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Issue Brief for Congress

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. Congress is considering limiting the authority of the President and amending particular monuments. The Administration is developing management plans for some monuments created by President Clinton, and is considering a new monument in Utah.

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. Implementation was enjoined, and the Administration did not appeal (but intervenors did). The Bush Administration has sought public comment on whether and how to revise the roadless rules. Interim direction is now in effect, and new final rules are being developed. A bill to protect roadless areas has been introduced.

Wildfire Protection. The threat of catastrophic wildfires seems to have become more severe. The FY2003 budget request ($2.02 billion) continued higher funding for most fire programs. Supplemental funding for 2002 fire-fighting efforts of $700 million was added by the House, and of $825 million was requested by the Administration and proposed in the Senate. In addition, the Administration's Healthy Forests Initiative seeks to protect communities from wildfires by reducing fuels; H.R. 5319 and a pending Senate amendment to Interior Appropriations (H.R. 5093) would largely enact this proposal.

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 (H.R. 4) is in conference. 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 by the House Resources 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, and legislation to make it permanent has been introduced. The FY2002 budget request proposed extending the program, and Congress enacted legislation to extend and revise the program.

MOST RECENT DEVELOPMENTS

Bills reported by the Senate Committee on Appropriations (S. 2708) and passed by the House (H.R. 5093) would provide $2.02 billion and $2.17 billion, respectively, for wildland firefighting on DOI and Forest Service lands. The House bill also would supplement FY2002 firefighting efforts with an additional $700 million. The Administration has asked for supplemental funds of $825 million, which is being considered by the Senate as an amendment to the Interior appropriations bill. In addition, the Administration has proposed a Healthy Forests Initiative to protect communities from wildfire by expediting fuel reduction treatments. H.R. 5319 and a proposed Senate amendment to the Interior appropriations bill would largely enact this proposal. The House bill also would provide $374 million for federal land acquisition and $154 million in state grants, while the Senate Committee bill recommends $380 million for federal land acquisition and $144 million for state grants.

H.R. 2114, to limit presidential designation of national monuments and amend the monument designation process, is on the House calendar. DOI agencies have begun to develop management plans for many of the monuments created by President Clinton. The Bush Administration is considering designating a monument in Utah and selling Governors Island, including Governors Island National Monument, for a nominal fee.

The Administration has published a report on comments received on whether and how to amend rules to prohibit developments in Forest Service roadless areas, but final rules are not complete; H.R. 4865, to protect roadless areas, has been introduced.

BACKGROUND AND ANALYSIS

The Bureau of Land Management (BLM) in DOI and the Forest Service (FS) in the U.S. Department of Agriculture 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. 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 planning regulations on November 9, 2000 (65 *Federal Register* 67514-67581), which established ecological sustainability as the priority for managing 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 RL31447, *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 particular issues affecting BLM and FS lands that are receiving attention during the 107th Congress. 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 RL31306. 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/].

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 President may proclaim national monuments on federal lands containing "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 protected objects. Congress subsequently limited the President's authority in Wyoming and Alaska.

Administrative Actions. President Clinton proclaimed 19 new monuments and enlarged 3 others, totaling about 5.9 million federal acres. He selected the Bureau of Land Management (BLM) to manage many of the monuments. Recent controversies have focused on how President Clinton created monuments; the size of the areas and types of resources protected; and restrictions on land uses that may result. Critics contend that the Antiquities Act should require congressional, state, or public input or environmental reviews. Supporters defend presidential authority to rapidly protect valuable federal lands and resources, and contend that monuments have broad public support.

On April 24, 2002, Interior Secretary Norton announced the development of management plans for the new DOI monuments. Notices published in the Federal Register

on that date formally begin the planning process with scoping periods (of at least 60 days each) to identify the key issues for each monument. Controversies are expected over recreational uses, including off-highway vehicles, and commercial uses, including grazing and energy development. Some observers interpret this planning effort as an indication that the Secretary is dropping consideration of significant reductions to monument sizes.

Pending completion of the plans, BLM monuments are to managed in accordance with the agency's interim management policy for newly created monuments, issued on October 4, 2001. The policy, which expires September 30, 2003, revises an earlier one in 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. In some cases, the monuments also are to be managed under state or issue specific interim guidance, e.g. for oil and gas leasing and development. For details of a monument's management, see its BLM web site, accessible at: [http://www.blm.gov/nlcs/monuments/].

The Bush Administration is reported to be considering the issue of nonfederal lands within national monuments, and to be supportive of the removal of private and state lands from the boundaries of national monuments. The Administration also 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. Some environmental groups fear the size will be too small and 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. Terms of the proposal have not been announced. 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.

Legislative Activity. *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. The language applies to the creation of new monuments and to additions to existing monuments if the acreage exceeds 50,000. The bill also establishes a process for input into presidential monument designations. Specifically, a monument proclamation affecting more than 50,000 acres may not be issued until 30 days after the President has solicited written comments on the proposal from the Governor(s) of the state(s) in which the monument would be located. Further, for any monument proclamation, to the extent consistent with the protection of the resources on the lands to be designated, the President is to solicit public input, and to consult with the Governor and congressional delegation, to the extent practicable, at least 60 days before the proclamation is issued. The measure also requires monument management plans to be developed in accordance with the National Environmental Policy Act of 1969. At markup, the House Resources Committee agreed to an amendment to clarify that the bill would apply to future proclamations. The Committee reported the measure on April 15, 2002, essentially on a party line vote with

Democrats opposed. Earlier, the Bush Administration testified in support of this bill. The measure is on the Union Calendar and available for House floor action.

Three bills would govern management, and transfer management, of Governors Island National Monument. *H.R. 1334 and S. 689* would authorize the conveyance of the Island to New York for free. It is not clear how a conveyance might affect the Monument part of the Island. *H.R. 4759* seeks to ratify the establishment of the monument and prohibit it from being sold. The measure would transfer jurisdiction and management of the monument, at no cost, from the Administrator of General Services to the Secretary of the Interior. As a condition of conveyance, certain rights of access and use are reserved. The Secretary is to manage the monument in accordance with the bill and laws applicable to the National Park System, and to submit a monument management plan to the House Resources Committee and the Senate Energy and Natural Resources Committees by January 19, 2004.

Other bills pertain to particular monuments. One bill (*H.R. 4076)* would modify the boundaries of the Agua Fria National Monument, 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. A second measure (H.R. 4822), pending on the House calendar, would exclude some 81,000 acres of private land from the boundaries of the Upper Missouri River Breaks National Monument. The Monument consists of approximately 377,346 acres of federal land. A third bill (*H.R. 601*) allowing hunting in the expanded portion of the Craters of the Moon National Monument was enacted into law (PL. 107-213).

Identical provisions relating to development in national monuments are contained in a House-passed bill (H.R. 5093, §320) and a bill reported by the Senate Appropriations Committee (S. 2708, §322). Those provisions would bar 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. A similar provision was enacted for FY2002.

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 RL31447, *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 supported 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 generally would have been prohibited, except for specified purposes.

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, 2001, 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, and the Administration has published a report on the comments received (see: [http://www.roadless.fs.fed.us]). However, 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, 2001, 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. *H.R. 4865* has been introduced with 174 co-sponsors, to direct management of inventoried roadless areas in accordance with the final rule promulgated by the Clinton Administration. *S. 2790* would prohibit road construction and timber harvesting in inventoried roadless areas. No action has occurred on either bill.

Wildfire Protection (by Ross W. Gorte)

Background. The 2002 fire season is on track to be worse than the 2000 fire season, which was, by most standards, one of the worst in the past 50 years. The threat of severe wildfires seems to have grown in recent years. Many forests 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). Many proponents of fuel reduction argue that needed treatments often are delayed by administrative appeals and litigation. However, many environmentalists fear that fuel reduction could enable timber companies to increase logging on federal lands and that such projects would not receive careful environmental review.

Administrative Actions. President Bush's FY2003 budget proposes continuing most of the wildfire management programs expanded by President Clinton, with a total of ($2.02 billion). The Administration has proposed a Healthy Forests Initiative, to improve wildfire protection by expanding and expediting fuel reduction, emphasizing the wildland-urban interface, and has requested an additional $825 million for FY2002 firefighting efforts.

Legislative Activity. Congress has focused attention on wildfire protection through annual agency appropriations. The FY2001 Interior Appropriations Act included nearly $2.9 billion in wildfire funding for the FS and BLM and the FY2002 Act included $2.24 billion. For FY2003, in *S. 2708* the Senate Appropriations Committee recommended $2.02 billion in wildfire funding, essentially matching the Administration's request ($1.37 billion for FS, and $654 million for BLM). The House passed *H.R. 5093* with $2.17 billion in FY2003 wildfire appropriations ($1.51 billion for the FS and $655 million for the BLM). The House also added $700 million for FY2002 firefighting ($500 million for the FS and $200 million for the BLM). The Senate is considering an amendment to add the requested $825 million ($636 million for the FS and $189 million for the BLM), while draft language being circulated would add $1.25 billion ($1.0 billion for the FS and $250 million for the BLM).

The Senate also is considering an amendment to the Interior Appropriations bill that would enact parts of the President's Healthy Forests Initiative by eliminating administrative appeals and restricting litigation for up to 10 million acres of fuel treatment. This is similar to language in the Supplemental Appropriations Act for FY2002 (*P.L. 107-206*), which directs completion of certain timber sales and other treatments in the Black Hills (SD) National Forest without administrative appeals or judicial review. Negotiations on a bi-partisan substitute are continuing, but a cloture vote scheduled for September 17 might prevent further consideration of the amendment.

The House also has addressed wildfire programs in legislation, both prior to and in response to the Administration's initiative. Several bills would accelerate fuel treatments by reducing or restricting the public review of projects or by eliminating challenges to projects, in limited or expansive circumstances, depending on the bill. (See *H.R. 5214, H.R. 5309, H.R. 5341, H.R. 5358, S. 2811,* and *S. 2920*.) One bill, *H.R. 5319,* may be the most similar to the Healthy Forests Initiative, and the House Resources Committee held hearings on it and other bills on September 5, 2002. Markup was scheduled for September 12, but was postponed for negotiations on a bi-partisan substitute.

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 BLM administers the Mineral Leasing Act of 1920 which governs the leasing of *onshore* oil and gas, coal, and several other minerals on the federal lands. A BLM study determined that of the roughly 700 million acres of federal minerals, 1) about 165 million acres have been withdrawn from mineral entry, leasing, and sale, subject to valid existing rights, and 2) 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.

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 with increased exploration elsewhere and energy conservation. Coal provides a sizable share of U.S. energy supply and accounts for about half of U.S.

electricity needs. Over the past 20 years, the government has emphasized developing clean coal technologies (CCT). However, with 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 impediments to oil and gas exploration and development on federal land. The Administration also is examining land status and reviewing public lands withdrawals. The BLM, USGS, and Department of Energy (DOE) are working to assess the oil and gas reserves and resources on federal lands.

The Bush Administration wants to revive the CCT programs under its Clean Coal Power Initiative (CCPI), and is seeking $2 billion over the next 10 years (FY2002-FY2011). Supporters note that coal resources could be more widely used if the 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 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 development. *H.R. 4* also is consistent with the NEPD energy report and authorizes spending for coal and related technologies programs for FY2002-FY2004. The Senate passed version of *H.R. 4* does not include language to open ANWR to oil and gas drilling, one of the dominant issues. Similar to the House version, the Senate bill would instruct the Secretary of the Interior to ensure "timely action" on applications for oil and gas leases and drilling on federal lands. It supports expeditious environmental reviews on public lands available for oil and gas development and increases funding for fossil energy research and development. Energy bill conferees are negotiating a compromise agreement.

There is likely to be a greater push from the energy industries to increase federal land available to oil and gas development, particularly in the Rocky Mountain region. Some regional and national organizations, including ranchers and environmentalists, have expressed concern with, and opposition to, any increased federal leasing in the West because of its potential impacts to wildlife, water quality, and other land uses. Other bills (*H.R. 3538* and *S. 1808*) seek to "reduce impediments" for oil and gas development on federal lands.

Royalty in-kind (RIK) provisions are contained in *H.R. 4* as passed by the House, and the Senate-passed version 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 RIK 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. (For information on other mining legislation under consideration, 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. The Bush Administration subsequently revised these 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 eliminates some of the most controversial Clinton changes, primarily 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. Environmental groups have challenged the Bush Administration regulations in court claiming they fail to prevent undue land degradation.

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. A decision on this issue is under review.

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,

inconsistent with agency practice, and an indirect way of reforming the 1872 Mining Law. Supporters 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. These actions came as a two-year similar legislative exemption from the Solicitor's 1997 opinion was due to expire. Currently, a new millsite opinion has been drafted, but has not received final approval. Its contents have not been publicly disclosed.

Legislative Activity. The millsite issue and hardrock mining regulations have been addressed in recent Interior appropriations laws, although current House and Senate versions of the FY2003 bill (H.R. 5093) do not address these issues. In the FY2000 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 the FY2000 and FY2001 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 regulations to include subjects not addressed in the NRC report, provided its recommendations were not directly contradicted. This interpretation was controversial in Congress. The FY2002 law 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. Comprehensive mining law reform legislation (*H.R. 4748*), which was introduced May 16, 2002, contains surface management provisions that require a reclamation plan and financial guarantees for cleanup of mine activities.

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 may be used for other purposes. Of the $25.4 billion LWCF had accumulated through FY2001, 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 and congressional consideration. 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 earmarks 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, which began in FY1998 and has involved substantial sums in some years.

Administrative Actions. For FY2003, the Bush Administration requested $333 million for federal land acquisition: $86 million for NPS, $45 million for BLM, $71 million for FWS, and $131 million for FS. The Administration seeks $200 million for the state grant program, of which $50 million would be for a proposed Cooperative Conservation Initiative. In earlier years, 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. In FY2002, in its first budget cycle, the Bush Administration requested $900 million for LWCF, a portion of which would have been spent for other purposes. Congress provided $573 million for land acquisition and $708 million in total

Legislative Activity. For FY2003, the House-passed Interior appropriations bill (H.R. 5093) provides $374 million for federal land acquisition and $154 million for state grants. The appropriations bill reported by the Senate Committee on Appropriations (S. 2708) provides $380 million for federal land acquisition and $144 million for state grants. Neither bill funds the Administration's proposed Cooperative Conservation Initiative.

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 245 cosponsors, including the leaders of the House Resources Committee. That Committee ordered the bill reported on July 25, 2001, but no report has been filed. Comparable bills have been introduced by Senator Murkowski (*S. 1318*) and Senator Landrieu (*S. 1328*).

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

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. It has been extended and revised by Congress. 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 revenues.

The agencies generally support the Fee Demo program because of the discretion they have in determining fee sites, setting fees, and using the revenues. 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, result in "double taxation" of the recreating public, and may not be needed given recent increases in appropriations for public land management. Most of the current concern has focused on the FS's Fee Demo program, with assertions that the fees are confusing, 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. Legislation has been introduced to establish a permanent recreation fee program. *S. 1011* creates a permanent program with between 60% and 80% of the funds retained at the collecting site. *S. 2607* authorizes the collection of fees on certain lands administered by DOI and DOA, prohibits other recreation fees from being collected on these lands, lists circumstances when fees may not be charged, and authorizes between 60% and 80% of funds to be retained at the collecting site. *S. 2473* establishes a permanent fee program only for the Park Service, with 60%-90% of funds retained at the collecting site. Other measures would remove FS lands from the Fee Demo program (*H.R. 908* and *H.R. 1139*), or extend the program to the Bureau of Reclamation and the Army Corps of Engineers (*H.R. 1013* and *S. 531*). *S. 2015* would exempt residents of counties containing Fee Demo program areas from paying fees.

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 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.

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

National Monuments and the Antiquities Act

P.L. 107-213, H.R. 601

Authorizes continued hunting by creating a national preserve in the expanded portion of Craters of the Moon National Monument. Signed into law August 21, 2002.

H.R. 1334 (Gilman)/S. 689 (Schumer)

The Governors Island Preservation Act 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 developed in accordance with the National Environmental Policy Act of 1969. House Resources reported (amended), and placed on calendar, on April 15, 2002.

H.R. 4076 (Stump)

The Agua Fria National Monument Technical Corrections Act 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.

H.R. 4759 (Nadler)

Ratifies establishment of Governors Island National Monument and prohibit its sale. Introduced May 16, 2002; referred to Committees on Resources and on Government Reform.

H.R. 4822 (Rehberg)

Removes private lands from the boundaries of the Upper Missouri River Breaks National Monument. Committee on Resources reported; place on House calendar on September 5, 2002.

Roadless Areas

H.R. 4865 (Inslee)

Requires management of inventoried national forest roadless areas under the Clinton Administration's final rule. Introduced June 5, 2002; referred to Committees on Agriculture and on Resources.

S. 2790 (Cantwell)

The Roadless Area Conservation Act generally prohibits road construction and timber harvesting in inventoried roadless areas. Introduced July 25, 2002; referred to Committee on Energy and Natural Resources.

Wildfire Protection

H.R. 5214 (Rehberg)

The National Forest Fire Prevention Act specifies criteria for timber sales to proceed without environmental analysis and without administrative appeals or judicial review. Introduced July 25, 2002; referred to Committees on Agriculture and on Resources. Committee on Resources held hearing on September 5, 2002.

H.R. 5309 (Shadegg)

The Wildfire Prevention and Forest Health Protection Act authorizes FS Regional Foresters to exempt certain types of projects from environmental analysis and administrative appeals or judicial review. Introduced July 26, 2002; referred to Committees on Agriculture and on Resources. Committee on Resources held hearing on September 5, 2002.

H.R. 5319 (McInnis)

The Healthy Forests Reform Act directs expedited environmental review, and limits administrative appeals and judicial review for certain types of projects; also authorizes "goods-for-services" stewardship contracting, where timber purchasers can be required to perform additional stewardship services as part of the timber sale contract. Introduced September 4, 2002; referred to Committees on Resources and on Agriculture. Committee on Resources held hearing on September 5, 2002.

H.R. 5341 (Taylor, C.)

The National Forest Fire Fuels Reduction Act specifies criteria for timber sales to proceed without environmental analysis or administrative appeals, and with limits on judicial review. Introduced September 5, 2002; referred to Committees on Agriculture and on Resources.

H.R. 5358 (Inslee)

The Community Protection Against Wildfire Act directs that 85% of fuel reduction funds be spent on projects in the wildland-urban interface, authorizes $1.5 billion over 5 years for grants for community and private land wildfire assistance, restricts the size of trees cut in fuel reduction projects, and authorizes "forest restoration and value-added centers." Introduced September 10, 2002; referred to Committees on Resources and on Agriculture.

S. 2811 (Enzi)

The Emergency Forest Rescue Act directs the Secretaries of Agriculture and of the Interior to identify emergency mitigation areas and to use alternative arrangements approved by the Council on Environmental Quality to expedite environmental analysis; the projects are exempt from administrative appeals. Introduced July 26, 2002; referred to Committee on Agriculture, Nutrition, and Forestry.

S. 2920 (Baucus)

Directs exemptions and expedited procedures for certain types of fuels reduction projects, without administrative appeals. Introduced September 10, 2002; referred to Committee on Agriculture, Nutrition, and Forestry.

Energy and Minerals

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. Conference held June 27, 2002 and July 25, 2002.

H.R. 3538 (Cubin)

Amends the Mineral Leasing Act of 1920 to reduce impediments to development of natural gas and oil resources on federal lands. Excludes producing acreage from limitations

on taking, holding, owning, and controlling federal oil and gas leases. Introduced December 19, 2001; referred to Committee on Resources.

H.R. 4748 (Rahall)

Comprehensive mining law reform, with surface management provisions that require a reclamation plan and financial guarantees for cleanup. Introduced May 16, 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. 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 calendar on December 6, 2001.

S. 1808 (Thomas)

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

Federal Land Acquisition

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 (amended) on July 25, 2001.

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.

Recreational Fee Demonstration Program

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)

Includes an extension of the Fee Demo Program to the 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.

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. 2015 (Smith, Bob)

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

S. 2607 (Bingaman)

Establishes a permanent recreation fee program. Introduced June 11, 2002; Committee on Energy and Natural Resources held hearings on June 19, 2002.

FOR ADDITIONAL READING

CRS Report RS20471, *The Conservation Spending Category: Funding Natural Resource Protection*, by Jeffrey A. Zinn.

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