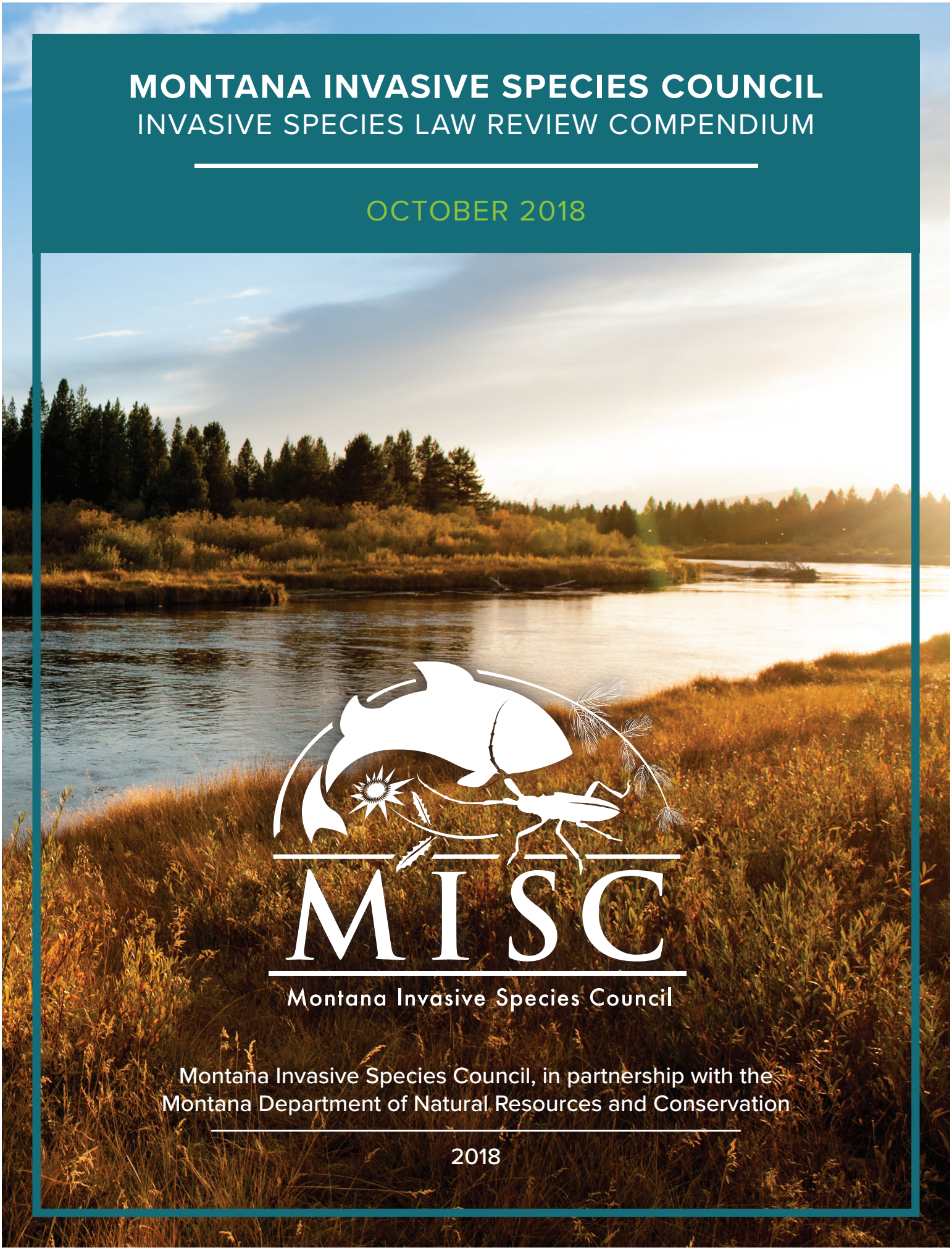
MONTANA INVASIVE SPECIES COUNCIL
INVASIVE SPECIES LAW REVIEW COMPENDIUM

OCTOBER 2018



MISC

Montana Invasive Species Council

Montana Invasive Species Council, in partnership with the
Montana Department of Natural Resources and Conservation

2018

Cover photo: Madison River near West Yellowstone, Montana.
Montana Office of Tourism and Business Development

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Introduction

This compendium is a collection of current and relevant authorities relating to the control, reduction, and management of invasive species and pests in the state of Montana. Included are Federal, State, Local, and Tribal sources of law, including statutes, regulations, ordinances, policies, and treaties. The compendium is a product of an invasive species law review initiated in 2018 by the Montana Invasive Species Council (MISC), in partnership with the Alexander Blewett III School of Law at the University of Montana. The purpose is to provide managers and lawmakers with a systematic compilation of the laws and regulations that are relevant to the management of all-taxa invasive species in the state. It reflects the current authorities, statutes, rules and policies as of 2018, but may be updated in the future to reflect modifications or amendments as needed.

STATE AUTHORITIES

A. General:

1. MCA: Title 7, Chapter 1, Part 2 – Creation of New Boards

    a. §7-1-202 – Creation of new boards: a county may create administrative boards, districts, and commissions that are not otherwise provided for by law: (1) county building commission; (2) cemetery districts; (3) county fair commission; (4) mosquito control board; (5) museum board; (6) board of park commissioners; (7) road district; (8) rodent control board; (9) solid waste district; (10) television district; (11) weed management district

2. MCA: Title 7, Chapter 11, Part 10 – Creation and Governance of Special Districts

    a. §7-11-1001 – Purpose: The purpose of this part is to allow for the creation and governance of special districts
    b. §7-11-1002 – Definitions: As used in this part, the following definitions apply: (1) "Governing body" means the legislative authority of a local government (2) "Local government" means a city, town, county, or consolidated city-county government or any combination of these acting jointly (3)(a) "Special district" means a unit of local government that is authorized by law to perform a single function or a limited

number of functions (b) the term includes but is not limited to cemetery districts, museum districts, park districts, fair districts, solid waste districts, local improvement districts, mosquito control districts, multijurisdictional districts, road districts, rodent control districts, television districts, and districts created for any public or governmental purposes not specifically prohibited by law. The term also includes any district or other entity formed to perform a single or limited number of functions by interlocal agreement (c) the term does not include business improvement districts, cattle protective districts, conservancy districts, conservation districts, water and sewer districts, planning and zoning districts, drainage districts, grazing districts, hospital districts, irrigation districts, library districts, livestock protective committees, parking districts, resort area districts, rural improvement districts, special improvement districts, lighting districts, rural fire districts, street maintenance districts, tax increment financing districts, urban transportation districts, water conservation and flood control projects, and weed management districts.

c. §7-11-1003 – Authorization to create special districts: (1) whenever the public convenience and necessity may require: (a) the governing body may (i) create a special district by resolution; or (ii) order a referendum on the creation of a special district to serve the inhabitants of the special district as provided by 7-11-1011; or (b) petitioners may initiate the creation of the special district to serve inhabitants of the special district as provided in subsection (2). (2)(a)(i) upon of a petition to institute the creation of a special district that is signed by at least 25% of the registered voters or by the owners of at least 25% of the real property within the boundary of the proposed special district and that is submitted to the clerk of the governing body, the governing body shall order a referendum on the creation of the special district pursuant to 7-11-1011. (ii) upon receipt of a petition to institute the creation of a special district that is signed by more than 50% of the registered voters or by the owners or more than 50% of the real property within the boundary of the proposed special district, the governing body shall conduct a public hearing pursuant to 7-11-1007. Following the hearing and if insufficient protests are made as provided in 7-11-1008, the governing body shall order the creation of the special district in accordance with 7-11-1013; (b) if a proposed special district would be financed by a mill levy, a petition to institute the creation of the special district must be signed by at least 40% of the registered voters or at least 40% of the property taxpayers within the boundary of the proposed district; (c) the form of the petition may be prescribed by the governing body, and the clerk of the governing body shall verify the signatures on the petition; (d) subject to subsection (2)(c), the petition must: (i) require the printed name of each signatory; (ii) specify

whether the signatory is property taxpayer or owner of real property within the proposed special district and either the street address or the legal description, whichever the signatory prefers, of that property; (iii) describe the type of special district being proposed and the general character of any proposed improvements and program to be administered within the special district; (iv) designate the method of financing any proposed improvements or maintenance program within the special district; (v) include a description of the areas to be included in the proposed special district; and (vi) specify whether the proposed special district would be administered by the local governing body or an appointed or elected board. (3) within 60 days of receipt of a petition to create a special district, the clerk of the governing body shall: (a) certify that the petition is sufficient under the provisions of subsection (2) and present it to the governing body at its next meeting; or (b) reject the petition if it is insufficient under the provisions of subsection (2). (4) a defect in the contents of the petition or in its title, form of notice, or signatures may not invalidate the petition and subsequent proceedings as long as the petition has a sufficient number of qualified signatures attached.

d. §7-11-1006 – Determining special district boundaries: (1) the boundaries of the proposed special district must be mapped, clearly described, and made available to the public at the time of the publication of the notice of public hearing pursuant to 7-11-1007 before the district may be approved. (2) the governing body or petitioners shall consult with a professional land surveyor, as defined in 37-67-101, to prepare a legal description of the boundaries for the proposed special district (3) the boundaries must follow property ownership, precinct, school district, municipal, and county lines as far as practical

e. §7-11-1007 – Public Hearing – resolution of intention to create special districts: (1) the governing body shall hold at least one public hearing concerning the creation of a proposed special district prior to the passage of a resolution of intention to create the special district. A resolution to create a special district may be based upon a decision of the governing body as provided in 7-11-1003(1)(a) or upon a petition that contains the required number of signatures as provided in 7-11-1003(1)(b). (2) the resolution must designate: (a) the proposed name of the special district; (b) the necessity for the proposed special district; (c) a general description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district; (d) the general character of any proposed improvements and the proposed location for the proposed program or improvements; (e) the estimated cost and method of financing the proposed program or improvements; (f) any requirements specifically applicable to the type of special district; (g) whether the proposed

special district would be administered by the governing body or an appointed or elected board; and (h) the duration of the proposed special district; (3)(a) the governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held. (b) at the same time that notice is published pursuant to subsection (3)(a), the governing body shall provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district. The list may not be distributed or sold for use as a distribution list in accordance with 2-6-1017. (c) a copy of the notice described in subsection (3)(a) must be mailed to each owner or purchaser under contract for deed of the property included on the list referred to in subsections (3)(b) as shown by the current property tax record maintained by the department of revenue for the county.

f. §7-11-1008 – Right to protest – procedure – hearing: (1) an owner of property that is liable to be assessed for the program or improvements in the proposed special district has 60 days from either the date of the first publication of the notice of passage of the resolution of intention or the date the protest form provided for in subsection (2)(c) was sent to property owners, whichever is later, to make a written protest against the proposed program or improvements. (2)(a) property owner may register a written protest under either subsection (2)(b) or (2)(c). (b) a property owner may register a written protest in any format in conformity with this section. The protest must identify the property in the district owned by the protestor by either its street address or its legal description, whichever the property owner prefers, be signed by a majority of the owners of that property, and be delivered to the clerk of the governing body, who shall endorse on the protest the date of receipt (c) the governing body shall send each person referred to in 7-11-1007(3)(c) a protest form with space for any information required under subsection (2)(b) of this section, mailing instructions, and the date the form must be returned to the governing body. The form must allow a property owner to select either support for or opposition against the creation of the district may be used, along with written protests submitted under subsection (2)(b), in determining whether sufficient protest has been filed to prevent further proceedings. (3)(a) for purposes of this section, "owner" means, as of the date a protest is filed, a record owner of fee simple title to the property or a contract buyer on file with the county clerk and recorder (b) the term does not include a tenant of or other holder of a leasehold interest in the property. (4) An owner of property created as a condominium may protest pursuant to the provisions in 7-11-1027. (5)(a) at the hearing

provided for in 7-11-1007, the governing body shall consider all protests (b) if the protest is made by the owners of property in the proposed district to be asserted for (i) 50% or more of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, further proceedings may not be taken by the governing body for at least 12 months; or (ii) more than 10% but less than 50% of the cost of the proposed program or improvements, in accordance with the method or methods of assessment, and if the governing body decides to proceed with proposing the district, the governing body shall order a referendum in accordance with 7-11-1011. (c) in determining whether or not sufficient protests have been filed in the proposed special district to prevent further proceedings, property owned by a governmental entity must be considered the same as any other property in the district. (d) the decision of the governing body is final and conclusive. (e) the governing body may adjourn the hearing from time to time.

g. §7-11-1010 – Combination of elections – term of board members if election combined: (1)(a) if the governing body orders a referendum on the creation of a proposed special district and the special district would be administered by an elected board, the governing body may combine the referendum on the formation of the district with the election of the members of the board so that the qualified electors of the district may vote on these matters on the same date and at the same time. (b) if the elections are combined, the notice of the election must contain the names of the candidates. Candidates for the board must file a declaration of candidacy with the election administrator within the time period specified in 13-1-502. The election administrator shall endorse on the declaration the date on which it was presented. (2) if the governing body orders a combined election pursuant to subsection (1) and unless otherwise provided by resolution by the governing body pursuant to 7-1-201: (a) a board member elected pursuant to this section shall hold office until the election and qualification or the appointment and qualification of the member's successor. (b) except as provided in subsection (2)(c), a board member has a term of office of 4 years. (c)(i) in a special district requiring the election of five directors, three of the initial directors shall serve for a term of 2 years and two of the initial directors shall serve for a term of 4 years. (ii) in a special district requiring the election of three directors, one initial director shall serve for a term of 2 years and two initial directors shall serve for a term of 4 years. (iii) at the first meeting following an initial election of board members, the board shall determine by lot who shall serve a 2-year term.

h. §7-11-1011 – Referendum – conduct of election on creating special district: (1) the governing body may order a referendum on the creation

of the proposed special district. (2) the resolution ordering the referendum must state: (a) the type and maximum rate of the initial proposed assessments or fees that would be imposed, consistent with the requirements of 7-11-1007(2)(e) and 7-11-1024; (b) the type of activities proposed to be financed, including a general description of the program or improvements; (c) a description of the areas included in the proposed special district; and (d) whether the proposed special district would be administered by the governing body or an appointed or elected board. (3) the election must be conducted in accordance with Title 13, chapter 1, part 5. (4) the proposition to be submitted to the electorate must read: "Shall the proposition to organize (name or proposed special district) be adopted?" (5) an individual is entitled to vote on the proposition if the individual: (a) is a registered elector of the state; and (b) is a resident or of owner of taxable real property in the area subject to the proposed special district. (6) if the proposition is approved, the election administrator of each county shall: (a) immediately file with the secretary of state a certificate stating that the proposition was adopted; (b) record the certificate in the office of the clerk and recorder of the county or counties in which the special district is situated; and (c) notify any municipalities lying within the boundaries of the special district.

i. §7-11-1012 – Certificate of establishment: (1) on receipt of the certificate referred to in 7-11-1011(6), the secretary of state shall, within 10 days, issue a certificate reciting that the specified district has been established according to the laws of the state of Montana. A copy of the certificate must be transmitted to and filed with the clerk and recorder of the county or counties in which the district is situated. (2) when the certificate is issued by the secretary of state, the district named in the certificate is established with all the rights, privileges, and powers set forth in 7-11-1021.

j. §7-11-1013 – Order creating district – power to implement program: (1) the governing body shall create a special district and establish assessments or fees if the governing body finds that insufficient protests have been made in accordance with 7-11-1008 or if the eligible registered voters have approved a referendum as provided in 7-11-1011. (2) to create a special district, the governing body shall issue an order or pass an ordinance or resolution in accordance with the resolution of intention introduced and passed by the governing body or in accordance with the terms of the referendum required under 7-11-1011. This must be done within 30 days of the end of the protest period or approval of the referendum. (3) if the governing body creates the special district of its own accord and without a referendum being held, a copy of the order, ordinance, or resolution creating the district, certified by the clerk of the governing body, must be delivered to the

clerk and recorder of the county or counties in which the special district is situated and to the secretary of state, who shall issue a certificate of establishment in accordance with 7-11-1012.

k. §7-11-1014 – Additional reporting procedures – coordination of information collection, transfer, and accessibility: (1) within 60 days after the creation of a special district or by January 1 of the effective tax year, whichever occurs first, the governing body shall provide to the department of revenue: (a) a legal description of the special district (b) map of its boundaries (c) list of the property taxpayers or owners of real property within the special district's boundaries; and (d) copy of the resolution establishing the special district, including any adopted method of assessment. (2) the department of revenue shall review the information provided in accordance with subsections (1) and work with the governing body to identify and correct any discrepancies before the information is recorded by the department. (3) if the governing body intends to submit any digital information to the department of revenue for the purposes of subsection (4)(b), the governing body shall notify the department of revenue as to the expected date of submission and submit the digital information in a manner prescribed by the department of revenue in consultation with the state library. (4) the state library, in coordination with the department of revenue, governing bodies, and other appropriate entities, may develop standards, best practices, and procedures for: (a) collecting and transferring between agencies any digital information submitted by a governing body for purposes of subsection (4)(b); and (b) creating digital information to map special districts for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through the website of the state library.

l. §7-11-1015 – Limitations on lawsuits: (1) a finding of the governing body in favor of the genuineness and sufficiency of the petition or election is final and conclusive against all persons except the state of Montana upon suit brought by the attorney general. (2) a lawsuit filed by the attorney general must be filed by the earlier of: (a) 1 year after the order, ordinance, or resolution creating the special district is approved by the governing body; or (b) the issuance of bonds to implement the program or improvements approved for the special district.

m. §7-11-1021 – Governance – powers and duties: (1) a special district must be administered and operated either by the governing body or by a separated elected or appointed board as determined by the governing body. (2)(a) if the special district is governed by a separate board, the board must be established in accordance with Title 7, chapter 1, part 2, except as provided in 7-11-1010, and specific powers and duties granted to the board and those specifically withheld must be stated. (b)

a vacancy created pursuant to 2-16-501 occurring during a term must be filled for the unexpired term by the governing body. The member appointed to fill the vacancy holds the office until a successor has been appointed and qualified. (c) the governing body may grant additional powers to the board. This includes the authorization to use privately contracted legal counsel or the attorney of the governing body. If privately contracted counsel is used, notice must be provided to the attorney of the governing body. (d) the governing body has ultimate authority under this subsection (2). (3) the entity chosen to administer the special district, as provided in subsection (1), may: (a) implement a program and order improvements for the special district designed to fulfill the purposes of the special district; (b) employ personnel directly related to the specific improvement or program; (c) purchase, rent, or lease equipment, personal property, and material necessary to develop and implement an effective program; (d) cooperate or contract with any corporation, association, individual, or group of individuals, including any agency of federal, state, or local government, in order to develop and implement an effective program; (e) receive gifts, grants, or donations for the purpose of advancing the program and, by gift, deed, devise, or purchase, acquire land, facilities, buildings, and material necessary to implement the purposes of the special district; (f) construct, improve, and maintain new or existing facilities and buildings necessary to accomplish the purposes of the special districts; (g) provide grants to private, nonprofit entities as part of implementing an effective program; (h) adopt a seal and alter it at the entity's pleasure; (i) administer local ordinances as appropriate; (j) establish district capital improvement funds pursuant to 7-6-616, maintenance funds, and debt service funds; and (k) borrow money by the issuance of: (i) general obligation bonds as authorized by the governing body pursuant to Title 7, chapter 6, art 40, and the appropriate provisions of Title 7, chapter 7, part 22 or 42; or (4) if the special district is administered by a separate board, the board shall submit annual budget and work plans to the governing body for review and approval. (5) the right to exercise eminent domain pursuant to 70-30-102 is limited to cemetery districts.

n. <u>§7-11-1022</u> – Multiple jurisdictions: (1) a special district created by a combination of local governments acting together must be administered according to an interlocal agreement. The interlocal agreement may determine whether the administrative body of the special district consists of the entire membership of all governing bodies from the participating jurisdictions or representatives of each governing body or jurisdiction. (2) a special district created by a combination of local governments acting together may enlarge an existing service district, but may not supersede or void an existing

contract, district, or interlocal agreement under which the same service is currently provided to residents of one or more of the participating jurisdictions. The local governments acting together may agree to alter an existing contract, district, or interlocal agreement as necessary. (3) the local governments shall proportionally share the ownership of real or personal property acquired by the district pursuant to their interlocal agreement.

o. §7-11-1023 – Alteration of special districts: (1) subject to subsections (2) and (3), the governing body may change the boundaries of any special district by resolution. (2) the boundaries may be altered by petition after complying with the requirements for petitions as provided in 7-11-1003. (3) alteration of special district boundaries is also subject to procedures for public notice, protest, referendum, certification, reporting, and establishment of assessment as provided in 7-11-1006 through 7-11-1008, 7-11-1011 and through 7-11-1015 and 7-11-1024. (4) Changes made to the boundaries may not: (a) occur more than once each year unless the governing body makes a special finding that an alteration is necessary; (b) delete any portion of the area if the deletion will create an island of included or excluded lands; (c) delete any portion of the area that is negatively contributing or may reasonably be expected to negatively contribute to environmental impacts that fall within the scope of the special district's program; and (d) affect indebtedness existing at the time of the change

p. §7-11-1024 – Financing for special district: (1) the governing body shall make assessments or impose fees for the costs and expenses of the special district based upon a budget proposed by the governing body or separate board administering the district pursuant to 7-11-1021. (2) for the purposes of this section, "assessable area" means the portion of a lot or parcel of land that is benefited by the special district. The assessable area may be less than but may not exceed the actual area of the lot or parcel. (3) the governing body shall assess the percentage of the cost of the program or improvements: (a) again the entire district as follows; (i) each lot or parcel of land within the special district may be assessed for that part of the cost that its assessable area bears to the assessable area of the entire special district, exclusive of roads, streets, avenues, alleys, and public places; (ii) if the governing body determines that the benefits derived from the program or improvements by each lot or parcel are substantially equivalent, the cost may be assessed equally to each lot or parcel located within the special district without regard to the assessable area of the lot or parcel; (iii) each lot or parcel of land, including the improvements on the lot or parcel, may be assessed for that part of the cost of special district that its taxable valuation bears to the total taxable valuation of the property of the district; (iv) each lot or parcel of land may be

assessed based on the lineal front footage of any part of the lot or parcel that is in the district and abuts the area to be improved or maintained; (v) each lot or parcel of land within the district may be assessed for that part of the cost that the reasonably estimated vehicle trips generated for a lot or parcel of its size in its zoning classification bear to the reasonably estimated vehicle trips generated for all lots in the district based on their size and zoning classification; (vi) each lot or parcel of land within the district may be assessed based on each family residential unit or one or more business units; or (vii) any combination of the assessment options provided in subsections (3)(a)(i) through (3)(a)(vi) may be used for the special district as a whole; or (b) based upon the character, kind, and quality of service for a residential or commercial unit, taking into consideration: (i) the nature of the property or entity assessed; (ii) a calculated basis for the program or service, including volume or weight; (iii) the cost, incentives, or penalties applicable to the program or service practices; or (iv) any combination of these factors; (4) if property created as a condominium is subject to assessment, each unit within the condominium is considered a separate parcel of real property subject to separate assessment and the lien of the assessment. Each unit must be assessed for the unit's percentage of undivided interest in the common elements of the condominium. The percentage of the undivided ownership interest must be as set forth in the condominium declaration.

q. §7-11-1025 – Notice of resolution for assessment – assessment: (1) the governing body shall estimate, as near as practicable, the cost of each established special district annually by the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values from the department of revenue. (2)(a) the governing body shall pass and finally adopt a resolution specifying the special district assessment option and levying and assessing all the property within the special district with an amount equal to the annual cost of the program and improvements as provided in 7-6-4012 and 7-6-4013. (b) if the entity chosen to administer the special district is the governing body, the governing body may not charge more than 15% of the annual fees or assessments collected to administer the special district. (3) the resolution levying the assessment to defray the cost fo the special district must contain or refer to a list that describes the lot or parcel of land assessed with the name of the owner of the lot or parcel, if known, and the amount assessed. (4) the resolution must be kept on file in the office of the clerk of the governing body. (5) a notice, signed by the clerk of the governing body, stating that the resolution levying a special assessment or changing the method of assessment to defray the cost of the special district is on file in the clerk's office and subject to

inspection must be published as provided in 7-1-2121 or 7-1-4127. The notice must state the time and place at which objections to the final adoption of the resolution will be heard by the governing body and must contain a statement setting out the method of assessment being proposed for adoption or the change in assessment being proposed for adoption. The time for the hearing must be at least 5 days after the final publication of the notice. (6) the notice and hearing process may be included in the local government's general budgeting process as provided in Title 7, chapter 6, part 40. (7) at the time set, the governing body shall meet and hear all objections that may be made to the assessment or any part of the assessment, may adjourn from time to time for that purpose, and may by resolution modify the assessment. (8) a copy of the resolution, certified by the clerk of the governing body, must be delivered to the department of revenue by the later of the first Thursday after the first Tuesday in September or within 20 calendar days after receiving certified taxable values from the department of revenue.

r. §7-11-1026 – Collection of special district assessments: (1) when a resolution of assessment has been certified by the clerk of the local government, the county treasurer, the city treasurer, or the town clerk, as provided in 7-12-4182, shall collect the assessment in the same manner and at the same time as property taxes for general purposes are collected. (2) all money received by the special district, including interest and earnings accrued, must be deposited in an account held only for the special district by the office of the county treasurer, or town clerk.

s. §7-11-1027 – Payment of assessment under protest – action to recover: (1)(a) when an assessment made under this part is considered erroneous by the party whose property is charged or from whom the payment is demanded, the person may: (i) prior to the assessment becoming delinquent, file an appeal to the administrative board of the district; or (ii) pay the assessment or any part of the assessment considered to be erroneous under protest to the county treasurer, city treasurer, or town clerk, whoever is charged with collection of the assessment, and either file an appeal to the administrative board of the district or initiate action in court as provided in subsection (2). (b)(i) if an appeal is filed before the administrative board and the board finds in favor of the taxpayer, the board shall order the assessment or the contested portion of the assessment removed, and if the payment was made under protest, it must be refunded by the county treasurer, or town clerk. (ii) if an appeal is filed before the administrative board and the board does not find in favor of the taxpayer and if a payment was made under protest or the taxpayer makes a payment under protest before the assessment becomes delinquent, the taxpayer may

initiate an action in court as provided in subsection (2). (2) the party paying under protest or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the local government on whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. An action instituted to recover the assessment paid under protest must be commenced within 90 days after the date of payment. (3) the assessment paid under protest must be held by the county treasurer, city treasurer, or town clerk until the determination of an action brought for the recovery of the assessment. (4) if the assessment considered to be unlawful pertains to property created as a condominium and the property is not solely a certain unit in the condominium, then the owner of the property created as a condominium that is entitled to protest is considered to be the collective owners of all units having an undivided ownership interest in the common elements of the condominium. (5) an owner of property created as a condominium may protest against the method of assessment or vote at an election of the special district only through a president, vice president, secretary, or treasurer of the condominium owners' association who timely presents to the secretary of the special district the following: (a) writing identifying the condominium property; (b) the condominium declaration or other condominium document that shows how votes of unit owners in the condominium are calculated; (c) original signatures of owners of units in the condominium having an undivided ownership interest in the common elements of the condominium sufficient to constitute an affirmative vote for an undertaking relating to the common elements under the condominium declaration; and (d) a certificate signed by the president, vice president, secretary, or treasurer of the condominium owners' association certifying that the votes of the unit owners, as evidenced by the signatures of the owners, are sufficient to constitute an affirmative vote of the condominium owners' association to protest against the method of assessment.

t. §7-11-1028 – Assessments as liens: (1) an assessment made and levied to defray the cost and expenses of the program or improvements, together with any percentages imposed for delinquency and for cost of collection, constitutes a lien upon the property on which the assessment is made and levied from the date of the passage of the resolution levying the assessment. This lien may be extinguished only by the payment of the assessment, with all penalties, costs, and interest, or by sale of the property as provided in subsection (2). (2) when the payment of an installment of an assessment becomes delinquent, all payments of subsequent installments of the assessment

may, at the option of the governing body and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold in the same manner as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method authorized by the law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

u. §7-11-1029 – Dissolution of special district: (1) a special district may be dissolved if it is considered to be in the best interest of a local government or the inhabitants of the local government or if the purpose for creating the special district has been fulfilled and the special district is not needed in perpetuity. (2) the governing body may pass a resolution of intention to dissolve a special district upon its own request or upon request of the separate board administering the special district. (3) after the passage of the resolution provided for in subsection (2), the clerk of the local government that established the special district shall publish a notice, as provided in 7-1-2121 or 7-1-4127, of the intention to dissolve the district. (4)(a) the notice must specify the boundaries of the special district to be dissolved, the date of the passage of the resolution of intention to dissolve, the date set for the passage of the resolution of dissolution, and that the resolution will be passed unless the clerk of the local government receives written protest in advance from the owners of property in the district who are assessed for: (i) 50% or more of the cost of the program or improvements; or (ii) more than 10% but less than 50% of the cost of the program or improvements. (b) if the governing body receives the protest as provided in subsection (4)(a)(i), further dissolution proceedings may not be taken by the governing body for at least 12 months. (c) if the governing body receives the protest as provided in subsection (4)(a)(ii), the governing body shall order a referendum on the dissolution in accordance with 7-11-1011. (d) in determining whether or not sufficient protests have been filed, property owned by a governmental entity must be considered the same as any other property in the district. (e) the decision of the governing body is final and conclusive. (5) if the special district is dissolved, the clerk of the local government shall immediately send written notice to: (a) the secretary of state; and (b) the department of revenue, providing the same information required in 7-11-1014 when a district is create. The department of revenue and the state library shall respond to the dissolution in the same manner as they respond to the creation of a district, as described in 7-11-1014. (6) the dissolution of a special district may not relive the property owners from the assessment and payment of a sufficient amount to liquidate all charges existing against the special district prior to the date of dissolution. (7) any assets

remaining after all debts and obligations of the special district have been paid, discharged, or irrevocably settled must be: (a) deposited in the general fund of the local government; (b) in the case of multiple local governments, divided in accordance with their interlocal agreement and deposited in the general fund of each local government; or (c) transferred to a new special district that has been created to provided substantially the same service as provided by the dissolved special district. (8) if the remaining assets are derived from private grants or gifts that restrict the use of those foods, the funds must be returned to the grantor or donor.

v. §7-11-1030 – Minutes: the board or governing body administering and operating the special district as provided by 7-11-1021 shall submit the minutes of its proceedings for electronic storage as provided in 7-1-204 unless: (1) the special district is operated by the governing body of a municipality; and (2) the governing body has designated an alternative place for the minutes to be recorded or maintained.

w. §7-11-1035 – Energy performance contracts exempt: this part does not apply to solicitation and award of an investment-grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

3. MCA: Title 80, Chapter 7, Part 12 – Invasive Species Council

a. §80-7-1201 – Invasive species council – purpose: the purpose of the invasive species council is to advise the governor on a science-based, comprehensive program to identify, prevent, eliminate, reduce, and mitigate invasive species in Montana and to coordinate with public and private partners to develop and implement statewide invasive species strategic plans.

b. §80-7-1203 – Duties – reporting – definition: (1) the invasive species council shall: (a) provide policy level recommendations, direction, and planning assistance for combating infestations of invasive species throughout the state and preventing the introduction of other invasive species; (b) foster cooperation, communication, and coordinated approaches that support federal, state, provincial, regional, tribal, and local initiatives for the prevention, early detection, and control of invasive species; (c) identify, coordinate, and maintain an independent science advisory panel that informs Montana's efforts based on the current states, trends, and emerging technology as they relate to invasive species management in Montana; (d) in coordination with stakeholders, identify and implement priorities for coordination, prevention, early detection, rapid response, and control of invasive species in Montana; (e) champion priority invasive species issues

identified by stakeholders to best protect the state; (f) advise and coordinate with agency personnel, local efforts, and the scientific community to implement program priorities; (g) implement an invasive species education and outreach strategy; (h) work with regional groups to coordinate regional defense and response strategies; and (i) work toward establishing and maintaining permanent funding for invasive species priorities. (2) the council shall report on its activities to the governor, the director of the department of natural resources and conservation, and the environmental quality council annually. (4) for the purpose of this part, invasive species means plants, animals, and pathogens that are nonnative to Montana's ecosystem and cause harm to natural and cultural resources, the economy, and human health.

B. Aquatic Invasive Species:

1. ARM: Title 4, Chapter 12, Part 13 – Quarantines and Pest Management

a. §4.12.1301 – Definitions: (1) "Article" is any item subject to a quarantine. (2) "Department" means the Department of Agriculture. (3) "Accredited Certifying Official (ACO)" is a federal, state, or county official accredited to perform phytosanitary inspections and sign phytosanitary certificates for commodities meeting phytosanitary requirements. (4) "Fomite" is any inanimate object or substance capable of carrying an organism, functions to transfer an organism, or in any other way acts as a nonliving vector of a pest. (5) "Location" is any place where quarantine pests, quarantine articles, plants, plant propagative material, plant products, and other associated items or materials are. This includes, but is not limited to, businesses; fields; gardens; production areas; propagation areas; greenhouses; processing facilities; places where regulated articles or plants are kept, sold, traded, bartered, used, given away, or distributed; and all conveyances. (6) "Long-term quarantine" is a quarantine that lasts over 12 months. (7) "Permit" is a written authorization issued by the department, another state, or the federal government and is approved by the department for the movement of any prohibited or restricted plant pests or quarantined articles. (8) "Phytosanitary documentation" is legal paperwork certifying that visual inspections have been completed by a state or federal official and that all other requirements such as, but not limited to, surveys, laboratory tests, and treatments, have been met. (9) "Phytosanitary inspection" is an inspection conducted by an individual trained and certified to determine if prohibited materials or organisms are present or to take official samples to be examined by a qualified individual or an accredited laboratory elsewhere.
(10) "Phytosanitary measure" is an action taken to assure that

prohibited materials and/or organisms are not present in or on plants or plant materials. (11) "Plant matter" is any plant species that includes, but is not limited to, agricultural, forest, range, nursery, or ornamental species; soil; fruit, vegetables, seeds, or nuts; any other plant part or propagative material; or plant product. This includes house, greenhouse, hothouse, potted (regardless of planting medium), bareroot, aquarium, pond or other water related, and windbreak plants. (12) "Plant pest" is any organism that can directly or indirectly injure or cause damage in or to a plant, plant propagative material, or a plant product including, but not limited to, an insect, weed, fungus, virus, bacteria, parasite, pathogen, nematode, vector or other organism that meets the criteria as a pest established by department rule. (13) "Proper documents" is a copy of the original invoice listing the origin of the articles, quantity and value of articles, location where the articles are destined to arrive, anticipated date of arrival, and/or other requirements specified under a quarantine. (14) "Quarantine" is a rule, order, or other legal instrument duly imposed or enacted by the department on regulated areas or articles. (15) "Quarantined article" is anything covered by a quarantine order in ARM 4.12.1302, 4.12.1303, or an emergency declared by the director of the Department of Agriculture. (16) "Regulated area" is an area into which, within which, and/or from which plants, plant products, and other regulated articles are subject to phytosanitary measures or a quarantine to prevent the introduction and/or spread of quarantine pests. (17) "Regulated article" is any plant, plant matter, propagative plant parts, plant products, associated plant material, container, conveyance, or any other object or material capable of harboring or spreading plant pests, and that is subject to phytosanitary measures or a quarantine. (18) "Short-term quarantine" is a quarantine that lasts 12 months or less. (19) "Vector" is an organism that transmits a pathogen.

b. §4.12.1302 – Establishing a quarantine: (1) The director of the Department of Agriculture or his/her designated representative may establish or modify a quarantine by signing an order. The order will specify what is to be quarantined, the quarantine requirements, and the length of the quarantine. (2) A long-term quarantine shall be adopted into rule, but is effective upon signature of the director or his/her designated representative. (3) A list of quarantines is available by contacting: Montana Department of Agriculture, Agricultural Sciences Division, 302 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-7336; e-mail: agr@mt.gov, or through the department's web site: www.agr.mt.gov.

c. §4.12.1303 – Notification of imports: (1) Anyone who transits or imports quarantined articles for use, sale, resale, or distribution shall provide notice and required proper documents to the department by

mail, fax, e-mail, or other approved method. (2) The department must be in receipt of all proper documents at least 48 business hours before bringing the items into the state. Business hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., MST, excluding state holidays. (3) Under no circumstance may the imported item(s) be unloaded within the state until the department receives the proper documents and authorizes entry of the regulated articles. (4) The department may notify the shipper or the receiver that the imported or transiting items cannot be brought into the state, must be removed from the state, must be inspected, or must show that it has met any requirements the department deems necessary.

d. §4.12.1304 – Permits: (1) The quarantine order or rule may specify the type and kind of permit required for import, export, transit, movement, handling, or other actions of regulated articles. Permits may require actions by the permittee or department such as, but not limited to, inspection, sampling, analysis or testing, cleaning, decontamination, treatment, covering/sealing, destruction or disposition, safeguarding, or other services or actions to mitigate the pest risk and protect the state and its resources. (2) At the department's discretion, the department may recognize and grant reciprocal permit agreements with other units of government through a written memorandum of understanding. Such agreements will, at a minimum, specify the unit of government and duration of the agreement and provide for termination of the agreement at the discretion of the department. (3) All permits are subject to department oversight and may be subject to audit or inspection to ensure conformance with all permit conditions. (4) Any permit may be canceled by the department at any time. (5) Permits may have an associated fee. Permit fees will be specified in each quarantine order. (6) Permits may require bonding, the amount of which will be determined by the risk associated with such a permit. (7) If no permit is specified, then the quarantined item in question cannot be imported, exported, transported, or moved into, through, out of, or within Montana, without specific written authorization by the department.

e. §4.12.1305 – Inspections: (1) The department may inspect at any time, without notice, any business, location, conveyance, or records relating to such a business, location, or conveyance of: (a) Any individual, business, distributor, or shipper that sends a notice of import and the receiver of such imports. (b) Any permit holder or anyone who has had a permit in the previous 24 months. (c) Any person involved in the import or export of any plant, plant matter, plant part, plant product, or other regulated article subject to a quarantine. (d) Any location that has, grows, propagates, processes, distributes, sells, trades, barters, uses, or gives away a plant, plant matter, plant part, or plant product

subject to a quarantine. (2) Inspections are only for the purposes of investigating compliance with these rules and to ensure the department's quarantines are effective. (3) The department may conduct inspections on any person, place, or item if the department has reason to believe it contains material in violation of a quarantine. (4) The department may recover actual costs of inspections.

f. §4.12.1306 – Compliance agreements: (1) The department may enter into a compliance agreement with any person. (2) Compliance agreements may be used to meet quarantine requirements that facilitate import, export, handling, and movement of quarantine articles or items. (3) Anyone who enters into a compliance agreement with the department must be able to demonstrate that they can meet or exceed all state and applicable federal requirements and must: (a) Have good standing with the department. (b) Not have an outstanding or past due account for any department program, service, or area of authority. (c) Have all required licenses and/or registrations for all department programs and services. (d) Not have any record of violation pertaining to a quarantine. (e) Not have a record of any violation within any statute, administrative rule, procedure, or policy for which the department has authority and jurisdiction that: (i) has occurred within the last two years; or (ii) is a repeat violation, occurring during the past five years. (f) Not have a record of any violation with any statute, administrative rule, procedure, or policy, within any state, that parallels a responsibility under the proposed compliance agreement. (g) Have had no permit, agreement, or other authority rescinded, suspended, revoked, or terminated for cause. (h) Meets all education, training, certification, accreditation, or other requirement to perform proposed activities or services. (4) The department may require a bonded compliance agreement for certain activities. (5) The department may charge a fee for a compliance agreement. The fee will be specific to the type and scope of the compliance agreement actions or services. (6) The department may recognize and grant reciprocal agreements with other units of government provided the above conditions are met both in Montana and the state in which the person resides. (7) All compliance agreements are subject to department oversight and may be subject to audit or inspection to ensure conformance with all compliance agreement conditions. (8) All compliance agreements may be canceled by the department at any time.

g. §4.12.1307 – Violations and penalties:

(1) Violation Schedule	1st Offense	Subsequent Offense
(a) Selling, distributing, propagating, rearing, planting, releasing, moving, or transporting a regulated article without a permit or compliance agreement.	$2,500	$5,000
(b) Knowingly bringing plants, plant matter, propagative plant parts, plant products, or any associated material into the state that is diseased, infected, or infested whether it is quarantined or not.	- - - - $2,500	- - - - $5,000
(c) Bringing a quarantined regulated article into the state without a required permit.	- - $2,500	- - $5,000
(d) Failure to obtain a permit.	$1,000	$5,000
(e) Failure to have a required permit or other required document with a quarantined item.	- - $1,000	- - $5,000
(f) Failure to provide required notification.	- $1,000	- $5,000
(g) Failure to follow any required safeguard not resulting in harm.	- $1,000	- $5,000
(h) Failure to follow any required safeguard that resulted in harm.	$2,500	$5,000
(i) Failure to keep required records.	- $1,000	- $5,000
(j) Failure to release or allow access to records pertaining to a quarantine, order, permit, or compliance agreement.	- - - $2,500	- - - $5,000
(k) Falsifying any record or document related to a quarantine, order, permit, or compliance agreement, including, but not limited to all sales, handling, shipping, transporting, importing, and exporting and any invoice, bill of lading, permit, seal, or certificate.	- - - - - - $2,500	- - - - - - $5,000
(l) Interfering with or preventing an inspection or investigation.	- $2,500	- $5,000

(m) Failure to be in compliance with a quarantine requirement.	- $2,500	- $5,000
(n) Noncompliance with any state or federal quarantine, order, permit condition or requirement, or compliance agreement that did not cause harm.	- - - $2,500	- - - $5,000
(o) Noncompliance with any state or federal quarantine, order, permit condition or requirement, or compliance agreement that caused harm.	$5,000	$5,000
(p) Any other violation of the Quarantine Act or these rules that did not cause harm.	$2,500	$5,000
(q) Any other violation of the Quarantine Act or these rules that caused harm.	$5,000	$5,000

(2) Violation of a quarantine permit, import permit, or compliance agreement may result in suspension of a permit or compliance agreement or denial of a future request for a permit or compliance agreement. (3) Anyone who violates these rules is acting negligently, if not intentionally, and is liable for all harm they cause and may be liable for all costs associated with, but not limited to, trapping, monitoring, surveying, analysis, testing, containment, eradication, control, management, disposition, destruction, restoration, and other measures deemed necessary by the department. (4) At the department's discretion, each continued day of violation can be a separate offense.

h. §4.12.1308 – Plant health quarantines: (1) All quarantines are listed by the name of the quarantine and references the quarantine order number. The order will specify the name of the quarantine and describe the plant pest(s), regulated articles, and regulations, e.g., notifications, inspections, sampling, certifications, required permit(s), safeguards, and any other requirements. (2) Quarantine orders are available from the department by accessing the department's web site at www.agr.mt.gov or by requesting a copy of the order by writing, e-mailing, or faxing a request to the Department of Agriculture at P.O. Box 200201, Helena, MT 59620-0201; agr@mt.gov; or (406) 444-5409. (a) The department may charge actual costs of printing, copying, and mailing copies of a quarantine rule or order. (3) The following is the

current list of long-term quarantines: (a) European Pine Shoot Moth (EPSM) (Rhyacionia bouliana). See Order MTQ-2008-01. (b) Late Blight Quarantine (Phytophthora infestans). See Order MTQ-2008-02. (c) Japanese Beetle (Popillia japonica Newman). See Order MTQ-2008-03. (d) Japanese Beetle (Popillia japonica Newman). See Order MTQ-2013-01.

2. ARM: Title 4, Chapter 12, Part 39 – Eurasian Watermilfoil Management Area

    a. §4.12.3901 – Eurasian Watermilfoil management area: (1) The Eurasian Watermilfoil Management Area is created covering Noxon and Cabinet Gorge reservoirs, the lower Clark Fork River, and the mouths of tributaries including a 200-foot set back beyond full pool or high water mark beginning at Plains, Montana and extending to the Montana/Idaho border and the land beneath two check stations at the juncture of Highway 2 and 56 with an eighth of a mile extension along the highways in each direction and the juncture of Highway 200 and Highway 28 near Plains with an eighth of a mile extension along the highways in each direction in order to prevent the spread of Eurasian watermilfoil. (2) The check stations will be mandatory for all water vessels, including live wells and trailers, and the check stations may mandate cleaning if the vessels appear to be potentially contaminated.
    b. §4.12.3902 – Upper and lower Missouri River Eurasian Watermilfoil: (1) The Upper Missouri River Eurasian Watermilfoil Management Area is created covering Beaverhead, Madison, Jefferson, Lewis & Clark, Broadwater, and Gallatin Counties. The Lower Missouri River Eurasian Watermilfoil Management Area is created covering Valley, Phillips, McCone, Richland, Garfield, and Petroleum Counties. (2) The inspection stations will be mandatory for all water vessels, including live wells and trailers, and the inspection stations may mandate cleaning if the vessels appear to be potentially contaminated.

3. ARM: Title 12, Chapter 5, Part 7 – Resource Protection

    a. §12.5.701 – Identified contaminated bodies of water for Eurasian Watermilfoil: (1) The department will identify bodies of water within any Department of Agriculture designated Eurasian watermilfoil management area as contaminated with Eurasian watermilfoil. (2) The department has identified the following bodies of water as contaminated with Eurasian watermilfoil: (a) Fort Peck Reservoir; (b) Fort Peck Dredge Cut Ponds; (c) Jefferson River; (d) Missouri River: (i) from Fort Peck Dam to the mouth of the Milk River; (ii) from the

confluence of the three forks of the Missouri River to the headwaters of Canyon Ferry Reservoir; and (e) Toston Reservoir.

b. §12.5.702 – Restrictions within identified contaminated bodies of water for Eurasian Watermilfoil: (1) The prohibitions of 80-7-1010, MCA apply to the bodies of water identified as contaminated in ARM 12.5.701 except: (a) possession of bait animals, dead or alive, is approved when allowed per fishing regulations; (b) transportation of aquatic bait animals is approved from contaminated bodies of water in water from a non-contaminated source when allowed per fishing regulations; and (c) transportation of live fish is approved from contaminated bodies of water in water from a non-contaminated source, when allowed per fishing regulations. (2) Upon departure of a contaminated body of water all vessels and equipment, including bait buckets, must be free of Eurasian watermilfoil.

c. §12.5.703 – Bodies of water not identified as contaminated within a Eurasian Watermilfoil management area: (1) Any body of water not identified as contaminated within the boundaries of a Department of Agriculture designated Eurasian watermilfoil management area are subject to the regulations outlined in the current published fishing regulations.

d. §12.5.706 – Identified areas threatened with aquatic invasive species and applicable quarantine measures: (1) Because of the known existence of aquatic invasive mussels in the areas defined in ARM 12.5.707, the department has identified all other areas of the State of Montana as an invasive species management area because of the threat of infestation of aquatic invasive mussels. (2) The department has determined the following quarantine measures are necessary to prevent the spread of aquatic invasive mussels: (a) vessels and equipment approaching a department inspection station must stop for inspection as directed; (b) vessels and equipment entering the state that do not approach a department inspection station must be inspected for aquatic invasive species prior to launching in any Montana water body, unless previously approved by the department for local use only; (c) vessels and equipment traveling across the Continental Divide into the Columbia River Basin that have been used on waters outside of the Columbia River Basin must be inspected at a department inspection station prior to launching within the Columbia River Basin. The department will post approved inspection stations and operating hours at fwp.mt.gov; (d) upon removing a vessel from any surface waters and before leaving the associated boat launch or parking area, all aquatic vegetation must be removed from the vessel, trailer, and equipment; (e) transport of surface water is prohibited unless authorized by the department; (f) live aquatic bait and fish must be transported in clean non-surface water where allowed in

current public fishing regulations; (g) reasonable measures must be taken to dry or drain all compartments or spaces that hold water, including emptying bilges, applying absorbents, and ventilation; and (h) areas subject to inspection include but are not limited to: (i) the exterior of the vessel; (ii) live wells; (iii) bait buckets; (iv) ballast tanks; (v) bilge areas; and (vi) trailer transporting vessel. (3) Any vessel at an inspection station found with invasive species, or any vessel containing residual water that has been in infested water in the last 30 days, will be decontaminated by AIS staff as arranged by the department. Infested waters that contain microscopic AIS species are identified on the map titled "Mussel-Infested States and Waterbodies" available at fwp.mt.gov. AIS staff shall refer to the map or to the most current known information. (4) Decontamination methods on vessels subject to (3) may include hot water washing, hot water flushing, and drying time, including interior portions of complex engine systems and pumps. A decontamination order may be issued that requires a drying period as directed by the department. The drying time will depend on weather conditions. During the drying period, the department may lock the vessel to the trailer to prevent launching. The department will be responsible for arranging the time and location to unlock the vessel when the drying time is complete. It is prohibited for anyone other than authorized department staff to remove the lock during the drying time. If a vessel requires a drying period as part of the decontamination process, then the vessel must pass a second inspection prior to launching in Montana waters in order to be considered decontaminated. (5) Upon inspection and/or decontamination, proof of compliance on any requirements will be provided and must be shown upon request. (6) Emergency response vehicles and equipment engaging in emergency response activities are exempt. (7) Violation of this rule is subject to penalty under 80-7-1014, MCA.

e. §12.5.707 – Identified bodies of water confirmed or suspected for aquatic invasive mussels: (1) The department has identified the following bodies of water as invasive species management areas because they are infested with confirmed or suspected aquatic invasive mussels: (a) Canyon Ferry Reservoir; and (b) Tiber Reservoir (Lake Elwell). (2) The department has determined the following quarantine measures are necessary to prevent further spread of the species from these bodies of water: (a) all vessels and equipment launched or having otherwise entered the water bodies listed in (1) must be inspected and, if directed by the department, decontaminated at a department decontamination station as required in ARM 12.5.706 prior to leaving the water body. The following are exempt: (i) vessels approved by the department for local travel only (vessels approaching a department

inspection station must still stop as directed pursuant to ARM 12.5.706); (ii) emergency response vehicles and equipment engaged in emergency response activities. (b) when an approved or decontaminated vessel leaves the water bodies listed in (1), all aquatic bait and fish must be transported without water. (3) Any rules or regulations for boat ramps or boat launching on the water bodies listed in (1) operated by the Bureau of Reclamation are considered rules adopted pursuant to the authority of the department for enforcement of these sites. (4) Upon inspection and/or decontamination, proof of compliance on any requirements will be provided and must be shown upon request. (5) Violation of this rule is subject to penalty under 80-7-1014, MCA.

f. §12.5.709 – Pilot program for Flathead Basin: (1) Vessels and equipment traveling into the Flathead Basin that have been used on waters outside of the Flathead Basin must be inspected at a department inspection station prior to launching within the Flathead Basin. (2) Emergency response vehicles and equipment engaging in emergency response activities are exempt. (3) Violation of this rule is subject to penalty under 80-7-1014, MCA. (4) This rule expires June 30, 2019, pursuant to 80-7-1027, MCA.

4. MCA: Title 23, Chapter 2, Part 3 – Pubic Trust Doctrine

a. §23-2-301 – Definitions: for the purposes of this part, the following definitions apply: (1) "barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, that totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other artificial obstacle to the natural flow of water. (2) "class I waters" means surface waters, other than lakes, that: (a) lie within the officially recorded federal government survey meander lines of the waters; (b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership; (c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or (d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership. (3) "class II waters" means all surface waters that are not class I waters, except lakes. (4) "commission" means the fish and wildlife commission provided for in 2-15-3402. (5) "department" means the department of

fish, wildlife, and parks provided for in 2-15-3401. (6) "diverted away from a natural water body" means a diversion of surface water through a constructed water conveyance system, including but not limited to: (a) an irrigation or drainage canal or ditch; (b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water; (c) a flood control channel; or (d) a hydropower inlet and discharge facility. (7) "lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded. (8) "occupied dwelling" means a building used for a human dwelling at least once a year. (9) "ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks. (10) "recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses. (11) "supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district. (12) "surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark.

b. §23-2-302 – Recreational use permitted – limitations – exceptions: (1) except as provided in subsections (2) through (5), all surface waters that are capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters. (2) the right of the public to make recreational use of surface waters does not include, without permission or contractual arrangement with the landowner: (a) the operation of all-terrain vehicles or other motorized not primarily designed for operation upon the water; (b) the recreational use of surface waters in a stock pond or other private impoundment fed by an intermittently flowing natural watercourse; (c) the recreational use of waters while diverted away from a natural water body for beneficial use pursuant to Title 85, chapter 2, part 2 or

3, except for impoundments or diverted waters to which the owner has provided public access; (d) big game hunting; (e) overnight camping unless it is necessary for the enjoyment of the surface water and the campsite is not within sight of any occupied dwelling or the campsite is more than 500 yards from any occupied dwelling, whichever is less; (f) the placement or creation of any permanent duck blind, boat moorage, or any other permanent object; (g) the placement or creation of any seasonal object, such as a duck blind or boat moorage, unless necessary for the enjoyment of that particular surface water and unless the seasonal objects are placed out of sight of any occupied dwelling or more than 500 yards from any occupied dwelling, whichever is less; (h) use of a streambed as a right-of-way for any purpose when water is not lowing in the streambed. (3) the right of the public to make recreational use of class II waters does not include, without permission of the landowner: (a) big game hunting; (b) overnight camping; (c) the placement or creation of any seasonal object; or (d) other activities that are not primarily water-related pleasure activities as defined in 23-2-301(10). (4) the right of the public to make recreational use of surface waters does not grant any easement or right to the public to enter onto or cross private property in order to use those waters for recreational purposes. (5) the commission shall adopt rules pursuant to 87-1-303, in the interest of public health, public safety, or the protection of public and private property, governing recreational use of class I and class II waters. These rules must include the following: (A) the establishment of procedures by which any person may request an order from the commission: (i) limiting, restricting, or prohibiting the type, incidence, or extent of recreational use of a surface water; or (ii) altering limitations, restrictions, or prohibitions on recreational use of a surface water imposed by the commission; (b) provisions requiring the issuance of written findings and a decision whenever a request is made pursuant to the rules adopted under subsections (5)(a); and (c) a procedure for the identification of streams within class II waters that are not capable of recreational use or are capable of limited recreational use, and a procedure to restrict the recreational use to the actual capacity of the water. (6) the provisions of this section do not affect any rights of the public with respect to state-owned lands that are school trust lands or any rights or lessees of those lands.

c. §23-2-309 – Land title unaffected: the provisions of this part and the recreational uses permitted by 23-2-302 do not affect eh title or ownership of the surface waters, the beds, and the banks of any navigable or nonnavigable waters or the portage routes within this state.
d. §23-2-310 – Lakes: nothing contained in this part addresses the recreational use of surface waters of lakes.

e. §23-2-311 – Right of portage – establishment of portage route: (10 a member of the public making recreational use of surface waters may, above the ordinary high-water mark, portage around barriers in the least intrusive manner possible, avoiding damage to the landowner's land and violation of the landowner's rights. (2) a landowner may create barriers across streams for purposes of land or water management or to establish land ownership as otherwise provided by law. If a landowner erects a structure that does not interfere with the public's use of the surface waters, the public may not go above the ordinary high-water mark to portage around the structure. (3)(a) a portage route around or over a barrier may be established to avoid damage to the landowner's land and violation of the landowner's rights, as well as to provide a reasonable and safe route for the recreational user of the surface waters. (b) a portage route may be established when either a landowner or a member of the recreating public submits a request to the supervisors that a route be established. (c) within 45 days of the receipt of a request, the supervisors shall, in consultation with the landowner and a representative of the department, examine and investigate the barrier and the adjoining land to determine a reasonable and safe portage route. (d) within 45 days of the examination of the site, the supervisors shall make a written finding of the most appropriate portage route. (e) the cost of establishing the portage route around artificial barriers must be borne by the department, including the cost of construction of notification signs of the route. (f) once the route is established, the department has the exclusive responsibility to maintain the portage route at reasonable times agreeable to the landowner. The department shall post notices on the stream of the existence of the portage route and the public's obligation to use it as the exclusive means around a barrier. (g) if either the landowner or the recreationalist disagrees with the route described in subsection (3)(e), the person may petition the district court to name a three-member arbitration panel. The panel must consist of an affected landowner, a member of an affected recreational group, and a member selected by the two other members of the arbitration panel. The arbitration panel may accept, reject, or modify the supervisors' finding under subsection (3)(d). (h) the determination of the arbitration panel is binding upon the landowner and upon all parties that use the water for which the portage is provided. Costs of the arbitration panel, computed as for jurors' fees under 3-15-201, must be borne by the contesting part or parties. All other parties shall bear their own costs. (i) the determination of the arbitration panel may be appealed within 30 days to the district court. (j) once a portage route is established, the public shall use the portage route as the exclusive means to portage around or over the barrier. (4) this part does not address the issue of

natural barriers or portage around the barriers, and this part does not make the portage lawful or unlawful.

f. §23-2-312 – Access to surface waters by public bridge or county road right-of-way: (1) a person may gain access to surface waters for recreational use by using: (a) a public bridge, its right-of-way, and its abutments; and (b) a county road right-of-way. (2) when accessing surface waters pursuant to subsection (1), a person shall stay within the road or bridge right-of-way. Absent definition in an easement or deed to the contrary, the width of a bridge right-of-way is the same width as the right-of-way of the road to which the bridge is attached. (3) the provisions in 7-14-2134, 23-2-313, and this section related to public access to surface waters for recreational use neither create nor extinguish any right related to county roads established by prescriptive use that exist on April 13, 2009. (4) for purposes of determining liability, a person accessing surface waters for recreational use pursuant to his section is owed no duty by a landowner or an agent or tenant of that landowner other than for an act or omission that constitutes willful or wanton misconduct.

g. §23-2-313 – Fencing for livestock control and public passage – negotiation – costs: (1) at county road bridges for which public access is authorized pursuant to 23-2-312, each fence attached to or abutting a county road bridge edge, guardrail, or abutment for livestock control or for property management pursuant to 7-14-2134(4) must provide for public passage to surface waters for recreational use pursuant to his section. (2)(a) is a dispute arises regarding public passage pursuant to subsection (1), the department, pursuant to the department's policy in 87-1-229 to work with private land managers to resolve and reduce user conflicts, shall negotiate with the affected landowner regarding the characteristics of an access feature of a legal fence for public passage and livestock control or property management. Examples of an access feature of a legal fence that provides public passage and livestock control or property management may include: (i) a stile; (ii) a gate; (iii) a roller; (iv) a walkover; (v) a wooden rail fence that provides for passage; or (vi) any other method designed for public passage and livestock control or property management. (b) one access feature, as described in subsection (2)(a), on each side of the stream is sufficient. When practicable, one access feature must be located on the downstream bridge edge, guardrail, or abutment. The department may waive these provisions when one access feature is sufficient. (c) if the landowner and the department cannot reach agreement within 60 days after the department's initial contact with the landowner for negotiation, the department shall provide the landowner with options for methods to provide public passage while controlling livestock or managing property. If the landowner does not choose one of the method

options within 30 days after the options are offered, the department shall choose and then may install one of the method options. (3) the department, in cooperation with other interested parties, shall provide the materials, installation, and maintenance of any fence modifications necessary to provide public passage as required by this section.

h. §23-2-321 – Restriction on liability of landowner and supervisor: (1) a person who makes recreational use of surface waters flowing over or through land in the possession or under the control of another, pursuant to 23-2-302, or land while portaging around or over barriers or while portaging or using portage routes, pursuant to 23-2-311, is owed no duty by a landowner, the landowner's agent, or the landowner's tenant other than that provided in subsection (2) a landowner, the landowner's agent, or tenant is liable to a person making recreational use of waters of land described in subsection (1) only for an act or omission that constitutes willful or wanton misconduct. (3) a supervisor or any member of the arbitration panel who participates in a decision regarding the placement of a portage route is not liable to a person who is injured or whose property is damaged because of placement or use of the portage route except for an act or omission that constitutes willful and wanton misconduct.

i. §23-2-322 – Prescriptive easement not acquired by recreational use of surface waters: (1) a prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years. (2) a prescriptive easement cannot be acquired through: (a) recreational use of surface waters, including: (i) the streambeds underlying them; (ii) the banks up to the ordinary high-water mark; or (iii) any portage over and around barriers; or (b) the entering or crossing of private property to reach surface waters.

5. MCA: Title 75, Chapter 6, Part 3 – Regional Water and Wastewater Authority Act

a. §75-6-301 – Short Title: this part may be cited as the "Regional Water and Wastewater Authority Act."

b. §75-6-302 – Purpose: (1) it is the purpose of this part to permit certain public agencies to make the most efficient use of their powers relating to public water supplies and the transportation and treatment of wastewater by enabling them to cooperate with other public agencies on a basis of mutual advantage and to provide services and facilities to participating public agencies. It is also the purpose of this part to provide for the establishment of a public body, corporate and politic, that is known as a regional water authority or, when appropriate, a regional wastewater authority or regional water and wastewater

authority. The function of the regional water authority is to secure a source of water on a scale larger than is feasible for individual public agencies acting alone and to sell the water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority is to enable pubic agencies to join together to provide the most economical method of transportation and treatment of wastewater and to provide the transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities and others. The function of the regional water and wastewater authority is to enable public agencies to join together to carry out the joint functions of both a regional water authority and a regional wastewater authority. (2) in addition to the purposes for which it may have originally been created, any authority created pursuant to this part may enter into agreements with public agencies, privately owned utilities, and other authorities for the provision of related services, including but not limited to the following: (a) administration; (b) operation and maintenance; and (c) billing and collection

c. §75-6-303 – Liberal construction: the provisions of this part are necessary for the public health, safety, and welfare and must be liberally construed to effectuate the purposes of this part.
d. §75-6-304 – Definitions: for the purposes of this part, the following definitions apply: (1) "authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of this part. (2) "District costumer" means a county water and/or sewer district that is afforded the use or the availability of service from an authority. (3) "Municipal customer" means a municipality that is afforded the use or the availability of service from an authority. (4) "Public agency" means any municipality, county, water and sewer district, or other political subdivision of this state. (5) "Rural customer" means a customer who is afforded the use or the availability of service from an authority and is neither a district customer nor a municipal customer.
e. §75-6-305 – Joint exercise of powers by certain public agencies – agreements among agencies – filing of agreement – prohibition against competition – retirement of bonds – consent of public agency: (1) any powers, privileges, or authority of a public agency of this state relating to public water supplies or the transportation or treatment of wastewater may be exercised jointly with any other public agency of this state or with any agency of the US to the extent that the laws of the US permit. An agency of the state government when acting jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by this part upon a public agency. (2) A public agency may enter into agreements with one or more other

public agencies for the purpose of organizing an authority. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of participating public agencies is necessary before any agreement may take effect. (3) an agreement must specify the following: (a) its duration; (b) the precise organization, composition, and nature of the authority created, together with the powers delegated to the authority; (c) its purpose or purposes; (d) the manner of financing for the authority and of establishing and maintaining a budget for the authority; € the permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination; (f) the manner of acquiring, holding, and disposing of real and personal property of the authority; and (g) any other necessary and proper matters. (4) an agreement may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if the terms of the agreement are not changed. Otherwise, a new agreement with the new public agency must be made. When only two public agencies form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies. (5) prior to taking effect, an agreement made under this part must be filed with the clerk of the county commission f each county in which a member of the authority is located and the agreement then must also be filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the county or counties where filed, stating that the agreement has been filed in that county. (6) a public agency that enters into an agreement made under this part may not offer or provide water or wastewater services in competition with another public agency entering into the agreement. (7) a public agency that enters into an agreement made under this part may not withdraw from the agreement until the outstanding bonded indebtedness of the authority is retired or the bondholders are otherwise protected. (8)(a) an authority may not provide water or wastewater services to end users located within the jurisdiction of a public agency that owns or operates a community water system or a public sewage system, as those terms are defined in 75-6-102, without the consent of the governing body of the public agency through the adoption of a resolution or ordinance. (b) the governing body may not adopt a resolution or ordinance without first holding a public hearing. The hearing must address relevant factors relating to the provision of the water or wastewater services, including but not limited to the scope of the proposed service, rates and charges, the indebtedness of the public agency and the authority, and the rights and obligations of the person or entities to be served. Notice must be given as provided in 7-1-2121 or 7-1-4127. (c) for purposes of this subsection (8), “governing body”

means the council, commission, board of directors, or other legislative body charged with governing the public agency.

f. §75-6-306 – Furnishing of funds, personnel, or services by certain public agencies – agreements for purchase, sale, distribution, transmission, transportation, and treatment of water or wastewater – terms and conditions: a public agency entering into an agreement pursuant to this part may appropriate funds and may sell, lease, give, or otherwise supply to the authority personnel or services for the operation of the authority as may be within its legal power to furnish. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned water distribution company may enter into contracts with any authority, created pursuant to this part, for the purchase of water from the authority or the sale of water to the authority, created pursuant to this part, for the purchase of water from the authority or the sale of water to the authority, for the treatment of water by either party, and for the distribution or transmission of water by either party. The authority may enter into the contracts. A public agency, whether or not a party to an agreement pursuant to this part, and a publicly or privately owned wastewater transportation or treatment system may enter into contracts with an authority, created pursuant to this part, for the transportation and treatment of wastewater by either party. The authority may enter into the contracts, subject to the prior approval of the public service commission, if the privately owned wastewater transportation or treatment system is subject to the jurisdiction of the public service commission. However, if the public service commission has not acted on a proposed contract within 90 days of its filing, approval is considered to have been granted. A contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated. A contract may not be for a period in excess of 40 years, but renewal options may be included in the contract. The obligations of a public agency under a contract must be payable solely from the revenue produced from the public agency's water or wastewater system, and the public service commission, in the case of water system whose rates are subject to its jurisdiction, shall permit the water system to recover through its rates revenue sufficient to meet its obligations under the agreement.

g. §75-6-310 – Declaration of authority organization – when public body, corporate and politic: upon filing with the secretary of state, the secretary of state shall declare the authority organized and give it the corporate name of regional water authority number, regional wastewater authority number, or regional water and wastewater authority number, as appropriate. Upon assignment of the designation, the authority is a public body, corporate and politic.

h. §75-6-311 – Governing body – appointments – terms of members – voting rights: (1) the governing body of the authority shall consist of not less than three persons selected by the participating public agencies. Each participating public agency shall appoint at least one member. Each member's full term may not be less than 1 year or more than 4 years, and initial terms must be staggered in accordance with procedures set forth in the agreement provided for in 75-6-305 and amendments to the agreement. In the case of an authority that is made up by the agreement of two public agencies, each public agency shall appoint two representatives to the governing body. (2) the manner of selection of the governing body and terms of office must be set forth in the agreement provided for in 75-6-305 and amendments to the agreement. The governing body of the authority shall elect one of its members as president, one as treasurer, and one as secretary. (3) each member has one vote in any matter that comes before the authority for decision. However, the member agencies shall, in the original agreement establishing the authority, set forth any special weighing of votes based upon population served, volumes of water purchased, volumes of wastewater treated, numbers of customers, or some other criterion that the authority considers appropriate for maintaining fairness in the decisions and operations of the authority.
i. §75-6-312 – Meetings of governing body – annual audit: the governing body of the authority shall meet as often as the needs of the authority require, but not less frequently than on a quarterly basis. The authority is subject to the provisions of Title 2, chapter 3, regarding open meeting laws and public participation. The governing body shall cause an annual audit of the financial records of the authority to be made. The cost of the audit must be paid by the authority. The authority is considered a local government entity for purposes of Title 2, chapter 7, part 5, and audits must comply with the provisions of that part.
j. §75-6-313 – Powers of governing body: (1) for the purpose of providing a water supply, transportation facilities, or treatment system to the participating public agencies and others, the governing body of the authority has the powers, authorities, and privileges provided for in this section. (2) the governing body may accept by gift or grant from any person, firm, corporation, trust, or foundation, from this state or any other state or any political subdivision or municipality of this or any other state, or from the United States any funds or property or any interest in funds or property for the uses and purposes of the authority. The governing body may hold title to the funds or property in trust or otherwise and may bind the authority to apply the funds or property according to the terms of the gift or grant. (3) the governing body may sue and be sued. (4) the governing body may enter into

franchises, contracts, and agreements with this or any other state, the United States, any municipality, political subdivision, or authority of a political subdivision, or any of their agencies or instrumentalities; any Indian tribe; or any public or private person, partnership, association, or corporation of this state or of any other state of the United States. This state and any municipality, political subdivision, or authority of a political subdivision or any of their agencies or instrumentalities and any public or private person, partnership, association, or corporation may enter into contracts and agreements with the authority for any term not exceeding 40 years for the planning, development, construction, acquisition, maintenance, or operation of a facility or for any service rendered to, for, or by the authority. However, the authority is subject to the same statutory requirements for competitive bidding and procurement contracts as would be applicable to any member public agency. (5) the governing body may borrow money and evidence the borrowing by warrants, notes, or bonds provided for in this part and may refund the indebtedness by the issuance of refunding obligations. (6) the governing body may acquire land and interests in land by gift, purchase, exchange, or eminent domain. The power of eminent domain may be exercised within or outside of the boundaries of the authority in accordance with the provisions of Title 70, chapter 30. (7) the governing body may acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distribution, and use of water and transportation facilities, pump stations, lift stations, treatment facilities, and other facilities necessary for the transportation and treatment of wastewater and may own and hold real and personal property that may be necessary to carry out the purposes of its organization. (8) the governing body has the general management, control, and supervision of all the business, affairs, property, and facilities of the authority and of the construction, installation, operation, and maintenance of authority improvements. The governing body may establish relating to authority improvements. (9) the governing body may hire and retain agents, employees, engineers, and attorneys and determine their compensation. The governing body shall select and appoint a general manager of the authority who shall serve at the pleasure of the governing body. The general manager must have training and experience in the supervision and administration of the system or systems operated by the authority and shall manage and control the system under the general supervision of the governing body. All employees, servants, and agents of the authority must be under the immediate control and management of the general manager. The general manager shall perform all other duties that may be prescribed

by the governing body and shall give the governing body a good and sufficient surety company bond in a sum to be set and approved by the governing body, conditioned upon the satisfactory performance of the general manager's duties. The governing body may also require that any other employees be bonded in an amount that it shall determine. The cost of a bond must be paid out of the funds of the authority. (10) the governing body may adopt and amend rules and regulations not in conflict with the constitution and laws of this state, necessary for carrying on the business, objects, and affairs of the governing body and of the authority. (11) the governing body has and may exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Specific powers may not be considered as a limitation upon any power necessary or appropriate to carry out the purposes of this part.

k. §75-6-320 – Revenue bonds: for constructing or acquiring any water supply, wastewater transportation, or treatment system for the authorized purposes of the authority or as necessary or incidental to the authorized purposes, for constructing improvements and extensions to improvements, and for reimbursing or paying the costs and expenses of creating the authority, the governing body of an authority may borrow money from time to time and in evidence of the borrowing issue revenue bonds of the authority. The revenue bonds are a lien on the revenue produced from the operation of the authority's system, but may not be general obligations of the public agencies participating in the agreement. All revenue bonds issued under this part must be signed by the president of the governing body of the authority and attested by the secretary of the governing body of the authority. The bonds must contain recitals stating the authority under which the bonds are issued, that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source, and that the bonds are negotiable and payable solely from the revenue derived from the operation of the system under control of the authority. However, in the case of a regional water and wastewater authority, the statutory lien created in this section is a lien only on the revenue of that service funded by the proceeds of the sale of the bonds, it being understood that the combined authority shall maintain separate books and records for its water and wastewater operations. The bonds may be issued in one or more series, may bear a date or dates, may mature at a time or times not exceeding 40 years from their respective dates, may bear interest at a rate not exceeding 2% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, may be payable at the times, may be in the form,

may carry registration privileges, may be executed in the manner, may be payable at a place or paces, may be subject to terms of redemption with or without premium, may be declared or become due before the maturity date, may be authenticated in any manner and upon compliance with the conditions, and may contain terms and covenants that may be provided by resolution or resolutions of the governing body of the authority. Notwithstanding the form or tenor of the bonds, and in the absence of any express recital on the face of the bonds, that the bonds are nonnegotiable, all bonds must be, and must be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing of the bonds must be valid and binding for all purposes, notwithstanding that before the delivery of the bonds, any of the persons whose signatures appear on the bonds ceased to be officers. Notwithstanding the requirements or provisions of any other law, bonds may be negotiated or sold in the manner and at the time or times that are found by the governing body to be most advantageous, and all bonds may be sold at the price that the interest cost of the proceeds from the bonds does not exceed 3% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury or the United States, based on the average maturity of the bonds and computed according to standard tables of bond values. Any resolution or resolutions that are considered necessary or advisable for the assurance of the payment of the bonds authorized by the resolutions.

l. §75-6-321 – Items included in cost or properties: the cost of any water supply, wastewater transportation, or treatment system acquired or constructed under the provisions of this part must be considered to include the cost of the acquisition or construction of the supply or system and the cost of all property rights, easements, and franchises considered necessary or convenient for the supply or system and for the improvements and extensions to the supply or system. Costs also include interest on bonds prior to and during construction or acquisition and for 6 months after completion of construction or of acquisition of the improvements and extensions; engineering expenses; fiscal agent and legal expenses; expenses for estimates of cost and of revenue; expenses for plans, specifications, and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the enterprise; administrative expense; and other expenses that may be necessary or incidental to the financing authorized in this part, the construction or acquisition of the properties, the placing of the properties in operation, and the performance of the things required or permitted, in connection with any property.

m. §75-6-322 – Trust indenture: in the discretion and at the option of the governing body of the authority, bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank that has the powers of a trust company within or outside of the state. However, a trust indenture may not convey, mortgage, or create a lien upon the water supply, wastewater transportation, or treatment system, any part of the system, or the authority or its member public agencies. The resolution authorizing the bonds and fixing the details of the bonds may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority and the members of its governing body and officers in relation to the construction or acquisition of the water supply, wastewater transportation, or treatment system and the improvement, extension, operation, repair, maintenance, and insurance of the bonds and the custody, safeguarding, and application of all money. The resolution may also provide that all or any part of the construction work must be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the governing body and satisfactory to the original bond purchasers, their successors, assignees, or nominees, who may be given the right to require that the security given by contractors and by any depository of the proceeds of bonds or revenue of the water supply, wastewater transportation, or treatment system or other money pertaining to the supply or system be satisfactory to the purchasers, their successors, assignees, or nominees. The indenture may set forth the rights and remedies of the bondholders and the trustee.
n. §75-6-323 – Sinking fund for revenue bonds: at or before the time of the issuance of any bonds under this part, the governing body of the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into the sinking fund from the revenue of the water supply, wastewater transportation, or treatment system operated by the authority sums in excess of the cost of maintenance and operation of the properties that will be sufficient to pay the accruing interest and retire the bonds at or before the time that each will respectively become due and to establish and maintain reserves for the bonds. All sums that are or should be, in accordance with the provisions, paid into the sinking fund must be used solely for payment of interest and for the retirement of the bonds at or prior to maturity, as may be provided or required by the resolutions.
o. §75-6-324 – Collection of revenue and enforcement of covenants – default – suit to compel performance – appointment and powers of

receiver: the governing body of an authority may insert enforceable provisions in a resolution authorizing the issuance of bonds relating to the collection, custody, and application of revenue of the authority from the operation of the water supply, wastewater transportation, or treatment system under its control and relating to the enforcement of the covenants and undertakings of the authority. If there is a default in the sinking fund provisions provided for in 75-6-323 or in the payment of the principal or interest on any of the bonds or if the authority or its governing body or any of its officers, agents, or employees fail or refuse to comply with the provisions of this part or default in any covenant or agreement made with respect to the issuance of the bonds or offered as security for the bonds, then any holder or holders of the bonds and any trustee under the trust indenture, if there is one, has the right by suit, action, mandamus, or other proceeding instituted in the district court in any of the counties in which the authority operates or in any other court of competent jurisdiction to enforce and compel performance of all duties required by this part or undertaken by the authority in connection with the issuance of the bonds. Upon application by any holder or holders of the bonds or the trustee of the trust indenture, the court shall, upon proof of the defaults, appoint a receiver for the affairs of the authority and its property. The receiver shall directly, or through its agents and attorneys, enter and take possession of the affairs of the authority. The receiver may hold, use, operate, manage, and control the authority and, in the name of the authority, exercise all of the rights and powers of the authority as considered expedient. The receiver may collect and receive all revenue and apply the revenue in the manner that the court shall direct. Whenever the default causing the appointment of the receiver has been cleared and fully discharged and all other defaults have been cured, the court, after notice and hearing as it considers reasonable and proper, may direct the receiver to surrender possession of the affairs of the authority to its governing body. The receiver may not sell, assign, mortgage, or otherwise dispose of any assets of the authority except as provided in this section.

p. §75-6-325 – Statutory mortgage lien: there is a statutory mortgage lien upon the water supply, wastewater transportation, or treatment system of the authority. The lien exists in favor of the holders of bonds authorized to be issued pursuant to this part, and each holder and the system remain subject to the statutory mortgage lien until payment in full of all principal of and interest on the bonds.

q. §75-6-326 – Rates, fees, and charges – establishment and changes: (1)(a) the governing body shall be appropriate resolution make provisions for the payment of bonds issued pursuant to this part by taxing rates, fees, and charges the use of all services rendered by the

authority. (b) the governing body of the authority shall review at least annually the rates, fees, and charges for services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received. (c) the rates, fees, and charges, in addition to grants or any other revenue, must be sufficient to: (i) pay the costs of operation, improvement, and maintenance of the authority's water supply or wastewater transportation or treatment system; (ii) provide an adequate depreciation fund; (iii) provide an adequate sinking fund to retire any bonds and pay interest on the bonds when due; (iv) create reasonable reserves for the enumerated purposes; and (v) allow for miscellaneous and emergency or unforeseen expenses. (2) the resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing body to effect eh efficient operation of the system, to safeguard the interests of the holders of the revenue bonds, and to secure the payment of the bonds and the interest on the bonds. (3) except as provided in subsection (9), prior to adopting a resolution to establish or change rates, fees, or charges, the governing body of the authority shall hold a public hearing. (4) notice of the public hearing must be published as provided in 7-1-2121 in each county or counties in which customers of the authority are located. The published notice must contain: (a) the date, time, and place of the hearing; (b) a brief statement of the proposed action; and (c) the address and telephone number of a person at the authority who may be contacted for information regarding the hearing. (5)(a) the notice must be mailed to each rural customer and to the governing bodies of district customers or municipal customers at least 25 days and not more than 40 days prior to the public hearing. (b) the mailed notice must contain an estimate of the amount that a customer would be charged under the proposed resolution. (6) if the establishment or change in rates, fees, or charges proposed by the authority requires an increase in the rates, fees, or charges imposed by district customers or municipal customers, district customers and municipal customers shall comply with the provisions of 7-13-2275 or 69-7-111. (7) any interested person, corporation, governmental body, or company may be present, be represented by counsel, and testify at the public hearing of the authority. (8)(a) the hearing may be continued by the governing body of the authority as necessary. After the public hearing, the governing body of the authority may, by resolution, impose, establish, change, or increase rates, fees, or charges. (b) within 10 days after adoption of a resolution establishing or changing rates, fees, or charges of the authority, an officer of the authority shall send a copy of the resolution to each governing body of an affected district or municipal customer. (9) the authority is not required to hold a public

hearing for a cumulative rate increase of less than or equal to 5% within a 12-month period if the governing body of the authority provides notification of the increase to rural customers and to the governing bodies of district customers and municipal customers on whom the rate will be imposed at least 10 days prior to the passage or enactment of the ordinance or resolution implementing the increase.

r. §75-6-327 – Refunding revenue bonds: if the authority has issued bonds under the provisions of this part, it may by resolution issue refunding bonds for the purpose of retiring or refinancing outstanding bonds, together with any unpaid interest on the bonds and any redemption premium. All of the provisions of this part relating to the issuance, security, and payment of bonds apply to the refunding bonds. However, the bonds are subject to the provisions of the proceedings that authorized the issuance of the bonds to be refunded.
s. §75-6-328 – Exemption from taxation: bonds issued pursuant to this part and the interest on the bonds, together with all properties and facilities of the authority owned or used in connection with the water supply, wastewater transportation, or treatment system, and all the money, revenue, and other income of the authority derived from the water supply, wastewater transportation, or treatment system are exempt from all taxation by the state or any county, municipality, political subdivision, or agency of the state, county, or municipality.
t. §75-6-329 – Bonds as legal investment: bonds issued under the provisions of this part are legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state.

6. MCA: Title 75, Chapter 7, Part 1 – Natural Streambed and Land Preservation Act

a. §75-7-101 – Short title: this part may be cited as "The Natural Streambed and Land Preservation Act of 1975."
b. §75-7-102 – Intent: (1) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Natural Streambed and Land Preservation Act of 1975. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. (2) It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and, in so doing, to keep soil erosion and

sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by The Constitution of the State of Montana.

c. §75-7-103 – Definitions: as used in this part, the following definitions apply: (1) "applicant" means any person presenting notice of a project to the supervisors. (2) "department: means the Montana department of fish, wildlife and parks. (3) "District" means: (a) a conservation district under Title 76, chapter 15, in which the project will take place; (b) a grass conservation district under Title 76, chapter 16, where a conservation district does not exist; or (c) the board of county commissioners in a county where a district does not exist. (4) "person" means any individual, corporation, firm, partnership, association, or other legal entity not covered under 87-5-502. (5)(a) "project" means a physical alteration or modification that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks. (b) project does not include: (i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district. (ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102; or (iii) livestock grazing activities. (6) "stream" means any natural, perennial-flowing stream or river, its bed, and its immediate bands except a stream or river that has been designated by district rules as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102. (7) "supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district. (8) "team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative. (9) "written consent of the supervisors" means a written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project.

d. §75-7-104 – Vested water rights preserved: this part shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

e. §75-7-105 – Application of flood plain management: approval for proposed projects or alternate plans not relieve the applicant of the responsibility of complying with Title 76, chapter 5, parts 1 through 4, floodway management and regulation, where designated flood plains

or designated floodways have been established in accordance with that chapter.

f. §75-7-106 – Junked motor vehicles as reinforcement prohibited – penalty: (1) it is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between the channel banks of any stream or to reinforce banks of a stream with junked motor vehicles or the body portion of junked motor vehicles. (2) a person who violates subsection to penalties as provided in 75-7-123.

g. §75-7-111 – Notice of project: (1) a person planning to engage in a project shall present written notice of the proposed project to the supervisors before any portion of the project takes place. (2) the notice must include the location, general description, and preliminary plan of the project. (3) at the time of filing a notice of the proposed project under subsection (1), the applicant may sign an arbitration agreement as provided in 75-7-117. (4) the district may authorize a representative to accept notices of proposed projects.

h. §75-7-112 – Procedure for considering project – team: (1) upon acceptance of a notice of a proposed project, the district or the district's authorized representative shall, within 10 working days, notify the department of the project. If at any time during the review process the supervisors determine that provisions of this part do not apply to a notice of the proposed project, the applicant may proceed upon written notice of the supervisors. The department shall, within 5 working days of receipt of the notification, inform the supervisors whether the department requests an onsite inspection by a team. (2) the supervisors shall call a team together within 20 days of receipt of the request of the department for an onsite inspection. A member of the team shall notify the supervisors in writing, within 5 working days after notice of the call for an inspection, of the team member's waiver of participation in the inspection. If the department does not request an onsite inspection within the time specified in this subsection, the supervisors may deny, approve, or modify the project. (3) each member of the team shall recommend in writing, within 30 days of the date of inspection, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation. (4) the supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision. (5)(a) when a member of the team, other than an applicant that has not agreed to arbitration, disagrees with the supervisors' decision, the team member shall request, within 5 working days of receipt of the supervisors' decision, that an arbitration panel as provided in 75-7-114 be appointed to hear the dispute and make a final written decision regarding the dispute. (b)

when an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors' decision, the applicant shall, within 15 working days of receipt of the supervisors' decision: (i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or (ii) appeal the decision of the supervisors to the district court for the county where the project is located. (6) upon written consent of the supervisors, the applicant shall notify the supervisors in writing within 15 days if the applicant wishes to proceed with the project in accordance with the supervisors' decision. Work may not be commenced on a project before the need of the 15-day waiting period unless written permission is given by all team members and the district. (7) the supervisors may extend, upon the request of a team member, the time limits provided in subsections (3) and (4) when, in their determination, the time provided is not sufficient to carry out the purposes of this part. The time extensions may not, in total, exceed 1 year from the date of application. The applicant must be notified, within 60 days of the date of application, of the initial time extension and must be notified immediately of any subsequent time extensions. (8) work on a project under this part may not take place without the written consent of the supervisors. (9) the team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine: (a) the purpose of the project; and (b) whether the proposed project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered: (i) the effects on soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives; (ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project; (iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream; (iv) the effects on stream channel alteration; (v) the effects on streamflow, turbidity, and water quality caused by materials used or by removal of ground cover; and (vi) the effect on fish and aquatic habitat. (10) if the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification. (11) the supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means.

i. §75-7-113 – Emergencies – procedure: (1) the provisions of this part do not apply to those actions that are necessary to safeguard life or

property, including growing crops, during periods of emergency. The person responsible for a taking action under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency. (2) the emergency notice given under subsection (1) must contain the following information: (a) the location of the action taken; (b) a general description of the action taken; (c) the date on which the action was taken; and (d) an explanation of the emergency causing the need for the action taken. (3) if the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the notice, within 5 working days of its receipt, to the department. (4) a team, called together as described in 75-7-112(2), shall make an onsite inspection within 20 days of receipt of the emergency notice. (5) each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, denial, approval, or modification of the project. (6) the supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice. (7) a person who has undertaken an emergency action that is denied or modified shall submit written notice, as provided in 75-7-111, to obtain approval pursuant to 75-7-112, to mitigate the damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision. (8)(a) when a member of the team, other than an applicant that has not agreed to arbitration, disagrees with the supervisors' decision of an emergency action, the team member shall request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and to make a final written decision on the dispute. (b) when an applicant that has not agreed to arbitration under 75-7-111 disagrees with the supervisors' decision, the applicant shall, within 15 working days of receipt of the supervisors' decision: (i) agree to arbitration under this section and request that an arbitration panel, as provided for in 75-7-114, be appointed to hear the dispute and make a final written decision regarding the dispute; or (ii) appeal the decision of the supervisors to the district court for the county where the project is located. (9) the failure of a person to perform the following subjects the person to civil and criminal penalties under 75-7-123: (a) failure to provide emergency notice under subsection (1); (b) failure to submit a notice of the project under subsection (7); or (c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation.

j. §75-7-114 – Arbitration panel – selection: The arbitration panel shall consist of three members chosen by the senior judge of the judicial district in which the dispute takes place. The members must be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the arbitration agreement and the policy set forth in 75-7-102.
k. §75-7-115 – Arbitration panel – costs: cost of the arbitration panel, computed as for jurors' fees under 3-15-201, shall be borne by the contesting party or parties; all other parties shall bear their own costs.
l. §75-7-116 – Modification of plan – assignment of costs: (1) if the final decision of the arbitration panel or district court requires modifications or alterations from the original project plan as approved by the supervisors, then the arbitration panel or district court shall include in its decision any part or percent of these modification or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant. (2) any of the involved entities may withdraw or modify required modification of the project within 10 days after the decision.
m. §75-7-117 – Minimum standards – arbitration agreement: (1) the department of natural resources and conservation, after consultation with the association of conservation districts, shall adopt and may revise rules setting minimum standards and guidelines for the purposes of this part. (2) the supervisors of each district shall adopt and may revise by resolution after a public hearing rules setting standards and guidelines for projects and exclusions within their districts that meet, exceed, or are not covered by the minimum standards set by the department under subsection (1). (3) the department of natural resources and conservation, after consultation with the association of conservation districts, shall prepare an arbitration agreement for use by the conservation districts when an applicant chooses to use arbitration. The arbitration agreement must contain provisions for: (a) the appointment of arbitrators; (b) the exercise of power by the arbitrators; (c) an arbitration hearing process, including time and place for hearing, notification, presentation of witnesses and evidence, cross-examination, subpoenas, depositions, and the issuance of the award or change of award; and (d) the fees and expenses of arbitration.
n. §75-7-121 – Review: (1) any review of final action by the supervisors under 75-7-112 or 75-7-113 may be by arbitration or by the district court of the county where the project is located. Judicial review of an arbitration action is under the provisions of Title 27, chapter 5, part 3, and must be brought in the county where the action is proposed to occur. (2) an applicant's choice of the judicial review remedy prevails

over any other team member's request for arbitration regardless of whether arbitration was requested prior to the filing of a petition for judicial review by the applicant.

o. §75-7-122 – Public nuisance: except for emergency action, a project engaged in by any person without prior approval or activities performed outside the scope of written consent of the supervisors, as prescribed in this chapter, is declared a public nuisance and subject to proceedings for immediate abatement.

p. §75-7-123 – Penalties – restoration: (1) a person who initiates a project without written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, violates emergency procedures provided for in 75-7-113, or violates 75-7-106 is: (a) guilty of a misdemeanor and upon conviction shall be punished by a find not to exceed $500; or (b) subject to a civil penalty not to exceed $500 for each day that person continues to be in violation. (2) each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty. (3) in addition to a fine or a civil penalty under subsection (1), the person: (a) shall restore, at the discretion of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible; or (b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 if the amount of liability does not exceed $12,000. If the amount of liability for restoration exceeds $12,000 then the action must be brought in district court. (4) money recovered by a conservation district or a county attorney, whether as a fine or a civil penalty, must be deposited in the depository of district funds provided for in 76-15-523, unless upon order of a justice's court the money is directed to be deposited pursuant to 3-10-601.

q. §75-7-125 – Jurisdiction – declaratory ruling – standards – judicial review: (1)(a) the supervisors shall determine the applicability, interpretation, or implementation of nay statutory provision or any rule or written consent of the supervisors under this part. (b) the supervisors' determination pursuant to subsection (1)(a) must be made, in accordance with rules established under 75-7-117, prior to the filing of a petition under subsection (2). (2)(a) a person who may be directly affected by the applicability, interpretation, or implementation of this part and who disagrees with a determination made under subsection (1) may petition the supervisors for a declaratory ruling. (b) if the issue raised in the petition for a declaratory ruling is of significant interest to the public, the supervisors shall provide a reasonable opportunity

for interested persons and the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling. (c) if the issue raised in the petition for a declaratory ruling is not of significant interest to the public, the supervisors shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling. (d) data and information may be submitted at a hearing before the supervisors. Data and information submitted to the supervisors outside of the hearing process must be made available for public review prior to the hearing being conducted before the supervisors. (3) a proceeding held under this section is not a contested case proceeding. A declaratory ruling under his section is not subject to the provisions of the Montana Administrative Procedure Act. (4) a declaratory ruling is subject to judicial review. Judicial review must be conducted by a court without a jury and is limited to the date, information, and arguments made before the supervisors. A court may reverse or modify the supervisors' ruling if substantial rights of the appellant have been prejudiced because the ruling is: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the supervisors; (c) affected by error of law; or (d) arbitrary or capricious, characterized by abuse of discretion, or clearly unwarranted exercise of discretion. (5) a final judgement of a district court under this section may be appealed in the same manner as provided in 2-4-711. (6) this section may not be interpreted or construed to allow a person to petition for a declaratory ruling under this section for an administrative review of a decision of the supervisors under 775-7-112 or 75-7-113 granting, denying, or conditioning a written consent. Review of a final action by the supervisors pursuant to 75-7-112 or 75-7-113 is exclusively provided for in 75-7-121.

7. MCA: Title 76, Chapter 5, Part 4 – Use of Flood Plains and Floodways

    a. §76-5-401 – Permissible open-space uses: the following open-space uses are permitted within the designated floodway to the extent that they are not prohibited by any other ordinance or statute and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment: (1) agricultural uses; (2) industrial-commercial uses such as lodging areas, parking areas, or emergency landing strips; (3) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming area, parks, wildlife management and natural areas, alternative livestock ranches, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing area, or hiking and horseback riding trails; (4)

forestry, including processing of forest products with portable equipment; (5) residential uses such as lawns, gardens, parking areas, and play areas; (6) excavations subject to the issuance of a permit under 76-5-405 and 76-5-406.

b. §76-5-402 – Permissible uses within flood plan but outside floodway: permits must be granted for the following uses within that portion of the flood plain not contained within the designated floodway to the extent that they are not prohibited by any other ordinance, regulation, or statute: (1) any use permitted in the designated floodway; (2) structures, including but not limited to residential, commercial, and industrial structures, provided that: (a) the structures meet the minimum standards adopted by the department; (b) residential structures are constructed so that the lowest floor elevation, including basements, is 2 feet above the 100-year flood elevation; (c) commercial and industrial structures are either constructed as specified in subsection (2)(b) or are adequately floodproofed up to an elevation no lower than 2 feet above the 100-year flood elevation. The floodproofing must be in accordance with the minimum standards adopted by the department.

c. §76-5-403 – Prohibited uses within floodway: the following nonconforming uses shall be prohibited within the designated floodway: (1) a building for living purposes or place of assembly or permanent use by human beings; (2) a structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway; (3) the construction or permanent storage of any object subject to flotation or movement during flood level periods.

d. §76-5-404 – Artificial obstructions and nonconforming uses: (1) an artificial obstruction or nonconforming use in a designated flood plain or designated floodway enforced under 76-5-301(1) and (2) and not exempt under 76-5-401 through 76-5-403 or subsection (2) or (3) of this section is a public nuisance unless a permit has been obtained for the artificial obstruction or nonconforming use from the department or the responsible political subdivision. (2) it is unlawful for a person to establish an artificial obstruction or nonconforming use within a designated flood plain or a designated floodway without a permit from the department or the responsible political subdivision. (3)(a) parts 1 through 4 of this chapter do not affect any existing artificial obstruction or nonconforming use established in the designated flood plain or designated floodway before the land use regulations adopted by the political subdivision are effective or before the department has enforced a designated flood plain or a designated floodway under 76-5-301(1) and (2). (b) However, a person may not make nor may an owner allow alterations of an artificial obstruction or nonconforming use

within a designated flood plain or a designated floodway whether the obstruction proposed for alteration was located in the flood plain or floodway before or after July 1, 1971, except upon express written approval of the department or the responsible political subdivision. Maintenance of an obstruction is not an alteration.

e. §76-5-405 – Variance for obstruction or nonconforming use: (1) the department or the responsible political subdivision may issue permits for the establishment or alteration of artificial obstructions and nonconforming uses that would otherwise violate 76-5-401 through 76-5-404. The application for the permit must be submitted to the department or the responsible political subdivision and contain the information that the department requires, including complete maps, plans, profiles, and specifications of the obstruction or use and watercourse or drainway. (2) permits for obstructions or uses to be established in the designated flood plain or designated floodway of watercourses must be approved or denied within a reasonable time by the department or the responsible political subdivision. Permits for obstructions or uses in the designated flood plains or designated floodways are conclusively considered to have been granted 60 days after the receipt of the application by the department or the responsible political subdivision or after a time that the department or the responsible political subdivision specifies, unless the department or the responsible political subdivision notifies the applicant that the permit is denied. The responsible political subdivision shall send to the department a copy of each permit granted pursuant to 76-5-406 and this section. (3) the department or the responsible or the responsible political subdivision may issue the permit the reasonable conditions. The permitted obstruction or use must be maintained in compliance with the permit.

f. §76-5-406 – Criteria to be considered in connection with variance request: in passing upon the application, the department or the responsible political subdivision shall consider in accordance with the minimum standards established by the department: (1) the danger to life and property by water that may be backed up or diverted by the obstruction or use; (2) the danger that the obstruction or use will be swept downstream to the injury of others; (3) the availability of alternate locations; (4) the construction or alteration of the obstruction or use in such a manner as to lessen the danger; (5) the permanence of the obstruction or use: (6) the anticipated development in the foreseeable future of the area that may be affected by the obstruction or use; and (7) other factors in harmony with the purpose of parts 1 through 4 of this chapter.

8. MCA: Title 80, Chapter 7, Part 10 – Montana Aquatic Invasive Species Act

a. §80-7-1001 – Short title: Montana Aquatic Invasive Species Act.
b. §80-7-1002 – Legislative findings and purpose: (1) The legislature finds that: (a) invasive species can wreak damage on the economy, environment, recreational opportunities, and human health in Montana; (b) there is reason to be concerned about the further introduction, importation, and infestation of Eurasian watermilfoil (Myriophyllum spicatum) and the introduction, importation, and infestation of additional invasive species in Montana, such as the zebra mussel (Dreissena polymorpha) and the quagga mussel (Dreissena bugensis), that could cause catastrophic damage to not only our waterways, rivers, and lakes, our water storage, delivery, and irrigation systems, our hydroelectric power structures and systems, and our aquatic ecosystems, but also to the entire state economy; (c) as infestations of threatening invasive species move ever closer to Montana's borders, protecting Montana against these species is of utmost importance to the state economy, environment, recreational opportunities, and human health for the benefit of all Montanans; (d) preventing the introduction, importation, and infestation of invasive species is the most effective and least costly strategy for combating invasive species that, once established, are often difficult to control or eradicate; (e) the use of check stations, at which vessels and equipment may be inspected for the presence of invasive species and cleaned if an invasive species is detected, is an effective way to prevent the introduction, importation, and infestation of invasive species that are easily transferred from infested areas to uninfested areas when proper precautions are not taken; and (f) preventing the introduction, importation, and infestation of invasive species is best accomplished through coordinated educational and management activities. (2) the purpose of this part is to establish a mechanism for Montana to take concerted action to detect, control, and manage invasive species, including preventing further introduction, importation, and infestation, by educating the public about the threat of these species, coordinating public and private efforts and expertise to combat these species, and authorizing the use of check stations to prevent the movement of invasive species from infested areas to uninfested areas to protect the state's economy, environment, recreational opportunities, and human health for the benefit of all Montanans.
c. §80-7-1003 – Definitions: As used in this part, the following definitions apply: (1) "Departments" means the department of agriculture, the department of fish, wildlife, and parks, the department of natural resources and conservation, and the department of transportation. (2) "Equipment" means an implement or machinery that has been wholly

or partially immersed in surface waters, including but not limited to boat lifts, trailers transporting vessels, floating docks, pilings, dredge pipes, and buoys. (3) "Invasive species" means, upon the mutual agreement of the directors of the departments, a nonnative, aquatic species that has caused, is causing, or is likely to cause harm to the economy, environment, recreational opportunities, or human health. (4) "Invasive species management area" means a designation made by a department under 80-7-1008 for a specific area or for a body or bodies of water for a specific or indeterminate amount of time that regulates invasive species or potential carriers of invasive species within the boundaries of that area. (5) "Person" means an individual, partnership, corporation, association, limited partnership, limited liability company, governmental subdivision, agency, or public or private organization of any character. (6) "Vessel" has the meaning provided in 61-1-101.

d. §80-7-1004 – Invasive species account: (1) There is an invasive species account in the state special revenue fund. The account is administered by the department of fish, wildlife, and parks. (2) Money transferred from the general fund or received from any other lawful source, including but not limited to gifts, grants, donations, securities, or other assets, public or private, may be deposited in the account. (3) Subject to subsection (4), money deposited in the account must be used for projects that prevent or control any nonnative, aquatic invasive species pursuant to this part. (4) Any private contribution deposited in the account for a particular purpose, as stated by the donor, must be used exclusively for that purpose. (5) Any interest and earnings on the account must be retained in the account.

e. §80-7-1005 – Cooperative agreement for invasive species detection and control: (1) In order to implement, administer, and accomplish the purposes of this part, the departments, collectively or individually, shall enter into a cooperative agreement with each other or may enter into an agreement with any person with the appropriate expertise and administrative capacity to perform the obligations of the agreement. (2) Prior to entering an agreement with a person other than a department, the departments shall work in collaboration with each other to coordinate their respective responsibilities in order to further the purposes of this part. (3) A cooperative agreement may include provisions for funding to implement the agreement.

f. §80-7-1006 – Departmental responsibilities: (1) The departments shall prepare a list of invasive species and identify those departments and other public agencies with jurisdiction over each species on the list. The jurisdiction of each department for the prevention and control of invasive species is according to the department's powers and duties as established by law. (2) For those invasive species under the jurisdiction

of more than one department, the departments with jurisdiction, through cooperative agreement, shall seek to clarify and coordinate their respective responsibilities. (3) Working in collaboration with each other, the departments, individually or collectively, shall develop and adopt an invasive species strategic plan or plans to accomplish the purposes of this part. The plan or plans shall identify and prioritize threats and determine appropriate actions, in the following order of priority, related to: (a) public awareness and education; (b) prevention and detection of invasive species, including the use of invasive species management areas authorized under 80-7-1008 and the statewide invasive species management area established in 80-7-1015; (c) management, control, and restoration of infested areas; and (d) emergency response. (4) The departments shall enforce quarantine regulations and measures imposed by law or rule in an invasive species management area established under 80-7-1008 and in the statewide invasive species management area established in 80-7-1015, including the mandatory inspection of any interior portion of a vessel or equipment that may contain water for the presence of an invasive species. (5) The departments may designate employees to carry out the provisions of this part. (6) The department of fish, wildlife, and parks shall authorize a request by another entity to operate a check station pursuant to this part if the entity agrees to the conditions of an agreement established by all parties, any cooperative funding requirements, and rules adopted under this part. The department of fish, wildlife, and parks retains oversight authority over the operation of a check station pursuant to this subsection. (7) The departments shall implement education and outreach programs that increase public knowledge and understanding of prevention, early detection, and control of invasive species.

g. §80-7-1007 – Rulemaking authority: (1) Unless otherwise provided in Title 81, chapters 2 and 7, or this chapter, each of the departments may adopt rules for the prevention, early detection, and control of invasive species under the departments' jurisdiction, including rules for the: (a) implementation of the invasive species strategic plan adopted pursuant to 80-7-1006; (b) transportation of an invasive species or any agent likely to be a carrier of an invasive species; (c) designation, regulation, and treatment of an invasive species management area under 80-7-1008, including rules pertaining to: (i) the use of quarantine regulations and measures; (ii) the movement of vessels and equipment within, to, or from the area; and (iii) the inspection and cleaning of vessels and equipment moving within, to, or from the area; and (d) manner in which vessels and equipment, including bilges, livewells, bait containers, and other boating-related equipment, traveling in the state must be cleaned to ensure that they

are free from the presence of an invasive species. (2) The departments shall adopt rules for the administration of the statewide species management area established in 80-7-1015, including rules specifying the method or methods for preventing the introduction or further introduction of invasive species into the state, and shall adopt rules for: (a) the use of quarantine measures; (b) the movement of vessels and equipment into the state; and (c) the manner in which check stations will be used to inspect, clean, and decontaminate vessels and equipment moving into the state

h. §80-7-1008 – Invasive species management area; authorization: (1) Except as provided in 80-7-1015, when an invasive species is identified as infesting or threatening an area, the department with jurisdiction over that invasive species may designate and administer an invasive species management area for a specific area of land or for a body or bodies of water for a specific or indeterminate amount of time to prevent and control the infestation or spread of that invasive species. (2) To the extent practicable, prior to the designation of an invasive species management area, the department making the designation shall coordinate with all of the departments in order to further the purposes of this part. (3) The designation of an invasive species management area must specify: (a) the invasive species present or considered threatening; and (b) the method or methods for preventing the introduction of the species or controlling or eradicating the species, including regulations pertaining to: (i) the use of quarantine measures; (ii) the movement of vessels and equipment within, to, and from the area; and (iii) whether check stations will be used to inspect and clean vessels and equipment moving within, to, or from the area. A department may conduct mandatory inspections of any interior portion of a vessel or equipment that may contain water only if the department has included the use of mandatory inspections as part of quarantine measures established pursuant to subsection (3)(b)(i). (4) As far as practical, signs indicating that an invasive species management area is in place must be posted in an effective manner at access points to the designated area and along the boundaries and within the area. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in 80-7-1004. The departments may coordinate with any other governmental entity for the posting of signs.

i. §80-7-1009 – Arrangements with landowners: (1) The department designating an invasive species management area pursuant to 80-7-1008 shall work cooperatively with any affected land managers and landowners within the boundaries of the designated area to establish prevention, treatment, control, and eradication methods best suited for

the invasive species infesting or threatening the area. (2) If negotiations with a land manager or landowner fail, the designating department may arrange for the prevention, treatment, control, and eradication of the designated species as it relates to water infrastructure, including but not limited to hydroelectric, municipal, recreational, and irrigation equipment, without the consent of the land manager or landowner. To the extent possible, the arrangements by the department must be made in a manner best suited to preventing, treating, controlling, and eradicating the invasive species, while minimizing disturbances and adverse impacts to the landowner.

j. §80-7-1010 – Invasive species management area; regulation: (1) The owner, operator, or person in possession of any vessel or equipment authorized for use in an invasive species management area shall comply with any regulations imposed pursuant to 80-7-1008(3)(b). (2) After use in a body of water within an invasive species management area, all vessels, equipment, bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be drained in a way that does not impact any state waters before being transported on land or a public highway, as defined in 61-1-101, except where allowed by the department of fish, wildlife, and parks.

k. §80-7-1011 – Check stations: (1) The departments shall establish a check station within or adjacent to an invasive species management area to prevent the introduction, importation, infestation, and spread of the invasive species for which the designation was issued. (2) At a check station established under subsection (1), the departments may examine vessels and equipment for the presence of an invasive species and compliance with regulations imposed under 80-7-1008(3)(b) and with this section. A department may examine any interior portion of a vessel or equipment that may contain water, including bilges, livewells, and bait containers, for compliance only if inspection of interior portions is included as part of quarantine measures established pursuant to 80-7-1008(3)(b)(i). (3) The owner, operator, or person in possession of a vessel or equipment shall stop at any check station unless a medical emergency makes stopping likely to result in death or serious bodily injury. (4) If during an inspection of a vessel or equipment the presence of an invasive species is detected, that vessel or equipment may not leave the check station without authorization until it is cleaned and decontaminated in a manner established in accordance with 80-7-1008(3)(b). The department shall make every effort to ensure decontamination of the vessel or equipment as expeditiously as possible.

l. §80-7-1012 – Invasive species possession and transfer prohibited; exceptions: (1) Except as provided in subsection (2), a person may not import, purchase, sell, barter, distribute, propagate, transport,

introduce, or possess an invasive species except: (a) when transporting a specimen to any of the departments or another destination as directed by any of the departments in a sealed container for the purpose of containing, identifying, or reporting the presence of the species or for an approved educational purpose; (b) when done by a government agency for an approved purpose; (c) with a proper permit issued by the state or federal government; or (d) as allowed by rule. (2) A person who learns of the presence of an invasive species on that person's vessel or property shall notify the department with primary jurisdiction of the species immediately. If the person complies with department requirements for the treatment, control, and eradication of the invasive species, the person must be considered to be in compliance with this section and is not subject to penalties under 80-7-1014. This subsection does not apply to a person who purposely or knowingly introduces or attempts to introduce an invasive species in Montana.

m. §80-7-1013 – Emergency response: (1) The governor may declare an invasive species emergency if: (a) the introduction or spread of an invasive species has occurred or is imminent; (b) a new and potentially harmful invasive species is discovered in the state and is verified by the departments; or (c) the state is facing a potential influx of invasive species as the result of a natural disaster. (2) If an emergency is declared pursuant to subsection (1), the governor may authorize the expenditure of funds pursuant to 10-3-312. (3) In the absence of necessary funding from other sources, the principal of the invasive species trust fund established in 80-7-1016 may be appropriated by a vote of three-fourths of the members of each house of the legislature to government agencies for emergency relief to eradicate or confine the new invasive species or to protect the state from an influx of invasive species due to a natural disaster.

n. §80-7-1014 – Penalty: (1) Except as provided in subsection (2), the following penalties apply: (a) The offense of negligently violating the provisions of 80-7-1010 through 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 pertaining to an invasive species management area or the statewide invasive species management area is a misdemeanor punishable by a fine not to exceed $500. (b) The offense of purposely or knowingly violating the provisions of 80-7-1010 through 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 pertaining to an invasive species management area or the statewide invasive species management area is a misdemeanor punishable by a fine not to exceed $1,000. (c) Purposely or knowingly attempting to introduce an invasive species in Montana is a felony. Any person found guilty under this subsection (1)(c) is subject to a criminal penalty of up to 2 years in prison, a fine not to exceed $5,000, or both. A person convicted of

violating this subsection (1)(c) may also be required to pay restitution for any cost incurred to mitigate the effect of the violation. (d) A civil penalty not to exceed $250 may be imposed on any person who violates any other provision of 80-7-1010 through 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 not enumerated in subsections (1)(a) through (1)(c). (2) A warning without penalty may be issued to any person violating the provisions of 80-7-1010 through 80-7-1012 and 80-7-1015 or rules adopted under 80-7-1010 through 80-7-1012 and 80-7-1015 if it is determined that a warning best serves the public interest. (3) Civil penalties collected under this section must be deposited in the general fund.

o. §80-7-1015 – Statewide invasive species management area: (1) There is established a statewide invasive species management area for the purpose of preventing the introduction, importation, and infestation of invasive species through the mandatory inspection of vessels and equipment at key entry points to the state on a seasonal basis and the mandatory decontamination of any vessel or equipment on or in which an invasive species is detected. (2) To the greatest extent possible, the department of transportation shall cooperate with the department of fish, wildlife, and parks to utilize ports of entry or adjacent department of transportation facilities as locations for check stations established pursuant to this section. (3) As far as practical, signs indicating that the statewide invasive species management area is in place must be posted in an effective manner along the boundaries of and within the state. The signs must include information about the specific regulations that apply to the area. The signs must be paid for with funds from the invasive species account established in 80-7-1004. The departments may coordinate with any other governmental entity for the posting of signs. (4) At a check station established pursuant to this section, the departments may examine vessels and equipment for the presence of an invasive species and compliance with this section and rules adopted pursuant to 80-7-1007. A department may examine any interior portion of a vessel or equipment that may contain water, including bilges, livewells, and bait containers, for compliance only if inspection of interior portions is included as part of quarantine measures established pursuant to rules adopted under 80-7-1007. (5) The owner, operator, or person in possession of a vessel or equipment shall: (a) comply with this section and rules imposed under 80-7-1007; and (b) stop at any check station established pursuant to this section unless a medical emergency makes stopping likely to result in death or serious bodily injury. (6) If during an inspection of a vessel or equipment the presence of an invasive species is detected, that vessel or equipment may not leave the check station without authorization until it is cleaned and decontaminated in a manner established in

accordance with rules adopted pursuant to 80-7-1007. The department shall make every effort to ensure decontamination of the vessel or equipment as expeditiously as possible. (7) After use in a body of water within the statewide invasive species management area, all vessels, equipment, bait containers, livewells, bilges, and other boating-related equipment, excluding marine sanitary systems, must be drained in a way that does not impact any state waters before being transported on land or on a public highway, as defined in 61-1-101, except when allowed by the department of fish, wildlife, and parks

p. §80-7-1016 – Invasive species trust fund: (1) There is an invasive species trust fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund. (2) The principal of the invasive species trust fund shall forever remain inviolate in an amount of $10 million unless appropriated by a vote of three-fourths of the members of each house of the legislature. (3) Except as provided in 80-7-1013 and subsections (2) and (4) of this section, money deposited in the invasive species trust fund may not be appropriated until the principal reaches $10 million. (4) On July 1 of each fiscal year, the principal of the invasive species trust fund in excess of $10 million and the interest and income generated from the trust fund, excluding unrealized gains and losses, must be deposited in the invasive species grant account established in 80-7-1017. (5) Deposits to the principal of the trust fund may include but are not limited to grants, gifts, transfers, bequests, or donations from any source. (6) If the invasive species trust fund is terminated, the money in the fund must be divided between all counties according to rules adopted by the department of natural resources and conservation for that purpose

q. §80-7-1017 – Invasive species grant account: (1) There is an invasive species grant account in the state special revenue fund established in 17-2-102. Subject to appropriation by the legislature, money deposited in the account must be used pursuant to 80-7-1018 and this section. (2) Deposits to the account may include but are not limited to grants, gifts, transfers, bequests, donations, appropriations from any source, and deposits made pursuant to 80-7-1016. (3) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account. (4) Money deposited in the account may be used for costs incurred by the department of natural resources and conservation to administer the provisions of 80-7-1016 through 80-7-1018. Except for startup costs incurred in the first year of the program, the administrative costs in any fiscal year, including but not limited to personal services and operations, may not exceed 10% of the total

amount of grants and contracts awarded pursuant to 80-7-1018 in the previous fiscal year

r. §80-7-1018 – Invasive species grant program – criteria – rulemaking: (1) Money deposited in the invasive species grant account established in 80-7-1017 may be expended by the department of natural resources and conservation through grants to or contracts with communities or local, state, tribal, or other entities for invasive species management. (2) For the purposes of this section, the term "invasive species management" includes public education and planning, development, implementation, or continuation of a program or project to prevent, research, detect, control, or, where possible, eradicate invasive species. (3) A grant or contract may be awarded under this section for demonstration of and research and public education on new and innovative invasive species management. (4) In making grant and contract awards under this section, the department of natural resources and conservation shall give preference to local governments, collaborative stakeholders, and community groups that it determines can most effectively implement programs on the ground. (5) If the governor appoints an advisory council on invasive species, the department of natural resources and conservation shall consider recommendations by the advisory council for awards made under this section. (6) The department of natural resources and conservation is not eligible to receive grants and contracts under this section. (7) The department of natural resources and conservation may accept federal funds for use pursuant to this section. (8) Any funds awarded under this section, regardless of when they were awarded, that are not fully expended upon termination of a contract or an extension of a contract, not to exceed 1 year, must revert to the department of natural resources and conservation and be deposited in the invasive species grant account established in 80-7-1017. The department of natural resources and conservation shall use any reverted funds to make future awards pursuant to this section. (9) The department of natural resources and conservation may adopt rules to administer the provisions of 80-7-1016 through 80-7-1018.

s. §80-7-1019 – Enforcement: A peace officer, as defined in 45-2-101, may: (1) stop the driver of a vehicle transporting a vessel or equipment on receiving a complaint or observing that the driver failed to stop at a check station as required under this part; (2) upon particularized suspicion that a vessel or equipment is infested with an invasive species, require the driver of a vehicle transporting a vessel or equipment to submit the vessel or equipment to an inspection. The peace officer may conduct mandatory inspections of any interior portion of a vessel or equipment that may contain water for compliance with this part and rules adopted under this part only if: (a) the peace

officer obtains a search warrant, as defined in 46-1-202; or (b) the vessel or equipment is physically located within the boundaries of an invasive species management area established under 80-7-1008 or the statewide invasive species management area established in 80-7-1015 and use of mandatory inspections has been included in quarantine measures established pursuant to 80-7-1008(3)(b)(i) or rules adopted under 80-7-1007. (3) cite a person for a violation of this part.

C. Insect Pests:

1. MCA: Title 7, Chapter 22, Part 23 – County Control of Insect Pests

    a. §7-22-2301 – Destruction of insect pests authorized: The board of commissioners of any county of this state where there are any insect pests is hereby authorized and empowered to appoint some suitable person or persons whose duty it shall be, acting under the direction of the state department of agriculture, to poison, kill, catch, and exterminate insect pests within such county.
    b. §7-22-2302 – Definition of term insect pest: The term "insect pest" as used in this part shall include grasshopper, cutworm, pale western cutworm, armyworm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticultural crops.
    c. §7-22-2303 – Compensation of appointee: Any person appointed under the provisions of 7-22-2301 shall receive such compensation as the county commissioners agree to pay, with warrants in payment thereof drawn on the general fund.
    d. §7-22-2304 – Authority to enter private land: Any person appointed pursuant to 7-22-2301 to control insect pests may fly over or enter upon any farm, railroad right-of-way, grounds, or premises infested with such insect pests and poison, kill, catch, and exterminate the insect pests therein.
    e. §7-22-2305 – Acquisition of supplies and equipment: The board of county commissioners of any county may from time to time purchase or contract to hire such quantities and amounts of poisons, traps, and other equipment necessary to poison, kill, catch, or exterminate such insect pests, and warrants in payment thereof shall be drawn on the general fund
    f. §7-22-2306 – Financing of insect pest control program: (1) The governing body of the county shall annually determine the amount of the warrants drawn on the general fund for the purposes of controlling insect pests under a control program approved by the department of agriculture. (2) Subject to 15-10-420, in the succeeding year, the

governing body shall levy a tax for the purpose of insect pest extermination sufficient to reimburse the general fund for the money paid out on the warrants. The tax must be levied on all taxable property in the county. (3) If there is no money in the general fund with which to pay the warrants, they must be registered and bear interest in the same manner as other county warrants. In this case, the interest must be computed and added to the amount for which the tax is levied

2. MCA: Title 76, Chapter 13, Part 3 – Control of Forest Diseases and Pest Control

    a. §76-13-301 – Policy: (1) it is the public policy of the state to: (a) protect and preserve forest resources from destruction by forest insect pests and tree diseases; (b) protect the forests and watersheds of Montana and restore those watersheds that are most affected by insect pests and tree diseases and are critical to water supplies; (c) enhance the production of forests; (d) promote the stability of forest industry; and (e) protect the recreational values of the forest. (2) It is further the public policy of the state to independently and through cooperation with the federal government and private forest landowners adopt measures to control, suppress, and eradicate outbreaks of forest insect pests and tree diseases.
    b. §76-13-302 – Definitions: In this part, the following definitions apply: (1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33. (2) "Forest land" means any land that has enough forest growth, standing or down, to constitute in the judgment of the department an insect or disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation. (3) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation. (4) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects, disease, fire, or windthrow when the removal of timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or provide long-range protection for such forest resources as wildlife, water, soils, or air quality.
    c. §76-13-303 – Creation of zone of infestation: (1) The department shall annually produce a list of areas where: (a) there exists an infestation of forest insect pests or forest tree diseases injurious to the timber or forest growth on forest lands within the state and where the infestation is of such a character as to be a menace to the timber or

forest growth of this state; and (b) an infestation of forest insect pests or forest tree diseases in a watershed makes the watershed at risk for wildfire, places the functionality of the watershed at risk, or creates other conditions that threaten the watershed. (2) The department shall present the list annually to the board of land commissioners to determine if a zone of infestation exists and, if so, shall fix the boundaries to definitely describe and identify each zone.

d. §76-13-304 – Suppression and eradication of infestation: (1) The department may enter upon the land within the zone and cause the forest insect pest infestation or forest tree disease to be suppressed, eradicated, and destroyed in the manner approved by it. (2) In order to accomplish the suppression, eradication, and destruction of the infestation, the department may enter into cooperative agreements with the federal government or other public or private agencies and with forest landowners, using such funds as are made available for those purposes. (3) The department may consider controlled burning or logging as methods to suppress or eradicate forest insect pest infestation or forest tree disease.

e. §76-13-305 – Termination of zone of infestation: When the department determines that forest insect or disease control work within the designated zone of infestation is no longer necessary or feasible, it shall abolish the zone.

D. Terrestrial Plant/Noxious Weeds:

1. ARM: Title 4, Chapter 5, Part 1 – Noxious Weed Trust Fund

    a. §4.5.101 – Definitions: When used in these rules, unless a different meaning clearly appears from the context: (1) "Department" means the department of agriculture provided for in 2-15-3001, MCA. (2) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and where possible, eradication of noxious weeds. (3) "Advisory council" means the noxious weed management advisory council provided for in 80-7-805, MCA. (4) "Project" means a planned undertaking which involves one or more renewable resources at an identified site or geographic location in Montana. (5) "Project sponsor" means the local state or national organization, either public or private, supporting a project.
    (6) "Renewable resource" means all land used for domestic livestock grazing, timber, or crop production, recreation, or wildlife and all water resources. (7) "Public benefits" means those benefits that accrue to persons other than the grant recipient and enhance the common well-being of the people of Montana. (8) "Tangible returns" means either monetary or non-monetary returns that will accrue to the state.

(9) "Community group" means three or more private landowners or federal, state, or local entities working together to control noxious weeds. (10) "Noxious weed emergency" means a new and potentially harmful noxious weed growing in the state that has been verified by the department and declared an emergency as provided for in 80-7-815

b. §4.5.102 – Application procedure: (1) The department will specify funding cycles and application deadlines as necessary. (2) The department may return an insufficient or incomplete proposal for correction or completion. The department may provide the applicant with reasons for the proposal's return and a brief description of the information required in order to make the proposal correct or complete, or both. If these corrections or completions, or both, are not made, the proposal will not be evaluated. (3) Proposals which more closely fit the legislative authority of another loan or grant program within state government will be referred to that program for review. (4) The applicant may request assistance from the department in completing the application. The department will provide such assistance, the level of which will be determined by availability of staff and funds.
(5) Advisory council will review, rank and recommend proposed projects and funding according to the guidelines and criteria described in ARM 4.5.108. Advisory council recommendations will be submitted to the department for final review and determination of funding. The applicant will receive written notification from the department of the action taken on the proposal.

c. §4.5.103 – Application content for grants: All applications for grants shall contain: (1) Name, address, and telephone number of the project sponsor, project manager and liaison (if different than manager).
(2) Title or name of the proposed project. (3) Location of proposed project. (4) A brief description of the history and background of the project. (5) A discussion of the need and urgency for the project and why it is best means to achieve the desired results. (6) Objectives of the project and desired accomplishments. (7) Discussion of the projects technical feasibility. (8) Amount of money to be requested for a grant. A statement indicating the amount of funding available from other sources. If no other funding is available, the applicant must give the reasons. (9) Proof, where appropriate, the applicant has the cooperation of all landholders within the project area including federal, state, and private entities. (10) A statement indicating both public and tangible benefits which would accrue as a result of the proposed project. (11) An evaluation of the project as required in ARM 4.5.105 and 4.5.106. (12) A statement that the project sponsor, if the grant receives department approval, is willing to enter into a contract with the department for utilization of grant funds.

d. §4.5.104 – Technical, feasibility or projects: Technical data and information to be provided in the proposal shall include but is not limited to the following: (1) A thorough discussion of the work plan including the purpose, location and schedule of major project phases. (2) A listing of herbicides, biological control agents, or cultural methods used for weed control within the project area, where appropriate. This description may include prior field investigations and research information to support the proposal. (3) Educational programs that will be conducted in conjunction with the project to increase weed awareness and improve weed control techniques of county residents. (4) Maps, drawings, charts, tables, etc., used as a basis for project planning and implementation. (5) A map showing land ownership associated with the project; and (6) Description of other management alternatives and applicant's consideration of those alternatives. (7) The department may request any additional information deemed necessary to document technical feasibility.
e. §4.5.105 – Project evaluation: (1) All project sponsors shall document the results of the project and the impact on the state and/or renewable resource. The amount of information required for evaluation of the technical, economic, environmental, financial and other factors may vary depending on the size and complexity of the project. The department may advise the applicant of the amount of documentation and evaluation necessary.
f. §4.5.106 – Economic assessment of projects: (1) The projects which receive funding shall demonstrate tangible return to the state of Montana or its citizens. (2) The applicant shall document current benefit and cost data.
g. §4.5.107 – Legal requirements: (1) The applicant is required to follow all statutory and regulatory standards.
h. §4.5.108 – Evaluation of projects: (1) The advisory council shall review and rank all projects as high, medium or low and by majority vote recommend to the department those projects which meet appropriate criteria for the project and the program. (2) The advisory council shall consider the following criteria in recommending projects for funding: (a) Projects which meet requirements specified in 80-7-814, MCA, of the Noxious Weed Trust Fund Act. (b) Projects that involve community groups, weed districts, reservations or conservation districts. (c) Projects which can be utilized statewide and will provide the most tangible returns to the county or state. (d) Projects in areas where county weed district funding sources for noxious weed control are limited. (e) Projects which include educational programs to increase weed awareness and improve weed control techniques. (f) Projects which involve an integrated weed management plan including biological, cultural, and chemical control. (g) Projects which

will enhance the renewable resources. (h) Projects which include matching funds (including in-kind services) from private, state, and/or federal entities. (i) Projects which have not previously received funds from the program. (j) Projects whose results will provide public benefits. (k) Projects with a long-term effect on natural resources. (l) Projects which involve noxious weed emergencies. (3) The advisory council evaluations and recommendations will be submitted to the department for final review and determination of funding for grant requests.

i. §4.5.109 – Reporting and monitoring procedures: (1) The project sponsor or project manager shall monitor the progress and results of the project and evaluate its overall effectiveness. The project sponsor shall submit to the department fiscal reports and written progress reports as determined by contract. If the department determines through field or office evaluations that improper progress or fiscal reports have been filed, the project sponsor shall initiate necessary corrective action.

j. §4.5.111 – Noxious weed identification and verification: (1) The department will identify new and potentially harmful noxious weeds based on characteristics which make the plant undesirable, troublesome, and/or difficult to control in cropland, rangeland, forestry, industrial, recreational or non-crop sites. (2) The department shall verify the existence of a noxious weed in Montana using any one or a combination of methods set forth below: (a) Verification of location of the infestation based on herbarium records. (b) Scientific identification of the plant by a botanist or weed scientist and by the concurrence of another botanist or weed scientist, or (c) Submission of a plant by any person which is scientifically identified by the scientists of the Montana state university or university of Montana herbarium.

k. §4.5.112 – Noxious weed management council: (1) The members of the Noxious Weed Management Advisory Council appointed by the director serve two-year terms.

2. ARM: Title 4, Chapter 5, Part 2 – Designation of Noxious Weeds

a. §4.5.201 – Designation of noxious weeds: (1) The department designates certain exotic plants listed in these rules as statewide noxious weeds under the County Weed Control Act 7-22-2101(5), MCA. All counties must implement management standards for these noxious weeds consistent with weed management criteria developed under 7-22-2109(2)(b), MCA of the Act.

b. §4.5.206 – Priority 1A: (1) These weeds are not present or have a very limited presence in Montana. Management criteria will require eradication if detected, education, and prevention: (a) Yellow

starthistle (Centaurea solstitialis); (b) Dyer's woad (Isatis tinctoria); (c) Common reed (Phragmites australis ssp. Australis); and (d) Medusahead (Taeniatherum caput-medusae).

c. §4.5.207 – Priority 1B: (1) These weeds have limited presence in Montana. Management criteria will require eradication or containment and education: (a) Knotweed complex (Polygonum cuspidatum¸ P. sachalinense¸ P. × bohemicum¸ Fallopia japonica¸ F. sachalinensis¸ F. × bohemica¸ Reynoutria japonica¸ R. sachalinensis¸ and R.× bohemica); (b) Purple loosestrife (Lythrum salicaria); (c) Rush skeletonweed (Chondrilla juncea); (d) Scotch broom (Cytisus scoparius); and (e) Blueweed (Echium vulgare).

d. §4.5.208 – Priority 2A: (1) These weeds are common in isolated areas of Montana. Management criteria will require eradication or containment of these weeds where less abundant. Management shall be prioritized by local weed districts: (a) Tansy ragwort (Senecio jacobaea¸ Jacobaea vulgaris); (b) Meadow hawkweed complex (Hieracium caespitosum¸ H. praealtum¸ H. floridundum¸ and Pilosella caespitosa); (c) Orange hawkweed (Hieracium aurantiacum¸ Pilosella aurantiaca); (d) Tall buttercup (Ranunculus acris); (e) Perennial pepperweed (Lepidium latifolium); (f) Yellowflag iris (Iris pseudacorus); (g) Eurasian watermilfoil complex (Myriophyllum spicatum and M. sibericum); (h) Flowering rush (Butomus umbellatus); and (i) Common buckthorn (Rhamnus cathartica).

e. §4.5.209 – Priority 2B: (1) These weeds are abundant in Montana and widespread in many counties. Management criteria will require eradication or containment of these weeds where less abundant. Management shall be prioritized by local weed districts: (a) Canada thistle (Cirsium arvense); (b) Field bindweed (Convolvulus arvensis); (c) Leafy spurge (Euphorbia esula); (d) Whitetop (Cardaria draba¸ Lepidium draba); (e) Russian knapweed (Acroptilon repens¸ Rhaponticum repens); (f) Spotted knapweed (Centaurea stoebe, C. maculosa); (g) Diffuse knapweed (Centaurea diffusa); (h) Dalmatian toadflax (Linaria dalmatica); (i) St. Johnswort (Hypericum perforatum); (j) Sulfur cinquefoil (Potentilla recta); (k) Common tansy (Tanacetum vulgare); (l) Oxeye daisy (Leucanthemum vulgare); (m) Houndstongue (Cynoglossum officinale); (n) Yellow toadflax (Linaria vulgaris); (o) Saltcedar (Tamarix spp.); (p) Curlyleaf pondweed (Potamogeton crispus); and (q) Hoary alyssum (Berteroa incana).

f. §4.5.210 – Priority 3 regulated plants (Non-Montana listed noxious weeds): (1) These regulated plants have the potential to have significant negative impacts. The plant may not be intentionally spread or sold other than as a contaminant in agricultural products. The state recommends research, education, and prevention to minimize the spread of the regulated plant: (a) Cheatgrass (Bromus

tectorum); (b) Hydrilla (Hydrilla verticillata); (c) Russian olive (Elaeagnus angustifolia); (d) Brazilian waterweed (Egeria densa); and (e) Parrot feather watermilfoil (Myriophyllum aquaticum or M. brasiliense).

3. ARM: Title 4, Chapter 5, Part 5 – Noxious Weed Training

    a. §4.5.501 – Weed district supervisor training: (1) Each weed district supervisor will become licensed as a government pesticide applicator in the weed control category prior to that person doing any actual herbicide applications in the county. (2) Within 6 months of the date of hire, all new weed district supervisors will become familiar with the weed District Supervisor's Handbook and complete the self-test approved by the weed district supervisor's support committee. (3) All weed district supervisors will attend at least one training session annually (several may be offered) that has been recommended by the department or the Montana noxious weed control association. (4) Training (over a four-year period) will include, but is not limited to the following topics and subjects: (a) weed species identification; (b) pesticide, selection; (c) pesticide mixing, loading, storage and disposal; (d) integrated weed management; (e) equipment selection and maintenance; (f) environmental protection (surface water, ground water, endangered species, sensitive plants); (g) weed mapping; (h) pesticide application; (i) pesticide statutes and rules; (j) public and worker safety; and (k) weed management plans.

4. MCA: Title 7, Chapter 22, Part 21 – County Weed Act

    a. §7-22-2101 – Definitions: As used in this part, unless the context indicates otherwise, the following definitions apply: (1) "Board" means a district weed board created under 7-22-2103. (2) "Commissioners" means the board of county commissioners. (3) "Coordinator" means the person employed by the county to conduct the district noxious weed management program and supervise other district employees. (4) "Department" means the department of agriculture provided for in 2-15-3001. (5) "District" means a weed management district organized under 7-22-2102. (6) "Native plant" means a plant indigenous to the state of Montana. (7) "Native plant community" means an assemblage of native plants occurring in a natural habitat. (8)(a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated: (i) as a statewide noxious weed by rule of the department; or (ii) as a district noxious

weed by a board, following public notice of intent and a public hearing. (b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state. (9) "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or right-of-way for a canal or lateral. (10) "Weed management" or "control" means the planning and implementation of a coordinated program for the containment, suppression, and, where possible, eradication of noxious weeds

b. §7-22-2101 – Weed management districts established: A weed management district shall be formed in every county of this state and shall include all the land within the boundaries of the county, except that a weed management district may include more than one county through agreement of the commissioners of the affected counties
c. §7-22-2103 – District weed board, appointment, commissioner powers: (1) The commissioners shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203. (2) Upon a recommendation from the weed board, the commissioners may appoint a weed coordinator. (3) The commissioners shall approve, approve with revisions, or reject a weed management plan submitted pursuant to 7-22-2121
d. §7-22-2109 – Powers and duties of board: (1) In addition to any powers or duties established in the resolution creating a district weed board, the board may: (a) supervise a coordinator and other employees and provide for their compensation; (b) purchase chemicals, materials, and equipment and pay other operational costs necessary for implementing an effective noxious weed management program. The costs must be paid from the noxious weed fund. (c) determine what chemicals, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the chemicals, materials, or equipment must be paid by the person and collected as provided in this part. (d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state; (e) enter into cost-share agreements for noxious weed management; (f) enter into agreements with commercial applicators, as defined in 80-8-102, for the control of noxious weeds; (g) request legal advice and services from the county attorney; and (h) perform other activities relating to weed management. (2) The board shall: (a) administer the district's noxious weed management program; (b) establish management criteria for

noxious weeds on all land within the district; and (c) make all reasonable efforts to develop and implement a noxious weed management program covering all land within the district owned or administered by a federal agency.

e. §7-22-2111 – Liability restrictions: A district is liable for damages caused by its use of herbicides only for an act or omission that constitutes gross negligence. The provisions of 2-9-305 apply to board members, coordinators, and employees of a district.
f. §7-22-2112 – Information on herbicide use: The district must provide information on protective clothing, health hazards, and proper application techniques to mixers, loaders, and applicators of herbicides and make the information available for review by the public at the district office.
g. §7-22-2113 – Minutes: The board administering and operating the district shall submit the minutes of its proceedings for electronic storage as provided in 7-1-204.
h. §7-22-2115 – Noxious weed and seeds declared nuisance: Noxious weeds and the seed of any noxious weed are hereby declared a common nuisance
i. §7-22-2116 – Unlawful to permit noxious weeds to propagate; notice required in sale: (1) It is unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land, except that any person who adheres to the noxious weed management program of the person's weed management district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section. (2) When property is offered for sale, the person who owns the property shall notify the owner's agent and the purchaser of: (a) the existence of noxious weed infestations on the property offered for sale; and (b) the existence of a noxious weed management program or a noxious weed management agreement as provided in subsection (1).
j. §7-22-2117 – Violations: (1) Any person who interferes with the board or its authorized agent in carrying out the provisions of this part or who refuses to obey an order or notice of the board is liable for a civil penalty in the amount of the actual cost to the board or the estimated cost of removing the noxious weeds from the impacted property in addition to any penalty imposed under 7-22-2134. (2) All fines, bonds, and penalties collected under the provisions of this part must be paid to the county treasurer of each county and placed by the county treasurer into a fund to be known as the noxious weed fund.
k. §7-22-2120 – Funding, reporting requirements, emergency exemption: (1)(a) Before a district applies to the state for state or federal funding, the district shall provide the department with a weed management plan, as provided in 7-22-2121, and with a copy of the resolution

creating the board. (b) After the initial submission of the weed management plan, the district's weed management plan must be updated and submitted to the department every 2 years. (c) The department may adopt rules and procedures necessary to implement this section. The rules may not impair the ability of the district to meet its responsibilities. (2) The department may exempt a district from the requirements of subsection (1) if a noxious weed emergency is declared by the governor as provided in 80-7-815.

l. §7-22-2121 – Weed management program: (1) The noxious weed management program must be based on a plan approved by the board and the commissioners. (2) The noxious weed management plan must: (a) specify the goals and priorities of the program; (b) review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations; (c) specify pesticide management goals and procedures, including but not limited to water quality protection, public and worker safety, equipment selection and maintenance, and pesticide selection, application, mixing, loading, storage, and disposal; and (d) estimate the personnel, operations, and equipment costs of the proposed program; (e) develop a compliance plan or strategy; and (f) incorporate cooperative agreements established pursuant to 7-22-2151. (3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial vegetation and wildlife habitat. When possible, management must include cultural, chemical, and biological methods. (4) The board may establish special management zones within the district. The management criteria in those zones may be more or less stringent than the general management criteria for the district.

m. §7-22-2126 – Embargo: (1) The board may establish embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district. (2) The board shall establish a special embargo program for the movement of forage, as defined in 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in 80-7-903. (3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not transport or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is

subject to embargo meets the requirements of the state certification program and the department verifies compliance with the program, the board shall release the embargo. The forage may also be released if the board: (a) verifies the guaranteed delivery back to the original producer, as defined in 80-7-903; (b) approves burning or disposal of the forage; or (c) approves other alternatives. (4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of Title 80, chapter 7, part 9, to the department within 48 hours. (5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not accomplished, the board may condemn the forage and implement through its employees the conditions in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage.

n. §7-22-2130 – Weed district coordinator training: Within the limitations of available funds, the board shall ensure that the weed district coordinator obtains training to properly implement the noxious weed management program described in 7-22-2121. The department shall specify through rulemaking the level and type of training necessary to fulfill this requirement.

o. §7-22-2131 – Noncompliance with weed control requirements; general notice: (1)(a) If a complaint is made against a landowner or if the board has reason to believe that noxious weeds are present on a landowner's property, the board shall notify the landowner by certified mail of the complaint and shall request permission for the board's agent to enter the property to conduct an inspection. (b) If the landowner has an agent for service on file with the secretary of state, the notice must be given by certified mail to the registered agent. (c) The landowner or the landowner's representative shall respond within 10 days of receipt of the notice. (2)(a) If the board's agent and the landowner or landowner's representative agree to an inspection, the agent and the landowner or representative shall inspect the land at an agreed-upon time. (b) The board or the board's agent may seek a court order to enter and inspect the land to determine if noxious weeds are present on the property if: (i) within 10 days of sending the certified letter to the address on the tax records or to the agent for service, the board is unable to determine the owner of the property; or (ii) the letter cannot be delivered because the landowner or the landowner's representative refuses to sign the receipt or does not reside on the property. (3) If the board finds noxious weeds on the property during the inspection, the board shall: (a) seek the landowner's or representative's voluntary compliance with the district weed management program in accordance with 7-22-2132;

or (b) if voluntary compliance is not obtained, notify the landowner or the landowner's representative by certified mail that noxious weeds were found on the property. (4) The notice must contain the language specified in this section. (5) If the board believes it is advisable, the board may post a dated order in a conspicuous place on the property providing notice that noxious weeds have been found on the property and informing the landowner or landowner's representative of the options for complying with the weed management program pursuant to 7-22-2132 and the actions that may be taken under 7-22-2134 if the landowner fails to comply with the weed management program. (6) All correspondence with a landowner or the landowner's representative concerning notifications of weed infestations, including requests made pursuant to subsection (1) to inspect property and notifications of noncompliance, must be made on the uniform notification material provided by the department and must: (a) list the noxious weeds found on the property; (b) provide the legal description of the property; (c) provide the address of the property, if available; (d) state the fact that the presence of the weeds violates state law and that the landowner has 10 days after receiving the notice to contact the board or its agent; (e) provide the address and phone number for the board; (f) notify the landowner of the landowner's: (i) responsibility to submit a weed management proposal; and (ii) right to request a hearing to contest the finding of noncompliance, including the timeframe for making the request; and (g) specify the actions the board may take if the landowner fails to remove the weeds, including but not limited to the anticipated costs of destroying the weeds and the 25% penalty allowed under 7-22-2134.

p. §7-22-2132 – Procedures for compliance: (1) A landowner is in compliance with this part if the landowner submits and the board accepts a written weed management proposal to undertake specific control measures, and the landowner remains in compliance if the terms of the proposal are met. The proposal must require that the landowner or the landowner's representative notify the board as measures in the proposal are taken. (2) In accepting or rejecting a weed management proposal, the board shall consider the economic impact on the landowner and neighboring landowners, practical biological and environmental limitations, and alternative control methods to be used.

q. §7-22-2133 – Noncompliance; actions for landowners: (1) If the board is unable to obtain the landowner's voluntary compliance with the weed management program within 10 days of the landowner's receipt of the notification, the landowner is considered to be in noncompliance and is subject to appropriate control measures pursuant to 7-22-2134. (2)(a) Within 10 days after receiving notice to comply with the weed

management program, the landowner may request a hearing before the commissioners if the landowner disagrees with the weed control measures proposed by the board. (b) If the landowner's objection to the board's action remains after the hearing, the landowner has 10 days to appeal the commissioners' decision to the district court with jurisdiction in the county in which the property is located. (3) If the landowner has requested a hearing pursuant to subsection (2)(a) or has appealed a hearing decision pursuant to subsection (2)(b), the board may not take any action to control the noxious weeds until after the hearing and authorization is provided from the commissioners or the court.

r. §7-22-2134 – Noncompliance; actions by board: (1) The board may seek a court order to enter upon the infested parcels of the landowner's property if attempts to achieve voluntary compliance have been exhausted. The board may institute appropriate noxious weed control measures, including but not limited to: (a) allowing the local weed district coordinator to implement the appropriate noxious weed control measures if the actions taken are valued at the current rate paid for commercial management operations in the district and are reflected in the bill sent to the landowner and the clerk and recorder; or (b) contracting with a commercial applicator as defined in 80-8-102 if the issues of compliance are not resolved under an agreement proposed and accepted pursuant to 7-22-2132 and: (i) the landowner does not take corrective action within the 10-day period provided for in 7-22-2133; or (ii) the board does not receive a formal objection or the board of county commissioners does not receive a request for a hearing. (2) A commercial applicator hired under this section shall carry all insurance required by the board. (3) If a court issues an order approving a board's actions, the court retains jurisdiction over the matter: (a) until the actions specified in the weed management plan or court order are complete; (b) for the length of time specified in the order; or (c) for 3 years if the order does not specify a time limit. (4) After instituting appropriate noxious weed control measures, the board shall submit a copy of the bill, including the penalty provided for in subsection (4)(b), to the county clerk and recorder and, by certified mail, to the landowner that: (a) covers the costs of the weed control measures; (b) contains a penalty of 25% of the total cost incurred; (c) itemizes the hours of labor, cost of material, equipment time, legal fees, and court costs or includes an invoice from a commercial applicator if the board contracted for weed control pursuant to subsection (1); and (d) specifies that payment is due 30 days from the date the bill is received. (5) If a landowner who received a notice to take corrective action requests an injunction or seeks to stay the corrective action in district court within 10 days of receipt of the notice,

the board may not institute control measures until the matter is finally resolved, except in emergency situations. (6) If the board declares an emergency and institutes appropriate measures to control the noxious weeds, the landowner who received the order is liable for costs as provided in subsection (4) only to the extent determined appropriate by the board, the board of county commissioners, or the court that finally resolves the matter.

s. §7-22-2141 – Noxious weed fund: (1) The commissioners shall create a noxious weed fund to be used only for purposes authorized by this part. (2) The fund must be maintained by the county treasurer in accordance with 7-6-2111.

t. §7-22-2142 – Sources of money for noxious weed fund: (1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by: (a) appropriating money from any source in an amount not less than $100,000 or an amount equivalent to 1.6 mills levied upon the taxable value of all property; and (b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control. (2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund. (3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year. (4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund. (5) Subject to 15-10-420, the commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. Pursuant to an election held in accordance with 15-10-425, the amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone.

u. §7-22-2143 – Determination of cost of weed control program: Based on the board's recommendations, the commissioners shall determine and fix the cost of the control of noxious weeds in the district, whether the same be performed by the individual landowners or by the board.

v. §7-22-2144 – Payment of cost of weed control program: The total cost of weed control within the district must be paid from the noxious weed fund. The cost of controlling weeds growing along the right-of-way of a state or federal highway must, upon the presentation by the board of a verified account of the expenses incurred, be paid from the state highway fund in compliance with 7-14-2132 and any agreement between the board and the department of transportation. Costs attributed to other lands within the district must be assessed to and collected from the responsible person as set forth in 7-22-2134.

w. §7-22-2145 – Expenditures from noxious weed fund: (1) The noxious weed fund must be expended by the commissioners at the time and in the manner as is recommended by the board to secure the control of noxious weeds. (2) Warrants upon the fund must be drawn by the board. Warrants may not be drawn except upon claims duly itemized by the claimant, except payroll claims that must be itemized and certified by the board, and each claim must be presented to the commissioners for approval before the warrant is countersigned by the commissioners.

x. §7-22-2146 – Financial assistance to persons responsible for weed control: (1) The commissioners, upon recommendation of the board, may establish a cost-share program for the control of noxious weeds. The board shall develop rules and procedures for the administration of the cost-share program. These procedures may include the cost-share rate or amount and the purposes for which cost-share funds may be used. (2)(a) Any person may voluntarily enter into a cost-share agreement for the management of noxious weeds on the person's property. The coordinator shall draft a cost-share agreement in cooperation with the person. The agreement must, in the board's judgment, provide for effective weed management. (b) The agreement must specify: (i) costs that must be paid from the noxious weed fund; (ii) costs that must be paid by the person; (iii) a location-specific weed management plan that must be followed by the person; and (iv) reporting requirements of the person to the board. (c) The cost-share agreement must be signed by the person and, upon approval of the board, by the presiding officer. (3) The agreement must contain a statement disclaiming any liability of the board for any injuries or losses suffered by the person in managing noxious weeds under a cost-share agreement. If the board later finds that the person has failed to abide by the terms of the agreement, all cost-share payments and agreements must be canceled and the provisions of 7-22-2134 apply to that person. (4)(a) When under the terms of any voluntary agreement, whether entered into pursuant to 7-22-2132 or otherwise, or under any cost-share agreement entered pursuant to this section a person incurs any obligation for materials or services provided by the board, the

board shall submit a bill to the person, itemizing hours of labor, material, and equipment time. The bill must specify and order a payment due date not less than 30 days from the date the bill is sent. (b) A copy of the bill must be submitted by the board to the county clerk and recorder. If the sum to be repaid by the person billed is not repaid on or before the date due, the county clerk and recorder shall certify the amount not repaid, with the description of the land to be charged, and shall enter the sum on the assessment list as a special tax on the land, to be collected in the manner provided in 7-22-2148.

y. §7-22-2148 – Payment of weed control expenses; tax liability: (1) The expenses incurred by the board for noxious weed control undertaken pursuant to 7-22-2134 must be paid by the county out of the noxious weed fund. (2) If the sum to be repaid by the landowner billed under 7-22-2134 is not repaid on or before the date due, the county clerk shall certify the amount due, with the description of the land to be charged, and shall enter the amount on the assessment list of the county as a special tax on the land. If the land is exempt from general taxation for any reason, the amount due and to be repaid may be recovered by direct claim against the landowner and collected in the same manner as personal taxes. (3) All amounts collected pursuant to subsection (2) must be deposited in the noxious weed fund.

z. §7-22-2150 – Cooperation with state and federal-aid programs: The board may cooperate with any state or federal-aid program that becomes available if the district complies with 7-22-2120. Under a plan of cooperation, the direction of the program must be under the direct supervision of the board of the district in which the program operates.

aa. §7-22-2151 – Cooperative agreements: (1) A state agency that controls land within a district, including the department of transportation; the department of fish, wildlife, and parks; the department of corrections; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for integrated noxious weed management on state-owned or state-controlled land within the district. The agreement must include the following: (a) an integrated noxious weed management plan, which must be updated biennially; (b) a noxious weed management goals statement; (c) a specific plan of operations for the biennium, including a budget to implement the plan; and (d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan. (2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the

municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101. (3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties. (4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on a state electronic access system

bb. §7-22-2152 – Revegetation of rights-of-way and areas that have potential for noxious weed infestation: (1) Any person or state agency proposing a mine, a major facility under Title 75, chapter 20, an electric, communication, gas, or liquid transmission line, a solid waste facility, a highway or road, a subdivision, a commercial, industrial, or government development, or any other development that needs state or local approval and that results in the potential for noxious weed infestation within a district shall notify the board at least 15 days prior to the activity. (2) Whenever any person or agency constructs a road, an irrigation or drainage ditch, a pipeline, an electric, communication, gas, or liquid transmission line, or any other development on an easement or right-of-way, the board shall require that the areas be seeded, planted, or otherwise managed to reestablish a cover of beneficial plants. (3)(a) The person or agency committing the action shall submit to the board a written plan specifying the methods to be used to accomplish revegetation at least 15 days prior to the activity. The plan must describe the time and method of seeding, fertilization practices, recommended plant species, use of weed-free seed, and the weed management procedures to be used. (b) The plan is subject to approval by the board, which may require revisions to bring the revegetation plan into compliance with the district weed management plan. The activity for which notice is given may not occur until the plan is approved by the board and signed by the presiding officer of the board and by the person or a representative of the agency responsible for the action. The signed plan constitutes a binding agreement between the board and the person or agency. The plan must be approved, with revisions if necessary, within 10 days of receipt by the board

cc. §7-22-2153 – Agreements for control of noxious weeds along roads; liability of landowner who objects to weed district control measures; penalties: (1) The board may enter into an agreement with a

landowner that allows the landowner to manage noxious weeds along a state or county highway or road that borders or bisects the landowner's property. (2) The agreement must be signed by the landowner and the board's presiding officer. An agreement involving a state highway right-of-way must also be signed by a representative of the department of transportation. (3) The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the landowner or anyone acting on behalf of the landowner in managing noxious weeds pursuant to the agreement. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the landowner who signed the agreement. (4) If the landowner violates the agreement, the board shall issue an order informing the landowner that the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the landowner complies with the agreement within a specified time period. (5)(a) If a landowner objects to weed control measures along a state or county highway or road that borders or bisects the landowner's property and does not enter into an agreement pursuant to this section and if the board finds that the person has failed to provide alternative weed control, the board shall issue an order informing the landowner that the management of noxious weeds on the right-of-way will be undertaken by the board unless the landowner provides to the board an acceptable plan of alternative weed control within 30 days. (b) Failing to provide alternative weed control pursuant to subsection (5)(a) is a misdemeanor. Upon conviction, an offender shall be sentenced pursuant to 46-18-212 and assessed the costs of weed control provided by the board. A second or subsequent conviction is punishable by a fine of not less than $500 or more than $2,000, plus the costs of weed control provided by the board.

dd. §7-22-2154 – Public purchase or receipt of property; weed management plan: (1) Except as provided in subsection (4), prior to the purchase of real property with public funds or the receipt of real property by a nonfederal public entity, the purchaser or grantee shall have the property inspected by the county weed management district. The county weed management district's report regarding the property must be filed with the purchaser or grantee. The costs associated with the inspection must be borne by the seller or grantor. (2) If the report indicates that there are noxious weeds present on the property, the purchaser, seller, grantee, or grantor shall develop a noxious weed management agreement to ensure compliance with the district noxious weed management program. However, unless the parties agree otherwise, a seller or grantor is obligated by a noxious weed agreement

only until the property sale or transfer is completed. Except as provided in subsection (4), the weed management agreement must be incorporated into the purchase agreement. (3) The provisions of this section do not apply to: (a) the state acquisition or disposition of a public right-of-way pursuant to Title 60, chapter 4; or (b) lands sold or purchased through land banking pursuant to 77-2-361 through 77-2-367. (4) If a transfer of property will occur during the winter months when the ability to identify noxious weeds is significantly reduced by snow cover, the purchaser, seller, grantee, or grantor may request a 6-month extension for completion of the inspection and any noxious weed management agreement that may be required. If, upon inspection, it is determined that a noxious weed management agreement is necessary, unless otherwise agreed by the parties, the purchaser or grantee is responsible for implementing the provisions of that agreement

5. MCA: Title 7, Chapter 22, Part 41 – Control of Nuisance Weeds within Municipality

    a. §7-22-4101 – Control of nuisance weeds within municipality: (1) The city or town council has power to: (a) declare and determine what vegetation within the city or town shall be nuisance weeds; (b) provide the manner in which they shall be exterminated; (c) require the owner or owners of any property within said city or town to exterminate or remove nuisance weeds from their premises and the one-half of any road or street lying next to the land or boulevard abutting thereon; and (d) provide, in the event the owner or owners of any of said premises neglect to exterminate or remove the nuisance weeds therefrom, for levying the cost of such extermination or removal as a special tax against the property. (2) A noxious weed as defined in 7-22-2101 may not be declared a nuisance weed under this section.

6. ARM: Title 36, Chapter 11, Part 4 – Weed Management

    a. §36.11.445 – Weed management: (1) On classified forest lands the department shall use an integrated pest management approach for noxious weed management that includes prevention, education, cultural, biological, and chemical methods as appropriate. (a) The department shall limit herbicide applications to areas where herbicides provide a cost-effective means of control. (b) The department shall consider new outbreaks of noxious weeds and locations where native plant communities are threatened by noxious weed encroachment the first priority for control. (c) The department shall submit general re-vegetation plans for land-disturbing projects to county weed boards as part of biennial agreements. (d) The department shall promptly re-

vegetate road rights-of-way and other disturbed areas with site-adapted species including native species, as available. (2) The department shall manage forested state trust lands with the intent of controlling the spread of weeds. (a) Practices to be utilized include, but are not limited to: (i) the use of weed-free equipment; (ii) prompt re-vegetation of roads; (iii) minimizing ground disturbance; and (iv) stipulations and control measures that limit the spread of weeds in timber sale contracts. (3) A licensee of classified forest trust land shall be responsible for weed control at their expense pursuant to ARM 36.25.132. (4) On sites where weeds were introduced by recreation use, the department shall make available a portion of recreational access fees for weed control pursuant to ARM 36.25.159. (5) All right-of-way agreements shall require the permittee to control weeds commensurate with the permitted use. (a) This may include fees charged for weed control by the department or the weed district. (6) In areas where weeds are widespread across state and adjacent ownerships, the department shall cooperate with weed districts on control projects. (7) The department shall review implementation of noxious weed control and mitigation measures on cooperative projects and shall establish reasonable goals to address deficiencies as determined by the department at its sole discretion.

7. MCA: Title 80, Chapter 7, Part 4 – Quarantine and Pest Management

    a. §80-7-401 – Short Title: this part may be cited as the "Montana Quarantine and Pest Management Act."
    b. §80-7-402 – Quarantines and pest management procedures; department rules: the department may adopt rules concerning: (1) intrastate and interstate quarantines; (2) procedures to investigate and enforce quarantines to prevent the introduction or spread of plant pests, plants capable of spreading plant pests, plants defined as noxious weeds in 7-22-2101, and other exotic plants defined by department rule as plant pests; (3) pest management standards and procedures for surveying and controlling plant pests; (4) procedures for the introduction of plant pests and biological control agents into the state; and (5) procedures for the recovery of expenses and imposition of penalties.
    c. §80-7-403 – Receipt and deposit of gifts, grants, and other funds: (1) to fund the provisions of 80-7-402, the department may receive funds from any source as gifts, grants, contracts, cost-share funds, and other funds, including civil penalties and recovered expenses. (2) except for funds received in the form of civil penalties, funds received pursuant to this section must be deposited in the produce account established in

80-3-304. Funds received in the form of civil penalties must be deposited in the general fund.

d. §80-7-404 – Penalty: (1) a person who violates the quarantines, procedures, or rules of the department adopted under 80-7-402 commits a civil offense and is subject to a civil penalty of not more than $5,000 for each violation. (2) assessment of a civil penalty may be more in conjunction with another warning, order, or administrative action authorized by this part. A civil penalty collected under this section must be deposited in the general fund. (3) the department shall establish by rule: (a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $5,000, for initial and subsequent offenses; and (b) other matters necessary for the enforcement of civil penalties. (4) this section may not be construed as requiring the department or its agents to report violations of 80-7-402 when the department believes that the public interest will be best served by a suitable notice of warning.

8. MCA: Title 80, Chapter 7, Part 7 – Regulation of Importation or Sale of Noxious Weeds

   a. §80-7-701 – Regulation of importation or sale of noxious weeds: (1) As used in this section: (a) "native plant" means a plant indigenous to the state of Montana; and (b) "native plant community" means an assemblage of native plants occurring in a natural habitat. (2) The department may regulate or prohibit the importation or sale of grain, plants, seed, tubers, nursery stock, fruit, or other materials containing noxious weed seed or plants harmful to Montana's horticultural, agricultural, forestry, livestock, wildlife, or native plant communities.
   b. §80-7-702 – Rulemaking authority: The department of agriculture shall adopt all necessary rules for the regulation of the importation or sale of materials as provided in 80-7-701. The department in adopting the rules may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, the regulation of nursery stock commerce, and other rules and procedures necessary to carry out 80-7-701 through 80-7-704.
   c. §80-7-703 – Violations of importation rules; penalty: Any person who refuses to obey an order of an appointed inspector or willfully disobeys the provisions of 80-7-701 through 80-7-704 shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 and not more than $500.
   d. §80-7-704 – Disposition of fines and inspection fees: All fines levied as provided in 80-7-703, except fines paid to a justice's court, and all fees

collected from inspections must be deposited with the department of revenue to the credit of the state special revenue fund for the use of the department for the purpose of administering and enforcing 80-7-701 through 80-7-704.

e. §80-7-705 – Weed management district program enhancement: (1) On an annual basis, the department shall distribute equally among Montana's counties that have established a noxious weed fund the funds in the noxious weed state special revenue account, provided for in 80-7-816, that were collected pursuant to 80-7-823 to be deposited in the county noxious weed fund as provided in 7-22-2141. Any unused portion must revert to the department for deposit in the noxious weed management trust fund established in 80-7-811. (2) The weed management districts shall use the funds on a county level to enhance noxious weed management programs.

f. §80-7-711 – Technical assistance: The department is authorized to provide technical assistance and services to local governments, agricultural producers, and the general public on the management and control of noxious plants. This assistance and service may include: (1) development, compilation, and reporting of information and records on noxious plant infestations in every county; (2) information and data on the location of noxious plants and acres infested per county and major infestations of watersheds and geographical regions of the state; (3) a determination of the economic and environmental impact of noxious plants on Montana and its citizens; (4) providing technical assistance to various governmental units and citizens on managing long-term noxious plant control programs; (5) delineation and recommendation of areas in the state where management programs or certain management tools should not be utilized because of economic or environmental considerations; (6) information on the restrictions and proper use of pesticides and other management techniques; (7) publishing of model quarantine standards for counties desiring to provide a quarantine program for noxious plants, plant parts, and seed transported in the county; and (8) cooperation and coordination of activities with any government agency, private industry, or citizen.

g. §80-7-712 – Funding of noxious plant management programs: (1) The department may make every effort to obtain federal funds under 43 U.S.C. 1242 to implement management of noxious plants on federal lands in cooperation with any federal agency and the local government body responsible for noxious plant management. These federal funds shall be directly disbursed to local governments authorized to conduct noxious plant management programs. The department may require individual or multiple local government units wishing to apply for federal funds to make proper application for the funds following the management program, budget guidelines, and policies of the

department, and the requirements of 43 U.S.C. 1241 through 1243. The department shall request 3% of the total federal funds received per year to cover the complete cost of administering, monitoring, and auditing the expenditure of these federal funds. (2) The department may cooperate in and coordinate the planning and disbursement of these funds with federal, state, and local agencies responsible for management of noxious plants. (3) The department may directly expend or provide federal or state funds to local governments to manage or eradicate new noxious plant infestations invading federal or state lands within the state. (4) The department may hold a public hearing in the specific locale requesting funding prior to granting the federal funds. The department may determine if there are any special requirements or restrictions that should be incorporated into the management program prior to its implementation

h. §80-7-713 – Reports: The department may prepare a biennial report on the status of noxious plants and their management in Montana. Reports may be submitted to the governor, to the legislature as provided in 5-11-210, and to other such groups and organizations as the department considers necessary.
i. §80-7-714 – Rules: The department may adopt rules and policies necessary to implement 80-7-711 through 80-7-713 pursuant to the Montana Administrative Procedure Act.
j. §80-7-720 – Biological agents for weed control: (1) The department of agriculture is authorized to expend funds for the collection and distribution of biological agents to control leafy spurge and spotted knapweed. The project will reduce energy consumption by reducing the need for repeated chemical application. (2) The department of natural resources and conservation is authorized to administratively transfer funds to the department of agriculture for the project described in subsection (1).

9. MCA: Title 80, Chapter 7, Part 8 – Noxious Weed Management Trust Fund

a. §80-7-801 – Definitions: As used in this part, the following definitions apply: (1) "Crop weed" means any plant commonly accepted as a weed and for which grants for management research, evaluation, and education under 80-7-814(5)(g) may be given. (2) "Department" means the department of agriculture established in 2-15-3001. (3) "Noxious weed" means any weed defined in 7-22-2101(8)(a).
b. §80-7-802 – Rules: The department may adopt rules necessary to implement this part.
c. §80-7-805 – Noxious weed management advisory council: (1) The director of the department shall appoint a noxious weed management advisory council to provide advice to the department concerning the

administration of this part. (2) If appointed, the council must be composed of 11 members, as follows: (a) the director of the department of agriculture, who shall serve as presiding officer; (b) one member representing livestock production; (c) one member representing agriculture crop production; (d) one member from a recreationist/wildlife group; (e) one member who is a herbicide dealer or applicator; (f) one member from a consumer group; (g) one member representing biological research and control interests; (h) one member from the Montana weed control association; (i) two members representing counties, one each from the western and eastern parts of the state, which may include a county commissioner, district weed board member, or weed district supervisor; and (j) one at-large member from the agricultural community.

d. §80-7-811 – Noxious weed management trust fund: (1) As required by Article IX, section 6, of the Montana constitution, there is a noxious weed management trust fund of $10 million. The department shall administer the trust fund in accordance with this part. (2) Deposits to the principal of the noxious weed management trust fund may include but are not limited to: (a) federal contributions; (b) private donations; and (c) state contributions.
e. §80-7-813 – Acceptance and expenditure of gifts and other funds: The department may accept gifts, grants, contracts, or other funds designated for noxious weed management. The funds must be deposited in the noxious weed management trust fund or in the account established in 80-7-816 and may be expended to support a noxious weed management project.
f. §80-7-814 – Administration and expenditure of funds: (1) The provisions of this section constitute the noxious weed management program. (2)(a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $10 million. (b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund. (c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches $10 million with a majority vote of each house of the legislature. (d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall use any reverted funds for future grant awards, provided the noxious weed management trust fund

principal exceeds $10 million as provided in subsection (2)(a). (e) The department may not apply for or receive grant awards from the noxious weed management special revenue fund. (3) The principal of the noxious weed management trust fund in excess of $10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of $10 million may be used only to fund the noxious weed management program. (4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program using one of the following methods, whichever is less: (a) levying an amount of not less than 1.6 mills or an equivalent amount from another source; or (b) appropriating an amount of not less than $100,000 from any source. (5) The department may expend funds without the restrictions specified in subsection (4) for the following: (a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations. (b) cost-share noxious weed management programs with local weed management districts; (c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district. (d) costs incurred by the department for administering the noxious weed management program as follows: (i) In fiscal year 2014, the funds used by the department for administering the program, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program, may not exceed 16% of the total amount expended through grants and contracts made under subsection (4). No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards. (ii) In fiscal year 2015 and in each succeeding fiscal year, the funds used by the department for administering the program, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program, may not exceed 12% of the total amount of grants and contracts awarded from the noxious weed management special revenue fund under subsection (4) in the previous fiscal year. No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards. (e) administrative expenses incurred by the

noxious weed management advisory council; (f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and (g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education. (6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council. (7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups. (8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.

g. §80-7-815 – Noxious weed emergency: (1) The governor may declare a noxious weed emergency if: (a) a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department; or (b) the state is facing a potential influx of noxious weeds as the result of a natural disaster. (2) In the absence of necessary funding from other sources, the principal of the noxious weed management trust fund may be appropriated as provided in 80-7-814 to government agencies for emergency relief to eradicate or confine the new noxious weed species or to protect the state from an influx of noxious weeds due to a natural disaster.
h. §80-7-816 – Account, deposit, investment: (1) There is a noxious weed account in the state special revenue fund established in 17-2-102. The interest from the noxious weed management trust fund and the funds directed to be deposited as provided in 80-7-823, excluding unrealized gains and losses, must be deposited in the account and must be expended as provided in 80-7-705 and 80-7-814. (2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund.
i. §80-7-823 – Transfer of funds: There is transferred $100,000 annually from the highway non-restricted account, provided for in 15-70-125, to the noxious weed state special revenue account, provided for in 80-7-816, for the purposes provided in 80-7-705.

10. MCA: Title 80, Chapter 7, Part 9 – Noxious Weed Seed Free Forage Act

a. §80-7-901 – Short title: This part may be cited as the "Noxious Weed Seed Free Forage Act"

b. §80-7-902 – Findings; purpose: (1) The legislature finds that: (a) natural resources of the state need to be protected from noxious weeds and their seeds; (b) the movement of agricultural crops or commodities as livestock forage, bedding, mulch, and related materials, including pellets, cubes, and other processed livestock feeds with noxious weed seeds, causes new and expanding noxious weed infestations on private and government-managed lands, which adversely impact agricultural, forest, recreational, and other lands; (c) it is necessary to develop and implement a state forage and product noxious weed seed free program in cooperation with federal, state, and local government, the university system, and private enterprise; (d) an educational program is needed to inform all citizens of the importance of the incentive to market and handle forage that is free of noxious weed seeds; (e) a cooperative forage and product distribution system with federal, state, local, and private land manager participation is needed to prevent increased noxious weed infestations; and (f) compliance standards involving the import or export of forage, in cooperation with county weed districts and the department, are needed. (2) The purpose of this part is to promote incentives to benefit the people of this state and other states by producing and making available forage free of noxious weed seeds.
c. §80-7-903 – Definitions: As used in this part, the following definitions apply: (1) "Advisory council" means the Montana noxious weed seed free forage advisory council. Except as provided in 80-7-904, the council is subject to the provisions of 2-15-122. (2) "Certification" means the state-approved and documented process of determining within a standard range of variances or tolerances that forage production fields are free of the seeds of noxious weeds, as defined in 7-22-2101(8)(a)(i), which process allows a person to sell the forage as noxious weed seed free and to attach approved certification identification. (3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage, bedding material, or mulch or related uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or related products. (4) "Noxious weed seed free" means that forage has an absence of noxious weed seeds within a standardized range of variances or tolerances established by department rule. (5) "Person" means a natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative. (6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust, sharecropper, and any other business entity,

devices, and arrangements that grow forage that is proposed to be certified as noxious weed seed free. (7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale, advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage as noxious weed seed free or certified or approved as noxious weed seed free.

d. §80-7-904 – Composition of advisory council: (1) The director of the department shall appoint an advisory council to provide advice to the department concerning the administration of this part. (2) The advisory council must be composed of 10 voting members and 2 ex officio, nonvoting members, as follows: (a) the director of the department or a designee, who shall serve as presiding officer; (b) four members who are producers of forage under a certified forage noxious weed seed free program and who represent different geographical areas of the state; (c) one member involved in the processing of forage into pellets, cubes, or related products; (d) one member representing the livestock or agricultural industry; (e) two members representing county weed districts involved in a forage certification program, who must be members of the Montana weed control association and who represent different geographical areas of the state; (f) one member representing an outfitter's or guide's organization; (g) the director of the Montana state university-Bozeman extension service or a designated representative, who is an ex officio, nonvoting member; and (h) the director of the Montana state university-Bozeman agricultural experiment station or a designated representative, who is an ex officio, nonvoting member. (3) The members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms

e. §80-7-905 – Powers and duties of department: The department may: (1) provide for administration and enforcement of this part; (2) enter into contracts and agreements; (3) authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations that are required for administering the provisions of this part; (4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications; (5) plan and conduct publicity and promotional campaigns to increase the incentives to use Montana forage that is free of noxious weed seed and to make publicity and promotional contracts and other agreements as necessary; (6) establish certification standards and processes for forage and byproducts of forage and determine if processed forage byproducts are noxious weed seed free, based upon field of origin or verification that the production process has destroyed the viability of noxious weed seeds; (7) establish fee assessments and accept other funds to make the

certification program financially self-supporting; (8) establish a standard range of variances or tolerances for noxious weed seeds in different forage subject to certification as noxious weed seed free, based upon scientific and operational considerations; (9) administer rules and orders to be adopted for the exercise of its power and the performance of its duties, in accordance with Title 2, chapter 4; (10) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States government, and enter into contracts or agreements with organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity, reciprocity, and enforcement of this part; (11) hire employees and designate authorized agents to conduct certification inspections, investigations, and sampling and to collect evidence of possible violations of this part; and (12) accept grants, donations, and gifts from any source and expend those funds for any purpose consistent with this part, which may be specified as a condition of any grant, donation, or gift.

f. §80-7-906 – Certification: (1) A person shall make an annual application to the department for certifying forage. The person shall comply with all certification standards and processes and pay any required fees prior to receiving certification approval and identification markers for the forage. If a production tonnage fee is established, the department may establish the method and time of payment. (2) A person who wishes to deliver forage as noxious weed seed free into this state from out of state shall notify the department and pay any application fee or other appropriate fee, including an inspection fee, if required, prior to delivering the forage. The forage must be certified as noxious weed seed free from the state or province of origin if the department approves the certification through a reciprocal agreement or other process approved by the department. The department may waive some certification documentation or fees based upon the provisions in a reciprocal agreement

g. §80-7-907 – Fees: (1) The department, with the advice of the advisory council, may establish fees to support the cost of administering the noxious weed seed free forage program. Fees may be established for: (a) processing applications; (b) per acre inspection of forage; (c) inspection of facilities; (d) minimum administration; (e) inspection related to processing or manufacturing forage into pellets, cubes, and related products; (f) certification identification markers; (g) mileage and per diem; and (h) import inspection. (2) Fees, structures, and procedures must be recommended to the department by the advisory council.

h. §80-7-908 – Deposit and disbursement of funds, records, investment: (1) There is a state noxious weed forage account in the state special

revenue account. All funds received by the department from fees or penalties collected or received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) and all other related funds received must be deposited in the state noxious weed forage account. (2) The department may by contract allow for the collection of fees authorized under 80-7-907. A portion of the fees collected may be retained by the collector, and the portion of the fees assigned to the department must be submitted to the department. The contract must require: (a) a record of the name of the person collecting fees; (b) a record of fees collected; (c) a record of the amounts submitted to the department; (d) a record of the amount retained by the collector; and (e) that all records be kept in accordance with generally accepted accounting principles. (3) Funds received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) that are not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investments must be deposited in the state special revenue fund and credited to the department. (4) Funds received pursuant to this part are available for appropriation to the department for the administration of the noxious weed seed free forage program and for the purposes of this part.

i. §80-7-909 – Rules: The department may, with the advice of the advisory council appointed under 80-7-904, adopt rules necessary to carry out its responsibilities under this part in accordance with Title 2, chapter 4. The rules may include but are not limited to: (1) contracts and agreements; (2) certification standards, processing, and sampling and equipment standards and operation; (3) inspections and investigation procedures and standards; (4) operations; (5) records; (6) application, inspection, production, import, certification identification, mileage, and per diem fees and their collection; (7) reciprocal agreements with other states or Canadian provinces; and (8) penalties, stop sales, condemnation, and other orders.

j. §80-7-910 – Investigation and enforcement authority: (1) In enforcing the provisions of this part, the department or its authorized agents, upon reasonable cause, may enter any private or public premises, property, or vehicle with a warrant or with the consent of the inhabitant or owner to inspect, sample, or investigate at reasonable times forage subject to certification or sale as certified forage or as free of noxious weed seeds. (2) All enforcement actions and orders must be made under the contested case provisions of Title 2, chapter 4, part 6.

k. §80-7-911 – Stop sale, use or removal order: When the department has reasonable cause to believe that a person is selling, distributing, storing, transporting, or using forage in violation of any of the provisions of this part, a written stop sale, use, or removal order may

be issued to that person. If the person is not available for service of the order, the department may attach the order to the forage and notify the person. The forage may not be sold, used, or removed until compliance with the provisions of this part is achieved. The department may release the order once compliance is achieved. The department may require that the forage be sold or used only as an uncertified forage or delivered back to the seller, or the department may order condemnation of any forage that does not meet the requirement of this part or other alternatives established by rule. The department, upon finding that the person responsible for the embargoed forage has failed to comply with the order in any respect, may petition the district court of the first judicial district for enforcement of the order.

l. §80-7-912 – Prohibited acts: (1) It is unlawful for a person to certify or sell as certified or as noxious weed seed free any forage as free of noxious weed seed within this state, unless the forage is identified under a department-approved process as "Montana certified" and the forage meets all the requirements of this part. A person may not designate forage as certified or use any other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the forage is certified unless the forage meets all the requirements of this part. (2) Forage certified under a reciprocal agreement between the department and another state or Canadian province and identified according to approved certification standards to be shipped into the state or shipped to another state or province must meet the requirements of this part. (3) All forage products used by public utilities and local, county, state, or federal agencies, including but not limited to mulches, bedding materials, and erosion control barriers, must be certified as noxious weed seed free. All seeds used for reclamation purposes by public utilities and local, county, state, or federal agencies must be free of noxious weed seeds and be certified seed according to Title 80, chapter 5.

m. §80-7-921 – Penalty for nonpayment of fees: In addition to the penalties set out in 80-7-922, a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of this part is subject to a penalty of $100 or double the assessment, whichever is greater, including the original fee. The penalty must be paid to the department and deposited as provided in 80-7-908. A certification issued to a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of this part is invalid until the original fee and penalty are paid to the department.

n. §80-7-922 – Penalties: A person who violates or aids in a violation of any of the provisions of this part or any rules or orders of the department adopted under this part is subject to the following

penalties: (1) a civil penalty of not more than $1,000 for each offense. Assessment of a civil penalty by the department may be made in conjunction with any other warning, order, or administrative action authorized by this part that is issued by the department. (2) a misdemeanor penalty of not less than $100 or more than $1,500 or up to 6 months' imprisonment, or both, if the person is convicted in district court.

o. §80-7-923 – Injunction authorized: The department may commence a civil action in the district court of the first judicial district seeking appropriate relief, including a permanent or temporary injunction, for a violation of this part.
p. §80-7-924 – Embargo: Upon receiving a report from a district weed board, as provided in 7-22-2126, that forage is subject to embargo and upon verification of a violation of this part, the department shall enforce the embargo throughout the state and issue appropriate stop sale orders as provided in 80-7-911.

11. ARM: Title 4, Chapter 5, Part 3 – Noxious Weed Seed Free Forage

a. §4.5.301 – Purpose and scope: (1) The 1995 Montana legislature, upon finding that the movement of agricultural crops containing noxious weed seeds, as livestock forage, bedding, mulch, pellets, cubes, grain concentrates and related material was causing new and expanding noxious weed infestations, authorized and directed the Montana Department of Agriculture to implement the Noxious Weed Seed Free Forage Act and to adopt all necessary rules for the exercise of its power under that act.
b. §4.5.302 – Definition of terms: These definitions apply to all rules adopted under the Montana Noxious Weed Seed Free Forage Act, Title 80, chapter 7, part 9, MCA: (1) "Agent" means a person who is authorized or employed by the department and is certified by the department to conduct activities under the Montana Noxious Weed Seed Free Forage Act. (2) "Board" means a district weed board created under 7-22-2103, MCA. (3) "Cubes and other processed forage products (physical form) " means forage harvested from a certified field that is compacted into large pellets. (4) "Field unit" means the part of a field that may be certified or which has been certified. (5) "Grain concentrate" means a grain product which includes but is not limited to whole grains, intended for livestock consumption that has been cleaned of noxious weed seeds by an approved process, inspected by an agent, and identified under a department-approved process as "Montana NWSFF certified". (6) "Montana certified forage" means forage products from fields that meet Montana's forage certification standards and are approved by an agent; or grain concentrates,

processed pellets, cubes and other forage products that meet the requirements of ARM 4.5.306(2) through (8). (7) "Pellets and other processed forage products (physical form)" means agglomerated feed formed by compacting and forcing through die openings by a mechanical process. If temperature is not used in the process, the forage must be from a certified field. (8) "Restricted area" means an area designated by an agency, group or person that requires the use of noxious weed seed free forage.

c. §4.5.303 – Noxious weeds: (1) The Montana noxious weed seed free forage (NWSFF) certification program includes the noxious weeds set forth in ARM 4.5.202, 4.5.203, and 4.5.204, authorized by 7-22-2101(7)(a)(i), MCA. (2) The regional forage certification program includes additional noxious weeds that have been so designated by other states and provinces. The department may enter into agreements with other states and/or provinces which will allow forage to be certified on a regional basis.
d. §4.5.304 – Application for Montana certification of noxious weed seed free forage: (1) A person shall make application for NWSFF certification of a forage crop annually. The application shall be made with the department agent in the county in which the person resides or in the county in which the person owns or leases land on which forage will be produced. This request for application may be made by telephone, fax, in person or in writing. (2) The agent is responsible for completing the top of the inspection form (or the agent may allow the producer to complete) with the following applicant information: (a) date annual application received; (b) producer name and address, including zip code; (c) producer telephone and, if available, their fax number; (d) producer identification number; (i) the producer identification number shall include the following, in the order stated, state, county, producer number and year forage harvested; (e) estimate of acres to be inspected; (f) general description of the field and/or legal description. (3) An application fee is not required.
e. §4.5.305 – Standard range of tolerances for noxious weed seeds: (1) The tolerance for noxious weed seeds in noxious weed seed free forage is zero for the weeds defined in 7-22-2101(7)(a)(i), MCA. (a) For field forage this means that an agent found no noxious weed plants with viable weed seeds present in the field unit at the time of inspection; or that an agent found no noxious weed plants capable of producing viable weed seeds present in the field unit at the time of inspection when following the standard inspection procedures. (b) For pellets this means that the pellets are free of viable noxious weed seeds or the pellets are greater than 99% free of viable noxious weed seeds. (c) For cubes and related materials this means that the field forage used to produce the cubes or related materials meet the standards expressed

in (1)(a) above. (d) For grain concentrates cleaned and sampled by a department-approved process, this means presence of noxious weed seeds was not detected. (2) For purposes of these rules, the department's certification represents the condition of the field forage at the time of certification. Further cautionary restrictions with respect to pelleting, cubing or related processes, storage and transportation are imposed in these rules to help preserve that certification. However, the rules do not intend or provide for any further visual or other inspection of the certified forage after the point of initial certification, other than that which may occur as a result of enforcement or other related activity.

f. §4.5.306 – Procedures for Montana certification of forage products: (1) A person desiring to certify processed feed products as noxious weed seed free must make an annual application on the department's application form. The application shall be valid from the date of issuance through December 31 of that calendar year. (a) Applications for certification of mechanically cleaned grain concentrates must describe the method of cleaning to remove noxious weed seed. The method must be approved by the department. (2) Persons desiring to certify processed pellets must meet the following criteria:
(a) Equipment is cleaned of any noxious weed seeds prior to processing forage for certification. Cleaning the entire feed manufacturing system through the bagging operation or bulk bins is required to prevent contamination of pellets for certification. A minimum of 500 pounds of the feed to be certified must pass through the system including the pelleter to purge the system. The feed used to purge the system will not be certified. (b) The forage must be pelleted following the standard pelleting process. (c) All screens must be maintained in a good operating condition. (d) The forage pellets must be reground with a number six (6/64 inch) screen or smaller. (e) The forage material from (2)(d) must be repelleted using steam and temperature in the process. The temperature of the pellets extruded from the die shall be greater than 140° F. (3) Equivalent pelleting procedures: Any person may apply for department approval of an alternative procedure for pelleting certified forage. The application shall include: (a) A complete narrative description of the procedure. (b) Independent laboratory study that demonstrates that the process is as effective as the process in this rule. (c) Documentation that the laboratory methods used are scientifically acceptable and results are statistically valid. (d) The department may deny or grant approval of the request based upon the information received from the applicant and from data and information from other sources. The department may also withdraw its approval should investigations or future studies reveal the procedure is not equivalent to accepted procedures. (4) A person desiring to certify cubes or other

forage products must ensure that: (a) All constituents be processed from certified forage meeting Montana certification standards.
(b) Equipment is cleaned of any noxious weed seeds prior to processing forage for certification. A minimum of 500 pounds of certified forage must be purged and cleaned through the entire system (from cubing to bagging or bulk storage) prior to processing cubes or other forage products. The 500 pounds of forage used to eliminate any noxious weed seeds will not be certified. (5) A person desiring to certify grain concentrates coming from noncertified fields must meet the following requirements: (a) an annual production plant inspection must be performed by an agent; (b) samples will be taken by an agent and sent to the Montana state seed laboratory or an alternate facility designated by the department to determine if the product meets NWSFF standards of zero tolerance. The sampling procedure will follow the procedure and the minimum amount required for seed testing as prescribed by the Association of Official Seed Analysis, "2003 Rules For Testing Seeds" which is adopted and incorporated by reference, and can be obtained from the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; and (c) at the conclusion of the inspection/sampling/analysis process, those lots of grain concentrate meeting criteria for certification will be certified. The department will provide: (i) an invoice for the inspection fees;
(ii) appropriate markers; and (iii) transportation certificates.
(6) To enforce this chapter, the department upon presenting appropriate credentials may enter, at reasonable times or under emergency conditions, any factory, warehouse, or establishment within the state in which grain concentrates, pellets, cubes and other forage products are manufactured, processed, packed, distributed, or held, or enter any vehicle being used to transport or hold such products. The department may inspect, obtain samples and examine records at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in them. (7) Grain concentrates, cubes and pellets shipped into the state as noxious weed seed free must meet all of Montana's NWSFF certification requirements. (8) Any person may request Montana certification of their grain concentrate, pellets, cubes or other forage produced out-of-state from the department. The department may enter into agreements with other state departments of agriculture or appropriate state agencies or provincial governments to verify that the grain concentrate, pellets, cubes or other forage meet Montana NWSFF certification standards. The agreements may specify the types of identification markers and/or transportation certificates that are acceptable.

g. §4.5.307 – Forage inspection procedures: (1) The following procedures and processes will be required for field unit NWSFF certification: (a) When a portion of a field is to be certified, this portion must be plainly marked or separated by a mowed strip or flagged at least 12 feet wide, to avoid cutting and mixing the certified and uncertified portion at harvest. (b) Field units must include surrounding ditches, fence rows, roads, easements, rights-of-way and buffer zones of a minimum of 12 feet surrounding the outside edges of a field. (c) If the field unit is certified for straw the seed that is harvested from that field unit may be considered for certification. (2) Areas such as stack yards, storage sheds and/or bins, shall be inspected at the same time as the field and/or fields prior to stacking or filling them with certified forage. These areas shall be free of noxious weeds and/or noxious weed seeds. Contaminated storage areas will not be approved for storage of certified forage or the certification shall be cancelled if the area is contaminated with noxious weeds and/or noxious weed seeds. (3) Harvested lots of certified forage from inspected fields may be tested or inspected at any time during normal business hours by an agent or the department. Evidence that any lot of certified forage has not been protected from contamination or is not properly identified or separated will be cause for certification cancellation. (4) The producer is responsible for notifying the agent at least seven days in advance of harvest to allow inspections to be completed. (5) Field inspection must be made within seven days prior to harvest. (a) For fields to be certified for straw only, notification and field inspections may be made up to two weeks before harvest. (6) Fields that have been cut or harvested prior to inspection are ineligible for certification. (7) Forms shall be completed by the agent at the time of inspection of each field unit. At the conclusion of the inspection the producer will be provided an invoice for the inspection fees and, if applicable, markers. (8) Baling equipment must be cleaned of any noxious weed seeds prior to harvesting certified forage. If this is not possible the first three small square bales or the first large round or square bale produced shall be considered noncertified and will not be included as a part of a field unit's certified forage. (9) Combining equipment is to be cleaned of any noxious weed seed prior to harvesting the certified whole grain field(s). (10) Fields that appear weedy or show poor crop practices, even though noxious weeds are not present, should not be certified under the certification standards. The local agent will document the problems and has the discretion to make this judgment. A producer can challenge this decision and petition the department to assign another agent to re-inspect the field.

h. §4.5.308 – Forage identification and transportation: (1) Identification of field grown forage includes the following: (a) Bales must be

identified individually using a department issued identification marker. A completed transportation certificate is required and must specify whether the forage was inspected for Montana or regional noxious weeds. (b) If colored baler twine is used for marking, only one strand of the colored twine is required per bale. (c) The producer shall make all reasonable efforts to ensure the certified forage is not contaminated with noxious weed seeds from the time of harvest and storage including delivery to the buyer. (2) Forage identification markers and transportation certificates will be sold and distributed by the department or its agents. (3) A noxious weed seed free forage product transportation certificate issued and numbered by the department must contain the following: (a) a statement that this forage meets the criteria set by the Montana Noxious Weed Seed Free Forage Act; (b) name of the producer; (c) producer identification number; (d) name and address of buyer; (e) type of forage; (f) identification marker (tags, colored baler twine, and labels); (g) security tie with a unique identification number;(h) number of bales by type or tonnage or weight of grain concentrate, pellets or other forage product; (i) date of sale; (j) seller's signature; (k) vehicle operator or driver's signature; this must be signed upon receipt of forage; and(l) a statement that the forage meets Montana or regional certification standards. (4) All baled forage sold by a producer to a second party (such as a retail outlet) for resale must be accompanied by the original transportation certificate. The second party (or retail outlet) will photocopy the original transportation certificate and provide this photocopy plus a receipt to third party buyers of the baled forage. Third party buyers must have the photocopy of the transportation certificate and the receipt (to show where the forage was purchased) in their possession when they are transporting or storing forage in a restricted area. (5) Identification of forage that has been pelleted or cubed or other related products shall include the following: (a) Certified grain concentrates, pellets, cubes or other forage byproducts must have a separate label attached showing proof of certification of the contents with the following statement: "MONTANA CERTIFIED Noxious Weed Seed Free Forage NOTE: Certification means this product has been inspected by an agent of the MT NWSFF program using recognized inspection methods and no noxious weed seed was detected." (b) For out-of-state pelleted, cubed or grain concentrate products the label on the product must be in compliance with Montana's standards for Noxious Weed Seed Free Forage. Montana may enter into reciprocal agreements with other states, agencies, and/or provinces that will identify the certification procedures to be used. (c) All identification labels for grain concentrates, pellets, cubes or other forage products manufactured in Montana must be obtained

from the department. (d) Transportation of bulk loads of certified grain concentrates and pelleted and cubed materials must be secured with a security tie having a unique identifier once loaded and remain unaltered or unbroken during transit. If bulk materials are intended to be delivered to multiple destinations, a security tie is required between delivery sites. Security ties are to be used in conjunction with required markers and transportation certificates. (6) It is the responsibility of each producer to make sure that all certified NWSFF sold under the program is properly labeled and identified with transportation certificates before it leaves the premises.

i. §4.5.309 – certification of agents: (1) Each person desiring to be an agent must be trained and certified according to department standards. (2) The following are minimum requirements for initial certification: (a) field inspection techniques and procedures; (b) map reading; (c) knowledge of weed management,
including: (i) burning; (ii) mowing, cutting or rogueing; (iii) mechanical methods; (iv) chemicals; (d) forms used; (e) state and regional certification standards and guidelines; (f) state and regional noxious and poisonous weed identification and training; (g) certify with a written examination score of 80% or better. (3) Agents participating in the NWSFF program will receive an annual recertification packet containing: (a) any changes or additions to the NWSFF law and rules and/or general program; (b) any changes or additions to the Montana noxious weed list; (c) form updates; (d) regional program changes and issues; and (e) an identification card to be used in the current season. (4) Agents certifying grain concentrates from noncertified fields must be trained department inspectors familiar with grain sampling procedures. (5) If an agent intentionally falsifies the certificate of an inspection, that agent will lose certification status.

j. §4.5.310 – Stop sale, use, or removal order: (1) When the department has reasonable cause to believe any lot of certified NWSFF is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written order requiring the person holding the forage not to sell, use or remove it in any manner until written permission is given by the department. The department shall release the order when the provisions of the act and rules have been met. If compliance is not obtained within 30 days, the department may begin proceedings for condemnation. The disposition of the forage may not be ordered by the department without first giving the owner or person from whom the forage was seized an opportunity to apply to the department for release of the forage or for permission to process or bring it into compliance with this chapter, and an opportunity to contest any such order under the provisions of 80-7-910(2), MCA.

k. §4.5.311 – Notification requirements – county embargo: (1) The board or their authorized representative shall, as required by 7-22-2126(4), MCA, notify the department of all embargoes issued and the final resolution within 48 hours of any embargo imposed. The notification to the department on issuance of a county embargo shall include the following items: (a) date and time of the embargo; (b) parties involved including name, address and telephone number; (c) any reference used by persons portraying forage as meeting requirements of the act; (d) the location of the embargoed forage; (e) volume and description of forage; (f) the type of violation; and (g) a copy of the embargo. (h) The notification may be accomplished by a telephone call, followed up in writing. (2) The notification to the department on final resolution shall include; (a) date of resolution; (b) identification of the embargo issued; (c) a description of the final resolution including any special time schedules and/or requirements. (d) the notification may be accomplished by a telephone call, followed up in writing.

l. §4.5.312 – Collection of fees: (1) The procedures to be followed by an agent employed by a governmental agency include: (a) collection of fees and deposition of fees in an appropriate government account; (b) a record of the name of the government agent collecting the fees; (c) a record of total fees collected; (d) a record of names of each producer and documentation of the fee paid; (e) a record of the amounts submitted to the department; (f) a record of the amount retained by the agent's governmental agency; and (g) all records be kept in accordance with generally accepted accounting principles. (h) the agent shall submit at the conclusion of the season complete information on the collection, deposit and disbursement of fees as set forth above including the name of the government account where the fees were deposited. (i) Fees collected and deposited in a government agency account may be used to support any activity or expense associated with the NWSFF program in that county. (2) The procedures to be followed by a nongovernment agent include: (a) deposition of all fees in a department approved account in a local financial institution; or submission of all fees directly to the department. The method of deposit will be determined by the department on a case by case basis; (b) submission of records to the department at the time of deposit or submission of fees; (i) a record of the name of the nongovernment agent collecting the fees; (ii) a record of total fees collected; (iii) a list of producers and the fees paid; (c) that all records be kept in accordance with generally accepted accounting principles; and (d) the department will issue the nongovernment agent payment for services rendered.

m. §4.5.313 – Fees: (1) A field inspection fee of $4.50 per acre or a $45 minimum charge per field for forage inspection will be charged to the person for whom the forage was inspected. State mileage and per diem

rates may also be assessed by the department or its agents. (2) Fees charged are payable to the department or its agent: (a) at the time of inspection; or (b) by special arrangement made for payment through a written agreement with the department or its agent. (c) If additional inspections are required because of weather operation delays or other related problems, the discretion of whether to charge an additional inspection fee will be left to the department or its agent. (3) Agents must submit a copy of the department completed inspection form and submit $2.25 per acre or $22.50 minimum inspection fee, whichever is greater, by September 15 of each year to ensure that the persons producing certified forage will be included on the NWSFF producer list. (4) If the fee is not paid or a person improperly pays any fee or assessment under the provisions of 80-7-921, MCA, the department or its agent will not provide further services. (5) An inspection fee of $44.00 per hour or an $88.00 minimum charge per facility per inspection will be charged to manufacturers of certified processed pellets using noncertified forage in the process and certified grain concentrates harvested from noncertified fields that are mechanically cleaned of noxious weed seed. State mileage, per diem, and lodging may also be assessed by the department or its agents when conducting in-state facility inspections. Actual costs associated with out-of-state facility inspections will be assessed by the department or its agents. Costs may include, but are not limited to, airfare, vehicle rental, state mileage, per diem, and lodging. The manufacturer shall document the tons of grain concentrate or pellets processed and submit the document to the department on or before January 30 for the previous year's production. (6) A record of grain concentrates or the pellets produced from noncertified forage shall be retained for two years. (7) The cost for grain concentrate analysis shall be paid by the manufacturer. The product marker (label) will be provided by the department. (8) Only product markers provided by the department or its agents may be used. Fees for markers are as follows: (a) Twine will be $50/unit; (b) Tags will be $0.50/tag; (c) Labels for grain concentrates, pellets, and cubes will be $0.40/label; (d) Labels for in-state grain concentrates, pellets, and cubes made from certified noxious weed seed free materials that have already been assessed field inspection fees specified in ARM 4.5.313(1), will be: (i) $0.15/adhesive label; or (ii) $0.25/weather and tear resistant sewn-in label; (e) Labels for in-state bulk grain concentrates, pellets, and cubes will be $0.20/50 pounds; and (f) Ties will be provided by the department at no cost.

n. §4.5.314 – Contracts: (1) The department may enter into contracts with organizations to conduct specific forage certification activities. These contracts may identify issues, such as time of collection of fees and

deposition of fees, that are unique to that organization. The standard fees for inspections are set forth in ARM 4.5.315.

o. §4.5.315 – Identification of product and package types: (1) The following identification information will be used by agents when completing reporting forms: (a) Product forage types (i) Alfalfa (ii) Alfalfa/grass (iii) Grass (iv) Straw (v) Grain/barley (vi) Grain/oats (vii) Sanfoin (viii) Other forage (agent must describe); (b) Package type (i) Small rectangular bales (ii) Large rectangular (iii) Large round bales (iv) Small round bales (v) Cubes (vi) Pellets (vii) Loose forage (viii) Silage (ix) Grain concentrate (x) Other packages (agent must describe

p. §4.5.316 – Civil penalties: (1) Whenever the department has reason to believe that a violation of Title 80, chapter 7, part 9, MCA, or any adopted rule thereunder has occurred, it may initiate a civil penalty action pursuant to the Montana Administrative Procedure Act. (2) Each violation shall be considered a separate offense and is subject to a separate penalty not to exceed $1,000. A repeat violation shall be considered a first violation if it occurred three or more years after the previous violation. (3) The penalty matrix set forth in this rule establishes the basic penalty value for each offense. Factors dealing with the violation may causes the matrix penalty to increase or decrease. Examples of such factors would be the person's history of compliance or noncompliance or the extent of the person's actions to sell forage or designate or imply forage as being certified when it does not meet state certification requirements. (4) Penalty matrix:

Type of violation:	1st Offense	2nd Offense	3rd Offense
(a) Violate any lawful order, stop sale, use or removal order; or condemnation action;	$250	$500	$1,000
(b) to certify or sell or advertise as certified, as noxious weed seed free any forage as free from noxious weed seed within the state, unless forage is identified under a department approved process of certification;	$250	$500	$1,000
(c) to transport into, offer for sale, sell or use forage as noxious weed seed free, from another state, province, or country, unless the forage meets state certification standards or is allowed by an agreement between the department and another government agency;	$250	$500	$1,000

(d) for a public utility or a local, county, state or federal agency to use forage products that have not been certified which may include but are not limited to: mulches, bedding materials and erosion control barriers;	$250	$500	$1,000
(e) for public utilities, local, county, state or federal agencies to use seed for reclamation purposes that is not free of noxious weed seeds and certified according to Title 80, chapter 5, MCA;	$250	$500	$1,000
(f) to improperly pay any application or certification fee or refuse to pay for any inspection fees or department approved identification markers;	$250	$500	$1,000
(g) for an agent to falsify a certificate of inspection;	$250	$500	$1,000
(h) for an agent to improperly deposit, collect or use any certificate or inspection fees or fail to document and submit any required records to the department;	$250	$500	$1,000
(i) to transport certified forage in a restricted area without a transportation certificate or identification markers;	$250	$500	$1,000
(j) to falsify or alter a transportation certificate;	$250	$500	$1,000
(k) for an agent to violate any provisions of a contract with the department.	$250	$500	$1,000

E. Vertebrate Pests:

1. ARM: Title 4, Chapter 12, Part 2 – Feed Regulations

    a. §4.12.218 – Inspection fee: (1) The supplier, manufacturer, or guarantor of a commercial feed, except pet foods and specialty pet foods, shall pay to the department an inspection fee of 18 cents per ton on all commercial feeds, including custom mixed feeds, except pet foods and specialty pet foods distributed in this state.
    b. §4.12.219 – Adoption of model feed and pet food regulations: (1) The Montana Department of Agriculture adopts and incorporates by

reference the model regulations and the model pet food and specialty pet food regulations under the model bill, as well as the feed terms and ingredient definitions as published in the 2018 official publication of the Association of American Feed Control Officials (AAFCO). A copy of the AAFCO model regulations or terms and ingredients may be obtained from the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201 or the entire official publication may be obtained through AAFCO. The director of the Montana Department of Agriculture or designee shall be the official recognized throughout the model regulations.

c. §4.12.222 – Standards for viable weed seeds: (1) The use of commercial feeds containing viable weed seeds can cause weed infestations with adverse economic and environmental impacts. The risk of weed infestations from commercial feeds may eventually justify the adoption of standards to define acceptable levels of viable weeds in commercial feeds. However, current scientific data on this matter are insufficient to allow the department to establish standards for weed seeds as authorized by 80-9-103, MCA. As an interim measure, and in recognition of the significance of this issue, the department is adopting this interim rule while literature research and scientific studies are being completed. (2) Persons who manufacture animals' feeds in Montana should utilize processes and ingredients that minimize, in the finished product, the presence of viable seeds of plant species designated as noxious weeds under 7-22-2101(7)(a)(i), MCA. Distributors should distribute, where feasible and practical, feeds that do not contain viable seeds of plant species designated as noxious weeds under 7-22-2101(7)(a)(i), MCA. (3) Claims made on labels and labeling regarding freedom from viable noxious weed seeds shall be accurate and truthful. Claims such as "free from noxious weed seeds," "noxious weed seeds destroyed," and similar phrases, or claims regarding the amount of noxious weed seeds may be made when: (a) the feed contains no viable noxious weed seeds; or (b) the feed has been tested for viable noxious weeds and the results of testing are accurately stated on the label or labeling. (4) Commercial feeds shall be misbranded when: (a) viable noxious weed seeds are present and a claim regarding weed freedom is made on the labels or labeling; or (b) viable noxious weed seeds are present in amounts exceeding that claimed on the label or labeling. (5) Feed manufacturers making claims regarding freedom from noxious weed seeds shall submit, upon written request by the department, and for each product making such a claim, information that verifies the absence of viable weed seeds. The department may request information regarding the following: (a) analytical test results regarding seed viability, species composition, and proportion of noxious weed seeds; (b) verification that

plant materials used in manufacture did not contain viable noxious weed seeds. For purposes of this subsection, plant materials certified pursuant to Title 80, chapter 7, MCA, are recognized as meeting standards for freedom from viable noxious weed seeds;
and (c) verification that methods used in manufacturing are effective in mitigating the presence or viability of noxious weed seeds. For purposes of this subsection, pellets and cubes certified pursuant to Title 80, chapter 7, MCA or produced in accordance with standards in ARM 4.5.306 are recognized as effective in mitigating the viability of noxious weed seeds. (6) The department will evaluate analytical methods, manufacturing methods, and other methods represented as mitigating the presence or viability of noxious weed seeds, and may make a determination regarding acceptability and effectiveness. Persons may not make claims regarding weed seeds when methods are determined to be unacceptable or ineffective.

d. §4.12.223 – Definition of commercial feed: (1) The following definitions are for the purpose of clarifying the term "commercial feed" pursuant to 80-9-101, MCA: (a) "chemically changed" means change in elemental composition, atomic structure, or mass which may be caused by application of heat, pressure, reactants, solvents or catalysts; (b) "cube" means a feed product that has fibers with a typical length of about one inch, ground to a lesser degree than a pellet, and is compressed and passed through an opening of one inch or larger; (c) "entire" means substantially complete or whole and identifiable to seed species;
and (d) "physically altered" means changes in physical characteristics such as density, shape, and color. Examples of physical alterations include grinding, removal of hulls, dry rolling, compaction, crimping, and flaking. (2) The following feeds are exempted from the definition of commercial feed when they are not ground, are not intermixed with other materials, and are not adulterated within the meaning of 80-9-204, MCA: (a) hay or straw that is baled, cubed or loose; (b) litter for livestock and pets whether litter is whole plants or parts of plants; (c) stover for litter or fodder consisting of the stalks and leaves of corn, sorghum or other plants after the ears or heads have been removed; (d) fodder consisting of whole plants, whether green or cured, used as forage; (e) silage; (f) corn cobs whether whole or with kernels removed; (g) husks and hulls including seed screenings; (h) raw meats; and (i) crimped, rolled or compacted entire seeds whether conditioned or steamed.

2. MCA: Title 7, Chapter 22, Part 25 – County Vertebrate Pest Management

   a. §7-22-2501 – Definitions: As used in this part, the following definitions apply: (1) "Department" means the department of agriculture. (2)

"Governing body" means the governing body specified by the form of government adopted by a county. (3) "Management of vertebrate pests" means the correct identification of a vertebrate pest; recognition of its biological and environmental needs; assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress such damage, nuisance, or injury; and evaluating the effects of these control methods. (4) "Vertebrate pests" means jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, skunks, raccoons, bats, and the following depredatory and nuisance birds: blackbirds, cowbirds, starlings, house sparrows, and feral pigeons, when such animals and birds are injurious to agriculture, other industries, or the public.

b. §7-22-2502 – Establishment of program; cooperation: (1) A governing body may establish a program to manage and suppress vertebrate pests. (2) A governing body that establishes a program under subsection (1) must cooperate with the department in the management and suppression of vertebrate pests, including cooperation in regard to the department's organized and systematic plans covering methods and procedures to be followed in the management and suppression of vertebrate pests. (3) A governing body, in cooperation with the department, may enter into cooperative agreements with state and federal governmental agencies, counties, rodent control districts, associations, corporations, or individuals when cooperation is necessary to promote the management and suppression of vertebrate pests.
c. §7-22-2503 – Agreements with department: A governing body, when cooperating with the department, may enter into written agreements with the department covering the methods and procedures to be followed in the management and suppression of vertebrate pests, the extent of supervision to be exercised by the governing body, and the use and expenditures of state and county money.
d. §7-22-2511 – County vertebrate pest management fund: A governing body that establishes a program to manage and suppress vertebrate pests must establish a county vertebrate pest management fund, from which the governing body may appropriate money for the operation of the program.
e. §7-22-2512 – Financing of vertebrate pest management program – tax: (1) A governing body may: (a) appropriate from the county general fund an amount to fund vertebrate pest management and transfer it to the county vertebrate pest management fund; and (b) subject to 15-10-420, levy a vertebrate pest management tax on the taxable valuation of all agricultural, horticultural, grazing, and timber lands and their improvements. Land within a rodent control district may not be taxed

in any given year under both 7-11-1024 and this section for the control of rodents. Land within a rodent control district may be taxed under this section only in a dollar amount that is proportional to the part of the vertebrate pest program's projected fiscal year budget that is allocated to the management and suppression of vertebrate pests other than rodents. (2) The tax provided for in subsection (1) must be collected as other county taxes and credited to the county vertebrate pest management fund.

f. §7-22-2513 – Expenditures for supplies and services authorized: A governing body may make necessary expenditures from the county vertebrate pest management fund for equipment, materials, supplies, personal services, and other expenses. A governing body may also purchase vertebrate pest management supplies and equipment for use by cooperating governmental agencies, counties, rodent control districts, associations, corporations, or individuals in the management of vertebrate pests if the governing body charges such users the approximate cost of the supplies and equipment. Receipts from the resale of such supplies and equipment to the cooperating users must be credited to the county vertebrate pest management fund.

3. ARM: Title 12, Chapter 6, Part 15 – Classification of Prohibited and Restricted Species:

   a. §12.6.1540 – Classification of prohibited and restricted species: (1) The department finds that the following species, hybrids, or viable gametes (ova and semen), are detrimental to existing wildlife and their habitats through nonspecific genetic dilution, habitat degradation or competition caused by feral populations of escaped game farm animals. The following is a list of prohibited species: (a) In the family Bovidae, all members of the following genera and hybrids thereof: (i) Subfamily Caprinae: (A) Rudicapra (chamois); (B) Hemitragus (tahr); (C) Capra (goats, ibexes--except domestic goat, Capra hircus); (D) Ammotragus (Barbary sheep or Aoudad); and (E) Ovis (only the mouflon species, Ovis musimon); (ii) Subfamily Hippotraginae: (A) Oryx (oryx and gemsbok); and (B) Addax (addax); (iii) Subfamily Reduncinae: (A) Redunca (reedbucks); (b) In the family Cervidae, all of the following species and hybrids thereof: (i) Red deer (Cervus elaphus elaphus); (ii) Axis deer (Axis axis); (iii) Rusa deer (Cervus timorensis); (iv) Sambar deer (Cervus unicolor); (v) Sika deer (Cervus nippon); and (vi) Roe deer (Capreolus capreolus and Capreolus pygarus); (c) All wild species in the family Suidae (Russian boar, European boar) and hybrids thereof; and (d) In the family Tayassuidae, the collared peccary (javelina) (Tayassu tajacu) and hybrids thereof.

b. §12.6.1541 – Possession of prohibited species: (1) the prohibited species in ARM 12.6.1540 and animals classified by the Department of Livestock pursuant to 87-4-424, MCA, may not be possessed, bred, released, imported, transported, bought, sold, bartered or traded within the state, except as authorized in writing by the department. A person may possess prohibited species for the life of the animals, provided that the person gained possession of the animals prior to May 15, 1992, and the animal is neutered and properly contained. Proof of ownership (including the date of acquisition) and neutering of such animals must be retained on the game farm premises. Prohibited species not legally retained under this rule must, within ten days of notice from the department, be transported out of the state in compliance with the requirements of the Department of Livestock and the game farm rules of the receiving state and federal laws or be destroyed by the owner. (2) animals testing positive for elk-deer hybridization pursuant to ARM 12.6.1542 are subject to the following: (a) a license shall neuter, sterilize, slaughter or sell such animal and its progeny out of the state within six months after the initial determination of a positive test result for elk-red deer hybridization. If the licensee fails to do so, the animal's possession shall be deemed illegal and the department may seize the animal. Any animal testing positive for elk-red deer hybridization must be confined to prevent breeding during the appropriate breeding season as defined in Arm 12.6.1538; (b) a licensee shall submit proof of neutering or sterilization to the department and the Department of Livestock; and (c) a licensee shall provide five working days advance written notice to the department and the Department of Livestock before removing any such animal from the licensee's game farm.

4. ARM: Title 12, Chapter 6, Part 22 – Enforcement of Exotic Wildlife

a. §12.6.2201 – Definitions: The following definitions apply to this subchapter: (1) "Condition" or "conditions" means specific requirements a person must abide by to receive or retain a permit. (2) "Controlled species" means a live, exotic wildlife species, subspecies, or hybrid of that species. (3) "Department" means the Montana Department of Fish, Wildlife and Parks. (4) "Exotic wildlife" means a wildlife species that is not native to Montana; foreign or introduced. (5) "Permit" means written authorization issued by the department to possess, sell, purchase, breed, or exchange a controlled or prohibited species in the state of Montana. (6) "Person" means any individual, corporation, association, firm, joint venture, partnership, municipality, school district or board, agency or political subdivision of the state or state-law-created special or other district. (7) "Prohibited species" means a

live, exotic wildlife species, subspecies, or hybrid of that species, including viable embryos or gametes, that may not be possessed, sold, purchased, exchanged, or transported in Montana, except as provided in 87-5-709, MCA, or this subchapter. (8) "Non-controlled species" means a live, exotic wildlife species, subspecies, or hybrid of that species that may be possessed, sold, purchased or exchanged in the state without a permit, except as provided in this subchapter or in Montana statutes or federal statutes. A non-controlled species may not be released into the wild unless authorized in writing by the department. This definition does not authorize the sale, possession, transportation, importation or exportation of a non-controlled species in violation of any applicable federal or state statute or regulation or county or city ordinance.

b. §12.6.2203 – Requirements for care and housing of exotic wildlife: (1) Exotic wildlife held in captivity must be treated in a humane manner and cannot be restrained with a chain, rope, or other holding device except when necessary to provide appropriate care. Facilities for care of captive exotic wildlife must be maintained in a sanitary condition, be large enough to provide room for exercise, be sturdy enough to prevent escape, and provide protection to the public. Food, water, and shelter must be provided in sufficient quantity and quality to maintain the exotic wildlife in a healthy condition. (2) Specific conditions for the housing of exotic wildlife may be required by the department. Requirements will be consistent with those under 9 CFR, Ch. 1, Part 3 "Standards for Humane Handling, Care, Treatment and Transportation" and consistent with ARM 12.6.1302. (3) Adequate veterinary care must be provided to identify and minimize the spread of diseases. All exotic wildlife held in captivity must be in compliance with and are subject to the current Compendium of Animal Rabies Prevention and Control.

c. §12.6.2204 – Specific requirements for care and housing of exotic wildlife: (1) These specific requirements apply in addition to the general requirements found in ARM 12.6.2203 and any other specific condition that may be found on the permit. (2) Coho salmon, Onocorhynchus kisutch, and Pacific White Shrimp, Penaeus (Litopenaeus) vannamei, may only be raised for commercial activities. (a) Coho salmon and Pacific White Shrimp must be raised in a facility that: (i) holds a corporate surety bond to the state of Montana for $500, conditioned to the effect that the permit holder will not violate the conditions of the permit; (ii) is indoors and locked with access restricted solely to individuals involved in the operation and maintenance of the facility; (iii) is not within the 100-year flood; (iv) is at least 200 feet from any surface water; (v) does not receive diverted surface water; (vi) does not have an effluent or discharge of waste or

water within 200 feet of surface water including perennial, intermittent, or ephemeral streams or rivers; and (vii) complies with all other local, state, and federal regulations and permits. (b) Live fish may not be transferred into or out of the facility. (c) Live shrimp may not be transferred out of the facility. (d) Fish health screening must be: (i) consistent with the requirements of ARM 12.7.503 and 12.7.504; (ii) done annually; and (iii) reported to the department within 30 days of receipt of results. (e) Any significant mortality in the facility that occurs as a result of an infectious disease must be reported to the department within 30 days. (f) Carcasses must either be disposed in a state regulated landfill or in another manner that would not impact state waters or be accessible to wildlife or other animals that might carry carcasses to water. (g) Imported shrimp must be certified pathogen free. (3) Goldfish, Carassius auratus, and koi, Cyprinus carpio, may only be held in outdoor ponds registered with the department using a form provided by the department. (a) Ponds used to hold goldfish and koi: (i) must not be larger than 400 square feet; (ii) must not be within the 100-year flood plain; (iii) must be at least 200 yards from any open water; (iv) must not receive diverted surface water; and

d. §12.6.2205 – Exotic wildlife: list of non-controlled species: (1) The following mammals are classified as non-controlled species: (a) African pygmy hedgehog - *Atelerix albiventris* and *Atelerix algirus*; (b) Degu (bush-tailed rat) - *Octodon degus*; (c) Jungle cat - *Felis chaus*; (d) Serval cat - *Leptailurus serval*; (e) Sugar gliders - *Petaurus breviceps*; (f) Two-toed sloth - *Choloepus didoctylus;* (g) Wallaby (Bennets) - *Macropus rufogriseus*; and (h) Wallaby (Tammar) - *Macropus eugenii*. (2) The following amphibians are classified as non-controlled species: (a) Cameroon volcano frog - *Xenopus amieti;* (b) Eritrea clawed frog - *Xenopus clivii;* (c) Hyperoliidae family; and (d) Leptodactylidae family. (3) The following arachnids are classified as non-controlled species: (a) Emperor scorpion - *Pandinus imperator*; and (b) Tanzanian red-claw scorpion - *Pandinus cavimanus*. (4) The following crustaceans are classified as non-controlled species: (a) Terrestrial hermit crabs - *Coenobita sp*.

e. §12.6.2208 – List of controlled species: (1) The following birds are classified as controlled species: (a) Barbary Falcon – Falco perigrinoides; (b) Black-Crowned Crane – Balearica pavonina; (c) Black-necked Crane – Grus nigricollis; (d) Blue Crane – Anthropoides paradiseus; (e) Brolga – Grus rubicunda; (f) Buff-banded Rail – Gallirallus philippensis; (g) Common Crane – Grus grus; (h) Demoiselle Crane – Anthropoides virgo; (i) Giant Wood Rail – Aramides ypecaha; (j) Grey Crowned Crane – Balearica regulorum; (k) Hooded Crane – Grus monacha; (l) Red-crowned Crane – Grus

japonensis; (m) Sarus Crane – Grus antigone; (n) Siberian Crane – Grus leucogeranus; (o) Taita Falcon – Falco fasciinucha; (p) Wattled Crane – Grus carunculata; (q) White-breasted Waterhen – Amaurornis phoenicurus; (r) White-naped Crane – Grus vipio; and (s) exotic waterfowl in the family Anatidae. (2) The following crustaceans are classified as controlled species: (a) Pacific White Shrimp – Panaeus (Litopenaeus) vannamei. (3) The following fish are classified as controlled species: (a) coho salmon – Onocorhynchus kisutch; (b) goldfish – Carassius auratus (for use in outdoor ponds); and (c) koi – Cyprinus carpio (for use in outdoor ponds). (4) The following mammals are classified as controlled species: (a) Wallaroo – Macropus robustus.

f. §12.6.2210 – Controlled species permits: (1) A permit is required for all controlled species except those identified in ARM 12.6.2208(2)(b) and (c). (a) The department shall assess a fee of $25 to obtain or renew a permit to possess a controlled species. The permit must be renewed annually. Renewal is contingent upon submission of the annual fee plus submission of any required reporting of current inventory and any changes to inventory during the preceding year; and (b) the department shall assess a fee of $100 to obtain or renew a permit to sell, breed, or exchange a controlled species. The permit must be renewed annually. Renewal is contingent upon submission of the annual fee plus submission of any required annual reporting of current inventory and any changes to the inventory during the preceding year. (2) A controlled species permit must require the permittee: (a) to provide annual reports on forms provided by the department, unless the department has given written authorization for a different format concerning births, deaths, sales, and purchases of any controlled species; (b) to provide a viable bio-security plan to control the spread of disease and an emergency response plan to protect emergency personnel and the species involved; (c) to report the escape of any controlled species to the department within 24 hours of the escape and accept responsibility and liability for recapture costs; (d) to report any injuries to humans inflicted by the controlled species to local public health officials within 24 hours of infliction of the injury; (e) to report injuries inflicted by the exotic species on domestic animals to the Department of Livestock within 24 hours of infliction of the injury; and (f) to report injuries inflicted by the exotic species on Montana wildlife to the department within 24 hours of infliction of the injury. (3) The department may require additional conditions on a permit to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety. Permit conditions may include, but are not limited to, individual identification of animals. A person must comply with all permit conditions in order to receive or retain a permit. The department may suspend or cancel a

permit if the permittee violates or fails to comply with a permit condition or is convicted of violating a federal or state law, or county or city ordinance associated with possession of the exotic wildlife species. (4) The department may amend, suspend, or cancel a permit if necessary to protect native wildlife, livestock, public health, public safety, or the environment. (5) The department shall document compliance with conditions, either through inspection by representatives of the department or through affidavit by the permittee prior to possession of the exotic wildlife species in Montana. (6) A person that displays, exhibits, or uses a controlled species for exhibition or commercial photography or television may import the species into Montana without a controlled species permit if the animal: (a) is accompanied by evidence of lawful possession; (b) is not in this state for more than 90 days or a time period authorized by the department; (c) is maintained under complete control and prohibited from coming into contact with members of the general public unless authorized for such contact by the department. If the person is displaying, exhibiting, or using animals for commercial purposes other than food or fiber, he/she must possess the appropriate license issued by the United States Department of Agriculture; and (d) is accompanied by an official certificate of veterinary inspection as defined in ARM 32.3.206 "Official Health Certificate" and an entry permit number issued by the Montana Department of Livestock within ten days of entry into Montana. (7) An interstate shipment of a controlled species may be transported through this state, without a permit or license issued by the department, if (a) the shipper or transporter has evidence of lawful possession of the species issued by the state or country where the species originated; (b) mammals, birds, reptiles, and amphibians are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian in the state or country where the species originated that indicates the destination and origin of the species being transported; (c) fish are accompanied by a health certificate issued in the state or country where the species originated that indicates the destination and origin of the species being transported; and (d) the species is not unloaded or otherwise released while being transported through this state.

g. §12.6.2211 – Application for a permit to possess a controlled species: (1) An applicant may be eligible for a controlled species permit if the applicant: (a) is at least 18 years of age; and (b) has not been convicted of any violation of exotic wildlife regulations or any offense involving the illegal commercialization of wildlife within three years of the date of application. Any offense involving cruelty to animals will permanently prohibit a person from obtaining a permit to possess a controlled species animal. (2) To obtain a controlled species permit a

person shall make written application to the department on forms provided by the department. The application must specify: (a) the applicant's name; (b) the applicant's date of birth; (c) the applicant's address; (d) the controlled species and the approximate number proposed to be kept or reared at the above address; (e) the type of facilities the applicant intends to use for confinement of the controlled species, including cage specifications; and (f) the source from which the applicant intends to acquire the controlled species. (3) In order for an applicant to receive a permit, the applicant shall agree to comply with all permit conditions.

h. §12.6.2215 – List of prohibited species: (1) The following amphibians are classified as prohibited species: (a) African clawed frog – Xenopus laevis; and (b) North American bullfrog – Rana catesbeiana. (2) The following crustaceans are classified as prohibited species:(a) Rusty crayfish – Orconectes rusticus. (3) The following fish are classified as prohibited species: (a) Bighead carp – Hypophthalmichthys nobilis; (b) Black carp – Mylopharyngodon piceus; (c) Eurasian Ruffe – Gymnocephalus cernuus; (d) Grass carp – Ctenopharyngodon idella; (e) Round goby – Neogobius melanostomus; (f) Silver carp – Hypophthalmichthys molitrix; (g) Snakehead fish – genera Channa and Parachanna (29 species); (h) Walking catfish – Clarias batrachus; (i) White perch – Morone Americana; and (j) Zander (European pikeperch) – Sander lucioperca. (4) The following mammals are classified as prohibited species: (a) African Soft Fur Rat/Natal Rat – Mastomys natalensis/Natal miltimammate mouse; (b) Aotidae Family (Night and Owl Monkeys); (c) Argali Sheep – Ovis ammon; (d) Atelidae Family (Howlers and Spider Monkeys); (e) Brush-tailed possum – Trichosurus vulpecula; (f) Callitrichidae Family (Marmosets and Tamarins); (g) Cebidae family (new world primates); (h) Cercopithecidae family (old world monkeys); (i) Hyaenidae family (hyenas); (j) Hylobatidae family (gibbons); (k) Natal Rat/African Soft Fur Rat – Natal miltimammate mouse/Mastomys natalensis; (l) Nutria – Myocastor coypus; (m) Pitheciidae Family (Titis and Saki Monkeys); (n) Pongidae family (apes); (o) Short-tailed opossum – Monodelphis domestica; (p) Small spotted genet – Genetta genetta; (q) Southern flying squirrel – Glaucomys volans; (r) Transcaspian urial sheep – Ovis aries vignei; and (s) Virginia opossum – Didelphis virginiana. (5) The following mollusks are classified as prohibited species: (a) New Zealand mudsnail – Potamopyrgus antipodarum; (b) Quagga mussel – Dreissena bugensis; and (c) Zebra mussel – Dreissena polymorpha. (6) The following reptiles are classified as prohibited: (a) African rock python – Python sebae; (b) Alligatoridae family; (c) Amethystine python – Morelia amethistina; (d) Boomslang – Dispholidus typus; (e) Burrowing asps (all species in family Atractaspidae); (f) Coral snakes

(all species in family Elapidae); (g) Cobras (all species in family Elapidae); (h) Crocodylidae family; (i) Green Anaconda – Eunectes marinus; (j) Indian python (including the Burmese python) – Python molurus; (k) Kraits (all species in family Elapidae); (l) Mambas (all species in family Elapidae); (m) Pit vipers and true vipers (all species in family Viperidae except species indigenous to Montana); (n) Red-eared slider – Trachemys scripta elegans; and (o) Reticulated python – Python reticulatus. (7) The following birds are classified as prohibited: (a) California quail – Callipepla californica; and (b) Gambel's quail – Callipepla gambelii.

i. §12.6.2220 – Prohibited species permit: (1) The department may issue a permit for possession of a prohibited species only to the following: (a) zoo or aquarium which is an accredited institutional member of the American Association of Zoological Parks and Aquariums; (b) a roadside menagerie or zoo licensed by the department; (c) a business that displays, exhibits, or uses the species for exhibition or commercial photography or television and has a USDA Class C Exhibitor's license if the species: (i) is accompanied by evidence of lawful possession; (ii) is not in this state for more than 90 days or a time period authorized by the department; (iii) is maintained under complete control and prohibited from coming into contact with members of the general public unless authorized for such contact by the department. If the person is displaying, exhibiting, or using animals for commercial purposes other than food or fiber, he/she must possess the appropriate license issued by the United States Department of Agriculture; and (iv) is accompanied by an official certificate of veterinary inspection as defined in ARM 32.3.206 "Official Health Certificate" and an entry permit number issued by the Montana Department of Livestock within ten days of entry into Montana; (d) a college, university, or government agency, for scientific or public health research; (e) any other scientific institution, as determined by the department, for research or medical necessity; (f) a tax-exempt nonprofit organization licensed by the United States Department of Agriculture that exhibits wildlife solely for educational or scientific purposes; (g) a person who, due to a medical necessity, has assistance requirements that may be provided by the prohibited species and that requirement is certified by a physician licensed in the state of Montana; or (h) a rescue facility for exotic wildlife with either national or state agency affiliation engaged in temporary housing of exotic wildlife for the purpose of rescue for relocation. (2) An interstate shipment of a prohibited species may be transported through this state, without a permit or license issued by the department, if: (a) the shipper or transporter has evidence of lawful possession of the species issued by the state or country where the species originated;

(b) mammals, birds, reptiles, and amphibians are accompanied by a certificate of veterinary inspection issued by an accredited veterinarian in the state or country where the species originated that indicates the destination and origin of the species being transported; (c) fish are accompanied by a health certificate issued in the state or country where the species originated that indicates the destination and origin of the species being transported; and (d) the species is not unloaded or otherwise released while being transported through this state. (3) The department may amend, suspend, or cancel a permit if necessary to protect native wildlife, livestock, public health, public safety, or the environment

j. §12.6.2225 – Determining exotic wildlife classification: (1) The classification review committee described in 87-5-708, MCA, shall consider petitions for species classification. Any individual, government agency, or interested group may petition the classification review committee to recommend to the commission classification of a species. (2) The classification review committee must make its recommendations based on the best available information and scientific knowledge of the following: (a) the environmental impacts caused by the animal if it is released or escapes from captivity, including ecological and economic impacts; (b) the risk the animal would pose to the health or safety of the public, wildlife, livestock, domestic animals and agriculture; and (c) the ability of a person to readily control and contain the animal in captivity. (3) Based on recommendations made by the classification review committee, the commission may classify exotic wildlife to either a non-controlled, controlled, or prohibited list. The commission shall adopt exotic wildlife classifications as administrative rules, amendments, or repeals according to the Montana Administrative Procedure Act. (4) Species of exotic wildlife may not be imported into Montana unless the following occur: (a) the exotic wildlife species has been classified by the commission or by listing in state statutes; (b) the department has issued the required permits for possession of exotic wildlife species classified as non-controlled, controlled or prohibited; and (c) the person has obtained authorization for importation from the Department of Livestock pursuant to Title 81, chapter 2, part 7, MCA.

k. §12.6.2230 – Exotic wildlife permit appeal process: (1) A person who has been denied a permit, denied renewal of a permit, or whose permit has been suspended or cancelled may appeal the permitting decision in writing to the department's director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal. (2) The department's director or the director's designee shall issue a written decision on the appeal. The department director's decision is final.

5. MCA: Title 60, Chapter 7, Part 1 – Livestock on Highway

   a. §60-7-101 – Purpose: It is the purpose of 60-7-101 through 60-7-103 to balance the tradition of the open range and the economic and geographic problems of raising livestock with the need for safer highways and the policy of taking all feasible measures to reduce the high incidence of traffic accidents and fatalities on Montana highways.
   b. §60-7-102 – Definitions: As used in 60-2-208 and 60-7-101 through 60-7-103, the following definitions apply: (1) A "high-hazard area" is a segment of the primary or secondary highway system passing through open range where livestock move on or across the highway often enough, in enough numbers, and with enough ease of access that the animals create a significant traffic safety hazard. Evidence bearing on whether animals on the highway pose a significant hazard includes, without limitation, past accident records, the opinions of persons qualified by experience to evaluate the relative safety of road conditions, and the terrain around the road. (2) "Livestock" means cattle, sheep, swine, horses, mules, and goats. (3) A "low-hazard area" is a segment of the primary or secondary highway system passing through open range that is not a high-hazard area. (4) "Open range" means those areas of the state where livestock are raised and maintained in sufficient numbers to constitute a significant part of the local or county economy and where livestock graze and move about generally unrestrained by fences.
   c. §60-7-103 – Department to fence right-of-way through open range – exception: (1) Except as provided in subsection (3), the department shall fence the right-of-way of any part of a primary or secondary highway or a county road or bridge that is constructed or reconstructed after July 1, 1969, through open range where livestock present a hazard to the safety of the motorist. When a fence is constructed, adequate stock gates or stock passes, as necessary, must be provided to make land on either side of the highway usable for livestock purposes. (2) The department shall erect a right-of-way fence in the high-hazard areas where fencing is warranted as promptly as possible, and the cost of the fence construction is an expenditure for the enforcement of federal-aid highway safety programs. Even if a right-of-way fence is determined to be unwarranted pursuant to subsection (3), gates, stock underpasses, water facilities, and cattle guards may be installed where necessary to enhance safety and to make the land on either side of the highway usable for livestock purposes or where a public right-of-way intersects the state highway. (3) The department is not required to fence the right-of-way of a secondary highway through open range that passes through a county park, provided that: (a) the department and the board of county commissioners: (i) agree that the criteria listed in this subsection (3) have been adequately met; and (ii) cooperate in developing an accident mitigation plan for the portion of the highway that will remain unfenced. The plan may

include the speed limit established as provided in 61-8-309 or 61-8-310, how the criteria listed in this subsection (3) have been met, how the plan will be implemented, and any other issues related to minimizing accidents involving livestock and motor vehicles where a fence has not been erected. (b) livestock grazing does not occur from Memorial Day to Labor Day; (c) the speed limit established as provided in 61-8-309 or 61-8-310 is clearly posted and enforceable; (d) warning signs indicating that livestock may be on the road are posted at regular intervals along the road and maintained during the months that livestock grazing occurs; (e) livestock management practices, such as locating water and administering dietary supplements away from the road and developing grazing and herding plans that minimize the amount of time that livestock are on or near the road, are employed; and (f) the unfenced portion of the road does not exceed 20 miles in length.

6. MCA: Title 60, Chapter 7, Part 2 – Grazing Livestock

    a. §60-7-201 – Grazing livestock on highway unlawful: A person who owns or possesses livestock may not permit the livestock to graze, remain upon, or occupy a part of the right-of-way of: (1) a state highway running through cultivated areas or a part of the fenced right-of-way of a state highway if in either case the highway has been designated by agreement between the transportation commission and the secretary of transportation as a part of the national system of interstate and defense highways; or (2) a state highway designated by agreement between the transportation commission and the secretary of transportation as a part of the federal-aid primary system, except as provided in 60-7-202.
    b. §60-7-202 – Exclusions: Section 60-7-201 does not apply to the following: (1) livestock on state highways under the charge of one or more herders; (2) the parts of fenced highways adjacent to open range where a highway device has not been installed to exclude range livestock; (3) the parts of a state highway or a part of the federal-aid primary system that the department of transportation designates as being impracticable to exclude livestock. These portions of the highway must be marked by proper signs in accordance with the department's manual and specifications for a uniform system of traffic control devices. (4) the parts of the secondary highway system that pass through county parks and that meet the criteria established in 60-7-103(3).
    c. §60-7-203 – Penalty: A person who violates 60-7-201 is guilty of a misdemeanor and is subject to a fine of not less than $5 or more than $100 for each offense. In a civil action for damages caused by collision between a motor vehicle and a domestic animal or animals on a highway brought by the owner, driver, or occupant of a motor vehicle or by their personal representatives or assigns or by the owner of livestock, there is no presumption or inference that the collision was due to negligence on the part

of the owner or the person in possession of the livestock or the driver or owner of the vehicle.

d. §60-7-204 – Flag escorts – prohibitions against nighttime herding on public highways: A person who owns, controls, or possesses livestock may not herd or drive more than 10 livestock on an interstate or state primary highway unless the livestock is preceded and followed by flag person escorts for the purpose of warning other highway users. Livestock may not be herded or driven on an interstate or state primary highway during nighttime, as that term is defined in 1-1-301, except in a case of emergency. In the case of an emergency during the nighttime, the flag person escorts shall use adequate warning lights, such as but not limited to portable lamps, lanterns, or rotating beacons. This section does not apply during daytime at posted livestock crossings on highways.

e. §60-7-205 – Violations: A person who violates 60-7-204 is guilty of a misdemeanor.

7. MCA: Title 76, Chapter 12, Part 1 – Natural Areas

a. §76-12-101 – Short title: this part shall be known and may be cited as the "Montana Natural Areas Act of 1974."

b. §76-12-102 – Legislative findings: the legislature finds that: (1) in the expanses of Montana there are natural areas possessing significant scenic, educational, scientific, biological, and/or geologic values or areas possessing these characteristics to a degree promising their restoration to a natural state (2) since the development of these areas is an irreversible commitment of a finite and diminishing resource of fundamental importance, selected areas should be preserved for the benefit of this and future generations (3) currently there are no regulations promulgated by the state or local governments to ensure adequate protection for natural areas (4) it is necessary to establish a process for developing a system of natural areas and to encourage public and private participation in the establishment of a natural areas system for the benefit of the citizens of the state; and (5) designations of natural areas should first consider protected natural features in publicly owned and privately dedicated lands, such as nature preserves, natural areas, parks, and wilderness areas, and should avoid duplication of these features.

c. §76-12-103 – Statement of policy: (1) it is the intention of the legislature to establish a system for the protection of natural or potentially natural areas in order to preserve their natural ecosystem integrity in perpetuity. (2) in this connection, the legislature recognizes the fact that the school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the

well-being of the people of the state; that it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state; and hereby declares the preservation of natural areas, whether trust or other lands, for the enjoyment and inspiration of future generations to be an object worthy of legislative action helpful to the well-being of the people of the state and also declares that the preservation of natural areas on state trust land has sufficient value to present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in The Enabling Act.

d. §76-12-104 – Definitions: (1) "board" means the board of land commissioners. (2) "department" means the department of natural resources and conservation. (3) "natural area" means an area of land that must generally appear to have been affected primarily by the forces of nature with the visual aspects of human intrusion not dominant and also must have one or more of the following characteristics: (a) an outstanding mixture or variety of vegetation, wildlife, water resource, landscape, and scenic values; (b) an important or rare ecological or geological feature or other rare or significant natural feature worthy of preservation for scientific, educational, or ecological purposes. (4) "natural areas system" means the composite of lands in the state that exhibit the characteristics of natural areas and that have been designated by the board or dedicated or otherwise protected and managed as natural areas. (5) "register" means the Montana register of natural areas established under 76-12-121.

e. §76-12-107 – Methods of bringing land under part: a natural area, as defined in 76-12-104, may become subject to the provisions of this part in any of the following ways: (1) designation by the board on lands controlled by the board; (2) designation by the legislature on lands owned by the state of Montana; (3) acquisition by the board by purchase with consent of the property owner of sufficient interests in private property to protect the natural area; provided, however, that transfer of surface property or development rights shall not alter the rights attending the subsurface estate if owned by another party; (4) gift accepted by the board under the authority of 77-1-213, including conservation easements, provided that lands accepted must be protected and managed as natural areas and money accepted must be used in accordance with the purposes of this part; (5) trade of state-owned trust land for a natural area on federal, county, or private land, provided, however, that lands received in exchange for trust lands should be equal in value to the exchanged trust land and as closely as possible equal in area; or (6) registration of land by the department, following appropriate documentation and owner consent, that has been designated, dedicated, or otherwise protected as a natural area by the

owner, including a private landowner, public interest group, or other land management agency.

f. §76-12-108 – Acquisition of lands: subject to the limits of available appropriations, the board is authorized to acquire interests in land by any lawful means for the purpose of designating natural area. The board may exercise the power of eminent domain, provided for in Title 70, chapter 30, only in specific instances authorized by the legislature.
g. §76-12-109 – Report to legislature: the board may, as provided in 5-11-210, submit to each legislature a report on its designation and acquisition activities.
h. §76-12-110 – Restriction on condemnation or development of natural areas: natural areas acquired or designated in accordance with the provision of this part are protected from condemnation or other development adversely affecting the integrity of the natural area until legislative action is taken specifically authorizing the development or condemnation, as provided in Title 70, chapter 30.
i. §76-12-111 – Continuation of existing uses: land uses on the designated or acquired natural area in existence at the time of designation or acquisition by the board may continue under appropriate leases or agreements. All such land uses shall be controlled under regulations established by the board under 76-12-112.
j. §76-12-112 – Duties of board – administrative rules and hearing requirements: (1) the board shall, after at least one public hearing, promulgate comprehensive regulations for the protection of acquired and designated natural areas within its jurisdiction. Such regulations shall be consistent with the intent of this part and shall be promulgated and enforced so as to protect the qualities of the natural areas. Special attention shall be given to protecting areas from recreational overuse. (2) the regulations shall provide for meetings by the board for the receipt of testimony on the department's proposed designation of natural areas. No area shall be designated by the board unless the opportunity for public testimony has been afforded at meetings provided for in the regulations and positive notification of all involved landowners and lessees has been made. (3) the board shall consider the department's recommendations as provided in 76-12-121(4) and issue a statement of its decision.
k. §76-12-115 – Consultation with interested parties: the department shall consult with citizen organizations, organizations representing Montana's basic resource industries, and other interested state agencies in the administration of this part.
l. §76-12-116 – Files and proceedings: all files and proceedings under this part shall be open to the public.
m. §76-12-117 – Application of more restrictive provisions: a designated natural area that is or shall become a part of a state park, wildlife

refuge, or similar area shall be subject to the provisions of this part and the laws under which the other areas may be administered, and in the case of conflict between the provisions of these laws, the more restrictive provisions shall apply.

n. §76-12-121 – Duties of department – plan for natural areas system: the department may: (1) identify the existing and potential natural areas on lands under its jurisdiction and annually prepare a register listing the existing natural areas on private, county, state, and federal land; (2) prepare and implement a biennial administrative plan for a natural areas system that will: (a) assure equitable representation of the diversity of natural area types that are found to occur on private, county, state, and federal lands; and (b) include identification of important natural area needs, viable methods ot make eligible lands a part of the natural areas system, responsible management entities, goals for establishing natural areas, obligations of cooperating agencies, organizations, and individuals, and administrative procedures for registering natural areas with the department; (3) consider the concerns and comments of the board and the public in preparing and implementing the administrative plan described in subsection (2); (4) make recommendations to the board for designation of natural areas on state lands and for acquisition of interests in other lands for the preservation of natural areas; (5) provide that designated natural areas on state lands area available for multiple uses, including but not limited to grazing, recreation, and snowmobiling, if such uses are consistent with the state's obligations under the Enabling Act and do not interfere with the management or integrity of the natural area; and (6) provide that the management of natural areas on state lands includes provisions for weed control consistent with 7-22-2151. The department assumes any levy under 7-22-2142 in natural areas; the lessee is not responsible for fire suppression costs in natural areas, and the lessee is not responsible for keeping natural areas free of garbage and debris.

o. §76-12-123 – Natural areas account: (1) there is a natural areas special revenue account within the state special revenue fund established in 17-2-102. (2) the natural areas account may receive funds from any source as gifts. (3) the department may spend funds accepted as gifts in accordance with the purposes of this part, including administration of a natural areas program.

8. MCA: Title 76, Chapter 14, Part 1 – Rangeland Management

a. §76-14-101 – Short title: this part shall be known as the "Montana Rangeland Resources Act."

b. §76-14-102 – Purpose: the purpose of this part is to establish a program of rangeland management whereby: (1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized; (2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and (3) those who are doing exceptional work in range management can receive appropriate recognition.
c. §76-14-103 – Definitions: as used in this part, the following definitions apply: (1) "committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2); (2) "department" means the department of natural resources and conservation; (3) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state; (4) "person" means any individual or association, partnership, corporation, or other business entity; (5) "range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that sire; (6) "range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources; (7) "rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use; (8) "state coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304; (9) "tame pastureland" means land that has been modified by mechanical cultivation and that has current vegetation consisting of native or introduced species, or both; (10) "users of rangeland" means all persons, including but not limited to ranchers, farmers, hunters, anglers, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.
d. §76-14-104 – Types of land included as rangeland: the term "rangeland" includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.
e. §76-14-105 – Role of state coordinator: the state coordinator shall: (1) serve as an advisor, counselor, and coordinator for and between

persons and agencies involved in range management; (2) strive to create understanding and compatibility between the many users of rangeland, including hunters, anglers, recreationists, ranchers, and others; (3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners; (4) participate in zoning and planning studies to ensure that native ranges are adequately represented at sessions for development of zoning and planning regulations; (5) coordinate range management research to help prevent duplication and overlap of effort in this area.

f. 76-14-106 – Duties of rangeland resources committee: (1) the committee shall: (a) review and recommend annual and long-range work programs; (b) suggest priorities of work; (c) provide advice and counsel to the coordinator for carrying out the rangeland resource program. (2) the committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties.

g. §76-14-111 – Rangeland improvement loan program: the department may make rangeland improvement loans for rangeland development and improvement, including but not limited to stock water development, cross fencing, establishment of grazing systems, reseeding, mechanical renovation, sagebrush management, and weed control.

h. §76-14-113 – Eligibility for loans: (1) any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who: (a) is a resident of Montana; (b) is engaged in farming or ranching; and (c) possesses the necessary expertise to make a rangeland loan practical. (2) all loans must be for rangeland improvement or development exclusively. (3) an application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States natural resources conservation service.

i. §76-14-114 – Criteria for evaluation of loan applications: the following criteria must be considered in selecting loan recipients: (1) loan applications must be ranked according to the following priorities: (a) range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition and of benefit to more than a single operator, have first priority; (b) range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition but of benefit to only a single operator, have second priority; (c) range improvement or development projects undertaken on either native rangeland or tame pastureland used in conjunction with native rangeland, or both, resulting in the improvement of native range condition and the

condition of the time pastureland used in conjunction with native rangeland, have third priority; (d) range improvement or development projects undertaken on tame pastureland, resulting in the improvement of the tame pastureland exclusively, have fourth priority; (e) range improvement or development projects undertaken to return to rangeland status land that was once native rangeland and that has since been cultivated have fifth priority. (2) consideration must be given to the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and soil conservation. (3) consideration must be given to the amount of funding from other sources. (4) consideration must be given to the feasibility and practicability of the project.

j. §76-14-115 – Selection of loan recipients: (1) conservation district supervisors shall initially review loan applications for feasibility and prioritize applications for referral to the department; (2) the department shall organize and review applications for clarity and completeness prior to committee review; (3) the committee shall consider applications and make recommendations to the department; (4) the department shall finally approve or disapprove applications recommended by the committee and shall select loan recipients.

k. §76-14-116 – Rules; the department shall adopt rules: (1) prescribing the form and content of applications for loans and the required conservation plan; (2) governing the application of the criteria for awarding loans and the procedure for the review of applications by conservation district supervisors, the committee, and the department; (3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges; (4) providing for the confidentiality of financial statements submitted; and (5) prescribing the conditions for making loans.

9. MCA: Title 76, Chapter 15, Part 1 – Conservation Districts

a. §76-15-101 – Legislative determinations: it is declared, as a matter of legislative determination: (1) that the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land use practices have caused and have contributed to and are now causing and contributing to a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there

has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive top soil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon the occupier's lands causes a washing and blowing of soil and water from the occupier's lands onto other lands and makes the conservation of soil and control of erosion on other lands difficult or impossible; (2) that the consequences of soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, and diches, the loss of fertile soil material in dust storms, the piling up of soil on lower slopes and its deposit over alluvial plains, the reduction in productivity or outright ruin or rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills, the deterioration of soil and its fertility, the deterioration of crops and range cover grown on the land, declining acre yields despite development of scientific processes for increasing a blowing and washing of soil into streams that silts over spawning beds and destroys water plants, diminishing the food supply of fish, a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop and range vegetation cover failures, an increase in the speed and volume of rainfall runoff, causing severe and increasing floods that bring suffering, disease, and death, the impoverishment of families attempting to operate eroding and eroded lands, damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms, and losses in municipal water supply, irrigation developments, farming, and grazing; (3) that to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages and further the conservation, development, utilization, and disposal of water, it is necessary that land use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land use practices and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, land drainage, dikes, ponds, ditches, and the like; the utilization of strip cropping; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, and rodent eradication; soil stabilization with

trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

b. §76-15-102 – Declaration of policy: it is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

c. §76-15-103 – Definitions: unless the context requires otherwise, in this chapter, the following definitions apply: (1) "agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state. (2) "department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33. (3) "district" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions set forth in this chapter. (4) "due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area. The posting must include, when possible, posting at public places where it is customary to post notices concerning county or municipal affairs generally. (5) "government" or "governmental" includes the government of this state, the government of the US, and any subdivision, agency, or instrumentality, corporate or otherwise, or either of them. (6) "land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity that holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise. (7) "petition" means a petition filed under 76-15-201 for the creation of a district. (8) "qualified elector" means an elector as defined in Title 13. (9) "supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter. (10) "united states" or "agencies of the united states" includes the United States of America, the natural resources conservation service of the United States department of agriculture, and any other agency or

instrumentality, corporate or otherwise, of the United States of America.

d. §76-15-104 – Adjournment of hearings: at any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.
e. §76-15-105 – Duties of the department: in addition to the duties hereinafter conferred upon the department, it shall: (1) offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs; (2) keep the supervisors of each of the several districts informed of the activities and experiences of all other districts and facilitate an interchange of advice and experiences between the districts and cooperation between them; (3) coordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation; (4) secure the cooperation and assistance of the United States and of agencies of this state in the work of the districts; (5) disseminate information throughout the state concerning the activities and programs of the conservation districts; and (6) encourage the formation of districts in areas where their organization is desirable.

10. MCA: Title 76, Chapter 15, Part 2 – Creation of Conservation Districts

a. §76-15-201 – Petition to create conservation district: (1) any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the department approve the organization of a conservation district to function in the territory described in the petition. (2) the petition must set forth: (a) the proposed name of the district; (b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition; (c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but is sufficient if generally accurate; (d) a request that: (i) the department define the boundaries for the district; (ii) a referendum be held within the territory defined on the question of the creation of a conservation district in the territory; and (iii) the department determine that a district be created. (3) where more than one petition if filed covering parts of the same territory, the department may consolidate all or any part of the petitions.
b. §76-15-202 – Hearing on petition: (1) within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of

the desirability and necessity in the interest of the public health, safety, and welfare of the creation of the district; upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this chapter; and upon all questions relevant to those inquiries. (2) all qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the described territory and all other interested parties are entitled to attend the hearings and be heard.

c. §76-15-203 – Hearing procedure if additional territory to be included: if it appears to the department after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the department shall adjourn the hearing and shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district. The further hearing must be held by the department.
d. §76-15-204 – Determination of need for district: (1) after the hearing, if the department determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district. (2) if the department determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made on the petitions.
e. §76-15-205 – Criteria for determining need: in making the determinations and in defining the boundaries, the department shall consider the topography of the area considered and of the state, the composition of soils in the area, the distribution of erosion, the prevailing land use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this chapter, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set

forth in 76-15-101 and 76-15-102. The territory to be included within the boundaries need not be contiguous.

f. §76-15-206 – Determination of administrative practicability of district: after the department has made and recorded a determination that there is need in the interest of the public health, safety, and welfare for the organization of a district in a particular territory and has defined the boundaries of the district, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this chapter is administratively practicable and feasible.

g. §76-15-207 – Referendum on question of creating district: (1) to assist the department in the determination of administrative practicability and feasibility, the department shall, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given. (2) the question must be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of, and," and "Against creation of a conservation district of the lands below described and lying in the county(ies) of, and" must appear, with a square before each proposition and a direction to insert and "X" mark in the square before one or the other of the propositions as the voter may favor or oppose creation of the district. The ballot must set forth the boundaries of the proposed district as determined by the department. (3) all qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

h. §76-15-208 – Administration of hearings and referenda: (1) the department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum. (2) no informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

i. §76-15-209 – Procedure following referendum: (1) the department shall publish the result of the referendum, and shall consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. (2) if the department

determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner provided in this chapter. (3) if the department determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. After 6 months have expired from the date of entry of a determination by the department that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken on the petitions in accordance with this part.

j. §76-15-210 – Criteria for determining administrative practicability: (1) in making its determination, the department shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-15-101 and 76-15-102. (2) the department may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district has been cast in favor of the creation of the district.

k. §76-15-211 – Appointment of supervisors: if the department determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors first elected, as provided in this part, as the initial governing body of the district.

l. §76-15-212 – Submission of application by appointed supervisors: the district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings: (1) the two appointed supervisors shall present to the to the secretary of state an application signed by them, which must set forth: (a) that a petition for the creation of the district was filed with the department pursuant to this chapter, that the proceedings specified in this chapter were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this chapter, and that the department has appointed them as supervisors; (b) the name and official residence of each of the supervisors, together

with a certified copy of the appointments evidencing their right to office; (c) the term of office of each of the supervisors; (d) the name which is proposed for the district; and (e) the location of the principal offices of the supervisors of the district. (2) the application must be subscribed and sworn to by each of the supervisors. (3)(a) the application must be accompanied by a statement by the department which shall certify that: (i) a petition was filed, notice issued, and hearing held as provided in this part; (ii) the department determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries of the district; (iii) notice was given and a referendum held on the question of the creation of the district; and (iv) the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that the department determined that the operation of the proposed district is administratively practicable and feasible. (b) the statement must also set forth the boundaries of the district as they have been defined by the department.

m. §76-15-213 – Processing of application by secretary of state: (1) the secretary of state shall examine the application and statement, and if the secretary of state finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, the secretary of state shall receive and file the application and statement shall record them in an appropriate book of record in the secretary of state's office. (2) if the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, the secretary of state shall certify that fact to the department. The department shall submit to the secretary of state a new name for the district which is not subject to the defects. Upon receipt of the new name free of defects, the secretary of state shall record the application and statement with the modified name in an appropriate book of record in the secretary of state's office. (3) the secretary of state shall make and issue to the supervisors, without cost, a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement.

n. §76-15-214 – Evidentiary status of certificate issued by secretary of state: in a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this chapter upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly

certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

o. §76-15-215 – District as governmental subdivision and public body: when the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic, exercising pubic powers.
p. §76-15-216 – Limitation on territory included in district: the boundaries of the district must include the territory as determined by the department, but may not include any area included within the boundaries of another conservation district.

11. MCA: Title 76, Chapter 15, Part 4 – Operation of Conservation Districts

a. §76-15-401 – Study problems relating to soil and water conservation: (1) a conservation district and the supervisors thereof shall have the power to: (a) conduct surveys, investigations, and research relating to the character of soil erosion, floodwater, and sediment damages, and water quality as it pertains to saline seep and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed; (b) publish the results of such surveys, investigations, or research; and (c) disseminate information concerning such preventive and control measures and works of improvement. (2) in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the United States or any of its agencies.
b. §76-15-402 – Development of soil and water conservation plans: a conservation district and the supervisors thereof shall have the power to: (1) develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, range programs, tillage and grazing practices, and changes in use of land; and (2) publish such plans and information and bring them to the attention of occupiers of lands within the district.
c. §76-15-403 – Operation of projects and works: a conservation district and the supervisors of the conservation district may: (1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of the lands or

the necessary rights or interest in the lands; (2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water, including but not limited to engineering operations, range management, methods of cultivation, growing vegetation, changes in use of land, and the measures listed in 76-15-101(3) on: (a) land within the district and owned or controlled by the state with the cooperation of the agency administering and having jurisdiction of the lands; or (b) any other lands within the district upon obtaining the consent of the occupier of the lands or the necessary rights or interests in the lands; (3) cooperate or enter into agreements with and, within the limits of appropriations duly made available to it by law, furnish financial or other aid to any governmental or other agency or any occupier of lands within the district, subject to any conditions that the supervisors consider necessary to advance the purposes of this chapter, to conduct or complete: (a) erosion control and prevention operations; and (b) works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district; (4) construct, improve, operate, and maintain any structures that are necessary or convenient for the performance of any of the operations authorized in this chapter; (5) purchase, lease, or otherwise take over and administer projects undertaken by the United States or the state within the district boundaries for: (a) soil conservation; (b) flood prevention; (c) drainage; (d) irrigation; (e) water management; (f) erosion control; or (g) erosion prevention; (6) manage, as agent of the United States or of the state any of the types of projects identified in subsection (5) within its boundaries; (7) act as agent for the United States or for the state in connection with the acquisition, construction, operation, or administration of any of the types of projects identified in subsection (5) within its boundaries; (8) accept donations, gifts, and contributions in money, services, materials, or otherwise from the Unites States, from the state, or from any other source and use or expend funds or other contributions to conduct its operations; (9) execute its duties and responsibilities under Title 75, chapter 7, part 1, pursuant to the procedures of this chapter; or (10) execute projects for the conservation, development, storage, distribution, and utilization of water, including but not limited to projects for the following purposes: (a) irrigation; (b) flood prevention; (c) drainage; (d) fish and wildlife; (e) recreation; (f) development of power; or (g) supplying water for fire protection, livestock, or public, domestic, industrial, or other uses.

12. MCA: Title 76, Chapter 15, Part 9 – Coal Bed Methane Protection Act

a. §76-15-901 – Short title: this part may be cited as the "Coal Bed Methane Protection Act."
b. §76-15-902 – Legislative findings and declaration of purpose: (1) the legislature finds that the need for an economical supply of clean-burning energy is a national and state priority. (2) the legislature further finds that Montana possesses plentiful reserves of clean-burning natural gas contained in coal beds. (3) the legislative further finds that the extraction of natural gas from coal beds may result in unanticipated adverse impacts to land and to water quality and availability. (4) the legislature declares that there is a compelling public need to promote efforts that preserve the environment and protect the right to use and enjoy private property. The legislature further declares that the purpose of this part is to establish a long-term coal bed methane protection account and a coal bed methane protection program for the purpose of compensating private landowners and water right holders for damage to land and to water quality and availability that is attributable to the development of coal bed methane wells. (5) the legislature further declares that the provisions of this part do not relieve coal bed methane developers or operators that own, develop, or operate coal bed methane wells and collection systems of their legal obligation to compensate landowners and water right holders for damages caused by the development of coal bed methane. (6) the legislature further declares that the provisions of this part do not relieve coal bed methane developers or operators from: (a) any liability associated with the exploration or development of coal bed methane; or (b) the responsibility to comply with any applicable provisions of Titles 75, 82, and 85 and any other provision of law applicable to the protection of natural resources or the environment.
c. §76-15-903 – Definitions: as used in this part, unless the context requires otherwise, the following definitions apply: (1) "agricultural production" means the production of: (a) any growing grass, crops, or trees attached to the surface of the land; or (b) farm animals with commercial value. (2) "coal bed methane developer or operator" means the person who acquires a lease for the purpose of extracting natural gas from a coal bed. (3) "department" means the department of natural resources and conservation as provided for in Title 2, chapter 15, part 33. (4) "emergency" means the loss of a water supply that must be replaced immediately to avoid substantial damage to a landowner or a water right holder.
d. §76-15-904 – Coal bed methane protection account – use: (1) there is a coal bed methane protection account in the state special revenue fund. (2) all money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account. (3) subject to the conditions of subsections (4) and (5), money

deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part. (4) money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earning s in the account may be expended for any purpose authorized pursuant to this part. (5) subject to legislative fund transfers, money in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holder who qualify for compensation as provided in 76-15-905.

e. §76-15-905 – Coal bed methane protection program – restrictions. (1) there is a coal bed methane protection program administered by conservation districts that have coal beds within the exterior boundary of the district or whose water sources may be adversely affected by the extraction of coal bed methane. The purpose of the coal bed methane protection program is to compensate private landowners or water right holders for damage caused by coal bed methane development. (2) a conservation district shall establish procedures, approved by the department, for evaluating claims for compensation submitted by a landowner or water right holder. The procedures must include: (a) a method for submitting an application for compensation for damages caused by coal bed methane development; (b) a process for determining the cost of the damage to land, surface water, or ground water, if any, caused by coal bed methane development; (c) the development of eligibility requirements for receiving compensation that include an applicant's access to existing sources of state funding, including state-mandated payments, that compensate for damages; and (d) criteria for ranking applications related to available resources. (3) an eligible recipient for compensation includes private landowners and water right holders who can demonstrate as the result of damage caused by coal bed methane development: (a) a loss of agricultural production or a loss in the value of land; (b) a reduction in the quantity or quality of water available from a surface water or ground water source that affects the beneficial use of water; or (c) the contamination of surface water or ground water that prevents its beneficial use. (4)(a) subject to the conditions of subsections (5) through (8), an eligible landowner may be compensated for the damages incurred by the landowner for loss of agricultural production and income, lost land value, and lost value of improvements caused by coal bed methane development. A payment made under this subsection (4)(a) may only cover land directly affected by coal bed methane development. (b) subject to the conditions of subsections (5) through (8), an eligible water right holder may be

compensated for damages caused by the contamination, diminution, or interruption of surface water or ground water. (5) in order to qualify for a payment of damages under this section, the landowner or water right holder shall demonstrate that it is unlikely that compensation will be made by the coal bed methane developer or operator who is liable for the damage to land or the reduction in or contamination of surface water or ground water as the result of coal bed methane development. (6) compensation made to a landowner or a water right holder under this section may not exceed 75% of the cost of the damages. The maximum amount paid to a landowner or water right holder may not exceed $50,000. (7) conservation district administrative expenses for services provided under this section are eligible costs for reimbursement from the coal bed methane protection account. (8)(a) except as provided in subsection (8)(b), compensation for damages allowed under this section may be made only after June 30, 2011. (b) compensation for an emergency may be made after June 30, 2005.

13. MCA: Title 76, Chapter 16, Part 1 – Grazing Conservation Act

    a. §76-16-101 – Short title: this chapter may be cited as the "Grass Conservation Act."
    b. §76-16-102 – Purpose: the purpose of this chapter is to provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit state districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate properties.
    c. §76-16-103 – Definitions: unless the context requires otherwise, in this chapter, the following definitions apply: (1) "animal unit" means one cow, one horse, or five sheep, 6 months of age or older. (2) "animal unit month" or "AUM" means one cow/calf pair, one horse, or five sheep, grazed individually for 1 month, or an equivalency as determined by a local state district. (3) "assessment" means a special levy imposed on permittee members by the state district to raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees. (4) "commensurate property" means land that is privately owned or

controlled and that is not range. (5) "commission" means the Montana grass conservation commission provided for in 76-16-112. (6) "department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33. (7) "dependent commensurate property" is commensurate property that: (a) requires the use of range in connection with it to maintain its proper use; (b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and (c) has been used in connection with the range for a 5-year period immediately preceding the date or organization of the sate district. (8) "directors" means the board of directors of a state district provided for in 76-16-301. (9) "grazing preference" is a right to obtain a grazing permit from a state district, expressed in animal unit months. Grazing preferences, expressed in AUMs, must be the basis for determining a member's proportionate interest in state district assets. (10) "permits" are evidence of grazing privileges granted by state districts. (11) "person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies. (12) "range" is the land within a state district upon which grazing permits are granted to maintain livestock through the established grazing period. (13) "secretary" means the secretary of the Montana grass conservation commission. (14) "state district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members.

d. §76-16-104 – Role of the commission: (1) the commission shall assist in carrying out the purposes of this chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of state districts that may be incorporated under this chapter. (2) the commission may act in an advisory capacity to the boards of county commissioners for the purpose of working out uniform plans for the use of lands lying within or outside of the boundaries of state districts in conformity with recognized conservation and stabilization policies.

e. §76-16-106 – Commission fees: (1) the commission may impose fees against the state districts in an amount not in excess of 10 cents per animal unit month of grazing preference, based upon the number of animal unit months per year for which the state district grants permits, to defray expenses incurred by the commission in carrying out its powers and duties under this chapter. (2) these fees must be held in the state special revenue fund to be expended by order and direction of the commission for the operation and administration of the commission

under this chapter. (3) if a state district fails or refuses to pay the fee on or before October 1 of each year and after the state district is provided with a full report from the department of all money collected and expended by it for its fiscal year preceding that date, the commission may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district.

f. §76-16-107 – Range for wild game animals: in each state district a sufficient carrying capacity of range must be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the state district. The commission may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts.

g. §76-16-108 – Nature of rights: (1) grazing preferences or rights under this chapter through the creation of the state district or the issuance of permits based on AUMs of grazing preference are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the state district except as provided in this chapter. (2) a person who chooses to become a member of a state district is bound by all the provisions of this chapter and is limited to the statutory remedies contained in this chapter, and a court has no jurisdiction to consider any right claimed under this chapter except by judicial review from the final decision of the commission as provided in this chapter.

h. §76-16-109 – Appeal procedure: (1) notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the state district. (2) a person affected by the decision of a state district may appeal to the commission, and the commission shall hear and decide all those appeals. An appeal from the decision of the state district to the commission may be taken by filing written notice of the appeal with the commission, by filing a copy of the notice of appeal with the secretary of the state district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the state district. The appellant shall also file with the commission proof by affidavit of the filing and service of the notice of appeal. The appeal to the commission must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the commission may, for good cause shown, permit additional testimony to be submitted.

i. §76-16-110 – Administrative procedure act applicable: the Montana Administrative Procedure Act applies to this chapter.
j. §76-16-111 – What constitutes receipt of notice: in all cases where notices are given to permittees under this chapter by certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices must be considered received by the permittee when deposited in the United States post office by the state district or by the commission.
k. §76-16-112 – Creation of Montana grass conservation commission – membership – meetings – compensation: (1) there is a Montana grass conservation commission. The commission is composed of five members appointed by the governor to serve staggered 3-year terms. (2)(a) the governor, after giving full consideration to representation by both large and small operators, shall appoint: (i) two members who are either officers of or who serve on the board of directors of a state district; (ii) two members who hold active grazing preference rights within a state district; and (iii) one member of the public who possesses a general understanding of the livestock industry and the proper use of rangelands within state districts for the purpose of livestock production. (b) ex officio members may be appointed by the commission as needed. (3) members may not be appointed for more than three consecutive terms. The commission shall annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer shall preside over all meetings of the commission, except that the vice presiding officer shall assume the duties of the presiding officer in the absence of the presiding officer. (4)(a) the commission shall meet annually in Montana at a place determined by the presiding officer. (b) the commission may hold other meetings at times and places as necessary upon the call of the presiding officer or the request of a majority of commission members and upon at least 7 days' written notice to the commission members of the time and place of the meeting. (c) a majority of commission members constitutes a quorum for the transaction of business. The commission shall keep accurate records of all business that is considered, and the presiding officer shall sign all orders, minutes, and other documents of the commission. (5) Commission members may receive no compensation for their services, but members are entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per diem. (6) the commission is allotted to the department for administrative purposes only as provided in 2-15-121. The commission shall, if it determines that personnel services are required, hire its own personnel, and 2-15-121(2)(d) does not apply. The secretary must be employed at the discretion of the commission.

l. §76-16-113 – Powers of the commission: the commission has all the powers enumerated in this chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this chapter, including but not limited to: (1) conducting hearings on issues brought before the commission and conducting investigations into matters affecting the commission or the operation of state districts, including appeals of decisions made by the board of directors of an individual state district or other actions taken in accordance with this chapter. (2) administratively promoting and fostering an atmosphere of cooperation and mutual trust between the federal bureau of land management, the United States forest service, the department, and state districts and upholding the terms and conditions of any memorandum of understanding between those entities with regard to provisions noted in the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter. (3) prescribing methodologies to be used for the reallocation of grazing preference within cooperative state districts that, for whatever reason, no longer have access to historical grazing preference records. (4) preparing and standardizing various forms to be used by the state districts and supervising or regulating the organization and operation of state districts (5) issuing citations directed to any person requiring the person's attendance before the commission and subpoenaing witnesses and paying expenses that would be allowed in a court action. (6) requiring an officer or director of a state district to submit records of the state district to the commission for the purpose of aiding an investigation conducted by the commission. (7) requiring state districts to annually furnish itemized financial reports, and (8) cooperating and entering into agreements on behalf of a state district, with its consent, with any governmental subdivision, department, or agency in order to promote the purposes of this chapter.

14. MCA: Title 80, Chapter 7, Part 11 – Vertebrate Pest Management

a. §80-7-1101 – Department to operate vertebrate pest management program: (1) the department may establish and operate organized and systematic programs for the management and suppression of vertebrate pests. Vertebrate pests are defined as jackrabbits, prairie dogs, ground squirrels, pocket gophers, rats, mice, skunks, raccoons, bats, snakes, voles, and depredatory and nuisance birds. Depredatory and nuisance birds are defined as blackbirds, cowbirds, starlings, house sparrows, and feral pigeons, when they are injurious to agriculture, other industries, and the public. For this purpose, the department may enter into written agreements with appropriate federal agencies, other state agencies, counties, associations,

corporations, or individuals covering the methods and procedures to be followed in the management and suppression of these vertebrate pests, the extent of supervision to be exercised by the department, and the use and expenditure of funds appropriated, when this cooperation is necessary to promote the management and suppression of vertebrate pests. Management is: (a) the correct identification of a vertebrate pests; (b) recognition of its biology and environmental needs; (c) assessment of the pest's damage, injury, or nuisance to agriculture, industry, or the public prior to selecting and implementing any integrated or individual control methods to reduce, prevent, or suppress these damages, nuisances, or injuries; and (d) evaluating the effects of these control methods. (2) this section does not apply to nongame wildlife managed or protected subject to Title 87, chapter 5, part 1.

b. §80-7-1102 – Expenditures authorized: the department may make expenditures to: (1) purchase equipment, materials, supplies, and personal services that are necessary to execute the functions imposed on it by this part; (2) obtain data on vertebrate pesticide registration and research information on alternative vertebrate pest management techniques; (3) conduct research or evaluation studies; (4) enter contracts with individuals, universities, other states, state or federal agencies, or other entities it considers appropriate to conduct vertebrate pests management projects; (5) maintain and support registration of current rodenticides such as compound 1080, strychnine, and zinc phosphide; (6) seek registration of alternative rodenticides; (7) develop and implement new vertebrate pest management methods and crop damage assessment techniques; (8) support vertebrate pest management research and evaluation projects; (9) educate the agricultural community regarding vertebrate problems and needs; (10) educate the general public regarding vertebrate pest concerns and the need for vertebrate pest management; and (11) perform any other related activities.

c. §80-7-1108 – Rules: the department may adopt rules necessary to implement this part.

15. MCA: Title 81, Chapter 4, Part 3 – Herd Districts

a. §81-4-301 – Herd districts -- creation, size, and location: (1) Herd districts may be created in any county in the state of Montana: (a) upon petition of owners or possessors of 55% of the land in the district and providing that 25% or more of the land in the district is in actual cultivation or being used for residential purposes; or (b) upon petition of owners or possessors of 75% of the land in the district. (2) Herd districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities,

except that herd districts may be created containing not less than 6 or more than 54 square miles, lying not less than 2 miles in width, when the territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and the territory to be created in a herd district has a suburban population of not less than 200 people. (3) In formation of a herd district the entire holding of any owner or lessee must be included unless the owner or lessee consents that less than the owner or lessee's entire contiguous holdings be included in the petition. (4) The petition must designate the months of the year when the herd district is effective, and upon presentation and filing of the petition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the petition signers, with the clerk and recorder in the county in which the district is being created, the county commissioners of that county, upon receipt of the petition, shall set a date for hearing protests and verifying the petition signatures and shall give not less than 20 days' notice of the hearing by three publications in a newspaper of general circulation in the county of the proposed district. At the hearing held pursuant to the notices, the county commissioners shall examine the petition and shall cause a map to be made in order to determine the shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but the district shall be established only in a manner that the district will be reasonably regular and symmetrical in shape or practicable in relation to the geographical features of the district. It is not required that the boundaries of a district follow section lines to meet the requirement of reasonably regular and symmetrical boundaries. (5) Should it appear to the county commissioners after the hearing that the signatures attached to the petition were genuine, they shall immediately declare the herd district created and established. After making the declaration, the county commissioners shall give notice by four weekly publications in a newspaper nearest the district of the creation of the district, also stating the period that the district will be in effect. A district may not be in effect until 30 days have expired after the order. (6) If the signature of lessee appears on the petition creating or abolishing any herd district, the owner or owners of the land may appear either in person or by agent and enter their protest and the board of county commissioners shall remove the name of the lessee from the petition, and a person may not withdraw the person's name after the hour set for hearing the protest.

b. §81-4-302 – Dissolution: (1) When a petition praying that any established herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district and that less than 25% of the lands included in such district is in actual cultivation, the said county clerk and recorder shall call such petition to the attention of the board of county commissioners

of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice shall be given by publication at least once in each week for 3 successive weeks in some newspaper of general circulation in the county. (2) At the time fixed for hearing, the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved and that less than 25% of the lands included in such district are in actual cultivation, then the board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the herd district is thereby dissolved. Forthwith, upon the making and entry of any such order aforesaid, the herd district affected thereby shall be dissolved for all purposes thereafter.

c. §81-4-303 – Exclusion of government land: any tract of land embraced within any established herd district and which contains 18 sections of government land or more, so located that at least one-fourth of the perimeter of such tract coincides with the existing boundaries of such herd district, may be excluded therefrom upon proceedings had before the board of county commissioners of the county wherein the said district has been established on a like petition, notice, and hearing and by a like order as in the case of proceedings for dissolving herd districts. When the exclusion of any such tract of land from an existing herd district is sought, the petition shall describe the tract to be excluded with common certainty and shall set forth that it is signed by the owners or possessors of 55% or more of the lands lying within the boundaries of the tract to be excluded and that less than 15% of the lands included in such tract is in actual cultivation. In any such case if the board of county commissioners at the conclusion of the hearing had shall find that the tract of land to be excluded conforms to the requirements of this section and that the allegations of the petition are true, its findings to that effect shall be spread upon the minutes and the board shall thereupon enter its order in terms that by reason of such findings and of the proceedings had upon such petition the tract of land described in the petition, which shall be further set forth with common certainty in the order, is thereby excluded from such herd district for all purposes thereafter. Forthwith upon the making and entry of any such order of exclusion the tract of land therein described shall be deemed for all purposes thereafter to be excluded from and to form no part of the herd district affected thereby.

d. §81-4-304 – Joint herd districts: herd districts may be created jointly between any two or more counties of the state of Montana where the

lands to be included in the district meet the requirements of this section and either extend across county boundaries under one ownership or are contiguous to the land of owners in the adjoining county wishing to participate in the herd district. The county commissioner boards of each county desiring to participate in a joint herd district shall comply with all the provisions of this section dealing with single-county districts. A joint herd district shall be created only after approval by all county commissioner boards of participating counties as provided for single-county herd districts in this section. Joint herd districts may be dissolved in the same manner as single-county herd districts.

e. §81-4-305 – Changing time when herd districts will be in effect – petition – notice – hearing: The time of year or period when any herd district heretofore or hereafter created under the provisions of the laws of this state is effective or will be in effect may be changed as herein provided, by the board of county commissioners of the county in which such herd district has been created, upon the presentation and filing with the clerk and recorder of such county a petition signed by the owners or possessors of 55% of the land in such district. Such petition shall designate the months of the year when such herd district is effective and designate the contemplated change. Upon receipt thereof, the county commissioners of such county shall set a date for hearing protests and verifying the signatures thereto and shall give not less than 20 days' notice of the same by posting five notices of hearing in five public places in the county, one of which shall be at the place such hearing is to be held and at least two of such notices to be posted within such herd district. Should it appear to the board of county commissioners after such hearing that the signatures attached to such petition are genuine, they shall immediately make an order changing the period of time such herd district will be in effect, as designated in such petition; after which the county commissioners must give notice by four weekly publications in some newspaper in the county nearest such district, stating the period such district will be in effect. The change of time shall not become effective until such notice has been published as herein provided. Upon the fourth publication of such notice, such change of time shall become effective and violation thereof shall be punished as provided under the laws of the state of Montana relative to herd districts.

f. §81-4-306 – Penalty for permitting animals to run at large in herd districts**:** (1) Any person who is the owner or entitled to the possession of any horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats, who willfully permits the animals to run at large within any herd district, is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that each five

head or less of horses, mules, cattle, sheep, llamas, alpacas, bison, asses, hogs, or goats are willfully permitted to run at large constitutes a separate offense. (2) Any person who is the owner or entitled to the possession of any bull, stallion, or jackass over 1 year of age who willfully permits the animal to run at large within any herd district is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that a bull is permitted to run at large constitutes a separate offense.

g. §81-4-307 – Trespassing animals in herd district – retention for damages and costs: (1) If an animal referred to in 81-4-306 wrongfully enters the premises of a person within a herd district, the owner or person in control of the animal is liable for care and feeding of the animal and for any damages caused by the animal. The owner or occupant of the land upon which the wrongful entry is made may take into possession the animal, may reasonably care for the animal, may retain possession of the animal, and is entitled to a lien on the animal as security for the payment of damages caused by the animal and costs incurred in caring for the animal. If the owner of the animal or the person entitled to possession of the animal can be found or is known to the person who takes possession of the animal for trespass, it is the duty of the person taking possession to notify the owner or person in charge of the animal within 48 hours after taking possession by a notice in writing, mailed as a certified letter, directed to the owner or person in charge at the owner's or person's post-office address or by serving the notice on the owner or person personally. The notice must give a particular description of the animal and state the amount of damages and costs claimed and demand that within 48 hours after receipt of the notice the damages and costs be paid and that the animal be taken away from the property of the complainant. (2) Upon demand and upon payment of the damages and costs, the owner or occupant of the land shall release and deliver possession of the animal to the owner or person entitled to possession of the animal. If the parties cannot agree upon the amount, then the owner or person entitled to possession of the animal shall give a receipt to the owner or occupant of the land who has possession of the animal. The receipt must fully describe the animal so that the animal may at any time be easily identified. Upon receiving the receipt, the owner or occupant of the land shall give possession of the animal to the owner or person entitled to possession of the animal. The owner or person receiving possession of the animal may not dispose of the animal but shall retain and keep the animal in possession as the legal custodian of the animal in order to meet and pay the amount of the lien on the animal for damages and costs due in consequence of the trespass. (3) The party entitled to damages or costs shall within 10 days after delivery of possession of the animal commence an action in any court having jurisdiction to recover the damages and costs, and the animal must be held for the payment of any judgment as though held under a writ of attachment. At any time after the action is commenced, the

owner or person entitled to possession of the animal, to whom delivery was made, may furnish and file a bond conditioned to pay the damages and costs incurred in the action, and upon approval of the bond by the justice of the peace, if the action is commenced in a justice court, or by the judge or clerk of the district court, if the action is commenced in the district court, the lien and claim upon the animal must be discharged. (4) If the owner or person entitled to possession of the animal does not furnish a bond within 10 days after the service of summons in the action, an order may be issued authorizing and directing the constable or sheriff to take possession and hold the animal to satisfy any judgment that may be recovered in the action. The animal, when taken possession of by the officer, must be held, treated, and sold under execution as though seized by writ of attachment. (5) The owner or person entitled to possession of the animal may, in lieu of furnishing a bond, deposit an amount of money sufficient to pay any judgment that may be recovered in the action, the amount to be determined by the justice or judge of the court in which the action is pending. If the owner or person entitled to possession of the animal, after delivery of possession without payment of damages and costs provided for in this section, sells or disposes of the animal or any part of the animal, permits the animal to be taken from the person's possession, or in any manner prevents the seizure of the animal by the constable or sheriff before the lien on the animal is fully discharged, the owner or person entitled to possession of the animal is guilty of a misdemeanor and in addition is liable to the party entitled to damages and costs in an amount that is double the value of the animal. At the time of delivery or possession of the animal to the owner or person entitled to possession of the animal, a written statement of the amount of the damages and costs must be furnished to the owner or person entitled to the possession of the animal by the person claiming the damages and costs. (6) If the owner or claimant of the animal is not known to the person taking possession of the animal, the person shall give notice within 48 hours by posting a notice at the nearest post office and serving a similar notice on the stock inspector of the district. The notice must describe the animal and the brand on the animal and give a minute description of the animal, together with the date of the trespass.

h. §81-4-308 – Retrieval of impounded animals – misdemeanor – penalty**:** A person who takes or rescues an animal impounded as provided in 81-4-307 from the possession of the person with custody of the animal without the possessor's consent is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $500 or be confined in the county jail for not more than 60 days, or both.

i. §81-4-309 – Unlawful introduction of livestock into herd district a misdemeanor – penalty: Any person not the owner or person in charge of any livestock who causes any livestock to enter any herd district established under the provisions of 81-4-301 through 81-4-309 is guilty

of a misdemeanor and upon conviction thereof is subject to a fine of not less than $250 or more than $500 or confinement in the county jail not less than 60 days or both such fine and imprisonment and is liable for all damages and costs occurring from such trespass. For the purposes of this section, each separate animal so moved constitutes a separate offense.

j. §81-4-310 – Annexation into existing herd district: (1) Owners or possessors of land that is contiguous to a herd district may petition to have their property annexed to that district. The petition must be properly signed by the owners or possessors of at least 55% of the affected land and must include the post-office address of all petition signers. The petition must state the outside boundaries and a description of the property to be annexed to the existing district. When the petition is filed with the clerk and recorder in the county in which the existing district lies, the county commissioners of that county shall set a date for hearing protests and verifying petition signatures. The county commissioners shall provide notice of the hearing by publishing the hearing date and a list of the properties proposed to be annexed, at least three times in a newspaper of general circulation in the county, not less than 20 days prior to the hearing date. (2) At the hearing held pursuant to subsection (1), the county commissioners shall examine the petition and have a map drawn up in order to determine the shape and regularity of the boundaries of the property proposed for annexation. If the county commissioners determine that the boundaries are reasonably regular and symmetrical in shape in relation to the geographical features of the properties proposed for annexation, the county commissioners may declare that those properties are annexed into the existing herd district. (3) If the county commissioners declare the properties annexed to the existing herd district, they shall give notice of the annexation by four weekly publications in a newspaper of general circulation in the county. Annexation does not become effective until 30 days after the declaration of annexation is made, as provided in subsection (2).

k. §81-4-311 – Duty to build and maintain fences**:** Upon creation of a herd district pursuant to 81-4-301, 81-4-304, or 81-4-322, fences must be constructed by the entities creating the herd district. Upon approving an annexation to an existing herd district pursuant to 81-4-310, fences must be constructed by the entities being annexed into the herd district. All fences must be maintained pursuant to 70-16-205. All fences must conform with the requirements of 81-4-101. An action to enforce the provisions of this section may be brought by the aggrieved party in the district court in the county where the land is situated.

l. §81-4-321 – Definition: The term "horses" when used in 81-4-321 through 81-4-328 shall include any mare, gelding, stallion, colt, foal, filly, mule, jack, and jenny.

m. §81-4-322 – Horse herd districts – size – location – petition – notice and hearing – abolishment: (1) Horse herd districts may be created in any county in the state of Montana upon the petition of owners or possessors of 55% of the land of the district. The district must contain 12 square miles or more lying not less than 1 mile in width outside of incorporated cities or towns. The petition must designate the months of the year when horse herd district regulations are effective. (2) Upon presentation and filing of a petition properly signed and reciting the outside boundaries and description of the proposed district, together with the post-office address of the signers, with the clerk and recorder in the county in which the district is being created, the county commissioners of the county upon receipt of the petition shall set a date for hearing protests and verification of signatures and shall give not less than 20 days' notice of the hearing by three publications in a newspaper of general circulation in the county of the proposed district. If it appears to the county commissioners, after the hearing, that the signatures attached to the petition were genuine, they shall immediately make an order declaring the horse herd district created and established, after which the county commissioners shall give notice by two weekly publications in some newspaper in the county, nearest the district, stating the period when the horse herd district will be in effect and when the district is not in effect. The order may not be effective until 30 days have expired after the order. (3) Herd districts may be abolished at any time upon proceedings as set forth for the establishment of a herd district. (4) The estimated expense of all publications required by 81-4-321 through 81-4-328 must be paid by the petitioners, and no part of the expenses may be paid by the county. (5) Upon petition of an owner or possessor of land lying contiguous and adjoining any horse herd district and upon like hearing and notice as provided in this section, the lands must be included in the horse herd district and become a part of the district. (6) If the signature of a lessee appears on the petition creating or abolishing any horse herd district, the owner or owners of the land may appear either in person or by agent and enter their protest, and the board of county commissioners shall remove the name of the lessee from the petition. A person may not be permitted to withdraw the person's name after the hour set for hearing the petition.

n. §81-4-323 – Petition to dissolve horse herd district – hearing and notice – order of county commissioners: When a petition praying that any established horse herd district be dissolved is filed with the county clerk and recorder of the county wherein such district has been established, and it is set forth therein that such petition is signed by the owners or possessors of 55% or more of the lands lying within such district, the county clerk and recorder shall call such petition to the attention of the board of county commissioners of the county at its next regular meeting. At said meeting by its order the board shall set such petition for hearing at a specified time on a day certain of which notice

shall be given by publication at least once in each week, for 3 successive weeks in some newspaper of general circulation in the county. At the time fixed for hearing the board of county commissioners shall first require proof of publication of the notice of said hearing to be made and thereafter shall consider the petition and hear all interested parties. At the conclusion of any such hearing, if the board of county commissioners shall find that notice of the hearing has been given in the manner and for the time prescribed herein and that the owners or possessors of 55% or more of the lands lying within such herd district have signed the petition and request that such district be dissolved, then the said board shall forthwith spread such findings upon its minutes and thereupon shall enter an order in terms that by reason of such findings and of the proceedings had upon such petition the said horse herd district is thereby dissolved. Forthwith upon the making and entry of any such order aforesaid the horse herd district affected thereby shall be dissolved for all purposes thereafter.

o. §81-4-324 – Horses running at large in herd district prohibited: All horses are hereby prohibited from running at large within any horse herd district as defined in 81-4-322.
p. §81-4-325 – Penalty and liability for horses wrongfully entering on premises in horse herd district: If any such horse or horses wrongfully enter upon premises within such district of any person, the owner or person in control of such horse or horses shall be punished according to the provisions of 81-4-309 and in addition to said punishment shall be liable for all damages sustained thereby to the party entitled thereto.
q. §81-4-326 – Retention and sale of horses for damages and care – procedure: (1) The owner or occupant of the land upon which wrongful entry is made under 81-4-325 may take into the owner's or occupant's possession the horse or horses and shall reasonably care for the horse or horses while in possession and may retain possession of the horse or horses and has a lien and claim on the horse or horses as security for payment of the damages and reasonable charges for the care of the horse or horses while in the owner's or occupant's possession. The person taking up the horse or horses shall within 48 hours after taking possession notify the owner, owners, or persons in charge of the horse or horses by a notice in writing, describing the horse or horses taken up, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the horse or horses, and, either by legal subdivisions or other general description, the location of the premises upon which the horse or horses are held and requiring that person within 48 hours after receiving the notice to take the horse or horses away after making full payment for all damages and costs of the horse or horses. The notice must be given by personal service on the owner, owners, or person in charge of the horse or horses or by leaving the notice at that person's usual place of residence with some member of that

person's family over 14 years of age or by sending the notice by prepaid certified mail addressed to that person's last-known place of residence. Service by certified mail is considered complete upon the deposit of the notice in the post office. (2) Upon demand, the owner or occupant of the land shall release and deliver possession of the horse or horses to the owner or person entitled upon payment of damages and charges, but payment of damages and charges may not act as a bar to the prosecution of the person, owner, or person in control of the horse or horses as provided in subsection (1). If the owner or claimant of the horse or horses is not known to the person taking up the horse or horses or the owner or claimant refuses to pay the amount of damages and charges, the person taking up the horse or horses shall, within 72 hours from the time the horse or horses were taken up, deliver to the sheriff or a constable of the county in which the horse or horses were taken up a statement containing the information required to be given in the notice. In addition, the person shall mail by prepaid certified mail a copy of the statement addressed to the nearest state livestock inspector. Upon receipt of the statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses taken up.

r. §81-4-326 – Retention and sale of horses for damages and care – procedure**:** (1) The owner or occupant of the land upon which wrongful entry is made under 81-4-325 may take into the owner's or occupant's possession the horse or horses and shall reasonably care for the horse or horses while in possession and may retain possession of the horse or horses and has a lien and claim on the horse or horses as security for payment of the damages and reasonable charges for the care of the horse or horses while in the owner's or occupant's possession. The person taking up the horse or horses shall within 48 hours after taking possession notify the owner, owners, or persons in charge of the horse or horses by a notice in writing, describing the horse or horses taken up, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the horse or horses, and, either by legal subdivisions or other general description, the location of the premises upon which the horse or horses are held and requiring that person within 48 hours after receiving the notice to take the horse or horses away after making full payment for all damages and costs of the horse or horses. The notice must be given by personal service on the owner, owners, or person in charge of the horse or horses or by leaving the notice at that person's usual place of residence with some member of that person's family over 14 years of age or by sending the notice by prepaid certified mail addressed to that person's last-known place of residence. Service by certified mail is considered complete upon the deposit of the notice in the post office. (2) Upon demand, the owner or occupant of the land shall release and deliver possession of the horse or horses to the owner or person entitled upon payment of damages and charges, but payment of damages and charges may not act as a bar to the prosecution of the person, owner, or

person in control of the horse or horses as provided in subsection (1). If the owner or claimant of the horse or horses is not known to the person taking up the horse or horses or the owner or claimant refuses to pay the amount of damages and charges, the person taking up the horse or horses shall, within 72 hours from the time the horse or horses were taken up, deliver to the sheriff or a constable of the county in which the horse or horses were taken up a statement containing the information required to be given in the notice. In addition, the person shall mail by prepaid certified mail a copy of the statement addressed to the nearest state livestock inspector. Upon receipt of the statement, the sheriff or constable shall proceed to advertise and sell at public auction the horse or horses taken up.

s. §81-4-328 – Liability of officers: No officer, board, or employee of any county or any employee of such officer or board shall be liable for any act performed in good faith in discharging official duties under 81-4-321 through 81-4-327, and all such acts shall be presumed to have been in good faith and in conformity with 81-4-321 through 81-4-327.

16. MCA: Title 81, Chapter 29, Part 1 – Feral Swine

a. §81-29-101 – Definitions: As used in this part, unless the context indicates otherwise, the following definitions apply: (1) "Board" means the board of livestock provided for in 2-15-3102. (2) "Feral swine" means a hog, boar, or pig that appears to be untamed, undomesticated, or in a wild state or appears to be contained for commercial hunting or trapping.
b. §81-29-102 – Control of feral swine: a person, a state agency, or a federal agency authorized by the state government is allowed to control or eradicate feral swine.
c. §81-29-103 – Presence of feral swine – notification – immediate threat: (1) Except as provided in subsection (2), a person who believes feral swine are present on private or public property shall notify the board and, if authorized, assist in the control or eradication of the feral swine. (2) A person or the person's agent who encounters feral swine on property owned or leased by that person may immediately eradicate the feral swine if the feral swine: (a) poses an immediate threat of harm to a person or property; or (b) will expand its range without immediate eradication. (3) A person who eradicates a feral swine pursuant to subsection (2) shall notify the board as soon as practicable, but no later than the limit established by board rule. The person shall follow instructions provided by the board, including but not limited to the handling, preservation for testing, or disposal of the carcass.
d. §81-29-104 – Prohibitions: The following actions are prohibited: (1) importing, transporting, or possessing live feral swine; (2) intentionally, knowingly, or negligently allowing swine to live in a feral

state; (3) except as provided in 81-29-102 and 81-29-103, hunting, trapping, or killing a feral swine or assisting in hunting, trapping, or killing a feral swine; (4) intentionally feeding a feral swine; (5) expanding the range of a feral swine; and (6) profiting from the release, hunting, trapping, or killing of a feral swine.

e. §81-29-105 – Penalties for violations: A person violating the provisions of 81-29-104 is subject to: (1) a fine of at least $2,000 but not more than $10,000 for each violation; and (2) repayment of costs incurred by a state or federal agency for the control or eradication of a feral swine as a result of the person's violation.
f. §81-29-106 – Authority – costs – rulemaking: (1) The board is authorized to control and eradicate feral swine and may establish rules to implement the reporting requirements of 81-29-103. (2) The cost of enforcement actions under this part must be paid from the general fund if the cost to the department exceeds $1,000 and federal funds are not available to pay the excess costs.

17. MCA: Title 87, Chapter 5, Part 7 – Exotic Wildlife and Wildlife Protection

a. §87-5-701 – Purpose: The legislature finds that in order to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, and agricultural production, and human health and safety, it is necessary to regulate the importation for introduction and the transplantation or introduction of wildlife in the state and to regulate the importation, transplantation, possession, and sale of exotic wildlife. Serious threats, known and unknown, from the introduction of wildlife and exotic wildlife into Montana necessitate the regulation of the importation for introduction and the transplantation or introduction of wildlife and regulation of the importation, transplantation, possession, and sale of exotic wildlife unless it can be shown that no harm will result from the importation, transplantation, possession, sale, or introduction. Any importation, transplantation, possession, sale, or introduction permitted must be conducted in a manner to ensure that wildlife or exotic wildlife can be controlled if harm arises from unforeseen effects.
b. §87-5-702 – Definitions: For purposes of this part, the following definitions apply: (1) "Controlled exotic wildlife" means species placed on the controlled exotic wildlife list under 87-5-707 that may be imported, possessed, or sold only pursuant to commission and department rules and an authorization permit provided for in 87-5-705(2). (2) "Domestic animal" means an animal that, through long association with humans, has been bred to a degree that has resulted in genetic changes affecting color, temperament, conformation, or other attributes of the species to an extent that makes the animal unique

and distinguishable from wild individuals of the species and that is readily controllable if accidentally released into the wild. The term includes livestock, as defined in 81-2-702, dogs, cats, rodents, Eurasian ferrets, and poultry. (3) "Exotic wildlife" means a wildlife species that is not native to Montana. (4) "Feral" means the appearance of an animal and any offspring that have escaped captivity and become wild. (5) "Importation" means the act of receiving, bringing or having brought, or shipping into the state for a person's temporary or permanent residence or domicile any wildlife from a location outside the state. (6) "Introduction" means the release from captivity or attempt to release from captivity, intentional or otherwise, wildlife from outside the state into the wild within the state. (7) "Native wildlife" means a species or subspecies of wildlife that historically occurred in Montana and that has not been introduced by humans or has not migrated into Montana as a result of human activity. (8) "Non-controlled exotic wildlife" means animal species traditionally sold or kept as pets and includes animals listed in 87-5-706 or animals that are added to the list in 87-5-706 by commission rule. (9) "Possession" means to own or have control over an animal for personal use or resale. (10) "Prohibited exotic wildlife" means animal species placed on the list provided in 87-5-704(3)(a) that may not be imported, possessed, or sold. (11) "Transplantation" means the release of or attempt to release, intentional or otherwise, wildlife from one place within the state into another part of the state. (12)(a) "Wildlife" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild animal or the egg, sperm, embryo, or offspring of the wild animal. (b) The term does not include domestic animals.

c. §87-5-704 – Rulemaking: (1) The commission may adopt rules to implement 87-5-701, 87-5-702, and 87-5-711 through 87-5-715. In implementing 87-5-713, the commission may adopt rules approving species of wildlife that may be introduced by the department. In implementing 87-5-715, the commission may adopt rules to authorize the control or extermination by the department of introduced wildlife species. (2) The department may adopt rules to implement 87-5-713 and 87-5-715. In implementing 87-5-713 and 87-5-715, the department may not adopt rules in the subject areas reserved to the commission in subsection (1). (3)(a) The commission may adopt rules to implement 87-5-705 through 87-5-709 and 87-5-712 regarding the importation, possession, and sale of exotic wildlife, including adoption of a list of controlled exotic wildlife and a list of prohibited exotic wildlife. The commission may by rule add to the list of non-controlled exotic wildlife provided in 87-5-706. The department of livestock may not issue import permits for exotic wildlife on a list of controlled exotic wildlife or prohibited exotic wildlife without authorization from the

department. (b) The commission may adopt rules regarding the operation of the classification review committee established in 87-5-708. (4) The department may adopt rules regarding issuance of the authorization permit provided for in 87-5-705(2), including the establishment of a reasonable fee for the permit.

d. §87-5-705 – Regulation of exotic wildlife: (1) A person may not import into the state, possess, or sell any exotic wildlife unless: (a) the importation, possession, or sale of the exotic wildlife is allowed by law or commission rule; and (b) the person has obtained authorization for importation from the department of livestock pursuant to Title 81, chapter 2, part 7. (2) The department may issue a permit for authorizing the possession or sale of controlled exotic wildlife and make the permit available to persons who wish to import, possess, or sell controlled exotic wildlife, subject to rules of the commission and the department. The department may charge a reasonable fee, as determined by department rule, for the issuance of the authorization permit.

e. §87-5-706 – Non-controlled exotic wildlife authorized for possession or sale: (1) The following non-controlled exotic wildlife may not be released or transplanted in the state but may be possessed or sold as pets in Montana without a permit: (a) tropical and subtropical birds in the order Passeriformes, including but not limited to birds in the families: (i) Sturnidae (mynahs); (ii) Ramphastidae (toucans, toucanettes); (iii) Fringillidae (siskins); (iv) Estrildidae (finches); (v) Emberizidae (cardinals); (vi) Ploceidae (weavers); (vii) Timaliidae (mesias); (viii) Viduinae (wydahs); (ix) Thraupidae (tanagers); (x) Zosteropidae (zosterops); (xi) Psittacidae (parrots); (xii) Loriidae (lories); and (xiii) Cacatuidae (cockatoos); (b) nonnative species in the subfamily Phaisianae, except: (i) chukar partridge (Alectoris chukar); (ii) gray (Hungarian) partridge (Perdix perdix); (iii) ring-necked pheasant (Phasianus colchicus); and (iv) turkey (Meleagris gallopavo); (c) all tropical fish, subtropical fish, marine fish, common goldfish (Carassius auratus), and koi (Cyprinus carpio) for use in residential and office aquariums; (d) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of nonvenomous snakes not on the controlled or prohibited lists in the families: (i) Boidae (boas); (ii) Bolyeriidae (Round Island Boas); (iii) Tropidophiidae (dwarf boas); (iv) Pythonidae (pythons); (v) Colubridae (modern snakes); (vi) Acrochordidae (file and elephant trunk snakes); (vii) Xenopeltidae (sunbeam snakes); (viii) Aniliidae (pipe snakes); (ix) Uropeltidae (shield-tailed snakes); (x) Anomalepididae (blind snakes); (xi) Leptotyphlopidae (blind snakes); and (xii) Typhlopidae (blind snakes); (e) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of

nonvenomous lizards not on the controlled or prohibited lists, including but not limited to the following families or subfamilies: (i) Agamidae (chisel-teeth lizards); (ii) Amphisbaenidae (worm lizards); (iii) Anelytropsidae (limbless lizards); (iv) Anguidae (glass and alligator lizards); (v) Anniellidae (legless lizards); (vi) Chamaeleonidae (chameleons); (vii) Cordylidae (girdle-tailed lizards); (viii) Corytophanidae (casquehead lizards); (ix) Crotaphytidae (collared and leopard lizards); (x) Dibamidae (blind lizards); (xi) Eublepharidae (eyelid geckos); (xii) Feyliniidae (African snake skinks); (xiii) Gekkonidae (geckos); (xiv) Helodermatidae (beaded lizards and gila monsters); (xv) Iguanidae (iguanas); (xvi) Lacertidae (wall lizards); (xvii) Lanthanotidae (earless monitor); (xviii) Phrynosomatidae (earless, spiny, and horned lizards); (xix) Polychrotidae (anoles); (xx) Pygopodidae (snake lizards); (xxi) Scincidae (skinks); (xxii) Teiidae (whiptail); (xxiii) Tropiduridae (neotropical ground lizards); (xxiv) Varanidae (monitor lizard); (xxv) Xantusiidae (night lizards); and (xxvi) Xenosauridae (knob-scaled lizards); (f) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of turtles with a carapace or shell length of more than 4 inches and not on the controlled or prohibited lists in the families: (i) Carettochelyidae (New Guinea softshell turtles); (ii) Chelidae (snake-necked turtles); (iii) Chelydridae (snapping turtles); (iv) Dermatemydidae (Central American river turtle); (v) Emydidae (pond turtles); (vi) Kinosternidae (mud turtles and musk turtles); (vii) Pelomedusidae (hidden-necked turtles); (viii) Platysternidae (big-headed turtle); (ix) Testudinidae (tortoises); and (x) Trionychidae (soft-shelled turtles); (g) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of frogs and toads not on the controlled or prohibited lists in the families: (i) Atelopodidae (harlequin frogs); (ii) Bufonidae (true toads); (iii) Centrolenidae (glass frogs); (iv) Dendrobatidae (poison dart frogs); (v) Hylidae (tree frogs); (vi) Leptodactylidae (rain frogs); (vii) Microhylidae (narrow-mouthed toads); (viii) Pelobatidae (spadefoot toads); (ix) Pelodytidae (old world spadefoot toads); (x) Ranidae (true frogs, except bullfrogs, Rana catesbeiana); (xi) Rhacophoridae (old world tree frogs); and (xii) Rhinophrynidae (Mexican burrowing frog); (h) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of limbless amphibians not on the controlled or prohibited lists in the families: (i) Caeciliidae (caecilians); (ii) Ichthyophiidae (fish caecilians); (iii) Rhinatrematidae (beaked caecilians); (iv) Scolecomorphidae (tropical caecilians); and (v) Uraeotyphlidae (Indian caecilians); and (I) unless otherwise regulated pursuant to 87-5-116, all nonnative tropical and subtropical species of salamanders not on the controlled or prohibited lists in the families: (i)

Ambystomatidae (mole salamanders); (ii) Amphiumidae (amphiumas); (iii) Cryptobranchidae (hellbenders); (iv) Dicamptodontidae (giant salamanders); (v) Hynobiidae (Asian salamanders); (vi) Plethodontidae (woodland salamanders); (vii) Proteidae (waterdogs); (viii) Salamandridae (newts, except for rough-skinned newt, Taricha granulosa); and (ix) Sirenidae (sirens). (2) The commission may by rule authorize the possession or sale of other species of non-controlled exotic wildlife that are not listed in subsection (1) if it is determined that the other species present minimal disease, ecological, environmental, safety, or health risks.

f. §87-5-707 – Controlled exotic wildlife list: As provided in 87-5-704(3)(a), the commission, after a public hearing and recommendation from the classification review committee established in 87-5-708, may by rule adopt a list of controlled exotic wildlife that may be imported, possessed, or sold only pursuant to commission and department rules and department authorization.

g. §87-5-708 – Classification review committee; composition, appointment and duties: (1) The director shall appoint a classification review committee whose duty is to advise the commission regarding the importation, possession, and sale of exotic wildlife, including recommendations on animals to be placed on the non-controlled, controlled, or prohibited exotic wildlife list. (2) The classification review committee is composed of at least one representative from: (a) the department; (b) the department of public health and human services; (c) the department of livestock; (d) the department of agriculture; (e) a business that breeds or exhibits exotic wildlife; and (f) the general public who has an interest in fish or wildlife. (3) Members of the classification review committee are not entitled to compensation or travel expenses as provided in 2-15-122.

h. §87-5-709 – Exceptions and exemptions to possession and sale of exotic wildlife: (1) Sections 87-5-705 through 87-5-708 and this section do not apply to: (a) institutions that have established that their proposed facilities are adequate to provide secure confinement of wildlife, including: (i) an accredited zoological garden chartered by the state as a nonprofit corporation; (ii) a roadside menagerie permitted under 87-4-803 that was established for the purpose of exhibition or attracting trade; (iii) a research facility for testing and science that employs individuals licensed under 37-34-301 or that submits evidence to the department that it meets animal testing standards as provided by the national institutes of health, the national science foundation, the centers for disease control and prevention, the United States department of agriculture, or another similar nationally recognized and approved testing standard; or (b) domestic animals. (2) Authorization for possession must be provided by the department for

exotic wildlife possessed as of January 1, 2004, and the authorization may include any conditions and restrictions necessary to minimize risks.

i. §87-5-711 – Control of importation for introduction and transplantation or introduction of wildlife: (1) Except as otherwise provided, the importation for introduction or the transplantation or introduction of any wildlife is prohibited unless the commission determines, based upon scientific investigation and after public hearing, that a species of wildlife poses no threat of harm to native wildlife and plants or to agricultural production and that the transplantation or introduction of a species has significant public benefits. (2) With regard to the transplantation or introduction of a fish species not previously legally transplanted to a specific water body within the state or not previously legally introduced to the state, the requirement for scientific investigation in subsection (1) may be satisfied only by completion of an environmental review conforming to the provisions of Title 75, chapter 1, part 2.

j. §87-5-712 – Authority for commission to control importation, possession or sale of certain wildlife species and exotic wildlife: (1) The commission may, after public hearing and recommendation by the classification review committee in 87-5-708, list by administrative rule wildlife species or exotic wildlife that may not be imported, possessed, or sold as pets for captive breeding for research or commercial purposes, for the commercial pet trade, or for any other reason. A wildlife species or exotic wildlife may be placed on the list only after the commission finds that: (a) the exotic wildlife would not be readily subject to control by humans while in captivity; (b) if released from captivity, the exotic wildlife would pose a substantial threat to native wildlife and plants or agricultural production; or (c) the exotic wildlife would pose a risk to human health or safety, livestock, or native wildlife through disease transmission, hybridization, or ecological or environmental damage. (2) The commission may make exceptions for wildlife species or exotic wildlife otherwise prohibited under this section if the wildlife species or exotic wildlife is controlled in an institution listed in 87-5-709(1)(a) and under any conditions specified by the commission.

k. §87-5-713 – Control of wildlife species permitted to be transplanted or introduced: Any wildlife species listed in 87-5-714 or approved by the commission for introduction or transplantation may be introduced or transplanted only subject to a plan developed by the department to assure that the population can be controlled if any unforeseen harm should occur.

l. §87-5-714 – Wildlife species authorized for introduction or transplantation: (1) The following wildlife species may be introduced or

transplanted by the department based upon scientific investigation and upon approval of the commission: (a) gray (Hungarian) partridge (Perdix perdix); (b) chukar partridge (Alectoris chukar); (c) ring-necked pheasant (Phasianus colchicus); (d) turkey (Meleagris gallopavo); (e) rainbow trout (Salmo gairdneri); (f) golden trout (Salmo aquabonita); (g) brown trout (Salmo trutta); (h) brook trout (Salvelinus fontinalis); (i) lake trout (Salvelinus namaycush); (j) northern pike (Esox lucius); (k) black bullhead (Ictalurus melas); (l) yellow bullhead (Ictalurus natalis); (m) largemouth bass (Micropterus salmoides); (n) smallmouth bass (Micropterus dolomieui); (o) pumpkinseed sunfish (Lepomis gibbosus); (p) bluegill (Lepomis macrochirus); (q) green sunfish (Lepomis cyanellus); (r) rock bass (Ambloplites rupestris); (s) black crappie (Pomoxis nigromaculatus); (t) white crappie (Pomoxis annularis); (u) yellow perch (Perca flavescens); (v) walleye (Sander vitreus); (w) cisco (tulibee) (Coregonus artedii); (x) spottail shiner (Notropis hudsonius); (y) kokanee salmon (Oncorhynchus nerka); (z) chinook salmon (Oncorhynchus tshawytscha); (aa) lake whitefish (Coregonus clupeaformis); (bb) golden shiner (Notemigonus crysoleucas). (2) The commission may by rule and subject to the provisions of 87-5-711 authorize the department to transplant or introduce species of wildlife not listed in subsection (1).

m. §87-5-715 – Extermination or control of transplanted or introduced wildlife or feral species posing threat: Any wildlife or feral species transplanted or introduced in the state may be exterminated or controlled by the department if the commission determines that the species poses harm to native wildlife or plants or to agricultural production.

n. §87-5-716 – Consultation with departments of agriculture, public health and human services and livestock: The commission and the department shall consult with the departments of agriculture, public health and human services, and livestock in all matters relating to the control of wildlife species and exotic wildlife that may have a harmful effect on agricultural production or livestock operations in the state or that may pose a risk to human health or safety.

o. §87-5-721 – Penalty; license and permit revocation and denial: (1) Except as provided in subsection (2), a person convicted of a violation of this part shall be fined not less than $50 or more than $1,000 or be imprisoned in the county detention center for not more than 6 months, or both. In addition, the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction. (2) A person who intentionally imports, introduces, or transplants fish in violation of this part: (a) is guilty of an offense

punishable by a fine of not less than $2,000 or more than $10,000 and imprisonment for up to 1 year. A sentencing court may consider an appropriate amount of community service in lieu of imprisonment. A sentencing court may not defer or suspend $2,000 of the fine amount. (b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1). (c) upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 5 years or more than 10 years from the date of conviction or forfeiture. If the time necessary to eliminate or mitigate the effects of the violation exceeds the imposed forfeiture period, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for an additional period of time. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for life. (3) Any exotic wildlife held in violation of this part must be shipped out of state, returned to the point of origin, or destroyed within a time set by the department, not to exceed 6 months. The person in possession of the exotic wildlife may choose the method of disposition. If the person in possession of the exotic wildlife does not comply with this requirement, the department may confiscate and then house, transport, or destroy the unlawfully held exotic wildlife. The department may charge any person convicted of a violation of this part for the costs associated with the handling, housing, transporting, or destroying of the exotic wildlife.

p. §87-5-725 – Notification of transplantation or introduction of wildlife: (1) When the decision to introduce or transplant a wolf, bear, or mountain lion is made pursuant to this part, the department shall: (a) provide public notice on its website and, when practical, by personal contact in the general area where the animal is released; and (b) notify the public through print and broadcast media of the availability of release information on the department's website. (2) Prior permission from the landowner is required before any animal may be transplanted onto private property.

FEDERAL AUTHORITIES

1. Title 39, Part 4, Chapter 30 – Alien Species Prevention and Enforcement Act

    a. 39 U.S.C. §3015 – Nonmailable plant pests and injurious animals: (a) injurious animals – any injurious animal, the importation or interstate shipment of which is prohibited pursuant to section 42 of title 18, constitutes nonmailable matter. (b) plant pests – any plant pest, the movement of which is prohibited pursuant to section 103 or 104 of the Federal Plant Pest Act, constitutes nonmailable matter. (c) plants – any plant, article, or matter, the importation or interstate shipment of which is prohibited pursuant to Plant Quarantine Act, constitutes nonmailable matter. (d) illegally taken fish, wildlife, or plants – any fish, wildlife, or plant, the conveyance of which is prohibited pursuant to section 3 of the Lacey Act Amendments of 1981, constitutes nonmailable matter.
    b. The Alien Species Prevention and Enforcement Act of 1992 defines certain categories of nonmailable plant pests and injurious animals. ASPEA does not make any new categories of plants or animals illegal to ship, but rather makes it clear that use of the U.S. mail is included among those forms of transport whose use is illegal for shipment of prohibited species. The prohibited species are those injurious animals whose movement is prohibited and those plants and animals whose shipment is prohibited, as well as plants covered under various plant pest and plant quarantine acts. ASPEA is administered by the U.S. Postal Service. Although ASPEA appears to do very little to prevent eh introduction of invasive species, especially if the sender is unaware that the shipped items are prohibited under the above laws, it may provide for prosecutors to bring cases involving shipment of various species, including non-native invasive species, to court.

2. Title 7, Chapter 109A – Animal Damage Control Act

    a. 7 U.S.C. §§8351 – Predatory and other wild animals: The Secretary of Agriculture may conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program. The secretary shall administer the program in a manner consistent with all of the wildlife services authorities in effect on the day before the date of the enactment of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001.

b. The Animal Damage Control of 1931, as amended, is the primary statute under which USDA operates its Wildlife Services program. This is the lead USDA program to conduct research and control work on invasive species to agriculture such as the brown tree snake, as well as address damage problems cause by such invasive species as nutria (*Myocastor coypus*), European starlings (*Sturnus vulgaris*), and monk parakeets (*Myiopsitta monarchus*). The law gives APHIS wide authority to control damage caused by wildlife to agricultural interests, including livestock, on federal, state, or private land. The program aims to protect field crops, vegetables, fruits, nuts, horticultural crops, and commercial forests; freshwater aquaculture ponds and marine species cultivation areas; livestock on public and private rangeland and in feedlots; public and private buildings and facilities, such as houses, commercial properties, swimming pools, golf courses, reservoirs, levees, and landfills; civilian and military aircraft (against collisions with birds); and public health (against wildlife-borne diseases such as rabies, Lyme disease, West Nile virus, and plague). Control methods include providing advice to individuals and to municipal, state or federal agencies on a wide variety of preventive, non-lethal control methods. Control of predatory animals, native or non-native, is largely carried out by lethal means, including hunting, trapping, and poisoning. The agency publishes annual Program Data Reports to inform the public on its wildlife damage management activities. APHIS has memoranda of understanding and other cooperative agreements with FWS, the National Park Service, the Bureau of Land Management, the Forest Service, and state natural resource agencies to help protect natural resources, including wildlife and threatened or endangered species, from loss of life, habitat, or food supply due to the activities of other species, including invasive species.

3. Title 7, Chapter 109 – Animal Health Protection Act

a. 7 U.S.C. §8301 – Findings: Congress finds that – (1) the prevention, detection, control, and eradication of diseases and pests of animals are essential to protect (a) animal health; (b) the health and welfare of the people of the United States; (c) the economic interests of the livestock and related industries of the United States; (d) the environment of the United States; and (e) interstate commerce and foreign commerce of the United States in animals and other articles; (2) animal diseases and pests are primarily transmitted by animals and articles regulated under this subtitle; (3) the health of animals is affected by the methods by which animals and articles are transported in interstate commerce and foreign commerce; (4) the Secretary must continue to conduct research on animal diseases and pests that constitute a threat to the livestock of the United

States; and (5)(a) all animals and articles regulated under this subtitle are in or affect interstate commerce or foreign commerce; and (b) regulation by the Secretary and cooperation by the Secretary with foreign countries, States or other jurisdictions, or persons are necessary (i) to prevent and eliminate burdens on interstate commerce and foreign commerce; (ii) to regulate effectively interstate commerce and foreign commerce; and (iii) to protect the agriculture, environment, economy, and health and welfare of the people of the United States.

b. 7 U.S.C. §8302 – Definitions: in this subtitle: (1) animal – the term "animal" means any member of the animal kingdom (except humans). (2) article – the term "article" means any pest or disease or any material or tangible object that could harbor a pest or disease. (3) disease – the term "disease" has the meaning given the term by the Secretary. (4) enter – the term "enter" means to move into the commerce of the United States. (5) export – the term "export" means to move from a place within the territorial limits of the United States to a place within the territorial limits of the United States. (6) facility – the term "facility" means any structure. (7) import – the term "import" means to move from a place outside the territorial limits of the United States to a place within the territorial limits of the United States. (8) Indian tribe – the term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act. (9) interstate commerce – the term "interstate commerce" means trade, traffic, or other commerce (a) between a place in a state and a place in another state, or between places within the same state but through any place outside that state; or (b) within the District of Columbia or any territory or possession of the United States. (10) livestock – the term "livestock" means all farm-raised animals. (11) means of conveyance – the term "means of conveyance" means any personal property used for or intended for use for the movement of any other personal property. (12) move – the term "move" means (a) to carry, enter, import, mail, ship, or transport; (b) to aid, abet, cause, or induce carrying, entering, importing, mailing, shipping, or transporting; (c) to offer to carry, enter, import, mail, ship, or transport; (d) to receive in order to carry, enter, import, mail, ship, or transport; (e) to release into the environment; or (f) to allow any of the activities described in this paragraph. (13) pest – the term "pest" means any of the following that can directly or indirectly injure, cause damage to, or cause disease in livestock: (a) a protozoan, (b) a plant, (c) a bacteria, (d) a fungus, (e) a virus or viroid, (f) an infectious agent or other pathogen, (g) an arthropod, (h) a parasite, (i) a prion, (j) a vector, (k) any organism similar to or allied with any of the organisms described in this paragraph. (14) secretary – the term "secretary" means the Secretary of Agriculture. (15) state – the term "state" means any of the states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth

of the Northern Mariana Islands, the Virgin Islands of the United States, or any territory or possession of the United States. (16) this subtitle – except when used in this section, the term "this subtitle" includes any regulation or order issued by the Secretary under the authority of this subtitle. (17) United States – the term "United States" means all of the states.

c. The Animal Health Protection Act of 2002 is the primary federal law governing the protection of animal health, and gives USDA's APHIS broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. APHA consolidates all of the animal quarantine and related laws, some dating back to the late 1800s, and replaces them with one statutory framework. Most of the authorities contained in the consolidated AHPA were taken from existing laws, while some new provisions were added to help fully protect U.S. animal agriculture due to gaps in legal authority. AHPA authorizes USDA to prohibit or restrict import or export of any animal or related material if necessary to prevent the spread of any livestock or poultry pest or disease, including quarantine of animals. USDA has the authority to hold, seize, treat, or destroy any animal, as well as to limit movement in interstate movement of invasive animal species. Like the Plant Protection Act, AHPA provides for emergency fund transfers and the determination of extraordinary emergencies, so that USDA can, under some circumstances, take actions within a state, and gives USDA the authority to enter into agreements with foreign governments, state governments, or other organizations. AHPA also requires compensation to farm owners based on fair market value of destroyed animals and related material. The law also authorizes USDA to transfer funds from the CCC or other USDA programs to implement an emergency control program, subject to OMB review.

4. Title 16, Chapter 41 – Cooperative Forestry Assistance Act

a. 16 U.S.C. §2101 – Findings – Purpose – Policy: (a) Findings. Congress finds that (1) most of the productive forest land of the United States is in private, State, and local governmental ownership, and the capacity of the United States to produce renewable forest resources is significantly dependent on such non-Federal forest lands; (2) adequate supplies of timber and other forest resources are essential to the United States, and adequate supplies are dependent on efficient methods for establishing, managing, and harvesting trees and processing, marketing, and using wood and wood products; (3) nearly one-half of the wood supply of the United States comes from nonindustrial private timberlands and such percentage could rise with expanded assistance programs; (4) managed forest lands provide habitats for fish and wildlife, as well as aesthetics, outdoor recreation opportunities, and other forest resources; (5) the soil,

water, and air quality of the United States can be maintained and improved through good stewardship of privately held forest resources; (6) insects and diseases affecting trees occur and sometimes create emergency conditions on all land, whether Federal or non-Federal, and efforts to prevent and control such insects and diseases often require coordinated action by both Federal and non-Federal land managers; (7) fires in rural areas threaten human lives, property, forests and other resources, and Federal-State cooperation in forest fire protection has proven effective and valuable; (8) trees and forests are of great environmental and economic value to urban areas; (9) managed forests contribute to improving the quality, quantity, and timing of water yields that are of broad benefit of society; (10) over half the forest lands of the United States are in need of some type of conservation treatment; (11) forest landowners are being faced with increased pressure to convert their forest land to development and other purposes; (12) increased population pressures and user demands are being placed on private, as well as public, landholders to provide a wide variety of products and services, including fish and wildlife habitat, aesthetic quality, and recreational opportunities; (13) stewardship of privately held forest resources requires a long-term commitment that can be fostered through local, state, and federal governmental actions; (14) the Department of Agriculture, through the coordinated efforts of its agencies with forestry responsibilities, cooperating with other Federal agencies, State foresters, and State political subdivisions, has the expertise and experience to assist private landowners in achieving individual goals and public benefits regarding forestry; (15) the products and services resulting from nonindustrial private forest land stewardship provide income and employment that contribute to the economic health and diversity or rural communities; and (16) sustainable agroforestry systems and tree planting in semiarid lands can improve environmental quality and maintain farm yields and income; and (17) the same forest resource supply, protection, and management issues that exist in the United States are also present on an international scale, and the forest and rangeland renewable resources of the world are threatened by deforestation due to conversion to agriculture of lands better suited to other purposes, over-grazing, over-harvesting, and other causes which pose a direct adverse threat to people, the global environment, and the world economy. (b) Purpose. It is the purpose of this Act to authorize the Secretary of Agriculture, with respect to non-Federal forest lands of the United States, and forest lands in foreign countries, to assist in (1) the establishment of a coordinated and cooperative Federal, State, and local forest stewardship program for management of the non-Federal forest lands; (2) the encouragement of the production of timber; (3) the prevention and control of insects and diseases affecting trees and forests; (4) the prevention and control of rural fires; (5) the efficient

utilization of wood and wood residues, including the recycling of wood fiber; (6) the improvement and maintenance of fish and wildlife habitat; (7) the planning and conduct of urban forestry programs; (8) broadening existing forest management, fire protection, and insect and disease protection programs on non-Federal forest lands to meet the multiple use objectives of landowners in an environmentally sensitive manner; (9) providing opportunities to private landowners to protect ecologically valuable and threatened non-Federal forest lands; and (10) strengthening educational, technical, and financial assistance programs that provide assistance to owners of non-Federal forest lands in the United States, and forest lands in foreign countries. (c) Priorities. In allocating funds appropriated or otherwise made available under this Act, the Secretary shall focus on the following national private forest conservation priorities, notwithstanding other priorities specified elsewhere in this Act: (1) conserving and managing working forest landscapes for multiple values and uses. (2) protecting forests from threats, including catastrophic wildfires, hurricanes, tornados, windstorms, snow or ice storms, flooding, drought, invasive species, insect or disease outbreak, or development, and restoring appropriate forests types in response to such threats. (3) enhancing public benefits from private forests, including air and water quality, soil conservation, biological diversity, carbon storage, forest products, forestry-related jobs, production of renewable energy, wildlife, wildlife corridors and wildlife habitat, and recreation. (d) Reporting requirement. Not later than September 30, 2011, the Secretary shall submit to Congress a report describing how funds were used under this Act, and through other programs administered by the Secretary, to address the national priorities specified in subsection (c) and the outcomes achieved in meeting the national priorities. (e) Policy. It is the policy of Congress that it is in the national interest for the Secretary to work through and in cooperation with State foresters, or equivalent State officials, nongovernmental organizations, and the private sector in implementing Federal program affecting non-Federal forest lands. (f) Construction. This Act shall be construed to complement the policies and direction under the Forest and Rangeland Renewable Resources Planning Act of 1974.

b. 16 U.S.C. 2101(a) – State-wide assessment and strategies for forest resources: assessment and strategies for forest resources. For a state to be eligible to receive funds under the authorities of this Act, the state forester of that State or equivalent State official shall develop and submit to the Secretary, not later than two years after the date of enactment of the Food, Conservation, and Energy Act of 2008, the following: (1) a state-wide assessment of forest resource conditions, including (A) the conditions and trends of forest resources in that state; (B) the threats to forest lands and resources in that state consistent with the national priorities specified

in section 2(c); (C) any areas or regions of that State that are a priority; and (D) any multi-state areas that are a regional priority. (2) a long-term state-wise forest resource strategy, including (A) strategies for addressing threats to forest resources in the state outline in the assessment required by paragraph (1); and (B) a description of the resources necessary for the state forester or equivalent state official from all sources to address the state-wide strategy. (b) Updating. At such time as the secretary determines to be necessary, the state forester or equivalent state official shall update and resubmit to the Secretary the state-wide assessment and state-wide strategy required by subsection (a). (c) Coordination. In developing or updating the state-wide assessment and state-wide strategy required by subsection (a), the State Forester or equivalent state official shall coordinate with (1) the State Forester Stewardship Coordinating Committee established for the state under section 19(b); (2) the state wildlife agency, with respect to strategies contained in the state wildlife action plans; (3) the State Technical Committee; (4) applicable Federal land management agencies; (5) as feasible, appropriate military installations where the voluntary participation and management of private or state-owned or other public forestland is able to support, promote, and contribute to the missions of such installations; and (6) for purposes of the Forest Legacy Program under section 7, the state lead agency designated by the Governor. (d) Incorporation of other plans. In developing or updating the state-wide assessment and state-wide strategy required by subsection (a), the state forester or equivalent state official shall incorporate any forest management plan of the state, including community wildfire protection plans and state wildlife action plans. (e) Sufficiency. Once approved by the Secretary, a state-wide assessment and state-wide strategy developed under subsection (a) shall be deemed to be sufficient to satisfy all relevant state planning and assessment requirements under this Act. (f) Funding. (1) authorization of appropriations. There are authorized to be appropriated to carry out this section up to $10,000,000 for each of fiscal years 2008 through 2018. (2) Additional funding sources. In addition to the funds appropriated for a fiscal year pursuant to the authorization of appropriations in paragraph (1) to carry out this section, the Secretary may use any other funds made available for planning under this Act to carry out this section, except that the total amount of combined funding used to carry out this section may not exceed $10,000,000 in any fiscal year. (g) Annual report on use of funds. The state forester or equivalent state official shall submit to the Secretary an annual report detailing how funds made available to the state under this Act are being used.

c. 16 U.S.C. §2102 – Rural forestry assistance: (a) assistance to forest landowners and others. The Secretary may provide financial, technical, educational, and related assistance to state foresters or equivalent state

officials, and state extension directors, to enable such officials to provide technical information, advice, and related assistance to private forest land owners and managers, vendors, forest resource operators, forest resource professionals, public agencies, and individuals to enable such persons to carry out activities that are consistent with the purposes of this Act, including (1) protecting, maintaining, enhancing, restoring, and preserving forest lands and the multiple values and uses that depend on such lands; (2) identifying, protecting, maintaining, enhancing, and preserving wildlife and fish species, including threatened and endangered species, and their habitats; (3) implementing forest management technologies; (4) selecting, producing, and marketing alternative forest crops, products and services from forest lands; (5) protecting forest land from damage caused by fire, insects, disease, and damaging weather; (6) managing the rural-land and urban-land interface to balance the use of forest resources in and adjacent to urban and community areas; (7) identifying and managing recreational forest land resources; (8) identifying and protecting the aesthetic character of forest lands; (9) protecting forest land from conversion to alternative uses; and (10) the management of resources of forest lands, including (A) the harvesting, processing, and marketing of timber and other forest resources and the marketing and utilization of wood and wood products; (B) the conversion of wood to energy for domestic, industrial, municipal, and other uses; (C) the planning, management, and treatment of forest land, including site preparation, reforestation, thinning, prescribed burning, and other silvicultural activities designed to increase the quantity and improve the quality of timber and other forest resources; (D) ensuring that forest regeneration or reforestation occurs if needed to sustain long-term resource productivity; (E) protecting and improving forest soil fertility and the quality, quantity, and timing of water yields; and (F) encouraging the investment of a portion of the proceeds from the sale of timber or other forest resources in stewardship activities that preserve, protect, maintain, and enhance their forest land. (b) State forestry assistance. The Secretary is authorized to provide financial, technical, and related assistance to state foresters, or equivalent state officials, to (1) develop genetically improved tree seeds; (2) develop and contract for the development of field arboretums, greenhouses, and tree nurseries, in cooperation with a state, to facilitate production and distribution of tree seeds and seedlings in states where the Secretary determines that there is an inadequate capacity to carry out present and future reforestation needs; (3) procure, produce, and distribute tree seeds and trees for the purpose of establishing forests, windbreaks, shelterbelts, woodlots, and other plantings; (4) plant tree seeds and seedlings on non-Federal forest lands that are suitable for the production of timber, recreation, and for other benefits associated with the growing of trees; (5) plan, organize, and

implement measures on non-Federal forest lands, including thinning, prescribed burning, and other silvicultural activities designed to increase the quantity and improve the quality of trees and other vegetarian, fish and wildlife habitat, and water yielded therefrom; and (6) protect or improve soil fertility on non-Federal forest lands and the quality, quantity, and timing of water yields therefrom. (c) Implementation. In implementing this section, the Secretary shall cooperate with other federal, state, and local natural resource management agencies, universities and the private sector. (d) Authorization of appropriations. There are authorized to be appropriated such sums as may be necessary to carry out this section.

d. 16 U.S.C. §2103a – Forest stewardship program: (a) Establishment. The Secretary, in consultation with state foresters or equivalent state officials, shall establish a Forest Stewardship Program (hereafter referred to in this section as the "program") to encourage the long-term stewardship of nonindustrial private forest lands by assisting owners of such lands to more actively manage their forest and related resources by utilizing existing state, federal, and private sector resource management expertise and assistance programs. (b) Goal. The goal of the program shall be to enter at least 25,000,000 acres of nonindustrial private forest lands in the program by December 31, 1995. (c) Nonindustrial private forest lands defined. For the purposes of this section, the term "nonindustrial private forest lands" means rural, as determined by the Secretary, lands with existing tree cover, or suitable for growing trees, and owned by any private individual, group, association, corporation, Indian tribe, or other private legal entity. (d) Implementation. In carrying out the program the Secretary, in consultation with state foresters or equivalent state officials, shall provide financial, technical, educational, and related assistance to state foresters or equivalent state officials, including assistance to other state and local natural resources entities, both public and private, and land-grant universities for the delivery of information and professional assistance to owners of nonindustrial private forest lands. Such information and assistance shall be directed to help such owners understand and evaluate alternative actions they might take, including (1) managing and enhancing the productivity of timber, fish, and wildlife habitat, water quality, wetlands, recreational resources, and the aesthetic value of forest lands; (2) investing in practices to protect, maintain, and enhance the resources identified in paragraph (1); (3) ensuring that afforestation, reforestation, improvement of poorly stocked stands, timber stand improvement, practices necessary to improve seedling growth and survival, and growth enhancement practices occur where needed to enhance and sustain the long-term productivity or timber and nontimber forest resources to help meet future public demand for all forest resources and provide the environmental benefits that result; and (4) protecting

their forests from damage caused by fire, insects, disease, and damaging weather. (e) Eligibility. All nonindustrial private forest lands that are not in management under federal, state, or private sector financial and technical assistance programs existing on the date of enactment of this section are eligible for assistance under the program. Nonindustrial private forest lands that are managed under such existing programs are eligible for assistance under the program if forest management activities are expanded and enhanced and the landowner agrees to meet the requirements of this Act. (f) Duties of owners. To enter forest land into the program, landowners shall (1) prepare and submit to the state forester or equivalent state official a forest stewardship plan that meets the requirements of this section and that (A) is prepared by a professional resource manager; (B) identifies and describes actions to be taken by the landowner to protect soil, water, range, aesthetic quality, recreation, timber, water, and fish and wildlife resources on such land in a manner that is compatible with the objectives of the landowner; and (C) is approved by the state forester, or equivalent state official; and (2) agree that all activities conducted on such land shall be consistent with the stewardship plan. (g) Stewardship recognition. The Secretary, in consultation with state foresters or equivalent state officials, is encouraged to develop an appropriate recognition program for landowners who practice stewardship management on their lands, with an appropriate, special recognition symbol and title. (h) Authorization of appropriations. There are hereby authorized to be appropriated $25,000,000 for each of the fiscal years 1991 through 1995, and such sums as may be necessary thereafter, to carry out this section.

e. 16 U.S.C. §2103c – Forest legacy program: (a) Establishment and purpose. The Secretary shall establish a program, to be known as the Forest Legacy Program, in cooperation with appropriate state, regional, and other units of government for the purposes of ascertaining and protecting environmentally important forest areas that are threatened by conversion to nonforest uses and, through the use of conservation easements and other mechanisms, for promoting forest land protection and other conservation opportunities. Such purposes shall also include the protection of important scenic, cultural, fish, wildlife, and recreational resources, riparian areas, and other ecological values. (b) State and regional Forest Legacy Programs. The Secretary shall exercise the authority under subsection (a) in conjunction with state or regional programs that the Secretary deems consistent with this section. (c) Interests in land. In addition to the authorities granted under section 6 of the Act of March 1, 1911 and section 11(a) of the Department of Agriculture Organic Act of 1956, the Secretary may acquire from willing landowners lands and interest therein, including conservation easements and rights of public access, for Forest Legacy Program purposes. The

Secretary shall not acquire conservation easements with title held in common ownership with any other entity. (d) Implementation. (1) In general. Lands and interests therein acquired under subsection (c) may be held in perpetuity for program and easement administration purposes as the Secretary may provide. In administering lands and interest therein under the program, the Secretary shall identify the environmental values to be protected by entry of the lands into the program, management activities which are planned and the manner in which they may affect the values identified, and obtain from the landowner other information determined appropriate for administration and management purposes. (2) Initial programs. Not later than November 28, 1991, the Secretary shall establish a regional program in furtherance of the Northern Forest Lands Study in the States of New York, New Hampshire, Vermont, and Maine under Public Law 100-446. The Secretary shall establish additional programs in each of the Northeast, Midwest, South and Western regions of the United States, and the Pacific Northwest, on the preparation of an assessment of the need for such programs. (e) Eligibility. Not later than November 28, 1991, and in consultation with State Forest Stewardship Coordinating Committees established under section 19(b) and similar regional organizations, the Secretary shall establish eligibility criteria for the designation of forest areas from which lands may be entered into the Forest Legacy Program and subsequently select such appropriate areas. To be eligible, such areas shall have significant environmental values or shall be threatened by present or future conversion to nonforest uses. Of land proposed to be included in the Forest Legacy Program, the Secretary shall give priority to lands which can be effectively protected and managed, and which have important scenic or recreational values; riparian areas; fish and wildlife values, including threatened and endangered species; or other ecological values. (f) Application. For areas included in the Forest Legacy Program, an owner of lands or interests in lands who wishes to participate may prepare and submit an application at such time in such form and containing such information as the Secretary may prescribe. The Secretary shall give reasonable advance notice for the submission of all applications to the State forester, equivalent State official, or other appropriate State or regional natural resource management agency. If applications exceed the ability of the Secretary to fund them, priority shall be given to those forest areas having the greatest need for protection pursuant to the criteria described in subsection (e). (g) State consent. Where a State has not approved the acquisition of land under section 6 of the Act of March 1, 1911, the Secretary shall not acquire lands or interests therein under authority granted by this section outside an area of that State designated as a part of a program established under subsection (b). (h) Forest management activities. (1) In general. Conservation easements or deed reservations acquired or

reserved pursuant to this section may allow forest management activities, including timber management, on areas entered in the Forest Legacy Program insofar as the Secretary deems such activities consistent with the purposes of this section. (2) Assignment of responsibilities. For Forest Legacy Program areas, the Secretary may delegate or assign management and enforcement responsibilities over federally owned lands and interests in lands only to another governmental entity. (i) Duties of owners. Under the terms of a conservation easement or other property interest acquired under subsection (b) [(c)], the landowner shall be required to manage property in a manner that is consistent with the purposes for which the land was entered in the Forest Legacy Program and shall not convert such property to other uses. Hunting, fishing, hiking, and similar recreational uses shall not be considered inconsistent with the purposes of this program. (j) Compensation and cost sharing. (1) Compensation. The Secretary shall pay the fair market value of any property interest acquired under this section. Payments under this section shall be in accordance with Federal appraisal and acquisition standards and procedures. (2) Cost sharing. In accordance with terms and conditions that the Secretary shall prescribe, costs for the acquisition of lands or interests therein or project costs shall be shared among participating entities including regional organizations, State and other governmental units, landowners, corporations, or private organizations. Such costs may include, but are not limited to, those associated with planning, administration, property acquisition, and property management. To the extent practicable, the Federal share of total program costs shall not exceed 75 percent, including any in-kind contribution. (k) Easements. (1) Reserved interest deeds. As used in this section, the term "conservation easement" includes an easement utilizing a reserved interest deed where the grantee acquires all rights, title, and interests in a property, except those rights, title, and interests that may run with the land that are expressly reserved by a grantor. (2) Prohibitions on limitations. Notwithstanding any provision of State law, no conservation easement held by the United States or its successors or assigns under this section shall be limited in duration or scope or be defeasible by (A) the conservation easement being in gross or appurtenant; (B) the management of the conservation easement having been delegated or assigned to a non-Federal entity; (C) any requirement under state law for re-recordation or renewal of the easement; or (D) any future disestablishment of a Forest Legacy Program area or other federal project for which the conservation easement was originally acquired. (3) Construction. Notwithstanding any provision of State law, conservation easements shall be construed to effect the Federal purposes for which they were acquired and, in interpreting their terms, there shall be no presumption favoring the conservation easement holder or fee owner. (l)

Optional state grants. (1) In general. The Secretary shall, at the request of a participating state, provide a grant to the state to carry out the Forest Legacy Program in the state. (2) Administration. If a state elects to receive a grant under this subsection (A) the Secretary shall use a portion of the funds made available under subsection (m), as determined by the Secretary, to provide a grant to the state; and (B) the state shall use the grant to carry out the Forest Legacy Program in the state, including the acquisition by the state of lands and interest in lands. (3) Transfer of forest legacy program land. (A) In general. Subject to any terms and conditions that the Secretary may require (including the requirements described in subparagraph (B)), the Secretary may, at the request of the State of Vermont, convey to the State, by quitclaim deed, without consideration, any land or interest in land acquired in the State under the Forest Legacy Program. (B) Requirements. In conveying land or an interest in land under subparagraph (A), the Secretary may require that (i) the deed conveying the land or interest in land include requirements for the management of the land in a manner that (I) conserves the land or interest in lade; and (II) is consistent with any other Forest Legacy Program purposes for which the land or interest in land was acquired; (ii) if the land or interest in land is subsequently sold, exchanged, or otherwise disposed of by the State of Vermont, the state shall (I) reimburse the Secretary in an amount that is based on the current market value of the land or interest in land in proportion to the amount of consideration paid by the United States for the land or interest in land; or (II) convey to the Secretary land or an interest in land that is equal in value to the land or interest in land conveyed. (C) Disposition of funds. Amounts received by the Secretary under subparagraph (B)(ii) shall be credited to the Wildland Fire Management account, to remain available until expended. (m) Appropriation. There are authorized to be appropriated such sums as may be necessary to carry out this section.

f. 16 U.S.C. §2103d – Community forest and open space conservation program: (a) Definitions. In this section: (1) eligible entity – the term "eligible entity" means a local governmental entity, Indian tribe, or nonprofit organization that owns or acquire a parcel under the program. (2) Indian tribe – the term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act. (3) Local governmental entity – the term "local governmental entity" includes any municipal government, county government, or other local government body with jurisdiction over local land use decisions. (4) Nonprofit organization – the term "nonprofit organization" means any organization that (A) is described in section 170(h)(3) of the Internal Revenue Code; and (B) operates in accordance with 1 or more of the purposes specified in section 170(h)(4)(A) of that code. (5) program – the term "program" means the community forest and open space conservation

program established under subsection (b). Secretary – the term "secretary" means the Secretary of Agriculture, acting through the Chief of the Forest Service. (b) Establishment. The Secretary shall establish a program, to be known as the "community forest and open space conservation program." (c) Grant program. (1) In general. The Secretary may award grants to eligible entities to acquire private forest lands, to be owned in fee simple, that (A) are threatened by conversion to nonforest uses; and (B) provide public benefits to communities, including (i) economic benefits, including clean water and wildlife habitat; (iii) benefits from forest-based educational programs, including vocational education programs in forestry; (iv) benefits from serving as models of effective forest stewardship for private landowners; and (v) recreational benefits, including hunting and fishing. (2) Federal cost share. An eligible entity may receive a grant under the Program in an amount equal to not more than 50 percent of the cost of acquiring 1 or more parcels, as determined by the Secretary. (3) Non-federal share. As a condition or receipt of the grant, an eligible entity that receives a grant under the program shall provide, in cash, donation, or in kind, a non-federal matching share in an amount that is at least equal to the amount of the grant received. (4) Appraisal of parcels. To determine the non-federal share of the cost of a parcel of privately-owned forest land under paragraph (2), an eligible entity shall require appraisals of the land that comply with the Uniform Appraisal Standards for Federal Land Acquisitions developed by the Interagency Land Acquisition Conference. (5) Application. An eligible entity that seeks to receive a grant under the program shall submit to the state forester or equivalent official an application that includes (A) a description of the land to be acquired. (B) a forest plan that provides (i) a description of community benefits to be achieved from the acquisition of the private forest land; and (ii) an explanation of the manner in which any private forest land to be acquired using funds from the grant will be managed; and (C) such other relevant information as the Secretary may require. (6) Effect on trust land. (A) Ineligibility. The Secretary shall not provide a grant under the program for any project on land held in trust by the United States. (B) Acquired land. No land acquired using a grant provided under the program shall be converted to land held in trust by the United States on behalf of any Indian tribe. (7) Applications to Secretary. The state forester or equivalent official shall submit to the Secretary a list that includes a description of each project submitted by an eligible entity at such times and in such form as the Secretary shall prescribe. (d) Duties of eligible entity. An eligible entity shall provide public access to, and manage, forest land acquired with a grant under this section in a manner that is consistent with the purposes for which the land was acquired under the program. (e) Prohibited uses. (1) In general. Subject to paragraphs (2) and (3), an eligible entity that acquire a parcel under the

program shall not sell the parcel or convert the parcel to nonforest use. (2) Reimbursement of funds. An eligible entity that sells or converts to nonforest use a parcel acquired under the program shall pay to the Federal Government an amount equal to the grater of the current sale price, or current appraised value, of the parcel. (3) Loss of eligibility. An eligible entity that sells or converts a parcel acquired under the program shall not be eligible for additional grants under the program. (f) State administration and technical assistance. The Secretary may allocate not more than 10 percent of all funds made available to carry out the program for each fiscal year to state foresters or equivalent officials (including equivalent officials of Indian tribes) for program administration and technical assistance. (g) Authorization of appropriations. There are authorized to be appropriated such sums as are necessary to carry out this section.

g. 16 U.S.C. §2104 – Forest health protection: (a) In general. The Secretary may protect trees and forests and wood products, stored wood, and wood in use directly on the National Forest System and, in cooperation with others, on other lands in the United States, from natural and man-made causes, to (1) enhance the growth and maintenance of trees and forests; (2) promote the stability of forest-related industries and employment associated therewith through the protection of forest resources; (3) aid in forest fire prevention and control; (4) conserve forest cover on watersheds, shelterbelts, and windbreaks; (5) protect outdoor recreation opportunities and other forest resources; and (6) extend timber supplies by protecting wood products, stored wood, and wood in use. (b) Activities. Subject to subsections (c), (d), and (e) and to such other conditions the Secretary may prescribe, the Secretary may, directly on the National Forest System, in cooperation with other Federal departments on other Federal lands, and in cooperation with State foresters, or equivalent State officials, subdivisions of States, agencies, institutions, organizations, or individuals on non-Federal lands (1) conduct surveys to detect and appraise insect infestation and disease conditions and man-made stresses affecting trees and establish a monitoring system throughout the forests of the United States to determine detrimental changes or improvements that occur over time, and report annually concerning such surveys and monitoring; (2) determine the biological, chemical, and mechanical measures necessary to prevent, retard, control, or suppress incipient, potential, threatening, or emergency insect infestations and disease conditions affecting trees; (3) plan, organize, direct, and perform measures the Secretary determines necessary to prevent, retard, control, or suppress incipient, potential, threatening, or emergency insect infestations and disease epidemics affecting trees; (4) provide technical information, advice, and related assistance on the various techniques available to maintain a healthy forest and in managing and coordinating the use of pesticides and other

toxic substances applied to trees and other vegetation, and to wood products, stored wood, and wood in use; (5) develop applied technology and conduct pilot tests of research results prior to the full-scale application of such technology in affected forests; (6) promote the implementation of appropriate silvicultural or management techniques that may improve or protect the health of the forests of the United States; and (7) take any other actions the Secretary determines necessary to accomplish the objectives and purposes of this section. (c) Consent of entity. Operations under this section to prevent, retard, control, or suppress insects or diseases affecting forests and trees on land not controlled or administered by the Secretary shall not be conducted without the consent, cooperation, and participation of the entity having ownership of or jurisdiction over the affected land. (d) Contribution by entity. No money appropriated to implement this section shall be expended to prevent, retard, control, or suppress insects or diseases affecting trees on non-federal land until the entity having ownership of or jurisdiction over the affected land contributes, or agrees to contribute, to the work to be done in the amount and in the manner determined appropriate by the Secretary. (e) Allotments to other agencies. The Secretary may, in the Secretary's discretion, and out of any money appropriated to implement this section, make allocations to Federal agencies having jurisdiction over lands held or owned by the United States in the amounts the Secretary determines necessary to prevent, retard, control, or suppress insect infestations and disease epidemics affecting trees on those lands. (f) Limitation on use of appropriations. (1) Removing dead trees. No amounts appropriated shall be used to (A) pay the cost of felling and removing dead or dying trees unless the Secretary determines that such actions are necessary to prevent the spread of a major insect infestation or disease epidemic severely affecting trees; or (B) compensate for the value of any property injured, damaged, or destroyed by any cause. (2) Insects and diseases affecting trees. The Secretary may procure materials and equipment necessary to prevent, retard, control, or suppress insects and diseases affecting trees without regard to section 3709 of the Revised Statutes, under whatever procedures the Secretary may prescribe, if the Secretary determines that such action is necessary and in the public interest. (g) Partnerships. The Secretary, by contract or cooperative agreement, may provide financial assistance through the Forest Service to state foresters or equivalent state officials, and private forestry and other organizations, to monitor forest health and protect the forest lands of the United States. The Secretary shall require contribution by the non-federal entity in the amount and in the manner determined appropriate. Such non-federal share may be in the form of cash, services, or equipment, as determined appropriate by the Secretary. (h) Authorization of appropriations. There are authorized to be appropriated

annually such sums as may be necessary to carry out subsections (a) through (g). (i) Integrated pest management. (1) In general. Subject to the provisions of subsections (c) and (e), the Secretary shall, in cooperation with state foresters or equivalent state officials, subdivisions of states, or other entities on non-federal lands (A) provide cost-share assistance to such cooperators who have established an acceptable integrated pest management strategy, as determined by the Secretary, that will prevent, retard, control, or suppress gypsy moth, southern pine beetle, spruce budworm infestations, or other major insect infestations in an amount no less than 50 percent nor greater than 75 percent of the cost of implementing such strategy; and (B) upon request, assist the cooperator in the development of such integrated pest management strategy. (2) Authorization of appropriations. There are hereby authorized to be appropriated annually $10,000,000 to implement this subsection.

h. Under the Cooperative Forestry Assistance Act of 1978, USDA's Forest Service may enter into cooperative agreements to assist other federal, state, and private entities in controlling and managing invasive species on other federal lands and non-federal lands. The primary cooperative authority for invasive species is Section 8 of the law and authorizes USDA to conduct activities and provide technical assistance relating to insect infestations and disease conditions affecting trees on National Forest System lands and on other federal lands. The law also provides support for good forest management practices, including financial assistance to maintain healthy timber ecosystem to prevent incursion of invasive species, on privately owned non-industrial forestlands.

5. Title 16, Chapter 35 – Endangered Species Act:

   a. 16 U.S.C. §1531 – Congressional findings and declaration of purposes and policy: (a) Findings. The Congress finds and declares that (1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untampered by adequate concern and conservation; (2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction; (3) these species of fish, wildlife, and plants area of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people; (4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to (A) migratory bird treaties with Canada and Mexico (B) the Migratory and Endangered Bird Treaty with Japan (C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (D) the International Convention for the Northwest Atlantic Fisheries (E) the International

Convention for the High Seas Fisheries of the North Pacific Ocean (F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora and (G) other international agreements; and (5) encouraging the states and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife and plants. (b) Purposes. The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threated species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section. (c) Policy. (1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act. (2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with state and local agencies to resolve water resources issues in concert with conservation of endangered species.

b. 16 U.S.C. §1532 – Definitions: For the purposes of this Act (1) the term "alternative courses of action" means all alternatives and thus is not limited to original project objectives and agency jurisdiction. (2) the term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: provided, however, that is does not include exhibition of commodities by museums or similar cultural or historical organizations. (3) the terms "conserve," "conserving," and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking. (4) the term "convention" means the Convention on International trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto. (5)(A) the term "critical habitat" for a threatened or endangered species means (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act,

on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. (B) critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph. (C) except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. (6) the term "endangered species" means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man. (7) the term "Federal agency" means any department, agency, or instrumentality of the United States. (8) the term "fish or wildlife" means any number of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. (9) the term "foreign commerce" includes, among other things, any transaction (A) between persons within one foreign country; (B) between persons in two or more foreign countries; (C) between a person within the United States and a person in a foreign country; or (D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States. (10) the term "import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. (12) the term "permit or license applicant" means, when used with respect to an action of a federal agency for which exemption is sought under section 7, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 7(a) to such agency action. (13) the term "person" means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the federal government, of any state, municipality, or political subdivision of a state, or of any foreign government; any state, municipality, or political subdivision of a state; or

any other entity subject to the jurisdiction of the United States. (14) the term "plant" means any member of the plant kingdom, including seeds, roots and other parts thereof. (15) the term "Secretary" means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this Act and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture. (16) the term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. (17) the term "state" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands. (18) the term "state agency" means any state agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a state. (19) the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. (20) the term "threatened species" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion or its range. (21) the term "United States," when used in a geographical context, includes all states.

c. 16 U.S.C. §1533 – Determination of endangered species and threatened species: (a) Generally. (1) The Secretary shall by regulation promulgated in accordance with subsection (b) determine whether any species is an endangered species or a threatened species because of any of the following factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanism; or (E) other natural or manmade factors affecting its continued existence. (2) with respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970 (A) in any case in which the Secretary of Commerce determines that such species should (i) be listed as an endangered species or a threatened species, or (ii) be changed in status from a threatened species to an endangered species, he shall so inform the Secretary of the Interior, who shall list such species in accordance with this section; (B) in any case in which the Secretary of Commerce determines that such species should (i) be removed from any list published pursuant to subsection (c) of this section, or (ii) be changed in status from an endangered species to a threatened species, he shall recommend such action to the Secretary of the

Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and (C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce. (3) the Secretary, by regulation promulgated in accordance with subsection (b) and to the maximum extent prudent and determinable (A)(i) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and (ii) may, from time-to-time thereafter as appropriate, revise such designation. (B)(i) the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. (ii) nothing in this paragraph affects the requirement to consult under section 7(a)(2) with respect to an agency action. (iii) nothing in this paragraph affects the obligation of the Department of Defense to comply with section 9, including the prohibition preventing extinction and taking of endangered species and threatened species. (b) Basis for determinations. (1)(A) the Secretary shall make determinations required by subsection (a)(1) solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation, or any political subdivision of a state or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction, or on the high seas. (B) in carrying out this section, the Secretary shall give consideration to species which have been (i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or (ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any state agency or by any agency or a foreign nation that is responsible for the conservation of fish or wildlife or plants. (2) the Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines,

based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. (3)(A) to the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to add a species to, or to remove a species from, either of the lists published under subsection (c), the Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commerce a review of the status of the species concern. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register. (B) within 12 months receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings: (i) the petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register. (ii) the petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5). (iii) the petitioned action is warranted, but that (I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and (II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) and to remove from such lists species for which the protections of the Act are no longer necessary, in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based. (C)(i) a petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted. (ii) any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review. (iii) the Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7 to prevent a significant risk to the well being of any such species. (D)(i) to the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to revise a critical habitat designation, the Secretary shall make a funding as to whether the petition presents

substantial scientific information indication that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register. (ii) within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register. (4) except as provided in paragraphs (5 and (6) of this subsection, the provisions of section 553 of title 5, United States Code, shall apply to any regulation promulgated to carry out the purposes of this Act. (5) with respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3), the Secretary shall (A) not less than 90 days before the effective date of the regulation (i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and (ii) give actual notice of the proposed 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; (B) insofar as practical, and in cooperation with the Secretary of state, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon; (C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate; (D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and (E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice. (6)(A) within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register (i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either (I) a final regulation to implement such determination; (II) a final regulation to implement such revision or a finding that such revision should not be made; (III) notice that such one-year period is being extended under subparagraph (B)(i); or (IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or (ii) subject to subparagraph (C), if a designation of critical habitat is involved, either (I) a final regulation to implement such designation, or (II) notice that such one-year period is being extended under such subparagraph. (B)(i) if the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that

there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data. (ii) if a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal. (iii) if the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based. (C) a final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that (i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or (ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat. (7) neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5, United States Code, shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if (A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and (B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the state agency in each state in which such species is believed to occur. Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-

day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it. (8) the publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this Act shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation. (c) Lists. (1) the Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b). (2) The Secretary shall (A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and (B) determine on the basis of such review whether any such species should (i) be removed from such list (ii) be changed in status from an endangered species to a threatened species; or (iii) be changed in status from a threatened species to an endangered species. Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b). (d) Protective regulations. Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any state which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such state. (e) Similarity of appearance cases. The Secretary may, by regulation of commerce or taking, and to the extent he

deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that (A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act. (f) Recovery plans. (1) the Secretary shall develop and implement plans for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable (A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such pans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity; (B) incorporate in each plan (i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species; (ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and (iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal. (2) the Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act. (3) the Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed. (4) 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. (5) each federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4). (g) Monitoring (1) the Secretary shall implement a system in cooperation with the states to monitor effectively for not less than five years the status of all species

which have recovered to the point at which the measures provided pursuant to this Act are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c). (2) the Secretary shall make prompt use of the authority under paragraph 7 of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species. (h) Agency guidelines; publication in Federal Register; scope; proposals and amendments: notice and opportunity for comments. The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to (1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section; (2) criteria for making the findings required under such subsection with respect to petitions; (3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and (4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section. The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline proposed to be established under this section. (i) Submission to state agency of justification for regulations inconsistent with state agency's comments or petition. If, in the case of any regulation proposed by the Secretary under the authority of this section, a state agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a state agency under subsection (b)(3), the Secretary shall submit to the state agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

d. 16 U.S.C. §1541 – Endangered plants: The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review (1) species of plants which are now or may become endangered or threatened and (2) methods of adequately conserving such species, and to report to Congress within one year after the date of the enactment of this Act, the results of such review including recommendations for new legislation or the amendment of existing legislation.
e. The Endangered Species Act of 1973, as amended, focuses on the conservation and protection of endangered or threatened species and their habitats, except for species that are common to the point of being weeds or pests. Although ESA has no direct regulation of invasive species, it could limit actions involving an invasive species to the extent the action may harm a listed species. For example, in the Pacific Northwest, the threat to

resident Pacific salmon protected under ESA is a major argument being used against the introduction or expansion of aquaculture that might introduce Atlantic salmon, potentially an invasive species. Similarly, introduction of mountain goats in an area where they are no tentative could be subject to proposed mitigation if the introduction would threaten listed plants likely to be eaten by the goats. ESA is jointly administered by the Departments of the Interior and Commerce. ESA could provide protection in two ways. First, if the introduction were to be carried out by a federal agency or to required licensing, financial support, permits, or other support from a federal agency, the agency involved would have to consult with FWS or National Marine Fisheries Service to determine whether the introduction would tend to jeopardize the continued existence of the listed species or adversely modify its critical habitat. If the agency action would lead to jeopardy or adverse modification, the action agency would need to carry out a reasonable and prudent alternative to avoid such problems, or risk violating the ESA. The alternative might, for example, reject the introduction in favor of a native species. Second, if the action had no federal nexus, but its effects could result in taking a listed species, the party carrying out the action would have to obtain an incidental take permit from FWS or NMFS.

6. Executive Order 13112 – Invasive species:

    a. Section 1 – Definitions: (a) "alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem. (b) "control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions. (c) "ecosystem" means the complex of a community of organisms and its environment. (d) "federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104. (e) "introduction" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity. (f) "invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health. (g) "native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem. (h) "species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied

groups of organisms. (i) "stakeholders" means, but is not limited to, state, tribal, and local government agencies, academic institutions, the scientific community, nongovernmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, ad private landowners. (j) "United States" means the 50 states, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

b. Section 2 – Federal agency duties: (a) each federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law, (1) identify such actions; (2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States of elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions. (b) federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when federal agencies are working with international organizations and foreign nations.

c. Section 3 – Invasive Species Council: (a) an Invasive Species Council is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council shall be co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the

Interior shall, with concurrence of the co-chairs, appoint an Executive Director of the Council land shall provide the staff and administrative support for the Council. (b) the Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, state, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

d. Section 4 – Duties of the Invasive Species Council: the Invasive Species Council shall provide national leadership regarding invasive species, and shall: (a) oversee the implementation of this order and see that the federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources. (b) encourage planning and action at local, tribal, state, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species; (c) develop recommendations for international cooperation in addressing invasive species; (d) develop, in consultation with the Council on Environmental Quality, guidance to federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species; (e) facilitate development of a coordinated network among federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health; (f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and (g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

e. Section 5 – Invasive Species Management Plan: (a) within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan, which shall detail and recommend performance-oriented goals and objectives and specific measures of success for federal agency effort concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with federal agencies and stakeholders. (b) the first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its co-chairs legislative proposals for necessary changes in authority. (c) the Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.
f. Section 6 – Judicial review and administration: (a) this order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person. (b)

Executive Order 11987 of May 24, 1977, is hereby revoked. (c) the requirements of this order do not affect the obligations of federal agencies under 16 U.S.C. 4713 with respect to ballast water programs. (d) the requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

7. Title 43, Chapter 35 – Federal Land Policy and Management Act:

   a. 43 U.S.C. §1701 – Congressional declaration of policy: (a) the Congress declares that it is the policy of the United States that (1) the public lands be retained in federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest; (2) the national interest will be best realized it the public lands and their resources are periodically and systematically inventoried and their present and future use if projected through a land use planning process coordinated with other federal and state planning efforts; (3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act; (4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate federal lands for specific purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action; (5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decision-making; (6) judicial review of public land adjudication decisions be provided by law; (7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law; (8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use; (9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by the statute; (10) uniform procedures for any disposal of public land,

acquisition of non-federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage; (11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed; (12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 as it pertains to the public lands; and (13) the federal government should, on a basis equitable to both the federal and local taxpayer, provide for payments to compensate states and local governments for burdens created as a result of the immunity of federal lands from state and local taxation. (b) the policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.

b. 43 U.S.C. §1702 – Definitions: without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act (a) the term "areas of critical environmental concern" means area within the public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards. (b) the term "holder" means any state or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title V of this Act. (c) the term "multiple use" means the management of the public lands and their various resources values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the

resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. (d) the term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decision-making, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance. (e) the term "public lands" means any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except (1) lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts, and Eskimos. (f) the term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in title V of this Act. (g) the term "Secretary" unless specifically designated otherwise, means the Secretary of the Interior. (h) the term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use. (i) the term "wilderness" as used in section 603 shall have the same meaning as it does in section 2(c) of the Wilderness Act. (j) the term "withdrawal" means withholding an area of federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended from one department, bureau or agency to another department, bureau or agency. (k) an "allotment management plant" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on land within National Forests in the eleven contiguous western states and which: (1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and (2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and (3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law. (l) the term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and

production, rights-of-way, outdoor recreation, and timber production. (m) the term "department" means a unit of the executive branch of the federal government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the federal government which is not under the jurisdiction of a head of a department. (n) the term "bureau" means the Bureau of Land Management. (o) the term "eleven contiguous western states" means the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. (p) the term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the eleven contiguous western states for the purpose of grazing domestic livestock.

c. 43 U.S.C. §1703 – Cooperative action and sharing of resources by Secretaries of the Interior and Agriculture: in fiscal year 2012 and each fiscal year thereafter, the Secretaries of the Interior and Agriculture, subject to annual review of Congress, may establish programs to conduct projects, planning, permitting, leasing, contracting and other activities, either jointly or on behalf of one another; may co-locate in federal offices and facilities leased by an agency of either department; and may promulgate special rules as needed to test the feasibility of issuing unified permits, applications, and leases. The Secretaries of the interior and Agriculture may make reciprocal delegations of their respective authorities, duties, and responsibilities in support of the "service first" initiative agency-wide to promote customer service and efficiency. Nothing herein shall alter, expand or limit the applicability of any public law or regulation to lands administered by the Bureau of Land Management, National Park Service, Fish and Wildlife Service, or the Forest Service or matters under the purview of other bureaus or offices of either department. To facilitate the sharing of resources under the Service First Initiative, the Secretaries of the Interior and Agriculture may make transfers of funds and reimbursement of funds on an annual basis, including transfers and reimbursements for multi-year projects, except that this authority may not be used to circumvent requirements and limitations imposed on the use of funds.

d. Provisions under the Federal Land Policy and Management Act of 1976 provide funds for range betterment within a variety of range rehabilitation and improvement activities, including weed control on certain national Forest System rangelands. In addition, the Public Rangelands Improvement Act of 1978 provides funding for on-the-ground rangeland rehabilitation and range improvements on some of the rangelands managed by the Forest Service within USDA.

8. Title 7, Chapter 61 – Federal Noxious Weed Act:

    a. 7 U.S.C. §2814 – Management of undesirable plants on federal lands: (a) duties of agencies. Each federal agency shall (1) designate an office or person adequately trained in the management of undesirable plant species to develop and coordinate an undesirable plants management program for control of undesirable plants on federal lands under the agency's jurisdiction; (2) establish and adequately fund an undesirable plants management program through the agency's budgetary process; (3) complete and implement cooperative agreements with state agencies regarding the management of undesirable plant species on federal lands under the agency's jurisdiction; and (4) establish integrated management systems to control or contain undesirable plant species targeted under cooperative agreements. (b) environmental impact statements. In the event an environmental assessment or environmental impact statement is required under the National Environmental Policy Act of 1969 to implement plant control agreements, federal agencies shall complete such assessments or statements within 1 years after the requirement for such assessment or statement is ascertained. (c) cooperative agreements with state agencies. (1) in general. Federal agencies, as appropriate, shall enter into cooperative agreements with state agencies to coordinate the management of undesirable plant species on federal lands. (2) contents of plan. A cooperative agreement entered into pursuant to paragraph (1) shall (A) prioritize and target undesirable plant species or group of species to be controlled or contained within a specific geographic area; (B) describe the integrated management system to be used to control or contain the targeted undesirable plant species or group of species; and (C) detail the means of implementing the integrated management system, define the duties of the federal agency and the state agency in prosecuting that method, and establish a timeframe for the initiation and completion of the tasks specified management system. (d) exception. A federal agency is not required under this section to carry out programs on federal lands unless similar programs are being implemented generally on state or private lands in the same area. (e) definitions. As used in this section: (1) cooperative agreement. The term "cooperative agreement" means a written agreement between a federal agency and a state agency entered into pursuant to this section. (2) federal agency. The term "federal agency" means a department, agency, or bureau of the federal government responsible for administering or managing federal lands under its jurisdiction. (3) federal lands. The term "federal lands" means lands managed by or under the jurisdiction of the federal government. (4) integrated management system. The term "integrated management systems" means a system for the planning and implementation of a program, using an interdisciplinary approach, to select a method for

containing or controlling an undesirable plant species or group of species using all available methods, including (A) education; (B) preventive measures; (C) physical or mechanical methods; (D) biological agents; (E) herbicide methods; (F) cultural methods; and (G) general land management practices such as manipulation of livestock or wildlife grazing strategies or improving wildlife or livestock habitat. (5) interdisciplinary approach. The term "interdisciplinary approach" means an approach to making decisions regarding the containment or control of an undesirable plant species or group of species, which (A) includes participation by personnel of federal or state agencies with experience in areas including weed science, range science, wildlife biology, land management, and forestry; and (B) includes consideration of (i) the most efficient and effective method of containing or controlling the undesirable plant species; (ii) scientific evidence and current technology; (iii) the physiology and habitat of a plant species; and (iv) the economic, social, and ecological consequences of implementing the program. (6) state agencies. The term "state agency" means a state department of agriculture, or other state agency or political subdivision thereof, responsible for the administration or implementation of undesirable plants laws of a state. (7) undesirable plant species. The term "undesirable plants" means plant species that are classified as undesirable, noxious, harmful, exotic, injurious, or poisonous, pursuant to state or federal law. Species listed as endangered by the Endangered Species Act of 1973 shall not be designated as undesirable plants under this section and shall not include plants indigenous to an area where control measures are to be taken under this section. (f) coordination. (1) in general. The Secretary of Agriculture and the Secretary of the Interior shall take such actions as may be necessary to coordinate federal agency programs for control, research, and educational efforts association with federal, state, and locally designated noxious weeds. (2) duties. The Secretary, in consultation with the Secretary of the Interior, shall (A) identify regional priorities for noxious weed control; (B) incorporate into existing technical guides regionally appropriate technical informational and (C) disseminate such technical information to interested state, local, and private entities. (3) cost share assistance. The Secretary may provide cost share assistance to state and local agencies to manage noxious weeds in an area if a majority of landowners in that area agree to participate in a noxious weed management program. (g) authorization of appropriations. There is authorized to be appropriated such sums as may be necessary in each of fiscal years 1991 through 1995 to carry out this section.

b. Most provisions in the Federal Noxious Weed Act of 1974 were supplanted by the Plant Protection Act; however, a key section still requires each federal agency to provide for noxious weed management on lands under its jurisdiction. The provision, introduced in the 1990 farm bill, amended

the Federal Noxious Weed Act to require agencies to establish and fund noxious weed management programs. It also allows the agencies to implement cooperative agreements with state agencies regarding the management of undesirable plant species in areas adjacent to federal lands. The law requires joint leadership from the Secretaries of Agriculture and the Interior in coordinating federal agency programs for control, research, and education associated with designated noxious weeds. In 1994, a memorandum of understanding among several federal agencies created the Federal Interagency Committee for Management of Noxious and Exotic Weeds as a vehicle to coordinate noxious weed priorities.

9. Title 7, Chapter 37 – Federal Seed Act:

    a. 7 U.S.C. §1551 – Short title: this Act may be cited as the "Federal Seed Act."
    b. 7 U.S.C. §1561 – Definitions: (a) when used in this Act (1) the term "United States" means the several states, District of Columbia, and Puerto Rico. (2) the term "person" includes a partnership, corporation, company, society, or association. (3) the term "interstate commerce" means (A) commerce between any state, territory, possession, or the District of Columbia, and any other state, territory, possession, or the District of Columbia; or (B) commerce between points within the same state, territory, or possession, of the District of Columbia, but through any place outside thereof; or (C) commerce within the District of Columbia. (4) for the purposes of this Act with respect to labeling for treatment, variety, and origin, seeds shall be considered to be in interstate commerce, or delivered for transportation in, that current of commerce usual in the transportation and/or merchandising of seeds, whereby such seeds are sent from one state with the expectation that they will end their transit in another, including, in addition to cases within the above general description, all cases where seeds are transported or delivered for transportation to another state, or for processing or cleaning for seeding purposes within the state and shipment outside the state of the processed or cleaned seeds. Seeds normally in such current of commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. (5) the term "foreign commerce" means commerce between the United States, its possessions, or any territory of the United States, and any foreign country. (6)(a) the term "district court of the United States" means any court exercising the powers of a district court of the United States. (7) the term (A) "agricultural seeds" shall mean grass, forage, and field crop seeds which the Secretary of Agriculture finds are used for seeding purposes in the United States and which he lists in the

rules and regulations prescribed under section 402 of this Act. (B) "vegetable seeds" shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be generally known and sold under the name of vegetable seeds. (8) for the purpose of title II, the term "weed seeds" means the seeds or bulblets of plants recognized as weeds either by the law or rules and regulations of (A) the state into which the seed is offered for transportation, or transported; or (B) Puerto Rico, Guam, or District of Columbia into which transported, or District of Columbia in which sold. (9)(A) for the purpose of title II, the term "noxious-weed seeds" means the seeds or bulblets of plants recognized as noxious (i) by the law or rules and regulations of the state into which the seed is offered for transportation, or transported; (ii) by the law or rules and regulations of Puerto Rico, Guam, or the District of Columbia, into which transported, or District of Columbia in which sold; or (iii) by the rules and regulations of the Secretary of Agriculture under this Act, when after investigation he shall determine that a weed is noxious in the United States or in any specifically designated area thereof. (B) for the purpose of title III, the term "noxious-weed seeds" means the seed of Lepidium draba L., Lepidium repens Boiss., Hymenophysa pubescens C.A., Mey., white top; Cirsium arvense Scop., Canada thistle; Cuscuta spp., dodder; Agropyron repens Beauv., quackgrass; Sorghum halepense Pers., Johnson grass; Convolvulus arvensis L., perennial sowthistle; Euphorbia esula L., leafy spurge; and seeds or bulbets of any other kind which after investigation the Secretary of Agriculture finds should be included. (10) the term "origin" means the state, District of Columbia, Puerto Rico, or possession of the United States, or the foreign country, or designated portion thereof, where the seed was grown. (11) the term "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, soybean, flax, carrot, radish, cabbage, cauliflower, and so forth. (12) the term "variety" means a subdivision of a kind which is characterized by growth, plant, fruit, seed, or other characters by which it can be differentiated form other sorts of the same kind, for example, Marquis wheat, Flat Dutch cabbage, Manchu soybeans, Oxheart carrot, and so forth. (13) the term "type" means either (A) a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions, or (B) when used with a variety name means seed of the variety of the same kind and of similar character, the manner of and the circumstances connected with the use of the designation to be governed by rules and regulations prescribed under section 402 of this Act. (14) the term "germination" means the percentage of seeds capable of producing normal seedlings under ordinarily favorable conditions determined by methods prescribed under section 403 of this Act. (15) the term "hard seeds" means the percentage of seeds which because of hardness or impermeability do

not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned, determined by methods prescribed under section 403 of this Act. (16) the term "inert matter" means all matter not seeds, and includes among others broken seeds, sterile florets, chaff, fungus bodies, and stones, determined by methods prescribed under section 403 of this Act. (17) the term "label" means the display or displays of written, printed, or graphic matter upon or attached to the container of seed. (18) the term "labeling" includes all labels, and other written, printed, and graphic representations, in any form whatsoever, accompanying and pertaining to any seed whether in bulk or in containers, and includes invoices. (19) the terms "advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this Act. (20) subject to such tolerances as the Secretary of Agriculture is authorized to prescribe under the provisions of this Act. (A) the term "false labeling" means any labeling which is false or misleading in any particular; (B) the term "false advertisement" means any advertisement which is false or misleading in any particular. (21) the term "screenings" shall include chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed in any way from any seeds in any kind of cleaning or processing and which contain less than 25 per centum of live agricultural or vegetable seeds. (22) the term "in bulk" refers to seed when loose either in vehicles of transportation or in storage, and not to seed in bags or other containers. (23) the term "treated" means given an application of a substance or subjected to a process designated to reduce, control, or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom. (24) the term "seed certifying agency" means (A) an agency authorized under the laws of a state, territory, or possession, to officially certify seed and which has standards and procedures approved by the Secretary to assure the genetic purity and identity of the seed certified, or (B) an agency of a foreign country determined by the Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under (A).

c. 7 U.S.C. §1571 – Prohibitions relating to interstate commerce in certain seeds: it shall be unlawful for any person to transport or deliver for transportation in interstate commerce (a) any agricultural seeds or any mixture of agricultural seeds for seeding purposes, unless each container bears a label giving the following information in accordance with rules and regulations prescribed under section 402 of this Act (1) the name of the kind or kind and variety of each agricultural seed component present in excess of 5 per centum of the whole and the percentage by weight of each: provided, that (A), except with respect to seed mixtures intended for lawn and turf purposes, if any such component is one which the Secretary

of Agriculture has determined, in rules and regulations prescribed under section 402 of this Act, is generally labeled as to variety, the label shall bear, in addition to the name of the kind, either the name of such variety or the statement "variety not stated," (B) in the case of any such component which is a hybrid seed it shall, in addition to the above requirements, be designated as hybrid on the label, and (C) seed mixtures intended for lawn and turf purposes shall be designated as a mixture on the label and each seed component shall be listed on the label in the order of predominance; (2) lot number or other identification; (3) origin, stated in accordance with paragraph (a)(1) of this section, of each agricultural seed present which has been designated by the Secretary of Agriculture as one on which a knowledge of the origin is important from the standpoint of crop production, if the origin is known, and if each such seed is present in excess of 5 per centum. If the origin of such agricultural seed or seeds is unknown, that fact shall be stated; (4) percentage by weight of weed seeds, including noxious-weed seeds; (5) kinds of noxious-weed seeds and the rate of occurrence of each, which rate shall be expressed in accordance with and shall not exceed the rate allowed for shipment, movement, or sale of such noxious-weed seeds by the law and regulations of the state into which the seed is offered for transportation or transported or in accordance with the rules and regulations of the Secretary of Agriculture, when under the provisions of section 101(a)(9)(A)(iii) he shall determine that weeds other than those designated by state requirements are noxious; (6) percentage by weight of agricultural seed other than those included under paragraph (a)(1) of this section; (7) percentage by weight of inert matter; (8) for each agricultural seed, in excess of 5 per centum of the whole, stated in accordance with paragraph (a)(1) of this section, and each kind or variety or type of agricultural seed shown in the labeling to be present in a proportion of 5 per centum or less of the whole, (A) percentage of germination, exclusive of hard seed, (B) percentage of hard seed, if present, and (C) the calendar month and year the test was completed to determine such percentages, except that, in the case of a seed mixture, it is only necessary to state the calendar month and year of such test for the kind or variety or type of agricultural seed contained in such mixture which has the oldest calendar month and year test date among the tests conducted on all the kinds or varieties or types of agricultural seed contained in such mixture; (9) name and address of (A) the person who transports, or delivers for transportation, said seed in interstate commerce, or (B) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 402 of this Act, indicating the person who transports or delivers for transportation said seed in interstate commerce; (10) the year and month beyond which an inoculant, if shown in the labeling, is no longer claimed

to be effective. (b) any vegetable seeds, for seeding purposes, in containers, unless each container bears a label giving the following information in accordance with rules and regulations prescribed under section 402 of this Act, (1) for containers of one pound or less of seed that germinates equal to or above the standard last established by the Secretary of Agriculture, as provided under section 403(c) of this Act, (A) the name of each kind and variety of seed, and if two or more kinds or varieties are present, the percentage of each, and further, that in the case of any such component which is a hybrid seed, it shall be designated as hybrid on the label; and (B) name and address of (i) the person who transports, or delivers for transportation, said seed in interstate commerce; or (ii) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 403 of this Act, indicating the person who transports or delivers for transportation said seed in interstate commerce; (2) for containers of one pound or less of seed that germinates less than the standard last established by the Secretary of Agriculture, as provided under section 403(c) of this Act, (A) the name of each kind and variety of seed, and if two or more kinds or varieties are present, the percentage of each, and further, that in the case of any such component which is a hybrid seed, it shall be designated as hybrid on the label; and (B) for each named kind and variety of seed (i) the percentage of germination, exclusive of hard seed; (ii) the percentage of hard seed, if present; (iii) the calendar month and year the test was completed to determine such percentages; (iv) the words "below standard;" and (C) name and address of (i) the person who transports, or delivers for transportation, said seed in interstate commerce; or (ii) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 402 of this Act, indicating the person who transports or delivers for transportation said seed in interstate commerce. (3) for containers of more than one pound of seed (A) the name of each kind an variety of seed, and if two or more kinds or varieties are present, the percentage of each and, further, that in the case of any such component which is a hybrid seed, it shall be designated as hybrid on the label; (B) lot number or other lot identification; (C) for each named kind and variety of seed (i) the percentage of germination, exclusive of hard seed; (ii) the percentage of hard see, if present; (iii) the calendar month and year the test was completed to determine such percentages; and (D) name and address of (i) the person who transports, or delivers for transportation, said seed in interstate commerce; or (ii) the person to whom the seed is sold or shipped for resale, together with a code designation approved by the Secretary of Agriculture under rules and regulations prescribed under section 402 of this Act, indicating the person

who transports or delivers for transportation said seed in interstate commerce. (c) any agriculture or vegetable seed unless the test to determine the percentage of germination required by this section shall have been completed within a five-month period, exclusive of the calendar month in which the test was completed, immediately prior to transportation or delivery for transportation in interstate commerce: provided, however, that the Secretary of Agriculture may by rules and regulations designate: (1) a shorter period for kinds of agricultural or vegetable seed which he finds under ordinary conditions of handling will not maintain, during the aforesaid five-month period, a germination within the established limits of tolerance; or (2) a longer period for any kind of agriculture or vegetable seed which (A) is packaged in such container materials and under such other conditions prescribed by the Secretary of Agriculture as he finds will, during such longer period, maintain the viability of said seed under ordinary conditions of handling; or (B) the Secretary finds will maintain a percentage of germination within the limits of tolerance established under this Act under ordinary conditions of handling. (d) any agricultural seeds or vegetable seeds having a false labeling, or pertaining to which there has been a false advertisement, or to sell or offer for sale such seed for interstate shipment by himself or others. (e) seed which is required to be stained under the provisions of this Act and the regulations made and promulgated thereunder, and is not so stained. (f) seed which has been stained to resemble seed stained in accordance with the provisions of this Act and the regulations made and promulgated thereunder. (g) seed which is a mixture of seeds which are required to be stained or which are stained with different colors under the provisions this Act and of the regulations made and promulgated thereunder, or which is a mixture of any seed required to be stained under the provisions of this Act and of the regulations made and promulgated thereunder, with seed of the same kind produced in the United States. (h) screenings of any seed subject to this Act, unless they are not intended for seeding purposes; and it is stated on the label, if in containers, or on the invoice if in bulk, that they are intended for cleaning, processing, or manufacturing purposes, and not for seeding purposes. (i) any agricultural seeds or any mixture thereof or any vegetable seeds or any mixture thereof, for seeding purposes, that have been treated, unless each container thereof bears a label giving the following information and statements in accordance with rules and regulations prescribed under section 402 of this Act (1) a word or statement indicating that the seeds have been treated; (2) the commonly accepted coined, chemical, or abbreviated chemical name of any substance used in such treatment; (3) if the substance used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals, an appropriate caution statement approved by the

Secretary of Agriculture as adequate for the protection of the public, such as "Do not use for food or feed or oil purposes," provided, that the caution statement for mercurial and similarly toxic substances, as defined in said rules and regulations, shall be a representation of a skull and crossbones and a statement such as "this seed has been treated with poison," in red letters on a background of distinctly contrasting color; and (4) a description, approved by the Secretary of Agriculture as adequate for the protection of the public, of any process used in such treatment.

d. 7 U.S.C. §1581 – Prohibitions relating to importations: the importation into the United States is prohibited of (1) any agricultural or vegetable seeds if any such seed contains noxious weed seeds or the labeling of which is false or misleading in any respect; (2) screenings of any seeds subject to title III of this Act (except that this shall not apply to screenings of wheat, oats, rye, barley, buckwheat, field corn, sorghum, broomcorn, flax, millet, proso, soybeans, cowpeas, field peas, or field beans, which are not imported for seeding purposes and are declared for cleaning, processing, or manufacturing purposes, and not for seeding purposes. (3) any seed containing 10 per centum or more of any agricultural or vegetable seeds, unless the invoice pertaining to such seed and any other labeling of such seed bear a lot identification and the name of each kind and variety of vegetable seed present in any amount and each kind or kind and variety of agricultural seed present in excess of 5 per centum of the whole, and unless in the case of hybrid seed present in excess of 5 per centum of the whole it is designated as hybrid. (4) any agricultural seeds or any mixture thereof, or any vegetable seeds or any mixture thereof, for seeding purposes, that have been treated, unless each container thereof bears a label giving the following information and statements in accordance with rules and regulations prescribed under section 402 of this Act (A) a word or statement indicating that the seeds have been treated; (B) the commonly accepted coined, chemical, or abbreviated chemical name of any substance used in such treatment; (C) if the substance used in such treatment in the amount remaining with the seeds is harmful to humans or other vertebrate animals, an appropriate caution statement approved by the Secretary of Agriculture as adequate for the protection of the public, such as "Do not use for food or feed or oil purposes," provided, that the caution statement for mercurial and similarly toxic substances, as defined in said rules and regulations, shall be a representation of a skull and crossbones and a statement such as "this seed has been treated with POISON," in red letters on a background of distinctly contrasting color; and (D) a description, approved by the Secretary of Agriculture as adequate for the protection of the public, of any process used in such treatment.

e. 7 U.S.C. §1585 – Certain seeds not adapted for general agricultural use: whenever the Secretary of Agriculture, after a public hearing, determines

that seed of alfalfa or red clover from any foreign country is not adapted for general agricultural use in the United States, the Secretary shall publish the determination and the reasons for the determination.

f. 7 U.S.C. §1586 – Certain acts prohibited: it shall be unlawful for any person (a) to sell or offer for sale (1) any seed for seeding purposes if imported under this title for other than seedling purposes; (2) any screenings of any seeds for seeding purposes if imported under this title for other than seeding purposes; or (3) any seed which is prohibited entry under the provisions of this Act. (b) to make any false or misleading representation with respect to any seed subject to this title being imported into the United States or offered for import: provided, that this subsection shall not be deemed violated by any person if the false or misleading representation is the name of a variety indistinguishable in appearance from the seed being imported or offered for import and the records and other pertinent facts reveal that such person relied in good faith upon representations with respect to the name of the indistinguishable variety made by the shipper of the seed.

g. 7 U.S.C. §1595 – Seizure: any seed sold, delivered for transportation in interstate commerce, or transported in interstate or foreign commerce in violation of any of the provisions of this Act shall, at the time of such violation or at any time thereafter, be liable to be proceeded against on libel of information and condemned in any district court of the United States within the jurisdiction of which the seed is found. (b) if seed is condemned by a decree of the court as being in violation of the provisions of this Act, it may be disposed of by the court by (1) sale; or (2) delivery to the owner thereof after he has appeared as claimant and paid the court costs and fees and storage and other proper expenses and executed and delivered a bond with good and sufficient sureties that such seed will not be sold or disposed of in any jurisdiction contrary to the provisions of this Act and the rules and regulations made and promulgated thereunder, or the laws of such jurisdiction; or (3) destruction. (c) if such seed is disposed of by sale, the proceeds of the sale, less the court costs and fees and storage and other proper expenses, shall be paid into the Treasury as miscellaneous receipts, but such seed shall not be sold or disposed of in any jurisdiction contrary to the provisions of this Act and the rules and regulations made and promulgated thereunder, or the laws of such jurisdiction. (d) the proceedings in such libel cases shall conform, as nearly as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any such case; and such proceedings shall be at the suit of and in the name of the United States.

h. 7 U.S.C. §1596 – Penalties: (a) any person who knowingly, or as a result either of gross negligence or of a failure to make a reasonable effort to inform himself of the pertinent facts, violates any provision of this Act or

the rules and regulations made and promulgated thereunder shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall pay a fine of not more than $1,000, for the first offense, and upon conviction for each subsequent offense not more than $2,000. (b) any person who violates any provision of this Act or the rules and regulations made and promulgated thereunder shall forfeit to the United States a sum, not less than $25 or more than $500, for each such violation, which forfeiture shall be recoverable in a civil suit brought in the name of the United States.

i. The Federal Seed Act of 1939, requires accurate labeling and purity standards for seeds in commerce, and prohibits the importation and movement of adulterated or misbranded seeds. The law also authorizes enforcement activities and rulemaking functions. In addition, it regulates interstate and foreign commerce in seeds, and addresses "noxious weed seeds" that may be present in agricultural or vegetable seed. APHIS administers the foreign commerce provision of this law. USDA's Agricultural Marketing Service administers the interstate commerce provisions. The law works in conjunction with the Plant Protection Act, which authorizes APHIS to regulate imports of agricultural seed when they may contain noxious weed seeds.

10. Title 16, Chapter 36 – Forest and Rangeland Renewable Resources Planning Act:

    a. 16 U.S.C. §1671 – Congressional statement of findings: Congress finds that (1) the extension program of the Department of Agriculture and the extension activities of each state provide useful and productive educational programs for private forest and range landowners and processors and consumptive and nonconsumptive users of forest and rangeland renewable resources, and these educational programs complement research and assistance programs conducted by the Department of Agriculture; (2) to meet national goals, it is essential that all forest and rangeland renewable resources, including fish and wildlife, forage, outdoor recreation opportunities, timber, and water, be fully considered in designing educational programs for landowners, processors, and users; (3) more efficient utilization and marketing of renewable resources extend available supplies of such resources, provide products to consumers at prices less than they would otherwise be, and promote reasonable returns on the investments of landowners, processors, and users; (4) trees and forests in urban areas improve the esthetic quality, reduce noise, filter impurities from the air and add oxygen to it, save energy by moderating temperature extremes, control wind and water erosion, and provide habitat for wildlife; and (5) trees and shrubs used as shelterbelts protect farm lands from wind and water erosion, promote moisture accumulation in the soil, and provide habitat for wildlife.

b. 16 U.S.C. §1672 – General program authorization: (a) types of programs; preconditions and cooperation with state program directors, etc. The Secretary of Agriculture under conditions the Secretary may prescribe and in cooperation with the state directors of cooperative extension service programs and eligible colleges and universities, shall (1) provide educational programs that enable individuals to recognize, analyze, and resolve problems dealing with renewable resources, including forest and range-based outdoor recreation opportunities, trees and forests in urban areas, and trees and shrubs in shelterbelts; (2) use educational programs to disseminate the results of research on renewable resources; (3) conduct educational programs that transfer the best available technology to those involved in the management and protection of forests and rangelands and the processing and use of their associated renewable resources; (4) develop and implement educational programs that give special attention to the educational needs of small, private nonindustrial forest landowners; (5) develop and implement educational programs in range and fish and wildlife management; (6) assist in providing continuing education programs for professionally trained individuals in fish and wildlife, forest, range, and watershed management and related fields; (7) help forest and range landowners in securing technical and financial assistance to bring appropriate expertise to bear on their problems; (8) help identify areas of needed research regarding renewable resources; (9) in cooperation with state foresters or equivalent state officials, promote public understanding of the energy conservation, economic, social, environmental, and psychological values of trees and open space in urban and community area environments and expand knowledge of the ecological relationships and benefits of trees and related resources in urban and community environments; and (10) conduct a comprehensive natural resource and environmental education program for landowners and managers, public officials, and the public, with particular emphasis on youth.

c. The Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act, is the U.S. Forest Service's primary authority to conduct research activities, including research relating to invasive species. The law contains broad authority for research and technology regarding U.S. lands related to the protection, conservation, and sustainable use of natural resources. The law also authorizes competitive grants to conduct research, and authorizes cooperative agreements with university, industry, and other private and public partnerships.

11. Title 16, Chapter 65 – International Forestry Cooperation Act:

a. 16 U.S.C. §4501 – Forestry and related natural resource assistance: (a) focus of activities. To achieve the maximum impact from activities

undertaken under the authority of this title, the Secretary shall focus such activities on the key countries which could have a substantial impact on emissions of greenhouse gases related to global warming. (b) authority for intentional forestry activities. In support of forestry and related natural resource activities outside of the United States and its territories and possessions, the Secretary of Agriculture may (1) provide assistance that promotes sustainable development and global environmental stability, including assistance for (A) conservation and sustainable management of forest land; (B) forest plantation technology and tree improvement; (C) rehabilitation of cutover lands, eroded watersheds, and area damaged by wildfires or other natural disasters; (D) prevention and control of insects, diseases, and other damaging agents; (E) preparedness planning, training, and operational assistance to combat natural disasters; (F) more complete utilization of forest products leading to resource conservation; (G) range protection and enhancement; and (H) wildlife and fisheries habitat protection and improvement; (2) share technical, managerial, extension, and administrative skills related to public and private natural resource administration; (3) provide education and training opportunities to promote the transfer and utilization of scientific information and technologies; (4) engage in scientific exchange and cooperative research with foreign governmental, educational, technical, and research institutions; and (5) cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife and fisheries, and related natural resource activities. (c) eligible countries. The Secretary shall undertake the activities described in subsection (b), in countries that receive assistance from the Agency for International Development only at the request, or with the concurrence, of the Administrator of the Agency for International Development.

b. Provisions under sections of the International Forestry Cooperation Act allow USDA to support international forestry and related natural resource activities and provide assistance to prevent and control insects, diseases, and other damaging agents, including invasive species. USDA's Forest Service delivers research and development to conduct prevention, rapid response, control, and management activities related to invasive species and to restore areas affected by invasive species.

12. Title 18, Chapter 3; Title 16, Chapter 53 – Lacey Act:

a. 18 U.S.C. §42 – Importation or shipment of injurious mammals, birds, fish, amphibia, and reptiles; permits, specimens for museums; regulations: (a)(1) the importation into the United States, any territory of the united States, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, or any shipment between the

continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States, of the mongoose of the species Herpestes auropunctatus; of the species of so-called "flying foxes" or fruit bats of the genus Pteropus; of the zebra mussel of the species Dreissena polymorpha; of the bighead carp of the species Hypophthalmichthys nobilis; and such other species of wild mammals, wild birds, fish, amphibians, reptiles, brown tree snakes, or the offspring or eggs of any of the foregoing which the Secretary of the interior may prescribe by regulation to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is hereby prohibited. All such prohibited mammals, birds, fish, amphibians, and reptiles, and the eggs or offspring therefrom, shall be promptly exported or destroyed at the expense of the importer or consignee. Nothing in this section shall be construed to repeal or modify any provision of the Public Health Service Act or federal Food, Drug, and Cosmetic Act. Also, this section shall not authorize any action with respect to the importation of any plant pest as defined in the Federal Plant Pest Act, insofar as such importation is subject to regulation under that Act. (2) as used in this subsection, the term "wild" relates to any creatures that, whether or not raised in captivity, normally are found in a wild state; and the terms "wildlife" and "wildlife resources" include those resources that comprise wild mammals, wild birds, fish, and all other classes of wild creatures whatsoever, and all types of aquatic and land vegetation upon which such wildlife resources are dependent. (3) notwithstanding the foregoing, the Secreary of Interior, when he finds that there has been a proper showing of responsibility and continued protection of the public interest and health, shall permit the importation for zoological, educational, medical, and scientific purposes of any mammals, birds, fish, amphibia, and reptiles, or the offspring or eggs thereof, where such importation would be prohibited otherwise by or pursuant to this Act, and this Act shall not restrict importations by federal agencies for their own use. (4) nothing in this subsection shall restrict the importation of dead natural-history specimens for museums or for scientific collections, or the importation of domesticated canaries, parrots, or such other cage birds as the Secretary of the Interior may designate. (5) the Secretary of the Treasury shall enforce the provisions of this subsection, including any regulations issued hereunder, and, if requested by the Secretary of the Interior, the Secretary of the treasury may require the furnishing of an appropriate bond when desirable to insure compliance with such provisions. (b) whoever violates this section, or any regulation issued pursuant thereto, shall be fined under this title or imprisoned not more than six months, or both. (c) the Secretary of the interior within one hundred and eighty days of the enactment of the Lacey Act Amendments of 1981 shall prescribe such requirements and issue

such permits as he may deem necessary for the transportation of wild animals and birds under humane and healthful conditions, and it shall be unlawful for any person, including any importer, knowingly to cause or permit any wild animal or bird to be transported to the United States, or any Territory or district thereof, under inhumane or unhealthful conditions or in violation of such requirements. In any criminal prosecution for violation of this subsection and in any administrative proceeding for the suspension of the issuance of further permits (1) the conditions of any vessel or conveyance, or the enclosures in which wild animals or birds are confined therein, upon its arrival in the United States, or any Territory or district thereof, shall constitute relevant evidence in determining whether the provisions of this subsection have been violated; and (2) the presence in such vessel or conveyance at such time of a substantial ratio of dead, crippled, diseased, or starving wild animals or birds shall be deemed prima facie evidence of the violation of the provisions of this subsection.

b. 18 U.S.C. §43 – Force, violation, and threats involving animal enterprises: (a) offense. Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or foreign commerce (1) for the purpose of damaging or interfering with the operations of an animal enterprise; and (2) in connection with such purpose (A) intentionally damages or causes the loss of any real or personal property used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise; (B) intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or (C) conspires or attempts to do so; shall be punished as provided for in subsection (b). (b) penalties. The punishment for a violation of section (a) or an attempt or conspiracy to violate subsection (a) shall be (1) a fine under this title or imprisonment not more than 1 year, or both, if the offense does not instill in another the reasonable fear of serious bodily injury or death and (A) the offense results in no economic damage or bodily injury; or (B) the offense results in economic damage that does not exceed $10,000; (2) a fine under this title or imprisonment for not more than 5 years, or both, if no bodily injury occurs and (A) the offense results in economic damage exceeding $10,000 but not exceeding $100,000; or (B) the offense instills in another the reasonable fear of serious bodily injury or death; (3) a fine under this title or imprisonment for not more than 10 years, or both, if (A) the offense results in economic damage exceeding $100,000; or (B) the offense results in substantial bodily injury to another individual; (4) a fine under this title or imprisonment for not more than 20

years, or both, if (A) the offense results in serious bodily injury to another individual; or (B) the offense results in economic damage exceeding $1,000,000; and (5) imprisonment for life or for any terms of years, a fine under this title, or both, if the offense results in death of another individual. (c) restitution. An order of restitution under section 3663 or 3663A of this title with respect to a violation of this section may also include restitution (1) for reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense; (2) for the loss of food production or farm income reasonably attributable to the offense; and (3) for any other economic damage, including any losses or costs caused by economic disruption, resulting from the offense. (d) definitions. As used in this section (1) the term "animal enterprise" means (A) a commercial or academic enterprise that uses or sells animals or animal products for profit, food or fiber production, agriculture, education, research, or testing; (B) a zoo, aquarium, animal shelter, pet store, breeder, furrier, circus, or rodeo, or other lawful competitive animal event; or (C) any fair or similar event intended to advance agricultural arts and sciences; (2) the term "course of conduct" means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose; (3) the term "economic damage" (A) means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, the loss of profits, or increased costs resulting from threats, acts of vandalism, property damage, trespass, harassment, or intimidation taken against a person or entity on account of that person's or entity's connection to, relationship with, or transactions with the animal enterprise; but (B) does not include any lawful economic disruption that results from lawful public, governmental, or business reaction to the disclosure of information about an animal enterprise; (4) the term "serious bodily injury" means (A) injury posing a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty and (5) the term "substantial bodily injury" means (A) deep cuts and serious burns or abrasions; (B) short-term or nonobvious disfigurement; (C) fractured or dislocated bones, or torn members of the body; (D) significant physical pain; (E) illness; (F) short-term loss or impairment of the function of a bodily member, organ, or mental faculty; or (G) any other significant injury to the body. (e) rules of construction. Nothing in this section shall be construed (1) to prohibit any expressive conduct protected from legal prohibition by the First Amendment to the Constitution; (2) to create new remedies for interference with activities protected by the free speech or free exercise clauses of the First Amendment to the Constitution, regardless of the point of view expressed, or to limit any existing legal remedies for such interference; or (3) to provide exclusive

criminal penalties or civil remedies with respect to the conduct prohibited by this action, or to preempt state or local laws that may provide such penalties or remedies.

c. 16 U.S.C. §3371 – Definitions: for the purposes of this Act: (a) the term "fish or wildlife" means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof. (b) the term "import" means to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. (c) the term "Indian tribal law: means any regulation of, or other rule of conduct enforceable by, any Indian tribe, band, or group but only to the extent that the regulation or rule applies within Indian country as defined in section 1151 of title 18, United States Code. (d) the terms "law," "treaty," "regulation," and "Indian tribal law" mean laws, treaties, regulations, or Indian tribal laws which regulate the takin, possession, importation, exportation, transportation, or sale of fish or wildlife or plants. (e) the term "person" includes any individual, partnership, association, corporation, trust, or any officer, employee agent, department, or instrumentality of the federal government or of any state or political subdivision thereof, or any other entity subject to the jurisdiction of the United States. (f) plant. (1) in general. The terms "plant" and "plants" mean any wild member of the plant kingdom, including roots, seeds, parts, or products thereof, and including trees from either natural or planted forest stands. (2) exclusions. The terms "plant" ad "plants" exclude (A) common cultivars, except trees, and common food crops; (B) a scientific specimen of plant genetic material that is to be used only for laboratory or field research; and (C) any plant that is to remain planted or to be planted or replanted. (3) exceptions to application of exclusions. The exclusions made by subparagraphs (B) and (C) of paragraph (2) do not apply if the plant is listed (A) in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; (B) as an endangered or threatened species under the Endangered Species Act of 1973; or (C) pursuant to any state law that provides for the conservation of species that are indigenous to the state and are threatened with extinction. (g) prohibited wildlife species. The term "prohibited wildlife species" means any live species of lion, tiger, leopard, cheetah, jaguar, or cougar or any hybrid of such species. (h) the term "Secretary" means, except as otherwise provided in the Act, the Secretary of the Interior or the Secretary of Commerce, as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the provisions of his

Act which pertain to the importation or exportation of plants, the term also means the Secretary of Agriculture. (i) the term "state" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and any other territory, commonwealth, or possession of the United States. (j) taken and taking. (1) taken. The term "taken" means captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged, or removed. (2) taking. The term "taking" means the act by which fish, wildlife, or plants are taken. (k) the term "transport" means to move, convey, carry, or ship by any means, or to deliver or receive for the purpose of movement, conveyance, carriage, or shipment.

d. 16 U.S.C. §3372 – Prohibited acts: (a) offenses other than marking offenses. It is unlawful for any person (1) to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the united States or in violation of any Indian tribal law; (2) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce (A) any fish or wildlife takne, possessed, transported, or sold in violation of any law or regulation of any state or in violation of any foreign law; (B) any plant (i) taken, possessed, transported, or sold in violation of any law or regulation of any state, or any foreign law, that protects plants or that regulates (I) the theft of plants; (II) the taking of plants form a park, forest reserve, or other officially protected area; (III) the taking of plants from an officially designated area; or (IV) the takin of plants without, or contrary to, required authorization; (ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any state or any foreign law; or (iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any state, or under any foreign law, governing the export or transshipment of plants; or (C) any prohibited wildlife species; (3) within the special maritime and territorial jurisdiction of the United States (A) to possess any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any state or in violation of any foreign law or Indian tribal law, or (B) to possess any plant (i) taken, possessed, transported, or sold in violation of any law or regulation of any state, or any foreign law, that protects plants or that regulates (I) the theft of plants; (II) the taking of plants from a park, forest reserve, or other officially protected area; (III) the taking of plants from an officially designated area; or (IV) the taking of plants without, or contrary to, required authorization; (ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any state or any foreign law; or (iii) taken, possessed, transported, or sold in violation of any limitation under any law or

regulation of any state, or under any foreign law, governing the export or transshipment of plants; or (4) to attempt to commit any act described in paragraphs (1) through (3). (b) marking offenses. It is unlawful for any person to import, export, or transport in interstate commerce any container or package containing any fish or wildlife unless the container or package has previously been plainly marked, labeled, or tagged in accordance with the regulations issued pursuant to paragraph (2) of subsection 7(a) of this Act. (c) sale and purchase of guiding and outfitting services and invalid licenses and permits. (1) sale. It is deemed to be a sale of fish or wildlife in violation of this Act for a person for money or other consideration to offer or provide (A) guiding, outfitting, or other services; or (B) a hunting or fishing license or permit; for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife. (2) purchase. It is deemed to be a purchase of fish or wildlife in violation of this Act for a person to obtain for money or other consideration (A) guiding, outfitting, or other services; or (B) a hunting or fishing license or permit; for the illegal taking, acquiring, receiving, transporting, or possessing of fish or wildlife. (d) false labeling offenses. It is unlawful for any person to make or submit any false record, account, or label for, or any false identification of any fish, wildlife, or plant which has been, or is intended to be (1) imported, exported, transported, sold, purchased, or received from any foreign country; or (2) transported in interstate or foreign commerce. (e) nonapplicability of prohibited wildlife species offense. (1) in general. Subsection (a)(2)(C) does not apply to importation, exportation, transportation, sale, receipt, acquisition, or purchase of an animal of a prohibited wildlife species, by a person that, under regulations prescribed under paragraph (3), is described in paragraph (2) with respect to that species. (2) persons described. A person is described in this paragraph, if the person (A) is licensed or registered, and inspected, by the Animal and Plant Health Inspection Service or any other federal agency with respect to that species; (B) is a state college, university, or agency, state-licensed wildlife rehabilitator, or state-licensed veterinarian; (C) is an accredited wildlife sanctuary that cares for prohibited wildlife species and (i) is a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code 1986 and described in sections 501(c)(3) and 17(b)(1)(A)(vi) of such Code; (ii) does not commercially trade in animals listed in section 2(g), including offspring, parts, and byproducts of such animals; (iii) does not propagate animals listed in section 2(g); and (iv) does not allow direct contact between the public and animals; or (D) has custody of the animal solely for the purpose of expeditiously transporting the animal to a person described in this paragraph with respect to the species. (3) regulations. Not later than 180 days after the date of enactment of this subsection, the Secretary, in cooperation with the Director of the Animal and Plant Health Inspection Service, shall

promulgate regulations describing the person described in paragraph (2). (4) state authority. Nothing in this subsection preempts or supersedes the authority of a state to regulate wildlife species within that state. (5) authorization of appropriations. There is authorized to be appropriated to carry out subsection (a)(2)(C) $3,000,000 for each of fiscal years 2004 through 2008. (f) plant declarations. (1) import declaration. Effective 180 days from the date of enactment of this subsection, and except as provided in paragraph (3), it shall be unlawful for any person to import any plant unless the person files upon importation a declaration that contains (A) the scientific name of any plant contained in the importation; (B) a description of (i) the value of the importation; and (ii) the quantity, including the unit of measure, of the plant; and (C) the name of the country from which the plant was taken. (2) declaration relating to plant products. Until the date on which the Secretary promulgates a regulation under paragraph (6), a declaration relating to a plat product shall (A) in the case in which the species of plant used to produce the plant product that is the subject of the importation varies, and the species used to produce the plant product is unknown, contain the name of each species of plant that may have been used to produce the plant product; (B) in the case in which the species of plant used to produce the plant product that is the subject of the importation is commonly taken from more than one country, and the country from which the plant was taken and used to produce the plant product is unknown, contain the name of each country from which the plant may have been taken and (C) in the case in which a paper or paperboard plant product includes recycled plant product, contain the average percent recycled content without regard for the species or country of origin of the recycled plant product, in addition to the information for the non-recycled plant content otherwise required by this subsection. (3) exclusions. Paragraphs (1) and (2) shall not apply to plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported. (4) review. Not later than two years after the date of enactment of this subsection, the Secretary shall review the implementation of each requirement imposed by paragraphs (1) and (2) and the effect of the exclusion provided by paragraph (3). In conducting the review, the Secretary shall provide public notice and an opportunity for comment. (5) report. Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary shall submit to the appropriate committees of Congress a report containing (A) an evaluation of (i) the effectiveness of each type of information required under paragraphs (1) and (2) in assisting enforcement of this section; and (ii) the potential to harmonize each requirement imposed by paragraphs (1) and (2) with other applicable import regulations in existence as of the date of the report; (B) recommendations for such legislation as the

Secretary determines to be appropriate to assist in the identification of plants that are imported into the United States in violation of this section; and (C) an analysis of the effect of subsection (a) and this subsection on (i) the cost of legal plant imports; and (ii) the extent and methodology of illegal logging practices and trafficking. (6) promulgation of regulations. Not later than 180 days after the date on which the Secretary completes the review under paragraph (4), the Secretary may promulgate regulations (A) to limit the applicability of any requirement imposed by paragraph (2) to specific pant products; (B) to make any other necessary modification to any requirement imposed by paragraph (2), as determined by the Secretary based on the review; and (C) to limit the scope of the exclusion provided by paragraph (3), if the limitations in scope are warranted as a result of the review.

e. 16 U.S.C. §3373 – Penalties and sanctions: (a) civil penalties. (1) any person who engages in conduct prohibited by any provision of this Act and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty, or regulation, and any person who knowingly violates subsection (d) or (f) of section 3, may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation: provided, that when the violation involves fish or wildlife or plants with a market value of less than $350, and involves only the transportation, acquisition, or receipt of fish or wildlife or plants taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any state, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, o regulation, or $10,000, whichever is less. (2) any person who violates subsection (b) or (f) of section 3, except as provided in paragraph (1) may be assessed a civil penalty by the Secretary of not more than $250. (3) for purposes of paragraphs (1) and (2), any reference to a provision of this Act or to a section of this Act shall be treated as including any regulation issued to carry out any such provision or section. (4) no civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which a person may have taken or been in possession of the said dish or wildlife or plants. (5) any civil penalty assessed under this subsection may be remitted or mitigated by the Secretary. (6) in determining the amount of any penalty assessed pursuant to paragraphs (1) and (2), the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed, and with respect to the violator, the degree of culpability, ability to pay, and

such other matters as justice may require. (b) hearings. Hearings held during proceedings for the assessment of civil penalties shall be conducted in accordance with section 554 of title 5, United States Code. The administrative law judge may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (c) review of civil penalty. Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate District Court of the United States by filing a complaint in such court within 30 days after the date of such order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General, and the appropriate United States attorney. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2122 of title 28, United States Code. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo. (d) criminal penalties. (1) any person who (A) knowingly imports or exports any fish or wildlife or plants in violation of any provision of this Act, or (B) violates any provision of this Act by knowingly engaging in conduct that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase, fish or wildlife or plants with a market value in excess of $350, knowingly that the fish or wildlife or plants were taken, possessed, transported, or sold in violation of, or in a manner unlawful under, any underlying law, treaty or regulation, shall be fined not more than $20,000, or imprisoned for not more than five years, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in the district in which the defendant

may have taken or been in possession of the said fish or wildlife or plants. (2) any person who knowingly engages in conduct prohibited by any provision of this Act and in the exercise of due care should know that the fish or wildlife or plants were taken, possessed, transported, or sold n violation of, or in a manner unlawful under, any underlying law, treaty or regulation shall be fined not more than $10,000 or imprisoned for not more than one year, or both. Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the district where the violation first occurred, but also in any district in which the defendant may have taken or been in possession of the said fish or wildlife or plants. (3) any person who knowingly violates subsection (d) or (f) of section 3 (A) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both, if the offense involves (i) the importation or exportation of fish or wildlife or plant; or (ii) the sale or purchase, offer of sale or purchase, or commission of an act with intent to sell or purchase fish or wildlife or plants with a market value greater than $350; and (B) shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both, if the offense does not involve conduct described in subparagraph (A). (e) permit sanctions. The Secretary may also suspend, modify, or cancel any federal hunting or fishing license, permit, or stamp, or any license or permit authorizing a person to import or export fish or wildlife or plants, or to operate a quarantine station or rescue center for imported wildlife or plants, issued to any person who is convicted of a criminal violation of any provision of this Act or any regulation issued hereunder. The Secretary shall not be liable for the payments of any compensation, reimbursement, or damages in connection with the modification, suspension, or revocation of any licenses, permits, stamps, or other agreements pursuant to this section.

f. The Lacey Act of 1900 addresses illegal wildlife trade to protect species at risk and bars importing species found to be injurious to the United States. The portion of the lacey Act known as the injurious species provision is codified in the criminal code at 18 U.S.C. §42. The injurious species provision bans import and shipment of listed living creatures and their eggs. Under 18 U.S.C. §42(a)(1), the Secretary of the Interior and the Secretary of the Treasury may exclude the importation and shipment of three major categories of non-native animals: vertebrates, crustaceans, and mollusks. The list of just these three taxonomic categories means that other abundant and diverse groups of animals, such as insects and spiders, are not covered in the act's injurious species provisions. Moreover, grounds for excluding such imports or shipments go beyond the traditional harm to agriculture, horticulture, and forestry interest to include harm to "wildlife or the wildlife resources of the United States." The act's broad definition of harm could mean that nearly any non-native vertebrate, crustacean, or mollusk could be considered for exclusion, because most

and perhaps all ecologists would hold that the proliferation of any non-native species in an ecosystem risks harm to the nation's wildlife or wildlife resources. The list of banned species may be amended either by statute or by regulation issued by FWS. Permits may be issued to import banned species for scientific, zoological, educational, or medical purposes. Under the injurious species provision, it is also illegal to import or ship between states any species listed under the act. A violation is a Class B misdemeanor, punishable by no more than six months in jail and/or up to a $5,000 fine for an individual and $10,000 for an organization. The species listed as injurious wildlife under the Lacey Act is available at the Department of Interior's U.S. Fish and Wildlife Service website. Generally, laws that list banned species are known as "black list" laws. "white list" laws ban importing al species except those on an approved list. For decades, the Lacey Act was primarily a white list law – prohibiting importing "any foreign wild animal or bird" except under special permit, as well as originally banning all imports of four species: mongoose, fruit bats, sparrows, and starlings. The 1949 amendments of the Lacey Act transformed the injurious species provision into a purely black list law, such that only listed species were banned. As a result of the black list approach, a species that might merit exclusion is not covered under the Lacey Act until a potentially lengthy review process is completed, thus limiting the usefulness of this statute when a new potential invader is first discovered. Because the Lacey Act relies on a black list, it implicitly focuses on those species which are knowingly moved between states or nations, or at least travel on pathways already known to present a high risk of transporting unwanted plants or animals. If someone enters the United States, or crosses between states, unaware that the plant or animal has stowed away in a hubcap, on a wheel well, or beneath a shoe, and that plant or animal furthermore is not already on a black list, the injurious species provision of the Lacey Act has little or no bearing on the act. Another provision of the statute is not discussed in detail here but also has implications for invasive species by making it illegal to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish, wildlife, or plant taken, possessed, transported, or sold in violation of any federal, tribal, state, or foreign law.

13. Title 16, Chapter 67 – National Invasive Species Act:

    a. 16 U.S.C. §4701 – Findings and purposes: (a) findings. The Congress finds that (1) the discharge of untreated water in the ballast tanks of vessels and through other means results in unintentional introductions of nonindigenous species to fresh, brackish, and saltwater environments; (2) when environmental conditions are favorable, nonindigenous species become established, may compete with or prey upon native species of

plants, fish, and wildlife, may carry diseases or parasites that affect native species, and may disrupt the aquatic environment and economy of affected nearshore areas; (3) the zebra mussel was unintentionally introduced into the Great Lakes and has infested (A) waters south of the Great Lakes, into a good portion of the Mississippi River drainage; (B) waters west of the Great Lakes, into the Arkansas River in Oklahoma' and (C) waters east of the Great Lakes, into the Hudson River and Lake Champlain; (4) the potential economic disruption to communities affected by the zebra mussel due to its colonization of water pipes, boat hulls and other hard surfaces has been estimated at $5,000,000,000 by the year 2000, and the potential disruption to the diversity and abundance of native fish and other species by the zebra mussel and ruffe, round goby, and other nonindigenous species could be severe; (5) the zebra mussel was discovered on Lake Champlain during 1993 and the opportunity exists to act quickly to establish zebra mussel controls before Lake Champlain is further infested and management costs escalate; (6) in 1992, the zebra mussel was discovered at the northernmost reaches of the Chesapeake Bay watershed; (7) the zebra mussel poses an imminent risk of invasion in the main waters of the Chesapeake Bay; (8) since the Chesapeake Bay is the largest recipient of foreign ballast water on the East Coast, there is a risk of further invasions of other nonindigenous species; (9) the zebra mussel is only one example of thousands of nonindigenous species that have become established in waters of the United States and may be causing economic and ecological degradation with respect to the natural resources of waters of the United States; (10) since their introduction in the early 1980's in ballast water discharges, ruffe (A) have caused severe declines in populations of other species of fish in Duluth Harbor (in Minnesota and Wisconsin); (B) have spread to Lake Huron; and (C) are likely to spread quickly to most other waters in North America if action is not taken promptly to control their spread; (11) examples of nonindigenous species that, as of the date of enactment of the National Invasive Species Act of 1996, infest coastal waters of the United States and that have the potential for causing adverse economic and ecological effects include (A) the mitten crab (Eriocher sinensis) that has become established on the Pacific Coast; (B) the green crab (Carcinus maenas) that has become established in the coastal waters of the Atlantic Ocean; (C) the brown mussel (Perna perna) that has become established along the Gulf of Mexico; and (D) certain shellfish pathogens; (12) many aquatic nuisance vegetation species, such as Eurasian watermilfoil, hydrilla, water hyacinth, and water chestnut, have been introduced to waters of the United States from other parts of the world causing or having a potential to cause adverse environmental, ecological, and economic effects; (13) if preventive management measures are not taken nationwide to prevent and control unintentionally introduced nonindigenous aquatic species in a

timely manner, further introductions and infestations of species that are as destructive as, or more destructive than, the zebra mussel or the ruffe infestations may occur; (14) once introduced into waters of the United States, aquatic nuisance species are unintentionally transported and introduced into inland lakes and rivers by recreational boaters, commercial barge traffic, and a variety of other pathways; and (15) resolving the problems associated with aquatic nuisance species will require the participation and cooperation of the federal government and state governments, and investment in the development of prevention technologies. (b) Purposes. The purposes of this Act are (1) to prevent unintentional introduction and dispersal of nonindigenous species into waters of the waters of the United States through ballast water management and other requirements; (2) to coordinate federally conducted, funded or authorized research, prevention, control, information dissemination and other activities regarding the zebra mussel and other aquatic nuisance species; (3) to develop and carry out environmentally sound control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange; (4) to understand and minimize economic and ecological impacts of nonindigenous aquatic nuisance species that become established, including the zebra mussel; and (5) to establish a program of research and technology development and assistance to states in the management and removal of zebra mussels.

b. 16 U.S.C. §4702 – Definitions: as used in this Act, the term (1) "aquatic nuisance species" means a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters; (2) "assistant secretary" means the Assistant Secretary of the Army (Civil Works); (3) "ballast water" means any water and associate sediments used to manipulate the trim and stability of a vessel; (4) "director" means the Director of the United States Fish and Wildlife Service; (5) "exclusive economic zone" means the Exclusive Economic Zone of the United States established by Proclamation Number 5030, dated March 10, 1983, and the equivalent zone of Canada; (6) "environmentally sound" methods, efforts, actions or programs means methods, efforts, actions or programs to prevent introductions or control infestations of aquatic nuisance species that minimize adverse impacts to the structure and function of an ecosystem and adverse effects on non-target organisms and ecosystems and emphasize integrated pest management techniques and nonchemical measures; (7) "Great Lakes: means Lake Ontario, Lake Erie, Lake Huron, Lake Michigan, Lake Superior, and the connecting channels, and includes all other bodies of water within the drainage basin of such lakes and connecting channels; (8) "Great Lakes region" means the 8 states that

border on the Great Lakes; (9) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; (10) "interstate organization" means an entity (A) established by (i) an interstate compact that is approved by Congress; (ii) a federal statute; or (iii) a treaty or other international agreement with respect to which the United States is a party; and (B)(i) that represents 2 or more (I) states or political subdivisions thereof; or (II) Indian tribes; or (ii) that represents (I) 1 or more states or political subdivisions thereof; and (II) 1 or more Indian tribes; or (iii) that represents the federal government and 1 or more foreign governments; and (C) has jurisdiction over, serves as forum for coordinating, or otherwise has a role or responsibility for the management of, any land or other natural resource; (11) "nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its historic range including any such organism transferred from one country into another; (12) "secretary" means the Secretary of the department in which the Coast Guard is operating; (13) "task force" means the Aquatic Nuisance Species Task Force established under section 1201 of this Act; (14) "territorial sea" means the belt of the sea measured from the baseline of the United States determined in accordance with international law, as set forth in Presidential Proclamation Number 5928, dated December 27, 1988; (15) "under secretary" means the Under Secretary of Commerce for Oceans and Atmosphere; (16) "waters of the United States" means the navigable waters and the territorial sea of the United States; and (17) "unintentional introduction" means an introduction of nonindigenous species that occurs as the result of activities other than the purposeful or intentional introduction of the species involved, such as the transport of nonindigenous species in ballast or in water used to transport fish, mollusks or crustaceans for aquaculture or other purposes.

c. The National Invasive Species Act of 1996 amended NANPCA to create a national ballast management program to prevent the introduction and spread of nonindigenous species into US waters. The program was modeled after the Great Lakes ballast water management program established in NANPCA. NISA cites concerns about several invasive aquatic species, including the zebra mussel as well as the Eurasian ruffe, mitten crab, green crab, brown mussel, shellfish pathogens, and also several vegetation species, such as Eurasian watermilfoil, hydrilla, anchored water hyacinth, and water hyacinth. In addition, NISA encouraged negotiations with foreign governments to develop and implement an international program for preventing the introduction and spread of invasive species in ballast water. NISA required the Coast

Guard to report to Congress on the effectiveness of existing shoreside ballast water facilities used by crude oil tankers in the coastal trade off Alaska, as well as studies of Lake Champlain, the Chesapeake Bay, San Francisco Bay, Honolulu Harbor, the Columbia River system, and other estuaries and waters of national significance. NISA established civil and criminal penalties for certain violations, ad also authorized funding for research on aquatic nuisance species prevention and control in the Chesapeake Bay, Gulf of Mexico, Pacific Coast, Atlantic Coast, and San Francisco Bay-Delta Estuary.

14. Title 42, Chapter 55 – National Environmental Policy Act:

    a. 42 U.S.C. §4321 – Congressional declaration of purpose: the purposes of this Act are: to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.
    b. 42 U.S.C. §4331 – Congressional declaration of national environmental policy: (a) the Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularity the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the federal government, in cooperation with state and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the federal government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, and programs, and resources to the end that the nation may (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings; (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; (4) 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; (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources. (c) the Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

c. The National Environmental Policy Act of 1970 established a national policy to protect the environment. Federal agencies are required to comply with NEPA and consider the environmental impacts, including invasive species, of an agency's actions. NEPA has two primary aims – to require federal agencies to consider the environmental effects of their actions before proceeding with them; and to involve the public in the decision-making process. To ensure that environmental impacts are integrated into that process, federal agencies must prepare an environmental impact statement for actions "significantly" affecting the quality of the human environment. NEPA applies only to "federal actions," defined broadly to include projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies. Accordingly, programs or projects intended to control invasive species or actions that may result in the spread or introduction of non-native invasive species (among a range of other potential impacts) may be subject to NEPA. Such impacts may occur as a direct result of the action or be incidental to the action. NEPA does not prohibit an agency from moving forward with a program or project that may introduce or spread non-native invasive species. Nor does NEPA require an agency to implement measures to control such impacts. Within the framework of completing the NEPA process, an agency would identify any environmental requirements applicable to a proposed action, including any measures that must be taken to assure or demonstrate compliance with those requirements. To demonstrate compliance with those requirements, the NEPA analysis must document any outside agency review or consultation regarding the proposal, and identify any measure necessary to control, minimize, or mitigate regulated impacts.

15. Title 16, Chapter 67 – Nonindigenous Aquatic Nuisance Prevention and Control Act:

    a. 16 U.S.C. §4701 – Findings and purposes: (a) findings. The Congress finds that (1) the discharge of untreated water in the ballast tanks of vessels and through other means results in unintentional introductions of nonindigenous species to fresh, brackish, and saltwater environments; (2)

when environmental conditions are favorable, nonindigenous species become established, may compete with or prey upon native species of plants, fish, and wildlife, may carry diseases or parasites that affect native species, and may disrupt the aquatic environment and economy of affected nearshore areas; (3) the zebra mussel was unintentionally introduced into the Great Lakes and has infested (A) waters south of the Great Lakes, into a good portion of the Mississippi River drainage; (B) waters west of the Great Lakes, into the Arkansas River in Oklahoma' and (C) waters east of the Great Lakes, into the Hudson River and Lake Champlain; (4) the potential economic disruption to communities affected by the zebra mussel due to its colonization of water pipes, boat hulls and other hard surfaces has been estimated at $5,000,000,000 by the year 2000, and the potential disruption to the diversity and abundance of native fish and other species by the zebra mussel and ruffe, round goby, and other nonindigenous species could be severe; (5) the zebra mussel was discovered on Lake Champlain during 1993 and the opportunity exists to act quickly to establish zebra mussel controls before Lake Champlain is further infested and management costs escalate; (6) in 1992, the zebra mussel was discovered at the northernmost reaches of the Chesapeake Bay watershed; (7) the zebra mussel poses an imminent risk of invasion in the main waters of the Chesapeake Bay; (8) since the Chesapeake Bay is the largest recipient of foreign ballast water on the East Coast, there is a risk of further invasions of other nonindigenous species; (9) the zebra mussel is only one example of thousands of nonindigenous species that have become established in waters of the United States and may be causing economic and ecological degradation with respect to the natural resources of waters of the United States; (10) since their introduction in the early 1980's in ballast water discharges, ruffe (A) have caused severe declines in populations of other species of fish in Duluth Harbor (in Minnesota and Wisconsin); (B) have spread to Lake Huron; and (C) are likely to spread quickly to most other waters in North America if action is not taken promptly to control their spread; (11) examples of nonindigenous species that, as of the date of enactment of the National Invasive Species Act of 1996, infest coastal waters of the United States and that have the potential for causing adverse economic and ecological effects include (A) the mitten crab (Eriocher sinensis) that has become established on the Pacific Coast; (B) the green crab (Carcinus maenas) that has become established in the coastal waters of the Atlantic Ocean; (C) the brown mussel (Perna perna) that has become established along the Gulf of Mexico; and (D) certain shellfish pathogens; (12) many aquatic nuisance vegetation species, such as Eurasian watermilfoil, hydrilla, water hyacinth, and water chestnut, have been introduced to waters of the United States from other parts of the world causing or having a potential to cause adverse environmental, ecological, and economic effects; (13) if

preventive management measures are not taken nationwide to prevent and control unintentionally introduced nonindigenous aquatic species in a timely manner, further introductions and infestations of species that are as destructive as, or more destructive than, the zebra mussel or the ruffe infestations may occur; (14) once introduced into waters of the United States, aquatic nuisance species are unintentionally transported and introduced into inland lakes and rivers by recreational boaters, commercial barge traffic, and a variety of other pathways; and (15) resolving the problems associated with aquatic nuisance species will require the participation and cooperation of the federal government and state governments, and investment in the development of prevention technologies. (b) Purposes. The purposes of this Act are (1) to prevent unintentional introduction and dispersal of nonindigenous species into waters of the waters of the United States through ballast water management and other requirements; (2) to coordinate federally conducted, funded or authorized research, prevention, control, information dissemination and other activities regarding the zebra mussel and other aquatic nuisance species; (3) to develop and carry out environmentally sound control methods to prevent, monitor and control unintentional introductions of nonindigenous species from pathways other than ballast water exchange; (4) to understand and minimize economic and ecological impacts of nonindigenous aquatic nuisance species that become established, including the zebra mussel; and (5) to establish a program of research and technology development and assistance to states in the management and removal of zebra mussels.

b. 16 U.S.C. §4702 – Definitions: as used in this Act, the term (1) "aquatic nuisance species" means a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural or recreational activities dependent on such waters; (2) "assistant secretary" means the Assistant Secretary of the Army (Civil Works); (3) "ballast water" means any water and associate sediments used to manipulate the trim and stability of a vessel; (4) "director" means the Director of the United States Fish and Wildlife Service; (5) "exclusive economic zone" means the Exclusive Economic Zone of the United States established by Proclamation Number 5030, dated March 10, 1983, and the equivalent zone of Canada; (6) "environmentally sound" methods, efforts, actions or programs means methods, efforts, actions or programs to prevent introductions or control infestations of aquatic nuisance species that minimize adverse impacts to the structure and function of an ecosystem and adverse effects on non-target organisms and ecosystems and emphasize integrated pest management techniques and nonchemical measures; (7) "Great Lakes: means Lake Ontario, Lake Erie, Lake Huron, Lake Michigan, Lake Superior, and the connecting channels, and includes

all other bodies of water within the drainage basin of such lakes and connecting channels; (8) "Great Lakes region" means the 8 states that border on the Great Lakes; (9) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional corporation that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; (10) "interstate organization" means an entity (A) established by (i) an interstate compact that is approved by Congress; (ii) a federal statute; or (iii) a treaty or other international agreement with respect to which the United States is a party; and (B)(i) that represents 2 or more (I) states or political subdivisions thereof; or (II) Indian tribes; or (ii) that represents (I) 1 or more states or political subdivisions thereof; and (II) 1 or more Indian tribes; or (iii) that represents the federal government and 1 or more foreign governments; and (C) has jurisdiction over, serves as forum for coordinating, or otherwise has a role or responsibility for the management of, any land or other natural resource; (11) "nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its historic range including any such organism transferred from one country into another; (12) "secretary" means the Secretary of the department in which the Coast Guard is operating; (13) "task force" means the Aquatic Nuisance Species Task Force established under section 1201 of this Act; (14) "territorial sea" means the belt of the sea measured from the baseline of the United States determined in accordance with international law, as set forth in Presidential Proclamation Number 5928, dated December 27, 1988; (15) "under secretary" means the Under Secretary of Commerce for Oceans and Atmosphere; (16) "waters of the United States" means the navigable waters and the territorial sea of the United States; and (17) "unintentional introduction" means an introduction of nonindigenous species that occurs as the result of activities other than the purposeful or intentional introduction of the species involved, such as the transport of nonindigenous species in ballast or in water used to transport fish, mollusks or crustaceans for aquaculture or other purposes.

c. The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 established a federal program to prevent the introduction or, and to control the spread of, unintentionally introduced aquatic nuisance species, including zebra mussels, and also the brown tree snake. NANPCA mandated a Great Lakes ballast water management program to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels and established civil and criminal penalties for violating these requirements. Under the program, all ships entering U.S. waters are directed to undertake high seas ballast exchange or alternative measure pre-approved by the Coast Guard as

equally or more effective. NANPCA established the Aquatic Nuisance Species Task Force, co-chaired by FWS and the National Oceanic and Atmospheric Administration (NOAA), which is tasked with implementing NANPCA. NANPCA is the major legal authority for NOAA activities, and also covers some FWS activities. Provisions in NANPCA primarily address prevention, control, and management, and research of invasive species, but not rapid response and restoration activities. NANPCA authorizes state governors to submit comprehensive management plans to ANSTF that identify areas or activities that need technical and financial assistance. NANPCA encourages the Secretary of Transportation, through the International Maritime Organization, to negotiate with foreign countries on the prevention and control of the unintentional introduction of aquatic nuisance species. NANPCA further directs the U.S. Army Corps of Engineers to develop a program of research and technology for the environmentally sound control of zebra mussels in and around public facilities, and make information available on these control methods. NANPCA also reauthorized the National Seas Grant College Program Act. Administered by NOAA, the Sea Grant program conducts research, outreach, and education to address marine and coastal systems focusing among other things on aquatic invasive species particularly in the Great Lakes. The program also supports research to demonstrate ballast water technology and marine engineering advances to combat aquatic nuisance species under two efforts – Great Lakes Environmental Research Lab and the Cooperative Institute for Limnology and Ecosystems Research at Michigan State University. Additional information is provided in the section on "National Oceanic and Atmospheric Administration."

16. Title 7, Chapter 104 – Noxious Weed Control and Eradication Act:

    a. 7 U.S.C. §7781 – Definitions: (1) Indian tribe. The term "Indian tribe" has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act. (2) Weed management entity. The term "weed management entity" means an entity that (A) is recognized by the state in which it is established; (B) is established for the purpose of or has demonstrable expertise and significant experience in controlling or eradicating noxious weeds and increasing public knowledge and education concerning the need to control or eradicate noxious weeds; (C) may be multijurisdictional and multidisciplinary in nature; (D) may include representatives from federal, state, local, or, where applicable, Indian Tribe governments, private organizations, individuals, and state-recognized conservation districts or state-recognized weed management districts; and (E) has existing authority to perform land management activities on federal land if the proposed project or activity is on federal lands. (3) Federal lands. The term "federal lands" means those lands

owned and managed by the United States Forest Service or the Bureau of Land Management.

b. 7 U.S.C. §7782 – Establishment of program: (a) in general. The Secretary shall establish a program to provide financial and technical assistance to control or eradicate noxious weeds. (b) grants. Subject to the availability of appropriations under section 457(a), the Secretary shall make grants under section 454 to weed management entities for the control or eradication of noxious weeds. (c) agreements. Subject to the availability of appropriations under section 457(b), the Secretary shall enter into agreements under section 455 with weed management entities to provide financial and technical assistance for the control or eradication of noxious weeds.

c. 7 U.S.C. §7783 – Grants to weed management entities: (a) consultation and consent. In carrying out a grant under this subtitle, the weed management entity and the Secretary shall (1) if the activities funded under the grant will take place on federal land, consult with the heads of the federal agencies having jurisdiction over the land; or (2) obtain the written consent of the non-federal landowner. (b) grant considerations. In determining the amount of a grant to a weed management entity, the Secretary shall consider (1) the severity or potential severity of the noxious weed problem; (2) the extent to which the federal funds will be used to leverage non-federal funds to address the noxious weed problem; (3) the extent to which the weed management entity has made progress in addressing the noxious weeds problem; and (4) other factors that the Secretary determines to be relevant. (c) use of grant funds; cost shares. (1) use of grants. A weed management entity that receives a grant under subsection (a) shall use the grant funds to carry out a project authorized by subsection (d) for the control or eradication of a noxious weed. (2) cost shares. (A) federal cost share. The federal share of the cost of carrying out an authorized project under this section exclusively on non-federal land shall not exceed 50 percent. (B) form of non-federal cost share. The non-federal share of the cost of carrying out an authorized project under this section may be provided in cash or in kind. (d) authorized projects. Projects funded by grants under this section include the following: (1) education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds. (2) other activities to control or eradicate noxious weeds or promote control or eradication of noxious weeds. (e) application. To be eligible to receive assistance under this section, a weed management entity shall prepare and submit to the Secretary an application containing such information as the Secretary shall by regulation require. (f) selection of projects. Projects funded under this section shall be selected by the Secretary on a competitive basis, taking

into consideration the following: (1) the severity of the noxious weed problem or potential problem addressed by the project. (2) the likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems. (3) the extent to which the federal funds will leverage non-federal funds to address the noxious weed problem addressed by the project. (4) the extent to which the program will improve the overall capacity of the United States to address noxious weed control and management. (5) the extent to which the weed management entity has made progress in addressing noxious weed problems. (6) the extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds. (7) the extent to which the project will reduce the total population of noxious weeds. (8) the extent to which the project promotes cooperation and participation between states that have common interest in controlling ad eradicating noxious weeds. (9) other factors that the Secretary determines to be relevant. (g) regional, state, and local involvement. In determining which projects receive funding under this section, the Secretary shall, to the maximum extent practicable (1) rely on technical and merit reviews provided by regional, state, or local weed management experts and (2) give priority to projects that maximize the involvement of state, local and, where applicable, Indian Tribe governments. (h) special consideration. The Secretary shall give special consideration to states with approved weed management entities established by Indian tribes and may provide an additional allocating to a state to meet the particular needs and projects that the weed management entity plans to address.

d. 7 U.S.C. §7784 – Agreement: (a) consultation and consent. In carrying out an agreement under this section, the Secretary shall (1) if the activities funded under the agreement will take place on federal land, consult with the heads of the federal agencies having jurisdiction over the land; or (2) obtain the written consent of the non-federal landowner. (b) application of other laws. The Secretary may enter into agreements under this section with weed management entities notwithstanding sections 6301 through 6309 of title 31, United States Code, and other law relating to the procurement of goods and services for the federal government. (c) eligible activities. Activities carried out under an agreement under this section may include the following: (1) education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds. (2) other activities to control or eradicate noxious weeds. (d) selection of activities. Activities funded under this section shall be selected by the Secretary taking into consideration the following: (1) the severity of the noxious weeds problem or potential problem addressed by the activities. (2) the likelihood that the activity will prevent or resolve the problem, or increase

knowledge about resolving similar problems. (3) the extent to which the activity will provide a comprehensive approach to the control or eradication of noxious weeds. (4) the extent to which the program will improve the overall capacity of the United States to address noxious weed control and management. (5) the extent to which the project promotes cooperation and participation between states that have common interests in controlling and eradicating noxious weeds. (6) other factors that the Secretary determines to be relevant. (e) regional, state, and local involvement. In determining which activities receive funding under this section, the Secretary shall, to the maximum extent practicable (1) rely on technical and merit reviews provided by regional, state, or local weed management experts; and (2) give priority to activities that maximize the involvement of states, local, and, where applicable, representatives of Indian Tribe governments. (f) rapid response program. At the request of the Governor of a state, the Secretary may enter into a cooperative agreement with a weed management entity in that state to enable rapid response to outbreaks of noxious weeds at a stage which rapid eradication and control is possible and to ensure eradication or immediate control of the noxious weeds if (1) there is a demonstrated need for the assistance; (2) the noxious weed is considered to be a significant threat to native fish, wildlife, or their habitats, as determined by the Secretary; (3) the economic impact of delaying action is considered by the Secretary to be substantial; and (4) the proposed response to such threat (A) is technically feasible; (B) economically responsible; and (C) minimizes adverse impacts to the structure and function of an ecosystem and adverse effects on nontarget species and ecosystems.

e. 7 U.S.C. §7785 – Relationship to other programs: funds under this Act are intended to supplement, not replace, assistance available to weed management entities, areas, and districts for control or eradication of noxious weeds on federal lands and non-federal lands. The provision of funds to a weed management entity under this Act shall have no effect on the amount of any payment received by a county from the federal government under chapter 69 of title 31, United States Code.
f. 7 U.S.C. § 7786 – Authorization of appropriations: (a) grants. To carry out section 454, there are authorized to be appropriated to the Secretary $7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs. (b) agreements. To carry out section 455 of this subtitle, there are authorized to be appropriated to the Secretary $7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of federal agencies.
g. The Noxious Weed Control and Eradication Act of 2004 amended the Plant Protection Act to direct USDA to establish a grant program to

provide financial and technical assistance to weed management entities to control or eradicate harmful, invasive weeds on public and private lands. The law also authorizes USDA to enter into cooperative agreements with weed management entities to fund weed eradication activities, and enable rapid response to outbreaks of noxious weeds. The law is administered by USDA's APHIS.

17. Title 16, Chapter 3 – Organic Administration Act:

    a. 16 U.S.C. §551 – Protection on national forests; rules and regulations: the Secretary of the Interior shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reservations which may have been set aside or which may be hereafter set aside under the said Act of March third, eighteen hundred and ninety-one, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of the provisions of this Act or such rules and regulations shall be punished by a fine or not more than $500 or imprisonment for not more than six months, or both. Any person charged with the violation of such rules and regulations may be tried and sentenced by any United States commissioner specially designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in title 18, United States Code, section 3401, subsection (b), (c), (d), and (e) as amended.
    b. The Organic Administration Act of 1897 provides broad authority to the U.S. Forest Service within the U.S. Department of Agriculture to protect National Forest System lands form a range of threats, including invasive species. In addition, under the Multiple-Use Sustained-Yield Act of 1960, USDA manages U.S. national forests for multiple uses – such as outdoor recreation, range, timber, watershed, and wildlife and fish purposes.

18. Title 7, Chapter 104 – Plant Protection Act:

    a. 7 U.S.C. §7701 – Findings: Congress finds that (1) the detection, control, eradication, suppression, prevention, or retardation of the spread of plant pests or noxious weeds is necessary for the protection of the agriculture, environment, and economy of the United States; (2) biological control is often a desirable, low-risk means of ridding crops and other plants of plant pests and noxious weeds, and its use should be facilitated by the Department of Agriculture, other federal agencies, and states whenever feasible; (3) it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other

commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds; (4) decisions affecting imports, exports, and interstate movement of products regulated under this title shall be based on sound science; (5) the smooth movement of enterable plants, plant products, biological control organisms, or other articles into, out of, or within the United States is vital to the United States' economy and should be facilitated to the extent possible; (6) export markets could be severely impacted by the introduction or spread of plant pests or noxious weeds into or within the United States; (7) the unregulated movement of plant pests, noxious weeds, plants, certain biological control organisms, plant products, and articles capable of harboring pant pests or noxious weeds could present an unacceptable risk of introducing or spreading plant pests or noxious weeds; (8) the existence on any premises in the United States of a plant pest or noxious weed new to or not known to be widely prevalent in or distributed within and throughout the United States could constitute a threat to crops and other plants or plat products of the united States and burden interstate commerce or foreign commerce; and (9) all plant pests, noxious weeds, plants, plant products, articles capable of harboring plant pests of noxious weeds regulated under this title are in or affect interstate commerce of foreign commerce.

b. 7 U.S.C. §7702 – Definitions: (1) article. The term "article" means any material or tangible object that could harbor plant pests or noxious weeds. (2) biological control organism. The term "biological control organism" means any enemy, antagonist, or competitor used to control a plant pest or noxious weed. (3) enter and entry. The terms "enter" and "entry" mea to move into, or the act of movement into, the commerce of the United States. (4) export and exportation. The terms "export" and "exportation" mean to move from, or the act of movement from, the United States to any place outside the United States. (5) import and importation. The terms "import" and "importation" mean to move into, or the act of movement into, the territorial limits of the United States. (6) interstate. The term "interstate" means (A) from one state into or through any other state; or (B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States. (7) interstate commerce. The term "interstate commerce" means trade, traffic, or other commerce (A) between a place in a state and a point in another state, or between points within the same state but through any place outside that state; or (B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States. (8) means of conveyance. The term "means of conveyance" means any personal property used for or intended for use for the movement of any other personal property used for or intended for use

for the movement of any other personal property. (9) move and related terms. The terms “move,” “moving,” and “movement” mean (A) to carry, enter, import, mail, ship, or transport; (B) to aid, abet, cause, or induce the carrying, entering, importing, mailing, shipping, or transporting; (C) to offer to carry, enter, import, mail, ship, or transport; (D) to receive to carry, enter, import, mail, ship, or transport; (E) to release into the environment; or (F) to allow any of the activities described in a preceding subparagraph. (10) noxious weed. The term “noxious weed” means any plant of plant product that can directly or indirectly injure or cause damage to crops, livestock, poultry, or other interest of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment. (11) permit. The term “permit” means a written or oral authorization, including by electronic methods, by the Secretary to move plants, plant products, biological control organisms, plant pests, noxious weeds, or articles under conditions prescribed by the Secretary. (12) person. The term “person” means any individual, partnership, corporation, association, joint venture, or other legal entity. (13) plant. The term “plant” means any plant for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed. (14) plant pest. The term “plant pest” means any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: (A) a protozoan. (B) a nonhuman animal. (C) a parasitic plant. (D) a bacterium. (E) a fungus. (F) a virus or viroid. (G) an infectious agent or other pathogen. (H) any article similar to or allied with any of the articles specific in the preceding subparagraphs. (15) plant product. The term “plant product” means (A) any flower, fruit, vegetable, root, blub, seed, or other plant part that is not included in the definition of plant; or (B) any manufactured or processed plant or plant part. (16) secretary. The term “Secretary” means the Secretary of Agriculture. (17) state. The term “state” means any of the several states of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States. (18) systems approach. For the purposes of section 412(e), the term “systems approach” means a defined set of phytosanitary procedures, at least two of which have an independent effect in mitigating pest risk associated with the movement of commodities. (19) this title. Except when used in this section, the term “this title” includes any regulation or order issued by the Secretary under the authority of this title. (20) United States. The term “United States” means all of the states.

c. 7 U.S.C. §7711 – regulation of movement of plant pests: (a) prohibition of unauthorized movement of plant pests. Except as provided in subsection (c), no person shall import, enter, export, prove in interstates commerce

any plant pests, unless the importation, entry, exportation, or movement is authorized under general or specific permit and is in accordance with such regulations as the Secretary may issue to prevent the introduction of plant pests into the United States or the dissemination of plant pests within the United States. (b) requirements for processes. The Secretary shall ensure that the processes used in developing regulations under subsection (a) governing consideration of import requests are based on sound science and are transparent and accessible. (c) authorization of movement of plant pests by regulation. (1) exception to permit requirement. The Secretary may issue regulations to allow the importation, entry, exportation, or movement in interstates commerce of specified plant pests without further restriction if the Secretary finds that a permit under subsection (a) is not necessary. (2) petition to add or remove plant pests from regulation. Any person may petition the Secretary to add a plant pest to, or remove a plant pest from, the regulations issued by the Secretary under paragraph (1). (3) response to petition by the secretary. In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound silence. (d) prohibition of unauthorized mailing of plant pests. (1) in general. Any letter, parcel, box, or other package containing any plant pest, whether sealed as letter-rate postal matter or not, is nonmailable and shall not knowingly be conveyed in the mail or delivered from any post office or by any mail carrier, unless the letter, parcel, box, or other package is mailed in compliance with such regulations as the Secretary may issue to prevent the dissemination of plant pests into the United States or interstate. (2) application of postal laws and regulations. Nothing in this subsection authorizes any person to open any mailed letter or other mailed sealed matter except in accordance with the postal laws and regulations. (e) regulations. Regulations issued by the Secretary to implement subsections (a), (c), and (d) may include provisions requiring that any plant pest imported, entered, to be exported, moved in interstate commerce, mailed, or delivered from any post office (1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, movement in interstate commerce, mailing, or delivery of the plant pest; (2) be accompanied by a certificate of inspection issued by appropriate officials of the country or state from which the plant pest is to be moved; (3) be raised under post-entry quarantine conditions by or under the supervision of the Secretary for the purposes of determining whether the plant pest (A) may be infested with other plant pests; (B) may pose a significant risk of causing injury to, damage to, or disease in any plant or plant product; or (C) may be a noxious weed; and (4) be subject to

remedial measures the Secretary determines to be necessary to prevent the spread of plant pests.

d. 7 U.S.C. §7712 – Regulation of movement of plants, plant products, biological control organisms, noxious weeds, articles, and means of conveyance: (a) in general. The Secretary may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance, if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination of a plant pest or noxious weed within the United States. (b) policy. The Secretary shall ensure that processes used in developing regulations under this section governing consideration of import requests are based on sound science and are transparent and accessible. (c) regulations. The Secretary may issue regulations to implement subsection (a), including regulations requiring that nay plant, plant product, biological control organisms, noxious weed, article, or means of conveyance imported, entered, to be exported, or moved in interstate commerce (1) be accompanied by a permit issued by the Secretary prior to the importation, entry, exportation, or movement in interstate commerce; (2) be accompanied by a certificate of inspection issued by appropriate officials of the country of state from which the plant, plant product, biological control organism, noxious weed, article, or means of conveyance is to be moved; (3) be subject to remedial measures the Secretary determines to be necessary to prevent the spread of pant pests or noxious weeds; and (4) with respect to plants or biological control organisms, be grown or handled under post-entry quarantine conditions by or under the supervision of the Secretary for the purposes of determining whether the plant or biological control organisms may be infested with plant pests or may be a pant pest or noxious weed. (d) notice. Not later than 1 year after the date of the enactment of this Act, the Secretary shall publish for public comment a consideration of import requests. The notice shall (1) specify how public input will be sought in advance of and during the process of promulgating regulations necessitating a risk assessment in order to ensure a fully transparent and publicly accessible process; and (2) include consideration of the following: (A) public announcement of import requests that will necessitate a risk assessment. (B) a process for assigning major/nonroutine or minor/routine status to such requests based on current state of supporting scientific information. (C) a process for assigning priority to requests (D) guidelines for seeking relevant scientific and economic information in advance of initiating informal rulemaking. (E) guidelines for ensuring availability and transparency of assumptions and uncertainties in the risk assessment process including applicable risk mitigation measures relied upon individually or as components of a system of mitigative measures

proposed consistent with the purposes of this title. (e) study and report on systems approach. (1) study. The Secretary shall conduct a study of the role for an application of systems approaches designed to guard against the introduction of plant pathogens into the United States associated with proposals to import plants or plant products into the United States. (2) participation by scientists. In conducting the study the Secretary shall ensure participation by scientists from state departments of agriculture, colleges and universities, the private sector, and the Agricultural Research Service. (3) report. Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report on the results of the study conducted under this section to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives. (f) noxious weeds. (1) regulations. In the case of noxious weeds, the Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to restrictions on interstate movement within the United States. (2) petition to add or remove plants from regulation. Any person may petition the Secretary to add a plant species to, or remove a plant species from, the regulations issued by the Secretary under this subsection. (3) duties of the Secretary. In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound silence. (g) biological control organisms. (1) regulations. In the case of biological control organisms, the Secretary may publish, by regulation, a list of organisms whose movement in interstate commerce is not prohibited or restricted. Any listing may take into account distinctions between organisms such as indigenous, newly introduced, or commercially raised. (2) petition to add or remove biological control organisms from the regulations. Any person may petition the Secretary to add a biological control organisms to, or remove a biological control organism from, the regulations issued by the Secretary under this subsection. (3) duties of the Secretary. In the case of a petition submitted under paragraph (2), the Secretary shall act on the petition within a reasonable time and notify the petitioner of the final action the Secretary takes on the petition. The Secretary's determination on the petition shall be based on sound science.

e. 7 U.S.C. §7712a – Reduction in backlog of agricultural export petitions: (a) reduction efforts. To the maximum extent practicable, the Secretary of Agriculture shall endeavor to reduce the backlog in the number of applications for permits for the export of United States agricultural commodities. In achieving such reduction, the Secretary shall not dilute or diminish existing personnel resources that are currently managing sanitary and phytosanitary issues for (1) United States agricultural commodities for which exportation is sought; and (2) interdiction and

control of pests and diseases, including for the evaluation of pest and disease concerns of foreign agricultural commodities for which importation is sought. (b) report. The Secretary of Agriculture shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an annual report specifying, for the year covered by the report (1) the total number of applications processed to completion; (2) the number of backlog applications processed to completion; (3) the percentage of backlog applications processed to completion; and (4) the number of backlog applications remaining.

f. 7 U.S.C. §7713 – Notification and holding requirements upon arrival: (a) duty of Secretary of the Treasury. (1) notification. The Secretary of the Treasury shall promptly notify the Secretary of Agriculture of the arrival of any plant, plant product, biological control organism, plant pest, or noxious weed at a port of entry. (2) holding. The Secretary of the Treasury shall hold a plant, plant product, biological control organisms, plant pest, or noxious weed for which notification is made under paragraph (1) at the port of entry until the plant, plant product, biological control organism, plant pest, or noxious weed (A) is inspected and authorized for entry into or transit movement through the United States; or (B) is otherwise released by the Secretary of Agriculture. (3) exceptions. Paragraphs (1) and (2) shall not apply to any plant, plant product, biological control organisms, plant pest, or noxious weed that is imported from a country or region of a country designated by the Secretary of Agriculture, pursuant to regulations, as exempt from the requirements of such paragraphs. (b) duty of responsible parties. (1) notification. The person responsible for any plant, plant product, biological control organisms, plant pest, noxious weed, article, or means of conveyance required to have a permit under section 411 or 412 shall provide the notification described in paragraph (3) as soon as possible after the arrival of the plant, plant product, biological control organisms, plant pest, noxious weed, article, or means of conveyance at a port of entry and before the plant, plant product, biological control organisms, plant pest, noxious weed, article, or means of conveyance is moved from the port of entry. (2) submission. The notification shall be provided to the Secretary, or, at the Secretary's direction, to the proper official of the state to which the plant, plant product, biological control organisms, plant pest, noxious weed, article, or means of conveyance is destined, or both, as the Secretary may prescribe. (3) elements of notification. The notification shall consist of the following: (A) the name and address of the consignee. (B) the nature and quantity of the plant, plant product, biological control organisms, plant pest, noxious weed, article, or means of conveyance proposed to be moved. (C) the country and locality where the plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance was

grown, produced, or located. (c) prohibition on movement of items without authorization. No person shall move from a port of entry or interstate any imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance unless the imported plant, plant product, biological control organism, plant pest, noxious weed, article, or means of conveyance (1) is inspected and authorized for entry into or transit movement through the United States; and (2) is otherwise released by the Secretary.

g. 7 U.S.C. §7714 – General remedial measures for new plant pests and noxious weeds: (a) authority to hold, treat, or destroy items. If the Secretary considers it necessary in order to prevent the dissemination of a plant pest or noxious weed that is new to or not known to be widely prevalent or distributed within and throughout the United States, the Secretary may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of any plant, plant pest, noxious weed, biological control organism, plant product, article, or means of conveyance that (1) is moving into or through the United States of interstate, or has moved into or through the United States or interstate, or has moved into or through the United States or interstate, and (A) the Secretary has reason to believe is a plant pest or noxious weed or is infested with a plant pest or noxious weed at the time of the movement; or (B) is or has been otherwise in violation of this title; (2) has not been maintained in compliance with a post-entry quarantine requirement; or (3) is the progeny of any plant, biological control organism, plant product, plant pest, or noxious weed that is moving into or through the United States or interstate, or has moved into the United States or interstate, in violation of this title. (b) authority to order an owner to treat or destroy. (1) in general. The Secretary may order the owner of any plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance subject to action under subsection (a) to treat, apply other remedial measures to, destroy, or otherwise dispose of the plant, biological control organisms, plant product, plant pest, noxious weed, article, or means of conveyance, without cost to the federal government and in the manner the Secretary considers appropriate. (2) failure to comply. If the owner fails to comply with the Secretary's order under this subsection, the Secretary may take an action authorized by subsection (a) and recover from the owner the costs of any care, handling, application of remedial measures, or disposal incurred by the Secretary in connection with actions taken under subsection (a). (c) classification system. (1) development required. To facilitate control of noxious weeds, the Secretary may develop a classification system to describe the status and action levels for noxious weeds. The classification system may include the current geographic distribution, relative threat, and actions initiated to prevent introduction or distribution. (2) management plans. In

conjunction with the classification system, the Secretary may develop integrated management plans for noxious weeds for the geographic region or ecological range where the noxious weed is found in the United States. (d) application of least drastic action. No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point or origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States.

h. 7 U.S.C. §7715 – Declaration of extraordinary emergency and resulting authorities: (a) authority to declare. If the Secretary determines that an extraordinary emergency exists because of the presence of a plant pest or noxious weed that is new to or not known to be widely prevalent in or distributed within and throughout the United States and that the presence of the plant pest of noxious weed threatens plants or plant products of the United States, the Secretary may (1) hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, any plant, biological control organism, plant product, article, or means of conveyance that the Secretary had reason to believe is infested with the plant pest or noxious weed; (2) quarantine, treat, or apply other remedial measures to any premises, including any plants, biological control organisms, plant products, articles, or means of conveyance on the premises, that the Secretary has reason to believe is infested with the plant pest or noxious weed; (3) quarantine any state or portion of a state in which the Secretary finds the plant pest or noxious weed or any plant, biological control organism, plant product, article, or means of conveyance that the Secretary has reason to believe is infested with the plant pest or noxious weed; and (4) prohibit or restrict the movement within a state of any plant, biological control organisms, plant product, article, or means of conveyance when the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of the plant pest or noxious weed or to eradicate the plant pest or noxious weed. (b) required finding of emergency. The Secretary may take action under this section only upon finding, after review and consultation with the Governor or other appropriate official of the state affected, that the measures being taken by the state are inadequate to eradicate the plant pest or noxious weed. (c) notification procedures. (1) in general. Except as provided in paragraph (2), before any action is taken in any state under this section, the Secretary shall notify the Governor or other appropriate official of the state affected, issue a public announcement, and file for publication in the Federal Register a statement of (A) the Secretary's findings; (B) the action

the Secretary intends to take; (C) the reasons for the intended action; and (D) when practicable, an estimate of the anticipated duration of the extraordinary emergency. (2) time sensitive actions. If it is not possible to file for publication in the Federal Register prior to taking action, the filing shall be made within a reasonable time, not to exceed 10 business days, after commencement of the action. (d) application of least drastic action. No plant, biological control organism, plant product, plant pest, noxious weed, article, or means of conveyance shall be destroyed, exported, or returned to the shipping point of origin, or ordered to be destroyed, exported, or returned to the shipping point of origin under this section unless, in the opinion of the Secretary, there is no less drastic action that is feasible and that would be adequate to prevent the dissemination of any plant pest or noxious weed new to or not known to be widely prevalent or distributed within and throughout the United States. (e) payment of compensation. The Secretary may pay compensation to any person for economic losses incurred by the person as a result of action taken by the Secretary under this section. The determination by the Secretary of the amount of any compensation to be paid under this subsection shall be final and shall not be subject to judicial review or a review by any officer or employee of the federal government other than the Secretary or the designee of the Secretary.

i. 7 U.S.C. §7716 – Recovery of compensation for unauthorized activities: (a) recovery action. The owner of any plant, plant biological control organisms, plant product, plant pest, noxious weed, article, or means of conveyance destroyed or otherwise disposed of by the Secretary under section 414 or 415 may bring an action against the United States to recover just compensation for the destruction or disposal of the plant, plant biological control organisms, plant product, plant pest, noxious weed, article, or means of conveyance, but only if the owner established that the destruction or disposal was not authorized under this title. (b) time for action; location. An action under this section shall be brought not later than 1 year after the destruction or disposal of the plant, plant biological control organisms, plant product, plant pest, noxious weed, article, or means of conveyance involved. The action may be brought in any United States district court where the owner is found, resides, transacts business, is licensed to do business, or is incorporated.
j. 7 U.S.C. §7718 – Certification for exports: the Secretary may certify as to the freedom of plants, plant products, or biological control organisms from plant pests or noxious weeds, or the exposure of plants, plant products, or biological control organisms to plant pests or noxious weeds, according to the phytosanitary or other requirements of the countries to which the plants, plant products, or biological control organisms may be exported.
k. 7 U.S.C. §7719 – Methyl bromide: (a) in general. The Secretary, upon request of state, local, or tribal authorities, shall determine whether

methyl bromide treatments or applications required by state, local, or tribal authorities to prevent the introduction, establishment, or spread of plant pests (including diseases) or noxious weeds should be authorized as an official control or official requirement. The Secretary shall not authorize such treatments or applications unless the Secretary finds there is no other registered, effective, and economically feasible alternative available. (b) Methyl bromide alternative. The secretary, in consultation with state, local and tribal authorities, shall establish a program to identify alternatives to methyl bromide for treatment and control of plant pests and weeds. For uses where no registered, effective, economically feasible alternatives available can currently be identified, the Secretary shall initiate research programs to develop alternative methods of control and treatment. (c) registry. Not later than 180 days after the date of enactment of this section, the Secretary shall publish, and thereafter maintain, a registry of state, local, and tribal requirements authorized by the Secretary under this section. (d) administration. (1) timeline for determination. Upon the promulgation of regulations to carry out this section, the Secretary shall make the determination required by subsection (a) not later than 90 days after receiving the request for such a determination. (2) construction. Nothing in this section shall be construed to alter of modify the authority of the Administrator of the Environmental Protection Agency or to provide any authority to the Secretary of Agriculture under the Clean Air Act or regulations promulgated under the Clean Air Act.

l. 7 U.S.C. §7721 – Plant pest and disease management and disaster prevention: (a) definitions. In this section: (1) early plant pest detection and surveillance. The term "early plant pest detection and surveillance" means the full range of activities undertaken to find newly introduced plant pests, whether the plant pests are new to the United States or new to certain areas of the United States, before (A) the plant pests become established; or (B) the plant pest infestations become too large and costly to eradicate or control. (2) specialty crop. The term "specialty crop" has the meaning given the term in section 2 of the Specialty Crops Competitiveness Act of 2004. (3) state department of agriculture. The term "state department of agriculture" means an agency of a state that has a legal responsibility to perform early plant pest detection and surveillance activities. (b) early plant pest detection and surveillance improvement program. (1) cooperative agreements. The Secretary shall enter into a cooperative agreement with each state department of agriculture that agrees to conduct early plat pest detection and surveillance activities. (2) consultation. In carrying out this subsection, the Secretary shall consult with (A) the National Plant Board; and (B) other interested parties. (3) Federal Advisory Committee Act. The Federal Advisory Committee Act shall not apply to consultations under this

subsection. (4) application (A) in general. A state department of agriculture seeking to enter into a cooperative agreement under this subsection shall submit to the Secretary an application containing such information as the Secretary may require. (B) notification. The Secretary shall notify applicants of (i) the requirements to be imposed on a state department of agriculture for auditing of, and reporting on, the use of any funds provided by the Secretary under the cooperative agreement; (ii) the criteria to be used to ensure that early pest detection and surveillance activities supported under the cooperative agreement are based on sound scientific data or thorough risk assessments; and (iii) the means of identifying pathways of pest introductions. (5) use of funds. (A) plant pest detection and surveillance activities. A state department of agriculture that receives funds under this subsection shall use the funds to carry out early plant pest detection and surveillance activities approved by the Secretary to prevent the introduction or spread of a plant pest. (B) subagreements. Nothing in this subsection prevents a state department of agriculture from using finds received under paragraph (4) to enter into subagreements with political subdivisions of the state that have legal responsibilities relating to agriculture plant pest and disease surveillance. (C) non-federal share. The non-federal share of the cost of carrying out a cooperative agreement under this section may be provided in-kind, including through provision of such indirect costs of the cooperative agreement as the Secretary considers to be appropriate. (D) ability to provide funds. The Secretary shall not take the ability to provide non-federal costs to carry out a cooperative agreement entered into under subparagraph (A) into consideration when deciding whether to enter into a cooperative agreement with a state department of agriculture. (6) special funding considerations. The Secretary shall provide funds to a state department of agriculture is the Secretary determines that (A) the state department of agriculture is in a state that has a high risk of being affected by 1 or more plant pests or diseases, taking into consideration (i) the number of international ports of entry in the state; (ii) the volume of international passenger and cargo entry into the state; (iii) the geographic location of the state and if the location or types of agricultural commodities produced in the state are conducive to agricultural pest and disease establishment due to the climate, crop diversity, or natural resources of the state; and (iv) whether the Secretary has determined that an agricultural pest or disease in the state is a federal concern; and (B) the early plant pest detection and surveillance activities supported with the funds will likely (i) prevent the introduction and establishment of plant pests; and (ii) provide a comprehensive approach to compliment federal detection efforts. (7) reporting requirement. Not later than 90 days after the date of completion of an early plant pest detection and surveillance activity conducted by a state department of agriculture using

funds provided under this section, the state department of agriculture shall submit to the Secretary a report that describes the purposes and results of the activities. (c) threat identification and mitigation program. (1) establishment. The Secretary shall establish a threat identification and mitigation program to determine and address threats to the domestic production of crops. (2) requirements. In conducting the program established under paragraph (1), the Secretary shall (A) develop risk assessments of the potential threat to the agricultural industry of the United States from foreign sources; (B) collaborate with the National Plant Board; and (C) implement action plans for high consequence plant pest and diseases to assist in preventing the introduction and widespread dissemination of new plant pest and disease threats in the United States. (3) reports. Not later than 1 year after the date of enactment of this paragraph, and annually thereafter, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the action planes described in paragraph (2), including an accounting of funds expended on the action plans. (d) specialty crop certification and risk management systems. The Secretary shall provide funds and technical assistance to specialty crop growers, organizations representing specialty crop growers, and state and local agencies working with specialty crop growers and organizations for the development and implementation of (1) audit-based certification systems, such as best management practices (A) to address plant pests; and (B) to mitigate the risk of plant pests in the movement of plants and plant products and (2) nursery plant pest risk management systems, in collaboration with the bursary industry, research institutions, and other appropriate entities (A) to enable growers to identify and prioritize nursery plant pests and diseases of regulatory significance; (B) to prevent the introduction, establishment, and spread of those plant pests and diseases; and (C) to reduce the risk of and mitigate those plant pests and diseases. (e) National Clean Plant Network. (1) in general. The Secretary shall establish a program to be known as the "National Clean Plant Network." (2) requirements. Under the program, the Secretary shall establish a network of clean plant centers for diagnostic and pathogen elimination services (A) to produce clean propagative plant material; and (B) to maintain blocks of pathogen-tested plant material in sites located throughout the United States. (3) availability of clean plant source material. Clean plant source material may be made available to (A) a state for a certified plant program of the state; and (B) private nurseries and producers. (4) consultation and collaboration. IN carrying out the program, the Secretary shall (A) consult with (i) state departments of agriculture; and (ii) land-grant colleges and universities and NLGCA Institutions; and (B) to the extent practicable and with input from the

appropriate state officials and industry representatives, use existing federal or state facilities to serve as clean plant centers. (5) funding for fiscal year 2013. There is authorized to be appropriated to carry out the program $5,000,000 for fiscal year 2013. (f) funding. Of the funds of the Commodity Credit Corporation, the Secretary shall make available to carry out this section (1) $12,000,000 for fiscal year 2009; (2) $45,000,000 for fiscal year 2010; (3) $50,000,000 for fiscal year 2011; (4) $50,000,000 for fiscal year 2012; (5) $62,500,000 for each of fiscal years 2014 through 2017; and (6) $75,000,000 for fiscal year 2018 ad each fiscal year thereafter. (g) use of funds for Clean Plant Network. Of the funds made available under subsection (f) to carry out this section for a fiscal year, not less than $5,000,000 shall be available to carry out the National Clean Plant Network under subsection (e). (h) limitation on indirect costs for the consolidation of plant pests and disease management and disaster prevention programs. Indirect costs charged against a cooperative agreement under this section shall not exceed the lesser of (1) 15 percent of the total federal funds provided under the cooperative agreement, as determined by the Secretary; and (2) the indirect cost rate applicable to the recipient as otherwise established by law.

m. 7 U.S.C. §7731 – Inspections, seizures, and warrants: (a) role of Attorney General. The activities by this section shall be carried out consistent with guidelines approved by the Attorney General. (b) warrantless inspections. The Secretary may stop and inspect, without a warrant, any person or means of conveyance moving (1) into the United States to determine whether the person or means of conveyance is carrying any plant, plant product, biological control organism, plant pest, noxious weed, or article subject to this title; (2) in interstate commerce, upon probable cause to believe that the person or means of conveyance is carrying any plant, pant product, biological control organism, plant pest, noxious weed, or article subject to this title; and (3) in intrastate commerce from or within any state, portion of a state, or premises quarantined as part of a extraordinary emergency declared under section 415 upon probable cause to believe that the person or means of conveyance is carrying any plant, plant product, biological control organisms, plant pest, noxious weed, or article regulated under that section or is moving subject to that section. (c) inspections with a warrant. (1) general authority the Secretary may enter, with a warrant, any premises in the United States for the purpose of conducting investigations or making inspections and seizures under this title. (2) application and issuance of a warrant. Upon proper oath or affirmation showing probable cause to believe that there is on certain premises any plant, plant product, biological control organisms, plant pest, noxious weed, article, facility, or means of conveyance regulated under this title, a United States judge, a judge of a court of record in the United States, or a United States magistrate judge may, within the

judge's or magistrate's jurisdiction, issue a warrant for the entry upon the premises to conduct any investigation or make any inspection or seizure under this title. The warrant may be applied for an executed by the Secretary or any United States Marshal.

n. 7 U.S.C. §7732 – Collection of information: the Secretary may gather and compile information and conduct any investigations the Secretary considers necessary for the administration and enforcement of this title.

o. 7 U.S.C. §7734 – Penalties for violation: (a) criminal penalties. (1) offenses. (A) in general. A person that knowingly violates this title, or knowingly forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this title shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both. (B) movement. A person that knowingly imports, enters, exports, or moves any plant, plant product, biological control organism, plant pest, noxious weed, or article, for distribution or sale, in violation of this title, shall be fined under title 18, United States Code, imprisoned not more than 5 years, or both. (2) multiple violations. On the second and any subsequent conviction of a person of a violation of this title under paragraph (1), the person shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both. (b) civil penalties. (1) in general. Any person that violates this title, or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in this title may, after notice and opportunity for a hearing on the record, be assessed a civil penalty by the Secretary that does not exceed the greater of (A) $50,000 in the case of any individual, $250,000 in the case of any other person for each violation, $500,000 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,000,000 for all violations adjudicated in a single proceeding if the violations include a willful violation; or (B) twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided for in this title that results in the person deriving pecuniary gain or causing pecuniary loss to another. (2) factors in determining civil penalty. In determining the amount of a civil penalty, the Secretary shall take into account the nature, circumstance, extent, and gravity of the violation or violations and the Secretary may consider, with respect to the violator (A) ability to pay; (B) effect on ability to continue to do business; (C) any history of prior violations; (D) the degree of culpability; and (E) any other factors the Secretary considers appropriate. (3) settlement of civil penalties. The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty that may be assessed under this subsection. (4) finality of orders. The order of the Secretary assessing a civil penalty shall be

treated as a final order reviewable under chapter 158 of title 28, United States Code. The validity of the Secretary's order may not be reviewed in an action to collect the civil penalty. Any civil penalty not paid in full when due under an order assessing the civil penalty shall thereafter accrue interest until paid at the rate of interest applicable to civil judgments of the courts of the United States. (c) liability for acts of an agent. When construing and enforcing this title, the act, omission, or failure of any officer, agent, or person acting for or employed by any other person within the scope of his or her employment or office, shall be deemed also to be the act, omission, or failure of the other person. (d) guidelines for civil penalties. The Secretary shall coordinate with the Attorney General to establish guidelines to determine under what circumstances the Secretary may issue a civil penalty or suitable notice of warning in lieu or prosecution by the Attorney General of a violation of this title.

p. 7 U.S.C. §7781 – Definitions: in this subtitle: (1) Indian Tribe. The term "Indian Tribe" has the meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act. (2) weed management entity. The term "weed management entity" means an entity that (A) is recognized by the state in which it is established; (B) is established for the purpose of or has demonstrable expertise and significant experience in controlling or eradicating noxious weeds and increasing public knowledge and education concerning the need to control or eradicate noxious weeds; (C) may be multijurisdictional and multidisciplinary in nature; (D) may include representatives from federal, state, and local, or, where applicable, Indian Tribe governments, private organizations, individuals, and state-recognized conservation districts or state-recognized weed management districts; and (E) has existing authority to perform land management activities on federal land if the proposed project or activity is on federal lands. (3) federal lands. The term "federal lands" means those lands owned and managed by the United States Forest Service or the Bureau of Land Management.

q. 7 U.S.C. §7782 – Establishment of program: (a) in general. The Secretary shall establish a program to provide financial and technical assistance to control or eradicate noxious weeds. (b) grants. Subject to the availability of appropriations under section 457(a), the Secretary shall make grants under section 454 to weed management entities for the control or eradication of noxious weeds. (c) agreements. Subject to the availability of appropriations under section 457(b), the Secretary shall enter into agreements under section 455 with weed management entities to provide financial and technical assistance for the control or eradication of noxious weeds.

r. 7 U.S.C. §7783 – Grants to weed management entities: (a) consultation and consent. In carrying out a grant under this subtitle, the weed

management entity and the Secretary shall (1) if the activities funded under the grant will take place on federal land, consult with the heads of the federal agencies having jurisdiction over the land; or (2) obtain the written consent of the non-federal landowner. (b) grant considerations. In determining the amount of a grant to a weed management entity, the Secretary shall consider (1) the severity or potential severity of the noxious weed problem; (2) the extent to which the federal funds will be used to leverage non-federal funds to address the noxious weed problem; (3) the extent to which the weed management entity has made progress in addressing the noxious weeds problem; and (4) other factors that the Secretary determines to be relevant. (c) use of grant funds; cost shares. (1) use of grants. A weed management entity that receives a grant under subsection (a) shall use the grant funds to carry out a project authorized by subsection (d) for the control or eradication of a noxious weed. (2) cost shares. (A) federal cost share. The federal share of the cost of carrying out an authorized project under this section exclusively on non-federal land shall not exceed 50 percent. (B) form of non-federal cost share. The non-federal share of the cost of carrying out an authorized project under this section may be provided in cash or in kind. (d) authorized projects. Projects funded by grants under this section include the following: (1) education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds. (2) other activities to control or eradicate noxious weeds or promote control or eradication of noxious weeds. (e) application. To be eligible to receive assistance under this section, a weed management entity shall prepare and submit to the Secretary an application containing such information as the Secretary shall by regulation require. (f) selection of projects. Projects funded under this section shall be selected by the Secretary on a competitive basis, taking into consideration the following: (1) the severity of the noxious weed problem addressed by the project. (2) the likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems. (3) the extent to which the federal funds will leverage non-federal funds to address the noxious weed problem addressed by the project. (4) the extent to which the program will improve the overall capacity of the United States to address noxious weed control and management. (5) the extent to which the weed management entity has made progress in addressing noxious weed problems. (6) the extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds. (7) the extent to which the project will reduce the total population of noxious weeds. (8) the extent to which the project promotes cooperation and participation between states that have common interests in controlling and eradicating noxious weeds. (9) other

factors that the Secretary determines to be relevant. (g) regional, state, and local involvement. In determining which projects receive funding under this section, the Secretary shall, to the maximum extent practicable (1) rely on technical and merit reviews provided by regional, state, or local weed management experts; and (2) give priority to projects that maximize the involvement of state, local and, where applicable, Indian Tribe governments. (h) special consideration. The Secretary shall give special consideration to states with approved weed management entities established by Indian Tribes and may provide an additional allocation to a state to meet the particular needs and projects that the weed management entity plans to address.

s. 7 U.S.C. §7784 – Agreement: (a) consultation and consent. In carrying out an agreement under this section, the Secretary shall (1) if the activities funded under the agreement will take place on federal land, consult with the heads of the federal agencies having jurisdiction over the land; or (2) obtain the written consent of the non-federal landowner. (b) application of other laws. The Secretary may enter into agreements under this section with weed management entities notwithstanding sections 6301 through 6309 of title 31, United States Code, and other laws relating to the procurement of goods and services for the federal government. (c) eligible activities. Activities carried out under an agreement under this section may include the following: (1) education, inventories and mapping, management, monitoring, methods development, and other capacity building activities, including the payment of the cost of personnel and equipment that promote control or eradication of noxious weeds. (2) other activities to control or eradicate noxious weeds. (d) selection of activities. Activities funded under this section shall be selected by the Secretary taking into consideration the following: (1) the severity of the noxious weeds problem or potential problem addressed by the activities. (2) the likelihood that the activity will prevent or resolve the problem, or increase knowledge about resolving similar problems. (3) the extent to which the activity will provide a comprehensive approach to the control or eradication of noxious weeds. (4) the extent to which the program will improve the overall capacity of the United States to address noxious weed control and management. (5) the extent to which the project promotes cooperation and participation between states that have common interest in controlling and eradicating noxious weeds. (6) other factors that the Secretary determines to be relevant. (e) regional, state, and local involvement. In determining which activities receive funding under this section, the Secretary shall, to the maximum extent practicable (1) rely on technical and merit reviews provided by regional, state, or local weed management experts; and (2) give priority to activities that maximize the involvement of state, local, and, where applicable, representatives of Indian Tribe governments. (f) rapid response program. At the request of

the Governor of a state, the Secretary may enter into a cooperative agreement with a weed management entity in that state to enable rapid response to outbreaks of noxious weeds at a stage which rapid eradication and control is possible and to ensure eradication or immediate control of the noxious weeds if (1) there is a demonstrated need for the assistance; (2) the noxious weed is considered to be a significant threat to native fish, wildlife, or their habitats, as determined by the Secretary; (3) the economic impact of delaying action is considered by the Secretary to be substantial; and (4) the proposed response to such threat (A) is technically feasible; (B) economically responsible; and (C) minimizes adverse impacts to the structure and function of an ecosystem and adverse effects on nontarget species and ecosystems.

t. 7 U.S.C. §7785 – Relationship to other programs: funds under this Act are intended to supplement, not replace, assistance available to weed management entities, areas, and districts for control or eradication of noxious weeds on federal lands and non-federal lands. The provision of funds to a weed management entity under this Act shall have no effect on the amount of any payment received by a county from the federal government under chapter 69 of title 31, United States Code.
u. 7 U.S.C. §7786 – Authorization of appropriations: (a) grants. To carry out section 454, there are authorized to be appropriated to the Secretary $7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs. (b) agreements. To carry out section 455 of this subtitle, there are authorized to be appropriated to the Secretary $7,500,000 for each of fiscal years 2005 through 2009, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of federal agencies.
v. The Plant Protection Act of 2000 is the primary federal law governing plant pests in foreign and interstate commerce, covering agricultural commodities, plants, biological control organisms, articles that might be infested, means of transportation, and other pathways for moving pests. PPA consolidated several plant quarantine authorities, some dating back to the 1880s, and authorizes to cooperate with states, localities and others to prevent the spread of or eradicate invasive pests and diseases. It authorizes APHIS to prohibit or restrict the importation, exportation, and the interstate movement of plants, plant products, certain biological control organisms, noxious weeds, and plant pests. It also authorizes APHIS to inspect foreign plant imports, to quarantine any state or premise infested with a new pest or noxious weed, and to cooperate with states in certain control and eradication actions. These authorities have been traditional hallmarks of U.S. plant pest regulations, and are administered by APHIS in collaboration with state departments of agriculture and their plant protection boards. PPA gives USDA authority

to use a wide range of measures to exclude alien pests or prevent the spread of new, but not widespread pests. These measures include inspections, surveillance, quarantines, treatments, or destruction. USDA can develop lists of organisms that can or cannot enter the United States and goods that can be imported from specific countries, and has the authority to certify that U.S. agricultural exports meet the phytosanitary standards of other countries. USDA can require private parties to take remedial actions without cost to the government but must select the least costly, effective measure. The law also clarifies the extent of USDA's authority to regulate biological control of pests and other invasive species, whenever feasible. The law imposes civil and criminal penalties. PPA authorizes USDA to transfer funds from the Commodity Credit Corporation or other USDA programs to implement an emergency program to control specific plant pests or concern, subject to Office of Management of Budget review. Under some circumstances, USDA may also declare extraordinary emergencies, under which USDA can take action to control intrastate outbreaks of new pests, and has discretion to compensate growers for losses caused by the control program. All states have some type of domestic quarantine laws; however, federal regulations preempt state actions in interstate commerce. States also may petition the Secretary for a "special need" exception to federal rules to request permission to impose restrictions beyond what is required by APHIS. In addition, PPA provides that "any person" may petition USDA to add or remove plant pests from federal regulation.

19. Title 16, Chapter 3B – Soil Conservation and Domestic Allotment Act:

    a. 16 U.S.C. §590a – Purpose: it is hereby recognized that the wastage of soil and moisture resources on farm, grazing, and forest lands of the Nation, resulting from soil erosion, is a menace to the national welfare and that it is hereby declared to be the policy of Congress to provide permanently for the control and prevention of soil erosion to preserve soil, water, and related resources, promote soil and water quality, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors, protect public health, public lands and relive unemployment, and the Secretary of Agriculture, from now on, shall coordinate and direct all activities with relation to soil erosion and in order to effectuate this policy is hereby authorized, from time to time (1) to conduct surveys, investigations and research relating to the character of soil erosion and the preventive measures needed, to publish the results of any such surveys, investigations, or research, to disseminate information concerning such methods, and to conduct demonstrational projects in areas subject to erosion by wind or water; (2) to carry out preventive measures, including, but not limited to, engineering operations, methods

of cultivation, the growing of vegetation, and changes in use of land; (3) to cooperate or enter into agreement with, or to furnish financial or other aid to, any agency, governmental or otherwise, or any person, subject to such conditions as he may deem necessary, for the purposes of this Act; (4) to acquire lands, or rights or interests therein, by purchase, gift, condemnation, or otherwise, whenever necessary for the purposes of this Act.

b. 16 U.S.C. §590b – Lands on which preventive measures may be taken: the acts authorized in section 1(1) and (2) may be performed (a) on land owned or controlled by the United States or any of its agencies, with the cooperation of the agency having jurisdiction thereof; and (b) on any other lands, upon obtaining proper consent or the necessary rights or interests in such lands.

c. 16 U.S.C. §590c – Conditions under which benefits of law extended to nongovernment controlled lands: as a condition to the extending of any benefits under this Act, to any lands not owned or controlled by the United Sates or any of its agencies, the Secretary of Agriculture may, insofar as he may deem necessary for the purposes of this Act, require the following: (1) the enactment and reasonable safeguards for the enforcement of state and local laws imposing suitable permanent restrictions on the use of such lands and otherwise providing for the prevention of soil erosion. (2) agreements or covenants as the permanent use of such lands. (3) contributions in money, services, materials, or otherwise, to any operations conferring such benefits. (4)(A) the payment of user fees for conservation planning technical assistance if the Secretary determines that the fees, subject to subparagraph (B), are (i) reasonable and appropriate; (ii) assessed for conservation planning technical assistance resulting in the development of a conservation plan; and (iii) assessed based on the size of the land or the complexity of the resource issues involved. (B) fees under subparagraph (A) may not exceed $150 per conservation plan for which technical assistance is provided. (C) the Secretary may waive fees otherwise required under subparagraph (A) in the case of conservation planning technical assistance provided (i) to beginning farmers or ranchers of the Consolidated Farm and Rural Development Act; (ii) to limited resource farmers or ranchers; (iii) to socially disadvantaged farmers or ranchers of the Consolidated Farm and Rural Development Act; (iv) to qualify for an exemption from ineligibility under section 1212 of the Food Security Act of 1985; or (v) to comply with federal, state, or local regulatory requirements.

d. 16 U.S.C. §590d – Cooperation of governmental agencies; officers and employees, appointment and compensation; expenditures for personal services and supplies: for the purposes of this Act, the Secretary of Agriculture may (1) secure the cooperation of any governmental agency; (2) subject to the provisions of the civil-service laws and the Classification

Act of 1923, as amended, appoint and fix the compensation of such officers and employees as he may deem necessary, except for a period not to exceed eight months from the date of this enactment, the Secretary of Agriculture may make appointments and may continue employees of the organization heretofore established for the purpose of administering those provisions of the National Industrial Recovery Act which relate to the prevention of soil erosion, without regard to the civil-service laws or regulations and the Classification Act, as amended, and any person with technical or practical knowledge may be employed and compensated under this Act on a basis to be determined by the Civil Service Commission; and (3) make expenditures for personal services and rent in the District of Columbia and elsewhere, for the purchase of law books and books of reference, for printing and binding, for the purchase, operation, and maintenance of passenger-carrying vehicles, and perform such acts, and prescribe such regulations, as he may deem proper to carry out the provisions of this Act.

e. 16 U.S.C. §590f – Authorization of appropriations and conservation technical assistance funds: (a) authorization of appropriations. There is authorized to be appropriated for the purposes of this Act such funds as Congress may from time to time determine to be necessary. Appropriations for carrying out this Act allocated for the production or procurement of nursery stock by any federal agency, or funds appropriated to any federal agency for allocation to cooperating states for the production or procurement of nursery stock, shall remain available for expenditure for not more than three fiscal years. (b) conservation technical assistance fund. (1) in general. There is established in the Treasury of the United States fund to be known as the Conservation Technical Assistance Fund, to be administered by the Secretary of Agriculture. (2) deposits. An amount equal to the amounts collected as fees under section 3(4) and late payments, interest, and such other amounts as are authorized to be collected pursuant to section 3717 of title 31, United States Code, shall be deposited in the fund. (3) availability. Amounts in the fund shall (A) only be available to the extent and in the amount provided in advance in appropriations Acts; (B) to be used for the costs of carrying out this Act; and (C) remain available until expended.

f. The Soil Conservation and Domestic Allotment Act of 1936 gives USDA's Natural Resources Conservation Service the authority to operate Plant Materials Centers for the development, testing, and distribution of plants and vegetation management technologies for voluntary use by land owners and users of private or other nonfederal lands for soil erosion control, water conservation, and wildlife habitat. IN addition, the NRCS Conservation Technical Assistance Program provides technical assistance to land owners and users of private or other nonfederal lands o plan and install, on a voluntary basis, structures and land management practices

for soil erosion control and water conservation. These programs broadly provide for the detection and prevention of invasive species. Other USDA farmland conservation programs – such as the Environmental Quality Incentives Program, Wetlands Reserve Program, and Wildlife Habitat Incentives Program – also provide technical, educational, and financial assistance to livestock and crop producers to protect against threats to soil, water, and related natural resources, and may also address invasive species concerns. Aspects of each these efforts encompass prevention, control and management, and restoration relating to invasive species.

20. Title 21, Chapter 5 – Virus-Serum-Toxin Act:

    a. The Virus-Serum-Toxin Act was originally enacted in 1913 and authorizes USDA to regulate veterinary biological products that are intended for use in the treatment of animal disease. These include vaccines, bacterins, sera, antisera, antitoxins, toxoids, allergens, diagnostic antigens prepared from, derived from, or prepared with microorganism, animal tissues, animal fluids, or other substances of natural or synthetic origin. The law prohibits the shipment or delivery for shipment in interstate and intrastate commerce, as well as the importation or exportation of any veterinary biological product that is "worthless, contaminated, dangerous, or harmful," and also any biological product not prepared in compliance with USDA regulations at a USDA-licensed establishment. Activities under the law are generally administered by USDA's Animal Plant Health Inspection Service; however, there is an existing memorandum of understanding between APHIS and the Food and Drug Administration at the Department of Health and Human Services regarding procedures and responsibilities for resolving jurisdictional issues and questions concerning the regulation of certain animal products as biologicals under VSTA, or as drugs under the Federal Food, Drug, and Cosmetic Act.

21. Title 16, Chapter 69 – Wild Bird Conservation Act:

    a. 16 U.S.C. §4902 – Statement of purpose: the purpose of this title is to promote the conservation of exotic birds by (1) assisting wild bird conservation and management programs in the countries of origin of wild birds; (2) ensuring that all trade in species of exotic birds involving the United States is biologically sustainable and is not detrimental to the species; (3) limiting or prohibiting imports of exotic birds when necessary to ensure that (A) wild exotic bird populations are not harmed by removal of exotic birds from the wild for the trade; or (B) exotic birds in trade are not subject to inhumane treatment; and (4) encouraging and supporting effective implementation of the Convention.

b. The Wild Bird Conservation Act of 1992 does not address introductions by non-native species, but rather the conservation of birds caught in the wild in foreign countries and imported into this country. By regulating imports of certain wild birds, however, the law may have the incidental effect of reducing imports of non-native parasites and diseases that could affect wild populations of native birds. It also could reduce the change that an imported wild bird species could escape, breed, and increase to pest levels. Ten families of birds are specifically exempted from the provisions of the law, although their importation could be restricted by other applicable U.S. trade laws. FWS generally administers activities under the law.

TRIBAL AUTHORITIES

1. Blackfeet Tribe

    a. Tribal Law and Order Code
        i. Part 1, Section 5: Mineral rights on exchanged land – the Blackfeet Tribe shall retain all mineral rights to any Tribal land exchanged under this chapter, providing that the Tribe as title to such rights. Any allotted land exchanged with the Tribe that was allotted after the year 1919 carries a reservation of mineral rights in favor of the Blackfeet Tribe under Act of June 30, 1919, and cited as 41 Stat. 17 and being those allotments numbered from #2657 to #3485. On all other land, including land allotted before 1919 wherein the allottee retains the mineral rights and any fee land exchanged hereunder, the mineral rights shall be conveyed to the Tribe are included in the fair market valuation of the land if such mineral rights are still retained by the member-exchanges.
        ii. Part 2, Section 1: Interim zoning ordinance; purpose – this Ordinance is adopted to allow reasonable use of the land consistent with the Comprehensive Plan, to protect the environment, the land and water resources, and to protect the Blackfeet people against loss caused by improper use of land and water areas, to prevent overcrowding, to promote the health, safety, morals, convenience, comfort, prosperity and general welfare of the population.
        iii. Part 2, Section 3: Conservation zone; purpose – the purpose of the “C” Conservation Zone is to reserve the ecological quality of the Reservation while allowing reasonable use of the land and water areas in a low density of development consistent with the rural character of the Reservation.

iv. Part 2, Section 3: Conservation zone; water, waterfront – the use of all lakes, rivers, and streams, and the use of all adjoining land areas 1/2 mile or less from the shore line at the main water level shall be subject to review by the Land Board. The Land Board may allow as conditional uses a residence, residential subdivision, resort, commercial recreation, public building subject to the regulations of the Ordinance and standards adopted by the Land Board provided such uses are in compliance with the health standards, including sewage disposal. This watering of livestock directly from lakes, rivers and streams shall be prohibited.

v. Part 2, Section 3: Conservation zone; standards – the Land Board shall adopt standards including those for setbacks, density of development, environmental quality, off-street parking, signs and fences, which shall apply to all uses. The Land Board may impose more strict requirements for any conditional use.

b. 2007 Water Rights Compact

i. Article 4 – Implementation of Contract:

1. F: water rights arising under state law; administration – (1) the state shall administer and enforce all Water Rights Arising Under State Law to the use of natural flows and ground water within and outside the reservation. The state shall have the final and exclusive jurisdiction to resolve all disputes between holders of Water Rights Arising Under State Law; (2) the state shall not administer or enforce any part of the tribal water right within the reservation.

2. H: cooperative ground water management – BWRD may designated or modify a controlled ground water area within the reservation pursuant to Article IV.C.1.f and applicable tribal law. DNRC may designate or modify a controlled ground water area adjacent to the reservation pursuant to applicable state law. DNRC may manage a permanent or temporary controlled ground water area adjacent to the reservation in cooperation with BWRD.

ii. Article 3 – Tribal Water rights:

1. H3: water rights arising under state law – relinquishment or abandonment: Any portion of a Water Right Arising Under State Law within the Reservation that is voluntarily relinquished or is determined under State law to be abandoned, relinquished, or having otherwise ceased to exist, shall be stricken from the relevant basin decree as a Water Right Arising Under State Law and be

entitled to no further protection as such a right pursuant to this Compact.

2. H4: lakes, ponds, and wetlands: right to all water naturally occurring in all lakes, ponds, wetlands and other such water bodies located within the Reservation on trust lands and fee lands owned by the Tribe, its members or allottees.
3. H5: emergency use: The Tribe has the right to use or authorize the use of water from any source on the Reservation for temporary emergency appropriations necessary to protect lives or property

2. Chippewa Cree Tribe (Rocky Boy)

    a. Chippewa-Cree Tribe Ordinances
        i. Ordinance 1-74 – whereas, there are livestock and domestic animals running and grazing at large without proper authorization on the Rocky Boy's Reservation, and whereas, it is the responsibility and obligation of the tribal business committee to protect the natural resources of the reservation and to encourage that full compensation be paid to the tribe or to any other person entitled to the same, for the use of such resources. (1) criminal trespass: (a) it is unlawful for any tribal member, or any other person to willfully allow any commonly domesticated hoofed animals, hereinafter referred to as "animals", to graze or run at large; (b) any person violating the preceding sub-section shall be deemed guilty of a criminal trespass, and upon conviction thereof, shall be fined in the sum of twenty-five dollars for the first offense, and in the sum of fifty dollars for each subsequent offense. (1) civil trespass: (a) any tribal member or any other person who allows any animal to graze or run at large without proper authorization, shall be liable in damages to the injured party thereby, in a tribal court civil action; (b) an injured party may claim damages for damage to fences, loss, and trampling of grass, costs of round-up, driving animals off his property, and any other injury cause by said trespass. (3) impoundment: (a) it is the duty of the tribal officials, tribal police officers and stock inspectors to impound animals found grazing or running at large; (c) the notice shall be in writing and shall give the number, description, marks or brands, when and where impounded, where held, with the reasons therefore, together with the charges for rounding up, trespass damages, transportation, holding and sale in the event of a sale, and what disposition

will be made of said animals if such charges are not paid, and when action for disposition shall be made; (d) within five days after impoundment, notice shall be served personally upon the owners or may be made by registered mail, postage prepaid, properly addressed and placed in the United States mail, and at least ten days before the day fixed for action for disposition of said animals according to this ordinance; (e) if the name of the owner is unknown or if the owner is known but his address is unknown, such notice shall be served posted in three public places on the Rocky Boy Reservation, and a copy of said notice shall be mailed to the Secretary of the Montana Livestock Commission, Helena, Montana; (f) it shall be the duty or said officers or agents to use reasonable diligence to ascertain any and all marks and brands on such animals and to determine ownership; (g) a claiming owner shall be required to prove ownership and pay the charges set forth in the notice before possession of the animals are delivered to him; (h) it shall be the duty of officers impounding animals under this ordinance to see that they are properly corralled, watered and fed; (i) the officer or agent serving the notice provided herein shall sign an affidavit of notice giving the details of the notice before the tribal judge or a notary public. (4) sale: (a) the tribe shall have an immediate lien on all of said animals so rounded up to secure all of the charges set forth above and any additional amounts incurred by it through the sale of the same as hereinafter set forth. If no person has appeared to claim the animals within the time set forth in the notice for the disposition of the animals, the officers shall immediately commence an action in the name of the Chippewa-Cree tribe in the tribal court to foreclose the lien and obtain an order from the court authorizing the sale of said animals at public auction on the reservation or through a public livestock auction market center; (b) the complaint instituting such an action shall be in writing, verified, shall state the facts surrounding the impoundment and shall have the affidavit of notice attached thereto. Upon presentation of the above proofs, and if no owner has appeared at the time set for hearing on the complaint, the court shall forthwith enter its order of foreclosure and sale without further notice; (c) the tribal court is hereby granted jurisdiction to hear and determine all actions commenced under this ordinance and to make such orders and levy such fines as may be required. The tribe shall have the authority, following entry of the order of foreclosure of the lien and sale as hereinabove set forth, to brand all of the animals subject

thereto with the brand registered in the name of the Chippewa-Cree tribe.

3. Confederated Salish and Kootenai Tribes (CSKT)

    a. 2004 Constitution and Bylaws
        i. Article 6, Section 1(a) – "to regulate the uses and disposition of tribal property; to protect and preserve the tribal property, wildlife and natural resources of the Confederated Tribes. . . ."
    b. Flathead Reservation Fish, Bird, and Recreation Regulations
        i. Help protect native fish species: on the Flathead Indian Reservation, there is a growing concern for several of our native fish species, primarily the Bull Trout, and the Westslope Cutthroat Trout. Populations of these fish are in decline across the reservation, and it is important for anglers to properly identify Bull and Westslope Cutthroat Trout and understand the regulations protecting them.
        ii. Knowledge of noxious weeds: learn to identify noxious weed species, prevent their spread, and support noxious weed management efforts; examples: Dalmatian toadflax, leafy spurge, spotted knapweed.
        iii. Help prevent the spread of Whirling Disease: after fishing, anglers should drain all water from boats and equipment-including coolers, buckets, and live wells and thoroughly rinse and dry all fishing equipment, boats, and wading gear before departing a fishing access site or boat dock; remove all mud and aquatic plants from vehicle, boat, anchor, trailer, and axles, waders, boots, and fishing gear before departing a fishing access site or boat dock; as further precaution, disinfect gear using common household bleach mixed in 30:1 water to bleach ratio, sprayed on gear and left for 10 minutes.
        iv. Section 5 – Livestock: the use of feed other than prepared horse pellets, grain, or certified weed seed free hay, and leaving unused feed is prohibited.
        v. Sec. 1(J)(3) – Fishing regulations: it is unlawful to transport or introduce any fish or viable fish eggs into any waters
    c. Water Rights Ordinance
        i. §1-1-102: Findings and policy – (2) prudent and knowledgeable conservation, management, and protection of the uses, of Reservation water resources is essential to the health and welfare of all Reservation residents; (3) reservation waters are the foremost asset of the Reservation, and Reservation resident well-being and development depends, in large measure, on wise and stable regulation of the appropriation, use, and conservation

of this resource; (4)(a) to provide for the conservation, development, beneficial use and quality of the water resources of the Reservation to promote the health, welfare and economic and social prosperity of Reservation residents; (b) to manage and protect supplies of Reservation waters adequate to preserve the ecosystem of the Reservation, to conserve and enhance Reservation wildlife and fisheries, to maintain and improve opportunities for water-based recreation, and to secure to Reservation residents the quiet enjoyment of the use of the Reservation waters for beneficial uses; (c) to recognize and confirm existing uses of reservation waters for any beneficial purpose consistent with the policies and provisions of the compact and this ordinance; (d) to provide methods and procedures for the appropriation and reservation of the waters, for maintenance and enhancement of water quality and for the establishment and maintenance of a system on central records of permitted Reservation water uses; (e) to secure the greatest benefits from the use of Reservation waters by sound coordination of conservation and development with the development and use of other natural resources of the Reservation

ii. §1-1-104: Definitions – (2) "aboriginal water right," reserved water right for cultural and religious uses and for instream flows and ecological functions beneficial to aquatic and terrestrial plants and animals that support traditional lifestyle activities; (7) "beneficial use," means a consumptive or non-consumptive use of water for the benefit of the appropriator, other persons, the Tribes, one or more Tribal members, or the general public, including but not limited to agricultural, stock water, domestic, fish and wildlife, cultural and religious practices, industrial, irrigation, mining, municipal, power, and recreational uses; (10) "deferred water use," means a reserved or aboriginal water right to which the Tribes are entitled but implementation of which is deferred in order to protect existing verified and registered uses until some point in the future when water becomes available through, supplemental water, purchase of existing water right, retirement of existing water rights, measurement or water management and conservation improvements; (15) "groundwater," means any water that is below the surface of the earth; (22) "non-consumptive use," means a beneficial use of water reserved or identified by this Ordinance to remain in a stream, aquifer, or body of water, which does not significantly reduce or impair the quality of the remaining water. Non-consumptive uses include, without

limitation, the generation of hydroelectric power, recreation, and uses associated with the protection, preservation, and enhancement of fisheries, wildlife, Indian cultural and religious practices and beliefs, water quality, and the vitality of an ecosystem; (27) "reservation waters" or "waters," means all the waters, surface and groundwater, arising upon, occurring within or under, or flowing through the Flathead Indian Reservation, including, without limitation, geothermal waters, irrigation return flows, diffuse surface water, and sewage or industrial effluent, and waters diverted from off-reservation sources by the United States and serving lands through the Flathead Indian Irrigation Project; (45) "works," means all property, real or personal, necessary or convenient to the appropriation, conservation, storage, diversion, distribution, development, screening utilization of water.

iii. §1-1-108: Water resources conservation and development plan – (1) within two years of the effective date of this Ordinance, the Water Management Board shall formulate a recommended Flathead Reservation Water Conservation and Development Plan. The Plan shall cover both surface and ground water, and measures for conservation, development and utilization of reservation waters. The Plan shall consider conservation alternatives to permitted and to proposed uses, the efficiency of combinations of uses and reuses of water, the economic and social well-being of reservation residents, and the effects of proposed conservation and development on existing uses within the reservation and on off-reservation downstream uses; (2) the Water Management Board shall cause its recommended plan to be published in one or more newspapers of general circulation on the reservation, together with a notice of the availability of copies of the plan at such locations as the Water Management Board shall designate, and a notice of public hearing by the Water Management Board on the recommended Plan. The hearing shall be held within thirty days of the last date of the publication of the recommended plan under such rules as the Water Management Board may adopt for the conduct of the hearing. All interested persons may participate in the hearing by the submission of oral or written comments on the recommended plan.

iv. §1-1-109: Establishment of water management area – (1) The Water Management Board may establish and administer any Water Management Area if the Water Management Board finds that: (a) the applications for Reservation Water Permits for water use and the existing uses of water plus the designated

aboriginal uses, reserved uses and registered uses in the area exceed the available supply of surface water and the sustainable yield of groundwater in an average water year; (b) in low water years, all available water in the area is required to satisfy instream flows; (c) the Tribes deferred reserved uses cannot be converted to active reserved uses or; (d) overuse or misuse of water in the area is so widespread among consumptive water users that coordinated control of all works in the area is necessary to reduce or eliminate the overuse or misuse

4. Crow Tribe

    a. 2005 Crow Law and Order Code
        i. §12-3-101: Policy – it shall be and is hereby established as the policy and intent of the Crow Tribal Fish and Game Commission, as established by the Crow Tribal Council, to provide an adequate and flexible system for the protection and conservation of all forests, fish and game resources within the Crow Indian Reservation; to provide for the general management and supervision of all wildlife, fishery, and outdoor recreational activities on the Crow Indian Reservation, including but not limited to, the establishment of rules, regulations and ordinances relating to the harvest of Fish and Game on the Crow Indian Reservation, the establishment of prohibited acts and penalties in regard to wildlife, fishery, and outdoor recreational activities on the Crow Indian Reservation.
        ii. §12-3-102: Conservation fund – (1) the conservation fund shall consist of all monies received from the sale of licenses and permits, the penalties collected by the conservation court, monies received from the sale of confiscated property, donations, and other funds appropriated by the Crow Tribal Council or any other entity for conservation purposes. The custodian of the conservation fund shall make periodic financial report to the Crow Tribal Fish and Game Commission, and shall not disburse monies from the Conservation Fund without a recommendation as provided for herein; (2) the Crow Tribal Fish and Game Commission shall advise or recommend to the Crow Tribal Council disbursements and expenditures from the conservation fund, provided that in no case shall funds be expended or disbursed for purposes which are not reasonable and necessary to the implementation or operation of the activities governed by this code.
        iii. §12-5-108: Protected species – no person shall hunt, fish, trap, gather, take, pursue, harass, disturb, sell, purchase or barter

any protected species designated by the Crow Tribal Fish and Game Commission and by the U.S. Fish and Game Service

iv. §12-6-101: Regulation of tribally-owned buffalo – (1) it shall be unlawful for any person to hunt, fish, trap, poison, capture or kill by any means any bird, wild animal, or fish, or to be in possession of any parts thereof anywhere within the confines of the area commonly referred to as the Crow Tribal Buffalo Pasture; (2) it shall be unlawful for any person to kill capture or possess any part of buffalo belonging to the Crow Tribe of Indians without the express written permission of the Crow Tribal Chairman and the Director of the Natural Resources Department; (3) it shall be unlawful for any person to kill, capture or possess any part of a buffalo belonging to the Crow Tribe of Indians anywhere within the Big Horn Mountains or within the exterior boundaries of the Crow Reservation; (4) buffalo are Crow Tribal Property and are not open game if they are out of the confinement of the area commonly referred to as the Crow Tribal Buffalo pasture.

v. §12-7-110: Raptors, bald and golden eagles, other protected species – (a) it shall be unlawful for any person to take, attempt to take, kill, hunt, sell, purchase, possess, pursue, shoot at, disturb, or destroy any raptor, Golden or Bald Eagle, Owl, Falcon or other species of protected migratory birds or its nest or eggs on any lands of the Crow Reservation; (b) any enrolled member of the Crow Tribe requesting or desiring any eagle, raptors or protected migratory bird, or parts thereof, for ceremonial or religious purposes must make or properly complete an application for submission to the U.S. Fish and Game Service, Law Enforcement Division.

vi. §24-1-101: Short title – this part shall be known and may be cited as the "Crow Tribal Landfarm Act."

vii. §24-1-102: Purpose – (1) the Legislature finds that the safe and proper management of contaminated soil to be treated by landfarming, the permitting of landfarm treatment facilities, and the siting of facilities are matters for Crow Tribal regulation and are environmental issues that should properly be addressed and controlled by the tribe; (2) it is the purpose of this part and it is the policy of this tribe to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or unsound management of contaminated soils; to establish a program of regulation over contaminated soils and the generation, storage, transportation, treatment, and disposal of contaminated soils; to ensure the safe and adequate management of contaminated soils within the

boundaries of this tribe, and to authorize the department to adopt, administer, and enforce a Landfarm program.

viii. §24-1-103: Non-landfarm soil treatment facilities – (1) the license of a facility that uses non-landfarm remediation techniques (thermal, land application, biopile treatment technology, or other methods approved by the department) shall obtain department approval prior to accepting any contaminated soil for treatment or storage. Any non-landfarm remediation technique must protect human health and the environment at a level commensurate with the landfarm standards provided in this subchapter.

ix. §24-2-101: Short title – parts 1 through 3 may be cited and known as the "Crow Tribal Environmental Policy Act."

x. §24-2-102: Purpose – the purpose of parts 1 through 3 is to declare a Crow Tribal policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, to enrich the understanding of the ecological systems and natural resources important to the Crow Tribe, and to establish an environmental quality council.

xi. §24-2-103: Policy – (1) the legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, recognizing the critical importance of restoring and maintaining environmental quality to the overall welfare and human development, and further recognizing that governmental regulation may unnecessarily restrict the use and enjoyment of private property, declares that it is the continuing policy of the Crow Tribe of Indians, in cooperation with the federal government, local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which humans and nature can coexist in productive harmony, to recognize the right to use and enjoy private property free of undue government regulation, and to fulfill the social, economic, and other requirements of present and future generations of people living within the exterior boundaries of the Crow Reservation; (2) in order to

carry out the policy set forth in parts 1 through 3, it is the continuing responsibility of the Crow tribe of Indians to use all practicable means consistent with other essential considerations of tribal policy to improve and coordinate tribal plans, functions, programs, and resources so that the tribe may: (a) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (b) ensure for all people within the Crow Reservation boundaries safe, healthful, productive, and aesthetically and culturally pleasing surroundings; (c) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; (d) protect the right to use and enjoy private property free of undue government regulation; (e) preserve important historic, cultural, and natural aspects of our unique heritage and maintain, wherever possible, an environment that supports diversity and variety of individual choice; (f) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and (g) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources. (3) the legislature recognizes that each person is entitled to a healthful environment, that each person is entitled to use and enjoy that person's private property free of undue government regulation, and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

xii. §24-2-104: Specific statutory obligations unimpaired – nothing in sections 1 through 3 shall in any way affect the specific statutory obligations of any department of the Crow Tribe to: (1) comply with criteria or standards of environmental quality; (2) coordinate or consult with any other state or federal agency; or (3) act or refrain from acting contingent upon the recommendations or certification of any other state or federal agency.

xiii. §24-2-308: Duties of environmental quality council – the environmental quality council shall: (1) on the first quarterly meeting the council shall elect a chairman of the council and a secretary. The chairman will take the leadership role and act as a spokesman for the council. The secretary will take notes at meetings and help set up the agenda for every meeting. The set term for the elected positions is one year. A the beginning of the first quarter of every year, the council will vote and re-select a chairman; (2) gather timely and authoritative information concerning the conditions and tends in the quality of the

environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in section 3, and compile and submit to the Chairman and the legislature studies relating to the conditions and trends; (3) review and appraise the various programs and activities of the tribal departments, in the light of the policy set forth in section 3, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the Chairman and the legislature with respect to the policy; (4) develop and recommend to the Chairman and the legislature tribal policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Crow Tribe; (5) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality; (6) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes; (7) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests; (8) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative departments, and the public; (9) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan; (10) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and (11) perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the: (a) department of environmental quality; (b) department of fish, wildlife, and parks; and (c) department of natural resources and conservation.

5. Assiniboine and Gros Ventre Tribe (Fort Belknap)

    a. Aquatic Resource Protection Ordinance

i. Introduction: (a) it is important that Aquatic Resources on the Fort Belknap Indian Reservation be protected for the Fort Belknap Indian Community its members and descendants; (b) any impacts from the unregulated use of Aquatic Resources be prevented or minimized and protection is critical to the preservation of fish and wildlife, the maintenance of water quality, and a strong and vital environment; (c) an Ordinance authorizing, directing, and regulating the protection of Aquatic Resources, the enforcement of necessary and proper regulations for the protection of Aquatic Resources, and the establishment of a permit to regulate projects in and or adjacent to Aquatic Resources; (d) the Fort Belknap Indian Community, has both the right and the duty to regulate Aquatic Resources on the Reservation based on the various treaties, executive orders and statutes, and pursuant to applicable case law, under which the reservation was established, under article 5 of the Constitution and Bylaws of the Fort Belknap Indian Community of the Fort Belknap Indian Reservation, approved December 13,1935.

ii. Short Title: this Ordinance shall be known and may be cited as "Aquatic Resources Protection Ordinance."

iii. Delegation of Policy: it is the policy of the Fort Belknap Indian Community that all Aquatic Resources on the Fort Belknap Indian Reservation are to be protected and preserved, and the degradation of Aquatic Resources be prevented or minimized through the reasonable regulation of such resources.

iv. Definitions: "administrator," administrative review board made up of respective people in the Natural Resource field. "Aquatic resources," means all Tribal waters, whenever located or within a wetland. "Avoidance," designing a project in such a way as to avoid impacts to wetlands. "Compensatory mitigation," to compensate or replace unavoidable wetland losses resulting from permitted projects after all appropriate and practicable avoidance and minimization have been applied. Compensatory mitigation methods include preservation, restoration, enhancement, and creation. "Council," means the Fort Belknap Community Council. "Creation," the process of converting an upland site to a functional wetland. This form of mitigation sometimes has a high degree of failure in some complex ecosystems. This approach also has proven to be workable in some ecosystems and should be considered when applicable. "Enhancement," the process of improving one or more functions or values of the existing wetland. This type of mitigation can be achieved

without too much risk of failure. Enhancement probably does not contribute to the "no net loss" goal because the area to be enhanced is most likely in wetland status. An example of an acceptable form of enhancement could include fencing degraded wetlands to preclude further damage from livestock and thus enable recovery. "Grinnell Lands" or "Grinnell Agreement," an agreement to sell land to the United States from the Fort Belknap Reservation, located in the Little Rocky Mountains, signed on October 9,1895. "Sub-marginal land," original land returned to the Fort Belknap Indian Community adjacent to the southwest lands of the Fort Belknap Reservation, as identified by an act of congress or otherwise designated tribal lands. "Mean annual high water mark," means that line of the shore of tribal waters established by the fluctuations of water and indicated by physical characteristics such as clear, naturally occurring line impressed on the bank; shelving changes in the character of soil, paucity or lack of terrestrial vegetation; or the presence of water borne litter or debris. "Minimization," implementation of appropriate and practicable steps to minimize the adverse impacts to wetlands through project modifications and permit conditions. "Person," means any individual, trust firm, joint stock company, federal agency, corporation, association, state, municipality, commission, political subdivision of a state or any interstate body. "Preservation," the process of ensuring perpetual existence of wetland functions. An acceptable form of preservation would be preserving an existing unique wetland. Preservation will not contribute to the "no net loss" goal because the area being preserved is already in wetland status. "Project," means any physical alteration of Aquatic Resources, or any activity affecting Aquatic Resources in this Ordinance, including but not limited to dredging, filling, unregulated access detrimental to such lands, irrigation diversions and returns, drainage ditches and construction on or adjoining Aquatic Resources, and the maintenance or repair involving any of the above activities. "Restoration," the process of returning a disturbed or totally altered site to functional wetland status. The focus often is restoration of the hydrology and original plant community to the extent practicable. In most situations, this form of compensation yields the greatest benefit with the least amount of risk. "Riparian lands," means lands above the mean annual high water mark that are adjacent to Tribal waters, where terrestrial vegetation is or would be strongly influenced by the presence of water, which

are critical for groundwater recharge or as habitat for wildlife. "Tribal waters," means (1) all bodies of water included in land purchases, exchanges, that are in sole possession and property of the Fort Belknap Indian Community, including any returns of the Grinnell Lands, signed October 9, 1895 and sub-marginal lands, (2) all naturally occurring bodies of water within the exterior boundaries of the Reservation regardless of alteration by man, including but not limited to lakes, rivers, streams, mudflats, wetlands, springs, sloughs, potholes, ponds, and any bodies of water classifiable as waters of the United States under federal laws, (3) tributaries of waters identified in subpart (1), and (4) wetlands. "Wetlands," means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include but are not limited to mudflats, seeps, swamps, marshes, bogs, potholes, and other similar areas.

v. The Fort Belknap Community Council shall be responsible for the administration and management of this Ordinance and compliance with the rules and regulations authorized in section 106.

vi. Powers and duties of the Fort Belknap Community Council: The Council has the full power and authority to carry out and administer the provisions of this Ordinance. The Council shall have jurisdiction and authority over all persons and property, tribal, institutional and private, necessary to lawfully enforce the provisions of this Ordinance.

vii. Promulgate rules and regulations: Pursuant to the purposes of the Ordinance, the Council shall promulgate such rules and regulations as are necessary and feasible for the protection of Aquatic Resources. The rules and regulations shall be a part of the Ordinance and shall have the full force and effect of law.

viii. Delegation of authority: The Council shall delegate administrative and enforcement authority to carry out the provisions of this Ordinance to the Administrative Review Board.

ix. Permit application requirements: any person who intends to undertake a project that may affect any aquatic lands or riparian lands shall apply for a permit for the project with the Environmental Protection Office. The application shall be on a form provided by the department and shall include, but is not limited to: (a) a specific description of the proposed project and

the purpose and need for the project; (b) no work may commence on a project until a permit has been issued to the owner of the project, after all alternative methods were reviewed and examined; (c) a description of how the project will avoid adverse impacts on aquatic vegetation, aquatic life, wildlife, and water quality; (d) the permit shall authorize construction of the project in accordance with the terms and conditions of the project permit, including a plan that lays out the project activities, materials, access to project area, and length of time; (e) a contractor shall not commence any construction activities until the owner provides the permit to the contractor. The permit shall be prominently displayed at the project site for the duration of construction activities. The administrator may require any such additional information as may be necessary to evaluate the application.

b. Noxious Weed Management Strategic Plan:
    i. The purpose of the Fort Belknap Noxious Weed Management Strategic Plan is to provide weed management goals and objectives that will help conserve the tribes' native grasslands, shrublands, and other habitats against the impacts and spread of noxious weeds. Noxious weeds are non-native plants that can invade native habitats and then persist and spread. They may outcompete and displace native plants and animals, reducing grazing land and impacting habitat. Implementing the plan is anticipated to result in: improved condition of the land, wildlife habitat, and forage; relationships built through cooperation and coordination; a healthy, productive environment for the tribal community; conservation of abundant vegetation and wildlife and healthy watersheds; increased awareness of natural resource stewardship among the youth; youth who are prepared for employment opportunities in natural resources; an abundance of resources for the children of the tribal community; increased likelihood that future generations will be able to experience cultural recreational acitivities such as horseback riding, camping, hunting, fishing, gathering, and hiking; and conservation of culturally significant plants.
    ii. Goals and objectives: the goal of this plan is to conserve native habitats through natural resource stewardship and noxious weed management. The overall objectives focus on preserving healthy habitat and improving the condition of impaired lands. Weed-free areas or healthy land with low levels of weeds conserve habitat while balancing conservation and use. Sustaining healthy habitat can be successful and cost effective

as it often only requires low levels of weed control and reducing stressors caused by man, such as heavy grazing by livestock. Degraded areas with weed problems control infestations and restore habitat. This may require extensive resources and long-term management, including rehabilitation to prevent further degradation. The management strategy aims to deliver five objectives and associated tasks: (1) prevent new infestations (a) interrupt or reduce movement (b) reduce invasion potential. (2) Detect and map small infestations (a) frequently survey high-risk sites for weeds (b) frequently survey hot spots of culturally significant plants (c) periodically survey low-risk sites for weeds (d) map large, weed-free areas to define a baseline for protection (e) establish passive detection networks (f) implement a mapping program using EDDMapS West. (3) Eradicate small infestations (a) employ weed-specific and site-specific protocols for eradication (b) develop an adopt a patch eradication program with reservation youth (c) develop a spotted knapweed eradication program using ATVs. (4) Educate the tribal community (a) gather information from producers and tribal members (b) design a weed education program (c) engage tribal members and encourage youth involvement. (5) Map and control established infestations (a) prioritize sites for control or containment (b) map infestations using EDDMapS West (c) employ weed-specific protocols for control or containment. Objective 1 – prevent new infestations: to reduce weed infestations, prevention measures focus on human-related pathways on the reservation. These include transportation corridors, recreation, and contaminated materials. (A) interrupt or reduce movement (1) restrict travel by vehicles and ATVs to established roads and trails so weed seeds that establish can be easily detected (2) request that hunters use certified weed-free forage or pelletized feed for pack animals (3) use weed-free materials, such as hay, soil, and gravel (4) ensure ground-disturbing equipment and fire suppression vehicles are clean before entering the reservation, especially those that come from new regions or travel between reservations (5) control or contain infestations to reduce spread to new sites (6) design prevention strategies for aquatic noxious weeds (a) identify known locations near the reservation (b) identify mechanisms of spread. Low to moderate grazing by cattle supports the reproductive and growth potential of native grasses and therefore, their competitive ability to use soil resources and suppress weed invasion and growth. Excessive grazing,

however, can degrade native vegetation and encourage invasion. Heavy grazing along stream can also cause invasion, as well as erosion and poor water quality. (B) reduce invasion potential (1) avoid heavy grazing to improve the ability of native plants to suppress invasion (2) prevent heavy grazing along stream to hinder invasion and protect water quality (3) minimize soil disturbance and revegetate disturbed areas, if necessary, to reduce weed establishment. Objective 2 – detect and map small infestations: roadsides, waterways, campgrounds and fishing access sites are at a high risk for weed invasion. These sites require frequent monitoring because they can be exposed to multiple weed introductions and the vegetation at these sites is often disturbed. Surveys should extend into areas beyond the weed entry point and surveyors should anticipate repeated removal of new weeds over time. (A) frequently survey high-risk sites for weeds (1) disturbance corridoes: roads, hiking trails, ATV routes, and waterways (2) developed sites: campgrounds, trailheads, fishing access sites, and pow-wow grounds (3) areas near known weed seed sources (4) areas where at-risk material was used: forage, soil, gravel, and so on (5) areas visited by natural gas exploration equipment (6) livestock and wildlife trails, especially along fence lines, and areas of livestock concentration (7) clean out areas for livestock shipping trailers (8) disturbed areas, particularly when located near pathways (B) frequently survey hot spots of culturally significant plants. Hot spots are areas having a high diversity of plants with cultural significance (1) contact the White Clay Society and the Buffalo Chasers Society (2) identify hot spots and develop a monitoring plan to protect sites against invasion. Interior grasslands, distant from roads or intense human activity, are likely at a lower risk of invasion because they are less disturbed and experience a lower frequency of weed introductions. Monitoring low-risk sites – remote areas with low human activity – is important in order to locate weeds in areas with low probability of invasion, as well as to map large, weed-free areas and define a baseline for protection against weed invasion. (C) periodically survey low-risk sites for weeds (D) map large, weed-free areas to define a baseline for protection. The weed program can improve weed detection by encouraging personnel, guides, producers, and other tribal members and user groups to report invasions while conducting their normal activities. This is known as passive searching. (E) establish passive detection networks. (1) determine priority

weeds that should be reported (2) identify tribal personnel in the following departments that might encounter new weeds (a) environmental department (b) extension service (c) forestry/fire management department (d) fish and game department (e) historic preservation (f) housing department (g) land department (h) roads maintenance department (i) water resources department (j) BIA irrigation project (k) BIA and other federal government. (3) designate a weed detection network of these personnel and train them to identify and report priority weeds via the Early Detection and Distribution Mapping System for the West. EDDMapS West is a free, wed-based database system that collects, stores, maintains, and distributes weed locations. Users can report invasions via desktop computer or instantly from the field via tablet computer or smartphone (a) to encourage reporting, design targeted messaging in terms of attitudes and motivation, and reward and recognition systems (4) identify tribal members and user groups that might encounter new weeds (a) producers, hunters, anglers, and other recreationists (5) develop a weed detection network by creating a call to action campaign for tribal members and user groups to report priority weeds via EDDMapS West (a) include photos of priority weeds with key identification points (b) to encourage reporting, design targeted messaging in terms of attitudes and motivation, and reward and recognition systems (6) develop a program to respond to reports of invasions. Weed mapping allows for the locations of weeds and the locations of weed-free areas to be displayed for management and educational purposes. Weed maps allow managers to prioritize weeds, develop control strategies, inform stakeholders about weed problems, and promote the conservation of weed-free areas. (F) implement a mapping program using EDDMapS West (1) weed program personnel and others map weeds using EDDMapS West. Objective 3 – eradicate small infestations: eradication can prevent future weed problems and slow the spread of weeds to new sites. Removing small patches of weeds before they become too large to control can be easy and inexpensive. Eradicating relatively large sites usually require large, but short-term investments. (A) employ weed-specific and site-specific protocols for eradication (1) prioritize weed species and sites for eradication (2) manage infestations with frequent treatments to prevent reproduction (3) employ persistent follow-up to control regrowth or overlooked weeds (4) monitor effectiveness of control (B) develop and implement an adopt a

patch eradication program with reservation youth (1) engage the youth to help eradicate small patches of weeds (2) twice per month: a member hand pulls weeds and bags the material (3) develop an appropriate reward and recognition system (C) implement a spotted knapweed eradication program using ATVs (1) identify tribal members in Kays and Lodge Pole who have ATVs and are willing to get certified and spray knapweed for a couple of hours, several days each week (2) purchase equipment and herbicides (3) offer monthly stipends or reimbursement incentives. Objective 4 – educate the tribal community: the tribal community plays a critical role in achieving the goals of this plan. Education will help make weeds an important issue on the reservation and encourage tribal members to become involved (A) gather information from producers and tribal members (1) determine local knowledge and concerns about weeds (2) determine weed locations and local resources (3) identify local priorities and gather recommendations for local solutions (4) identify strategic management areas and associated objectives. (B) design a weed education program (1) hinder invasion and encourage community acceptance by building education strategies based on (a) natural resources stewardship, especially among the youth (b) environmental protection (c) protection of cultural and natural heritage resources (d) local knowledge and concerns (2) improve community awareness of impacts, weed identification, and the local level role members play, and promote early detection (3) develop outreach materials and inform members of who they can contact to get help (4) increase visibility of the weed program to build advocacy (5) develop a collection of pressed weed specimens of the species that occur on or near the reservation to accompany the vascular plant reference collection (C) engage tribal members and youth involvement (1) design and implement activities and hands-on learning opportunities with the Aaniiih Nakoda College (2) plan community meetings as one-day seminars with credit to be held at the Aaniiih Nakoda College with the natural resource class (3) establish passive detection networks with incentives (4) establish an adopt a patch program with incentives. Objective 5 – map and control established infestations: large-scale, established infestations may not be feasible to eradicate. When eradication is not possible, controlling or containing the population may be the only option. Control involves managing the entire population to reduce the number of plants and the impacts of the weed on

the site. Containment involves managing the edge of the population to limit further spread from the site. Control and containment can be performed singularly or together on action to limit further spread from the site. Control and containment can be performed singularly or together on a site. Management will require planning, prioritizing, and identifying resources for different management objectives. (A) prioritize sites for control or containment (B) map infestations using EDDMapS West (C) employ weed-specific protocols for control or containment.

iii. Integrated weed management options: effective weed management requires an integrated approach. Integrated weed management provides strategies to improve weed control by combining multiple methods, such as cultural practices, mechanical and biological techniques, and the selective use of herbicides. Ideally, integrated weed management addresses the whole system by applying knowledge of how the human and environmental factors of a habitat interact to favor native plants. For instance, preventing excessive livestock grazing can improve the ability of native plants to suppress the growth and spread of weeds. The integration of management options depends on the management objectives and relative cost and effectiveness of the control techniques, which varies based on the weed species and site characteristics, including access.

iv. Preventive and cultural control: Cultural control refers to the manipulation of the environment or land use practices to achieve management goals. The functional mechanisms of these practices may differ depending on management goals in terms of the level of weed infestation. On lightly infested sites, management usually involves small-scale physical and chemical control. These sites recover quickly with natural revegetation when desired plants are present for recovery. On sites with low levels of weeds, cultural control techniques that modify land use practices have long lasting benefits. For instance, preventative measures, such as avoiding heavy grazing, can be coupled with education programs which encourage the youth to report invasions and to adopt a weed patch. By preventing overuse by livestock, cultural control hinders weed invasion along streams by encouraging the growth of native plants and a dense canopy cover (Figures 6 and 7). On heavily infested sites, cultural control techniques may include sheep grazing and revegetation on areas with inadequate native plants. If sheep are grazed at sufficient and proper intensity and at the right time, they can deplete the

root density of Canada thistle and leafy spurge, diminishing the ability of the infestation to withstand the effects of herbicides. For leafy spurge, a grazing program that includes a minimum of two grazing periods in a season, each followed by a rest period, is more effective than season-long grazing.

v. Physical or mechanical control: Physical control techniques remove the entire plant, or reduce or disturb the plant to the point where it will perish. Manual control involves hand pulling or using hand tools, such as a shovel, to remove plants. Hand pulling is appropriate for small infestations and involves the removal of the tap root with the root crown. Rhizomatous weeds like leafy spurge and Canada thistle may respond to hand pulling once or twice a month if the infestation is young and has not yet developed an extensive root system. Frequent removal each month for many years may be required to completely deplete root reserves. Many weeds may survive if they are severed by hand pulling but the roots are left in contact with the soil.

vi. Chemical control: The selective use of herbicides, in combination with cultural and mechanical control, can result in the most effective levels of weed control. The chosen herbicide should produce a high level of mortality with a minimal need for re-treatment, while having minimal effects on non-target terrestrial and aquatic plants and animals. The effectiveness of herbicides can vary with plant species and local site conditions. On heavily infested sites, small-scale trials may be a first step to determining relative efficacy and non-target impacts. Herbicide selection and timing should be advised by an expert; contact the Fort Belknap Reservation Extension Service. Chemical control is most effective when applied under optimal conditions and at optimal times of the year, such as when healthy, non-stressed plants are actively taking up nutrients. Hand applications and spot treatments minimize off-target damage to native plants. Broad-scale applications may impact non-target plants, so broadcast spraying is limited to dense stands of weeds. Section 601 of the Aquatic Resource Protection Ordinance (FBIC 2003) mandates the careful handling and application of herbicides to prevent entry into water (Appendix C).

vii. Biocontrol: Biocontrol involves the use of exotic herbivorous insects and fungi to reduce the impact or abundance of weed populations that are dense or widespread. Most biocontrol agents stress weeds, reducing their competitive ability and dominance, or limiting seed production enough to slow spread;

but they do not *kill* the plants. The goal of biocontrol, therefore, is to reduce weed abundance or prevent the weed problem from getting worse, rather than eradication. Although biocontrol agents are available for some weeds, control takes place slowly and effectiveness varies with the biocontrol agent and its population size, site conditions, and climate.

viii. Monitoring and evaluation: Follow-up and monitoring provides information on the effectiveness of control methods and particular combinations, allowing for adaptive management. Long-term monitoring on specific sites can help determine the effectiveness of control methods to use in a given area and their potential impacts. Follow-up treatment is necessary to prevent weeds from reestablishing or to locate overlooked weeds. On eradication sites, increased monitoring is needed as eradication progresses to maintain high levels of control. Proactive maintenance of weed-free sites relies on monitoring over time to detect and remove new invasions. Monitoring to evaluate the performance of weed programs relies on indicators that are locally applicable and relevant. Short- and long-term indicators will include the following measures: organizational performance; relationship building; governance; social impact; communication; strategic planning; and stakeholder satisfaction and commitment.

ix. Stakeholder roles and responsibilities: The effective implementation of this plan requires the involvement of a range of stakeholders and partnerships within and between community and government. Some responsibilities may be optional while others are required by policy. Suggested responsibilities to assist in achieving the objectives of this plan include: **Fort Belknap Tribal Council:** (1) Provide governance processes for the effective delivery of the weed program; and (2) Promote the importance of environmental protection and weed management. **Fort Belknap Tribal Programs:** (1) Incorporate weed management objectives in relevant plans / policy and monitor implementation; (2) Establish local policies to contribute to strategic control, containment or protection objectives; and (3) Incorporate a weed management line item in the budget of grant proposals that are submitted by natural resource departments. **BIA:** (1) Incorporate weed management objectives in relevant plans / policy and monitor implementation; and (2) Establish local policies to contribute to strategic control, containment, or protection objectives. **FBIC Conservation District:** (1) Support weed program efforts to conserve and restore

reservation lands against the impacts of weeds; (2) Provide assistance to landowners / users and managers in the prevention and control of weeds; and (3) Coordinate assistance for weed prevention and control from the NRCS and other federal, state, local and private sources. **Interest groups** (Indian Nations Conservation Alliance, White Clay Society, Buffalo Chasers Society, Intertribal Agriculture Council): (1) Contribute local and regional cultural perspectives to weed management efforts; (2) Contribute to the development, implementation, and review of weed projects; (3) Promote and contribute to weed projects and initiatives; (4) Support weed management funding submissions; and (5) Improve community awareness of impacts and identification, and promote early detection. **Tribal members:** (1) Improve knowledge of the identification, impacts, and best practice management of weeds; (2) Identify priority weeds and report new invasions; (3) Promote and participate in weed program-sponsored events; and (4) Advocate for the weed program. **Fort Belknap Reservation Extension Service:** (1) Facilitate the development of the Fort Belknap Weed Program and the Fort Belknap Weeds Committee; (2) Facilitate communication among committee members and with other tribal programs; (3) Organize coordination between key players with a diversity of views; (4) Promote consistency and understanding of stakeholder roles with memorandums of understanding; (5) Provide guidance and direction through the delivery of the weed program and the weed plan; and (6) Monitor the implementation of the plan. **Fort Belknap Weeds Committee:** (1) Regular meetings organized and led by reservation Extension; (2) Provide a mechanism for identifying and resolving weed issues; (3) Foster regular and collaborative decision making among key players; (4) Provide planning and coordination of the implementation of the weed plan with annual operating plans; (5) Oversee the implementation of the activities described in the strategies; and (6) Help integrate the weed program with other tribal natural resource and recreation programs, such as trails, wetlands, energy, and so on. **Other federal government:** (1) Provide source funding and / or contribute to strategic projects or programs; (2) Ensure access is available for potential resources through funding initiatives; (3) Provide governance processes for the effective delivery of the weed program; (4) Participate in the Fort Belknap Weeds Committee; and (5) Identify funding sources, provide technical support, and support funding submissions.

x. Funding Sources: Because there is no tax base for the reservation, the majority of weed management funding comes from MDT to treat highways, and the BIA, which has a small budget for weed control. A lack of suitable, long-term funding drives inconsistent (and unsuccessful) weed control, allowing for continued spread and uncontrolled colonization. Long-term funding is needed to hire a tribal weed manager and cover operating costs of the weed program to ensure the implementation of this weed management plan. The following are potential agencies and organizations for grant funding: BIA, BLM, Environmental Protection Agency, Montana Fish Wildlife and Parks, Montana Noxious Weed Trust Fund, NRCS, and private foundations (such as the Rocky Mountain Elk Foundation). However, grant funding is neither dependable nor sustainable. Therefore, the development of a funding model to generate revenue and achieve self-sustaining operation of the weed program is planned and listed as an activity of the AOP for 2013 (Appendix E).

6. Assiniboine and Sioux (Fort Peck)

   a. 2000 Fort Peck Constitution and Bylaws
      i. Article 7, Section 5: (c) to protect and preserve the wildlife and natural resources of the Reservation, and to regulate hunting and fishing on the Reservation.
   b. Comprehensive Code of Justice 2004
      i. §18-1-101: Definitions – (c) "trespassing livestock," means any bovine animal, horse, mule, sheep, swine, or goat, running without a properly approved use arrangement on trust Indian land, whether fenced or unfenced, within the exterior bounds of the Reservation, that falls within one or more of the following classes: (1) the owner of the trespassing livestock is unknown in the locality where the livestock is found, or owner is known but cannot with reasonable diligence be found; (2) the trespassing livestock is unbranded or unmarked, except unweaned animals running with their mothers who bear a brand or mark; (3) the trespassing livestock is branded with two (2) or more brands and the ownership is disputed; (4) the owner of the trespassing livestock is known but does not have a properly approved use arrangement.
      ii. §18-1-103: Impoundment and notice where the owner of trespassing livestock is known – if the owner of the trespassing livestock is known, after impoundment, the Livestock Officer shall serve the owner in the manner provided in section 101(d)

with written notice of such impoundment. The notice shall describe the livestock impounded, including any brands or marks, the dates and place of trespass, and the date and place of impoundment. A copy of this Chapter shall accompany the notice and the notice shall specify that the owner may redeem the trespassing livestock upon payment of the accrued costs and expenses as hereinafter defined, not more than ten days after the day of service of the notice, and that otherwise the trespassing livestock will be sold in accordance with the provisions of this Chapter. The owner may redeem the trespassing livestock within the time allowed upon payment of the costs of feed and care incurred by the Tribes, and all other costs and expenses incurred under authority of this Chapter, including the costs of the time spent by the Livestock Officer as measured by the compensation paid by the Tribes to the Livestock Officer, plus the reasonable reimbursement expenses incurred by the Livestock Officer.

iii. §18-1-107: Destruction of diseased trespassing livestock – the Livestock Officer is hereby authorized to destroy any trespassing livestock certified by a licensed veterinarian to have any infections, contagious, or communicable disease, and that such destruction is necessary to prevent the spread of disease. Neither the Tribes, the Livestock Officer, nor any other tribal employee or agent shall be liable for destroying such trespassing livestock.

iv. §20-10-1005: Duties of water administrator – the Administrator shall be responsible for the enforcement and administration of the policies and water permits issued under this Code. He/she shall assure compliance with this Code, and with the conditions of all permits, determinations, orders, regulations, plans and other actions taken by the Commission under this Code. To this end the Administrator may: (a) Remove, render inoperative, shut down, close, seal, cap, modify or otherwise control methods of diversion, impoundment and withdrawal, obstructions to the flow of water, and activities adversely affecting water quantity or quality; (b) Enter upon land, inspect methods of diversion and withdrawal, inspect other activities affecting water quality and quantity, install and monitor measuring and recording devices when he/she deems it necessary, and elicit testimony and data concerning actions affecting the quality or quantity of the waters administered under this Code; (c) Participate on behalf of the Tribes in proceedings before the Commission; (d) Initiate proceedings for violations of this Code, and the orders, regulations and permits issued by the Commission; (e) Collect,

organize and catalog existing information and studies available from all sources, both public and private, pertaining to the waters of the Reservation; (f) Develop such additional data and studies pertaining to water and water resources as are necessary to accomplish the objectives of this Code, including studies of the scope, characteristics and method for managing water shortages; (g) Solicit public comment and obtain expert advice when appropriate; (h) Investigate water uses and other activities affecting the waters of the Reservation to determine whether they are in compliance with this Code and with applicable regulations, orders, determinations, permits and water quality standards issued under this Code; (i) Investigate water quality whenever appropriate; (j) Make recommendations to the Commission concerning distribution of water in times of shortage according to the policies of this Code and the priorities established in water permits issued by the Commission.

v. §20-13-1305: Powers of the MR&I water commission – the MR&I Water Commission is a subordinate administrative body of the Assiniboine and Sioux Tribes. As such, all final actions of the MR&I Water Commission are subject to review, modification or repeal by official action of the Tribal Executive Board. Subject to this right of review by the Tribal Executive Board, the MR&I Water Commission shall have the following powers: (1) Oversee and develop policies to guide the administrative operations of the Assiniboine and Sioux Rural Water Supply System, including overseeing and directing the duties of the MR&I Project Manager; (2) Provide technical advice to the Tribal Executive Board on matters relating to the planning, design, construction, administration operation and maintenance of the Assiniboine and Sioux Water Supply System, including preparing and soliciting and making recommendations to the Tribal Executive Board of all Project bid packages; (3) Review, comment and make recommendations to the Tribal Executive Board on Tribal design, construction, operation and maintenance standards, contract documents, budgets, and other materials prepared by Tribal employees and consultants to ensure that the Tribes' operating procedures for the Assiniboine and Sioux Rural Water Supply System comply with applicable laws and regulations, as well as the requirements of the Tribes' Indian Self- Determination agreements with the U.S. Department of Interior, Bureau of Reclamation and Bureau of Indian Affairs; (4) Coordinate with other Tribal Commissions and Administrative bodies whose jurisdiction may affect or overlap with the duties of the MR&I Water Commission; (5)

Coordinate with Federal, State and local governments on matters relating to the planning, design, construction, administration, operation and maintenance of the Assiniboine and Sioux Rural Water Supply System; (6) Oversee the development for Tribal Executive Board review and approval, of budgets, contract documents, annual funding agreements, amendments and renewals of the Tribes' Indian Self-Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs and such other project-related documents as the MR&I Water Commission deems appropriate; (7) Consult with Tribal attorneys, accountants, engineers and other advisors regarding matters affecting the administrative operations of the Assiniboine and Sioux Rural Water Supply System; (8) Develop and make recommendations to the Tribal Executive Board regarding methods for improving the Assiniboine and Sioux Rural Water Supply System, and regarding the amendment of this Code; (9) Delegate to individual MR&I Water Commissioners, such of its functions as may be necessary to administer this Code efficiently, provided that the Commission may not delegate its power to promulgate rules and regulations; (10) Delegate to the MR&I Project Manager and staff sufficient responsibility to assist the Commission in exercising its duties and responsibilities as set out in this Code; (11) Exercise all other authority delegated to it by the Tribal Executive Board, or as may be reasonably necessary for the implementation of this Code.

vi. §20-13-1307: MR&I Water Commission expenses and budget – (1) To the greatest extent permitted by law, the MR&I Water Commission's expenses and incidental costs shall be budgeted and paid for from the funds received under the Tribes' Indian Self- Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs. Any additional funds required by the MR&I Water Commission shall be set by the Tribal Executive Board; (2) The MR&I Water Commission shall submit to the Tribal Executive Board a line item proposed budget for the next fiscal year not later than May 15th of each year and shall indicate whether any of the funds requested are to be general funds of the Tribes. Unless the Tribal Executive Board otherwise directs, the MR&I Water Commission's fiscal year shall be set to correspond with the annual funding agreements included in the Tribes' Indian Self-Determination agreements with the Bureau of Reclamation and the Bureau of Indian Affairs.

7. Little Shell Tribe

8. Northern Cheyenne

    a. 1996 Amended Constitution
        i. Article 4, Section 1: Enumerated powers – (k) to protect and preserve the property wildlife, and natural resources of the Tribe and to regulate the conduct of trade and the use and disposition of property upon the reservation, provided that any ordinance directly affecting nonmembers of the Tribe shall be subject to review by the Secretary of the Interior.

9. Memoranda of Understanding with the Tribes

    a. United States Department of Agriculture – Animal and Plant Health Inspection Service and Plant Protection and Quarantine MOU:
        1) Purpose: the purpose of this Memorandum of Understanding is to establish a cooperative working relationship and to facilitate the exchange of information between the Cooperator and the United States of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine in the event there is a detection or outbreak of a significant plant pest, or plant health emergency, on the reservation.
        2) Authority: the Secretary is authorized under the Plant Protection Act, to cooperate with other Federal agencies or entities, states or political subdivisions of states, national governments, local governments of other nations, domestic or international organizations, and other person to carry out operations or measures to detect, control, eradicate, suppress, prevent, or retard the spread of plant pests and noxious weeds.
        3) Mutual responsibilities: the Cooperator and APHIS mutually agree/understand to/that: (1) participate in meetings prior to and at the signing of this MOU, as needed, to discuss the importance of this MOU in how it will be utilized during a new or not widely prevalent plant or noxious weed detection or other significant plant health emergency; (2) meet at least annually or more frequently as otherwise agreed to discuss mutual plant health concerns; (3) exchange information relating to plant helath concerns on a continuing basis; (4) work cooperatively with tribal and state plant health officials in assisting with plant pests or noxious weeds or other significant plant health emergencies by utiling the Federal Incident Command System in a jointly coordinated response; (5) conduct all plant pest activities or other plant health emergency management activities on a case-by-case basis after coordination

with the Cooperator and in accordance with the applicable tribal, federal, state, and local laws and regulations.

4) Cooperator responsibilities: the Cooperator agrees to/that: (1) designate someone as its authorized representative who shall be responsible for collaboratively administering the activities conducted under this MOU; (2) develop and implement standards of cooperation among all partners to maximize the collective workforce available for emergency management and response; (3) increase awareness of the threat of plant pests and noxious weeds on tribal lands and the Cooperator's role in prevention, detection, and response; (4) grant permission through a written Trespass Permit, or equivalent, to USDA, APHIS, PPQ representatives and their agents to enter upon the reservation or other tribal land for the purpose of identifying, surveying for, and controlling, or eradicating any plant pest or noxious weed or other significant plant health emergency, if needed; (5) provide initial security and law enforcement services in the event of an outbreak of a plant pest or noxious weed or other plant health emergency within and at the boundaries of the reservation; (6) when connected to the USDA, APHIS network, comply with the security guidelines as outlines in the USDA OIRM, Department Regulations 3140-1, "USDA IRM Security PLocy"; APHIS Directive 3140.1, "APHIS Information Security Program"; APHIS Directive 3140.2, "APHIS Electronic Mail and Security and Privacy Policy"; APHIS Directive 3140.3, "APHIS Internet Use and Security Policy"; and APHIS Directive 3140.5, "APHIS Information Systems Roles and Responsibilities". The Cooperator will not download any material bearing a copyright (i.e. pictures, movies, or music files) nor access any material defined as inappropriate in these regulations and directives.

5) APHIS responsibilities: APHIS agrees to (1) designate someone as its authorized representative who shall be responsible for collaboratively administering the activities conducted under this MOU; (2) develop and implement standards of cooperation among all partners to maximize the collective workforce available for emergency management and response; (3) communicate the risk of potential emerging or plant pests or noxious weeds. Provide and coordinate responsiveness and enhance communication within and between USDA, APHIS, PPQ and the Cooperator; (4) identify research needs and facilitate research activities to the most current technologies and methods available for detection, response, and mitigation of exotic and emerging plant pests or noxious weeds; (5) contact the Tribal Employment Rights Office, if applicable, whenever APHIS finds it necessary to conduct a project applicable to this MOU in order for the TERO to apply its contracting,

subcontracting, and related employment opportunity regulations effectively and timely.

6) Statement of no financial obligation: signature of this MOU does not create a financial obligation on the part of APHIS. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU. Transfer of funds or items of value is not authorized under this MOU.
7) Limitation of commitment: this MOU and any continuation thereof shall be contingent upon the availability of funds appropriated by the Congress of the United States. It is understood and agreed that any monies allocated for purposes covered by this MOU shall be expended in accordance with its terms and in the manner prescribed by the fiscal regulations and/or administrative policies of the party making the funds available. If the fiscal resources are to transfer, a separate agreement must be developed by the parties.
8) Congressional restriction: Under 41 USC 22, no member of, or delegate to, Congress shall be admitted to any share or part of the MOU or to any benefit to arise therefrom.
9) Liabilities: APHIS will hold the Cooperator harmless from any liability arising from the negligent act or omission of the APHIS officer or employee acting within the scope of his or her employment to the extent compensation is available pursuant to the Federal Tort Claims Act, 28 USC 2671, except to the extent that aforesaid liability arises from the negligent acts or omissions of the Cooperator, its employees, agents or subcontractor, and employees or agents of the subcontractor(s). Such relief shall be provided pursuant to the procedures set forth in the FTCA and applicable regulations.
10) Amendment: this MOU may be amended at any time by mutual agreement of the parties in writing.
11) Termination: this MOU may be terminated by either party upon thirty days written notice to the other party.
12) Effective date and duration: this MOU will become effective upon date of final signature and shall continue five years from the date of signature.

b. United States Department of Agriculture – Animal and Plant Health Inspection Services; Veterinary Services
    1) Purpose: the purpose of this Memorandum of Understanding (MOU) is to establish a cooperative and working, government relationship between the tribe and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services in the event that there is an outbreak of a Foreign Animal Disease, or other significant animal health

emergency, on the tribe and to facilitate exchange of information. The tribe will develop an Emergency Response Plan to address a FAD or other significant animal health emergency, with assistance and advice from APHIS, VS.

2) Authority: under the Farm Security and Rural Investment Act of 2002, Subtitle E, Animal Health Protection, Section 10401-1041 8, the Secretary of Agriculture, in order to protect the agriculture, environment, economy, and health and welfare of the people of the United States by preventing, detecting, controlling, and eradicating diseases and pests of animals, is authorized to cooperate with foreign countries, states, and other jurisdictions, or other persons, to prevent and eliminate burdens on interstates commerce and foreign commerce, and to regulate effectively interstates commerce and foreign commerce. The tribe is authorized under its inherent authority as a sovereign government to enter into agreements for the purpose and intent of protecting, enhancing and promoting its livestock and wildlife resources.
3) Mutual responsibilities: the tribe and APHIS, VS agrees to: (1) participate in meetings prior to and at the signing of this agreement, as needed, to discuss the importance of this MOU in how it will be utilized during a Foreign Animal Disease, or other significant animal health emergency. All parties will be informed of their mutual responsibilities for this MOU; (2) meet annually to discuss mutual animal health concerns; (3) exchange information relating to animal health concerns on a continuing basis; (4) work cooperatively with tribal and state animal health officials in assisting with all FADs, or other significant animal health emergencies, by utilizing the Incident Command System in a jointly coordinated response; (5) conduct all FADs or other animal health emergency management activities on a case-by-case basis after coordination with the tribe and in accordance with the applicable tribal, federal, and local laws and regulations.
4) Cooperator responsibilities: the tribe agrees to (1) designate someone as its authorized representative who shall be responsible for collaboratively administering the activities conducted under this MOU; (2) develop and implement standards of cooperation among all partners to maximize the collective workforce available for emergency management and response; (3) increase awareness of the threat of foreign animal and zoonotic diseases and their role in prevention and response; (4) grant permission through a written tribe Trespass Permit to APHIS, VS representatives and their agents to enter upon the reservation for the purpose of identifying and eradicating any Foreign Animal Disease, or other significant animal health emergency disease if needed; (5) provide initial

security and law enforcement services in the event of an outbreak of FAD, or other animal health emergency, within and at the boundaries of the reservation.

5) APHIS responsibilities: APHIS, VS agrees to (1) designate someone as its authorized representative who shall be responsible for collaboratively administering the activities conducted under this MOU; (2) develop and implement standards of cooperation among all partners to maximize the collective workforce available for emergency management and response; (3) communicate the risk of potential emerging or foreign animal diseases. Provide and coordinate response and enhance communication within and between APHIS, VS and the tribe; (4) identify research needs and facilitate research activities to the most current technologies and methods available for detection, response, and mitigation of foreign and emerging diseases; (5) abide by all local Tribal Employment Rights Office regulations in contracting, subcontracting, and all employment related opportunities.
6) Statement of no financial obligation: signature of this MOU does not constitute a financial obligation on the part of APHIS. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU. Transfer of funds or items of value is not authorized under this MOU.
7) Limitations of commitment: the MOU shall supersede all existing MOUs and supplements thereto related to the outbreak of a FAD, or other significant animal health emergency within the boundaries of the reservation. This MOU and any continuation thereof shall be contingent upon the availability of funds appropriated by the Congress of the United States. It is understood and agreed that any monies allocated for purposes covered by this MOU shall be expended in accordance with its terms and the manner prescribed by the fiscal regulations and/or administrative policies of the party making the funds available.
8) Congressional restriction: under 41 USC 22, no member of, or delegate to, Congress shall be admitted to any share or part of the MOU or to any benefit to arise therefrom.
9) Amendment: this MOU many be amended at any time by mutual agreement of the parties.
10) Termination: this MOU may be terminated by either party upon 60 days written notice to the other party.
11) Effective date and duration: this MOU shall be in effect upon date of final signature and shall continue 5 years from the date of the final signature.

c. Memorandum of Understanding for Interagency Cooperation and Management of New Invasive Species on lands within the Flathead Reservation, and Law, Sanders, and Missoula Counties

1) Introduction: The Partners for Regional Invasive Management (PRISM) is a multi-agency effort assembled to address the threats that invasive plants place on the natural resources we strive to protect and manage. PRISM was established to provide a mechanism for agencies to cooperatively manage invasive plants, through information exchange, data sharing, and interagency planning and management efforts to locate and eradicate new invaders are a high priority. Established infestations of prolific and widespread non-native species are impacting our economy, scarring our landscapes and diminishing our natural resources. With enhanced communication and collaboration, we are better able to curtail these impacts and address the challenges of new invaders. Representatives from the Confederated Salish and Kootenai Tribes (CSKT), U.S. Fish and Wildlife Service (FWS), Lake County Weed District (LCWD), Montana States Department of Fish Wildlife and Parks (FWP), Central Management Entity (CMW), Salish Kootenai College (SKC), Missoula County Weed District (MCWD), Natural Resource Conservation Service (NRCS), Mission Valley Pheasants Forever (MVPH), Lake County Conservation District (LCCD) and Sanders County Weed District (SCWD) agree to actively participate in a partnership as outlined below. The purpose of this agreement is to establish interagency roles for the implementation of the PRISM project on lands within the Flathead Indian Reservation.

2) Priority invasive species: the priorities for terrestrial invasive plants managed under this MOU are shown below. In addition to priorities, this outlines the existing conditions and management goals for these plants. Priority 1 – watch and prevent species: plants (dyers woad, scotch-broom, tansy ragwort, and yellowstar thistle); status (these invasive species have not been detected in the project area); management goal (eradicate if detected. Prioritize education and prevention to increase likelihood of early detection). Priority 2 – newly established species: plants (medusahead, ventenada, bluewood, rush skeletonwood, knotweed complex and tamarisk); status (these invasive plants are newly established and have a limited presence in the project area); management goal (eradicate where possible and contain larger infestations, prevent movement and introduction into non-infested sites, prioritize education and prevention). Priority 3 – recently established species: plants (orange hawkweed, meadow hawkweed complex, common tansy, and yellow toadflax); status (these invasive plants have become well-established over the law couple of decades and are

prevalent on many landscapes in the project area; management goal (work to contain and minimize spread, prioritize education.

3) Responsibilities of the parties: species will be managed according to the following ranking; these rankings are created by the group and will be evaluated annually. Cooperators agree to follow up and confirm or refute reports within our jurisdictional boundaries. Following is a list that includes, but is not limited to, species that fall into this category: Yellow Starthistle, Dyer's woad. Cooperators agree to treat these species located within their jurisdiction, offer integrated treatment options to interested parties, share location data and either allow for or complete follow up monitoring. Following is a list that includes, but is not limited to, species that fall into this category: rush skeletonweed, Blueweed. Cooperators agree to information share, collaborate on treatment efforts where applicable, use best management plans, support mapping efforts to understand the extent of the problem, support ongoing treatment efforts through information and data sharing and adapt methods for the prevention of spread. Following is a list that includes, but is not limited to, species that fall into this category: Knotweed complex, Leafy spurge, Yellow toadflax. CSKT, FWS, FWP, Lake County, Missoula County, NRCS, and SKC will also (1) provide education/outreach regarding new invasive weeds through the use of signage, newspaper articles, publications, and other media sources; by providing adult and youth education programs, and by other appropriate means; (2) actively participate with PRISM to develop regional strategies and priorities for managing new invasive weeds; (3) cooperate in developing grant and other funding proposals for inventorying and managing new invader projects. CSKT, FWP, SKC, CME, Lake County, Missoula County and Sanders County will (1) provide non-federal match through in kind services and/or other means when applicable, for obtaining resources sought by the group for the purpose of funding the components of this agreement. PRISM will (1) develop and implement an interagency Early Detection Rapid Response process for managing new invaders; (2) provide small tank sprayers, weed eaters, mowers and assistance, when available, to interested parties for the control of new invasive weeds identified in this agreement, at no cost; (3) administer funds for positions, contracts, or equipment purchase, when opportunistic and with consideration to limitations identified by the group; (4) develop integrated treatment options and prescriptions for new invasive weeds; (5) providing funds are available, contribute funding support to managing new invasive weeds on all lands within the Flathead Reservation, and Law, Sanders, and Missoula counties; (6) report

new invader management issues and opportunities to Montana Noxious Weed Summit Committee; NRCS State Technical Committee; Conservation Districts for Lake, Missoula, Sanders, and Flathead counties; Northwest Regional Office Invasive Specie Coordinator; Crown of the Continent Invasive Species Working Group; (7) participate in interagency field reviews of new invader treatment projects to discuss project outcomes, follow up management and monitoring options, and opportunities for cooperative management when appropriate.

4) Termination: the parties may terminate this agreement at any time, without cause, upon providing ten days written notice all other parties to this agreement.
5) Amendments: this agreement may be amended only with the written consent of the parties.

***Note**: the information within this section, entitled "Tribal Authorities", includes, but it not limited to, information provided to and collected by the Invasive Species Council Survey with tribal members also serving on the Invasive Species Council. The memorandums were provided, in part, by Animal and Plant Health Inspection Service (APHIS).*

LOCAL AUTHORITIES

A. Montana Counties:

1. Broadwater County:

a. Animals deemed nuisance

i. 8-7-101: maintenance of certain animals – any person, persons, firm, corporation or association of any kind or character that shall keep, or maintain, or cause to be kept or maintained, any horses, cows, sheep, hogs, goats or more than two rabbits over three months of age, within the platted area of the City that lies east of the railway line, at any time, shall be deemed guilty of maintaining a nuisance, as the keeping or maintaining of any such animals within said designated area, due to congested conditions in said prescribed area, is injurious to the free use of property, so as to interfere with the comfortable enjoyment of life and property.

ii. 8-7-102: penalties – any person, persons, firm, corporation or association of any kind or character, convicted of maintaining

any such nuisance as set forth in section 8-7-101 hereof shall be punished by a find or not less than seventy-five dollars nor more than one hundred fifty dollars, and each day's continuance of such nuisance, after notice to abate the same given by any officer or employee of said City, shall be deemed a separate offense and be punished as aforesaid.

2. Jefferson County:

   a. Jefferson County Weed Management Plan:
      i. Purpose: the purpose of the Jefferson County Weed Management Plan, in conjunction with the Montana State Weed Management Plan, is to strengthen, support and coordinate private, county, state and federal weed management efforts in Jefferson County and Montana, to promote implementation of ecologically based integrated weed management programs within Jefferson County. Noxious weeds are established and spreading in Montana and in Jefferson County. The Jefferson County Weed Board has created this plan for the purpose of managing noxious weeds in Jefferson County, with emphasis on specific weed management areas, as outlined in the attached (EIA), Appendix C. Noxious weeds render land unfit for agricultural production, recreation, wildlife habitat; increase erosion, sedimentation of streams and alter the bio-diversity of the ecological systems. These invasive plants are designated noxious by rule of the Montana Department of Agriculture and local county Weed Boards based on their detrimental impact to the environment and economy of Montana. The Jefferson County Weed Management Plan will outline objectives that are reasonable for effective and efficient invasive noxious weed management for all landowning entities in Jefferson County. These objectives will provide guidelines for private, county, state and federal land managers to develop plans and goals consistent with state and national strategies; provide a method of prioritizing management strategies, and allocating the limited resources based upon these priorities; and prioritizes **Noxious Weed Trust Fund Grants** based on compatibility and compliance with the Montana State Weed Management Plan. This plan is dynamic and will be revisited every two years as ruled by the Montana Department of Agriculture for qualification of potential funding through the Noxious Weed Trust Fund.
      ii. **Jefferson County Noxious Weeds:** Jefferson County's Noxious Weed list is comprised of species on the statewide list

and two additional species listed specifically by the Jefferson County Weed Board. Noxious weeds are estimated to infest 10 to 12 percent of the total acreage in Jefferson County. **Priority 2B:** These weeds comprise 10% of the total acreage within the County. These noxious weeds make up 90% of the infested acreage. The largest infestations include Spotted Knapweed, Leafy Spurge, Houndstongue, Hoary Alyssum and Canada Thistle. Management priorities include maintaining clean roadsides, public grounds and areas, requiring landowners to manage and contain infestations to reduce the infestations, work with landowners to establish management programs, identify and work to eradicate small infestations, and provide cost share assistance. **Priority 2A:** This group consists of nine weeds. The Priority 2A plants that have been identified in Jefferson County in small rare instances include: Perennial Pepperweed, Orange Hawkweed and Tansy Ragwort. Management priorities will include: Provide cost share assistance, maintain clean roadsides, public grounds and areas, require landowners to manage and contain infestation to reduce infestations, work with landowners to establish management programs, identify and work to eradicate all infestations. With aquatic noxious weeds identified in the Missouri Headwaters a complete survey was conducted during the 2011 growing season. Eurasian Watermilfoil was identified infesting waters in the Jefferson River. The source of this infestation is found in the Jefferson Slough in Southern Jefferson County. Because of the infestation of this aquatic weed, an area task force has been formed to set priorities for these sites as well as pool educational resources for the benefit of landowners and recreationists. The newly Missouri Headwaters EWM Task Force spearheaded a week long hand pull effort in a 5 mile stretch of the Jefferson Slough in July 2012. Additional management strategies for the future are being planned by the task force. **Priority 1A:** This category is limited to three weeds: Yellow Starthistle, Dyer's Woad and Common reed. There have been no sightings of this plant to date, but it has been detected in surrounding counties. **Jefferson County Declared Noxious Weeds:** At this time there is three (3) county declared noxious weed specified in Jefferson County. These noxious weeds are Baby's Breath, Field Scabious and Russian Olive tree. Management of these weeds is the same as Priority 2B Noxious Weeds. **Jefferson County Watch List:** There is also one (1) additional weed of

concern within Jefferson County that is managed if resources permit. Weed of concern is: Common Mullein.

iii. Goals and priorities: As stated earlier, the Jefferson County Weed Board operates under the guidance of the Montana County Weed Control Act, dated October 2011, Title 7, Chapter 22, Part 21, Sections 2101-2153. The Jefferson County Weed Board is charged with enforcement of the County Weed Control Act and bases the County Weed Program on the requirements of the Noxious Weed Control Act as well as the Montana State Noxious Weed Management Plan. The Weed Board is directed to provide information, guidance and perform weed management activities within the county. The Jefferson County Weed Board provides assistance to private landowners in forming management plans to promote good stewardship for their land and to effectively and efficiently manage invasive noxious weeds. The Weed Board also provides assistance and develops cooperative agreements with State and Federal agencies to manage noxious weeds on their land within Jefferson County. Among these cooperative agreements is an agreement to manage noxious weeds on Montana Department of Transportation rights-of-way, and Bureau of Land Management. There are an estimated 4,254.7 acres that are managed each year on these rights-of-way. The average yearly funding for these acres is approximately $37,000.00 for an average price of $8.70 per managed acre. Helena National Forest contracts with Jefferson County to manage traveled right-of-ways and trails. The project funding is approximately $3,000.00 per fiscal year. A cooperative agreement to manage noxious weeds is also in place with USDI Bureau of Land Management. Jefferson County manages in excess 1,600 acres per season. Management on these acres concentrate on traveled rights-of-way and rangeland. Preliminary numbers at this time are approximately $16,000.00 for the next five (5) years. Jefferson County also has cooperative agreements with Jefferson Watershed Council, Department of Natural Resources and Fish, Wildlife & Parks to assist with weed management responsibilities on designated waterway and tributaries to control the aquatic invasive species.

iv. Weed management areas: The Weed Board provides assistance to private landowners with formation of noxious weed management plans on their own lands and formation of cooperative weed management areas to address specific, localized noxious weed problems within a group of landowners in a specific area of concern. There is one identified Weed

Management Areas in Jefferson County: Travis Creek area and future Aspen Valley weed management area. The Weed Board provides assistance to these groups via cooperative grants obtained from the Montana Noxious Weed Trust Fund and RAC. Jefferson County actively seeks funding to assist these groups with cost-share for herbicide and/or commercial herbicide application cost-share through these grants. There are also several watershed projects underway, including the Jefferson Slough and Pipestone Creek to assess and treat noxious weeds within the riparian corridor as well as address the sediment issues. These projects have received funding from the Department of Natural Resources. In addition to seeking grant funding for cost-share, the Weed Board offers a countywide cost-share program to all landowners within Jefferson County. This is a 49% herbicide cost-share up to a maximum of $1500 per landowner in one calendar year and not to exceed $6000 in a four year period. This cost-share assists landowners that are not currently involved in a cooperative management grant project. See attached APPENDIX H for cost-share program specifics.

v. Noxious weed compliance program: MCA 7-22-2116 Part 1 states: It is unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land. A landowner is considered to be in compliance if they file a Weed Management Plan and the plan is approved by the Jefferson County Weed Board. In the case a landowner is not considered to be in compliance the Weed Board has adopted the following procedures: When an infestation of noxious weeds have been identified or reported, the Weed Board will attempt to notify the landowner/manager of the problem with a letter outlining the following information: **Legal description where infestation occurs. A common location associated with the site. Noxious weeds known to be present.** The landowner/manager will be asked to notify the Weed Board within ten (10) days of their intentions in addressing the noxious weeds. If the landowner/manager does not respond within the ten (10) days, a certified letter will be sent requesting voluntary compliance in the form of a noxious weed management plan. This plan will help to guide the landowner/manager in developing a comprehensive weed management program and help meet requirements set in 7-22-2123 (3) MCA, placing the landowner/manager in compliance. If the landowner/manager does not respond within the ten (10) days, the Weed Board or Weed Board Agent will seek a court

order to enter and inspect the land to determine if noxious weeds are present on the property. Under MCA 7-22-2134 the Board may seek a court order to enter the property and institute appropriate noxious weed control measures or seek a civil penalty. The Jefferson County Weed Board will continue to work with all landowners to develop a Weed Management Plan.

vi. Subdivision weed management plan: As stated in the Jefferson County Weed Management Requirements for Subdivisions: "Upon approval by the Board, this plan must be signed by the Chairman of the Board or appointed Representative in cooperation with the agency responsible for the disturbance of ground and constitutes a binding agreement between the Board and such person or agency." Jefferson County charges the sub-dividers for time spent on the review, inspections and approval process. The fees are as follows: $150.00 fee for minor subdivisions (5 lots or less), and a $150.00 fee for the first five lots of a major subdivision with an additional $20.00 per lot over five.

vii. Gravel pit/opencut weed management plans: The Department of Environmental Quality requires all new gravel pits submit a noxious weed management plan before approval. The Jefferson County Weed Board is charged with the review, inspection, and approval process. A $150.00 fee is charged.

viii. Right of way waivers: When a landowner objects to weed control measures along a state or county highway or road that borders or bisects their property they will be asked to complete and submit Noxious Weed Control Permit/Plan (Appendix G) per 7-22-2153MCA. This permit/plan must be approved by the Weed Board. If control measures are not carried out as per permit/plan, the Weed Board will send a letter requesting alternative measurers be carried out within 30 days or the agreement will be revoked and control measures will be undertaken by the Weed Board and may be fined as outlined in MCA 7-22-2153 Part 5 (a) & (b).

ix. Education: Jefferson County Weed Board will continue to develop and participate in numerous educational programs County wide. The Weed Coordinator & the Madison/Jefferson Extension Service will offer Pesticide Applicator Training (PAT) courses throughout the year. In addition to trainings the County will continue to work with many of the Jefferson River Watershed group within the County as well as other organizations like the Elkhorn Working Group and Weed Committee to inform landowners and recreationist to the

impacts of invasive noxious weeds. Jefferson County will continue to work with the Southwestern Area Council in continued development of educational displays for the Southwestern Area Education Trailer as well as submitting informational articles to the area newspapers when time allows. Jefferson County also encourages participation in trainings offered by surrounding counties and throughout the state with the Montana Weed Control Association (MWCA).

x. Weed board program mission: The Mission of the Jefferson County Weed District is to promote good land stewardship and to educate landowners/managers as well as agencies within Jefferson County on the importance of implementing an integrated weed management program and to protect and improve the integrity of the natural resources for future use and enjoyment.

3. Lake County:

a. Lake County Noxious Weed Management Plan of 2012 (mirrors the 2005 Montana Weed Management Plan, with specific provisions tailored to Lake County):

i. Introduction: The Purpose of the Montana Weed Management Plan is to strengthen, support, and coordinate private, county, state, and federal weed management programs. The magnitude and complexity of a thoughtful management plan that can achieve reasonable objectives. These objectives will: 1) provide guidelines for private, county, state, and federal land managers to develop goals and plans consistent with state and national strategies; 2) provide a method of prioritizing management strategies and allocating limited resources based upon prioritized objectives; and 3) prioritize Noxious Weed Trust fund grants based on compatibility and compliance with the state plan. This plan is a dynamic document that will be evaluated and revised every two years. Specific objectives, issues, and programs are discussed to increase awareness and foster coordinated, cooperative weed management efforts statewide.

ii. Objectives: 1. Assist in the development of stable long-term funding sources for land managers to implement a comprehensive weed management program that includes all aspects of integrated weed management. 2. Build a team effort for managing noxious weeds in Montana. This coalition includes private, private-corporate, utilities, municipalities, county, state, tribal and federal land interests. 3. Establish

strategies for managing weeds on a priority basis, including the development of memorandums of understanding and enforcement of the county weed act. 4. Promote the development and maintenance of a noxious weed inventory for all lands in Lake County. 5. Provide Montana Department of Agriculture, Montana State University, University of Montana, neighboring counties, state, tribal and federal agencies current inventory and mapping information. 6. Prevent introduction and establishment of noxious weeds into non-infested areas. 7. Raise awareness and understanding of effects and affects of noxious weeds on land and in Montana, and educate the public on state-of-the-art integrated weed management. 8. Promote and support noxious weed research based on needs determined by public and private land managers. 9. Promote implementation of ecologically based, integrated weed management programs. 10. Prepare for weed-related emergencies that occur from fires, drought, flood, or other major natural or human-caused disturbances.

iii. Noxious weed impacts: A weed is defined as any plant that interferes with the management objective for a given area of land (or body of water) at a given point in time. Once a plant has been classified as a weed, it attains a "noxious" status by Rule as described in the County Noxious Weed Control Act. "Noxious weeds", by definition of the Montana County Noxious Weed Act, means any exotic plant species established or that may be introduced into the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated as a statewide noxious weed by rule of the department; or as a district noxious weed by a board , following public notice of intent and public hearing (MCA 7-22-2101). Weeds are considered one of the most serious threats to natural habitats and resources in the West. Noxious weeds displace native plants and cause serious economic losses and environmental impacts. Noxious weed establishment reduces range and agricultural land productivity, reduces available forage for wildlife, and negatively impacts aesthetics. Ecological processes may be negatively affected by invasion of noxious weeds; for example, spotted knapweed forms monocultures that can increase soil erosion. Spotted knapweed infests over 3.8 million acres in Montana, but there are new invaders that have the potential to do even greater ecological and economic damage, such as yellow star thistle. Several species that have been designated as noxious by federal, state,

and local governments were brought to an area because a species was known to be useful somewhere else or a use has been found since its introduction. For example, spotted knapweed, introduced form Eurasia, arrived in Montana as a food source for honeybees. Purple loosestrife, a Eurasian native that may not have been intentionally introduced, is used as a landscape ornamental. On the other hand, species such as spotted knapweed, which spread rapidly in susceptible areas are detrimental to Montana's range livestock industry. The annual loss would be expected to increase until noxious weeds are established in most susceptible areas. Losses to livestock also mean losses to wildlife, especially big game. The state of Montana has listed 27 nonnative, invasive plant species as noxious, which means it is unlawful to propagate these or allow them to go to seed because they pose a threat to agriculture and the ecology and economy of Montana. In addition, Lake County has listed 10 species which are problematic here or have great potential to cause problems, specifically for aquatic and riparian areas. Because approximately 10% of Lake County is surface water and wetlands, five (5) aquatic weeds were adopted and added to the county noxious weed list in 2001.

iv. Lake County Herbicide Application Policy: General Applications will be made under the guidelines provided in each herbicide label. Herbicides will be selected by considering 1) target plant species; 2) target plant growth stage; 3) desired plant communities and cover (choose an herbicide that will result in the least amount of non-target plant damage); 4) soil and water; 5) weather and soil conditions; 6) personal safety; and 7) economics. Tordon 22k, a restricted use chemical, will not be applied within 50 feet of surface or ground water. When applied along roadsides applicators will make every attempt to not apply Tordon 22k within 100 feet of surface water. Tordon will not be applied to soils that have a high probability of leaching characteristics. 2,4-D Amine, Weedar 64, Opti Amine or another aquatically labeled selective herbicide will be applied in buffer zones between an application of a non-aquatic labeled herbicide and the waters edge, or below the tidal area. Hi-Dep, 2,4-D Ester, 2,4-D Amine, Opti Amine or other selective ornamental/turf herbicides will be used in ornamental/turf areas (lawns, cemeteries, developed parks, etc). Rodeo, AquaNeat, 2,4-D Amine, OptiAmine, Weedar 64 or other aquatically labeled herbicides will be considered for application against noxious weeds within the riparian areas or

wetlands. R-11 or Competitor, surfactants that enhance herbicide activity and have an aquatic label will be used in wetlands and riparian areas. R-11, R-900, Penetrator, Sylgard, Syltac, Activator 90 or other surfactants that enhance herbicide activity will be added with each herbicide application to ensure a higher rate of reponse. Transline, Curtail, Vista, Rangestar, Banvel, Ally, Escort, Telar, Redeem, Cimmarron, Milestone, Plateau, Overdrive and other selective herbicides are considered and used accordingly to their respective labels. Hyvar, Topsite and Sahara are among non-selective herbicides used on industrial sites to eliminate vegetation. This list of herbicides represents the most broadly used herbicides, but does not restrict the Lake County Weed District from considering or using others as they prove to be effective in selectively controlling noxious weeds. As agricultural sciences change and progress, Lake County Weed District is always looking for new answers to aid in the fight against noxious weeds in Lake County.

4. Powell County:

   a. Powell County Vegetation Management Plan (2016-2018):
      i. Introduction: The locally appointed Powell County Weed Board is mandated by state statute to enforce Montana's County Noxious Weed Control Act (7-22-2101 Montana Code Annotated). The Powell County Vegetation Management Plan (PCVMP) provides the foundation for fulfilling that mandate. For management purposes, Powell County is divided into 14 Vegetation Management Areas (VMA's). A VMA is defined as a unit of land with an infestation of one or more state or county listed noxious weeds in which adjoining landowners cooperate together to implement an Integrated Weed Management (IWM) effort. VMA's encompass 63% of the 1,491,190 acres within Powell County (See Figure 1. Appendix A.) The majority of remaining lands not encompassed by a VMA is under federal ownership, and much is designated as wilderness (See Figure 2. Appendix B.) An estimated 150,500 acres of Powell County (10.1%) is infested with noxious weeds. An Integrated Weed Management (IWM) approach, which considers site conditions, and prescribes education and prevention, as well as mechanical/manual, biological, cultural, and chemical weed management practices where appropriate, will be implemented to manage noxious weeds in Powell County. The PCVMP is supported by an Environmental

Assessment (EA) completed on January 1, 1998. This EA is available for review at the weed board office and will be used to guide implementation of PCVMP.

ii. Purpose: The purpose of the Powell County Vegetation Management Plan is to: Maintain healthy, weed resistant plant communities that meet the management objectives of public and private land managers. Protect agricultural and natural resources of Powell County by preventing the spread of existing noxious weeds. Implement the County Noxious Weed Control Act (7-22-2101 MCA). Coordinate weed control efforts with private individuals and government agency personnel. Implement an ecologically based plan that will integrate prevention, public education, and various control methods to manage noxious weed infestations without significant adverse environmental effects. The Powell County Noxious Weed List includes all Priority 1A, 1B, 2A, 2B, and 3 Noxious Weeds as listed in the Montana Department of Agriculture rule (4-5-205) as of July 2015.

iii. Montana Noxious Weed List: The Montana Noxious Weed List has been developed so that management objectives align with the invasion stage of each species. The documented history of plant invasions recognizes four major stages in the geographic spread of weeds (Figure 1). The "exclusion stage" occurs when introduction of a weed to a new area can be prevented. The management goals of this stage are prevention, education, and awareness. This stage is the most cost-effective stage in which to manage weeds, and therefore species in this stage often receive priority. After a weed becomes established, there is typically a lag phase before the weed begins to rapidly increase its range. During this phase eradication is the most effective management strategy; populations may occur in isolated areas throughout the state and are still small. Aggressive and persistent efforts may eliminate the weed or at least contain or reduce the population. The third stage of invasion is the "suppression stage." Populations may be expanding rapidly during this stage. Emphasis is placed on suppressing infestations from further growth, especially through control of satellite infestations, which are small infestations that occur beyond the existing perimeter of a core infestation. Populations may be abundant and widespread in many counties; therefore integrated management that delivers cost-effective, long-term suppression of weeds is critical during this stage. The final stage of invasion occurs when the geographic breadth of the invasion reaches its maximum. Most suitable

habitat has already been invaded, and further expansion of the weed may not occur. Effective control is unlikely without massive resource inputs. Often management is directed towards the use of biocontrol and other low input methods that will suppress weed abundance. **Priority 1A** weeds of the Montana Noxious Weed List correspond to the "exclusion stage" of the invasion process illustrated in Figure 1. These weeds will be eradicated if detected, and education and prevention efforts will be employed. **Priority 1B** weeds, depending on the weed species and location within the county, correspond with the "eradication stage". These weeds will be eradicated or contained if detected. Education efforts will be employed. **Priority 2A** weeds, depending on the weed species and location within the county, correspond with the "eradication stage" or the "suppression stage". Priority 2A species will be a priority within the county weed district. The status of each weed in its invasion stage will vary within the county. These weeds will be eradicated or contained where less abundant if detected, and education efforts will be employed. Any one method, or a combination of chemical, biological, and prescription grazing control methods will be implemented where possible and appropriate. **Priority 2B** weeds, again depending on the species and location within the county, correspond with the "suppression stage". These weed species shall also be a priority within the county weed district. The status of each weed in its invasion stage will vary within the county. Any one method, or a combination of chemical, biological, and prescription grazing control methods will be implemented where possible and appropriate. **Priority 3** or **Regulated Plant** management criteria include limiting the intentional sale of these species, the intentional distribution as a contaminant of agricultural products, and implementation of research, education, prevention, and control programs where appropriate within the county.

iv. Management methods: Education and prevention are the foundation of any noxious weed management program. Beyond that, multiple management techniques can be used to contain, control, or eradicate noxious weeds. These include cultural methods (seeding, grazing systems, fertilization, irrigation, etc.), mechanical methods (hand pulling, cultivation, etc.) and biological methods (insects, pathogens, grazing animals, etc.) and chemical methods. Integrated Weed Management (IWM) is generally recommended and used by the Weed Board to control extensive weed infestations that often occupy riparian

areas, foothills, and other ecological niches. IWM is defined as any effort combining two or more weed control methods. **Public Education:** Early detection and treatment of weeds, and an overall effective preventive weed management program is dependent on education. Public education programs, such as tours, workshops, meetings, radio and newspaper announcements, youth programs, etc., are useful for preventing the spread of noxious weeds. Educational programs should also address range management. Proper range management allows desirable plants to remain vigorous and competitive, and is the most practical and effective weed preventive strategy on pasture and rangeland. **Prevention:** The prevention of introduction of weed seed and plant parts into non-infested sites is the most practical and cost-effective method of weed control. Measures include minimizing soil disturbance, warning against the transport of weed-contaminated seed and feed, advising that machinery and equipment should be cleaned before they are moved from weed-contaminated areas, warning against the transport of weed seed-contaminated gravel, and preventing newly established weeds to set seed. **Cultural Methods:** Cultural weed management methods enhance the growth of desired vegetation that should help to slow weed invasion. The use of irrigation, fertilization, plant competition, smother crops, and crop rotation are methods often most suited to cropland agriculture. Maintaining native or desirable vegetation in a healthy condition and minimizing soil disturbance are beneficial for slowing spread of noxious weeds into recreation and wildland sites. On some forest sites, improving shrub and tree canopy cover can reduce spotted knapweed density and slow invasion. Reseeding with competitive, adapted species may also be necessary when rehabilitating a noxious weed impacted site. **Mechanical Methods:** The use of manual methods to eliminate weeds can be effective on small infestations that are not well established, or on intensively managed sites such as seeded turf. Hand pulling, hoeing, tilling, mulching, burning and mowing are all commonly used methods. Physical and mechanical methods are labor intensive and may not be effective on deep-rooted perennial weeds. **Biological Methods:** Biological control involves the use of living organisms, such as insects, pathogens, or grazing animals, to control a weed infestation. Biological control attempts to recreate a balance of plant species with predators. Since noxious weeds are not native to the plant community in

which they have established, they have no natural predators. **Chemical Methods:** Herbicides are a valuable tool for managing noxious weeds; however, it is important to understand the effects and limitations of these products. Herbicides are categorized as selective or non-selective based on their ability to control certain kinds of plants. Selective herbicides will control either broadleaf or grass plants depending on the product selected. Non-selective herbicide will kill both grasses and broadleaf plants. Herbicides can also be selective based on the rate of application. Chemical Management Procedures: The Powell County Noxious Weed Program Environment Assessment details consequences of and provides mitigation measures for the use of chemicals (herbicides). Consistent with that information, the following procedures are established. Pesticide application will be contracted to commercial pesticide applicators. Seasonal plan(s) will be established with commercial applicators that respond to goals of the responsible agencies for weed control. The seasonal plan will also be responsive to the weed control efforts of cooperative weed management groups. Herbicide application will be recorded by the spray contractor(s) in terms of date, location, environmental conditions, herbicide used, and application rate. Records will be submitted to the Weed Board upon completion of work. The following weed control equipment will be made available to landowners for their weed control efforts. Slide in sprayer; ATV spray rigs; Backpack sprayers; Trailer Boomless sprayer; Mini-drill and broadcast seeder. IWM will be recommended for control activities within Powell County.

v. Monitoring and evaluation: Monitoring is conducted to find out what is happening over time. The Powell County Weed Board will monitor to determine the effectiveness of management methods as well as the current range of weed infestations. Monitoring data will be geographically referenced using GIS and GPS where possible. The coordinator will compile and maintain maps of known weed infestations throughout the county based on land owner reports, agency maps, and school and county sponsored mapping projects. The maps will be the best known up-to-date information, but will be limited by the accuracy and reporting participation of the citizens with the county. The GIS database will be maintained and updated annually to provide data for portraying changes on a large scale and to transfer this information to audiences of different backgrounds. Data will include weed species location, bio-

release locations, right of way control locations, and any other data associated with Weed Board activities. Periodic photo points will be recorded and linked to the GIS data to evaluate change over time.

vi. Weed board policies: 1. Landowners are treated equally with regard to enforcement of the Montana Noxious Weed Law, whether the owner is a private or a public entity. 2. Each Landowner is responsible for weed control on his or her property. 3. Vegetation Management Areas (VMA's) are supported, encouraged, and developed. 4. The Powell County Weed Board works in cooperative management strategies for weed control with private, corporate, and governmental agencies. 5. The Powell County Weed Board works toward "Helping landowners help themselves". 6. The Powell County Weed Board supports and promotes education/awareness programs wherever the opportunity is available or where the Board can make an opportunity available. 7. The Powell County Weed Board supports and encourages using an integrated approach to weed control to control noxious weeds, including but not limited to, the use of chemical, cultural, mechanical, and bio-agents (insects, grazing). 8. The Powell County Weed Board will only be directly involved with those weeds that are listed on the Montana and County Noxious Weed List. In special projects, such as roadway projects, total vegetation removal may be encouraged and other plant species may be considered for control measures.

B. Montana Cities and Towns:

1. City – Choteau, Montana:

a. City Code:

i. 7.3.5 – Nuisance weeds – defined: "nuisance weeds" are all weeds, grass and other wild and uncared for vegetation growing to a height in excess of eight inches and/or those designated noxious by the Teton County weed district, on premises located within the corporate limits of the city.

ii. 7.3.6 – Nuisance weeds – deemed a nuisance: it is a public offense and a nuisance for any person to maintain, cause, permit, or suffer any growth of nuisance weeds, as defined in section 7.3.5 of this chapter, to exist in or upon any premises in the city owned by such person or upon boulevards or the one half of any public roads, streets, alleys adjacent thereto.

iii. 7.3.7 – Violation – city superintendent to serve notice: It shall be the duty of the city superintendent of the city, or his authorized representative, to enforce the provisions of this chapter and upon a determination that a violation of this chapter exists, shall ascertain the name and mailing address of the owner of the premises and the description of the premises where the violation exists. The name and mailing address of the owner of the property may be obtained from the current assessment list maintained by the office of the Teton County assessor. Written notice of violation shall be served upon the owner directing that the nuisance weeds be cut within seven (7) days of the mailing of the notice. Furthermore, if the nuisance weeds are classified as noxious by the Teton County weed district, it will be at the discretion of the city superintendent as to whether or not these weeds will be sprayed with an appropriate herbicide. This decision will be determined by the stage of growth as well as the time of year. Seven (7) days following the spraying, noxious weeds will be cut and, where directed by the superintendent, removed from the premises. In either instance if appropriate action has not been initiated by the property owner, the following action will be taken: The city will cause the nuisance weeds to be cut and, where appropriate, noxious weeds to be sprayed, cut and removed.

iv. 7.3.8 – Violation – notice procedure: notice of violation shall be made by either: (A) posting a copy of the notice on the premises; or (B) mailing a copy of the notice to the owner by first class United States mail. The notice shall be deemed complete on the day the notice is posted or mailed.

v. 7.3.9 – Notice to abate nuisance weeds – assessment: Seven (7) days subsequent to posting or mailing of the notice, if action has not been taken by the property owner the same may be done by the city, and the cost assessed against the property and included in the next general tax levy and collected the same as any other taxes; or it may be recovered in a civil action by suit of the city.

2. City – Great Falls, Montana:

a. Title 8, Chapter 44:

i. 8.44.010 – Definition: nuisance weeds are all weeds, grass and uncared or vegetation growing to a height in excess of eight inches on premises located within the City.

ii. 8.44.020 – Nuisance weeds – deemed a nuisance: it is a public offense punishable under the general penalty provided in Chapter 1.4.070, and it is a nuisance, for any person, firm or

corporation to maintain, cause, permit, or suffer any growth of nuisance weeds as defined in Section 8.44.010 to exist in or upon any premises in the City owned by such person, firm, or corporation, or upon the boulevards or the one-half of any public roads, streets, or alleys adjacent thereto.

iii. 8.44.040 – Violation – public works director to serve notice: (A) it shall be the duty of the public works director or authorized representative to enforce the provisions of this chapter, and upon a determination that a violation of this chapter exists, shall ascertain the name and mailing address of the owner of the premises and the description of the premises where the violation exists. The name and mailing address of the owner may be obtained from the current assessment list maintained by the office of the Cascade County assessor. Written notice of violation shall be served upon the owner directing that the nuisance weeds shall be cut and removed from the premises within seven days or the following action will be taken: the city will cause the nuisance weeds to be removed, with the cost thereof to be charged against the owner. (B) payment shall be made at the Fiscal Services Department within fifteen days after the billing date. If payment is not made, such costs can be assessed against the property.

iv. 8.44.050 – Violation – notice procedure: notice of violation shall be made by either: (A) posting a copy of the notice on the premises; or (B) mailing a copy of the notice to the owner by first-class United States mail. The notice shall be deemed complete on the day the notice is posted or mailed.

v. 8.44.060 – Assessing delinquent charges: the city may include weed removal as part of the annual resolution assessing delinquent accounts. The resolution shall provide the property owners name; property owners mailing address; street address; legal description; and parcel number of the property in question.

3. City – Helena, Montana:

a. Helena City Code:

i. 7.7.1 – Title: this chapter shall be known and cited as the Nuisance Vegetation Ordinance for the City of Helena

ii. 7.7.2 – Intent: to control, to a reasonable degree vegetation that constitutes a physical danger to people or property, or visual obstruction for pedestrians or vehicles. It is not the intent of this section to require the control or maintenance of native plant communities in areas not disturbed by development or n undisturbed areas to which equipment access is restricted by

topography unless those areas pose an imminent physical danger to people or property, or visual obstruction for pedestrians or vehicles.

iii. 7.7.3 – Definitions: For purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The words "shall" and "must" are mandatory and not merely directory. BOARD: Lewis and Clark County weed district board. DEPARTMENT: City of Helena parks and recreation department. NOXIOUS WEEDS: Any weed defined and designated as a noxious weed under title 7, chapter 22, part 21, Montana Code Annotated. NUISANCE VEGETATION: All vegetation that constitutes an imminent physical danger to people or property or visual obstruction for pedestrians or vehicles.

iv. 7.7.4 – Nuisance vegetation to be cut: All property owners shall cut nuisance vegetation on their premises and the one-half ($^1/_2$) of any alley or street lying next to their property, and the boulevard abutting thereon. When cutting of nuisance vegetation is not sufficient to prevent physical danger to people or property the nuisance vegetation must be removed.

v. 7.7.5 – Noxious weeds prohibited: (A) Noxious weeds are prohibited on all property within the corporate limits of the city. (B) The department, upon determination that a property within the corporate limits of the city contains noxious weeds, shall forward the name and mailing address of the property owner and the description of the property where the violation exists to the board.

vi. 7.7.6 – Notice of violation: When nuisance vegetation is found on property or the adjacent alley, street, or boulevard in violation of this chapter, the city will send a written notice of violation to the property owner informing the owner of the violation and advising the owner that the nuisance vegetation must be cut, or removed if necessary, within fifteen (15) days from the date of the notice. If the nuisance vegetation is not cut or removed within that period, the property owner is subject to the penalties in this chapter.

vii. 7.7.7 – Violation: Violations of this chapter may subject the property owner to a fine not to exceed five hundred dollars ($500.00), or imprisonment in the county jail for a period no more than thirty (30) days, or both such fine and imprisonment.

viii. 7.7.8 – Enforcement by city – costs: If the property owner does not cut or remove the nuisance vegetation following a conviction, the city may take whatever reasonable action is necessary to cut or remove the offending vegetation. The costs of such cutting or removal may be assessed against the property by the commission.

4. City – Livingston, Montana:

   a. Livingston City Code; Chapter 12 – Garbage, Trash and Weeds:
      i. §12.91 – Definitions: for the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein: (A) "developed parcel: means any parcel of land that has been used or is being used for commercial or residential use with a principal structure covering over five percent of the parcel; (B) "offending vegetation" means vegetation which violates the sections of this article; (C) "owner and/or occupant" means any persons who alone, jointly, or severally with others: (1) has a legal or equitable interest in a dwelling unit, with or without accompanying actual possession hereof; (2) act as the agent of a person having a legal or equitable interest in a dwelling or dwelling unit thereof; or (3) is the general representative or fiduciary of an estate through which a legal or equitable interest in a dwelling unit is administered. (D) "ownership means ownership of land which shall be deemed to exist from the center line of any abutting alley, to and including the curb and gutter area of any abutting street of such lot or tract of land. (E) "undeveloped parcel of land" means any parcel of land zoned for but not currently being used for commercial or residential use. (F) "weed" means any plant which: (1) ordinarily grow without cultivation; and (2) is not grown for the purposes of landscaping or food production. (G) "weed cut or removed" means weeds that can normally be cut by the use of a push or ridden mower.
      ii. §12.92 – Duty to remove weeds: The existence of weeds or offensive vegetation in violation of this section constitutes a public nuisance. (A) Developed Parcel. It shall be the duty of every owner (occupant) of a developed parcel to cut, destroy or remove, or cause to be cut, destroyed or removed, all weeds in excess of twelve (12) inches in height growing thereon and upon one-half (½) of any road, street or alley abutting this property to a height of four (4) inches or less. (B) Undeveloped Parcel. It shall be the duty of every owner (occupant) of an undeveloped parcel to cut, destroy or remove, or cause to be cut, destroyed or

removed, all weeds in excess of twelve (12) inches in height growing thereon and upon one-half (½) of any road, street or alley abutting this property to a height of four (4) inches or less on property located within thirty (30) feet of any developed parcel. (C) Traffic Hazards. All weeds and offensive vegetation in developed and underdeveloped areas shall also comply with and be subject to all requirements imposed under section 30.52(b) and 30.52(d) concerning visibility at intersections, alleys and drive approaches.

iii. §12.93 – Notice to destroy: The Recording Secretary shall give notice to destroy weeds within the City limits by publishing notice to the public at least once each week for two (2) consecutive weeks in a newspaper distributed within the City. The last publication shall not be less than seven (7) days prior to April 30th. (For the calendar year 1990 these notices shall be published following the second reading of this chapter.) Such notice shall at a minimum advise the public as follows: (A) That all owners of real property or agents having control thereof are responsible for destroying all weeds in prohibited areas by extermination, removal or cutting not later than April 30th of each year and to keep the area free of weeds through November 30th of that year. (B) Failure to remove the offending weeds may cause the City to remove the weeds and charge the cost thereof against the real property together with an administrative cost equal to twenty-five (25) percent of the removal cost and a penalty of twenty-five dollars ($25.00) for each time the City provides the removal.

iv. §12.94 – Failure to comply: Upon first failure, neglect or refusal to maintain the prohibited areas free from weeds during the prescribed period, the City shall give notice to the noncomplying owner, agent or occupant thereof. Such notice shall provide as a minimum: (A) That the noncomplying owner, or agent thereof, is allowed seven (7) days from the date of the first notice of noncompliance to exterminate or remove; (B) That upon failure to comply the City may by its own work forces or by contract cause the weeds to be exterminated, removed or cut and the cost thereof shall be assessed against the noncomplying real property together with an additional administrative cost equal to twenty-five (25) percent of the cost of removal and a twenty-five dollar ($25.00) penalty; (C) If the owner, or agent of the property continues to neglect to maintain the prohibited areas free from weeds, the City may at its sole discretion exterminate, remove or cut the weeds again as needed without additional notice of any kind. Charges as in

subsection (2), including penalty, will be assessed for each time the City removes the weeds; (D) That the assessed amount together with costs and penalties shall constitute a lien on the noncomplying real property and will be taxed as a special assessment against the real property. The City has the option of sending a monthly billing statement to the owner, agent or occupant of said premises which is due and payable upon receipt. Should this statement remain unpaid, within sixty (60) days all costs will be levied and assessed against the real property.

v. §12.95 – Notice: notice under this article is sufficient if served personally or mailed regular mail to the last known address or the last address shown on the tax rolls of the county. Notice shall be deemed given when deposited in a United States Postal Service receptacle.

vi. §12.96 – Failure to comply misdemeanor: any person who willfully fails to comply with the provisions of this article is guilty of a misdemeanor and shall be punished as provided in section 1.8.

vii. §12.97 – Assessment: (A) Annually the City shall prepare a list of all lots, tracts and parcels of real property within the City from which and adjacent to which weeds were removed or exterminated by the City and for which such charges and penalties have not yet been paid, the list shall include as a minimum the following: (1) Name as shown by the tax rolls, common address if known; (2) Tax code of the property; (3) Legal description of the lot, tract or parcel; (4) Cost of the weed removal for that property; (5) Administrative costs; (6) Penalty assessed. (B) The assessment list shall be incorporated into a special assessment resolution in proper form which resolution shall be presented the City Council for consideration. From and after passage of the resolution, the assessments stated therein, together with administrative costs and penalty shall constitute a special tax, as provided in MCA 7-22-4101 and a lien on the real property shown on the assessment list. A copy of the resolution after passage shall be certified to the official collecting the City taxes and assessments.

5. City – Missoula, Montana:

   a. City of Missoula Code:

      i. §8.40.010 – Definitions: (A) The following shall be considered hazardous vegetation pursuant to this chapter: (1) Any weeds and any grasses in excess of twenty-four inches in height if they

exist within the city limits and abut a street or alley intersection or are within one hundred feet of a developed property located within the city limits or, (2) Accumulations of vegetation in excess of twenty-four inches in height that pose a fire hazard, as determined by the City Fire Department. (B) Nuisance weeds shall be defined as hazardous vegetation as defined pursuant to this chapter.

ii. §8.40.020 – Hazardous vegetation cutting, removal or extermination – property owner's duty – by city: (A) The owner, his representative, contract purchaser or any occupant of real property within the city shall cut hazardous vegetation growing on their real property including one-half of any street, road or alley lying next to their property or public boulevard abutting their property, (B) The owner, his representative, contract purchaser or any occupant of real property within the City shall remove or exterminate hazardous vegetation that poses a fire hazard as determined by the City Fire Department. (C) In case of their failure to do so, they shall be subject to the punishment provided in Section 8.40.050. In the case of hazardous vegetation, the City may cause the vegetation to be cut 12 calendar days from the date the notice of non-compliance is sent and the expense incurred shall be charged against the property. In the case of accumulation of hazardous vegetation as determined by the City Fire Department, the City Fire Department may cause the accumulated hazardous vegetation to be removed or exterminated and the expense incurred may be charged against the property or against the owner as provided by law. It shall be the duty of such persons to maintain their property so that it shall not be considered a fire hazard, a public safety visibility hazard at street or alley intersections, a public health hazard or a public or a private nuisance. (D) In lieu of cutting all weeds and grasses on the total parcel, the property owner is permitted to mow or cut a twenty-five foot (25') swath on the property along the border of any adjacent rights-of-way or any adjacent developed property with buildings, and is required to cut a twenty-five foot (25') swath next to any structures located on the parcel itself. In situations involving parcels of land that are maintained and designated or designed as natural parks/gardens, the owners may request exemption from the Director of Development Services or designated representative. The exemption will be in the form of a Managed Natural Garden/Park Agreement. The purpose is to recognize that private owners may have managed naturalized, less water

intensive gardens and lawns. It shall be the duty of such persons to maintain their property so that it shall not be considered a fire hazard, a public safety visibility hazard at street or alley intersections, a public health hazard or a public/private nuisance. Parcels of land designated or designed as natural parks/gardens may lose the designation of exempt, under this ordinance, if the property is not managed as stated in the management agreement. (E)In situations involving parcels of land used for agricultural purposes such as growing crops, that are fully irrigated, the owners may request exemption from the Director of Development Services or designated representative. The exemption will be in the form of an Agricultural Property Management Agreement. It shall be the duty of such persons to maintain their property so that it shall not be considered a fire hazard, a public safety visibility hazard at street or alley intersections, a public health hazard or a public or a private nuisance. Parcels of land used for agricultural purposes may lose the designation of exempt, under this ordinance, if the property is not managed as stated in the management agreement. (F) It shall be unlawful for a property owner or their tenant or designated property manager to violate any of the duties set forth in the provisions of this section

iii. §8.40.030 – Hazardous vegetation cutting, removal or extermination – collection of changes: In the event the owner, representative of the owner, contract purchaser or occupant of any property required by Section 8.40.020 to cut hazardous vegetation fails to do so, the City may at any time, cause such vegetation to be cut. In the case of accumulation of hazardous vegetation as determined by the City Fire Department, the City Fire Department may cause the accumulated hazardous vegetation to be removed or exterminated and the expense incurred may be charged against the property or against the owner as provided by law. The cost of such cutting, removal, or exterminating shall be based upon charges as set forth in Section 8.40.040 and collected as a special tax against the property, in accordance with the provisions of MCA Section 7-22-4101.

iv. §8.40.040 – Hazardous vegetation cutting, removal, or extermination – fee for cutting, removal or extermination by the city: (A) A hazardous vegetation cutting, removal or exterminating fee equal to the amount the contractor bills the City, plus a City administrative fee shall be charged for the cutting, removal or exterminating of hazardous vegetation. The work will be performed by a City assigned cut contractor at the

direction of the City. Fees are intended to pay for labor, fuel, equipment and administrative costs. (B) A City administrative fee shall be assessed for each weed and grass cutting, removal or exterminating work order that is processed. The City Council will establish and/or amend the fee by resolution after conducting a public hearing. (C) If a fire originates in the grasses or weeds on a property, the property owner may be assessed costs for fighting that fire if the City Fire Chief deems it appropriate to do so after conducting an investigation of the cause of the fire.

v. §8.40.050 – Violation – penalty: Any owner, representative, contract purchaser or occupant of the property violating the provisions of Section 8.40.020 shall be fined not less than fifty dollars nor more than five hundred dollars. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violation within a reasonable time. Each day that prohibited conditions are maintained or allowed to exist shall constitute a separate offense. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

6. City – Whitefish, Montana:

   a. Ordinance No. 17-22: An ordinance of the City Council of the City of Whitefish, MT, amending Chapter 5, Aquatic Invasive Species Prevention, of Title 13 of the Whitefish City Code, to comport with the regulations and protocol of MT Fish, Wildlife and Parks.
   b. Title 13, Chapter 5 – Aquatic Invasive Species Prevention:
      i. §13-5-1 – Purpose: the purpose of this chapter is to protect all native and desired aquatic species, aquatic habitat, water quality, commerce, and recreation in the waters of Whitefish Lake by preventing the introduction and spread of aquatic invasive species. Nothing herein shall be deemed or construed as creating an affirmative duty on the City to enforce the provisions of this chapter.
      ii. §13-5-2 – Definitions: "aquatic invasive species: shall mean any invertebrates, plants, fish species or pathogens, as identified by the State of Montana whose introduction to waters of Whitefish Lake is likely to cause economic or environmental harm or harm to human health. "Vessel" shall mean every description of watercraft, unless otherwise defined by the Montana Department of Justice, other than a seaplane on the water, used or capable of being used as a

means of transportation on the water. "High risk vessel" includes but is not limited to, ballast boats or boats with ballast bags, boats with standing water, boats from a state known to have water bodies infested with aquatic invasive species, boats from a Montana water body known to have aquatic invasive species, boats with attached flora or fauna, and boats with live bait.

iii. §13-5-3 – Prohibitions: no person shall transport or introduce any aquatic invasive species into Whitefish Lake; no person shall launch any vessel contaminated with any aquatic invasive plant or animal species into Whitefish Lake; no person shall launch any vessel into Whitefish Lake without first submitting to an inspection pursuant to section 13-5-4, when such an inspection is required by a duly authorized agent of the City or State; no person shall launch any vessel into Whitefish Lake without having the vessel decontaminated after being directed to do so by a duly authorized agent of the City or the State; no person shall launch any high risk vessel into Whitefish Lake without first having the vessel decontaminated, when such decontamination is required by a duly authorized agent of the City or the State. Decontamination is not required when the operator is able to provide proof that the vessel has not been launched in any water body for the preceding thirty (30) days; no person shall provide false information to any person authorized to inspect, decontaminate or quarantine vessels; no person shall utilize the City Beach launch outside its hours of operation.

iv. §13-5-4 – Vessel inspections and decontamination: (A) the City may appoint agents or assign City personnel to inspect vessels prior to launching into Whitefish Lake to detect the presence and prevent the introduction of aquatic invasive species; (B) any vessel inspected that is found to have indicia of contamination by aquatic invasive species shall be required to undergo decontamination procedures or be quarantined prior to launch. Prior to launching into Whitefish Lake, any vessel having undergone decontamination or quarantine procedures pursuant to this section may be subject to inspection and/or certification requirements; (C) prior to launching any vessel into Whitefish Lake, the owner and/or operator of the vessel may be required to complete an online self-certification program and test in lieu of a full vessel inspection; (D) prior to launching any vessel into Whitefish Lake and/or at the time

of the inspection, the owner and/or operator of the vessel may be required to execute an affidavit indicating whether the vessel has been operated in any waters known to contain aquatic invasive species and, if so, providing the dates of said operation, the length of time that the vessel has been continuously stored in a drained and dry condition subsequent to being on a water body containing aquatic invasive species, and what decontamination procedures, if any, the vessel has undergone; (E) no person shall be required to submit to a vessel inspection under this section. If the vessel owner or operator refuses to consent to inspection or screening, that vessel shall not be allowed to launch into Whitefish Lake.

v. 13-5-5 – Fees: all vessel inspected pursuant to this chapter may be subject to payment of fees for the inspection. Inspection fees shall be in such amounts as may be established from time to time by resolution of the City Council.

vi. §13-5-6 – Public nuisance declaration: any intentional violation of this chapter is declared to be unlawful and a public nuisance and may be abated as set forth in section 4-1-3 of this Code, irrespective of any other remedy provided in this chapter.

vii. §13-5-7 – Penalty: any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished as set forth in section 1-4-1 of this Code. Any person who violates any provisions of this chapter shall also be deemed to have committed a municipal infraction and shall be assessed the civil penalty described in section 1-4-4 of this Code. For each separate incident, the City shall elect to treat the violation as a misdemeanor or a municipal infraction, but not both. If a violation is repeated, the City may treat the initial violation as a misdemeanor and the repeat violation as a municipal infraction, or vice versa. If any section, subsection, sentence, clause, phrase, or word in this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed this chapter and each section, subsection, sentence, clause, phrase, and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or words have been declared invalid or unconstitutional, and if for any reason this chapter should be declared invalid or unconstitutional,

then the remaining ordinance provisions will remain in full force and effect. This ordinance shall take effect thirty (30) days after its adoption by the City Council of the City of Whitefish, Montana, and signing by the Mayor thereof.

***Note**: the information within this section, entitled" Local Authorities", includes, but is not limited to, information given to and collected by the Invasive Species Council Law Review Survey to the Montana Leagues of Cities and Towns. Most counties adopted the Montana Invasive Weed Control Act.*

APPENDIX

STATE AGENCIES:

1. Montana Department of Agriculture (MDA): The Department's goal is to protect producers and consumers, and to enhance and develop agriculture and allied industries. The Department is split into three subdivisions: The Agricultural Development Division, the Agricultural Sciences Division, and the Central Services Division. The Agricultural Development Division is designed to enhance, expand, and diversify Montana's agricultural economy, thereby improving the general economy of the state of Montana by providing services which include market and agri-business development. Growth Through Agriculture grants and loans, wheat and barley research and marketing, agriculture loans, beginning farmer/rancher loans, hail insurance, grain grading and inspection, agriculture literacy and outreach, and administration of agricultural commodity research and market development programs. The Agricultural Sciences Division is designed to provide agricultural producers and consumers, commodity and environmental protection through the administration of the Montana laws and rules in the areas of pesticides, groundwater monitoring, noxious weed control, feeds, fertilizers, seed, anhydrous ammonia, grain commodity dealers, commodity warehousemen, nurseries, produce, mint, honey bees, alfalfa leafcutting bees, and other services including organic certification, pest management consulting, laboratory analysis, pest surveys, export certification and quarantines. Within the Sciences Division are specific programs, including: The Agricultural Commodity Dealer and Commodity Warehouse Program; Alfalfa Leafcutting Bee Registration and Certification Program; Anhydrous Ammonia Program; Apiculture Program; Education and Assessment Program; Commercial Feed Program; Commercial Fertilizer Program; Cooperative Agricultural Pest Survey Program; Groundwater Management Program; Export Certification Program; Licensing and Registration Program; Noxious Weed Management Program; Noxious Weed Seed Free Forage Program; Nursery Program; Organic Program; Pesticide Management Program; Pesticide Disposal and Pesticide Container Recycling Programs;

Produce Program; and the Seed Program. The Central Services Division is designed to assist management and staff of the Montana Departmetn of Agriculture in meeting the department's mission by providing efficient, knowledgeable, and cost-effective customer service.

2. Montana Department of Environmental Quality (DEQ): to protect, sustain, and improve a clean and healthful environment to benefit present and future generations. The DEQ is divided into five divisions: Enforcement; Centralized Services; Air, Energy and Mining; Water Quality; and Waste Management and Remediation. The Water Quality Division develops integrated water quality plans to protect Montana's environmental resources. The division encourages business, local governments and citizens to adopt new products, technologies, and practices that avoid environmental damage to the public's resources. It provides financial and technical assistance to overcome market and institutional barriers hindering the implementation of cleaner business and public works practices and the installation of infrastructural equipment.

3. Montana Department of Livestock (MDL): to control and eradicate animal diseases, prevent the transmission of animal diseases to humans, and to protect the livestock industry from theft and predatory animals.

4. Montana Fish, Wildlife, and Parks (FWP): an agency in the executive branch of the Montana government with responsibility for protecting sustainable fish, wildlife, and state-owned park resources for the purpose of providing recreational activities. FWP engages in law enforcement activities to enforce laws and regulations regarding fish, wildlife, and state parks, and encourages safe recreational use of these resources, such as safety courses for boaters, hunters, snowmobilers, and others. FWP includes a Fish, Wildlife, and Parks Commission, which is a quasi-judicial body authorized to engage in rulemaking for FWP. The Commission approves the purchase of land, and approves certain activities for the Department. The Commission has five members whom represent one of the Department's five geographical regions (Northcentral, Northeast, Northwest, Southeast, and Southwest). FWP is led by a director and has four managerial offices: Human Resources; Lands/Outreach; Legal; and Deputy Director. The Department has three programmatic divisions: Finance; Fish and Wildlife; and Parks. The Fish and Wildlife Division has five administrative bureaus: Communication and Education; Enforcement; Fisheries; Strategic Planning and Data Services; and Wildlife. The Parks Division has three bureaus: Business Operations; Capital and Recreation; and Field Operations. The Finance Division has four bureaus.

5. Montana League of Cities and Towns (MLCT): MLCT's mission statement is that the Montana League of Cities and Towns will provide resources and

representation for its members to build and maintain vibrant, healthy, and safe communities. MLCT works to provide local control, advocacy, teamwork, and transparency. MLCT provides resources and representation for its members to build and maintain vibrant, healthy, and safe communities.

6. Montana Department of Natural Resources and Conservation (DNRC): to help ensure that Montana's land and water resources provide benefits for present and future generations. The DNRC is divided into nine boards and commissions. Six of them – the Board of Land Commissioners, Reserved Water Rights Compact Commission, Board of Oil and Gas Conservation, Board of Water Well Contracts, Flathead Basin Commission, and Montana Grass Conservation Commission – have decision-making authority. The other three – the Resource Conservation Advisory Council, Rangeland Resources Committee, and Drought Advisory Committee – act in an advisory capacity only. The DNRC is also organized into seven divisions: Director's Office; Conservation and Resource Development; Forestry; Oil and Gas Conservation; Reserved Water Rights Compact Commission; Trust Land Management; and Water Resources. Two of the divisions – the Oil and Gas Conservation Division and the Reserved Water Rights Compact Commission – area attached to the department for administrative purposes only.

7. Montana Department of Transportation (MDT): to serve the public by providing a transportation system and services that emphasize quality, safety, cost effectiveness, economic vitality and sensitivity to the environment.

FEDERAL AGENCIES:

1. Aquatic Nuisance Species Task Force (ANSTF): an intergovernmental organization, established in 1991 to implement NANPCA. The ANSTF is co-chaired by FWS and NOAA, which coordinate government efforts related to nonindigenous aquatic species in the United States with those of the private sector and other North American interests. Overall, ANSTF consists of 25 members. Of these, 13 are federal agency representatives: EPA, Coast Guard, U.S. Army Corps of Engineers, Forest Service, National Park Service, Bureau of Reclamation, Bureau of Land Management, Maritime Administration, USDA APHIS, U.S. Geological Survey, and the Department of State. The other 12 ex officio members include mostly regional representatives. Sic regional panels for the Great Lakes, Western, Mid-Atlantic, Gulf and South Atlantic, Mississippi River Basin, and Northeast regions serve as advocates and advisory committees to ANSTF, coordinating interagency efforts to address regional priorities. ANSTF approves comprehensive state and interstate plans for managing nonindigenous aquatic species. As of February 2013, there were 41 approved plans. ANSTF manages a public awareness

campaign targeted toward aquatic recreation users entitled "Stop Aquatic Hitchhikers." The campaign builds on voluntary guidelines for recreational activities to highlight measures that can be taken to minimize the spread of aquatic invasive species. ANSTF also has conducted studies and reports to Congress addressing ballast water exchange, controls on vessels, and aquatic nuisance species, among other issues.

2. Invasive Terrestrial Animals and Pathogens (ITAP): a federal scientific and technical interagency group housed at USDA to coordinate sharing of technical information for program planning and for managing invasive species. It was established in 2004 by a memorandum of understanding between USDA, the Department of the Interior and the Smithsonian Institution. Other partners include the Departments of Defense, Health and Human Services, Homeland Security, State, and Transportation, as well as EPA and National Aeronautics and Space Administration. ITAP's mission is to support and facilitate more efficient networking and sharing of technical information for program planning and coordination among federal agencies involved with invasive species research and management. ITAP focuses on several major taxonomic groups of invasive species, and its mission parallels and complements the missions of FICMNEW and ANSTF.

3. National Invasive Species Council (NISC): provides high-level interdepartmental coordination of federal invasive species actions and works with other federal and non-federal groups to address invasive species issues at the national level. NISC was created by Executive Order 13112 in 1999. NISC is co-chaired by the Secretaries of the Interior, Agriculture, and Commerce. The membership of the council also consists of the Secretaries of Defense, Health and Human Services, State, Transportation, and Treasury as well as the Administrators of the Agency for International Development and the Environmental Protection Agency. NISC and its member agencies, supported by its advisory committee (Invasive Species Advisory Committee), are tasked with developing recommendations for international cooperation promoting a network to document and monitor invasive species impacts, and encouraging development of an information-sharing system on invasive species. Among NISC's other duties and activities are to: prepare, revise, and issue a national invasive species management plan; draft the interdepartmental invasive species performance budget; oversee implementation of Executive Order 13112, and review progress under the NISC Management Plan and Executive Order 13112; encourage planning and action at local, tribal, state, regional, and ecosystem based level to achieve strategic goals; work with the Council on Environmental Quality (CEQ) to develop guidance for federal agencies pursuant to NEPA; work with the Department of State to provide input for international invasive species standards and cooperation; and facilitate development of a coordinated

network among federal agencies to document, evaluate, and monitor invasive species impacts. In 2001, NISC released its first national invasive species management plan. The 2001 plan recommended nine goals for invasive species management and, with the help of ISAC, recommended research needs and measures to minimize the risk of species introductions. The 2001 plan constituted the first federal attempt to coordinate invasive species actions over a broad range of species and habitats; across federal, state, and local governments; and with private industry, interest groups, and private individuals. Among the major features in the plan were the three key areas of prevention, early detection and rapid response, and control and management. In terms of overall federal spending for invasive species activities across all federal agencies, these three areas accounted for nearly 80% of all annual spending in FY2012: prevention; control and management; and early detection and rapid response accounted for $274 million. NISC completed a five-year review of Executive Order 13112 in 2005. Also in 2005, the National Invasive Species Information Center (NISIC) was established. The NISIC website serves as a reference gateway to information, organizations, and services about invasive species, and its maintained by USDA's National Agricultural Library. The website posts the national invasive species management plan and provides extensive links to major data bases. NISC released its second management plan in 2008, revising the 2001 plan. The revised plan directed federal efforts from 2008 through 2012. It has not yet been updated. The 2008 plan focused on five strategic goals: prevention; early detection and rapid response; control and management; restoration; and organizational collaboration. These goals are supported through efforts such as research, data and information management, education and outreach, and international cooperation.

4. U. S. Department of Agriculture

    a. Animal and Plant Health Inspection Service (APHIS): the primary USDA agency charged with preventing plant and animal pests and diseases, including non-native species, from entering the United States. APHIS can prohibit, inspect, treat, quarantine, or require mitigation measures prior to allowing entry of plant species, plant pests, biological control organisms, animals, animal products and byproducts, or their host commodities or conveyances. APHIS is involved with overseas control and eradication of some invasive pest species. APHIS also regulates the importation/exportation of veterinary biological products intended to treat animal disease. APHIS is responsible for protecting U.S. agriculture from domestic and foreign pests and diseases, responding to domestic animal and plant health problems, and facilitating agricultural trade. As part of APHIS' regulatory framework, the agency regulates certain animals and

animal products to guard against the introduction of animal diseases into the United States, and regulates certain plants and plant products prohibiting or restricting the importation of plants, plant parts, and plant products into the United States. APHIS also lists noxious weeds that may be a concern involving the importation and interstate movement of plants and plant products. The text box below provides a partial listing of some of the plant and wildlife programs and ongoing efforts at USDA – primarily addressing concerns to U.S. agriculture. Many of these plant and animal species are invasive. APHIS conducts program delivery, research, and other activities through its regional and state offices, the National Wildlife Research Center and its field stations, as well as through its national programs. It has a number of ongoing efforts targeting certain plant pest concerns for key invasive species that are known to harm agricultural production. APHIS also administers the Plant Epidemiology and Risk Analysis Laboratory, whose scientists and professionals conduct Plant Protection and Quarantine analyses for pest risks. PERAL is responsible for providing essential scientific support to risk-based policy-making across a broad range of phytosanitary issues. APHIS's Wildlife Services activities target introduced and invasive animal species of concern, including brown tree snakes, Gambian rats, nutria, coqui frogs, pigeons, starlings, house sparrows, feral pigs, and Burmese pythons. APHIS's Veterinary Services activities include the National Animal Health Laboratory Network, which is a state-federal cooperative effort including the APHIS National Veterinary Services Laboratories, and provide reference and confirmatory laboratory services including training, proficiency testing, and prototypes for diagnostic tests. For example, more than 40 laboratories have been trained and proficiency-tested to perform foot and mouth disease, avian influenza, and exotic Newcastle surveillance diagnostics, among other animal-related diseases. Control methods used by the agency include providing advice to individuals and to municipal, state or federal agencies on a wide variety of preventative, non-lethal control methods. Control of predatory animals, native or non-native, is largely carried out by lethal means, including hunting, trapping, and poisoning. The agency published annual Program Data Reports to inform the public about its wildlife damage management activities. The agency has memoranda of understanding and other cooperative agreements with FWS, the National Park Service, the Bureau of Land Management, the Forest Service, and state natural resource agencies to help protect natural resources, including wildlife and threatened or endangered species, from loss of life, habitat, or food supply due to the activities of other species. The agency also addresses damage problems caused by such non-native species as nutria, European starlings, and monk parakeets

and is also charged with monitoring and controlling the brown tree snake. The two primary laws administered by APHIS are the Plant Health Protection Act and the Animal Health Protection Act. Other laws and statutes governing APHIS activities relating to invasive species also include the Agricultural Bioterrorism Act; the Animal Damage Control Act; the Federal Seed Act; the Federal Noxious Weed Act; and the Noxious Weed Control and Eradication Act of 2004.

b. Farm Service Agency (FSA): administers USDA's Conservation Reserve Program (CRP). CRP is a voluntary program that helps agricultural producers and landowners use environmentally sensitive lands for conservation benefits, including weed control and invasive species, insects, pests, and other undesirable species on enrolled lands. Accordingly, the primary statute governing FSA relating to invasive species are provisions regarding CRP.

c. Forest Service: The Forest Service manages invasive activities on 193 million acres of National Forests and grasslands. As part of its forest and resource management activities, it has numerous programs intended to prevent invasive species introduction and spread, controlling the most threatening invasive species, monitoring to detect newly introduced species, ad restoring ecosystems damaged by invasive plants, insects or pathogens. The agency's activities in the national Forest System (NFS) are intended to improve forest management by preventing, controlling, and eradicating aquatic and terrestrial invasive species, as well as monitoring to detect newly introduced species, and restoring ecosystems damaged by invasive plants, insects, or pathogens. Some Forest Service activities regarding invasive species are: respond to nationwide threats to forest ecosystems from non-native invasive species – insects, pathogens, and plants; support the establishment of Cooperative Weed Management Areas and also Cooperative Invasive Species Management Areas; develop a Forest Service Manual for invasive species management on the NFS, and also a NFS Invasive Species Management Handbook; establish an Early Detection and Rapid Response initiative and also an Invasive Insects Early Detection Program; conduct training, and provide funding and technology for invasive species work; develop policies regarding both native and invasive species management in national forests; and conduct date management, recordkeeping and reporting, and research. To support these efforts, the FS conducts research focused on invasive plant species, including ecological studies to support restoration of sites after treatment of exotic weeds, as well as control Miconia sp. and other invasive plants in Hawaii; kudzu in the southern United States; yellow starthistle, spotted knapweed, and

leafy spurge in Idaho; among other non-native invasive species. In addition, the Forest Service seeks to control and mitigate the impacts from harmful non-native invasive insects, such as the Asian longhorned beetle, gypsy moth, hemlock wooly adelgid, and browntail moth. The agency conducts research on such tree diseases as butternut canker and sudden oak death syndrome, and works to find and develop trees genetically resistant to Dutch elm disease, pitch canker, chestnut blight, and white pine blister rust. The Forest Service works closely with state agencies, private landowners, and tribal governments on prevention and control activities, and provides funding and technical assistance through its state and private forestry programs. Primary laws governing Forests Service programs relating to invasive species include the Organic Administration Act, Multiple-Use Standard-Yield Act, Forest and Rangeland Renewable Resources Planning Act, Federal Noxious Weed Act, Public Rangelands Improvement Act, Federal Land Policy and Management Act, Cooperative Forestry Assistance Act, among others. Many of these authorities do not focus strictly on invasive species management, but also apply to other Forest Service activities including rangeland management, research, or pubic use activities.

5. U.S. Department of Commerce

    a. National Oceanic and Atmospheric Administration (NOAA): a statutory co-chair of both interagency NISC and ANSTF, and administers a variety of programs aimed at expanding and coordinating prevention. Early detection, rapid response, control, and monitoring programs nationwide. NOAA is responsible for supporting research and monitoring efforts on the effects of aquatic invasive species on ecosystems and socioeconomic factors. It also assists regions and states by providing technical support and best management practices to prevent and contain invasive species. NOAA sub-agencies, including the National Ocean Service and the National Marine Fisheries Service, are involved in both prevention and control activities. In addition, the National Ocean Service monitors coastal areas for the presence of nonindigenous species. Funding for NOAA's invasive species activities totaled $6.7 million in FY2012, and was used mostly for research and restoration activities. NOAA's Sea Grant programs on invasive species focus on marine systems and the Great Lakes, through funding of research, education, and outreach to address threats from invasive species. Through this program, NOAA has supported research on ballast water technology and marine engineering advances to combat aquatic nuisance species under two efforts – NOAA's Great Lakes Environmental Research Lab and at the

Cooperative Institute for Limnology and Ecosystems Research at Michigan State University. Regarding invasive species, GLERL targets both the prevention and control to stop the inflow and spread of new aquatic organisms, with particular emphasis on ship ballast, and also understanding and minimizing the ecological and economic impacts of recent species invasions, especially the on-going secondary effects of zebra mussels. FLERL also leads investigations of invasive species impacts on the Great Lakes ecosystem, focusing on zebra mussels and other recent invaders. Other program efforts support research on the biology on non-native invasive species; impacts of invasive species on ecosystems, including socioeconomic analysis of costs and benefits; control and mitigation options; prevention of new introductions; and reduction in the spread of established populations of harmful non-native species. The program also funded a Nationwide Zebra Mussel Training Initiative to provide technical services outside the coastal and Great Lakes areas and help provide inland states with a knowledge base for creating state and regional programs. The primary law governing NOAA's role in addressing invasive species is the Nonindigenous Aquatic Nuisance Prevention and Control Act.

6. U.S. Department of Defense

    a. U.S. Army Corps of Engineers (USACE): supports a range of invasive species efforts. The Crops generally undertakes efforts to prevent or reduce the establishment of invasive species at its projects pursuant to its national USACE Invasive Species Policy. Invasive species work within individual projects is typically funded through Operations and Maintenance funding for each project; the nature of the work at the project level is addressed in project planning documents. Other USACE activities must also take invasive species into consideration. USACE also has specific programs that address subcategories of invasive species. The Aquatic Plant Control Program provides cost-shared assistance to state for aquatic plant management that is not a part of routine federal project maintenance. At full federal costs, USACE administers an Aquatic Nuisance Species Research Program, which develops methods and provides general guidance and research assistance on invasive species control strategies. Finally, USACE fully funds control of aquatic plants, predominantly invasive species, in waterways in certain southeastern states through its Removal of Aquatic Growth Program. In some cases, Congress has authorized Crops invasive species control efforts at scientific federal water resource projects administered by USACE in the form of physical construction and other project-level authorities. The most notable example is control of Asian river carp in the Chicago area. In that case

Congress authorized and funded USACE's construction and operation of underwater electric barriers to help prevent the encroachment of Asian river carp into the Great Lakes. Congress also authorized USACE to study and carry out other means to control Asian river carp in the same area, as well as a large study of potential methods to prevent the transfer of aquatic nuisance species between the Great Lakes and Mississippi River basin.

7. U.S. Department of Homeland Security

    a. U.S. Customs and Border Protection (CBP): responsible for securing the border and facilitating lawful international trade and travel while enforcing hundreds of U.S. laws and regulations. CBP guards nearly 7,000 miles of land border the United States shares with Canada and Mexico and 2,000 miles of coastal waters surrounding the Florida peninsula and off the coast of Southern California. The agency also protects 95,000 miles of maritime border in partnership with the U.S. Coast Guard. Among its many border protection responsibilities, CBP works with USDA and the Department of Interior to enforce laws prohibiting or limiting the entry of invasive species. CBP also works with wildlife inspectors at FWS, USDA, and other federal trade inspection agencies to facilitate the detection and disruption of wildlife trafficking. CBP agriculture specialists prevent the entry of harmful plant pests and exotic foreign animal diseases and confront emerging threats in agro- and bioterrorism. As part of its role in enforcing plant and animal regulations, CBP will detain, where necessary, imported or exported products pending their clearance by agency inspectors. CBP also supports the removal of invasive plants that interfere with border area surveillance. CBP states they regularly discover pests at U.S. ports of entry, many that are potentially harmful to agricultural and natural resources they also hold materials – plant, meant, animal byproduct, and soil – for quarantine.

8. U.S. Department of Interior

    a. Bureau of Indian Affairs (BIA): responsible for protecting and improving the trust assets of Indian tribes while maintaining a relationship within the sprit of self-governance. The BIA, through exotic weed eradication and other programs, helps support the management of non-native invasive species on Indian lands. In addition, BIA's Noxious Weed Control program supports resource protection on trust land sin compliance with various laws and also provides education, direction and technical guidance to individual Indians, non-Indian farmers and ranchers, Indian tribes and Alaska

natives involved in controlling noxious weeds. BIA also cooperates in DOI's Invasive Species Crosscut Initiative and participate in three of the Area Invasive Plant Initiatives: Rio Grande; Norther Great Plains; and Florida, and Brazilian pepper. The BIA funds tribal projects in all three of these initiatives.

b. Bureau of Land Management (BLM): focuses its invasive species efforts primarily on controlling non-native plants on the 250 million acres its manages, primarily in western states and Alaska. BLM works with state, federal and local partners to reduce the spread of invasive species, and focuses on early detection of and rapid response to new invasions and to reduce the need for larger, more expensive treatments. BLM's action plan details its strategy to prevent and control the spread of noxious weeds on public lands; the goals of the plan roughly parallel those of NISC. BLM also provides for education and cooperative efforts with various states to control exotic weeds. It maintains a cooperative research relationship with most USDA agencies. BLM also is responsible for protecting, controlling, and managing populations of wild horses and burros which, although not native, have a legally protected status. APHIS, through its Wildlife Services program, helps to regulate animal pests, whether native or non-native, on BLM land. On its grazing lands, BLM requires that non-native plant species be used only when native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health.

c. Bureau of Reclamation: the research, prevention, detection, and control programs address primarily the pests of aquatic systems such as reservoirs, canals, pipelines, and rivers. Such pests include both plants and animals, including tamarisk, hydrilla, Eurasian watermilfoil, giant salvinia, quagga and zebra mussels, and Asian river clams. Their presence results in loss of irrigation water, blocked waterways, impediments to navigation, and lost recreational opportunities. To control these pests, eh agency uses biological control agents and pesticide application. Ongoing projects include research and development for eradicating or controlling invasive mussels, insect control for weed species; grass carp for control of certain aquatic weeds, and use of herbicide meters to match herbicide flow to fluctuating water levels. The agency also maps the movement of certain invasive species, and works with partners in Cooperative Weed Management Areas in western states to identify and control weeds. It works to improve control methods and basic knowledge of non-native invasive species, and to develop methods to restore areas with tamarisk infestation. Mitigating the effects of zebra and quagga mussels is

among its top research and develop priorities. It also works with federal agencies, state and local governments, and others including Mexican officials on cross-border weed infestations. It also supports the work of NISC.

d. Fish and Wildlife Service (USFWS): authorized to help prevent the introduction and spread of invasive species in general and, on its own lands, to control established non-native invasive species. FWS maintains numerous programs covering fisheries, endangered species, habitat conservation, refuge operations and maintenance, and international affairs. FWS also enforces laws and regulations concerning the importation of injurious wildlife species. FWS wildlife inspectors also help prevent the entry of invasive species, working with other federal agencies and state and local governments. Several other programs providing grants to states, territories, and tribes may be sued for prevention, control, or eradication of invasive species. Annual spending on invasive species under these programs will vary depending on the applications received. FWS allocated $219.1 million nationally for wildlife and habitat management in FY2012, within the 150-million-acre National Wildlife Refuge System. Many refuges spend substantial portions of their budgets on the control of such non-native invasive species such as feral pigs, Burmese pythons, melaleuca, tamarisk, and purple loosestrife. The agency attempts to minimize the use of pesticides and herbicides in these efforts. FWS also has five Invasive Species Strike Teams available to respond rapidly to new infestations of invasive species before they become established. Under wildlife protection statuses, such as ESA, the agency's authority to protect domestic ecosystems is indirect or general, meaning the agency sometimes finds itself at odds with other interests, particularly those wishing to introduce various species for sport fishing or hunting. Its broad authority under ESA allows the agency to act if a proposed introduction or other activity seems likely to harm a protected species. Its spending on harmful non-native species occurs in a number of its program, including fisheries, endangered species, Partners for Fish and Wildlife, habitat conservation, refuge operations and maintenance, and also international affairs. The primary laws governing FWS's role in addressing invasive species are: Lacey Act, Endangered Species Act, Nonindigenous Aquatic Nuisance Prevention and Control Act, and Wild Bird Conservation Act; among other authorities.

e. Geological Survey (USGS): conducts and supports research that assists resource managers in the control of invasive species and restoration of affected areas. Its invasive species program focuses on "early detection and assessment of newly established invaders, monitoring of invading

populations; improving understanding of the ecology of invaders and factors in the resistance of habitats to invasion; and development and testing of prevention, management, and control methods." USGS has focused its research in recent years on a number of highly invasive species in the Great Lakes and eastern waterways and wetlands; in riparian ecosystems; invasive species in Hawaii and Florida; large constrictor snakes; and invasive plants on western rangelands. USGS also manages the national Nonindigenous Aquatic Species Database, as well as several regional databases and manages a nonindigenous aquatic species website. USGS had also begun efforts to compile a central database, called the National Biological Information Infrastructure (NBII) to identify, document, disseminate, and integrate information about the nation's biological resources generally, including its invasive species. The NBII's purpose was to facilitate access to data and information on U.S. biological resources, as well as early detection and predictive modeling efforts for invasive species in each refuge. However, due to FY2012 budgetary concerns, the program was terminated in January 2012, along with many other federal programs identified for termination or reduction.

f. National Park Service (NPS): over 6,500 non-native invasive species have been found on National Park Service lands and waters. Of these, about 650 are in marine environments. NPS uses an integrated pest management approach to control exotic species, and has a number of programs targeted to specific sites or species. For example, in Hawaii, NPS has designated Special Ecological Areas that best represent native Hawaiian systems, and these areas are managed for the removal of exotic species. Elsewhere, NPS's Lionfish Response Plan is a species-specific program that addresses problems with invasive lionfish at several units on the Atlantic seaboard and in the Gulf of Mexico, through public education, monitoring, and removal. The agency targets quagga and zebra mussels in at least 54 park units, taking actions such as inspecting and cleaning boats at ramps and mooring locations. Some units have special regulations to minimize the potential for spreading zebra mussels and other aquatic nuisance species. For example, regulations for the St. Croix National Scenic Riverway address zebra mussels, purple loosestrife, and Eurasian watermilfoil as aquatic nuisance species. In the western United States, some of the non-native invasive species of concern are leafy spurge, knapweed, Japanese brome, and cheatgrass. NPS is authorized to regulate fishing on its lands and prohibits the possession or use of live or dead minnows or other bait fish, amphibians, non-preserved fish eggs or fish roe as bait for fishing, except in designated waters. Waters which may be so designated are limited to those where invasive species

are already established, where scientific data indicate that the introduction of additional numbers or types of non-native species would not hurt populations of native species, and where park management plans do not call for elimination of non-native species. NPS uses Exotic Plant Management Teams for rapid response to invasive plants on units of the National Park System. The teams are explicitly modeled on teams used to fight fires. The team approach provides quick response and consistent application of techniques. The EPMT's provide a personnel resource not otherwise available to these parks, and reduces the need for individual parks to procure and maintain expensive equipment. In an FY2011 report, the EPMT's reported that they inventoried 2,164,232 acres for exotic plants, uncovering 9,589 acres of infestation, of which 8,453 acres were treated for exotic plant infestations. The EMPT's have claimed elimination of two invasive plant species at Haleakala National Park and of all exotic plants at Loggerhead Key at Dry Tortugas National Park, among other accomplishments. Lake Mead National Recreation area is the focal point for an EMPT whose tasks include controlling salt cedar. EMPT's train personnel from other federal agencies with these methods. Their list of partners has included such disparate entities as National Wildlife Refuges, the Navajo Nation, Florida Power and Light, state departments of transportation, and the Nature Conservancy. The primary laws governing NPS's role in addressing invasive species are the National Park System Organic Act, Endangered Species Act, Noxious Weed Control and Eradication Act, Plant Protection Act, National Invasive Species Act, Nonindigenous Aquatic Nuisance Prevention and Control Act, and Animal Damage Control Act; among other authorities.

9. U.S. Environmental Protection Agency (EPA)

    a. The EPA is a member of NISC and actively participates in implementing its invasive species management plan. EPA conducts and supports research on the prevention, early detection, control, and management of invasive species. EPA is involved internationally in cooperative efforts focusing on developing policies for early detection and rapid response to potential invasive species. These efforts are mainly coordinate from EPA's regional offices surrounding Great Lakes and regional offices in the Northeast and involve considerable collaboration and cooperation with Canadian environmental resource managers. As part of these international efforts, EPA is designing public awareness programs on the risk and impacts of invasive species. Invasive species public awareness programs are also sponsored by various estuarine management groups, administered by EPA.EPA

administers a number of environmental laws that have some aspects relating to invasive species, although invasive species may not be the primary focus of these laws. For example, under the Federal Insecticide, Fungicide, and Rodenticide Act, EPA oversees the federal registration process for pesticides, including pesticides that may be used to control and/or eradicate invasive species, and may place limits on the conditions under which such compounds may be used. EPA implements the Clean Water Act, which broadly aims to protect waters of the United States. CWA permit programs regulate ballast water discharges and also protect U.S. wetlands and waterways from invasive plants and aquatic species. Under CWA, EPA is promulgating joint regulations with DoD to set uniform national discharge standards and requiring the use of marine pollution control devices to control incidental discharges from armed forces vessels. EPA also conducts research to develop methodologies for the early detection of non-native invasive species and approaches for applying those methodologies in existing environmental monitoring programs. EPA's research activities include evaluation of ecological indicators for surface waters, the effects of non-native species on wetland restoration, and studies on non-native submerged aquatic vegetation, as well as model development to estimate the area and spreading rates for potentially invasive species. EPA scientists are also working with regional staff to develop guidance for including evaluations of the potential impacts of invasive species in NEPA assessments.

MISC

Montana Invasive Species Council

www.misc.mt.gov