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Bureau of Land Management (BLM) Lands and National Forests

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SUMMARY

The 109th Congress is likely to consider issues related to the public lands managed by the Bureau of Land Management (BLM) and the national forests managed by the Forest Service (FS). The Administration might address public lands and national forests through budgetary, regulatory, and other actions. Key issues of likely congressional and administrative interest are covered here.

Energy Resources. Congressional and administrative interest in access to federal lands for energy and mineral development was reflected in major energy policy legislation that was not enacted in the 108th Congress. Some versions would have eliminated the 160-acre limit on coal leases and authorized demonstration technologies for unproven, unconventional oil and gas reserves; others would have opened ANWR to oil and gas leasing. Energy legislation remains a priority.

R.S. 2477 Rights of Way. Revised Statute (R.S.) 2477 granted rights of way to construct highways across unreserved federal lands, but the extent of valid rights of way is unclear in some states. Congress prohibited regulations "pertaining to" R.S. 2477 from becoming effective. The Bush Administration developed regulations on "disclaimers of interest," which may be used to clear title to R.S. 2477 highway easements. Whether the regulations "pertain to" R.S. 2477 remains controversial. Congress may provide guidance on validating these easements.

Southern Nevada Land Sales. The Southern Nevada Public Land Management Act allows the Secretary of the Interior to sell land near Las Vegas, with the proceeds permanently appropriated for certain purposes. The President has proposed altering the distribution of receipts, with 70% going to the Treasury rather than to a special account. No related legislation has been introduced.

Wild Horses and Burros. The 108th Congress made controversial changes to the Wild Free-Roaming Horses and Burros Act of 1971. They included giving the agencies new authority to sell certain old and unadoptable wild horses and burros, and removing prohibitions on selling wild horses and burros and their remains for processing into commercial products. Legislation has been introduced to overturn the changes.

Wilderness. Many wilderness recommendations remain pending for national forests and BLM and other federal lands. Questions also persist about wilderness reviews and management of wilderness study areas (WSAs). The 109th Congress will likely see numerous bills to designate wilderness areas, and may address wilderness review and WSA protection.

Wildfire Protection. In 2002, the Bush Administration proposed a Healthy Forests Initiative to protect communities from wildfires by expediting fuel reduction. Congress enacted the Healthy Forests Restoration Act of 2003 (P.L. 108-148) with many aspects of the President's initiative and other provisions. Wildfire protection also has been addressed through changes in regulations. The 109th Congress may conduct oversight on implementation of the law and regulations.

Other Topics. Other topics of likely interest include grazing management, hardrock mining, national forest planning, national forest roadless areas, national monuments, and competitive sourcing.

MOST RECENT DEVELOPMENTS

- P.L. 108-357 (the American Jobs Creation Act of 2004) was enacted on October 22, 2004, with a number of energy tax incentives.
- P.L. 108-447, the FY2005 Consolidated Appropriations Act, was enacted on December 8, 2004, with several relevant provisions: (1) it generally barred funding of energy leasing within presidentially created monuments during FY2005; (2) it provided $3.01 billion for wildfire protection for FY2005; (3) it placed spending limits on DOI and FS competitive sourcing studies for FY2005; and (4) it modified wild horse and burro management.
- In his FY2006 budget, the President proposed altering the distribution of funds collected from land sales in Nevada, with 70% going to the general fund of the Treasury rather than to a special account.
- On January 25, H.R. 297 was introduced to amend current law regarding management of wild horses and burros, including to repeal certain sale authority and prohibit sale of animals (or their remains) for processing into commercial products.
- On January 5, 2005, the Administration issued new FS planning regulations that emphasize (1) balancing ecological and economic sustainability, and (2) making decisions locally.

BACKGROUND AND ANALYSIS

The Bureau of Land Management (BLM) in the Department of the Interior (DOI) and the Forest Service (FS) in the Department of Agriculture (USDA) 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. 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 also 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 the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. §§1701, et seq.), sometimes called BLM's Organic Act because it consolidated and articulated the agency's responsibilities. Among other provisions, the law establishes a general national policy that the BLM-managed public lands be retained in federal ownership, establishes management of the public lands based on the principles of multiple use and sustained yield, and generally requires that the federal government receive fair market value for the use of public lands and resources. Today BLM public land management encompasses diverse uses, resources, and values, such as energy and mineral development, timber harvesting, livestock grazing, recreation, wild horses and burros, fish and wildlife habitat, and preservation of natural and cultural resources.

History of the Forest Service

The FS was created in 1905, when forest lands reserved by the President (beginning in 1891) were transferred from DOI 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 and directs "harmonious and coordinated management" to provide sustained yields of the many resources found in the national forests — including timber, grazing, recreation, wildlife and fish, and water.

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. The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. §528-531) included wilderness as an appropriate use of national forest lands, and possible national forest wilderness areas have been reviewed under the 1964 Wilderness Act as well as in the national forest planning process. Pressure to protect pending wilderness recommendations and other areas contributed to the Clinton Administration's decision to protect "roadless areas" not designated as wilderness. (See "Other Issues," below.)

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 — a high level of resource outputs in perpetuity, without impairing the productivity of

the lands. Further, many issues, programs, and policies affect both agencies. For these reasons, BLM and FS lands often are discussed together, as in this issue brief.

This brief focuses on several issues affecting BLM and FS lands that are likely to be of interest to the 109th 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. For brief, general information on natural resource issues, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*, coordinated by Nicole Carter and 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 IB10145, *National Park Management*, coordinated by Carol Hardy Vincent, and CRS Issue Brief IB10141, *Recreation Issues in the 109th Congress*, coordinated by Kori Calvert and Carol Hardy Vincent. For information on oil and gas leasing in the Arctic National Wildlife Refuge (ANWR), see CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin. For information on local compensation for the tax-exempt status of federal lands, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn, and CRS Report RS22004, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*, by Ross W. Gorte. For information on other related issues, see the CRS web page at [http://www.crs.gov/].

Energy Resources (by Aaron M. Flynn)

Background. A controversial issue is whether and how 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, (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 the United States could realize equivalent energy gains through 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. Executive Order 13212 (May 18, 2001) established an administration policy of encouraging increased energy production on federal lands. 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 analysis and permitting process under the National Environmental Policy Act of 1969 (NEPA; P.L. 91-190, 42 U.S.C. §§4321-4347). New FS land management planning regulations (70 *Fed. Reg.* 1023, Jan. 5, 2005) also are premised upon, among other things, increasing management flexibility and streamlining energy project permitting. (See "Other Issues," below.)

The Administration also is examining land status and reviewing public land withdrawals. The BLM, U.S. Geological Survey (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, while others focus on the amount of lands withdrawn.

Legislative Activity. Many of the issues addressed in earlier comprehensive energy legislation that was not enacted remain priorities for the 109th Congress. Legislative activity in the 108th Congress resulted in several versions of comprehensive energy legislation, including separate House- and Senate-passed bills and a conference agreement on one bill. While comprehensive energy legislation was not enacted, a number of energy tax incentives were enacted as part of a corporate tax law (P.L. 108-357), including incentives for marginal oil and gas producers; for the Alaskan natural gas pipeline; and for the use of a specific clean coal technology (termed K-Fuel) that can cut nitrogen oxides, sulfur dioxide, and mercury emissions by 20%.

Federal lands could have been affected by various provisions of the energy legislation. Provisions would have ended the 160-acre limit on coal lease modifications and initiated demonstration technologies for oil and gas recovery in unproven, unconventional reservoirs on public and private lands. They also would have altered the siting and administration of rights of way on federal lands, and required the Secretary of the Interior to evaluate the oil and gas leasing and permitting process, with particular emphasis on streamlining permitting time frames. Previous energy legislation also included provisions addressing geothermal energy production on federal lands. Legislation to expedite the geothermal energy leasing process — H.R. 174 — has been introduced in the 109th Congress as well.

Whether to open the Arctic National Wildlife Refuge (ANWR) to oil and gas development was one of the most contentious issues in the energy debate. A provision to open ANWR was included in energy bills by the House, but not by the Senate. Similar legislation, H.R. 39, has been introduced in the 109th Congress as a stand-alone bill. (See CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin.)

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 *Fed. Reg.* 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 is to 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 the existence of R.S. 2477 rights of way in Utah, by disclaiming any federal interest. Other states also have requested MOUs. The MOU does not fully 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 Government Accountability Office has concluded that the Utah MOU itself is an unlawful regulation pertaining to R.S. 2477 (GAO Opinion B-300912, *Recognition of R.S. 2477 Rights-of-Way Under the Department of the Interior's FLPMA Disclaimer Rules and Its Memorandum of Understanding with the State of Utah*, Feb. 6, 2004). The first notice of an application for a disclaimer (filed in regard to a Utah road) was published on February 9, 2004 (69 *Fed. Reg.* 6000); Utah withdrew the application on September 16, 2004.

Legislative Activity. The 108th Congress considered, but did not enact, legislation which would have established a process for resolving R.S. 2477 claims and would have defined certain terms critical to evaluating the validity of such claims. Also in the 108th Congress, the House approved an amendment to FY2004 Interior appropriations legislation to prohibit implementation of the 2003 changes to the disclaimer regulations in certain federal conservation areas, but this language was eliminated in conference. The 109th Congress may consider a process and criteria for resolving R.S. 2477 claims, and also may consider the use of disclaimers in the R.S. 2477 context.

Southern Nevada Public Land Management Act (by Carol Hardy Vincent)

Background. Historically, proceeds from the sale of BLM lands under various laws were deposited in the general fund of the Treasury. Certain recent laws have provided for land sales and established separate Treasury accounts available to the Secretary for subsequent land acquisition and other purposes. A proposal in the President's FY2006 budget seeks a legislative change to one such law — the Southern Nevada Public Land Management Act (SNPLMA, P.L. 105-623) — to provide that most proceeds are returned to the Treasury.

Specifically, SNPLMA allows the Secretary of the Interior to sell or exchange certain lands around Las Vegas, NV. The Secretary and the relevant local government unit jointly choose the lands offered for sale or exchange. In practice, these responsibilities of the Secretary are performed by the BLM. State and local governments get priority to acquire lands for local purposes under the Recreation and Public Purposes Act (43 U.S.C. §869).

Proceeds from the sales are distributed in different ways, depending on which lands are sold. In general, 85% of the money from land sales is deposited into a special account, which is permanently appropriated for certain purposes, including (1) federal acquisition of environmentally sensitive lands in Nevada; (2) development of a multi-species habitat conservation plan in Clark County, NV; (3) conservation initiatives on federal land in Clark County; (4) capital improvements at certain federal areas; and (5) development of parks, trails, and natural areas in Clark County. The other 15% of the revenues are provided to the State of Nevada and certain local entities, for state and local purposes such as the Nevada general education program.

The law was enacted in part to promote sale of federal land for development near fast-growing Las Vegas, to acquire environmentally sensitive land, and to foster competition in land disposals in response to criticisms that the government did not consistently receive a fair price for land it sold. Collections from SNPLMA land sales in FY2005 are estimated at $1.2 billion, vastly exceeding expectations at the time the law was enacted ($70 million annually) and more than double the amount collected in FY2004 ($530.5 million).

Administrative Actions. The President's FY2006 budget request supports amending SNPLMA to change the portion of revenue dedicated to the special account. The Administration recommends that 15% of the receipts from land sales go to the special account and 70% go to the Treasury, with the remaining 15% provided to the state of Nevada and local entities as under current law. The Administration states that because SNPLMA land sales have produced receipts far beyond expectations, there is significantly more revenue than is needed for land acquisition in Nevada. Consequently, proceeds of land sales increasingly are being used for local projects which are not overseen by Congress, thus reducing accountability, and do not reflect the highest needs of the nation, according to the Administration. Further, the change would still provide for far more money for Nevada than anticipated when the law was enacted, according to the Administration. The SNPLMA proposal could be opposed as impeding development in the Las Vegas area, federal acquisition of land with valuable resources, and conservation and recreation initiatives in Clark County. It is one of many changes advocated by the Administration that affect receipts or spending levels in FY2006 or subsequent years.

Legislative Activity. Administration budget documents for FY2006 state that the President intends to submit a legislative proposal to accomplish his desired change regarding SNPLMA receipts. The Administration has not done so to date, according to the BLM, and no related legislation has been introduced to amend SNPLMA.

Wild Horses and Burros (by Carol Hardy Vincent)

Background. The Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. §1331 et seq.) sought to protect wild horses and burros on federal land and placed them under the jurisdiction of BLM and the FS. For years, management of wild horses and burros has generated controversy and lawsuits. Controversies have involved the method of determining the "appropriate management levels" (AMLs) for herd sizes that the statute requires; whether and how to remove animals from the range to achieve AMLs; alternatives to adoption for reducing wild horses and burros on the range, particularly fertility control and holding animals in long-term facilities; and whether appropriations for managing wild horses and burros are adequate. There was particular concern that adopted horses were slaughtered,

despite prohibitions on that practice. (For background, see CRS Report RS21423, *Wild Horse and Burro Issues*, by Carol Hardy Vincent.)

The 108th Congress enacted changes to wild horse and burro management on federal lands in the Consolidated Appropriations Act for FY2005 (§142, P.L. 108-447). These changes have intensified controversies. One change gives the agencies new authority to sell, "without limitation," excess animals (or their remains) which essentially are deemed too old (more than 10 years old) or otherwise unable to be adopted (tried unsuccessfully at least thee times). A second change removed provisions of law that had barred wild horses and burros and their remains from being sold for processing into commercial products. A third change removed criminal penalties for processing into commercial products the remains of a wild horse or burro, if it is sold under the new authority. Also, the law did not expressly prohibit BLM from slaughtering healthy wild horses and burros, as had annual appropriations bills apparently each year starting in FY1988. These changes have been supported as providing a cost-effective way of helping the agencies achieve AML, to improve the health of the animals, protect range resources, and restore a natural ecological balance on federal lands. The changes have been opposed, particularly by animal rights activists, as potentially leading to the slaughter of large numbers of healthy animals.

Administrative Actions. It is unclear how BLM will implement the changes enacted in §142, and how they affect the agency's ambitious multi-year effort to reduce wild horses and burros on its lands to achieve AML. About 8,400 wild horses and burros are affected by the new law, according to BLM. The agency has completed its first sale under the new authority, with the sale of 200 wild horses to a Wyoming company seeking to protect them.

There are currently about 37,000 wild horses and burros on the range, with the national AML set at between 26,000 and 28,000, according to different BLM estimates. BLM manages another 24,000 animals in holding facilities. For management of wild horses and burros during FY2006, BLM has requested $36.9 million, a reduction of $2.1 million (5%) from the FY2005 level of $39.0 million. The agency asserts in its FY2006 budget justification that the reduction can be accomplished through program efficiencies, such as a reduction in the cost of the agency's adoption program; an increase in the number of animals adopted; and a reduction in the number of animals maintained in long-term holding facilities, presumably in part through the new sale authority. The cost per animal per year in long-term holding facilities is between $465 and $500, according to varying BLM estimates. During FY2005, BLM expects to reduce the number of animals in long-term facilities by 5,000 head, reducing budgets need for FY2006.

Legislative Activity. Legislation has been introduced in the 109th Congress (H.R. 297) to overturn the changes to wild horse and burro management enacted during the 108th Congress. Specifically, the bill would repeal provisions of law that allow the sale of certain excess animals or their remains and that remove related criminal penalties for processing into commercial products the remains of such animals. The measure also would bar the sale of wild horses and burros or their remains for processing into commercial products. No further action has been taken on the bill.

Wilderness (by Ross W. Gorte and Pamela Baldwin)

Background. 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 commercial activities, motorized access, and roads, structures, and facilities generally are restricted in wilderness areas. (See CRS Report RS22025, *Wilderness Laws: Permitted and Prohibited Uses*, by Ross W. Gorte.) Similarly, agency wilderness studies are controversial because many uses also are restricted in the study areas to preserve wilderness characteristics while Congress considers possible designations.

Some observers believe that the Clinton rule protecting national forest roadless areas (discussed below) was prompted by a view that Congress had lagged in designating areas which many assert should be wilderness. Others assert that the Bush Administration — in addressing R.S. 2477 rights-of-way (discussed below), promulgating new guidance to end additional, formal BLM wilderness study areas, and eliminating the nationwide national forest roadless area protections of the Clinton Administration — is attempting to open areas with wilderness attributes to energy and mineral exploration, roads, and development, thereby making them ineligible to be added to the Wilderness System.

Administrative Actions. The Wilderness Act directed the Secretary of Agriculture to review the wilderness potential of administratively designated national forest primitive areas and the Secretary of the Interior to review the wilderness potential of National Park System and National Wildlife Refuge System lands. The Forest Service expanded its review and sent recommendations to the President and Congress in 1979. "Release language," agreed to in statutes designating national forest wilderness areas, provides for periodic review of potential national forest wilderness areas in the agency's planning process. The Secretary of the Interior was directed to review the wilderness potential of BLM lands in §603 of FLPMA, and to maintain the wilderness character of wilderness study areas (WSAs) "until Congress has determined otherwise." (For background, see CRS Report RL31447, *Wilderness: Overview and Statistics*, by Ross W. Gorte.)

In 1996, following debate over additional wilderness areas proposed in legislation for Utah, then-Secretary of the Interior Bruce Babbitt used the BLM authority to inventory its lands and resources (§201 of FLPMA; 43 U.S.C. §1711) to identify an additional 2.6 million acres in Utah as having wilderness qualities. The state of Utah filed suit alleging that the inventory was illegal. On September 29, 2003, Interior Secretary Gale Norton settled the case and issued new wilderness guidance (Instruction Memoranda Nos. 2003-274 and 2003-275) prohibiting further wilderness reviews and limiting the "nonimpairment" standard of management to the BLM's previously designated wilderness study areas. (See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by Ross W. Gorte and Pamela Baldwin.)

Legislative Activity. Many of the administrative wilderness recommendations remain pending, including some national forest areas and many BLM and National Park System areas. Many bills to designate wilderness areas typically are introduced in each Congress, and nearly a dozen such bills have been introduced to date in the 109th Congress. One bill, designating 14 new BLM wilderness areas (among other provisions), was enacted in the 108th Congress (P.L. 108-424). Note that the "Legislation" section, near the end of this

report, does *not* identify each bill that would designate new wilderness areas; rather, it identifies bills that would substantively amend the Wilderness Act or alter wilderness or WSA management.

Bills also were introduced in the 106th, 107th, and 108th Congresses to prohibit future wilderness reviews and to place time limits on WSA status, generally terminating WSAs 10 years after the bills' enactment or after Congress establishes new WSAs. The House Committee on Resources reported bills in the 106th and 107th Congresses, but there was no floor consideration. No action occurred in the 108th Congress.

Wildfire Protection (by Ross W. Gorte)

Background. Recent fire seasons have killed firefighters, burned homes, threatened communities, and killed trees. Many argue that the threat of severe wildfires has grown, because many forests have unnaturally high fuel loads (e.g., dense undergrowth and dead trees) and increasing numbers of structures are in and near the forests (the *wildland-urban interface*). Reducing fuels on federal lands has been urged as a way 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. Opponents of accelerated review processes argue 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 reducing fuels and modifying structures on private lands. The National Fire Plan is the program of wildfire protection activities and funding for the FS and BLM.

Administrative Actions. In August 2002 (107th Congress), the Bush Administration proposed a Healthy Forests Initiative to improve wildfire protection by expediting projects to reduce hazardous 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 (described below under "Legislative Activity").

Before legislation was enacted, the Administration made several regulatory changes to facilitate fire protection activities, which remain 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 are limited in scale, and 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 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 (1) to clarify that some emergency actions may be implemented immediately and others after complying with publication requirements; and (2) 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 has made other regulatory changes that could affect fuel reduction, public involvement, and environmental impacts. For example, new categorical exclusions for small timber harvesting projects (68 *Fed. Reg.* 44598, July 29, 2003) and new regulations for FS forest planning (70 *Fed. Reg.* 1023, Jan. 5, 2005; see "Other Issues," below) have been completed. The total impact of the regulatory changes is generally 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. (See CRS Report RS22024, *Wildfire Protection in the 108th Congress*, by Ross W. Gorte.) Title I authorized a new, alternative process for reducing fuels on national forest or BLM lands in certain areas. 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, providing comments on proposed projects, collaborating, and multiparty monitoring of project effects. Lawsuits must be filed in the district court for the project's area, and courts are encouraged to review cases expeditiously. However, under the act, similar projects expressly can be implemented under other authorities, including the new regulatory processes described above. P.L. 108-148 contained five other titles that indirectly relate to fire protection. The 109th Congress may conduct oversight of the implementation of this law and the several new regulations.

Congress also has addressed wildfire protection through appropriations. For FY2006, the Administration has requested $2.47 billion for the National Fire Plan. For FY2005, Congress provided $3.00 billion for wildfire protection, including supplemental and emergency funding.[1] (For more information, see CRS Report RL32306, *Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren.)

Other Issues

Several other federal lands topics could be addressed through legislation or oversight. These include agency competitive sourcing initiatives, grazing management, hardrock mining, national forest planning, national monuments and the Antiquities Act, and roadless areas of the national forest system.

Competitive Sourcing. (by Carol Hardy Vincent) The Bush Administration's Competitive Sourcing Initiative would subject federal agency activities judged to be commercial in nature to public-private competition. This government-wide effort could affect diverse government activities in federal agencies, including BLM and the FS. The Administration's goal is to save money through competition, particularly in areas where private business might provide better commercial services (e.g., administration 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. Through December 2004, BLM had studied 415 full-time equivalents (FTEs) to determine whether they should be subject to competitive bidding. That represents 12% of the agency's 3,340.5 FTEs identified as commercial. While 176 FTEs were subjected to competitive bidding, none were contracted out. For the FS, similar information is not readily available.

[1] Funding has risen substantially over the past decade or so. For instance, there was average spending of $1.07 billion annually for FY1994-FY1999.

P.L. 108-447 specified that agencies include, in reports to Congress on competitive sourcing, information on costs associated with sourcing studies and related activities. The law also placed spending limits on agency competitive sourcing studies during FY2005, limiting funds for FS competitive sourcing studies to $2.0 million. For DOI, the cap is $3.25 million, unless the appropriations committees approve an agency reprogramming proposal. The portion for BLM was not specified. However, the FY2006 BLM budget justification states that the agency received $562,000 for competitive sourcing, which will be used for planning and competitive sourcing studies on 80 to 100 FTEs. For FY2006, the BLM is seeking another $562,000, for planning and competitive sourcing studies on up to 150 FTEs. The FY2006 Forest Service budget justification states that the agency will conduct its FY2005 studies within the $2.0 million cap imposed by law. The agency is not requesting funds for competitive sourcing for FY2006, but instead will focus on implementing completed studies and analyzing study results. (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.)

Grazing Management. (by Carol Hardy Vincent) 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. The agency is developing a final grazing rule. 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. BLM did not address some controversial issues, such as revising the grazing fee or authorizing the agency to establish reserve common allotments for permittees to use while their normal allotments undergo rest or range improvements.

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. No timetable for completion of policy changes has been announced. (For more information, see CRS Report RL32244, *Grazing Regulations and Policies: Changes by the Bureau of Land Management*, by Carol Hardy Vincent.) The 109th Congress may conduct oversight on the proposed changes or the final changes when they have been completed.

Hardrock Mining. (by Aaron M. Flynn) Reform of the General Mining Act of 1872, the law governing hardrock mining on federal public lands, may be undertaken by the 109th Congress. The Mining Act authorizes a prospector to locate and claim an area believed to contain a valuable mineral deposit, subject to the payment of certain fees. At such time, mineral development may proceed and, if certain minimum conditions are met, the Mining Act authorizes claim holders to patent — or acquire title to — the federal land contained within the claim area and to patent attendant millsites. Some argue that title acquisition

encourages mineral production in a variety of ways, including assurance of necessary land access and facilitation of project financing. Others argue that the patent system is unnecessary and deprives the government of fair market value for transferred lands, and that mining incentives can be achieved through other measures. As this debate has continued, Congress has placed yearly moratoria on mineral claim patents through appropriations legislation, most recently in the FY2005 Consolidated Appropriations Act (P.L. 108-447). Similarly, critics of the Mining Act suggest that the lack of a production-related royalty, as is required for oil, gas, and several other minerals, also serves as an unnecessary subsidization of the mining industry. Legislation has been introduced in previous Congresses that would have required royalty payments, but such provisions have not been enacted.

Additional reforms also have been proposed. Significant issues, such as environmental protection and abandoned mine reclamation, have been addressed in past legislation (e.g., H.R. 504 and H.R. 2141, 108th Congress), although major reforms have not been enacted. Recent administrative activities in these areas also have been controversial. First, in October 2001, the Bush Administration eliminated several Clinton Administration regulations designed 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 (66 Fed. Reg. 54834). A November 18, 2003, federal district court decision upheld the Bush regulations against challenge by several environmental groups, despite concluding that they may arguably constitute "unwise and unsustainable" land use policy.

National Forest Planning. (by Ross W. Gorte) New FS planning regulations were promulgated by the Clinton Administration in November 2000, but implementation of them was delayed. On January 5, 2005, the Bush Administration issued two new rules. The first (70 *Fed. Reg.* 1022) removes the Clinton regulations, and the second (70 *Fed. Reg.* 1023-1061) finalizes new FS planning regulations. The Clinton regulations established ecological sustainability as the priority for managing national forests. The Bush regulations seek to simplify planning in response to concerns about the feasibility of the Clinton regulations. Plans are to be an articulation of desired conditions and goals, and all planning details will be moved to the level of agency "directives." Because plans will guide activity decisions, and not make decisions, they are to be categorically excluded from NEPA analysis and public involvement requirements. The new regulations replace ecological sustainability as the main priority for the national forests with a balance of ecological, economic, and social sustainability. The regulations do not address species viability, roadless areas, or many other specific topics. These and other regulatory changes affecting public participation in, and review of, agency decisions have been criticized by many environmentalists and others. The 109th Congress may review the new FS planning regulations.

National Monuments and the Antiquities Act. (by Carol Hardy Vincent) 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 set off renewed controversy regarding presidential authority to proclaim monuments. To date, courts have upheld the monuments. Currently, BLM is formulating and analyzing management options and issuing management plans for some of the monuments. Some issues have involved recreational uses, including off-highway vehicles, and commercial uses, including grazing and energy development. The 108th Congress focused 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. A bill was introduced to limit the President's authority to designate national monuments and establish a process for input into presidential monument designations, but no further action was taken. The 108th Congress enacted legislation (P.L. 108-447) that essentially bars FY2005 funds from being used for energy leasing activities within the boundaries of presidentially created national monuments. (For more information on monument issues, see CRS Report RS20902, *National Monument Issues*, by Carol Hardy Vincent.) The 109th Congress may consider legislation restricting presidential authority and altering President Clinton's proclamations.

Roadless Areas of the National Forest System. (by Pamela Baldwin) The Clinton Administration issued several rules affecting the roadless areas of the National Forest System (NFS). The principal rule (66 *Fed. Reg.* 3244, Jan. 12, 2001) resulted in a nationwide approach to management that curtailed, but did not eliminate, most roads and timber cutting in roadless areas. This national guidance was justified as avoiding the litigation and delays that had occurred when decisions were made at the level of each national forest. The rule was twice enjoined. The Bush Administration has proposed a new general rule that would replace the Clinton rule by allowing governors of states to petition the FS to promulgate separate statewide rules on roadless area management (69 *Fed. Reg.* 42636, July 16, 2004). Until new roadless area regulations are finalized, the FS is managing roadless areas in accordance with interim directives that place most decisions with the Regional Forester, and some with the Chief of the FS, until each forest plan is amended or revised to address roadless area management. This returns decisions on roadless area management to the individual forest planning process, basically reversing the Clinton nationwide roadless rule.

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. New NFS planning regulations finalized January 5, 2005, do not address roadless areas, apparently leaving decisions involving them to the project level within each forest. (For more information on roadless area issues, see CRS Report RL30647, *The National Forest System Roadless Areas Initiative*, by Pamela Baldwin.) The 109th Congress may review administrative guidance for roadless area management.

LEGISLATION

H.R. 39 (Don Young)

The Arctic Coastal Plain Domestic Energy Security Act of 2005 would establish a competitive oil and gas leasing program for the Arctic National Wildlife Refuge. Introduced January 4, 2005; referred to House Committee on Resources.

H.R. 174 (Millender-McDonald)

The Geothermal Energy Initiative Act of 2005 would encourage the use of geothermal power for energy production. Introduced January 4, 2005; referred to House Committee on Resources and Committee on Agriculture.

H.R. 297 (Rahall)

This bill would amend the Wild Horses and Burros Act (P.L. 92-195; 16 U.S.C. §1333 (d)(5)) to restore the prohibition on the commercial sale and slaughter of wild horses and burros. Introduced January 25, 2005; referred to House Committee on Resources.

H.R. 411 (Renzi)

The Cattleman's Bill of Rights Act would direct compensation for ranchers when government actions reduced their allowed amount of grazing. Introduced January 26, 2005; referred to House Committee on Resources and Committee on Agriculture.

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 IB10136. *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th 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 IB10143. *Energy Policy: Legislative Proposals in the 109th Congress*, 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 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 Issue Brief IB10141. *Recreation Issues in the 109th Congress*, coordinated by Kori Calvert and Carol Hardy Vincent.

CRS Report RS21423. *Wild Horse and Burro Issues*, by Carol Hardy Vincent.

CRS Report RS22025. *Wilderness Laws: Permitted and Prohibited Used*, by Ross W. Gorte.

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

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

CRS Report RS22024. *Wildfire Protection in the 108th Congress*, by Ross W. Gorte.

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