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Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service: Issues for the 110th Congress

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Summary

The 110th 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 also address issues through budgetary, regulatory, and other actions. Several key issues of likely congressional and administrative interest are covered here.

Energy Resources. The Energy Policy Act of 2005 affected energy development on federal lands. Significant new regulations have been written or are in progress in response, including on the federal oil, gas, and coal leasing programs and on application of environmental laws to certain energy-related agency actions.

Hardrock Mining. The General Mining Law of 1872 grants free access to individuals and corporations to prospect for minerals in open public domain lands, and allows them, upon making a discovery, to stake a claim on the deposit. A claim gives the holder the right to develop the minerals and apply for a "patent" to obtain full title of the land and minerals. A continuing issue is whether this law should be reformed, and if so, how to balance mineral development with competing land uses.

Roadless Areas in the National Forest System. The Clinton Administration issued rules to protect inventoried roadless areas in the national forests. Implementation of the rules was enjoined. The Bush Administration issued rules in May 2005 to supplant the Clinton rules and allow governors to petition for roadless area protections in their states. On September 19, 2006, a district court judge set aside the Bush rules and reinstated the Clinton rules; the decision has been appealed.

Wild Horses and Burros. Controversial changes to the Wild Free-Roaming Horses and Burros Act of 1971 gave the agencies authority to sell certain old and unadoptable animals and removed the ban on selling wild horses and burros and their remains for commercial products. BLM has resumed animal sales with provisions to prevent their slaughter, and continues to dispose of animals through adoption and placement in long-term holding facilities.

Wilderness. Many wilderness recommendations for federal lands are pending. Questions persist about wilderness review and managing wilderness study areas (WSAs). Several areas were designated by the 109th Congress, but other bills were not enacted. Bills to designate wilderness areas are being introduced in the 110th Congress, and Congress may address wilderness review and WSA protection.

Wildfire Protection. President Bush's Healthy Forests Initiative, the Healthy Forests Restoration Act of 2003, and other provisions may help protect communities from wildfires by expediting fuel reduction. Some believe that more effort is needed; others fear that changes will increase timber sales and damage the environment. The 110th Congress may consider legislation on post-fire rehabilitation, oversee implementation of new authorities, and examine litigation over fuel treatments.

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The 110th Congress is likely to consider actions that affect the various uses and management of federal lands administered by the Bureau of Land Management and the Forest Service. These actions include legislation, administrative or regulatory proposals, and litigation and judicial decisions. Issues areas include access to energy resources on federal lands, especially implementation of the Energy Policy Act of 2005; development of hardrock minerals; roadless area management and protection; management, protection, and disposal of wild horses and burros; wilderness designation and management; and wildfire management and protection. Many of these issues have been of interest to Congress and the nation for decades.

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 rangelands are managed by the BLM, 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 forest landowners. Moreover, development of the two agencies has differed, and historically they have focused on different issues. Nonetheless, there are many parallels. By law, 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. Thus, the two agencies' lands are often discussed together, as is done in this report.

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 (created in 1812) and the U.S. Grazing Service (created in 1934). The General Land Office had helped convey land to settlers, 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 (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 or to expand federal land ownership. 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. 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 are to be managed and directs "harmonious and coordinated management" to provide for multiple uses and 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. In part to address these issues, Congress enacted the National Forest Management Act of 1976 (NFMA; 16 U.S.C. §§1600-1614, et al.) to revise timber sale authorities and to elaborate on considerations and requirements in land and resource management plans.

Wilderness protection also is a continuing issue for the FS. The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. §528-531) authorizes wilderness as a appropriate use of national forest lands, and possible national forest wilderness areas have been reviewed under the 1964 Wilderness Act (16 U.S.C. §§1131-1136) as well as in the national forest planning process. Pressures persist to protect the wilderness character of areas in pending wilderness recommendations and other roadless areas.

Scope of Report

The missions of the BLM and FS are similar, and many issues, programs, and policies affect both agencies. For these reasons, BLM and FS lands often are discussed together, as in this report. This report focuses on several issues affecting both agencies' lands that are likely to be of interest to the 110th Congress, including energy resources, hardrock mining, FS roadless areas, wild horses and burros, wilderness, wildfire protection, and others. It does not comprehensively cover general issues affecting management of these and other federal lands. For background on federal land management generally, see CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by Carol Hardy Vincent. For other information on BLM, FS, and natural resources issues and agencies generally, see the CRS website at [http://www.crs.gov/].[1]

Onshore Energy Resources (by Marc Humphries)[2]

Background. A controversial issue is whether or how to increase access to federal lands for energy and mineral development. A BLM study in 2000 estimated that (1) about 165 million acres of lands with federally owned mineral rights[3] (24% of all federal mineral acreage) have been withdrawn from mineral entry, leasing, and sale, subject to valid existing rights, and (2) mineral development on another 182 million acres (26% of all federal mineral acreage) is subject to the approval of the surface management agency[4] and must not be in conflict with land designations and plans. A 2006 BLM-coordinated study found that of 99 million acres of federal lands inventoried (with an estimated 187 trillion cubic feet of natural gas and 21 billion barrels of oil), 51% of the estimated oil and 27% of the estimated natural gas on the

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[1] For brief information on natural resource issues, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*. Information on FY2007 appropriations for the BLM and FS is included in CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*. For information on park and recreation issues, see CRS Report RL33484, *National Park Management*; and CRS Report RL33525, *Recreation on Federal Lands*. For information on oil and gas leasing in the Arctic National Wildlife Refuge (ANWR), see CRS Report RL33523, *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*.

[2] This report does not cover offshore energy resources, such as oil and gas development in the Outer Continental Shelf (see CRS Report RL33493, *Outer Continental Shelf: Debate Over Oil and Gas Leasing and Revenue Sharing*, by Marc Humphries) or in the Arctic (see CRS Report RL33523, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin).

[3] Most of these are federal lands, but in some cases, the U.S. government owns the minerals under privately owned lands.

[4] The BLM administers mineral resources under all federal lands, regardless of which agency has responsibility for administering the surface.

99 million acres is off-limits to leasing.[5] The oil and gas industry contends that entry into currently unavailable areas is necessary to ensure future domestic oil and gas supplies. Opponents maintain that the restricted lands are unique or environmentally sensitive and that the United States could realize equivalent energy gains through conservation and increased exploration elsewhere.[6]

Development of oil, gas, and coal on BLM and FS lands (and other federal lands) is governed primarily by the Mineral Leasing Act of 1920 (30 U.S.C. §181). Leasing on BLM lands goes through a multi-step approval process. If the minerals are located on FS lands, the FS must perform a leasing analysis and approve leasing decisions for specific lands before BLM may lease minerals. The Energy Policy Act of 2005 (P.L. 109-58) made significant changes to the laws governing federal energy resources, including the management of energy development on BLM and FS lands. Implementation of these changes is discussed below.

Administrative Actions. The Administration has begun to respond to the 2005 Energy Policy Act. For example, BLM solicited comments and held a series of meetings to prepare its report for Congress on the management of split estates.[7] The report[8] analyzes the respective rights and responsibilities of owners of mineral leases, private surface owners, and the federal government under existing law. It also compares the surface owner consent provisions found in the Surface Mining Control and Reclamation Act of 1977 to those provisions applicable to federal oil and gas. Finally, the report makes recommendations for administrative actions that allow for access to oil and gas deposits while seeking to address surface owner concerns. The report does not make any recommendations for legislative action.

Pursuant to §352 of the 2005 act, BLM has issued a final rule that allows ownership of oil and gas leases covering greater acreages.[9] The law generally limits a single entity to owning leases of up to 246,080 acres in one state. The new regulation exempts from the overall limitation the area attributable to producing

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[5] U.S. Depts. of the Interior, Agriculture, and Energy, *Scientific Inventory of Onshore Federal Lands' Oil and Gas Resources and the Extent and Nature of Restrictions or Impediments to their Development* (Phase II), 2006, available on the website of the BLM at [http://www.blm.gov/epca/]. This study was mandated by the Energy Policy Act of 2000 as amended by the Energy Policy Act of 2005. Phase I of the study was completed in January 2003.

[6] See CRS Report RL33014, *Leasing and Permitting for Oil and Gas Development on Federal Public Domain Lands*, by Aaron M. Flynn and Ryan J. Watson.

[7] A split estate is where the surface is owned by one entity and rights to the subsurface minerals are owned by a different entity.

[8] U.S. Dept. of the Interior, Bureau of Land Management, *Energy Policy Act of 2005 — Section 1835 Split Estate, Federal Oil and Gas Leasing and Development Practices, A Report to Congress*, December 2006, available on the website of the BLM at [http://www.blm.gov/bmp/Split_Estate.htm].

[9] 71 *Fed. Reg*. 14821, March 24, 2006.

leases and leases committed to "communitization agreements."[10] The final regulation also amends the lease reinstatement petition process. Now, if a lease is terminated for late or non-payment of rent, a lessee may petition for reinstatement for up to 24 months from the date of termination (the previous deadline was 15 months).

Additionally, under §§353 and 354 of the Energy Policy Act, BLM was to conduct rulemaking and grant royalty relief if such relief would encourage development of natural gas hydrates and enhanced recovery of oil from underground injection of carbon dioxide. On August 4, 2006, the DOI deferred rulemaking on §§353 and 354 because the Minerals Management Service concluded that royalty incentives would not increase production from gas hydrates, and BLM concluded that royalty incentives were unnecessary for increasing oil recovery through carbon dioxide injection.

In January 2006, BLM completed a final programmatic environmental impact statement (EIS) for developing wind energy facilities on BLM lands.[11] This document supports land management plan amendments providing for wind energy development in the western states. The review was undertaken in compliance with Executive Order 13212,[12] and seeks to comply with congressional directives within the Energy Policy Act directing renewable energy development on public lands.

Under §369 of the 2005 act, BLM has begun a programmatic EIS to support a tar sands and oil shale leasing program for research and development.[13] On November 13, 2006, the BLM announced completion of environmental assessments for five proposed oil shale research, development, and demonstration projects on federal lands. A finding of no significant impact (FONSI) was reached on each of the proposed projects. Regulations to govern this leasing program are required, and implementation of a commercial leasing program also is underway.

Legislative Activity. In the 109th Congress, various bills (e.g., H.R. 3710, H.R. 4479) sought to suspend any royalty relief program applicable to oil or natural gas production from federal lands as well as other federal resource production incentives contained in the Energy Policy Act of 2005. Numerous other bills were also introduced, addressing such issues as geothermal energy access, potash or soda ash royalties, and coal leasing procedures. Oversight of oil and gas development on federal lands seems likely to be a high priority in the 110th Congress.

Hardrock Minerals (by Marc Humphries)

Background. The General Mining Law of 1872 is one of the major statutes that direct the federal government's land management policy. The law grants free

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[10] A communitization agreement is an agreement among all parties holding interests in a particular formation (usually determined by a state oil and gas commission) to combine those interests for operating efficiency and other communal benefits.

[11] 71 *Fed. Reg*. 1768, Jan. 11, 2006.

[12] "Actions to Expedite Energy-Related Projects," 66 *Fed. Reg.* 28357, May 22, 2001.

[13] 70 *Fed. Reg*. 73791, Dec. 13, 2005.

access to individuals and corporations to prospect for minerals in open public domain lands, and allows them, upon making a discovery, to stake (or *locate*) a claim on the deposit. A claim gives the holder the right to develop the minerals and apply for a *patent* to obtain full title of the land and minerals. A continuing issue is whether this law should be reformed, and if so, how to balance mineral development with competing land uses.

The right to enter federal lands and freely prospect for and develop minerals is the feature of the claim-patent system that draws the most vigorous support from the mining industry. Critics consider the claim-patent system a giveaway of publicly owned resources because royalty payments are not required and because of the small amounts paid to maintain a claim and to obtain a patent. Congress has imposed a moratorium on mining claim patents through the annual Interior appropriations laws since FY1995.

The lack of direct statutory authority for environmental protection under the Mining Law of 1872 is another major issue that has spurred reform proposals. Many Mining Law supporters contend that other current laws provide adequate environmental protection. Critics, however, assert that these general environmental requirements are not adequate to assure reclamation of mined areas and that the only effective approach to protecting lands from the adverse impacts of mining under the current system is to withdraw them from development under the Mining Law. Further, critics charge that federal land managers lack regulatory authority over patented mining claims and that clear legal authority to assure adequate reclamation of mining sites is needed.

Administrative Actions. Since the late 1990s, administrative efforts have focused on new surface management regulations, with attention centering on mine reclamation efforts. New mining claim location and annual claim maintenance fees were increased in 2005 to $30 and $125 per claim, respectively (from $25 and $100).

Legislative Activity. Broad-based legislation to reform the General Mining Law of 1872 may well be introduced in the 110th Congress as in previous Congresses. Proposals in the 109th Congress sought to limit issuing patents to claimants whose patent applications were filed with the Secretary of the Interior on or before September 30, 1994, and which met appropriate statutory requirements by that date. Some included an abandoned locatable minerals mine reclamation fund and an 8% royalty on "net smelter returns." Other provisions would have made lands located under the General Mining Law of 1872 subject to a review by the Secretary of the Interior or the Secretary of Agriculture to determine whether they were unsuitable for mineral activity. A reclamation plan and reclamation bond or other financial guarantee would have been required before exploration and operation permits were approved.

Roadless Areas in the National Forest System

(by Ross W. Gorte and Pamela Baldwin)

Background. Roadless areas in the National Forest System were examined as potential wilderness areas in the 1970s and early 1980s; 60 million acres of roadless areas were inventoried in the FS's second *Roadless Area Review and*

Evaluation (RARE II). The RARE II Final Environmental Statement presented the agency's wilderness recommendations in January 1979, but many recommended areas still have not been designated by Congress. Some observers believe that the remaining roadless areas should be protected from development, while others argue that the areas should be available for development-type uses.

Administrative Actions. The Clinton Administration issued several rules affecting roadless areas in the National Forest System (NFS). The principal rule resulted in a nationwide approach to management that curtailed most road construction and timber cutting in roadless areas.[14] National guidance was justified by the Clinton Administration as avoiding litigation and delays when decisions were made at each national forest. The rule was enjoined twice.

The Bush Administration issued a new final rule, called the State Petitions Rule, to replace the Clinton rule and allow governors 18 months to petition the FS for a special rule for roadless areas in all or part of their state.[15] The FS can decide whether or not to approve the roadless area management requested by a state. Until such a new regulation in response to a petition is finalized, the FS is to manage roadless areas in accordance with interim directives that place most decisions with the regional forester or the chief. These decisions remain in effect until each forest plan is amended or revised to address roadless area management.[16] This returns decision-making on the management of roadless areas to the individual forest plans, essentially reversing the Clinton nationwide roadless rule. The Administration has stated that states can still petition for a special rule, even though the 18-month period in the original rule has expired and a court has enjoined implementation of the rule, under the Administrative Procedures Act, 7 U.S.C. §1.28.

Oregon petitioned for a rule allowing any state to petition for an expedited restoration of full protections for roadless areas in that state; this petition was denied. Virginia, North Carolina, South Carolina, New Mexico, California, and Idaho have submitted petitions for a special rule to protect roadless areas in those states. The petitions for Virginia, North Carolina, and South Carolina have been approved by the FS. The FS and the state of Idaho have agreed to develop a memorandum of understanding for roadless area management based on the then-Governor's petition. The governors of several other states have decided not to petition.

Judicial Actions. California, Oregon, New Mexico, and Washington have jointly sued the FS to challenge the Bush roadless area rule; an environmental group coalition has similarly sued the FS challenging the rule.[17] The plaintiffs argued that the State Petitions Rule offered less protection and a more localized approach than the Clinton rule, and thus required environmental analysis under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§4321-4347) and consultation

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[14] 66 *Fed. Reg.* 3244, Jan. 12, 2001.

[15] 70 *Fed. Reg.* 25654, May 13, 2005.

[16] 69 *Fed. Reg.* 42648, July 16, 2004.

[17] Respectively: *State of California, et al. v. U.S. Dept. of Agriculture, et al.*, C-05-3508 EDL; and *Wilderness Society, et al. v. U.S. Forest Service, et al.*, C-05-4038.

under the Endangered Species Act (ESA; 16 U.S.C. §§1531-1540). In a summary judgment on September 19, 2006, the U.S. District Court for Northern California set aside the State Petitions Rule and reinstated the Clinton rule until the State Petitions Rule complied with NEPA and ESA. The decision has been appealed by the Silver Creek Timber Company, and further judicial challenges on the rules over roadless area protection seem likely.

Legislative Activity. Legislation affecting roadless area management and protection was introduced but not enacted in the 109th Congress. Similar bills, and the litigation over the Clinton and Bush rules, might be addressed in the 110th Congress.

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.) seeks to protect wild horses and burros on federal land and places them under the jurisdiction of the BLM and FS. For years, management of wild horses and burros has generated controversy and lawsuits. Controversies include 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 animals on the range, particularly fertility control and holding animals in long-term facilities; whether appropriations for managing wild horses and burros are adequate; and the slaughter, or potential for slaughter, of horses.[18]

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 directed the agencies 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 (offered 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 sold under the new authority. Also, the law did not expressly prohibit the BLM from slaughtering healthy wild horses and burros, as annual appropriations bills had since FY1988. These changes have been supported as providing a cost-effective way to help the agencies achieve AML, to improve the health of the animals, to protect range resources, and to restore a natural ecological balance on federal lands. They have been opposed as potentially leading to the slaughter of healthy animals.

Administrative Actions. As of November 2006, there were about 31,000 wild horses and burros on the range. The national maximum AML is set at 28,186. The 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. To achieve AML, the BLM continues to remove wild horses and burros from the range, and dispose of them through adoption and sale as well as through placement in long-term holding

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[18] See CRS Report RS22347, *Wild Horse and Burro Issues*, by Carol Hardy Vincent.

facilities. During FY2006, the BLM removed 9,926 animals, and 5,172 were adopted. Adoption continues to be the primary method of disposal of healthy animals, with more than 214,000 adopted since 1973.

As of November 2006, there were about 8,400 animals available for sale, with 2,200 having been sold and delivered, according to the BLM. The sale price is determined on a case-by-case basis. Currently, the BLM is promoting sales of animals through two new efforts. First, the BLM and the Public Lands Council (a private interest group) have appealed to BLM grazing permit holders to purchase wild horses and burros. Second, the BLM, Ford Motor Company, and Take Pride in America are making a similar appeal to wild horse and equine rescue groups, with the "Save the Mustangs Fund" providing $100 for each animal purchased by these groups. In both cases, the animals would be sold for $10 each and the BLM would deliver 20 or more animals to the purchaser.

The BLM had suspended sale and delivery of wild horses and burros on April 25, 2005, due to concerns about the slaughter of some animals sold under the new authority. 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. For instance, purchasers now must agree not to knowingly 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 new penalties would withstand legal challenge because the law provides for the sale of animals without limitation. Also, according to the BLM, purchased animals are classified as private property free of federal protection.

The BLM manages about 28,000 animals in holding facilities. The cost per animal per year in long-term holding facilities is about $500, according to the BLM. Currently, the BLM needs additional space in long-term holding facilities for wild horses and burros. In the summer of 2006, the agency solicited bids for contracts for two new facilities, which must be able to hold 1,500 animals each.

Legislative Activity. The 110th Congress may oversee implementation of the sale and adoption programs, as well as consider related legislation. The 109th Congress considered legislation to overturn the changes to wild horse and burro management enacted during the 108th Congress. Other legislation sought to foster the sale and adoption of wild horses and burros while establishing further protections. The 110th Congress will likely address funding for management of wild horses and burros. While final FY2007 funding has not been enacted to date, the President requested continuing funding for management of wild horses and burros at $36.4 million, with an additional $0.7 million in fees expected to be collected from adoptions. The House approved, and the Senate Appropriations Committee recommended, these funding levels in 109th Congress legislation.

Wilderness (by Ross W. Gorte)

Background. The 1964 Wilderness Act established the National Wilderness Preservation System and directed that only Congress can designate federal lands as

part of the national system. Designations are often controversial because commercial activities, motorized access, and roads, structures, and facilities generally are restricted in wilderness areas.[19] 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 (see above) was prompted by a belief that Congress had lagged in designating areas as wilderness. Others assert that the Bush Administration — in promulgating new guidance to preclude 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 roads, energy and mineral exploration, and development, thereby making them ineligible to be added to the wilderness system.

One significant issue is when the agencies must review the wilderness potential of their lands. The Wilderness Act directed the review of administratively designated national forest primitive areas and of National Park System and National Wildlife Refuge System lands. *Release language*, in statutes designating national forest wilderness areas, and FS planning regulations (36 C.F.R. §219.7(a)(5)(ii)) provide for periodic review of potential national forest wilderness areas in the FS planning process. For BLM lands, §603 of FLPMA requires the agency to review potential wilderness and to not impair the wilderness character of wilderness study areas (WSAs) "until Congress has determined otherwise." In 1996, then Interior Secretary Bruce Babbitt used the general BLM authority to inventory lands and resources (43 U.S.C. §1711) to identify an additional 2.6 million acres in Utah as having wilderness qualities. The State of Utah challenged the inventory, and in September 2003, DOI settled the case and issued new wilderness guidance (IM Nos. 2003-274 and 2003-275) prohibiting further reviews and limiting the *nonimpairment* standard to the previously designated WSAs.[20]

Legislative Activity. Many wilderness recommendations remain pending, including some FS areas and many BLM and Park System areas. More than 30 bills to designate wilderness areas in more than a dozen states were introduced in the 109th Congress, and five bills — for areas in New Mexico, Puerto Rico, Utah, California, and New Hampshire and Vermont — were enacted. Bills to designate additional wilderness areas are being introduced in the 110th Congress, and bills to prohibit future BLM wilderness reviews and to place time limits on WSA status may be considered, as in the 106th-108th Congresses.

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[19] See CRS Report RS22025, *Wilderness Laws: Permitted and Prohibited Uses*, by Ross W. Gorte.

[20] Section 603(c) of FLPMA directs management of WSAs so as not to impair the wilderness characteristics of the areas. See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by Ross W. Gorte and Pamela Baldwin.

Wildfire Protection (by Ross W. Gorte)

Background. Recent fire seasons have killed firefighters, burned homes, threatened communities, and destroyed trees. More acres burned in 2006 — 9.8 million acres through December 22 — than in any year since record-keeping began in 1960. This level is 31% above the five-year average and 14% more than the level through December 22, 2005 (with 2005 being the second-worst year since 1960). 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 sought to reduce the threats from fire.

Administrative Actions. In August 2002, President Bush proposed the Healthy Forests Initiative to improve wildfire protection by expediting projects to reduce hazardous fuels on federal lands. The Healthy Forests Restoration Act of 2003 (P.L. 108-148) included many of the proposals in the President's initiative and other provisions. Title I authorized a new, alternative process for reducing fuels on FS or BLM lands in many areas; five other titles indirectly relate to fire protection.[21]

In addition, the Administration made several regulatory changes to facilitate fire protection activities. First, additional categories of actions could be excluded from analysis and documentation under the National Environmental Policy Act (NEPA; 42 U.S.C. §§4321-4347), namely certain fuel reduction and post-fire rehabilitation activities.[22] Second, the administrative review processes were revised to clarify that some emergency actions may be implemented immediately and others after complying with publication requirements, and to expand emergencies to include those "that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed."[23] A U.S. District Court found that these and other regulations violate the legal requirements for public review of FS decisions. (See "Other Issues," below.)

The Administration made other regulatory changes that could affect fuel reduction, public involvement, and environmental impacts. For example, new categorical exclusions for small timber harvesting projects and new regulations for FS planning have been completed.[24] The total impact of the regulatory changes is likely to be 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. The 109th Congress held hearings on various aspects of wildfire protection — on the airworthiness of firefighting airtankers; on litigation

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

[22] 68 *Fed. Reg.* 33814, June 5, 2003.

[23] 68 *Fed. Reg.* 33582, June 4, 2003, for the FS; 68 *Fed. Reg.* 33794, June 5, 2003, for the BLM.

[24] 68 *Fed. Reg.* 44598, July 29, 2003, and 70 *Fed. Reg.* 1023, Jan. 5, 2005, respectively.

over the use of chemical fire retardant;[25] and on litigation over NEPA categorical exclusions (see below) for fuel reduction and post-fire recovery projects. A bill to improve research on, and expedite action for, rehabilitation of areas after catastrophic events passed the House, but not the Senate. The 110th Congress may consider similar legislation, and may hold oversight hearings on fire-related litigation and on implementation of existing authorities.

The 110th Congress is likely to consider wildfire funding issues, as in the past. The FY2006 Interior Appropriations Act (P.L. 109-54) included $2.54 billion for the National Fire Plan. For FY2007, the Administration requested a small increase, with further modest increases passed by the House and recommended by the Senate Appropriations Committee.[26] The FY2007 Defense appropriations law (P.L. 109-289) added $100.0 million each for FS and BLM wildfire fighting during FY2006. Because wildfire funding now constitutes nearly half the FS budget and the FS may use any unobligated funds after wildfire appropriations are exhausted, some interests are concerned that fire control efforts are delaying or preventing other agency activities, including land management and cooperative assistance.

Other Issues

Other federal lands topics may be addressed by the 110th Congress through legislation or oversight. These may include FS NEPA categorical exclusions and grazing management.

Forest Service NEPA Categorical Exclusions. (by Ross W. Gorte and Pamela Baldwin) The FS historically has identified certain activities as not having significant environmental impacts, and exempted them from analysis and associated public participation under the National Environmental Policy Act of 1969 (NEPA; 43 U.S.C. §§4321-4347), except in extraordinary circumstances. Proponents see categorical exclusions as a way to expedite actions and reduce agency costs. Opponents charge that some of the excluded actions could have significant impacts, especially if extraordinary circumstances are present, and should be examined and subject to public involvement.

Various statutes and regulations have expanded categorical exclusions, including those for biomass fuel reduction projects, "small" timber sales, and forest plans.[27] The FS also has modified its application of extraordinary circumstances.[28] Previously, the rules appeared to automatically preclude an action from being categorically excluded if extraordinary circumstances were present; the new rule gives the responsible official discretion to determine whether extraordinary

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[25] *Forest Service Employees for Environmental Ethics v. U.S. Forest Service*, CV 03-165-M-DVM (D. Mt. Sept. 30, 2005).

[26] See CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*, coordinated by Carol Hardy Vincent and Susan Boren.

[27] 68 *Fed. Reg*. 33814, June 5, 2003; 68 *Fed. Reg.* 44598, July 29, 2003; and 70 *Fed. Reg.* 1023, Jan. 5, 2005, respectively.

[28] 67 *Fed. Reg*. 54622, Aug. 23, 2002.

circumstances warrant NEPA analysis and public involvement in otherwise exempt projects. Several of the regulations were challenged. On July 2, 2005, a U.S. District Court ruled that five regulations violated the Forest Service Decision Making and Appeals Reform Act (§322 of P.L. 102-381; 16 U.S.C. §1612 note) by excluding decisions from the public comment and appeals process and for other reasons.[29] The agency initially responded to the ruling by suspending more than 1,500 permits, projects, and contracts. The court in the dispute (now under the name *Earth Island Institute v. Ruthenbeck*) issued a clarifying order that allowed many minor activities to go forward as categorical exclusions. Legislation in the 109th Congress (§ 426 of H.R. 5386, the FY2007 Interior appropriations bill, as reported by the Senate Appropriations Committee) included a provision exempting activities categorically excluded from NEPA by the agency's rules from administrative challenges under the Appeals Reform Act.

Grazing Management. (by Carol Hardy Vincent) BLM issued new grazing regulations, effective August 11, 2006.[30] The agency revised its grazing regulations on the grounds that changes were needed to comply with court decisions, increase flexibility of managers and permittees, improve administrative procedures and business practices, and promote conservation. While lauded by some, the reform effort was criticized by others as unnecessary or harmful. Some of the regulatory 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 the BLM is required to consult with the public. The BLM did not address some controversial issues, such as revising the grazing fee. The BLM had expected to return to the consideration of related grazing policy changes once the new regulations were in effect. The 110th Congress seems likely to conduct oversight of the regulatory changes and other grazing issues.

The 110th Congress may continue to consider whether to compensate livestock operators on federal lands under certain circumstances. The 109th Congress considered legislation 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. Other legislation sought to provide payment to federal grazing permittees who voluntarily relinquish their permits, either generally or in particular areas, with the allotments then permanently closed to grazing.

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[29] *Earth Island Institute v. Pengilly*, 376 F.Supp. 2d 994 (E.D. Cal. 2005).

[30] The new grazing regulations, and related information about the reform effort, are available on the BLM website at [http://www.blm.gov/grazing/].

Additional Reading

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

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

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

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

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

CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*, Carol Hardy Vincent and Susan Boren, co-coordinators.

CRS Report RL33014, *Leasing and Permitting for Oil and Gas Development on Federal Public Domain Lands*, by Aaron M. Flynn and Ryan J. Watson.

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

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

CRS Report RS22347, *Wild Horse and Burro Issues*, by Carol Hardy Vincent.

CRS Report RS22025, *Wilderness Laws: Permitted and Prohibited Uses*, 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.