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

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Summary

The 110th Congress, the Administration, and the courts are considering many issues related to the public lands managed by the Bureau of Land Management (BLM) and the national forests managed by the Forest Service (FS). Key issues include the following.

Energy Resources. The Energy Policy Act of 2005 affected energy development on federal lands. In response, significant new regulations have been issued or are in progress, including on the oil, gas, and coal leasing programs and on application of environmental laws to certain energy-related agency actions. Congress is considering (H.R. 3221) repealing or amending several of the act's provisions related to oil and gas development on federal lands.

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, develop the minerals, and apply for a *patent* to obtain full title of the land and minerals. H.R. 2262 would reform aspects of the General Mining Law.

Roadless Areas in the National Forest System. In May 2005, the Bush Administration issued rules on roadless areas in the national forests to supplant earlier Clinton Administration rules and to allow governors to petition for roadless area protections in their states. In September 2006, a district court set aside the Bush rules and reinstated the Clinton rules; the decision has been appealed. H.R. 2516 would direct implementation of the Clinton roadless rule, while S. 1478 would largely enact provisions of that rule.

Wild Horses and Burros. Controversial changes enacted in 2004 to the Wild Free-Roaming Horses and Burros Act of 1971 authorized the sale of certain animals and removed the ban on selling wild horses and burros and their remains for commercial products. The House passed H.R. 249 to overturn these changes. The BLM continues to dispose of animals through sale, adoption, and placement in long-term holding facilities. BLM requested 12% less funds for managing wild horses and burros in FY2008, but pending appropriations legislation does not include a cut.

Wilderness. Many agency recommendations for wilderness areas are pending. Questions persist about wilderness review and managing wilderness study areas (WSAs). More than 20 wilderness area bills have been introduced this Congress.

Wildfire Protection. President Bush's Healthy Forests Initiative, the Healthy Forests Restoration Act of 2003, and other provisions seek to protect communities from wildfires by expediting fuel reduction. Some believe that more effort is needed; others fear that enacted and regulatory changes will increase timber sales and damage the environment. The 110th Congress is debating wildfire appropriations and overseeing implementation of new authorities.

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The 110th Congress is considering 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 U.S. 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 established a general national policy that 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 an 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/] and the CRS reports on related issues listed at the end of this report.

Onshore Energy Resources[1] (by Marc Humphries)

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 about 165 million acres of lands with federally owned mineral rights[2] (24% of all federal mineral acreage) have been withdrawn from mineral entry, leasing, and sale, subject to valid existing rights. Mineral development on another 182 million acres (26% of all federal mineral acreage) is subject to the approval of the surface management agency[3] and must not be in conflict with land designations and plans. A 2006 BLM-coordinated study found that 51% of the estimated oil and 27% of the estimated natural gas on the 99 million acres of federal land inventoried (about 15% of all federal lands) are off-limits to leasing.[4] 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.[5]

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[1] This report does not cover offshore energy resources, such as oil and gas development in the Outer Continental Shelf, or the Arctic National Wildlife Refuge (ANWR).

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

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

[4] 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.

[5] 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.

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 the BLM may lease minerals. The Energy Policy Act of 2005 (EPAct, 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 is responding to provisions of EPAct.[6] For example, the BLM solicited comments and held a series of meetings to prepare its report for Congress on the management of split estates.[7] This BLM report analyzed the respective rights and responsibilities of owners of mineral leases, private surface owners, and the federal government under existing law.[8] It also compared the surface owner consent provisions found in the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. §§ 1201, et al.) to those applicable to federal oil and gas. Finally, the report recommended administrative actions that allow for access to oil and gas deposits while seeking to address surface owner concerns. The report did not make any recommendations for legislative action.

Pursuant to § 352 of the 2005 act, the BLM has issued a final rule that allows ownership of oil and gas leases covering greater acreages than previously allowed.[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 leases and leases committed to "communitization agreements."[10] The final regulation also amends the lease reinstatement petition process. Currently, 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, the 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 (another DOI agency)

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[6] For additional information on BLM implementation of the EPAct, see the agency's website at [http://www.blm.gov/wo/st/en/prog/energy/epca_chart.html].

[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 at [http://www.blm.gov/bmp/Split_Estate.htm].

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

[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.

concluded that royalty incentives would not increase production from gas hydrates, and the BLM concluded that royalty incentives were unnecessary for increasing oil recovery through carbon dioxide injection.

In January 2006, the 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 in EPAct directing renewable energy development on public lands.

Under § 369 of the 2005 act, the BLM has begun a programmatic EIS to support a tar sands and oil shale leasing program for research, development, and demonstration (RD&D).[13] On November 13, 2006, the BLM announced completion of environmental assessments for five proposed oil shale RD&D projects on federal lands in Colorado. A finding of no significant impact (FONSI) was reached on each of the proposed projects. A Record of Decision signed by DOI on April 30, 2007, will allow issuance of a sixth RD&D lease in Utah. Regulations to govern this leasing program are required, and implementation of a commercial leasing program also is underway.

BLM has issued its final rule for developing geothermal energy on federal lands, effective June 1, 2007.[14] Much of the nation's geothermal energy potential is located on federal lands. The Administration has asserted that improving the efficiency of the federal geothermal leasing process could increase geothermal energy production. The BLM administers 423 geothermal leases, of which 55 are currently in production. The Energy Policy Act, §§ 221-236, amended the Geothermal Steam Act of 1970 (30 U.S.C. §§ 1001-1028) to change the leasing procedures to offer more competitive leasing and establish a new royalty and rental rate framework.

Legislative Activity. The conflict between an interest in increased domestic energy production from public lands and environmental concerns over development continues in the 110th Congress. To address concerns with the implementation of the Energy Policy Act of 2005, legislation was introduced (H.R. 2337) to repeal or amend several of its provisions related to oil and gas development on federal lands. H.R. 2337 was folded into a broader energy proposal — H.R. 3221[15] — as Title

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

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

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

[14] 72 *Fed. Reg*. 24358, May 2, 2007.

[15] As passed by the House, the bill has two short tiles: the *New Direction for Energy Independence, National Security, and Consumer Protection Act* and the *Renewable Energy and Energy Conservation Tax Act of 2007*.

VII.[16] The bill passed the House on August 4, 2007, and was placed on the Senate calendar on September 5, 2007.

Among other provisions, H.R. 3221 would repeal provisions of EPAct regarding recovery of permit processing costs. It would require the DOI Secretary to impose fees on the oil and gas industry to recover costs associated with the streamlining of permits during the pilot project established by EPAct. Other provisions of H.R. 3221 would limit § 390 of EPAct, which allows for a rebuttable presumption regarding the application of categorical exclusion under NEPA for oil and gas exploration and development activities, and adhere to the regulations issued by the Council on Environmental Quality. Further, onshore oil and gas reclamation requirements would become more stringent under the bill. (For more information on Title VII of H.R. 3221, see CRS Report RL34111, *Energy Policy Reform and Revitalization Act of 2007, Title VII of H.R. 3221: Summary and Discussion of Oil and Gas Provisions,* by Marc Humphries.)

At an April 17, 2007, oversight hearing, many witnesses contended that the 2008 sale date for commercial leases of oil shale would be too soon, based on the current state of oil shale technology and the potential environmental impacts.[17] Additionally, the BLM continues to process an increased number of Applications for Permit to Drill (APD) due to its streamlining regulations. Some witnesses asserted that as more APDs are approved, the environment is likely to be subject to greater risks. The Administration disputes this view.

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 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, but has not restricted the right to stake claims or extract minerals.

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[16] The name of this title, as passed by the House, is the *Energy Policy Reform and Revitalization Act of 2007*.

[17] U.S. House Natural Resources Subcommittee on Energy and Mineral Resources, *Implementation of Title III, the Oil and Gas Provisions, of the Energy Policy Act of 2005* (April 17, 2007).

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 (H.R. 2262) was introduced on May 10, 2007 — the 135-year anniversary of the original law's signing. The proposal would, among other provisions, establish an 8% "net smelter return" (NSR) royalty on hardrock mineral production (e.g., gold, copper, silver) from new mines and mine expansions on public domain lands, and a 4% NSR royalty on existing mines. H.R.2262 would create an abandoned hardrock mine reclamation fund, require a reclamation plan by mineral producers, and impose new environmental standards. Hearings were held on H.R. 2262 by the Committee on Natural Resource's Subcommittee on Energy and Mineral Resources in Washington, DC (July 26, 2007), and in Elko, Nevada (August 21, 2007). Full Committee mark-up occurred on October 18th and 23rd. The House Committee on Natural Resources approved H.R. 2262, as amended, on October 23, 2007 by a vote of 23-15. (For more information on the General Mining Law of 1872 and recent reform efforts, see CRS Report RL33908, *Mining on Federal Lands: Hardrock Minerals,* by Marc Humphries.)

Roadless Areas in the National Forest System

(by Ross W. Gorte and Kristina Alexander)

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 Impact Statement presented the agency's wilderness recommendations in January 1979, but many recommended areas still have not been designated as wilderness by Congress. Some observers believe that the remaining roadless areas should be protected from development, while others contend 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, issued in 2001, resulted in a nationwide approach that curtailed most road building

and timber cutting in roadless areas.[18] 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, temporarily blocking it from being implemented. Currently, however, the Clinton rule is in effect due to a 2006 court decision.

The Clinton rule is back in effect because a court enjoined implementation of the Bush roadless rule. The Bush Administration had issued a final rule in 2005 to replace the Clinton rule, allowing governors 18 months to petition the FS for a special rule for roadless areas in all or part of their state.[19] The FS could decide whether or not to approve the roadless area management requested by a state. Until such a new regulation — issued in response to a petition from a governor — was finalized, the FS was to manage roadless areas in accordance with interim directives that place most decisions with the regional forester or the Chief. These decisions would remain in effect until each forest plan was amended or revised to address roadless area management.[20] This temporarily returned decision-making on roadless area management to the individual forest plans, essentially reversing the Clinton roadless rule. Even though the Bush rule is enjoined and the 18-month period has expired, the Administration has stated that under the Administrative Procedure Act (APA; 5 U.S.C. §§ 701, et seq.) states can still petition for a special rule.

A number of state petitions were filed under the Bush rule. 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. Several states submitted petitions to protect roadless areas in those states: Virginia (December 22, 2005), North Carolina (March 9, 2006), South Carolina (April 19, 2006), New Mexico (May 31, 2006), California (July 12, 2006), Idaho (September 20, 2006), and Colorado (November 13, 2006). The Idaho and Colorado petitions did not seek protection for all of their states' roadless areas. 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 Colorado governor amended the petition filed by his predecessor, further limiting the acreage available for roads, using the APA procedure. The FS is using the APA to review state petitions as a rulemaking activity, although the Clinton roadless rule is in effect. The governors of several other states have decided not to petition.

Judicial Actions. Numerous lawsuits have tracked the roadless rules' course. On April 5, 2001, the Clinton Roadless Rule was enjoined by the U.S. District Court for the District of Idaho,[21] but that decision was overturned by the Ninth Circuit and the rule was put back in place.[22] Later in 2001, a suit challenging the application of

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[18] 66 *Fed. Reg.* 3244, January 12, 2001.

[19] 70 *Fed. Reg*. 25654, May 13, 2005.

[20] 69 *Fed. Reg*. 42648, July 16, 2004.

[21] Kootenai Tribe of Idaho v. Veneman, 142 F. Supp. 2d 1231 (D. Idaho 2001).

[22] Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094 (9th Cir. 2002).

the Clinton Roadless Rule to the Tongass National Forest in Alaska was settled, eventually leading to that forest being exempt from the Clinton roadless rule.[23]

In July 2003, the Federal District Court for Wyoming stopped the application of the Clinton Roadless Rule (the second injunction, after the first was overturned).[24] Another appeal was filed, this time in the Tenth Circuit, but the court ruled that there was no longer a dispute because the Bush roadless rule was final.[25] However, legal action continues. In August 2005, California, Oregon, and New Mexico jointly sued the FS to challenge the Bush roadless rule, and the State of Washington later joined the suit. In September 2006, the District Court for the Northern District of California found that the Bush Roadless Rule violated the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§ 4321-4347) and the Endangered Species Act (ESA; 16 U.S.C. §§ 1531-1540). In that decision, the court set aside the Bush Roadless Rule and reinstated the Clinton roadless rule.[26] In a related decision, the court held that the oil and gas leases that were issued while the Clinton rule was enjoined could not be developed unless they complied with the Clinton roadless rule.[27] The FS filed an appeal in the Ninth Circuit, challenging the September 2006 decision.

Shortly following the Northern District of California decision, the State of Wyoming filed a motion in the District Court for Wyoming seeking to reinstate the 2003 ruling that blocked implementation of the Clinton roadless rule. This motion was denied by the district court, which said it lacked authority over the matter and that the issue would have to be brought before the Tenth Circuit.[28]

Legislative Activity. Two bills have been introduced in the 110th Congress addressing roadless area management. H.R. 2516 would direct implementation of the Clinton roadless rule. S. 1478 would have a similar effect, but would largely enact the provisions of the Clinton roadless rule rather than directing the rule to be implemented. Both bills were introduced on May 24, 2007.

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

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[23] 68 *Fed. Reg.* 75136 (December 30, 2003); this is referred to as the *Tongass Amendment*. Settlement was filed June 10, 2001, in *Alaska v. U.S. Dept. of Agriculture*, No. A01-039 CV (D. Alaska 2001).

[24] Wyoming v. U.S. Dept. of Agriculture, 277 F. Supp. 2d 197 (D. Wyo. 2003).

[25] Wyoming v. U.S. Dept. of Agriculture, 414 F.3d 1207 (10th Cir. 2005). The Bush Roadless Rule became final in May of 2005.

[26] California v. U.S. Dept. of Agriculture, 459 F. Supp. 2d 874 (N.D. Cal. 2006).

[27] California v. U.S. Dept of Agriculture, 468 F. Supp. 2d 1140 (N.D. Cal. 2006).

[28] Wyoming v. U.S. Dept. of Agriculture, No. 01-CV-86 (D. Wyo. June 6, 2007).

herd sizes, as the statute requires; whether and how to remove animals from the range to achieve AMLs; methods — other than 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.[29]

Adoption has been the primary method of disposal of healthy animals, with 216,942 adopted from FY1972 to FY2006. The 108th Congress enacted controversial changes to wild horse and burro management on federal lands (P.L. 108-447, § 142) to provide for the *sale* of wild horses and burros. Specifically, the first 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 or 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. These changes have been supported as providing a cost-effective way to help the agencies achieve AMLs, 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. As of September 2007, BLM has sold more than 2,500 animals.

As of April 1, 2007, there were about 28,500 wild horses and burros on BLM lands. However, 2007 spring foals were expected to increase the population to about 34,000. The national maximum AML is set at 27,512, which some critics assert is set low in favor of livestock. There were another 3,180 wild horses and burros on FS lands as of September 30, 2006. Further, 29,772 wild horses and burros were being held in facilities — preparation, maintenance, and long-term facilities — as of mid-FY2007, and the BLM continues to be responsible for these animals.

Administrative Actions. The BLM has been pursuing a multi-year effort to achieve AML and currently is closer to AML than at any time since the early 1970s. 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 facilities. However, the BLM budget justification for FY2008 states an intent to reduce the emphasis on removals. The reason for the reduced emphasis is not clear. In FY2008, the BLM anticipates removing 830 animals, a significant reduction from the 9,926 removed in FY2006 and the 6,811 estimated to be removed in FY2007. Adoption will continue to be the primary method of disposal in FY2008, as the BLM has determined that there is very little demand for the estimated 8,000 older animals available through the sales program.

For FY2008, the BLM requested $32.1 million for management of wild horses and burros, a 12% decrease from the FY2006 and FY2007 level of $36.4 million. The agency expects that the funding reduction will be achieved by reducing efforts to gather and remove animals from the range. Whether funding will be sufficient to

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

care for wild horses and burros, achieve AML, and reduce long-term budgetary needs is unclear. A particular concern has been the cost of holding animals in facilities. The potential cost of holding animals in all facilities for one year is $26.4 million, which would be nearly three-quarters of BLM's FY2007 appropriation for wild horse and burro management.[30] The BLM currently needs additional space in long-term holding facilities and has been soliciting bids for new facilities. Most recently, in June 2007, the agency solicited bids for contracts for one or more new facilities to be located west of the Mississippi River. Each facility must be able to provide care for between 1,000 and 2,500 animals. Currently, all long-term facilities are in Kansas and Oklahoma.

Legislative Activity. The House and the Senate Committee on Appropriations did not support the Administration's proposed decrease for wild horse and burro management for FY2008. Rather, in Interior appropriations legislation, the House approved $37.5 million and the Senate Committee recommended $36.8 million.

On April 26, 2007, the House passed H.R. 249 to overturn the changes enacted in the 108th Congress. Specifically, the bill would repeal the authority to sell wild horses and burros, reimpose a ban on the sale of wild horses and burros and their remains for processing into commercial products, and reinstate criminal penalties for processing the remains into commercial products.[31] As with the 108th Congress legislation, the debate centered on whether the sale authority would result in the slaughter of healthy animals or whether it is needed as a tool to manage the number of wild horses and burros on the range.

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.[32] 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

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[30] The cost for animals in preparation and maintenance facilities is $4.55 daily, for a potential total annual cost of $17.4 million for the 10,496 animals being held as of March 30, 2007. The cost for animals in long-term facilities is $1.27 daily, for a potential total annual cost of $8.9 million for the 19,276 animals in long-term holding. The combined cost for all animals in holding is thus estimated at $26.4 million. Annual costs derived by CRS from data provided by the BLM on daily costs and numbers of animals in holding facilities.

[31] For information on horse slaughter legislation generally, see CRS Report RS21842, *Horse Slaughter Prevention Bills and Issues*, by Geoffrey S. Becker.

[32] See CRS Report RL33827, *Wilderness Laws: Permitted and Prohibited Uses*, by Ross W. Gorte.

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 (and whether) 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 required the agency to review potential wilderness, to present recommendations to the President, 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 (FLPMA § 201; 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 as violating the review required by § 603, 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 previously designated § 603 WSAs.[33]

Legislative Activity. More than 20 bills to designate new wilderness areas or expand existing ones in 13 states have been introduced in the 110th Congress. (See **Table 1**.) Many agency recommendations for wilderness designations remain pending. Some bills that include provisions to release specific BLM WSAs have been introduced. Bills to prohibit broad future BLM wilderness reviews and to release all WSAs after a specified period have not been introduced during this Congress to date; such legislation had been introduced in the 106th-108th Congresses.

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

Table 1. 110th Congress Bills to Designate Wilderness Areas

Bill Title	Acreage	State	Bill No.	Most Recent Action
America's Red Rock Wilderness Act of 2007	9,425,840 9,208,840	UT	H.R. 1919 S. 1170	H.R. 1919 introduced 4/18/07 S. 1170 introduced 4/19/07
California Wild Heritage Act of 2007	2,088,766	CA	H.R. 860 S. 493	Both introduced 2/6/07
Central Idaho Economic Development and Recreation Act	318,765	ID	H.R. 222	Introduced 1/4/07
Chattahoochee National Forest Act of 2007	8,448	GA	H.R. 707	Introduced 1/29/07
Copper Salmon Wilderness Act	13,700	OR	H.R. 3513 S. 2034	Both introduced 9/10/07
Izembek and Alaska Peninsula Refuge and Wilderness Enhancement Act of 2007 (S. 1680); Izembek and Alaska Peninsula Refuge and Wilderness Enhancement and King Cove Safe Access Act (H.R. 2801)	45,493	AK	H.R. 2801 S. 1680	H.R. 2801 introduced 6/20/07 S. 1680 introduced 6/21/07
Lewis and Clark Mount Hood Wilderness Act of 2007	128,660	OR	S. 647	Ordered reported 7/25/07
Northern Rockies Ecosystem Protection Act	24,322,915	ID, MT, OR, WA, WY	H.R. 1975	Introduced 4/20/07
Owyhee Initiative Implementation Act of 2007	517,196	ID	S. 802	Introduced 3/7/07
Rocky Mountain National Park Wilderness and Indian Peaks Wilderness Expansion Act	253,534	CO	H.R. 2334 S. 1380	H.R. 2334 introduced 5/15/07 S. 1380 hearing on 7/12/07
Sabinoso Wilderness Act of 2007	19,880	NM	H.R. 2632	Introduced 6/7/07
Sequoia-Kings Canyon National Park Wilderness Act of 2007	114,686	CA	H.R. 3022 S. 1774	Both introduced 7/12/07
Tumacacori Highlands Wilderness Act of 2007	83,300	AZ	H.R. 3287	Introduced 8/1/07
Udall-Eisenhower Arctic Wilderness Act	1,559,538	AK[a]	H.R. 39	Introduced 1/4/07
Virginia Ridge and Valley Act of 2007	39,161	VA	H.R. 1011 S. 570	H.R. 1011 reported 9/4/07 S. 570 introduced 2/13/07
Wild Sky Wilderness Act of 2007	106,000	WA	H.R. 886 S. 520	H.R. 886 reported by Sen. Comm. 6/28/07 S. 520 introduced 2/7/07

[a] Affects the Arctic National Wildlife Refuge (ANWR).

Wildfire Protection (by Ross W. Gorte)

Background. Recent fire seasons seem to have been getting more severe, with more acres burned and presumably more damage to property and resources than in previous years. In 2006, more acres burned — 9.9 million acres — than in any year since record-keeping began in 1960. This is 77% above the 10-year average. As of September 6, 2007, more than 7.2 million acres had burned in 2007, 28% 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 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 (16 U.S.C. §§ 6501, et al.) 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.[34]

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.[35] Second, the administrative review processes were revised to clarify that some emergency actions may be implemented immediately, and others may be implemented after complying with public notice requirements. Other changes to the administrative review process expanded "emergencies" to include those "that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed."[36] 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 promulgated.[37] The total impact of the regulatory changes is likely to be greater discretion for FS action — more fuel reduction projects, with lower costs, and less public review and oversight of their potential effects.

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

[35] 68 *Fed. Reg.* 33814, June 5, 2003.

[36] 68 *Fed. Reg.* 33582, June 4, 2003, for the FS; 68 *Fed. Reg.* 33794, June 5, 2003, for the BLM.

[37] 68 *Fed. Reg.* 44598, July 29, 2003, and 70 *Fed. Reg.* 1023, January 5, 2005, respectively.

Legislative Activity. The 110th Congress has held hearings on aspects of wildfire protection, particularly on wildfire preparedness and on cost containment. To date, no general bills to modify wildfire management and protection have been introduced in the 110th Congress.

The 110th Congress is also considering wildfire funding issues.[38] The FY2007 Interior appropriations act provided $2.62 billion for the National Fire Plan, and the emergency supplemental appropriations act[39] provided another $425 million for wildfire suppression costs. Because wildfire funding now constitutes nearly half the FS budget and the FS and BLM may use other unobligated funds after wildfire appropriations are exhausted, there has been some concern 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 categorical exclusions from the National Environmental Policy Act (NEPA), national forest planning, national forest land sales and county payments, BLM land sales, and grazing management.

FS NEPA Application and Categorical Exclusions. (by Ross W. Gorte and Kristina Alexander) Unlike most federal agencies, the FS has not published its NEPA policies in regulation form. Instead, the policies have been included in the Forest Service Handbook (FSH). Rulemaking initiated in August 2007 would change that.[40] Under the proposed rule, some, but not all, of the NEPA guidance from the FSH will be integrated into Title 36 of the Code of Federal Regulations (C.F.R.). The proposal would modify the NEPA process to incorporate what the FS calls "incremental alternative development," to allow its decision-making to change while developing alternatives without issuing versions for notice and comment. The rule also would allow the FS to consider only one alternative when preparing an Environmental Assessment (EA), if there are no unresolved conflicts concerning alternative uses of available resources. Further, the proposed rule would limit consideration of cumulative impacts to only those past actions found to be "relevant and useful."

The FS historically has identified certain activities as not having significant environmental impacts, and exempted them from analysis and associated public participation under NEPA, except in extraordinary circumstances. Proponents see categorical exclusions (CEs) 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.

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[38] See CRS Report RL33990, *Wildfire Funding*, by Ross W. Gorte.

[39] P.L. 110-28; U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.

[40] 72 *Fed. Reg*. 45998 (August 16, 2007).

Since 2003, the FS has changed the types of activities that can be conducted without environmental review, increasing the number of types from 18 to 27.[41] Some of the nine newer CEs include biomass fuel reduction projects, "small" timber sales, and forest plans.[42] The FS also has modified its application of extraordinary circumstances.[43] Previously, the rules appeared to preclude an action from being automatically categorically excluded if extraordinary circumstances, such as roadless areas or endangered species habitat, were present. The new rule gives the responsible official discretion to determine whether extraordinary circumstances warrant NEPA analysis and public involvement in otherwise exempt projects.

Five of the new CEs were challenged in federal court in Alabama. The challenged CEs addressed fire management activities and limited harvesting.[44] The court upheld the regulations.[45] Additionally, the FS issued new regulations changing its notice, comment, and appeals procedures for land management planning, including a change that a decision to use a CE could not be appealed.[46] These new regulations, found in 36 C.F.R. Part 215, also were challenged. In 2005, California federal court ruled that the regulations violated the Forest Service Decision Making and Appeals Reform Act (P.L. 102-381, § 322; 16 U.S.C. § 1612, note) by excluding decisions from the public comment and appeals process and for other reasons.[47] The agency initially responded to the ruling by suspending more than 1,500 permits, projects, and contracts. The court issued a clarifying order that held that only projects and decisions dated after July 7, 2005, were enjoined.[48] The order was further clarified two months later to allow the FS to use CEs in emergencies.[49] On appeal, the Ninth Circuit held that the challenges to the regulations in Part 215 were premature, and reversed the lower court, except for the holding that the regulation pertaining to CEs was improper. Therefore, after all five court decisions, the appeals regulations in Part 215 remain in place, except for § 215.12(f) — that is, invoking a CE is *not* exempt from appeal.

National Forest Planning. (by Ross W. Gorte and Kristina Alexander) The FS is required to prepare comprehensive, integrated land and resource management

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[41] Forest Service Handbook (FSH) 1909.15, ch. 30, §§ 30.12, 31.2. Under the proposed rule, the CEs would be found at 36 C.F.R. § 220.6.

[42] 68 *Fed. Reg.* 33814 (June 5, 2003); 68 *Fed. Reg.* 44598 (July 29, 2003); and 70 *Fed. Reg.* 1023 (January 5, 2005), respectively.

[43] 67 *Fed. Reg.* 54622 (August 23, 2002).

[44] The challenged regulations are found at FSH 1909.15, ch. 30, §§ 31.2(10) through (14).

[45] Wildlaw v. U.S. Forest Service, 471 F. Supp. 2d (M.D. Ala. 2007).

[46] 68 *Fed. Reg.* 33581 (June 4, 2003); 36 CFR part 215.

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

[48] Earth Island Institute v. Ruthenbeck, 2005 WL 5280446 (E.D. Cal. September 20, 2005), holding that a retroactive remedy would "plunge the Forest Service headlong into a crippling morass of confusion."

[49] Earth Island Institute v. Ruthenbeck, 2005 WL3284289 (E.D. Cal. November 30, 2005).

plans for the national forests.[50] The plans are to be developed and revised with public involvement, must provide for multiple use and sustained yield of goods and services, and must be "prepared in accordance with the National Environmental Policy Act of 1969...." Regulations to implement forest planning were adopted in 1979 and substantially revised in 1982.[51] The 1982 regulations are in effect today, despite subsequent regulatory action during the Clinton and Bush Administrations (described below). They are found at 36 C.F.R. Part 219.

The Clinton Administration finalized new rules (to be phased in over three years) that emphasized planning for the biological sustainability of the national forests.[52] The Bush Administration extended the effective date of the Clinton 2000 Rules three times and proposed new rules in 2002. The Bush Administration issued an *interpretive rule* in 2004, retaining the 1982 regulations until the new Bush regulations were finalized.[53] The Bush Administration then promulgated final rules in 2005 to balance biological and socioeconomic sustainability, to make fewer decisions at the national level by reducing regulatory guidelines, and to limit public input into the planning process. The rules also would have exempted plans from NEPA and ESA, because the Administration viewed these plans as guides to decision-making that would not include site-specific decisions.[54]

The Bush 2004 interpretive and 2005 planning rules were challenged. On March 30, 2007, the U.S. District Court for the Northern District of California remanded the 2005 Bush rules to the agency because the rules violated NEPA, ESA, and APA.[55] The Administration has appealed the decision. The challenge to the interpretive rule was denied, and thus forest planning is proceeding under the 1982 regulations. The FS also has reissued the 2005 rule as a proposed rule to meet the court's requirement to provide notice.[56] To comply with the court's other mandates, the FS issued a draft environmental impact statement (DEIS) and consulted with the Fish and Wildlife Service under the ESA.

National Forest Land Sales and County Payments. (by Ross W. Gorte) For FY2008, the Administration has again proposed selling about 300,000 acres of national forest lands. Current FS authorities to sell or otherwise dispose of national forest lands are narrow, so legislation would be needed to authorize the President's proposal. Under the President's proposal, half of the estimated $800 million in

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[50] The requirement is in the Forest and Rangelands Renewable Resources Planning Act of 1974 (16 U.S.C. §§ 1600-1614). Substantial detail on the considerations and analysis to be included in the plans was added in the National Forest Management Act of 1976 (NFMA). Hence, forest planning is also often called NFMA planning.

[51] 47 *Fed. Reg.* 43037 (September 30, 1982).

[52] 65 *Fed. Reg.* 67514 (November 9, 2000).

[53] 69 *Fed. Reg.* 58056 (September 29, 2004).

[54] 70 *Fed. Reg.* 1022 (January 5, 2005).

[55] Citizens for Better Forestry v. U.S. Dept. of Agriculture, No. C 05-1144 PJH, 2007 U.S. Dist. LEXIS 27419 (N.D. Cal. March 30, 2007).

[56] 72 *Fed. Reg.* 48513 (August 23, 2007).

proceeds from the sales would pay for a four-year phase-out of payments under the Secure Rural Schools and Community Self-Determination Act of 2000 (SRS; 16 U.S.C. § 500, note). According to the FY2008 FS budget justification, the other half would be available "for acquisition of land for the NFS [National Forest System], conservation education, access to public lands, habitat improvement, and to cover administrative costs of disposal." In FY2007, the President had proposed that all the proceeds be used to make payments under the SRS.

The SRS was enacted as an alternative to two major programs that compensate counties for the tax-exempt status of federal lands.[57] Payments under SRS expired at the end of FY2006.[58] Bills to extend the SRS payments have been introduced, but legislation that creates new or extends existing mandatory spending (like SRS payments) generally must be offset by new revenues or other changes in mandatory spending programs.

In the 110th Congress, several bills have been introduced to extend the SRS program for one or several years. As passed by the House, H.R. 1591 included a one-year extension of SRS payments. The Senate passed H.R. 1591 with S.Amdt. 709, a five-year extension of the SRS program with complex modifications to shift more of the payments toward counties with large federal landholdings but low historic revenues from those lands. The conference agreed to a one-year extension, but President Bush vetoed the bill. The replacement, H.R. 2206, was enacted as P.L. 110-28 with a one-year extension.[59] On July 26, 2007, a subcommittee of the House Natural Resources Committee held hearings on H.R. 3058, a bill similar to the Senate-passed version of H.R. 1591, but directing the agencies to establish new or higher fees to offset the payments.

BLM Land Sales. (by Carol Hardy Vincent) The President's FY2008 budget request included a proposal to amend BLM's authority to sell or exchange land under the Federal Land Transaction Facilitation Act (43 U.S.C. § 2301). The law currently provides for the sale or exchange of land identified for disposal under BLM's land use plans "as in effect" at enactment. Proceeds from the sale or exchange of public land are to be deposited into a separate Treasury account. Funds in the account are available to both the Secretary of the Interior and the Secretary of Agriculture to acquire inholdings and other nonfederal lands (or interests therein) that are adjacent to federal lands and contain exceptional resources. The law's purposes included allowing for the reconfiguration of land ownership patterns to better facilitate

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[57] FS and BLM payments have traditionally been based on revenues — 25% of FS gross revenues returned to the states for use on roads and schools in the counties where the FS lands are located; and 50% of BLM revenues from the Oregon & California (O&C) grant lands returned to the counties containing the O&C lands. FS and BLM revenues declined precipitously in the early 1990s due to declining timber sales to protect northern spotted owls, water quality, and other resources.

[58] See CRS Report RL33822, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*, by Ross W. Gorte.

[59] The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.

resource management, improving administrative efficiency, and increasing the effectiveness of the allocation of fiscal and human resources.

The President's proposal would direct using updated land management plans for determining which lands to sell or exchange. It would change the distribution of the proceeds to allow 70% of the net proceeds to be deposited in the general fund of the Treasury, with "a portion" available to the BLM for restoration projects. It would cap receipts retained by Interior at $60 million annually. The Administration estimated that these changes would generate $193 million in total revenue for the Treasury from FY2008 through FY2012. The Administration made a similar proposal in its FY2007 budget. The changes were promoted in part to reduce the federal deficit and to ensure that the public will benefit from land sales. Legislation would be needed to effect these changes, and no such legislation has been introduced in Congress to date.

Grazing Management. (by Carol Hardy Vincent and Kristina Alexander) The BLM issued new grazing regulations, effective August 11, 2006.[60] On June 8, 2007, the U.S. District Court for the District of Idaho enjoined all the 2006 regulations from taking effect.[61] The court found that BLM had violated three laws in enacting the regulations — NEPA, ESA, and FLPMA. In particular, the court criticized the 2006 regulations' reduction of public input into BLM day-to-day decisions such as allotment boundaries and temporary permits. It also found that BLM should have consulted with the Fish and Wildlife Service regarding the changes, as it had done for the 1995 changes to grazing regulations. Further, the court criticized BLM for eliminating comments by DOI scientists from a NEPA document. Before the regulations could be reinstated, BLM would have to satisfy the court that it had examined the environmental impacts under NEPA, performed a Section 7 consultation under the ESA, and restored the FLPMA public comments provisions.

Earlier lawsuits immediately following the effective date of the grazing regulations had nullified some of the changes. Specifically, on August 11, 2006, the district court had held that the regulations pertaining to public participation were invalid as enacted.[62] On September 25, 2006, the same court held that regulations pertaining to the fundamentals of rangeland health, including the standards and guidelines section, violated NEPA.[63]

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

[61] Western Watersheds Project v. Kraayenbrink, No. CV-05-297-E-BLW, 2006 (D. Idaho June 8, 2007).

[62] Western Watersheds Project v. Kraayenbrink, No. CV-05-297-E-BLW, 2006 WL 2348080 (D. Idaho August 11, 2006); Maughan v. Rosenkrance, No. CV-06-275-E-BLW, 2006 WL 2348077 (D. Idaho August 11, 2006). The court issued nearly identical opinions in these cases.

[63] Western Watersheds Project v. Kraayenbrink, No. CV-05-297-E-BLW, 2006 WL 2735772 (D. Idaho September 25, 2006).

BLM had revised its grazing regulations (in 2006) 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 had been 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.

National Landscape Conservation System. (by Carol Hardy Vincent) The BLM created the National Landscape Conservation System (NLCS) in 2000 to focus management and public attention on its specially protected conservation areas. The system consists today of about 26 million acres of land, and includes national monuments, national conservation areas, wilderness areas, and wilderness study areas as well as thousands of miles of national historic and national scenic trails and wild and scenic rivers. Several issues related to the NLCS have been of interest to Congress.

One issue is whether to establish the system legislatively. Legislation has been introduced (H.R. 2016 and S. 1139) to establish the NLCS legislatively without intending to alter the way the areas are currently managed. The legislation seeks to "conserve, protect, and restore nationally significant landscapes" that have outstanding values for the benefit of current and future generations. At hearings on the bills, the Administration (and other witnesses) testified in favor of establishing the system legislatively. For instance, at a hearing on the Senate bill, the Acting Director of the BLM testified that DOI supported the bill as a way to provide legislative support and direction to the BLM and to formalize and strengthen its conservation system within the context of agency's multiple use mission.[64] Other witnesses expressed opposition to the legislation, for instance, on the assertion that it could have the effect of establishing new, standardized requirements for disparate areas in the system.[65] On June 28, 2007, the Senate Committee on Energy and Natural Resources reported S. 1139 with an amendment seeking to clarify the description of the components of the system, but without making substantive changes to the bill as introduced (S.Rept. 110-116, p. 3). Several other House and Senate bills would make federal land designations (e.g., wilderness, national monument, and outstanding natural area) and add these areas to the NLCS.

Another issue relates to a BLM proposal to add certain responsibilities and programs to the NLCS, possibly including cooperative conservation, volunteer

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[64] U.S. Senate Energy and Natural Resources Subcommittee on Public Lands and Forests, *Hearing to Receive Testimony on Current Legislation* (May 3, 2007).

[65] U.S. House Natural Resources Subcommittee on National Parks, Forests, and Public Lands, *Legislative Hearing on H.R. 2016*, testimony of Mr. Orie Williams (June 7, 2007).

programs, environmental and heritage education, and alternative dispute resolution. This proposal, part of a broader agency restructuring, has raised questions as to whether these additional programs could dilute the focus of the system and overextend its funding resources. Questions about the adequacy of funds for the NLCS have been recurring, and the prospect of adding new responsibilities to the system has perhaps heightened attention to the level of funding. Some questions have centered on whether recent funding for management and law enforcement have been sufficient to address vandalism and other damage to cultural resources in the system. These questions are likely to continue in light of a proposed reduction in funding for the NLCS in FY2008. Specifically, the Administration requested $49.2 million for the NLCS in FY2008, a decrease of $3.3 million (6%) from the FY2007 level of $52.5 million and of $9.8 million (17%) from the FY2006 level of $59.0 million. However, as part of Interior appropriations legislation for FY2008, the House and the Senate Appropriations Committee supported increases over the request, of $10.0 million and $8.0 million respectively.

Additional Reading

CRS Report RL33872, *Arctic National Wildlife Refuge (ANWR): New Directions in the 110th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin.

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

CRS Report RL34111, *Energy Policy Reform and Revitalization Act of 2007, Title VII of H.R. 3221: Summary and Discussion of Oil and Gas Provisions*, by Marc Humphries.

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 RL34011, *Interior, Environment, and Related Agencies: FY2008 Appropriations*, coordinated by Carol Hardy Vincent.

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 RL33908, *Mining on Federal Lands: Hardrock Minerals*, by Marc Humphries.

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

CRS Report RL33806, *Natural Resources Policy: Management, Institutions, and Issues*, coordinated by Carol Hardy Vincent, Nicole T. Carter, and Julie Jennings.

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

CRS Report RL33493, *Outer Continental Shelf: Debate Over Oil and Gas Leasing and Revenue Sharing*, by Marc Humphries.

CRS Report RL33525, *Recreation on Federal Lands*, by Kori Calvert (coordinator), Sandra L. Johnson, Carol Hardy Vincent (coordinator), Ross W. Gorte, Nicole T. Carter, Nic Lane, David L. Whiteman, and M. Lynne Corn.

CRS Report RL33822, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*, by Ross W. Gorte.

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

CRS Report RL33827, *Wilderness Laws: Permitted and Prohibited Uses*, by Ross W. Gorte.

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

CRS Report RL33990, *Wildfire Funding*, by Ross W. Gorte.