Order Code IB10076

Bureau of Land Management (BLM) Lands and National Forests

Updated July 20, 2005

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

CONTENTS

Bureau of Land Management (BLM) Lands and National Forests

SUMMARY

The 109th Congress is considering 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 is addressing public lands and national forests through budgetary, regulatory, and other actions. Several key issues of congressional and administrative interest are covered here.

Energy Resources. Comprehensive energy legislation remains a priority for the 109th Congress, and access to federal lands for energy and mineral development continues to command congressional and administrative interest. The House and Senate have passed their own versions of the Energy Policy Act of 2005, H.R. 6. They would affect energy development on federal lands, and provisions include changes to federal oil, gas, and coal leasing; energy development in the Arctic National Wildlife Refuge; and the application of environmental laws to certain energy-related administrative actions.

Wild Horses and Burros. The 108th Congress made controversial changes to the Wild Free-Roaming Horses and Burros Act of 1971. Changes gave the agencies new authority to sell certain old and unadoptable wild horses and burros, and removed prohibitions on selling wild horses and burros and their remains for processing into commercial products. Currently, BLM has resumed the sale of animals with provisions seeking to prevent their slaughter. H.R. 297 and S. 576 seek to overturn the changes, while H.R. 2993 and S. 1273 seek to foster adoptions and sales.

Wilderness. Many wilderness recommendations are pending for federal lands. Questions also persist about wilderness review and managing wilderness study areas (WSAs). Numerous bills to designate areas have been introduced, and the 109th Congress may address wilderness review and WSA protection.

Wildfire Protection. The Healthy Forests Restoration Act of 2003 (P.L. 108-148) contains provisions from President Bush's Healthy Forests Initiative and other provisions to protect communities from wildfires by expediting fuel reduction. Wildfire protection also has been addressed through changes in regulations. The 2005 fire season is on a pace to be among the worst in recent years. The 109th Congress is conducting oversight on fire protection and implementation of the law and regulations.

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.

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. 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 consider validation of such easements.

MOST RECENT DEVELOPMENTS

- The Senate passed its version of the Energy Policy Act of 2005 as an amendment to H.R. 6, on June 28, 2005. H.R. 6 currently is in conference.
- H.R. 2361, the FY2006 Interior appropriations bill as passed by the House, would bar funds for the sale or slaughter of wild horses and burros; require the Secretary to report on expenditures under the Southern Nevada Public Land Management Act; cap funds for DOI and FS competitive sourcing studies; bar funds for energy leasing activities within the boundaries of presidentially created national monuments; and provide funds for DOI and FS wildfire protection and firefighting. The latter three provisions are also in the version passed by the Senate.
- As of July 14, 2005, wildfires in 2005 have burned more than 3 million acres, more than 50% above the 10-year average.
- H.R. 2993 and S. 1273, introduced June 20, 2005, seek to foster adoptions and sales of wild horses and burros.

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 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 is 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 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*. For brief, general information on natural resource issues, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*. Information on FY2006 appropriations for the BLM and FS (and other agencies and programs funded by Interior and Related Agencies appropriations bills) is included in CRS Report RL32893, *Interior and Related Agencies: FY2006 Appropriations*. For information on park and recreation issues, see CRS Issue Brief IB10145, *National Park Management*, and CRS Issue Brief IB10141, *Recreation Issues in the 109th Congress*. 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*. 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*, and CRS Report RS22004, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*. For information on other related issues, see the CRS web page at [http://www.crs.gov/].

Energy Resources (by Aaron M. Flynn)

Background. BLM administers the Mineral Leasing Act of 1920, which governs the leasing of onshore oil and gas, coal, and other minerals on many federal lands, including lands managed by the BLM and the FS. Before BLM may lease minerals on FS lands, the FS must perform a leasing analysis and approve leasing decisions for specific lands.

A controversial issue is whether and how to increase access to federal lands for energy and mineral development. 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. In January 2003, several federal agencies issued a similar assessment, *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 these reports show that more federal lands currently are available for energy development than generally had been realized, while others focus on the amount of lands withdrawn.

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 maintain that the 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*.)

Administrative Actions. Executive Order 13212 (May 18, 2001) established a 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

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). A goal of new FS land management planning regulations (70 *Fed. Reg.* 1023, Jan. 5, 2005) is to increase management flexibility and streamline energy project permitting. (See "Other Issues," below.)

The BLM also has recently proposed or made final changes to its oil and gas leasing process. On June 27, 2005, BLM adopted new procedures for filing protests to oil and gas lease sales in an effort to provide for a more orderly leasing process that can reasonably be expected to meet the statutory deadline for the issuance of leases. Previously, protests could be filed until the day of the lease sale, but now they must be filed at least 15 calendar days prior to the sale. Protests also now must state the interest of the filing party and be received by mail or telefax. Some have asserted that similar proposals unnecessarily limit the public review of proposed lease sales and make the protest filing process more burdensome. Finally, the BLM has proposed new rules (70 *Fed. Reg.* 41531, July 19, 2005) increasing existing fees and imposing new fees to cover the costs of processing certain documents relating to its mineral programs, including oil and gas leasing.

In addition, the Administration is moving forward on proposals to develop federal lands for a variety of other energy purposes. Recently, the BLM completed a Final Programmatic Environmental Impact Statement addressing the environmental, social, and economic impacts associated with the development of wind energy on public lands. The BLM also has initiated an oil shale research, development, and demonstration leasing program as the first stage in its overall oil shale development program. The lease terms are provided for in the final lease form published in the *Federal Register* (70 *Fed. Reg*. 33753, June 9, 2005).

Legislative Activity. The 108th Congress saw several versions of comprehensive energy legislation. While such legislation was not enacted, some energy tax incentives were included in 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 certain emissions by 20%.

In the 109th Congress, the Energy Policy Act of 2005, H.R. 6, has passed the House. The Senate also passed the bill with its own version of comprehensive energy legislation. Both versions of the bill would affect federal lands in a variety of ways. They would significantly amend the Geothermal Steam Act of 1970, providing new guidelines for geothermal development of BLM and FS lands. These amendments also would impose new royalty rates and deem geothermal leasing consistent with existing land management plans. They also would amend the Mineral Leasing Act to modify statutory requirements governing federal coal leases, ending the 160-acre limit on coal lease modifications and allowing mining operations under a mining plan to extend beyond the current 40-year limitation. In addition, both versions would require the Secretary of the Interior to evaluate the existing oil and gas leasing process, with particular emphasis on streamlining permitting time frames. There are differences between the House- and Senate-passed versions. The House version, for instance, would shield a variety of energy-related activities on federal lands from NEPA review, a provision that does not appear in the Senate version.

Another version of comprehensive energy legislation also would address certain issues related to energy development on federal lands. H.R. 1640 would require Interior and Agriculture to coordinate and streamline their application processing for oil and gas development on federal lands. The agencies, and others, also would be directed to study and designate energy corridors on federal lands and to amend land management plans as necessary to accommodate future right-of-way grants. In addition, the bill would require federal agencies to comply with Executive Order 13211, which directs agencies to prepare an analysis of any actions resulting in adverse energy impacts.

Whether to open the Arctic National Wildlife Refuge (ANWR) to oil and gas development continues to be one of the most contentious issues in the energy debate. Various legislation to open ANWR, including provisions within the House-passed version of H.R. 6, has been introduced. For information on ANWR legislation, see CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress.* Additional bills have been introduced in the 109th Congress addressing specific energy and other mineral leasing issues, such as geothermal energy access, potash or soda ash royalties, and coal leasing procedures. However, the numerous bills on specific energy and other mineral leasing issues are not listed in the "Legislation" section of this report.

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, as 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*.)

The 108th Congress enacted changes to wild horse and burro management on federal lands (§142, P.L. 108-447). These changes have intensified controversies. One change gave the agencies new authority to sell, "without limitation," excess animals (or their remains) that essentially are deemed too old (more than 10 years old) or otherwise unable to be adopted (tried unsuccessfully at least three times). Proceeds are to be used for the BLM wild horse and burro adoption program. A second change removed the ban on wild horses and burros and their remains 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 annual appropriations bills apparently had since 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 as potentially leading to the slaughter of healthy animals.

Administrative Actions. On April 25, 2005, BLM temporarily suspended sale and delivery of wild horses and burros, due to concerns about the slaughter of some animals sold under the new authority. According to BLM, 41 animals that were sold under the new authority were subsequently resold or traded, and then sent to slaughterhouses by the new owners. Another 52 animals also had been sold to slaughterhouses, but Ford Motor Co. committed to purchasing them. On May 19, 2005, the agency resumed sales after revising its bill of sale and pre-sale negotiation procedures to protect sold animals from slaughter. Purchasers formerly gave written affirmation of an intent to provide humane care, and now also must agree not to sell or transfer ownership of animals to persons or organizations that intend to resell, trade, or give away animals for processing into commercial products. Sales contracts also now incorporate criminal penalties for anyone who knowingly or willfully falsifies or conceals information. Some horse advocates have questioned whether the penalties would withstand legal challenge, because the law provides for the sale of animals without limitation. Also, according to BLM, once purchased the animals are classified as private property free of federal protection. BLM also is pursuing agreements with the three U.S. horse processing plants to not purchase horses sold under the new law.

According to the BLM, of the 8,400 wild horses and burros affected by the new law, about 992 animals had been sold and delivered, and another 950 had been sold pending delivery, as of May 6, 2005. BLM has been negotiating sales of groups of excess animals, for instance with ranchers, tribes, and horse, humane, and other organizations, with the price determined on a case-by-case basis. Ranchers, horse advocates, and other prospective purchasers are considering or promoting several related ideas. They include outsourcing the sale of wild horses and burros; creating private sanctuaries as tourist attractions; raising funds for wild horses and burros by selling horse sponsorships; and changing current law to allow proceeds of BLM disposals to be used for wild horse and burro management.

As of February 2005, there were about 32,000 wild horses and burros on the range, with the national maximum AML set at 28,000, according to BLM. BLM has been pursuing a multi-year effort to achieve AML. Some critics assert that the current AMLs are set low in favor of livestock. BLM manages another 23,000 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 that the reduction can be accomplished through program efficiencies, such as a reduction in the cost of the adoption program; an increase in animals adopted; and an expected reduction during FY2005 of 5,000 animals in long-term holding facilities. The cost per animal per year in these facilities is $465-$500, according to varying BLM estimates.

Legislative Activity. The House- and Senate-passed versions of the FY2006 Interior appropriations bill (H.R. 2361) would provide $36.9 million for BLM management of wild horses and burros, and an additional $1.2 million in fees collected from adoptions. The House version also would prohibit funds for the sale or slaughter of wild horses and burros. The Senate Appropriations Committee report (S.Rept. 109-80) encourages BLM to fund the pilot adoption program of the National Wild Horse Association in Nevada.

Bills have been introduced (H.R. 297 and S. 576) to overturn the changes to wild horse and burro management enacted during the 108th Congress. (See "Background," above.) Other bills (H.R. 2993 and S. 1273) seek to foster the sale and adoption of wild horses and burros while establishing further protections. Changes include: eliminating the limit of four

animals per adopter per year; reducing the minimum adoption fee from $125 to $25 per animal; removing the provision that excess, unadoptable animals be destroyed in a humane and cost-effective manner and making them available for sale; imposing a one-year wait period before buyers obtain title to sold animals, and removing the provision for sale of animals "without limitation." Some opponents fear that additional sales or adoptions could increase the risk of slaughter. Also, under H.R. 2419 as passed by the Senate, the Secretary of the Interior is to provide not more than $70.0 million to the University of Nevada for purposes including wild horse and burro research and adoption marketing.

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 wilderness. Designations are 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*.) 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 believe 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*, in statutes designating national forest wilderness areas, and the new FS planning regulations (36 C.F.R. §219.7(a)(5)(ii)) provide 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." 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 WSAs. (See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*.)

Legislative Activity. Many wilderness recommendations remain pending, including some FS areas and many BLM and Park System areas. Nearly 20 such bills for wilderness areas in more than a dozen states have been introduced in the 109th Congress. The "Legislation" section of this report does *not* identify each bill that would designate new wilderness areas; it will identify bills to substantively amend the Wilderness Act or alter wilderness or WSA management.

Bills were introduced in the 106th, 107th, and 108th Congresses to prohibit future BLM 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. To date, no wilderness review or WSA legislation had been introduced in the 109th Congress.

Wildfire Protection (by Ross W. Gorte)

Background. Recent fire seasons have killed firefighters, burned homes, threatened communities, and destroyed trees. The 2005 fire season is on a pace to be among the worst in recent years, with more than 3 million acres burned through July 14, 56% above the 10-year average. Many assert 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 contend 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 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*.) Title I authorized a new, alternative process for reducing fuels on national forest or BLM lands in certain areas. The act contained five other titles that indirectly relate to fire protection.

The 109th Congress is overseeing the implementation of this law. On February 17, 2005, a House Resources subcommittee hearing focused on a Government Accountability Office (GAO) review of progress in wildfire protection. The GAO report (GAO-05-147) and testimony (GAO-05-353T) found some progress, but noted that the agencies lack a cohesive long-term strategy for addressing excess fuels and other wildfire threats. On April 26, 2005, the Senate Energy and Natural Resources Committee held a hearing on wildfire preparedness. GAO's report (GAO-05-380) and testimony (GAO-05-627T) noted that the knowledge and technology for protecting structures and improving communications exist, but their adoption by landowners and governmental agencies has been slow. Also, questions were raised about the airworthiness of firefighting airtankers, in the wake of an airtanker crash (CA) on April 20. On July 14, 2005, witnesses testified before a House Appropriations subcommittee on progress in implementing the National Fire Plan. A GAO witness testified on the need for identifying long-term options and funding needs (GAO-05-923T).

Congress also has addressed wildfire protection through appropriations. For FY2006, the Administration has requested $2.51 billion for the National Fire Plan. In the Interior appropriations bill (H.R. 2361), the House provided $2.59 billion for wildfire protection and the National Fire Plan and the Senate provided $2.54 billion. The Senate also included provisions requiring a report on the Biscuit fire (OR) rehabilitation and consideration of the effects of competitive sourcing (see below) on wildfire protection. For FY2005, Congress provided $3.00 billion for wildfire protection, including supplemental and emergency funding.[1] (See CRS Report RL32893, *Interior and Related Agencies: FY2006 Appropriations*.) In addition, bills have been introduced to alter firefighter and fire organization compensation and safety practices, and provisions have been included in comprehensive energy bills to provide grants for producing energy from biomass fuels removed from forests to reduce wildfire risks.

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

[1] Funding has risen substantially over the past decade or so. Average spending for FY1994-FY1999 was $1.07 billion annually.

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 to change one such law — the Southern Nevada Public Land Management Act (SNPLMA, P.L. 105-623) — to send most proceeds to the Treasury.

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 are distributed in different ways, depending on which lands are sold. In general, 85% 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 allocation of revenue to the special account. The Administration recommends that 15% of the receipts go to the special account and 70% go to the Treasury, with the remaining 15% 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. The House-passed version of the FY2006 Interior appropriations bill (H.R. 2361) would require the Secretary of the Interior to report on expenditures under SNPLMA during FY2003 and FY2004.

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. GAO 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. Two new Utah applications have been filed recently (70 *Fed. Reg*. 19500, April 13, 2005).

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.

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 activities in agencies including BLM and the FS. The goal is to save money

through competition, particularly in areas where private business might provide better services (e.g., administration and maintenance). The plan is controversial, with concerns as to whether it would save the government money, the private sector could provide the same quality of service, or it is being used to accomplish policy objectives. Through December 2004, BLM had studied 415 full-time equivalents (FTEs) to determine whether they should be subject to competitive bidding. That is 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.

The House- and Senate-passed versions of the FY2006 Interior appropriations bill (H.R. 2361) capped DOI competitive sourcing studies during FY2006 at $3.45 million. They did not specify the portion for BLM. The House-passed bill limited FS spending during FY2006 to no more than $2.5 million, while the Senate-passed bill provided a limit of $3.0 million. The Administration had urged removing the funding limitations. The Senate version also (1) directed the Secretary of Agriculture to assess the affect of contracting out on FS fire management, and (2) specified that agencies include, in any reports to the Appropriations Committees on competitive sourcing, information on the costs associated with sourcing studies and related activities. P.L. 108-447 capped FY2005 funds for FS competitive sourcing studies at $2.0 million and for DOI at $3.25 million, with the portion for BLM unspecified. The FY2006 BLM budget justification stated that the agency received $562,000 for competitive sourcing during FY2005, which will be used for planning and competitive sourcing studies on 80 to 100 FTEs. For FY2006, the BLM sought another $562,000, for planning and competitive sourcing studies on up to 150 FTEs. (For more information, see CRS Report RL32893, *Interior and Related Agencies: FY2006 Appropriations*; and CRS Report RL32017, *Circular A-76 Revision 2003: Selected Issues*.)

Grazing Management. (by Carol Hardy Vincent) On June 16, 2005, BLM published a final environmental impact statement analyzing the impact of proposed changes to grazing regulations as well as of two alternatives (see [http://www.blm.gov/grazing]). The new regulations will take effect 30 days after their publication in the *Federal Register*, expected in mid-July. 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. Some of the changes would (1) allow title to range improvements to be shared by the BLM and permittees, (2) allow permittees to acquire water rights for grazing if consistent with state law, (3) change the definition of "grazing preference" to include an amount of forage, (4) eliminate conservation use grazing permits, (5) extend the time to remedy rangeland health problems, and (6) reduce occasions where BLM is required to consult with the public. BLM did not address some controversial issues, such as revising the grazing fee. The agency received more than 18,000 comments on earlier proposed changes to its grazing regulations (43 C.F.R. Part 4100, December 8, 2003) and a draft environmental impact statement (DEIS) issued on January 2, 2004. BLM is reportedly no longer considering related grazing policy changes. (For background, see CRS Report RL32244, *Grazing Regulations and Policies: Changes by the Bureau of Land Management*.) The 109th Congress may conduct oversight on the regulatory changes.

Legislation has been introduced to compensate livestock operators on federal lands. H.R. 411 seeks to require federal land management agencies to compensate holders of grazing permits when certain actions reduce or eliminate their permitted grazing, and alternative forage is not available. The bill also would authorize grazing permit holders to

sublease their allotments under specified conditions. H.R. 3166 provides for payment to federal grazing permittees who voluntarily relinquish their permits, at a rate of $175 per AUM. The allotments would be permanently closed to grazing. The bill also provides for payments to counties in which the relinquished allotments are located, and authorizes permittees to opt for nonuse or reduced use throughout a term.

Hardrock Mining. (by Aaron M. Flynn) Reform of the General Mining Act of 1872, the law governing hardrock mining on federal lands, may be considered in 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, deprives the government of fair market value for transferred lands, and that mining incentives can be achieved through other measures. Similarly, critics of the Mining Act suggest that the lack of a production-related royalty, as is required for oil, gas, and other leasable minerals, is a subsidy to the mining industry. As this debate has continued, Congress has annually placed moratoria on mineral claim patents in appropriations bills, most recently in the FY2005 Consolidated Appropriations Act (P.L. 108-447). Legislation has been introduced in previous Congresses to require royalty payments, but no such provisions have been enacted.

Additional reforms also have been proposed. Significant issues, such as environmental protection and abandoned mine reclamation, have been addressed in past and pending legislation, although major reforms have not been enacted. The "Legislation" section of this report identifies only broad, substantive bills to alter mining practices. 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 challenged by several environmental groups, despite concluding that the regulations 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 their implementation 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 most planning details have been moved to agency "directives," some of which were published on March 23, 2005 (70 *Fed. Reg.* 14637). Because plans will guide activity decisions but will not usually make decisions, they can 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.

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 when decisions were made at each national forest. The rule was twice enjoined. The Bush Administration has issued a new final rule that replaces the Clinton rule and allows a governor of a state to petition the FS to promulgate a special rule for roadless areas in all or part of that state. (*Federal Register* cite not available as of May 6, 2005.) Governors have 18 months in which to submit petitions. Until such a new roadless area regulation in response to a petition is finalized, the FS is to manage roadless areas in accordance with interim directives (69 *Fed. Reg*. 42648, July 16, 2004) that place most decisions with the Regional Forester, and 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 plans, basically reversing the Clinton nationwide roadless rule.

The FS also has made 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 (see above) do not address roadless areas, apparently leaving decisions involving them to the project level within each forest, unless a special rule is adopted for a particular state. (For more information on roadless area issues, see CRS Report RL30647, *The National Forest System Roadless Areas Initiative*.) Congress may review administrative guidance for managing roadless areas.

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. As of July 15, 2005, similar legislation had not been introduced in the 109th Congress. The

House- and Senate-passed versions of H.R. 2361, the FY2006 Interior appropriations bill, would continue to bar funds 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*.)

LEGISLATION

H.R. 6 (Barton)

The Energy Policy Act of 2005 would, among other provisions, amend the Geothermal Steam Act of 1970 and the Mineral Leasing Act, require the Secretary of the Interior to evaluate the oil and gas leasing process, and shield various energy-related activities on federal lands from review under NEPA. Conference held July 14 and 19, 2005.

H.R. 297 (Rahall); S. 576 (Byrd)

These bills would amend the Wild Horses and Burros Act to restore the prohibition on the commercial sale and slaughter of wild horses and burros. H.R. 297, introduced January 25, 2005; referred to Committee on Resources. S. 576, introduced March 9, 2005; referred to Committee on Energy and Natural 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 Committee on Resources and Committee on Agriculture.

H.R. 1640 (Barton)

This broad energy bill contains provisions affecting federal lands, including those related to oil and gas development, energy corridors, right-of-way grants, and analyses of actions. Introduced April 14, 2005; referred to Committee on Energy and Commerce and several other committees.

H.R. 2993 (Porter); S. 1273 (Reid)

These bills seek to foster the sale and adoption of wild horses and burros while strengthening protections. H.R. 2993, introduced June 20, 2005; referred to Committee on Resources. S. 1273, introduced June 20, 2005; referred to Committee on Energy and Natural Resources.

H.R. 3166 (Grijalva)

The Multiple-Use Conflict Resolution Act would compensate livestock operators who voluntarily relinquish grazing permits. Introduced June 30, 2005; referred to Committee on Resources, Committee on Agriculture, and Committee on Armed Services.

S. 10 (Domenici)

The Energy Policy Act of 2005 would, among other provisions, affect energy development on federal lands by amending the Geothermal Steam Act of 1970 to encourage more leasing and production; amending the Mineral Leasing Act to reduce royalties on oil and gas production and to repeal certain restrictions on federal coal leases; attempting to streamline energy-related permitting on federal lands; and requiring the designation of utility corridors on federal lands. Incorporated as amendment into H.R. 6; H.R. 6 is in conference.

FOR ADDITIONAL READING

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 RL30755. *Forest Fire/Wildfire Protection*, by Ross W. Gorte.

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 RL32893. *Interior and Related Agencies: FY2006 Appropriations*, Carol Hardy Vincent and Susan Boren, co-coordinators.

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 RL32936. *Omnibus Energy Legislation, 109th Congress: Assessment of H.R. 6 as Passed by the House*, by Mark Holt and Carol Glover, co-coordinators.

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.