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Public (BLM) Lands and National Forests

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SUMMARY

The 107th Congress is addressing issues related to the public lands managed by the Bureau of Land Management (BLM) and the national forests managed by the U.S. Forest Service (FS). A key issue is how to balance the protection and development of these lands. Other questions relate to which lands the government should own, and the adequacy of funds and programs for agencies to acquire and protect lands. A related focus is authority for collecting fees for land use.

National Monuments and the Antiquities Act. The Antiquities Act of 1906 authorizes the President to establish national monuments on federal lands. The Bush Administration is reviewing the monument actions of President Clinton, and considering designating a new monument in Utah. Congress is considering limiting the authority of the President and amending particular monuments, and has enacted legislation to generally prohibit spending funds for energy leasing activities within monuments.

Roadless Areas of the National Forest System. The Clinton Administration issued rules that limit road construction and timber cutting in 58.5 million acres of roadless areas in the National Forest System. On May 10, a U.S. district court issued a preliminary injunction postponing rule implementation. The Administration did not appeal (but intervenors did). The Administration published a notice of possible proposed rulemaking on July 10, seeking comment on whether and how to revise the roadless rules by September 10. Interim direction is now in effect, and new final rules are being developed.

Wildfire Protection. The threat of catastrophic wildfires seems to have become more severe. The 106th Congress substantially increased funding for agency wildfire management, and FY2002 appropriations and the Bush Administration's FY2003 budget request continue higher funding for most fire programs. Questions for the 107th Congress include whether to authorize new forest health programs for BLM or FS lands.

Energy and Minerals. The Bush Administration and Congress are examining whether to increase access to federal lands for energy and mineral development, and related legislation is under consideration. A second issue is whether to clarify the General Mining Law of 1872 regarding the number and size of millsites per mining claim. A third issue is the Bush Administration's revisions of the hard rock mining regulations finalized by the Clinton Administration.

Federal Land Acquisition. Debate is focused on funding levels for land acquisition using the Land and Water Conservation Fund. Questions include the amount of funds to be provided, the lands to be acquired, and spending the Fund for purposes other than land acquisition. In addition, H.R. 701, which has been ordered reported from committee, could provide more certain funds for land acquisition.

Recreational Fee Demonstration Program. The "Fee Demo" program was created to allow land management agencies to test the feasibility of generating revenues for self-financing through new fees. In his FY2003 budget, President Bush proposed making the program permanent. In his FY2002 budget, President Bush proposed extending the program, and Congress enacted legislation to extend and revise the program.

Most Recent Developments

In his FY2003 budget, President Bush proposed making the Recreational Fee Demonstration Program permanent, and continuing most of the wildfire management programs expanded by President Clinton, with total funding of $2.11 billion. For federal land acquisition, the Administration is seeking $333 million for the four major federal land management agencies. The Administration is also seeking $200 million for the state grant program, of which $50 million would be used in a new Cooperative Conservation Initiative.

The Bush Administration is considering designating a national monument in Utah and selling Governors Island, including Governors Island National Monument, for a nominal fee. The House Resources Committee has ordered reported H.R. 2114 to limit presidential designation of national monuments and amend the monument designation process.

The Administration has sought public comment on how to amend Clinton Administration rules prohibiting road construction into Forest Service roadless areas, but final rules have not been complete. The Administration issued new hard rock mining regulations, effective December 31, 2001, which eliminate controversial provisions of the Clinton Administration regulations. The Administration also issued a proposed rule containing these and additional changes, with public comment through December 31, 2001. Senator Daschle introduced a revised energy bill (S. 1766) on December 5, 2001, and offered an amended version of that measure as a floor amendment to S. 517 on February 15, 2002. The amendment remains pending.

Background and Analysis

The Bureau of Land Management (BLM) in the U.S. Department of the Interior (DOI) and the Forest Service (FS) in the U.S. Department of Agriculture together manage 456 million acres of land, 70% of the land owned by the federal government and one-fifth of the total U.S. land area. The BLM itself manages 264 million acres of land, predominantly in the West. These lands are defined by the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. §§1701, *et seq.*) as "public lands." The FS administers 192 million acres of federal land, also concentrated in the West.

The BLM and FS have similar management responsibilities for their lands, and many key issues affect both agencies' lands. However, each agency has unique emphases and functions. For instance, most LM lands are rangelands, and the BLM administers mineral development on all federal lands. Most federal forests are managed by the FS, and only the FS has a cooperative program to assist nonfederal landowners. Moreover, development of the two agencies has differed, and historically they have focused on different issues.

History of the Bureau of Land Management

For the BLM, many of the issues traditionally center on the agency's responsibilities for land disposal, range management (particularly grazing), and minerals development. These three key functions were assumed by the BLM when it was created in 1946, by the merger of the General Land Office (itself created in 1812) and the U.S. Grazing Service (created in 1934). The General Land Office had helped convey land to settlers and issued leases and administered mining claims on the public lands, among other functions. The U.S. Grazing Service had been established to manage the public lands best suited for livestock grazing. The Taylor Grazing Act of 1934 (TGA, 43 U.S.C. §§315, *et seq.*) was the principal statute governing the public lands in the early years of the U.S. Grazing Service, and remains a key statute governing the use of federal rangelands for private livestock grazing. Enacted to remedy the deteriorating condition of public rangelands, the Act provides for the management of public lands "pending [their] final disposal." This language expresses the view that federal lands might be transferred to other ownership.

In subsequent decades, Congress debated how best to manage federal lands, and whether to retain or dispose of the remaining public lands. In 1976, Congress enacted FLPMA, sometimes called BLM's Organic Act because it consolidated and articulated the agency's responsibilities, although it left the TGA in place. Among other provisions, the law establishes management of the public lands based on the principles of multiple use and sustained yield; provides that the federal government receive fair market value for the use of public lands and resources; and establishes a general national policy that the public lands be retained in federal ownership (as opposed to managed until their "final disposal.") This retention policy contributed to the "Sagebrush Rebellion" of the late 1970s and early 1980s, which was an effort among some Westerners seeking to reduce the federal presence in their states by transferring federal land to state or private ownership. Land ownership, as well as conflicts over land use, continue to be among the key issues for BLM lands.

History of the Forest Service

The FS was created in 1905, when forest lands reserved by the President (beginning in 1891) were transferred from the Department of the Interior into the existing USDA Bureau of Forestry (an agency for private forestry assistance and forestry research). Management direction for the national forests, first enacted in 1897 and expanded in 1960, identify the purposes for which the lands are to be managed, allow protection of areas as wilderness, and direct "harmonious and coordinated management" to provide sustained yields of resources.

Many issues over national forest management and use have focused on the appropriate level and location of timber harvesting. Major conflicts over clearcutting began in the 1960s, and litigation in the early 1970s successfully challenged FS clearcutting in West Virginia and elsewhere. Congress enacted the National Forest Management Act of 1976 (NFMA; P.L. 94-588) to revise timber sale authorities and to elaborate on considerations and requirements in land and resource management plans for the national forests. This NFMA planning has been widely criticized as expensive, time-consuming, and ineffective for making decisions and informing the public. The Clinton Administration promulgated new final planning regulations on November 9, 2000 (65 *Federal Register* 67514-67581), which altered the planning process by establishing ecological sustainability as the top priority for managing the national forests. The Bush Administration is reviewing these new regulations.

Wilderness protection also has been a continuing issue for the FS. In 1960, Congress explicitly authorized wilderness management of national forests. In 1964, Congress enacted the Wilderness Act, creating the National Wilderness Preservation System with certain national forest lands, and requiring review of the wilderness potential of certain other federal lands. The FS completed its "RARE II" wilderness review in 1979. In the early 1980s, Congress responded to the agency's wilderness recommendations by designating national forest wilderness areas in most states. However, recommendations are pending for two states with extensive potential wilderness—Idaho and Montana. These pending recommendations and pressure to protect other areas contributed to the Clinton Administration decision to protect roadless areas not designated as wilderness. (For FS and BLM wilderness issues, see CRS Report 94-976 ENR, *Wilderness: Overview and Statistics*.)

Scope of Issue Brief

While the evolution and issues of traditional focus for the BLM and FS have been different, the issues affecting their lands have become more similar. Moreover, the missions of the agencies are nearly identical. By law, the BLM and FS lands are to be administered for multiple uses, albeit slightly different uses are specified. In practice, the land uses considered by the agencies include recreation, range, timber, minerals, watershed, wildlife and fish, and conservation. BLM and FS lands also are required to be managed for sustained yield—*i.e.*, for providing in perpetuity a high level of resource outputs, without impairing the land's productivity. Further, many issues, programs, and policies affect both agencies. For these reasons, BLM and FS lands often are discussed together, as in this report.

This brief focuses on issues affecting BLM and FS lands. While in some cases the issues discussed here are relevant to other federal lands and agencies, this brief does not comprehensively cover issues primarily affecting other federal lands, such as the National Park System (managed by the National Park Service, DOI) or the National Wildlife Refuge System (managed by the Fish and Wildlife Service, DOI). For background on federal land management generally, see CRS Report RL30867. Information on appropriations for the BLM and FS (as well as other agencies) is included in CRS Report RL31006. For information on park and recreation issues, see CRS Issue Brief IB10093. For information on oil and gas leasing in the Arctic National Wildlife Refuge (ANWR), see CRS Issue Brief IB10073. For information on related issues, see the CRS web page at [http://www.crs.gov/].

Current Issues

A current issue for Congress continues to be how to reconcile different perspectives on federal land ownership. Questions include how much land should be acquired from or conveyed to state, local, or private ownership, and under what circumstances; the effect of public ownership on state and local taxes and authorities; and the non-federal role in managing federal lands. Debate has resumed on funding for land acquisition; within these discussions, Members may raise concerns about acquiring private land; the effectiveness of federal land exchange programs; and appropriations to reduce the backlog in maintaining existing federal lands and facilities as an alternative to new acquisitions.

A key related issue for Congress is how to balance multiple uses of public lands and national forests—resource extraction, recreation, and preservation. To what extent should Congress support traditional commodity uses, primarily mining, oil and gas production, livestock grazing, and timber harvesting? Historically, development of federal resources has supported local economies; more recently, non-development values have been stressed. The

107th Congress is addressing executive actions related to land and resource protection, e.g., monument designations, funding for wildfire protection, and regulatory changes for mining and roadless areas. The effect of these efforts on land uses and the role of Congress, states, and the public in determining use and protection are among the controversies. Other issues relate to setting fees (e.g., for rights of way and livestock grazing); collecting revenues (e.g., by imposing royalties on mining); and regulating the environmental effects of land uses. Recreation issues include user fees, and access restrictions (e.g., limits on use of off-highway vehicles). The adequacy of agency land use plans in addressing these and other current recreation, preservation, and development issues also may arise. Following is a fuller discussion of particular issues that are receiving attention during the 107th Congress.

National Monuments and the Antiquities Act (by Carol Hardy Vincent)

Background. Presidential establishment of national monuments under the Antiquities Act of 1906 (16 U.S.C. §§431 *et seq.*) has been contentious. The Act allows the President to proclaim national monuments on federal lands that contain "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest." The President is to reserve "the smallest area compatible with the proper care and management of the objects to be protected." Congress subsequently limited the President's authority in Wyoming and Alaska.

Recent criticisms and controversies have focused on how President Clinton created recent monuments; the size of the areas and types of resources protected; and restrictions on land uses, including their economic effects, that may result. Critics also contend that the Antiquities Act is out of date in permitting land actions otherwise reserved to Congress, and not requiring congressional, state, or public input or environmental reviews. Supporters of the Antiquities Act assert that changes to the Act are neither warranted nor desirable. They defend the authority of Presidents to expeditiously protect valuable federal lands and resources, and contend that large segments of the public support monument designations.

Administrative Actions. President Clinton proclaimed 19 new monuments and enlarged 3 others, with a total of about 5.9 million federal acres. He selected the Bureau of Land Management (BLM) to manage many of the monuments. The Department of the Interior is examining the monument actions of President Clinton, receiving input from officials in the states containing the new monuments as to how the lands should be managed.

The Bush Administration is considering establishing the San Rafael Swell National Monument on some 620,000 acres in southern Utah. The monument would consist largely of the San Rafael Swell—a giant rock dome—and include desert canyons, rock formations, and Indian carvings. The Administration reportedly is seeking to develop the monument proposal with the input of Utah officials, stakeholders, and the public to avoid charges that plagued President Clinton of insufficient consultation during the monument designation process. Some environmental groups fear the size of the would be too small and that land uses they view as destructive, such as mining and use of motorized vehicles, will be allowed.

On April 1, 2002, President Bush stated that Governors Island, which contains the Governors Island National Monument, would be sold to New York for a nominal fee. Current law (P.L. 105-33, Section 9101) requires the conveyance of the Island, but at fair market value. The fair market value has been estimated by some at between $300 million and

$500 million, but by others as much less because New York authorities reportedly would block major development. Various development possibilities for the Island have been discussed. Two bills (*H.R. 1334 and S. 689*) would authorize the conveyance of the Island to New York for free, but neither has been enacted. It is not clear how a conveyance might affect the Monument part of the Island.

On October 4, 2001, BLM issued a revised interim management policy for newly created national monuments. The policy, which expires September 30, 2003, is intended to guide BLM state managers in managing national monuments during the development of monument management plans. The policy supersedes and revises an earlier one in several areas, including grazing, use of off-road vehicles, animal damage control, rights of way, and activities on non-monument lands. BLM asserts that the changes seek to clarify and simplify language in the earlier guidance, but some conservation groups view them as substantive.

Legislative Activity. In the 107th Congress, Republican leaders of the House Resources Committee sent letters to Members of Congress with newly-created monuments in their districts seeking information as to how their constituents and local officials view the monuments. One bill (*H.R. 601*) to allow hunting in the expanded portion of the Craters of the Moon National Monument through creation of a national preserve, has passed the House and been the subject of Senate subcommittee hearings. Two bills (*H.R. 1334* and *S. 689*) to govern management, and to transfer management, of Governors Island National Monument are under consideration. A bill (*H.R. 4076)* pertaining to the Agua Fria National Monument would modify the Monument's boundaries, bar Presidents from expanding the monument except during a specified 90-day period, require development of a monument management plan within 2 years, and specify allowed land uses.

Another bill, *H.R. 2114*, amends the Antiquities Act of 1906 to make presidential designations of monuments exceeding 50,000 acres ineffective unless approved by Congress within 2 years, establishes a process for public input in presidential monument designations, and requires monument management plans to be developed in accordance with the National Environmental Policy Act of 1969. During markup, the House Resources Committee agreed to an amendment to clarify that the bill would apply to future monument proclamations. The Committee ordered the measure reported on March 20, 2002, essentially on a party line vote with Democrats opposed. Earlier, the Bush Administration testified in support of this bill.

The FY2002 Interior and Related Agencies Appropriations Act (P.L. 107-63) bars funds in the bill from being used for energy leasing activities within the boundaries of national monuments, as they were on January 20, 2001, except where allowed by the presidential proclamations that created the monuments.

Roadless Areas of the National Forest System (by Pamela Baldwin)

Background. In its final months, the Clinton Administration issued several new rules that affect the roadless areas of the National Forest System (NFS). New rules were finalized with respect to: (1) the roadless areas; (2) the NFS roads that make up the Forest Development Transportation System, and (3) the FS planning process. These three rules are intertwined and each part affects the others. The roadless area rule limits roads and development in approximately 58.5 million acres of inventoried FS roadless areas. (For information on wilderness, see CRS Report 94-976, *Wilderness: Overview and Statistics*.)

Administrative Actions. The Clinton Administration established a new approach to the management of NFS roadless areas to provide national guidance on roads and timber harvesting in those areas — issues that have generated litigation and expense in the past, when decisions were made at the forest unit level. A record of decision (ROD) and a final rule were issued on January 12, 2001, which prohibited road construction in the inventoried roadless areas, with exceptions, e.g. for public health and safety. Environmentalists and -those favoring less developed recreation generally favored the regulations and urged greater protections, while the extractive industries and those favoring greater access (e.g., for developed recreation and hunting) generally opposed them. In addition, timber harvesting in the roadless areas would generally have been prohibited, except for specified purposes, e.g. reducing the risk of uncharacteristic wildfire.

The Bush Administration delayed the effective date of the roadless rule, but then proposed letting the rule take effect while considering amendments to again allow for local modification of roadless area protection. However, on May 10, U.S. District Court Judge Edward Lodge issued a preliminary injunction to postpone implementation of the rule, citing its "irreparable harm" to federal forests and their neighbors (Kootenai Tribe of Idaho v. Veneman, 142 F.Supp. 2d 1231 (Id. D.C. 2001)). The Administration did not appeal the injunction, but intervenors did and the appeal is awaiting decision in the 9th Circuit. A series of directives constituting interim guidance on roadless area management have been issued. On July 10, the Forest Service published an advance notice of proposed rulemaking asking for public comment on whether and how to amend the roadless rules (66 Fed. Reg. 35918). The comment period closed on September 10, 2001, but no new regulations have yet been proposed. However, additional interim direction on roadless areas was published on December 20, 2001 (66 Fed. Reg. 65796). That direction places most decisions on roadless area management with the Regional Forester, and some with the Chief of the Forest Service until forest plan amendments or revisions that address roadless area protection are completed. At that time management of the roadless areas will once again be up to each forest. In a related action, on September 20, the Forest Service proposed new interim direction on a facet of NEPA compliance that, if finalized, could allow some activities in roadless areas without environmental studies (66 Fed. Reg. 48412).

Legislative Activity. Congress may consider legislation on forest management in general or on the roadless areas issue in particular. Congress may wish to provide new direction for forest planning, the NFS roads system, or for management of the roadless areas, either to rescind, modify, or ratify the approaches taken by the new rules. *H.R. 552*, in the 107th Congress, for example, would protect specified areas and require an assessment of their wilderness suitability, with recommendations to Congress within 3 years of enactment.

Wildfire Protection (by Ross W. Gorte)

Background. The 2000 fire season was, by most standards, one of the worst in the past 50 years. The Clinton Administration and Congress responded by more than doubling wildfire funding in the FY2001 Interior Appropriations Act and sustaining that level (except for some of the emergency funding) in FY2002. The Bush Administration is proposing modest reductions for FY2003. The 107th Congress is considering whether the funding levels and programs are sufficient and effective to protect lands, resources, and structures from catastrophic wildfires.

National attention began to focus on wildfires in May 2000, when a prescribed burn escaped control and burned 235 homes in Los Alamos, NM, but the threat of catastrophic wildfires seems to have become more severe in recent years. Many forests are widely thought to have unnaturally high fuel loads (e.g., dead trees and dense undergrowth) and an historically unnatural mix of plant species (e.g., exotic invaders). Fuel treatments have been proposed to reduce the threats from wildfires, including prescribed burning (setting fires under specific conditions); commercial logging followed with appropriate slash disposal; and other treatments (e.g., precommercial thinning). Treatments often can be more effective if combined (e.g., prescribed burning after thinning), but most fuel treatments are expensive and their effectiveness for reducing wildfire threats depends on many factors.

Administrative Actions. President Bush's FY2003 budget proposes continuing most of the wildfire management programs expanded by President Clinton, with total funding of $2.11 billion ($1.46 billion for the Forest Service and $0.65 billion for BLM). The FY2003 budget is $159 million less than FY2002, primarily for emergency fire contingency (shifting some to fire suppression funding) and community assistance. The Administration proposes increasing funding to reduce hazardous fuels and drafting legislation to test "fireplain easements to acquire...perpetual easements to permit implementation of fire suppression strategies, including the option of allowing fires to burn without suppression activities."

Legislative Activity. Congress has focused attention on wildfire protection mostly through annual agency appropriations. The FY2001 Interior Appropriations Act included nearly $2.9 billion in wildfire funding for the FS and BLM, roughly corresponding to the Clinton Administration's funding requests. The FY2002 Interior Appropriations bill (*H.R. 2217*) included $2.24 billion for wildfire management, maintaining the program funding increases, but not the emergency fire control and rehabilitation funding. Despite the significant increase in funding, FS fuel treatment appropriations for FY2001 and FY2002 are 28% of the level that the General Accounting Office estimated was needed annually for 16 years to treat the 39 million acres of national forests identified as at high risk of catastrophic wildfire. (Comparable estimates are not available for BLM lands.)

Congress also has addressed wildfire programs in the 2002 farm bill — *H.R. 2646* and *S. 1731*. Both bills contain a forestry title and similar wildfire protection programs. They would authorize "stewardship end-results contracts" to allow the Forest Service to require forest health improvement activities in timber sale contracts, paid for with lower timber receipts. Both measures also would establish a new program for assisting communities with protection from wildfires and authorize grants to biomass energy facilities to offset the costs to acquire and transport hazardous biomass fuels from federal lands. The Senate bill would also require the USDA Inspector General to investigate and report on all firefighter fatalities. *H.R. 2646* passed the House on October 5, 2001; Senate incorporated *S. 1731* into *H.R. 2646* and passed the House measure on February 13, 2002. (See CRS Report RL31195.)

Energy and Minerals (by Marc Humphries and Carol Hardy Vincent)

Energy and Mineral Development on Federal Lands: Background. A key, controversial issue is whether to increase access to federal lands for energy and mineral development. The Mineral Leasing Act of 1920 governs the leasing of *onshore* oil and gas, coal, and several other minerals on the federal lands. The BLM administers the development of energy and mineral resources on federal lands and other lands where the government owns the resources. A BLM study determined that of the approximately 700 million acres of federal subsurface minerals under the agency's jurisdiction in 2000, about 165 million acres have been withdrawn from mineral entry, leasing, and sale, subject to valid existing rights. Also of the 700 million acres, mineral development on another 182 million acres is subject to the approval of the surface management agency, and must not be in conflict with land designations and plans, according to a BLM representative.

The U.S. Geological Survey (USGS) estimates that significant oil and gas resources exist below some federal lands now off-limits, particularly in the Rocky Mountain region. The industry contends that entry into these areas is necessary to ensure future domestic oil and gas supplies. Opponents to opening these areas maintain that there are environmental risks, restricted lands are environmentally sensitive or unique, and that the United States could meet its energy needs through a combination of increased exploration elsewhere around the globe along with increased energy conservation.

Coal has maintained a sizable share of U.S. energy supply and accounts for approximately 50% of U.S. electricity needs. Because of a huge proven domestic coal reserve — 272 billion short tons — coal will continue to be prominent in the U.S. energy picture. Over the past 20 years, the federal government has emphasized developing clean coal technologies. The Clean Coal Technology (CCT) program, begun in 1984, focused on projects that could demonstrate emission control devices as an alternative to low sulfur coal or scrubbers and new advanced power generating facilities. However, within the context of environmental restrictions on coal emissions and cheaper natural gas, funding for CCT has been deferred or rescinded over the past 5 years.

Administrative Actions. The underlying concern for the Administration is how to best increase U.S. domestic oil and gas supplies. Proposals from the National Energy Policy Development (NEPD) Group, established by President Bush and led by Vice President Cheney, recommended that the President direct the Secretary of the Interior to identify and eliminate any impediments to oil and gas exploration and development on federal land, and this is being done. The Administration is examining land status and reviewing public lands withdrawals. Work by the BLM, USGS, and Department of Energy (DOE) is underway to assess the oil and gas reserves and resources on federal lands.

The Bush Administration wants to revive the clean coal technology programs under its Clean Coal Power Initiative (CCPI); it is seeking $2 billion over the next 10 years (FY2002-FY2011) for CCPI. The CCPI would be a cost-sharing industry-government program to demonstrate advanced power technologies, emphasizing coal-based gasification projects. Supporters note that coal is a major domestic energy resource that could be more greatly utilized if its environmental drawbacks could be reduced. Opponents contend that new technology will not make coal environmentally acceptable at a competitive cost.

Legislative Activity. A broad House-passed energy bill (*H.R. 4*) includes tax incentives, extension of deepwater royalty relief, and relief for marginal onshore oil and gas. The bill repeals the prohibition on leasing in the coastal plain of ANWR but ensures that not more than 2,000 acres of surface area of the federal lands are used for carrying out oil and gas development on the coastal plain. *H.R. 4* also is consistent with the Bush energy report and authorizes spending for coal and related technologies programs for FY2002 through FY2004. It includes a provision for establishing Clean Coal Centers of Excellence.

The Senate Energy and Natural Resources Committee held hearings on two energy measures (*S. 597 and S. 388*) and began marking up *S. 597*. Both *H.R. 4* and *S. 388* are consistent with the Administration's plan to assess resources under public lands, expedite the oil and gas leasing process, and open ANWR to development. The Senate Majority Leader did not view the energy bill as a priority for the first session. Senate Republicans pursued a strategy of attaching energy legislation to other high priority bills but were unsuccessful in that approach. Senate majority proposals for comprehensive energy legislation were delayed until *S. 1766*, a revision of *S. 597*, was introduced on December 5, 2001. The measure does not include a provision to open ANWR. It would increase funding for fossil energy research and development and support expeditious environmental reviews on public lands available for oil and gas development. Senator Daschle offered an amended version of *S. 1766* as a floor amendment to *S. 517* on February 15, 2002. The amendment remains pending. Separately, bills (*H.R. 3538 and S. 1808*) have been introduced to revise the Mineral Leasing Act of 1920 to "reduce impediments for prompt development of oil and gas resources on federal lands." On February 13, 2002, the Senate Finance Committee marked up another proposal, The Energy Tax Incentives Act of 2002, prepared by the Joint Committee on Taxation (JCT). The proposal would provide tax credits and incentives for oil and natural gas producers and incentives for investing in clean coal technology.

Royalty in-kind (RIK) provisions are contained in *H.R. 4* and *S. 388*. A provision in *S. 517* would require a tax and royalty policy review to ascertain its impact on oil and gas development. The issue has been the appropriate valuation for oil and gas produced on federal land. Critics charge that the Minerals Management Service (MMS) has been collecting less than fair market value in oil and gas royalties as a result of undervaluation of production on federal leases. The MMS attempted to correct the situation through the issuance, on March 15, 2000, of new rules for establishing a price for calculating the government's royalty share. The oil industry trade representative, the American Petroleum Institute, has filed a lawsuit to overturn the new valuation rule. Taking federal oil and gas royalties in-kind has been proposed as a method to solve the oil valuation issue and several pilot studies are underway. The federal government would receive its royalty payment in physical quantities of oil or gas then sell its quantities for a market-based price. The Bush Administration will use the RIK program to acquire 22 million barrels of oil from the Gulf of Mexico for the Strategic Petroleum Reserve.

Hardrock Mining and Millsites: Background. In addition to access to federal lands for energy development, two recent issues have been controversial. One is the regulations governing hardrock mining operations (43 CFR 3809). The Clinton Administration changed the regulations, seeking to enhance the agency's ability to prevent "unnecessary or undue degradation" of public land resources from mining operations. The regulations authorized the BLM to deny mining operations if the result were "substantial irreparable harm" to significant resources, and made mining operators more responsible for reclaiming mined lands. The mining industry asserted that the regulations were unlawful, impeded mining operations, and duplicated some existing federal and state laws. The Bush Administration has revised these regulations. (See below.)

A second issue involves mining millsites. Under the General Mining Law of 1872, the holder of a mining claim has the right to claim and patent nonmineral, noncontiguous lands to mill and process ore — millsites — from mining claims on federal lands. At issue is whether the language in the 1872 statute allows only one millsite (of no more than five acres) or multiple millsites per mining claim. The Clinton Administration decided that only one millsite is allowed per claim. Congress, and later the Bush Administration, essentially exempted on-going mining operations from this decision.

The 107th Congress also is considering legislation related to other mining issues. Among them are bills related to the maintenance and location fees and the moratorium on mining patents for mining or mill site claims. (See CRS Issue Brief IB89130.)

Administrative Actions. After a decade of review, the Clinton Administration revised the hardrock mining regulations, effective on January 20, 2001. On March 23, 2001, the Bush Administration proposed suspending the new regulations and reinstating the previous ones to allow the BLM to address legal, economic, and environmental issues that were raised. The Bush Administration subsequently revised the hard rock mining rules, taking a multi-tiered approach. First, on June 15, 2001, BLM issued a final rule that changed the dates by which financial guarantee requirements would become effective (66 Fed. Reg. 32571). Then, on October 30, 2001 (66 Fed. Reg. 54834), the BLM published a final hard rock mining rule, effective December 31, 2001. The final rule keeps some of the Clinton changes, but eliminates the most controversial features. For instance, it eliminates the part on unnecessary and undue degradation of BLM lands that permitted BLM to stop mining operations that would cause substantial irreparable harm to significant resources that could not be effectively mitigated. Other important provisions that had defined "operator," the source and extent of liability of operators, and the authority for BLM to assess civil penalties for violations were changed to move the Bush regulations closer to the previous 1980 regulations. The Bush Administration regulations have been challenged in court by environmental groups claiming they fail to prevent undue degradation of lands.

Also on October 30, 2001 (66 Fed. Reg. 54863), BLM published a proposed rule that proposed many of the changes that were just put in place in the final rule published the same day. According to BLM, this unusual procedure was intended to both achieve some stability by issuing changes in final form, but then also issuing them as proposals in order to gather additional public comments. The proposed rule also contains several technical, clerical, and other modifications. The BLM reopened the comment period on April 12, 2002 for 30 days (through May 13, 2002) due to continued substantial interest in the issue. The comment period initially ran through December 31, 2001, with an extension from February 1, 2002, to February 15, 2002. The BLM is soliciting comments on topics including the federal/state relationship with respect to regulation of mining on the public lands and "the delegations these rules provide," and whether the regulations "contain other provisions which are either overly burdensome or fail to provide adequate environmental protection."

With respect to millsites, on November 7, 1997, a legal opinion of the Solicitor of the Department of the Interior stated that each mining claim could use no more than five acres for activities associated with mining (i.e., for "millsites"). This opinion affects many modern mining operations, such as heap-leach mines for gold, which typically require large tracks of land beyond that of the mining claim for mining-related purposes, including disposal of waste rock. Critics charged that this opinion was a new interpretation of the Mining Law, was inconsistent with agency practice, and was an indirect way of reforming the 1872 Mining Law. Supporters of the decision assert that it is based both in law and practice, and necessary because the Mining Law is anachronistic and lacks tough environmental protections.

On September 28, 2001, the Department of the Interior instructed the BLM not to apply the millsite opinion to mines with plans of operation approved before November 29, 1999, operations with plans submitted prior to the Solicitor's November 7, 1997 opinion, and patent applications grandfathered as part of the 1995 mining patent moratorium. The Department simultaneously tasked its Solicitor (under President Bush) to review the 1997 millsite opinion, and that opinion is now being actively reviewed. These actions came as a two-year similar legislative exemption from the Solicitor's 1997 opinion was due to expire.

Legislative Activity. The millsite issue and hardrock mining regulations most recently have been addressed in appropriations laws. In the FY2000 Interior appropriations law, Congress provided a two-year exemption from the Solicitor's millsite opinion for mines with approved plans of operation, operations with plans submitted prior to the Solicitor's opinion, and patent applications grandfathered as part of the 1995 mining patent moratorium.

Provisions of both the FY2000 and FY2001 appropriations laws prohibited the Secretary of the Interior from using funds to revise the hardrock mining regulations except to make changes "not inconsistent" with law and the recommendations contained in a National Research Council (NRC) report entitled "Hardrock Mining on Federal Lands." Under President Clinton, the Department interpreted this as allowing the revised regulations to include subjects not addressed in the recommendations of the NRC report, provided these recommendations were not directly contradicted. This interpretation was controversial in Congress. The FY2002 Interior and Related Agencies Appropriations Act (P.L. 107-63) dropped House language that would have prohibited spending funds to suspend or revise the hardrock mining regulations. The Bush Administration's final rule retained some provisions not specifically addressed by the NRC recommendations.

Federal Land Acquisition (by Jeffrey Zinn)

Background. The Land and Water Conservation Fund (LWCF) is the principle source of funding for land acquisition by the four major federal land management agencies. LWCF includes a matching grant program to assist states in acquiring and developing recreational sites and facilities. It accumulates $900 million annually, mostly from offshore oil and gas revenues, but money becomes available only if Congress appropriates it. The unappropriated balance is in the General Treasury and used for other purposes. Of the $25.4 billion LWCF has accumulated to date, Congress has appropriated$12.5 billion to LWCF.

Congress is considering three policy issues related to LWCF. One issue is the level of annual appropriations and whether to make the appropriation permanent. Some interests are seeking full annual funding at $900 million and permanent appropriations to bypass the annual requests. The second issue is deciding which lands federal agencies should acquire with LWCF funds. Currently, federal agencies propose acquisitions in their annual budget requests, and Congress apportions most of the funds for specified acquisitions. The agencies typically can identify more potential acquisitions than the appropriations would fund. The agencies and Congress do not similarly direct the states as to how to spend their LWCF state grants. A final issue is spending LWCF funds on purposes other than land acquisition.

Administrative Actions. In FY2003, the Bush Administration has requested $333 million for federal land acquisition: $86.1 million for NPS, $44.7 million for BLM, $71.1 million for FWS, and $131.0 million for FS. The Administration seeks $200 million for the state grant program, of which $50 million would be used in a new Cooperative Conservation Initiative. In FY2002, the Bush Administration had sought full funding—$900 million—for the LWCF, with half ($450 million) to the federal agencies and the other half to state grants. Of the federal portion, the Administration proposed $50 million for incentive grants to states to help landowners enhance habitat for rare species "while continuing to engage in traditional land management practices," and $10 million for a new grant program to support local, private conservation efforts, leaving $390 million for land acquisition.

The Clinton Administration had proposed increases for many natural resource programs, including LWCF, through its Lands Legacy Initiative. For FY2000, it had sought over $1 billion for 16 programs, including $560 million for LWCF, and Congress appropriated $727 million, including $466 million for LWCF. In FY2001, the Administration requested $1.4 billion for 20 programs, including $600 million for LWCF; Congress increased this to $1.67 billion, including $585 million for LWCF, in part because related legislation (see below) had not been enacted. Congress also specified a cap on several funding levels for the next 5 years for these programs, now called the Conservation Spending Category.

Legislative Activity. The FY2002 Interior Appropriations Act (P.L. 107-63) contains $707.9 million for LWCF, less than the President's request ($900 million) but more than FY2001 ($584.4 million). The FY2002 appropriation includes $428.9 million for federal land acquisition and $279 million for state and other grant programs. The federal land acquisition appropriation was more than the President's request ($390 million) but less than FY2001 ($444.2 million). Congress also provided $50 million, as requested, in the federal portion for state incentive grants, administered by FWS. The state/other appropriation was less than the President's request ($450 million) but more than FY2001 ($140.2 million), with $144 million for state grants and $135 million for FWS state grants and incentive grants.

The Conservation and Reinvestment Act (CARA) has been reintroduced in the 107th Congress (*H.R. 701*), with provisions nearly identical to the House-passed version from the 106th Congress. It would create the CARA Fund, funding LWCF at $900 million annually — $450 million for federal land acquisition and $450 million for state grants. The bill has 243 cosponsors, including the leaders of the House Resources Committee. That Committee held a hearing on June 20, 2001, and ordered the bill reported on July 25. Comparable bills have been introduced by Senator Murkowski (*S. 1318*) and Senator Landrieu (*S. 1328*).

Recreational Fee Demonstration Program (by David Whiteman and Carol Hardy Vincent)

Background. The Recreational Fee Demonstration Program ("Fee Demo") was authorized to begin in FY1996 as a 3-year trial to allow the four major federal land management agencies (BLM, FS, the National Park Service (NPS), and U.S. Fish and Wildlife Service) to test the feasibility of recovering some of the costs of operating and maintaining federal recreation sites through new fees. This program has been extended by Congress, most recently through FY2004 for fee collection and FY2007 for expenditures. Currently, each agency can establish any number of fee projects and retain and spend all the revenue collected, with at least 80% retained at the site where collected. The agencies have broad discretion in using the Fee Demo revenues. Traditionally, Congress has set fees and designated fee use areas, and most entrance and user fees have gone to the general fund of the Treasury, with Congress annually appropriating funds for agency operations and maintenance. The program was designed to supplement appropriated funds, and Congress has not offset Fee Demo revenues with decreased appropriations.

The agencies generally support the Fee Demo program because of the discretion they have in setting fees, determining fee sites, and using the revenues. For FY2001, Fee Demo revenues totaled $173 million, with most collected by the NPS. The agencies assert that users overwhelmingly support the new fees, and some supporters would like the program extended to other agencies. Critics counter that fees restrict access and result in "double taxation" of the recreating public, and that fee surveys are misleading because they omit those who do not pay the fees. They also question the need for the program in recent years, given increased appropriations for public land management. Most of the current concern has focused on the FS's Fee Demo program, with assertions that the fees keep poorer people out, commercialize public lands, and are unfair if improved facilities are lacking.

Administrative Actions. The Bush Administration's FY2003 budget proposes making the Fee Demo Program permanent, and states an intent to draft such legislation. The agencies in the program have collaborated on developing related legislation. Last year, in his FY2002 budget, the President proposed extending the program through FY2006.

Legislative Activity. The FY2002 Interior and Related Agencies Appropriations Act (P.L. 107-63) extended the Fee Demo Program for 2 years — through September 30, 2004, for collection and September 30, 2007, for expenditures. The extension is intended to allow the authorizing committees to develop a "permanent solution" for the program. Since 1996, the program has operated under temporary authority provided by appropriations laws. The joint explanatory statement of the conference report states that "the managers strongly encourage the authorizing committees to address this matter forthwith so short-term extensions via the appropriations process are no longer germane." The agencies in the program are developing legislation for a permanent Fee Demo program. The law also gives the agencies discretion to determine the number of fee sites, and requires approval by the Appropriations Committees of Fee Demo funded capital construction projects costing more than $500,000, to address congressional concern about large projects. The law does not fix the percentage of collections to be used for maintenance, thus continuing the discretion of the agencies in spending fee revenues.

In the 107th Congress, legislation has been introduced to remove FS lands from the Fee Demo program (*H.R. 908* and *H.R. 1139*), and to extend the program to the Bureau of Reclamation and the Army Corps of Engineers (*H.R. 1013* and *S. 531*). An introduced Senate bill, the National Parks Stewardship Act (*S. 1011*), includes authorizing a permanent version of the Fee Demo program with between 60% and 80% of the funds retained at the collecting site. Another Senate bill (*S. 2015*) would exempt residents of counties containing Fee Demo Program areas from paying fees imposed under the program. In addition, the Fee Demo program might be affected by bills (*H.R. 359*, *S. 224*, and *S. 930*) which would fund some park capital improvement projects with bonds secured by a surcharge over, or set aside from, park entrance fees.

A November 2001 report by the General Accounting Office asserts that agencies in the program could be more innovative in setting and collecting fees to make fee payment easier for visitors; improve coordination to eliminate inconsistent and confusing fees; and establish performance measures to facilitate an evaluation of the program. It finds that Congress may wish modify the requirement that 80% of the revenues be kept at the collecting site, to direct more funds to agency-wide priorities and sites with little or no collections.

LEGISLATION

P.L. 107-63, H.R. 2217

P.L. 107-63, the FY2002 Interior and Related Agencies Appropriations Act extends the Recreational Fee Demonstration Program for 2 years and makes other program changes. It also generally bars funds in the bill from being used for energy leasing activities within the boundaries of national monuments, as they were on January 20, 2001. It contains funds for diverse land programs, including $2.24 billion for wildland fire management and $429 million for federal land acquisition. Signed into law November 5, 2001.

H.R. 4 (Tauzin)

Seeks to enhance energy conservation, research, and development; includes resource assessments for federal lands and other modifications in energy production on federal lands. Passed House 240-189 (Roll no. 320) on August 2, 2001; placed on Senate legislative calendar on August 3, 2001.

H.R. 552 (Udall, M.)

Protects certain roadless areas in Colorado and require an assessment of their wilderness suitability. Introduced on February 8, 2001; referred to Committee on Resources.

H.R. 601 (Simpson)

Authorizes continued hunting by creating a national preserve in the expanded portion of Craters of the Moon National Monument. Reported by House Resources Committee on April 3, 2001 (H.Rept. 107-34); passed House by voice vote on May 1. Senate Energy and Natural Resources subcommittee held hearings on July 31, 2001.

H.R. 701 (Young, D.)

Conservation and Reinvestment Act (CARA) authorizes use of royalties from Outer Continental Shelf oil and gas production to establish a fund for land acquisition, protection, and restoration. Committee on Resources ordered reported on July 25, 2001.

H.R. 908 (Capps)

Removes FS from the Fee Demo Program. Introduced March 7, 2001; referred to Committees on Agriculture and on Resources.

H.R. 1013 (Deal)/S. 531 (Lincoln)

National Recreation Lakes Act of 2001 creates demonstration program to enhance federal recreation programs at designated lakes and extends the Fee Demo Program to Bureau of Reclamation and Army Corps of Engineers. Introduced March 14, 2001. H.R.

1013 referred to Committees on Resources, on Transportation and Infrastructure, and on Agriculture. S. 531 referred to Committee on Energy and Natural Resources.

H.R. 1139 (Bono)
Removes FS from the Fee Demo Program. Introduced March 21, 2001; referred to the Committees on Resources and on Agriculture.

H.R. 1334 (Gilman)/S. 689 (Schumer)
The Governors Island Preservation Act of 2001 guides management and transfers Governors Island National Monument from General Services Administration to Department of the Interior. H.R. 1334 introduced April 3, 2001, and referred to Committees on Resources and on Government Reform. Senate Energy and Natural Resources subcommittee held hearings on S. 689 on July 31, 2001.

H.R. 2114 (Simpson)
Amends the Antiquities Act of 1906 to make presidential designations of monuments exceeding 50,000 acres ineffective unless approved by Congress within 2 years, establishes a process for public input in presidential monument designations, and requires monument management plans to be developed in accordance with the National Environmental Policy Act of 1969. House Resources ordered reported (24-18) on March 20, 2002.

H.R. 3538 (Cubin)
Mineral Leasing Act Revision of 2001 amends the Mineral Leasing Act of 1920 to reduce impediments to the prompt development of natural gas and oil resources on federal lands. Excludes producing acreage from acreage limitations on taking, holding, owning, and controlling federal oil and gas leases. (S. 1808 has identical title and similar purpose, but different language.) Introduced December 19, 2001; referred to Committee on Resources.

H.R. 4076 (Stump)
The Agua Fria National Monument Technical Corrections Act of 2002 contains provisions on boundary adjustments to the monument, allowed land uses, and development of a management plan. Introduced March 20, 2002; referred to Committee on Resources.

S. 388 (Murkowski)
Seeks to protect U.S. energy and security and decrease America's dependency on foreign oil to 50% by the year 2011; includes the Federal Oil and Gas Lease Management Improvement Act of 2000 [sic] to allow state administration of leases on federal lands. Committee on Energy and Natural Resources held hearings in May, June, and July 2001.

S. 597 (Bingaman)
Seeks to provide for a comprehensive and balanced energy policy. Marked up by Energy and Natural Resources on August 2, 2001.

S. 1011 (Graham)
National Parks Stewardship Act includes establishing a permanent recreation fee program, with between 60% and 80% of receipts retained at the collecting site. Introduced June 11, 2001; referred to Committee on Energy and Natural Resources.

S. 1318 (Murkowski)

Provides coastal impact assistance to state and local governments and establishes a fund for conservation and recreation. Introduced August 2, 2001; referred to Committee on Energy and Natural Resources.

S. 1328 (Landrieu)

Entitled the Conservation and Reinvestment Act. Introduced August 2, 2001; referred to Committee on Energy and Natural Resources.

S. 1766 (Daschle)

A comprehensive energy bill to provide for the energy security of the Nation and for other purposes. Introduced December 5, 2001; placed on Senate Legislative Calendar under General Orders on December 6.

S. 1808 (Thomas)

Mineral Leasing Act Revision of 2001 amends the Mineral Leasing Act of 1920 to encourage the development of natural gas and oil resources on federal lands; this bill would exempt certain oil or gas leases from the statutory acreage limitation. (H.R. 3538 has identical title and similar purpose, but different language.) Introduced December 12, 2001; referred to Committee on Energy and Natural Resources.

S. 2015 (Smith, Bob)

Exempts residents of counties containing fee demonstration areas from paying fees imposed under the Recreational Fee Demonstration Program. Introduced March 14, 2002; referred to Committee on Energy and Natural Resources.

For Additional Reading

CRS Report 98-794 ENR, *Federal Recreation Fees: Demonstration Program*, by Rosemary Mazaika.

CRS Report RL30755, *Forest Fire Protection*, by Ross W. Gorte.

CRS Issue Brief IB10015, *Managing Growth and Related Issues in the 107th Congress*, by Jeffrey Zinn.

CRS Issue Brief IB89130, *Mining on Federal Lands*, by Marc Humphries.

CRS Report RL30647, *The National Forest System Roadless Areas Initiative*, by Pamela Baldwin.

CRS Report RS20902, *National Monument Issues*, by Carol Hardy Vincent.

GAO-01-47, *Forest Service Roadless Areas: Potential Impact of Proposed Regulations on Ecological Sustainability* (Washington, DC: November 2000).

GAO-02-10, *Recreation Fees: Management Improvements Can Help the Demonstration Program Enhance Visitor Services* (Washington, DC: November 2001).