Order Code IB10076

Bureau of Land Management (BLM) Lands and National Forests

Updated October 29, 2004

Ross W. Gorte and Carol Hardy Vincent, Coordinators
Resources, Science, and Industry Division

CONTENTS

Bureau of Land Management (BLM) Lands and National Forests

SUMMARY

In the second session, Congress continues to confront an array of 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). The Administration continues to address public lands and national forests through budgetary, regulatory, and other actions. Several key issues of ongoing congressional and administrative interest are covered in this report.

Wildfire Protection. The Administration proposed a Healthy Forests Initiative to protect communities from wildfires by reducing fuels. Congress enacted the Healthy Forests Restoration Act of 2003 (P.L. 108-148) with many of the proposals in the President's initiative and other provisions. Other aspects of fire protection have been addressed through changes in regulations.

Energy Resources. Congressional and administrative interest in access to federal lands for energy and mineral development is reflected in major energy policy legislation — H.R. 6 and S. 2095. Both S. 2095 and the conference agreement on H.R. 6 would eliminate the 160-acre limit on coal leases and authorize demonstration technologies for unproven, unconventional reserves, but not open ANWR to oil and gas leasing. The conference agreement passed the House but remains pending in the Senate, and S. 2095 is on the Senate calendar.

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. A court has enjoined implementation of the Clinton rules. On December 30, the Bush Administration issued a new rule exempting the Tongass NF in Alaska from the roadless rule. The House agreed to an amendment to H.R. 4568 that would prohibit funding for new permanent roads in the Tongass. New proposed rules published on July 16, 2004, which would replace the Clinton rules, would allow state governors to petition for special roadless area management rules.

R.S. 2477 Rights of Way. Revised Statute (R.S.) 2477 granted rights of way for the construction of highways across unreserved federal lands, but the extent of valid rights of way is not clear in some states. Congress prohibited regulations "pertaining to" R.S. 2477 from becoming effective. The Bush Administration recently finalized regulations on "disclaimers of interest" for clearing title to R.S. 2477 highway easements, and executed an agreement with Utah to acknowledge and disclaim R.S. 2477 rights of way in that state. Whether these regulations "pertain to" R.S. 2477 is controversial.

National Monuments and the Antiquities Act. The Antiquities Act of 1906 authorizes the President to establish national monuments on federal lands. The 108th Congress is considering limiting the President's authority and amending certain monuments. The Bush Administration is developing management plans for many monuments. H.R. 4568 and S. 2804 would bar funding for energy leasing activities within presidentially created national monuments.

Other Issues. Other federal lands issues of interest to the 108th Congress include wilderness, hardrock mining and millsites, grazing management, forest planning, land acquisition, and competitive sourcing federal jobs.

MOST RECENT DEVELOPMENTS

- H.R. 4503, energy legislation essentially identical to the conference agreement on H.R. 6, passed the House on June 15, 2004. H.R. 4513, to reduce NEPA analysis for renewable energy projects, also passed the House on June 15. H.R. 4529, to open ANWR to oil and gas development, was introduced and the rule for floor consideration was adopted June 15. The conference report on H.R. 6 remains pending in the Senate.
- H.R. 4568 and S. 2804, Interior appropriations for FY2005, would bar funding of energy leasing within presidentially created monuments.
- On September 9, 2004, the Administration extended the comment period on new proposed rules for the management of the national forest roadless areas.

BACKGROUND AND ANALYSIS

The Bureau of Land Management (BLM) in DOI and the Forest Service (FS) in the U.S. Department of Agriculture manage 454 million acres of land, two-thirds of the land owned by the federal government and one-fifth of the total U.S. land area. The BLM manages 261.5 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 192.5 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 BLM 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 under the Taylor Grazing Act of 1934 (TGA, 43 U.S.C. §§315, et seq.).

Congress frequently has 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.

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 (initially an agency for private forestry assistance and forestry research). Management direction for the national forests, first enacted in 1897 and expanded in 1960, identifies the purposes for which the lands controlled by the Forest Service are to be managed, allows protection of areas as wilderness, and directs "harmonious and coordinated management" to provide sustained yields of resources.

Many issues concerning 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. In part to address these issues, 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. (See "Other Issues," below.)

Wilderness protection also has been a continuing issue for the FS since 1964 because agency recommendations are pending. Pressure to protect these and other areas contributed to the Clinton Administration's decision to protect roadless areas not designated as wilderness. (For wilderness issues, see "Other Issues," below, and CRS Report RL31447, *Wilderness: Overview and Statistics*, by Ross W. Gorte.)

Scope of Issue Brief

Many issues affecting BLM and FS lands are similar, and the missions of the agencies are nearly identical. By law, the BLM and FS lands are to be administered for multiple uses, although slightly different uses are specified for each agency. 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 — that is, 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 several issues affecting BLM and FS lands that are of interest to the 108th 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 RL32393, *Federal Land Management Agencies: Background on Land and Resource Management*, coordinated by Carol Hardy Vincent. Information on FY2005 appropriations for the BLM and FS (and other agencies and programs funded by the FY2005 Interior and

Related Agencies appropriations bill) is included in CRS Report RL32306, *Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren. For information on park and recreation issues, see CRS Issue Brief IB10093, *National Park Management and Recreation*, coordinated by Carol Hardy Vincent. For information on oil and gas leasing in the Arctic National Wildlife Refuge (ANWR), see CRS Issue Brief IB10111, *Arctic National Wildlife Refuge (ANWR): Controversies for the 108th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin. For information on other related issues, see the CRS web page at [http://www.crs.gov/].

Wildfire Protection (by Ross W. Gorte)

Background. Recent fire seasons have killed firefighters, burned homes, and threatened communities. Many argue that the threat of severe wildfires has grown, because many forests have unnaturally high fuel loads (e.g., dead trees and dense undergrowth) and increasing numbers of structures are in and near the forests (i.e., the *wildland-urban interface*). Reducing fuels on federal lands has been proposed to reduce the threats from fire. Proponents of fuel reduction on federal lands argue that needed treatments often are delayed by environmental studies, administrative appeals, and litigation. However, others fear that *streamlining* fuel projects could increase logging on federal lands, that such projects might not receive proper environmental review, and that reducing fire risk in the interface requires landscaping to reduce fuels on the private lands and modifying structures on those lands.

Administrative Actions. In August 2002, the Bush Administration proposed a Healthy Forests Initiative to improve wildfire protection by reducing hazardous fuels. The program would have given priority to the wildland-urban interface, municipal watersheds, and areas affected by insects and diseases. It included expedited consultations on endangered species and a collaborative process for public involvement, but would have eliminated public requests for an administrative review of project proposals, constrained judicial review, and prohibited restraining orders and injunctions. Congress enacted the Healthy Forests Restoration Act of 2003 (P.L. 108-148) with many of the proposals in the President's initiative and other provisions (described below under "Legislative Activity").

Before legislation was enacted, the Administration made several regulatory changes to facilitate fuel reduction. These changes are unaffected by P.L. 108-148. First, two new categories of actions can be excluded from NEPA analysis and documentation: fuel reduction and post-fire rehabilitation activities (68 *Fed. Reg.* 33814, June 5, 2003). These categorical exclusions cannot be used in certain areas or under certain circumstances, but may be used for timber sales if fuel reduction is the primary purpose. Second, the administrative review processes also were revised (68 *Fed. Reg.* 33582, June 4, 2003, for the FS; 68 *Fed. Reg.* 33794, June 5, 2003, for the BLM). The revisions sought to clarify that some emergency actions may be implemented immediately and others after complying with publication requirements, and to expand emergencies to include those "that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed."

The Administration also proposed regulatory changes that could affect fuel reduction, public involvement, and environmental impacts. New regulations were proposed for FS

forest planning (67 *Fed. Reg.* 72770, December 6, 2002; see "Other Issues," below)[1], and new categorical exclusions were finalized for small timber harvesting projects (68 *Fed. Reg.* 44598, July 29, 2003). The total impact of the regulatory changes is greater discretion for FS action without environmental studies and with fewer opportunities for the public to comment on or to request administrative review of those actions.

Legislative Activity. H.R. 1904, the Healthy Forests Restoration Act of 2003, was signed into law (P.L. 108-148) on December 3, 2003. Title I addresses hazardous fuel reduction on federal lands. Priority is directed to protecting "at-risk communities" and municipal watersheds. Title I authorizes a new, alternative process for reducing fuels on up to 20 million acres of national forests or BLM lands in certain areas: in or near the wildland-urban interface and municipal water supply systems, certain endangered species habitats, and areas affected by wind or ice storms or by insect or disease epidemics that threaten ecological health or natural resources. Authorized projects must be consistent with land management plans. They generally are to focus on small trees, thinning, fuel breaks, and prescribed burning while retaining large trees and maintaining old growth stands, but are prohibited on certain lands, such as wilderness areas. The law authorizes $760 million annually for authorized projects and for any other fuel reduction activities, including grants to states.

For authorized projects, the FS or BLM must prepare NEPA documents, but the agencies are allowed to analyze a limited number of alternatives. The public can be involved through scoping, collaboration, and multiparty monitoring of project impacts; the public also must be given a chance to comment on proposed projects. For its projects, the FS is to develop a new pre-decisional review process to supplant the existing administrative appeals process, and administrative reviews must be "exhausted" before litigation is allowed. Lawsuits against either agency's projects must be filed in the district court for the area where the project is proposed, and courts are encouraged to review cases expeditiously. Preliminary injunctions are limited to 60 days, but can be renewed, and courts are directed to balance short- and long-term impacts of action and of inaction. However, under the act, similar projects can be implemented under other authorities, possibly without public participation.

P.L. 108-148 also contains five other titles that indirectly relate to wildfire protection. Title II expands biomass research, authorizes a new biomass rural revitalization program, and authorizes grants for biomass use. Title III establishes a watershed forestry assistance program with cost-sharing assistance to landowners and financial and technical assistance to states and tribal governments to protect water quality through forestry practices. Title IV authorizes data collection on forest-damaging insects and "applied silvicultural assessments" (treatments for research purposes) of up to 1,000 acres each (250,000 acres total) that are categorically excluded from NEPA, but with peer review and public notice and comment on each project. Title V authorizes a program of 10-year agreements or 30-year or long-term (up to 99-year) easements to pay willing private landowners to protect or restore their lands as habitat for endangered species. Finally, Title VI authorizes an "early warning system" for environmental threats primarily to eastern U.S. forests.

---

[1] See also CRS congressional memorandum, *Analysis and Critique of the Forest Service Planning Regulations Proposed on December 6, 2002*, by Pamela Baldwin (Jan. 3, 2003), 21 p.

Congress also continues to address wildfire protection through appropriations. For FY2005, the Administration has requested $2.47 billion for the National Fire Plan. In H.R. 4568, the House passed FY2005 funding of $3.02 billion (including $500 million for emergency firefighting, if certain conditions are met). In S. 2804, the Senate Appropriations Committee recommended funding of $2.98 billion (including $500 million for emergency firefighting, if certain conditions are met). Congress also enacted $500 million for FY2004 emergency firefighting in P.L. 108-287, the FY2005 DOD Appropriations Act. (For more information, see CRS Report RL32306, *Interior Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren.)

Energy Resources (by Marc Humphries)

Background. A 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 (December 1, 2000) determined that, of the roughly 700 million acres of federal minerals, underlying federal as well as other lands, (1) about 165 million acres (24%) have been withdrawn from mineral entry, leasing, and sale, subject to valid existing rights, and (2) mineral development on another 182 million acres (26%) is subject to the approval of the surface management agency, and must not be in conflict with land designations and plans.

The oil and gas industry contends that entry into areas that are off-limits to development, particularly in the Rocky Mountain region, 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 energy conservation and increased exploration elsewhere. (For more information, see CRS Report RL32315, *Oil and Gas Exploration and Development on Public Lands*, by Marc Humphries.)

Administrative Actions. A 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, 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. On April 14, 2003, the BLM announced new management strategies intended to remove impediments, and streamline the permitting process, for oil and gas leasing on federal lands. Features of this new strategy include the use of multiple applications for a permit package when appropriate and use of a geographic area development plan for the NEPA analysis and permitting process.

The Administration is examining land status and reviewing public land withdrawals. The BLM, USGS, and Department of Energy (DOE) continue to assess the oil and gas reserves and resources on federal lands. Several federal agencies issued (January 2003) an assessment entitled *Scientific Inventory of Onshore Federal Lands' Oil and Gas Resources and Reserves and the Extent and Nature of Restrictions or Impediments to their Development.* Some assert that the report shows that more federal lands currently are available for energy development than generally had been realized.

The Bush Administration also is reviving the 20-year-old Clean Coal Technologies program under its Clean Coal Power Initiative (CCPI) and is seeking $2 billion over 10 years (FY2002-FY2011). For FY2004, Congress enacted $178.8 million for the CCPI including funds for the FutureGen project, a 10-year, $1 billion Bush Administration initiative designed to establish the feasibility of producing electricity and hydrogen from a coal-fired plant yielding no emissions. For FY2005, the combined CCPI and FutureGen request is $287 million. In H.R. 4568, the House passed $105 million for CCPI and the House Appropriations Committee report notes support for up to $18 million in previously appropriated Clean Coal Technology funds for FutureGen. In reporting S. 2804, the Senate Appropriations Committee provided $18 million for Future Gen. For the CCTP, the Senate Committee recommended a deferral of $257 million, the House supported a deferral of $237 million, and the President requested a rescission of $237 million. The Senate Committee agreed with the Administration in supporting $50 million for the CCPI. Supporters note that coal resources could be more widely used if the environmental restrictions could be reduced. Opponents contend that new technology will not make coal environmentally acceptable at a competitive cost.

Legislative Activity. While enacting comprehensive energy legislation was considered a priority at the start of the session, such legislation has not been enacted to date. However, a corporate tax bill (H.R. 4520) that was signed into law in October 2004 (P.L. 108-357) incorporates a number of energy tax incentives that are included in comprehensive energy legislation discussed below. Among those included were energy tax incentives for marginal oil and gas producers, for the Alaskan natural gas pipeline, and for the use of a specific clean coal technology called K-Fuel that cuts nitrogen oxides, sulfur dioxide, and mercury emissions by 20%.

The House passed the energy bill (H.R. 6) on April 11, 2003. After contentious debate over high-priority issues, the Senate opted to pass its previously passed version — H.R. 4 from the 107th Congress — in lieu of H.R. 6. A conference agreement on the House- and Senate-passed versions was reached. The House approved the conference report (H.Rept. 108-375) on November 18, 2003, but the Senate failed to invoke cloture to end debate. The Majority Leader entered a motion to reconsider the cloture vote, and the bill remains pending in the Senate. The House also passed H.R. 4503, which is essentially the same as the conference version of H.R. 6, on June 15, 2004.

Federal lands could be affected by various provisions of the energy legislation. Both S. 2095 and the conference agreement on H.R. 6 would end the 160-acre limit on coal lease modifications and would initiate demonstration technologies for oil and gas recovery in unproven, unconventional reservoirs on public and private lands. They also would alter the siting and administration of rights of way on federal lands, and would require the Secretary of the Interior to evaluate the oil and gas leasing and permitting process, with particular emphasis on permitting time frames.

Whether to open the Arctic National Wildlife Refuge (ANWR) to oil and gas development has been one of the most contentious issues in the energy debate. A provision to open ANWR was in the House-passed version of the energy bill, but was not in the Senate-passed version. Opening ANWR to oil and gas exploration or drilling was not included in the conference agreement on H.R. 6 or contained in S. 2095. H.R. 4529 contains language that is substantially the same as the H.R. 6 language to open ANWR to oil and gas

development; the rule for its consideration was agreed to by the House on June 15, 2004. (See CRS Issue Brief IB10111, *Arctic National Wildlife Refuge: Controversies for the 108th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin.)

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

Background. In its final months, the Clinton Administration issued several new rules affecting the roadless areas of the National Forest System (NFS), including new rules and policies on roadless areas, NFS roads (66 *Fed. Reg.* 3219, January 12, 2001), and the FS planning process. The Bush Administration has proposed new rules for both the forest planning process (see "Other Issues," below) and roadless area management; the latter issue is discussed here. (For more information, see CRS Report RL30647, *The National Forest System Roadless Areas Initiative*, by Pamela Baldwin.)

Administrative Actions. The Clinton Administration established a new approach to the management of the approximately 58.5 million acres of NFS inventoried roadless areas by providing national guidance limiting roads and timber cutting in those areas. This nationwide approach was justified as limiting the litigation and delays that occurred when decisions were made at the level of each national forest. The roadless rule (66 *Fed. Reg.* 3244, January 12, 2001) would have prohibited road construction and timber cutting in the inventoried roadless areas, with several exceptions, including roads for access to inholdings or for public health and safety purposes, and timber cutting for fire control.

Implementation of the roadless rule was enjoined, citing "irreparable harm" to federal forests and their neighbors (Kootenai Tribe of Idaho v. Veneman, 142 F.Supp. 2d 1231 (Id. D.C. 2001)), but the Ninth Circuit reversed this decision. However, on July 14, 2003, the Federal District Court for Wyoming again enjoined implementation of the rule.

The Bush Administration sought public comment on whether and how to change the rule. On December 30, 2003, the Administration finalized a rule temporarily exempting the Tongass NF from the roadless rule, until an Alaska-wide rule can be completed (68 *Fed. Reg.* 75136). The Bush Administration has now proposed a new rule that would replace the Clinton rule and would allow governors of states to petition for promulgation of separate statewide rules on roadless area management (69 *Fed. Reg.* 42636, July 16, 2004). Under the proposed procedure, the resources and particular characteristics of each roadless area in a state would be reviewed by the state, which would then make management recommendations to the Secretary. If the petition is approved by the Secretary, rulemaking for that state would follow. There are no express requirements as to public input into the process, nor any indication of the weight to be given a petitioning state's recommendations versus those of other citizens interested in the public lands. The comment period on the proposed rule has been extended to November 15, 2004 (69 *Fed. Reg.* 54600).

Until new regulations are finalized, the FS is managing roadless areas in accordance with interim guidance directives. This guidance places most decisions with the Regional Forester, and some with the Chief of the Forest Service, until each forest plan is amended or revised to address roadless area protection. This approach reverses the Clinton rule by returning decisions on roads and timber activities in roadless areas to the individual forest planning level. The FS also has made several changes to its NEPA compliance requirements

that could allow some activities in roadless areas without environmental studies, public notice and comment, or appeals.

Legislative Activity. Congress is considering legislation on forest management in general and roadless areas in particular. H.R. 2369 would require that roadless areas be managed in accordance with the original roadless rule, and S. 1200 would enact most of the content of the roadless rule. S. 1938 would protect roadless and other areas more stringently than the Clinton roadless rule would have. No action has occurred on these bills. The House adopted a floor amendment to the FY2005 Interior appropriations bill (H.R. 4568) to prohibit funding for planning, designing, studying, or constructing development roads for timber harvesting in the Tongass NF; however, the language is not a total ban on road construction and would allow road maintenance. Neither the Senate companion bill nor the committee report (S. 2804, S.Rept. 108-341) contains similar language.

R.S. 2477: Rights of Way Across Public Lands (by Pamela Baldwin)

Background. In 1866, in an act that became Revised Statute (R.S.) 2477, Congress granted rights of way across unreserved public lands "for the construction of highways." This grant was repealed in 1976, but existing rights were protected. What constitutes construction of highways and whether a qualifying right of way existed by the time of repeal in 1976 can be contentious. These issues are important because possible rights of way may affect the management of federal lands, perhaps degrading their wilderness suitability while increasing access for recreation and other uses. Section 108 of the FY1997 Interior Appropriations Act (P.L. 104-208) states that final regulations "pertaining to" R.S. 2477 rights of way cannot take effect unless expressly authorized by an act of Congress.

Administrative Actions. On January 6, 2003 (68 *Federal Register* 494), the BLM finalized changes to its regulations for issuing "disclaimers of interest," a procedure to help clear title to property or interests in property with respect to possible interests of the United States. This procedure will be used to acknowledge R.S. 2477 rights of way. Interior Secretary Norton and the State of Utah executed a Memorandum of Understanding on April 9, 2003, under which the DOI will acknowledge and disclaim R.S. 2477 rights of way in Utah. Other states also have requested MOUs. The MOU does not clarify what criteria will be used to validate right of way claims. Critics assert that the disclaimer regulations "pertain to" R.S. 2477 rights of way and are unlawful under §108 of P.L. 104-208. The General Accounting Office has concluded that the Utah MOU itself was an unlawful regulation pertaining to R.S. 2477. The first notice of an application for a disclaimer (filed in re a Utah road) was published on February 9, 2004 (69 *Federal Register* 6000). Comments received indicate that the road in question might have been federally constructed, and not eligible to be an R.S. 2477 highway. Utah withdrew the application on September 16, 2004.

Legislative Activity. H.R. 1639 would establish a process for resolving R.S. 2477 claims and would define certain terms critical to evaluating the validity of such claims. The House approved an amendment to the FY2004 Interior appropriations bill, H.R. 2691, that prohibits implementation of the amendments to the disclaimer regulations in certain federal conservation areas, but this language was eliminated in conference.

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.) sometimes 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 expressly prohibited the President from proclaiming new national monuments in Wyoming (1950), and many assert that 1980 legislation did the same for Alaska.

President Clinton's establishment or enlargement of 22 monuments, primarily during his last year in office (2000), set off renewed controversy regarding presidential authority to proclaim monuments. The 108th Congress is focusing on land uses within monuments; the inclusion of non-federal lands in monument boundaries; and whether the President should be required to seek congressional, state, or public input or environmental reviews. (For more information on monument issues, see CRS Report RS20902, *National Monument Issues*, by Carol Hardy Vincent.)

To date, courts have upheld the monuments. In October 2003, the Supreme Court declined to hear two cases challenging President Clinton's designations of monuments, leaving in place lower court decisions upholding the designations. One recent case challenged the Grand Staircase-Escalante National Monument in Utah, but on April 19, 2004, the Federal District Court in Salt Lake City upheld the monument designation (2004 WL 965922, 2004 U.S. Dist. LEXIS 9865 (D. Ut. 2004)).

Administrative Actions. On April 24, 2002, the Department of the Interior began developing management plans for the new DOI monuments. Currently, some monuments are formulating and analyzing management options and issuing management plans. Some issues have involved recreational uses, including off-highway vehicles, and commercial uses, including grazing and energy development.

Other Administration actions affect national monuments. First, the Bush Administration has been considering the issue of nonfederal lands within national monuments, and is reported to support the removal of private and state lands from the boundaries of national monuments. Second, Governors Island National Monument, and the rest of Governors Island, were conveyed to the Governors Island Preservation and Education Corporation of the State and City of New York for $1, despite P.L. 105-33, § 9101, which required fair market value. That value had been estimated by some at between $300 million and $500 million but by others as much less. The approximately 22 acres that comprise the national monument were reconveyed to the federal government and reestablished as a national monument to be managed by the Secretary of the Interior.

Legislative Activity. Congress enacted legislation (P.L. 108-108) that bars FY2004 funds from being used for energy leasing activities within the boundaries of presidentially-created national monuments, as they were on January 20, 2001, except where allowed by the presidential proclamations that created the monuments. Similar provisions were enacted for FY2002 and FY2003, and are contained in the FY2005 Interior appropriations bills as passed by the House (H.R. 4568) and reported in the Senate (S. 2804).

A bill seeking to limit the authority of Presidents to designate national monuments has been introduced. H.R. 2386 would amend the Antiquities Act of 1906 to make presidential designations of monuments exceeding 50,000 acres ineffective unless approved by Congress within two years. It also would establish a process for input into presidential monument designations and require monument management plans to be developed in accordance with NEPA. A bill dealing with private property within a monument's boundaries saw committee action. On November 21, 2003, the House Resources Committee reported H.R. 1629 (H.Rept. 108-392) to exclude private property from the boundaries of the Upper Missouri River Breaks National Monument.

Other Issues

Congress is evaluating several other federal lands issues that could lead to increased legislation or oversight. These include wilderness, grazing management, national forest planning, federal land acquisition, and outsourcing government jobs.

Wilderness. The Wilderness Act established the National Wilderness Preservation System in 1964 and directed that only Congress could designate federal lands as part of the system. Wilderness designation is often controversial because various activities are not allowed in wilderness areas — commercial activities, motorized access, and roads, structures, and facilities generally are prohibited. Wilderness studies are also controversial, because many uses are restricted in the study areas to preserve wilderness characteristics while Congress considers possible designations. (See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by Ross W. Gorte and Pamela Baldwin.)

Some observers believe that the Clinton rule protecting national forest roadless areas (discussed above) was prompted by a view that Congress had lagged in designating areas which many assert should be wilderness. Others assert that the Bush Administration — by possibly disclaiming R.S. 2477 rights-of-way (discussed above), promulgating new guidance to end additional BLM wilderness studies, and eliminating the nationwide national forest roadless area protections of the Clinton Administration — is attempting to open these areas to energy and mineral exploration, roads, and development, thereby making them ineligible to be added to the Wilderness System. Many bills to designate wilderness areas typically are introduced in each Congress, and to date, more than a dozen such bills have been introduced in the 108th Congress. (For background information, see CRS Report RL31447, *Wilderness: Overview and Statistics*, by Ross W. Gorte.)

Hardrock Mining and Millsites. Two recent mineral issues have been controversial. First, the Clinton Administration revised the hardrock mining regulations (43 CFR 3809), effective January 20, 2001. The changes were intended to enhance the BLM's ability to prevent "unnecessary or undue degradation" of public lands from mining operations and to make mining operators more responsible for reclaiming mined lands. The Bush Administration revised the rules on October 30, 2001 (66 *Federal Register* 54834). The final rule eliminated some of the most controversial of the Clinton Administration changes. Environmental groups challenged the Bush regulations. On November 18, 2003, District Judge Henry H. Kennedy ruled that the regulations were not illegal on their face, but they may be "unwise and unsustainable" land use policy. Also on October 30, 2001, the BLM published a proposed rule (66 *Federal Register* 54863) with many of the same changes as

the final rule; according to BLM, this unusual procedure was intended to provide the stability of final rules while gathering additional public comments.

The second issues involves mining millsites. At issue is whether the General Mining Law of 1872 allows only one millsite of no more than five acres or multiple millsites (of no more than five acres each) for activities associated with each mining claim. On November 7, 1997, President Clinton's Interior Department solicitor issued a Legal Opinion that each *claim* could use no more than five acres for associated activities. Critics charged that this Opinion indirectly reformed the 1872 Mining Law, was inconsistent with agency practice, and severely restricted some modern mining operations (e.g., heap-leach mines for gold). On September 28, 2001, President Bush's Secretary of the Interior directed the BLM not to apply the 1997 Opinion to existing mining operations and the new DOI solicitor to review the Opinion. On October 7, 2003, a new Solicitor's Opinion allowed multiple millsites (of no more than five acres each) per claim if needed for development of mineral resources. On October 24, 2003, BLM issued a final rule significantly reorganizing and amending regulations on locating, filing, and maintaining mining claims and sites (68 *Federal Register* 61045), including regulations to implement the new millsite Opinion.

Grazing Management. BLM published proposed changes to its grazing regulations (43 CFR Part 4100) on December 8, 2003, and on January 2, 2004 issued a draft environmental impact statement (DEIS) analyzing the potential impact of the proposed changes and of alternative actions. Past efforts at grazing reform were highly controversial. BLM asserts that regulatory changes are needed to comply with court decisions, increase flexibility of managers and permittees, improve administrative procedures and business practices, and promote conservation. Among the proposed changes are: (1) allowing title to range improvements to be shared by the BLM and permittees, (2) allowing permittees to acquire water rights for grazing if consistent with state law, (3) changing the definition of "grazing preference" to include an amount of forage, (4) eliminating conservation use grazing permits, (5) extending the time to remedy rangeland health problems, and (6) reducing occasions where BLM is required to consult with the public. Due to negative public comments, the regulatory proposal did not include authorizing the agency to establish reserve common allotments for permittees to use while their normal allotments undergo rest or range improvements. Further, BLM did not address some controversial issues, such as revising the grazing fee. BLM received public comment on the proposal and DEIS during a period ending March 2, 2004. The agency anticipates issuing a final grazing rule in October 2004 that would take effect in the fall of 2004.

BLM is considering related grazing policy changes with a goal of providing more flexibility to managers and increasing innovative partnerships. Changes under consideration relate to establishing reserve common allotments, voluntary restructuring of allotments, acquiring conservation easements, and creating conservation partnerships. Final grazing policy changes will be developed when the rulemaking process is "substantially completed," according to BLM. (For more information, see CRS Report RL32244, *Grazing Regulations and Policies: Changes by the Bureau of Land Management*, by Carol Hardy Vincent.)

Competitive Sourcing. The Bush Administration's Competitive Sourcing Initiative would subject commercial activities to public-private competition. This government-wide effort could affect diverse government activities in agencies including the Forest Service and BLM. The Administration's goal is to save money through competition between government

and private businesses, particularly in areas where private business might provide better commercial services (e.g., law enforcement and maintenance). The plan is controversial, with concerns as to whether it would save the government money, whether the private sector could provide the same quality of service, or whether it is being used to accomplish policy objectives by outsourcing particular functions. P.L. 108-108 placed spending limits on agency competitive sourcing studies during FY2004 and required agencies to report annually to Congress on competitive sourcing. Similar provisions are contained in H.R. 4568, the FY2005 Interior appropriations bill as passed by the House, while the companion bill (S. 2804) reported by the Senate Committee on Appropriations would limit agency spending on competitive sourcing. The FY2004 law also required agencies to specify in their annual budget requests the level of funding sought for competitive sourcing studies. P.L. 108-7, providing consolidated appropriations for FY2003, limited the use of quotas in agencies' competitive sourcing efforts. Authorizing committees and the Appropriations Committees continue to evaluate the competitive sourcing initiative. (For more information, see CRS Report RL32306, *Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren and CRS Report RL32017, *Circular A-76 Revision 2003: Selected Issues*, by L. Elaine Halchin.)

National Forest Planning. Another issue is land management planning for the national forests. New Forest Service planning regulations were promulgated by the Clinton Administration effective on November 9, 2000, but with delayed implementation. New regulations were proposed by the Bush Administration on December 6, 2002, to supplant the Clinton regulations, but have not been finalized. The Clinton regulations established ecological sustainability as the priority for managing national forests, and were meant to be phased in over several years. The Bush proposal responded to concerns about the feasibility of the Clinton regulations with revisions seeking to simplify planning and to lead to decisions made closer to the users, but without ecological sustainability as the main priority and with other changes involving public participation in and review of agency decisions that was criticized by many environmentalists. On September 29, 2004, the FS issued an "interpretive rule," effective immediately without notice or comment, stating that the 1982 regulations are not in effect, apparently leaving only the requirement to manage the national forests using "the best available science." This appears to eliminate the "viable species" and all other management guidance, aside from the forest plans themselves. A lawsuit challenging this action was filed October 26, 2004.

Federal Land Acquisition. Federal land acquisition is a perennial focus of Congress and the public because of debates over how much land the federal government owns and should own, and which parcels of land it should acquire. The principal source of land acquisition funding for BLM and the Forest Service (and the Park Service and Fish and Wildlife Service) is the Land and Water Conservation Fund (LWCF). The LWCF is authorized at $900 million annually, but only the appropriated amount is available. Most of the appropriations are identified for specific units of public land. Legislation has been introduced starting with the 105th Congress to appropriate the full authorized level (the CARA proposals) and, in some of those bills, to remove the discretion to limit funding from the appropriators by making it mandatory spending.

On March 31, 2004, Representative George Miller introduced H.R. 4100, the latest iteration of the CARA proposals (Conservation and Reinvestment Act). This bill has many similarities with the earlier versions. It would dedicate $3.125 billion annually from federal

offshore oil and gas revenues to numerous purposes, including offsetting the coastal effects of offshore oil and gas development activities; fully funding LWCF; and funding several other wildlife, park, and historic preservation programs. It would sunset at the end of FY2024. The Senate CARA bill, S. 2590, does not address funding for federal land acquisition.

Total funding for federal land acquisition using the LWCF has declined steadily over the last two years, from $429 million in FY2002 to $165 million in FY2004. The BLM portion dropped over that period from $49.9 million to $18.4 million, while the FS portion declined from $149.7 million to $66.4 million. Possible explanations include the change from a federal budget surplus to a deficit, different spending priorities since 9/11, and concern by some about the extent of federal land ownership. The Administration's request for federal land acquisition for FY2005 is $220 million, including $24.0 million for BLM and $66.9 million for FS. H.R. 4568, the FY2005 Interior appropriations bill as passed by the House, contains $48.5 million for total federal land acquisition, with $4.5 million for BLM and $15.5 million for FS. The Senate companion measure, S. 2804 as reported, provides $217.1 million in total, with $22.9 million for BLM and $62.5 million for FS. (For more information, see CRS Report RS21503, *Land and Water Conservation Fund: Current Status and Issues*, by Jeffrey A. Zinn.)

LEGISLATION

Wildfire Protection.[2]

H.R. 1904 (McInnis); P.L. 108-148

The Healthy Forests Restoration Act of 2003 authorizes expedited planning and review procedures for fuel reduction projects on federal lands, grants for fuel reduction-biomass utilization, watershed forestry assistance, assessment and treatment of insect infestations, and a federal payments for a private forests reserve system. December 3, 2003, enacted into law (P.L. 108-148).

Energy Resources.

H.R. 6 (Tauzin)

Omnibus energy legislation. Federal lands could be affected by provisions including those ending the 160-acre limit on coal lease modifications and leading to demonstration technologies for oil and gas recovery in unproven, unconventional reservoirs on public and private lands. Nov. 18, 2003, conference report (H.Rept. 108-375) agreed to in the House (246-180). Nov. 21, 2003, Senate failed to invoke cloture (57-40) on the conference report.

H.R. 794 (Cubin)

The Coal Leasing Act Amendments of 2003 amend the Mineral Leasing Act of 1920 to repeal the 160-acre limit on coal leases, modify plan requirements and advance royalty payments, and require periodic assessment of coal resources under public lands. Introduced Feb. 13, 2003; referred to Committee on Resources.

---

[2] This section does not include alternatives considered prior to the enactment of H.R. 1904.

H.R. 2772 (Gibbons)

Amends the Geothermal Steam Act of 1970 in many ways, to alter the leasing process and the collection and disposition of royalties, and to require a periodic assessment of geothermal steam energy potential under federal lands. Included in conference report on H.R. 6 (H.Rept. 108-375) Nov. 18, 2003. (See H.R. 6, above.)

H.R. 3698 (M. Udall)

The Western Waters and Surface Owners Protection Act enhances protection of water quality and surface landowner rights in federal oil and gas development. Introduced Dec. 8, 2003; referred to Committees on Resources and on Transportation and Infrastructure.

H.R. 4017 (M. Udall)

The Western Waters and Farm Lands Protection Act enhances protection of water quality and surface landowner rights in federal oil and gas development. Introduced Mar. 23, 2004; referred to Committee on Resources and Committee on Transportation and Infrastructure.

H.R. 4503 (Barton)

The Energy Policy Act of 2004 is essentially the same as the conference agreement on H.R. 6. June 15, 2004, passed the House.

H.R. 4513 (Pombo)

Modifies NEPA review process for renewable energy projects to require analysis only of proposed and no-action alternatives. June 15, 2004, passed the House. June 17, 2004, referred to the Senate Committee on Environment and Public Works.

H.R. 4529 (Pombo)

The Arctic Coastal Plain and Surface Mining Improvement Act of 2004 essentially would enact the provision of H.R. 6 (as introduced) to open the Arctic National Wildlife Refuge to oil and gas development, and would reform the Abandoned Mine Reclamation Program. June 15, 2004, rule for House consideration agreed to.

H.R. 4549 (Pombo)

Virtually identical to H.R. 4529. Introduced June 14, 2004; referred to Committee on Resources and Committee on Ways and Means.

H.R. 4984 (Pearce)

The Potash Royalty Reduction Act of 2004 would reduce potash royalties to 1.0% for five years. Oct. 6, 2004, reported by House Resources Committee (H.Rept. 108-739).

S. 14 (Domenici)

Omnibus energy legislation. Federal lands could be affected by provisions ending the 160-acre limit on coal lease modifications and requiring further analyses of resource assessments, land withdrawals, and impediments to oil and gas development on public lands. July 31, 2003, Senate returned S. 14 to the calendar, and passed H.R. 4 from the 107th Congress in lieu, as an amendment in the nature of a substitute to H.R. 6.

S. 2095 (Domenici)

Omnibus energy legislation. Federal lands could be affected by provisions including those ending the 160-acre limit on coal lease modifications and leading to demonstration technologies for oil and gas recovery in unproven, unconventional reservoirs on public and private lands. Feb. 23, 2004, placed on the Senate legislative calendar.

Roadless Areas.

H.R. 2369 (Inslee)

The National Forest Roadless Area Conservation Act requires that roadless areas be managed in accordance with the original roadless rule. Introduced June 5, 2003; referred to Committee on Agriculture and Committee on Resources.

S. 1200 (Cantwell)

The Roadless Area Conservation Act of 2003 enacts most of the content of the Clinton Administration roadless rule. Introduced June 5, 2003; referred to Committee on Energy and Natural Resources.

S. 1938 (Corzine)

Seeks to protect ancient forests and roadless, watershed, and special areas. Introduced Nov. 24, 2003; referred to Committee on Energy and Natural Resources.

R.S. 2477: Rights-of-Way.

H.R. 1639 (Udall, M.)

The R.S. 2477 Rights-of-Way Act of 2003 establishes a process for resolving R.S. 2477 claims and defines certain terms critical to evaluating the validity of such claims. Introduced Apr. 3, 2003; referred to Committee on Resources.

National Monuments and the Antiquities Act.

H.R. 1629 (Rehberg)

Provides that the Upper Missouri River Breaks National Monument does not include private property within its boundaries. Nov. 21, 2003, placed on House calendar.

H.R. 2386 (Simpson)

Amends the Antiquities Act of 1906 making presidential designations of monuments exceeding 50,000 acres ineffective unless approved by Congress within two years, establishing a process for public input in presidential monument designations, and requiring monument management plans to be developed in accordance with the National Environmental Policy Act of 1969. Introduced June 5, 2003; referred to Committee on Resources.

For Additional Reading

CRS Report RL32306. *Appropriations for FY2005: Interior and Related Agencies*, by Carol Hardy Vincent and Susan Boren, Co-coordinators.

CRS Issue Brief IB10111. *Arctic National Wildlife Refuge (ANWR): Controversies for the 108th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin.

CRS Report RS21917. *Bureau of Land Management (BLM) Wilderness Review Issues*, by Ross W. Gorte and Pamela Baldwin.

CRS Issue Brief IB10116. *Energy Policy: The Continuing Debate and Omnibus Energy Legislation*, by Robert L. Bamberger.

CRS Report RL32393. *Federal Land Management Agencies: Background on Land and Resources Management*, by Carol Hardy Vincent, Coordinator.

CRS Report RS21402. *Federal Lands, "Disclaimers of Interest," and R.S. 2477*, by Pamela Baldwin.

CRS Report RL32244. *Grazing Regulations and Policies: Changes by the Bureau of Land Management*, by Carol Hardy Vincent.

CRS Report RL32142. *Highway Rights of Way on Public Lands: R.S. 2477 and Disclaimers of Interest*, by Pamela Baldwin.

CRS Report RS21503. *Land and Water Conservation Fund: Current Status and Issues*, by Jeffrey A. 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.

CRS Issue Brief IB10093. *National Park Management and Recreation*, by Carol Hardy Vincent, Coordinator.

CRS Report RL32315. *Oil and Gas Exploration and Development on Public Lands*, by Marc Humphries.

CRS Report RL32078. *Omnibus Energy Legislation: Comparison of Major Provisions in House- and Senate-Passed Versions of H.R. 6, Plus S. 14*, by Mark Holt, Coordinator.

CRS Report RL31447. *Wilderness: Overview and Statistics*, by Ross W. Gorte.

CRS Report RS21544. *Wildfire Protection Funding*, by Ross W. Gorte.

CRS Issue Brief IB10124. *Wildfire Protection in the 108th Congress*, by Ross W. Gorte.

CRS Report RS21880. *Wildfire Protection in the Wildland-Urban Interface*, by Ross W. Gorte.