Order Code IB10076

Public (BLM) Lands and National Forests

Updated May 9, 2003

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

CONTENTS

Public (BLM) Lands and National Forests

SUMMARY

The 108th Congress confronts an array of issues related to the public lands managed by the Bureau of Land Management (BLM) and the national forests managed by the U.S. Forest Service (FS). The Administration also continues to address public lands and national forests through budgetary, regulatory, and other actions. Several key issues are covered in this report.

Wildfire Protection. Threats from wildfires seem to have become more severe. The Administration has proposed a Healthy Forests Initiative to protect communities from wildfires by reducing fuels. One program to reduce fuels was enacted in the FY2003 Omnibus Appropriations Act. Other options are being pursued through proposed regulations, and wildfire protection bills have been introduced in the 108th Congress. H.R. 1904 was ordered reported by the House Agriculture Committee on May 8, 2003.

Energy Resources. The 107th Congress passed major energy legislation but the differences could not be resolved. The 108th Congress and the Administration continue to examine whether and how to increase access to federal lands for energy and mineral development. Major energy policy legislation, with provisions affecting federal lands, has passed the House and is being considered by the Senate.

Roadless Areas of the National Forest System. The Clinton Administration issued rules that limit road construction and timber cutting in 58.5 million acres of roadless areas in the National Forest System. Implementation was enjoined, but the appellate court reversed the decision. The Bush Administration is considering new rules and has issued interim direction.

R.S. 2477 Rights of Way. Revised Statute (R.S.) 2477 granted rights of way for highways across unreserved federal lands, but the extent of valid rights of way is not clear in some states. This statute might allow unrestricted public access across (and to) federal lands, including sensitive lands and potential wilderness. Congress prohibited R.S. 2477 regulations in 1996, but the Bush Administration recently finalized regulations on "disclaimers of interest" for clearing title to R.S. 2477 highway easements, and executed a Memorandum of Understanding with the State of Utah to acknowledge and disclaim R.S. 2477 rights of way in that state.

National Monuments and the Antiquities Act. The Antiquities Act of 1906 authorizes the President to establish national monuments on federal lands. Congress has considered limiting the authority of the President and amending particular monuments. President Bush reestablished Governors Island National Monument. The Administration also is developing management plans for some new monuments.

Hardrock Mining and Millsites. Two mineral issues have been controversial. One is whether to clarify the General Mining Law of 1872 regarding the number and size of millsites per mining claim. Currently, the Department of the Interior is drafting a new opinion on this issue. The second issue relates to the Bush Administration's revisions of the hard rock mining regulations finalized by the Clinton Administration.

Other Issues. Many other issues affecting federal lands also are of interest. These include wilderness, grazing management, national forest planning, and land acquisition.

MOST RECENT DEVELOPMENTS

The House passed and the Senate is considering comprehensive energy legislation. The House bill includes provisions that would lead to demonstration technologies for oil and gas recovery in unproven, unconventional reservoirs on public and private lands. The Senate version would require further analyses of resource assessments, land withdrawals, and impediments to oil and gas development on public lands.

On January 31, 2003, Governors Island National Monument was conveyed to the National Trust for Historic Preservation and then back to the government. The President subsequently reestablished the Monument on February 7, 2003, with approximately 22 acres.

On December 12, 2002, the Ninth Circuit Court of Appeals reversed the district court's ruling on its preliminary injunction to prevent implementation of the Clinton regulations to protect roadless areas; Idaho requested a rehearing and en banc review of the decision, but this was denied. On January 6, 2003, the Administration finalized regulations on "disclaimers of interest" to clear title to R.S. 2477 highway easements, possibly conflicting with a congressional prohibition on R.S. 2477 regulations unless explicitly authorized by law. The Administration has executed a Memorandum of Understanding with the State of Utah to acknowledge and disclaim R.S. 2477 rights of way in that state.

H.R. 1904, the Healthy Forests Restoration Act of 2003, was ordered reported by the Committee on Agriculture on May 8, 2003, and is pending before the Committee on Resources. The Resources Committee marked up a committee print, similar to H.R. 1904, on April 30.

BACKGROUND AND ANALYSIS

The Bureau of Land Management (BLM) in DOI and the Forest Service (FS) in the U.S. Department of Agriculture manage 456 million acres of land, 70% of the land owned by the federal government and one-fifth of the total U.S. land area. The BLM itself manages 264 million acres of land, predominantly in the West. These lands are defined by the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. §§1701, *et seq.*) as "public lands." The FS administers 192 million acres of federal land, also concentrated in the West.

The BLM and FS have similar management responsibilities for their lands, and many key issues affect both agencies' lands. However, each agency has unique emphases and functions. For instance, most BLM lands are rangelands, and the BLM administers mineral development on all federal lands. Most federal forests are managed by the FS, and only the FS has a cooperative program to assist nonfederal landowners. Moreover, development of the two agencies has differed, and historically they have focused on different issues.

History of the Bureau of Land Management

For the BLM, many of the issues traditionally center on the agency's responsibilities for land disposal, range management (particularly grazing), and minerals development. These three key functions were assumed by the BLM when it was created in 1946, by the merger of the General Land Office (itself created in 1812) and the U.S. Grazing Service (created in 1934). The General Land Office had helped convey land to settlers and issued leases and administered mining claims on the public lands, among other functions. The U.S. Grazing Service had been established to manage the public lands best suited for livestock grazing. The Taylor Grazing Act of 1934 (TGA, 43 U.S.C. §§315, *et seq*.) was the principal statute governing the public lands in the early years of the U.S. Grazing Service, and remains a key statute governing the use of federal rangelands for private livestock grazing. Enacted to remedy the deteriorating condition of public rangelands, the Act provides for the management of public lands "pending [their] final disposal." This language expresses the view that federal lands might be transferred to other ownership.

In subsequent decades, Congress debated how best to manage federal lands, and whether to retain or dispose of the remaining public lands. In 1976, Congress enacted FLPMA, sometimes called BLM's Organic Act because it consolidated and articulated the agency's responsibilities, although it left the TGA in place. Among other provisions, the law establishes management of the public lands based on the principles of multiple use and sustained yield; provides that the federal government receive fair market value for the use of public lands and resources; and establishes a general national policy that the public lands be retained in federal ownership (as opposed to managed until their "final disposal.") This retention policy contributed to the "Sagebrush Rebellion" of the late 1970s and early 1980s, which was an effort among some Westerners seeking to reduce the federal presence in their states by transferring federal land to state or private ownership. Land ownership, as well as conflicts over land use, continue to be among the key issues for BLM lands.

History of the Forest Service

The FS was created in 1905, when forest lands reserved by the President (beginning in 1891) were transferred from the Department of the Interior into the existing USDA Bureau of Forestry (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, allows protection of areas as wilderness, and directs "harmonious and coordinated management" to provide sustained yields of resources.

Many issues over national forest management and use have focused on the appropriate level and location of timber harvesting. Major conflicts over clearcutting began in the 1960s, and litigation in the early 1970s successfully challenged FS clearcutting in West Virginia and elsewhere. Congress enacted the National Forest Management Act of 1976 (NFMA; P.L. 94-588) to revise timber sale authorities and to elaborate on considerations and requirements in land and resource management plans. This NFMA planning has been widely criticized as expensive, time-consuming, and ineffective for making decisions and informing the public. (See Other Issues, below.)

Wilderness protection also has been a continuing issue for the FS because agency recommendations are pending. Pressure to protect these and other areas contributed to the

Clinton Administration's decision to protect roadless areas not designated as wilderness. (For wilderness issues, see Other Issues, below, and CRS Report RL31447.)

Scope of Issue Brief

Many issues affecting BLM and FS lands are similar, and the missions of the agencies are nearly identical. By law, the BLM and FS lands are to be administered for multiple uses, albeit slightly different uses are specified. 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 — *i.e.*, for providing in perpetuity a high level of resource outputs, without impairing the land's productivity. Further, many issues, programs, and policies affect both agencies. For these reasons, BLM and FS lands often are discussed together, as in this report.

This brief focuses on several issues affecting BLM and FS lands that are of interest to the 108th Congress. While in some cases the issues discussed here are relevant to other federal lands and agencies, this brief does not comprehensively cover issues primarily affecting other federal lands, such as the National Park System (managed by the National Park Service, DOI) or the National Wildlife Refuge System (managed by the Fish and Wildlife Service, DOI). For background on federal land management generally, see CRS Report RL30867. Information on appropriations for the BLM and FS (as well as other agencies) is included in CRS Report RL31306. For information on park and recreation issues, see CRS Issue Brief IB10093. For information on oil and gas leasing in the Arctic National Wildlife Refuge (ANWR), see CRS Issue Brief IB10111. For information on related issues, see the CRS web page at [http://www.crs.gov/].

Wildfire Protection (by Ross W. Gorte)

Background. The 2000 and 2002 fire seasons were, by most standards, among the worst in the past 50 years. Many argue that the threat of severe wildfires has grown, because many forests have unnaturally high fuel loads (e.g., dead trees and dense undergrowth) and an historically unnatural mix of plant species (e.g., selectively logged or containing exotic invaders). Fuel treatments have been proposed to reduce the threats from wildfires, including prescribed burning (setting fires under specific conditions); commercial logging followed with appropriate slash disposal; and other treatments (e.g., precommercial thinning). Proponents of fuel reduction argue that needed treatments often are delayed by environmental studies, administrative appeals, and litigation. However, many project opponents fear that "streamlining" fuel reduction projects could enable timber companies to increase logging on federal lands and that such projects might not receive proper environmental review.

Administrative Actions. In August 2002, the Bush Administration proposed a Healthy Forests Initiative to improve wildfire protection by reducing hazardous fuels. The program would give priority to the "wildland-urban interface," municipal watersheds, and areas affected by insects and diseases. The proposal includes expedited consultations on endangered species and a collaborative process for public involvement, but would eliminate public requests for an administrative review of project proposals, constrain judicial review, and prohibit restraining orders and injunctions. The proposal also includes authorized stewardship (goods-for-services) contracts, essentially allowing the agencies to use timber,

instead of cash, to pay contractors for land management services (e.g., thinning, noxious weed control, and road and trail maintenance).

Because wildfire protection legislation was not enacted in the 107th Congress, the Administration also proposed two changes in Forest Service rules and regulations to facilitate fuel reduction. One is a proposal (67 Fed. Reg. 77038, Dec. 16, 2002) to add two new categories of actions to be excluded from NEPA analysis and documentation: fuel reduction and post-fire rehabilitation activities. These categorical exclusions would not be allowed in wilderness or wilderness study areas, in other "extraordinary circumstances,"or if managers determined that the effects would be significant. Projects could not include herbicide or pesticide use or new permanent road construction, but the exclusions could encompass timber sales if fuel reduction were the primary purpose of the sale.

The second proposal is to revise the administrative appeals process (67 Fed. Reg. 77451, Dec. 18, 2002). Among the many changes is a clarification that actions in emergency situations are to be implemented immediately, without stays of action during the appeal. The proposal expands emergency situations to include those "that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed," while deleting examples of emergency situations. It also would exclude notice and opportunity for the public to comment on or to appeal actions categorically excluded from NEPA, such as the fuel reduction activities discussed above.

These proposed changes must be read in conjunction with other proposed regulatory changes to understand the potential consequences for fuel reduction, public involvement, and environmental impacts. New forest planning regulations were proposed on December 6, 2002 (67 Fed. Reg. 72770)[1], and new categorical exclusions were proposed for small timber harvesting projects on January 8, 2003 (68 Fed. Reg. 1026). The total impact of these proposals, if finalized, seems to be greater discretion for the Forest Service to act without environmental studies and with fewer opportunities for the public to comment on or to administratively appeal those actions.

Legislative Activity. Wildfire protection legislation has been introduced in the 108th Congress. Some measures (e.g., H.R. 387 and H.R. 1621) are substantially the same as 107th Congress bills. Others focus on narrow aspects of fire protection (e.g., firefighting equipment availability) or on protecting private lands (e.g., H.R. 1042). On May 8, the House Committee on Agriculture reported H.R. 1904 — the Healthy Forests Restoration Act of 2003. The bill would enact many of the proposals in the President's Healthy Forests Initiative and also includes provisions on a biomass utilization-fuel reduction grant program, watershed forestry assistance, insect infestation assessment and treatment, and federal payments for private forest reserves. The bill is pending before the House Committee on Resources, although the Resources Committee marked up a committee print quite similar to H.R. 1904 on April 30, 2003, and is expected to discharge the bill for floor consideration.

Congress also continues to address wildfire protection through appropriations. The FY2003 Consolidated Appropriations Resolution (P.L. 108-7) included appropriations for

---

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

wildfire management for FY2003 and supplemental funds for fire fighting actions in FY2002. (For more information, see CRS Report RL31306, *Interior Appropriations for FY2003: Interior and Related Agencies*.) It also contained a section authorizing unlimited stewardship (goods-for-services) contracting for the FS and BLM through 2013. The request for FS and Interior wildfire management for FY2004 is $2.24 billion. This is down $606 million (-21%) from the $2.85 billion enacted in FY2003 (including the $825 million supplemental FY2002 funds).

Numerous bills were introduced late in the 107th Congress to address the wildfire threats on federal lands, focusing on several issues — environmental concerns (e.g., NEPA analysis, endangered species consultation, and large tree retention); public involvement and challenges to decisions (e.g., public participation under NEPA, administrative appeals, and judicial challenges); priorities for action (e.g., the wildland-urban interface and municipal watersheds); and limitations for action (e.g., total acreage treated and areas excluded from possible action). However, none was enacted. (See CRS Report RL31679, *Wildfire Protection: Legislation in the 107th Congress and Issues in the 108th Congress*.)

Energy Resources (by Marc Humphries)

Background. A key, controversial issue is whether to increase access to federal lands for energy and mineral development. The BLM administers the Mineral Leasing Act of 1920 which governs the leasing of *onshore* oil and gas, coal, and several other minerals on the federal lands. A BLM study determined that of the roughly 700 million acres of federal minerals, 1) about 165 million acres have been withdrawn from mineral entry, leasing, and sale, subject to valid existing rights, and 2) mineral development on another 182 million acres is subject to the approval of the surface management agency, and must not be in conflict with land designations and plans.

The U.S. Geological Survey (USGS) estimates that significant oil and gas resources exist below some federal lands now off-limits, particularly in the Rocky Mountain region. The industry contends that entry into these areas is necessary to ensure future domestic oil and gas supplies. Opponents to opening these areas maintain that there are environmental risks, restricted lands are environmentally sensitive or unique, and that the United States could meet its energy needs with increased exploration elsewhere and energy conservation. Coal provides a sizable share of U.S. energy supply and accounts for about half of U.S. electricity needs. Over the past 20 years, the government has emphasized developing clean coal technologies (CCT). Although environmental restrictions have led to rescissions and deferrals for CCT programs over the past 5 years, the Bush Administration has been successful in getting funding for its new Clean Coal Power Initiative (CCPI). The CCPI, modeled after the CCT, focuses on improved performance of coal-fired power generators.

Administrative Actions. The underlying concern for the Administration is how to best increase U.S. domestic oil and gas supplies. Proposals from the National Energy Policy Development (NEPD) Group, established by President Bush and led by Vice President Cheney, recommended that the President direct the Secretary of the Interior to identify and eliminate impediments to oil and gas exploration and development on federal land. on April 14, 2003, the BLM recently announced new management strategies that are intended to remove impediments and streamline the processing of permits to drill for oil and gas leasing. The Administration also is examining land status and reviewing public land withdrawals.

The BLM, USGS, and Department of Energy (DOE) continue to assess the oil and gas reserves and resources on federal lands. The January 2003 *Scientific Inventory of Onshore Federal Lands' Oil and Gas Resources and Reserves and the Extent and Nature of Restrictions or Impediments to their Development*, by several federal agencies, concluded that there were fewer restrictions on access than many have asserted.

The Bush Administration is reviving the CCT program under its Clean Coal Power Initiative (CCPI), and is seeking $2 billion over 10 years (FY2002-FY2011). Congress has supported the Administration by funding the CCPI at $146 million in FY2002 and $150 million in FY2003. The Administration is seeking $130 million in FY2004. Supporters note that coal resources could be more widely used if the environmental drawbacks could be reduced. Opponents contend that new technology will not make coal environmentally acceptable at a competitive cost.

Legislative Activity. The House and Senate passed comprehensive energy legislation in the 107th Congress (*H.R. 4*), but the measure stalled in conference. Passing comprehensive energy legislation is considered a priority in the 108th Congress. The House passed its version of energy legislation (H.R. 6) on April 11, 2003. Federal lands could be affected by provisions that would end the 160-acre limit on coal lease modifications and would lead to demonstration technologies for oil and gas recovery in unproven, unconventional reservoirs on public and private lands. The Senate is considering its version (S. 14) of comprehensive energy legislation. The Senate bill would similarly end the 160-acre limit on coal lease modifications and would require further analyses of resource assessments, land withdrawals, and impediments to oil and gas development on public lands.

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

Background. In its final months, the Clinton Administration issued several new rules affecting the roadless areas of the National Forest System (NFS). New rules were finalized with respect to the roadless areas, NFS roads, and the FS planning process. These rules were intertwined and each part affects the others. On December 6, 2002, the Bush Administration proposed new rules for the planning process. (See Other Issues, below.) Congressional and public attention have focused on roadless areas, and that issue is discussed here. (See CRS Report RL30647.)

Administrative Actions. The Clinton Administration established a new approach to the management of the approximately 58.5 million acres of NFS inventoried roadless areas by providing national guidance limiting roads and timber cutting in those areas. These issues have generated litigation and delay in the past, when decisions were made at the forest unit level. President Clinton's approach would have prohibited road construction in the inventoried roadless areas, with several exceptions, e.g. roads for access to inholdings or for public health and safety purposes. In addition, the cutting of timber in the roadless areas generally would have been prohibited, except for specified purposes, including fire control.

On May 10, 2001, a U.S. district court judge issued a preliminary injunction postponing implementation of the roadless rule, citing its "irreparable harm" to federal forests and their neighbors (Kootenai Tribe of Idaho v. Veneman, 142 F.Supp. 2d 1231 (Id. D.C. 2001)). On December 12, 2002, the Ninth Circuit reversed the decision, noting that the district court had wrongfully concluded the plaintiffs were likely to succeed on the merits and accepted a

minimal showing of irreparable harm, and thus incorrectly issued the injunction. On December 26, 2002, the State of Idaho filed a motion for a rehearing and *en banc* review of the decision, but this was denied.

Following the May, 2001 court injunction, the Bush Administration expanded the debate over protection of roadless areas. In an advance notice of proposed rulemaking (66 Fed. Reg. 35918), the Forest Service asked for public comment on whether and how to change the Clinton Administration's roadless rules. On July 26, 2002, the Administration published a report on the comments received, but no new roadless rules have been proposed.

While considering new rules, the Bush Administration has issued a series of directives constituting interim guidance on roadless area management. The most recent direction (66 Fed. Reg. 65796, Dec. 20, 2001) places most decisions on roadless area management with the Regional Forester, and some with the Chief of the Forest Service, until each forest plan is amended or revised to address roadless area protection. This approach reverses the Clinton rule by returning decisions on roads and timber activities in roadless areas to the individual forest planning level. This is also the position taken in the proposed planning regulations. In addition, the Forest Service has proposed three changes in categorical exclusions to NEPA compliance: (1) allowing decisionmakers to determine whether the presence of extraordinary circumstances necessitates an environmental analysis (66 Fed. Reg. 48412, Sept 20, 2001), (2) adding a categorical exclusion for fuel reduction and fire rehabilitation activities (67 Fed. Reg. 77038, Dec. 16, 2002), and (3) adding a categorical exclusion for small timber sales (68 Fed. Reg. 1026, Jan 8, 2003). If finalized in their current form, they could allow some activities in roadless areas without environmental studies, public notice and comment, or appeals.

Legislative Activity. Congress may consider legislation on forest management in general or on the roadless areas issue in particular. One bill in the 107th Congress would have directed management of inventoried roadless areas in accordance with the final rule promulgated by the Clinton Administration; another would have prohibited road construction and timber harvesting in inventoried roadless areas. No action occurred on either bill.

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

Background. In 1866, in an act that became Revised Statute (R.S.) 2477, Congress granted rights of way across unreserved public lands "for the construction of highways." This grant was repealed in the Federal Land Policy and Management Act of 1976 (FLPMA; P.L. 94-579; 43 U.S.C. 1701, *et seq.*), but existing rights were protected. What constitutes construction of highways and whether a qualifying right of way existed in 1976 can be contentious issues.

For much of the time between 1866 and 1976, as the West was being settled, state law largely governed the validity of highways under R.S. 2477, although federal law provides the parameters of the grants. The laws in many states were clear as to when a public highway was established and few issues remain; in other states, such as Alaska and Utah, the situation is less clear. In such states, depending on existing rights and the definitions of "highway" and "construction," the public might have broad, unrestricted access across (and to) federal lands, including sensitive lands, potential wilderness, or even national forests and parks if the highways were established before the lands were reserved. Thus, the possible existence

of R.S. 2477 rights of way across federal lands can affect the management of those lands and their suitability as wilderness.

In 1988, the Department of the Interior issued a policy on the subject that defined certain terms. At the request of Congress, the Department completed a study of R.S. 2477 issues in June 1993, and in August 1994 proposed regulations to process R.S. 2477 claims. Those regulations met with both congressional support and opposition, and led to a prohibition on using FY1996 funds to promulgate or implement a rule concerning R.S. 2477 rights of way (P.L. 104-134). Section 108 of the FY1997 Interior Appropriations Act (P.L. 104-208) states that final regulations pertaining to R.S. 2477 rights of way cannot take effect unless expressly authorized by an Act of Congress.

In 1997, the Clinton Administration issued a new R.S. 2477 policy that revoked the 1988 policy and changed some of the relevant definitions. However, the Secretary directed the BLM to defer processing R.S. 2477 claims unless there was a "demonstrated, compelling, and immediate need to make such determinations," and the Forest Service has followed suit. The Administration offered a legislative proposal on R.S. 2477 but no bill was introduced.

Administrative Actions. On January 6, 2003 (68 Fed. Reg. 494), the Bureau of Land Management finalized changes to its regulations at 43 CFR Part 1864 under which the agency issues "disclaimers of interest." A disclaimer functions much as a quit-claim deed does and clears title to property or interests in property with respect to possible interests of the United States. The regulations expand those who can apply for a disclaimer to include states, subdivisions of states, and "creations" of states. It is not clear what entities might be included in this last group, but it might include special commissions. It is anticipated that disclaimers will be used to clear title to lands beneath navigable waters and to R.S. 2477 highway rights-of-way. BLM asserts in the explanatory material accompanying the new regulations that they do not trigger the congressional direction that regulations "pertaining to" R.S. 2477 are not effective unless authorized by Congress, because the disclaimer regulations address only the procedures for obtaining disclaimers. Critics note that the BLM itself indicates an awareness that the newly-broadened process will be used for increased R.S. 2477 filings and the critics therefore conclude that the regulations violate the congressional prohibition. Secretary Norton and the State of Utah executed a Memorandum of Understanding on April 9, 2003, under which R.S. 2477 rights of way in the State of Utah will be acknowledged and disclaimed. The MOU repeals the 1997 policy, for purposes of the MOU, but does not clarify what criteria will be used to validate right of way claims.

Legislative Activity. H.R. 1639 would establish a process for resolving R.S. 2477 claims and would define certain terms critical to evaluating the validity of such claims. Congress may also address the issue of the recent disclaimer regulations issued by the Department of the Interior. Language in §108 of the FY1997 Interior Appropriations Act — prohibiting final regulations on R.S. 2477 rights of way without express authorization in an Act of Congress — has been characterized as permanent law, but whether it applies to the disclaimer regulations is controversial.

National Monuments and the Antiquities Act (by Carol Hardy Vincent)

Background. Presidential establishment of national monuments under the Antiquities Act of 1906 (16 U.S.C. §§431 *et seq*.) sometimes has been contentious. The President may

proclaim national monuments on federal lands containing "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest." The President is to reserve "the smallest area compatible with the proper care and management" of the protected objects. Congress has limited the President's authority to proclaim monuments in Wyoming and Alaska.

Administrative Actions. President Clinton's proclamation of 19 new monuments, and enlargement of 3 others, has been controversial. Controversies have focused on whether the President should be required to seek congressional, state, or public input or environmental reviews; the size of the areas and types of resources protected; and restrictions on land uses that may result. To date courts have upheld the monuments.

On April 24, 2002, the Department of the Interior began the process of developing management plans for the new DOI monuments. Some observers interpreted this action as an indication that the Secretary is dropping consideration of significant reductions to monument sizes. Currently, some monuments are concluding the scoping process, formulating management options, and issuing draft management plans. Some issues have involved recreational uses, including off-highway vehicles, and commercial uses, including grazing and energy development.

Other actions of the Bush Administration affect national monuments. First, the Bush Administration is reported to be considering the issue of nonfederal lands within national monuments, and to support the removal of private and state lands from the boundaries of national monuments. Second, Governors Island National Monument was conveyed to the National Trust for Historic Preservation and back to the government. The Monument was "established" again on February 7, 2003 by Proc. 7647 (68 Fed. Reg. 7053, February 11, 2003), although the previous proclamation (from January 19, 2001) was not expressly repealed. The Monument consists of approximately 22 acres and will be managed by the Secretary of the Interior. The rest of Governors Island was conveyed to the Governors Island Preservation and Education Corporation of the State and City of New York. The Monument lands and the rest of the Island were each conveyed for $1, according to the deeds, which emphasized the public benefit aspects of the conveyance. However, the deeds also allow retail development and other uses. Governors Island was required by law to be conveyed, but at fair market value (P.L. 105-33, § 9101). That value had been estimated by some at between $300 million and $500 million, but by others as much less because New York authorities reportedly were opposed to major development.

Legislative Activity. P.L. 108-7, which includes FY2003 funds for Interior and related agencies, bars funds in the law from being used for energy leasing activities within the boundaries of presidentially-created national monuments, as they were on January 21, 2001, except where allowed by the presidential proclamations that created monuments. A similar provision was enacted for FY2002. A 108th Congress bill (H.R. 1629) seeks to exclude private property from the boundaries of the Upper Missouri River Breaks National Monument; a similar bill was introduced last Congress.

In the 107th Congress, several monument-related measures were considered but only one was enacted—to allow hunting in the expanded portion of the Craters of the Moon National Monument (P.L. 107-213). Among those considered was a bill to amend the Antiquities Act of 1906 to make presidential designations of monuments exceeding 50,000 acres ineffective

unless approved by Congress within 2 years. The bill also would have established a process for input into presidential monument designations, and required monument management plans to be developed in accordance with the National Environmental Policy Act of 1969. The Bush Administration testified in support of this bill. Three bills would have governed management, and transferred management, of Governors Island National Monument. Another would have modified the boundaries of the Agua Fria National Monument and governed the monument's expansion and management.

Hardrock Mining and Millsites (by Marc Humphries)

Background. Two recent mineral issues have been controversial. One is the regulations governing hardrock mining operations (43 CFR 3809), changed by the Clinton Administration to enhance the agency's ability to prevent "unnecessary or undue degradation" of public land resources from mining operations and to make mining operators more responsible for reclaiming mined lands. The mining industry asserted that the regulations were unlawful, impeded mining operations, and duplicated existing federal and state laws. The Bush Administration has revised these regulations.

A second issue involves mining millsites. At issue is whether the language in the General Mining Law of 1872 allows only one millsite (of no more than five acres) or multiple millsites per mining claim. The Clinton Administration decided that only one millsite is allowed per claim. Congress, and later the Bush Administration, exempted on-going mining operations from this decision. The Bush Administration is drafting a new opinion. (For information on other mining issues, see CRS Issue Brief IB89130.)

Administrative Actions. After a decade of review, the Clinton Administration revised the hardrock mining regulations, effective on January 20, 2001. The Bush Administration revised these rules, effective December 31, 2001 (66 Fed. Reg. 54834). The final rule eliminates some of the most controversial Clinton changes, primarily the part on unnecessary and undue degradation of BLM lands that permitted BLM to stop mining operations that would cause substantial irreparable harm to significant resources that could not be effectively mitigated. Environmental groups have challenged the new regulations in court claiming they fail to prevent undue land degradation.

On October 30, 2001 (66 Fed. Reg. 54863), BLM also published a proposed rule that proposed many of the changes that were just put in place in the final rule published the same day. According to BLM, this unusual procedure was intended to both achieve some stability by issuing changes in final form, but then also issuing them as proposals in order to gather additional public comments. A decision on this issue is under review.

With respect to millsites, on November 7, 1997, a legal opinion of the Solicitor of the Department of the Interior stated that each mining claim could use no more than five acres for activities associated with mining (i.e., for "millsites"). This opinion affects many modern mining operations, such as heap-leach mines for gold, which typically require large tracks of land beyond that of the mining claim for mining-related purposes, including disposal of waste rock. Critics charged that this opinion was a new interpretation of the Mining Law, inconsistent with agency practice, and an indirect way of reforming the 1872 Mining Law. Supporters assert that it is based both in law and practice, and necessary because the Mining Law is anachronistic and lacks tough environmental protections.

On September 28, 2001, the Department of the Interior instructed the BLM not to apply the millsite opinion to on-going mining operations and simultaneously tasked its Solicitor (under President Bush) to review the 1997 millsite opinion. These actions came as a similar legislative exemption from the Solicitor's 1997 opinion was due to expire. Currently, a new millsite opinion has been drafted, but has not received final approval. DOI is not releasing information regarding its focus, specific contents, or time frame for consideration.

Legislative Activity. The millsite issue and hardrock mining regulations were not addressed in 107th Congress laws and have not been addressed in 108th Congress bills to date.

Other Issues

Several other issues affecting federal lands are under evaluation that could lead to increased legislation or congressional oversight. These include wilderness, grazing management, national forest planning, and federal land acquisition.

Wilderness. The Wilderness Act established the National Wilderness Preservation System in 1964 and directed that only Congress could designate areas as part of the System. From the initial 9 million acres of national forest land designated in 1964, the System has grown to more than 105 million acres of federal land managed by the four federal land management agencies. Wilderness designation is often controversial because wilderness areas usually may not be developed—commercial activities, motorized access, and roads, structures, and facilities generally are prohibited. Wilderness studies are also controversial, because many uses are restricted in the study areas to preserve wilderness characteristics while Congress considers possible designations. Some observers believe that the Clinton rule protecting national forest roadless areas was prompted by congressional inactivity in designating areas which many people believe should be wilderness. Many bills to designate wilderness areas are typically introduced in each Congress, and to date, about a dozen wilderness designation bills have been introduced in the 108th Congress.

Grazing Management. The BLM is considering changes to grazing regulations (43 CFR Part 4100) and policy. Past efforts at grazing reform were highly controversial. On March 3, 2003, the agency issued an advanced notice of proposed rulemaking describing the nature of the proposed regulatory changes, and a notice of intent to prepare an environmental impact statement analyzing the potential impact of the proposed changes and of alternative actions. The agency asserts that regulatory changes are needed to comply with court decisions, increase flexibility of managers and permittees, improve administrative procedures and business practices, and promote conservation. Among the regulatory changes under consideration are: (1) authorizing the agency to establish reserve common allotments, which permittees could use while their normal allotments undergo rest or range improvements; (2) extending a permittee's non-use of a permit from 3 to 5 years, (3) allowing range improvements to be shared by the BLM and permittees, (4) streamlining the administrative appeals process, (5) clarifying who will receive preference for a permit or lease, and (6) making changes related to permitted use. The proposal does not relate to the grazing fee or resource advisory councils. The public comment period on these proposed changes closed on May 2, 2003. The BLM expects to issue a proposed rule in the summer of 2003 and a final rule/EIS in the fall.

The BLM also is considering related grazing policy changes with a goal of providing more flexibility to managers and increasing innovative partnerships. Changes under consideration include voluntary allotment restructuring, conservation easement acquisition, and conservation partnerships.

National Forest Planning. Another issue is land management planning for the national forests. This is largely an administrative issue, with new Forest Service planning regulations promulgated by the Clinton Administration on November 9, 2000, and further new regulations proposed by the Bush Administration on December 6, 2002. The Clinton regulations would have established ecological sustainability as the priority for managing national forests, and were to be implemented over several years. The Bush proposal responded to concerns about the feasibility of the Clinton regulations with revisions seeking to simplify planning and to lead to decisions made closer to the users, but without ecological sustainability as the main priority and with other changes that some assert will reduce public participation in and review of agency decisions.

Federal Land Acquisition. Federal land acquisition is a perennial focus of Congress and the public. The principal source of land acquisition funding for BLM and the Forest Service (and the Park Service and Fish and Wildlife Service as well) is the Land and Water Conservation Fund (LWCF). Under current law, the fund is authorized at $900 million annually, but only the portion of the total that is appropriated is available to the federal agencies. Most of the appropriations are identified for specific units of public land. In addition, legislation has been introduced in the past three Congresses to fully appropriate the authorized level and to make it mandatory spending, removing that discretion from the appropriators. One version of this legislation, known as CARA, passed the House in the 106th Congress, and a slightly different version was reported by the House Resources Committee in the 107th Congress. Action in the 108th Congress seems less likely, however, as the budget surplus has been replaced by a deficit, and as federal spending priorities have changed in the aftermath of 9/11. It is also unclear how these events will affect future funding levels under the current system. For more information, see CRS Report RS21503 and CRS Report RL30444.

LEGISLATION

H.R. 6 (Tauzin)

Omnibus energy legislation. Federal lands could be affected by provisions ending the 160-acre limit on coal lease modifications and leading to demonstration technologies for oil and gas recovery in unproven, unconventional reservoirs on public and private lands. Passed House April 11, 2003; placed on Senate Calendar May 6, 2003.

H.R. 387 (Shadegg)

The Wildfire Prevention and Forest Health Protection Act would authorize Forest Service Regional Foresters to exempt tree-thinning projects from any provision of law, and from administrative appeals and judicial review. Introduced January 27, 2003; referred to Committee on Agriculture and Committee on Resources.

H.R. 504 (Udall, M.)

Helps finance the cleanup of inactive and abandoned mine sites in certain eligible states. The proposal would establish an interest-bearing Abandoned Minerals Mine Reclamation Fund. Its revenues would come from a reclamation fee imposed on producers of hardrock minerals that received a claim or patent under the General Mining Law of 1872. The fee would be a percentage of the net proceeds from the mine. Introduced January 29, 2003; referred to Committee on Resources and Committee on Transportation and Infrastructure.

H.R. 1042 (Udall, M.)

The Forest Restoration and Fire Risk Reduction Act authorizes a cooperative program for wildland fire hazard reduction and forest restoration on federal and other lands, with special procedures for projects meeting the specified conditions. Introduced February 27, 2003; referred to Committee on Agriculture and Committee on Resources.

H.R. 1621 (Miller, G.)

The Federal Lands Hazardous Fuels Reduction Act of 2003 authorizes expedited procedures for fuel reduction projects on federal lands. Introduced April 3, 2003; referred to Committee on Agriculture and Committee on Resources.

H.R. 1629 (Rehberg)

Provides that the Upper Missouri River Breaks National Monument does not include private property within its boundaries. Introduced April 3, 2003; referred to Committee on Resources.

H.R. 1639 (Udall, M.)

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

H.R. 1904 (McInnis)

The Healthy Forests Restoration Act of 2003 authorizes expedited planning and review procedures for fuel reduction projects on federal lands, grants for fuel reduction-biomass utilization, watershed forestry assistance, assessment and treatment of insect infestations, and a federal payments for a private forests reserve system. Introduced May 1, 2003; referred to Committee on Agriculture and Committee on Resources. Reported by Committee on Agriculture on May 8, 2003.

S. 14 (Domenici)

Omnibus energy legislation. Federal lands could be affected by provisions ending the 160-acre limit on coal lease modifications and requiring further analyses of resource assessments, land withdrawals, and impediments to oil and gas development on public lands. Senate floor consideration began May 6, 2003.

S. 44 (Feingold)

Amends the Internal Revenue Code to repeal the percentage depletion allowance for hardrock mines located on land subject to the general mining laws or patented under such laws. Introduced January 7, 2003; referred to Committee on Finance.

FOR ADDITIONAL READING

CRS Report RL31096, *Bush Energy Policy: Overview of Major Proposals and Legislative Action*, by Robert L. Bamberger and Mark E. Holt, coordinators.

CRS Issue Brief IB10080, *Energy Policy: Setting the Stage for the Current Debate*, by Robert L. Bamberger.

CRS Report RS21402, *Federal Lands, "Disclaimers of Interest," and RS2477*, by Pamela Baldwin.

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

CRS Issue Brief IB89130, *Mining on Federal Lands*, by Marc Humphries.

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

CRS Report RS20902, *National Monument Issues*, by Carol Hardy Vincent.

CRS Report RL31427, *Omnibus Energy Legislation: H.R. 4 Side-by-side Comparison*, by Mark Holt and Carol Glover, coordinators.

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

CRS Report RL31679, *Wildfire Protection: Legislation in the 107th Congress and Issues in the 108th Congress*, by Ross W. Gorte.