FEDERAL-STATE RELATIONSHIP – AUTHORITY FRAMEWORK[1]

SCENARIO I	**Federal Authority Exclusively**
Explanation	There are powers that are specifically enumerated by the U.S. Constitution as exclusively the purview of the federal government.[2]
Some Examples	National defense, interstate commerce, border control.
SCENARIO II	**State Primacy Rules**
Explanation	All powers not specifically delegated to the federal government by the U.S. Constitution are reserved for the states, allowing state legal authority to overrule federal intrusion.
Some Examples	Groundwater,[3] water allocations/management, wildlife management (outside

[1]

[2] U.S. Constitution Article VI (Supremacy Clause), Article I (Congressional) Section 8; Article II, Section 1 (Executive Branch), Article III, Section 2 (Judicial Branch). State law can be preempted two ways: Congress evidences an intent to fully occupy a given "field," then state law falling within the field is preempted If Congress has not fully displaced state regulation over the matter, state law is preempted to the extent it *actually* conflicts with federal law.

[3] Congress recognized states as the sole authority over groundwater in the Desert Land Act of 1877. The U.S. Supreme Court has repeatedly emphasized the exclusive nature of state authority over water management, including in *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142 (1935).

	ESA context)[4] and natural resource management under state "trust" authorities.[5]
SCENARIO III	**Shared State-Federal Authority**
Explanation	Where state and/or federal authority can apply, given a particular fact pattern.[6] Risk of federal preemption of state law is a concern with this scenario.
Some Examples	Water (e.g. federal water rights adjudicated through state water courts), wildlife (ESA-triggered and in wilderness and National Wildlife Refuges), land management (especially under landscape-based planning models), planning and siting of linear facilities.
SCENARIO IV	**State Authority "Delegated" from Federal Agencies via Federal Statute**
Explanation	Where a statutory regime contemplates establishment of federal standards, with delegated authority (permissive) available to states that wish to implement those standards.[7]
Some Examples	CAA, CWA, EPCRA, FIFRA, OPCA, RCRA, SDWA, SMCRA, TSCA.[8]

[4] See AFWA's 2014 report: "Wildlife Management Authority, the State Agencys' Perspective."
[4] Amendment 10 of the U.S. Constitution: "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.*" Public trust doctrine is a common-law concept concerning public rights to lands and water to be held "in trust" by states for certain public uses. This is the basis of states' so-called "trust" authority over natural resources and wildlife. The manner in which states hold title to such lands and water is described in the U.S. Supreme Court case *Illinois Central Railroad vs. Illinois*. In the wildlife context, this is further articulated through the North American Model of Wildlife Conservation
[5] Per the 10th Amendment, state authority dominates in the pre-listing conservation context.
[4]Ibid.

[6] The federal government has authority to regulate federal property under Article IV of the Constitution. However, that authority is limited. General regulatory authority (including regulation of wildlife and land use) is held by the states, unless Congress passes a specific law that conflicts with state policy. This is discussed in detail in U.S. Supreme Court case, *Kleppe v. New Mexico*. On the other hand, federal authority can extend to state public trust lands adjacent to so called "special use" federal property (e.g. designated wilderness areas) when state uses interfere with the federal property. This concept is discussed in U.S. Supreme Court cases, *Camfield v. United States* and *United States v. Alford*.
[7]There are requirements that federal facilities and activities comply with state environmental laws, The CWA, CAA, RCRA, SDWA, TSCA and CERCLA all include provisions that require implementation activities involved to be subject to, and comply with, all federal, state, interstate and local requirements.
[8] See ECOS, "State Delegation of Environmental Acts," (Feb. 2016) for lists of states accepting delegation under various federal environmental statutes. According to ECOS, states implement 96.5% of federal programs that can

SCENARIO V	**Other Opportunities for State Engagement / State Rights Afforded by Statute / EO**
Explanation	Where the federal government has a statutory, historical or "moral" obligation to states.
Some Examples	PILT/SRS, mineral royalties, unfunded mandates, required regulatory review, cost-benefit and economic impacts analyses, federalism reviews, NEPA cooperating agency status, ESA cooperating agency (Section 7) and Section 6 cooperative agreements and "maximum extent practicable" clause (Section 6).
SCENARIO VI	**Voluntary Federal-State Collaboration Models**
Explanation	Where state(s) and federal governments enter wholly voluntary collaborative relationships.
Some Examples	WGA Chair initiatives, conservation joint ventures[9], collaboratives.

be delegated to states. States conduct over 90% of environmental inspections, enforcement, environmental data collection.

[9] AFWA 2014 report: "Wildlife Management Authority, the State Agencys' Perspective," pages 26-27