

CRS Issue Brief for Congress

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Bureau of Land Management (BLM) Lands and National Forests

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

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Bureau of Land Management (BLM) Lands and National Forests

SUMMARY

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

Energy Resources. The Energy Policy Act of 2005 affects energy development on federal lands in a variety of ways. Significant new regulations are expected in response to the law, including changes to the federal oil, gas, and coal leasing programs and application of environmental laws to certain energy-related agency actions.

Wild Horses and Burros. Controversial changes to the Wild Free-Roaming Horses and Burros Act of 1971 gave the agencies authority to sell certain old and unadoptable animals and removed the ban on selling wild horses and burros and their remains for commercial products. BLM has resumed animal sales with provisions to prevent their slaughter. Bills have been introduced to overturn the changes (H.R. 297/S. 576) and to foster adoptions and sales (H.R. 2993/S. 1273).

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

Wildfire Protection. The Healthy Forests Restoration Act, President Bush's Healthy Forests Initiative, and other provisions may help protect communities from wildfires by expediting fuel reduction. Some believe that more effort is needed; others are concerned that current and additional streamlining will increase timber sales and damage the environment. Legislation for research and post-fire rehabilitation of federal lands is being considered. The 109th Congress also has held hearings on fire protection and on litigation over fuel treatments and use of fire retardant.

Other Issues. The Administration and Congress are addressing other issues as well, including grazing management, hardrock mining, FS NEPA categorical exclusions, national forest roadless areas, federal land sales, and R.S. 2477 rights of way.

MOST RECENT DEVELOPMENTS

- The BLM has begun or completed various actions to implement the Energy Policy Act of 2005, including a final rule on fees for mineral document processing, a final EIS on wind energy facilities on BLM lands, and a new EIS on tar sands and oil shale leasing.
- On March 15, 2006, the House Resources Committee held a mark-up on H.R. 4200, to improve research and expedite post-catastrophe forest recovery activities (including timber salvage).
- The Administration has sent to Congress draft legislation to sell national forest system lands, in furtherance of a proposal in the FY2007 budget request for the Forest Service.

BACKGROUND AND ANALYSIS

The Bureau of Land Management (BLM) in the Department of the Interior (DOI) and the Forest Service (FS) in the Department of Agriculture (USDA) manage 454 million acres of land, two-thirds of the land owned by the federal government and one-fifth of the total U.S. land area. The BLM manages 261.5 million acres of land, predominantly in the West. The FS administers 192.5 million acres of federal land, also concentrated in the West.

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

History of the Bureau of Land Management

For the BLM, many of the issues traditionally center on the agency's responsibilities for land disposal, range management (particularly grazing), and minerals development. These three key functions were assumed by the BLM when it was created in 1946, by the merger of the General Land Office (itself created in 1812) and the U.S. Grazing Service (created in 1934). The General Land Office had helped convey land to settlers and issued leases and administered mining claims on the public lands, among other functions. The U.S. Grazing Service had been established to manage the public lands best suited for livestock grazing under the Taylor Grazing Act of 1934 (TGA, 43 U.S.C. §§315, et seq.).

Congress frequently has debated how to manage federal lands, and whether to retain or dispose of the remaining public lands. In 1976, Congress enacted the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. §§1701, et seq.), sometimes called BLM's Organic Act because it consolidated and articulated the agency's responsibilities. Among other provisions, the law establishes a general national policy that the BLM-managed public lands be retained in federal ownership, establishes management of the public lands based on the principles of multiple use and sustained yield, and generally requires that the federal government receive fair market value for the use of public lands and resources. 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; P.L. 94-588) to revise timber sale authorities and to elaborate on considerations and requirements in 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) includes wilderness as a use of national forest lands, and possible national forest wilderness areas have been reviewed under the 1964 Wilderness Act as well as in the national forest planning process. Pressures to protect pending wilderness recommendations and other “roadless” areas persist.

Scope of Issue Brief

Many issues affecting BLM and FS lands are similar, and the missions of the agencies are nearly identical. By law, the BLM and FS lands are to be administered for multiple uses, although slightly different uses are specified for each agency. In practice, the land uses considered by the agencies include recreation, range, timber, minerals, watershed, wildlife and fish, and conservation. BLM and FS lands also are required to be managed for sustained yield — a high level of resource outputs in perpetuity, without impairing the productivity of the lands. Further, many issues, programs, and policies affect both agencies. For these reasons, BLM and FS lands often are discussed together, as in this issue brief.

This brief focuses on several issues affecting BLM and FS lands that are of interest to the 109th Congress, and does not comprehensively cover issues primarily affecting 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, see the CRS web page at [<http://www.crs.gov/>].¹

¹ For brief, general information on natural resource issues, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109th Congress*, by Nicole Carter and Carol Hardy Vincent. Information on FY2006 appropriations for the BLM and FS (and other agencies and programs funded by Interior and Related Agencies appropriations bills) is included in CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, co-ordinated by Carol Hardy Vincent. (continued...)

Energy Resources (by Aaron M. Flynn)

Background. A controversial issue is whether and how to increase access to federal lands for energy and mineral development. A BLM study (December 1, 2000) determined that, of the roughly 700 million acres of federal minerals, (1) about 165 million acres (24%) have been withdrawn from mineral entry, leasing, and sale, subject to valid existing rights, and (2) mineral development on another 182 million acres (26%) is subject to the approval of the surface management agency and must not be in conflict with land designations and plans. In January 2003, several federal agencies issued similar assessments. 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. (For more, 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 is governed primarily by the Mineral Leasing Act of 1920. Leasing on BLM lands goes through a multi-step approval process. If the minerals are located on FS lands, the FS must perform a leasing analysis and approve leasing decisions for specific lands before BLM may lease minerals. The Energy Policy Act of 2005 (P.L. 109-58) made significant changes to the laws governing federal energy resources, including the management of energy development on BLM and FS lands. Specifically, the law amends leasing authorities for oil, gas, coal and unconventional resources, such as geothermal resources. Additional provisions require DOI and USDA to establish utility corridors on federal lands and direct the Secretary of Interior to take additional steps to move forward with oil shale leasing.

Administrative Actions. The Administration has begun to respond to the 2005 Energy Policy Act. For example, BLM is soliciting comments and holding a series of meetings to aid preparation of a report for Congress analyzing agency policy on management of split estates. This report will analyze the rights and responsibilities under existing law of the owner of a mineral lease, the private surface owners, and the federal government. It will also compare the surface owner consent provisions found in other mining laws to those provisions applicable to federal oil and gas. Finally the report will recommend legislative changes necessary to authorize any policy changes the Department wishes to implement.

¹ (...continued)

Hardy Vincent and Susan Boren. For information on park and recreation issues, see CRS Issue Brief IB10145, *National Park Management* coordinated by Carol Hardy Vincent; and CRS Issue Brief IB10141, *Recreation on Federal Lands*, co-coordinated by Kori Calvert and Carol Hardy Vincent. For information on oil and gas leasing in the Arctic National Wildlife Refuge (ANWR), see CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress*, M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin. For information on local compensation for the tax-exempt status of federal lands, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn; and CRS Report RS22004, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*, by Ross W. Gorte.

Additionally, in response to §353 and §354 of the Energy Policy Act of 2005, BLM is seeking public comment on two advanced notices of proposed rulemaking. BLM is contemplating regulations that would provide various incentives for development of natural gas hydrates, both onshore and offshore. They also would provide incentives to companies using underground injection of carbon dioxide to increase production from federal oil and gas leases.

BLM also has recently completed a final programmatic environmental impact statement (EIS) for developing wind energy facilities on BLM lands (71 *Fed. Reg.* 1768-01, Jan. 11, 2006). This document will be used to support land management plan amendments providing for wind energy development the western states. The review was undertaken in compliance with Executive Order 13212 and seeks to comply with congressional directives within the Energy Policy Act of 2005 directing renewable energy development on public lands.

BLM has begun to prepare a programmatic EIS to support a tar sands and oil shale leasing program for research and development purposes (70 *Fed. Reg.* 73791-01, Dec. 13, 2005). This action is required by §369 of the Energy Policy Act of 2005, as is the promulgation of regulations to govern this leasing program. Implementation of a commercial leasing program is also underway.

Additionally, BLM has issued a final rule (70 *Fed. Reg.* 58854, Oct. 7, 2005) governing the fees charged for processing documents associated with mineral development. The proposed rule that formed the basis for this action was promulgated in July 2005. The Energy Policy Act prohibits certain fee changes associated with oil and gas applications for permits to drill and geothermal exploration and drilling permits. The proposed fees that conflict with these new legal requirements were removed from the final rule.

Short of issuing additional regulations, BLM has held meetings and taken a variety of other actions to begin implementation of the Energy Policy Act of 2005, including changes in geothermal leasing (70 *Fed. Reg.* 65933-01, Nov. 1, 2005) and in oil and gas leasing (70 *Fed. Reg.* 50262-01, Aug. 26, 2005). Prior to enactment of the Energy Policy Act, BLM and FS proposed significant changes to the regulations governing the approval of oil and gas leases (70 *Fed. Reg.* 43349, July 27, 2005). The changes included new requirements for development on split estates, a new approval process for multiple wells based on a single environmental review and Master Development Plan, and additional bonding requirements. The proposal would have also encouraged the use of various best management practices aimed at reducing surface, visual, and wildlife impacts. Because of the passage of the 2005 Energy Policy Act, BLM extended the comment period on this proposed rule and may issue a significant revision in the future.

Legislative Activity. On October 7, 2005, the House has passed additional energy policy legislation, the Gasoline for America's Security Act (H.R. 3893). Among other provisions, the bill would require the President to designate federal lands as suitable for refinery construction or expansion and provide an expedited permitting process for refineries sited in the designated area. Additional energy-related legislation has been introduced in response to the Gulf Coast Hurricanes and the ensuing increases in energy prices; various bills (e.g., H.R. 3710, H.R. 4479) would suspend any royalty relief program applicable to oil or natural gas production from federal lands as well as other federal resource production incentives contained in the Energy Policy Act of 2005.

Whether to open the Arctic National Wildlife Refuge (ANWR) to oil and gas development continues to be one of the most contentious issues in the energy debate. Recent efforts to authorize ANWR development through the budget reconciliation process and in the defense appropriations bill were unsuccessful. For more information, see CRS Issue Brief IB10136, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109th Congress*, by M. Lynne Corn. Finally, numerous other bills have been introduced, addressing such issues as geothermal energy access, potash or soda ash royalties, and coal leasing procedures. These bills on specific energy issues are not listed in the “Legislation” section of this report.

Wild Horses and Burros (by Carol Hardy Vincent)

Background. The Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. §§1331, et seq.) seeks to protect wild horses and burros on federal land and places them under the jurisdiction of BLM and the FS. For years, management of wild horses and burros has generated controversy and lawsuits. Controversies include the method of determining the “appropriate management levels” (AMLs) for herd sizes, as the statute requires; whether and how to remove animals from the range to achieve AMLs; alternatives to adoption for reducing animals on the range, particularly fertility control and holding animals in long-term facilities; whether appropriations for managing wild horses and burros are adequate; and the slaughter, or potential for slaughter, of horses. (For background, see CRS Report RS21423, *Wild Horse and Burro Issues*, by Carol Hardy Vincent.)

The 108th Congress enacted changes to wild horse and burro management on federal lands (§142, P.L. 108-447). These changes have intensified controversies. One change directed the agencies to sell, “without limitation,” excess animals (or their remains) that essentially are deemed too old (more than 10 years old) or otherwise unable to be adopted (offered unsuccessfully at least three times). Proceeds are to be used for the BLM wild horse and burro adoption program. A second change removed the ban on wild horses and burros and their remains being sold for processing into commercial products. A third change removed criminal penalties for processing into commercial products the remains of a wild horse or burro, if it is sold under the new authority. Also, the law did not expressly prohibit BLM from slaughtering healthy wild horses and burros, as annual appropriations bills had since FY1988. These changes have been supported as providing a cost-effective way to help the agencies achieve AML, to improve the health of the animals, to protect range resources, and to restore a natural ecological balance on federal lands. They have been opposed as potentially leading to the slaughter of healthy animals.

Administrative Actions. On April 25, 2005, BLM suspended sale and delivery of wild horses and burros, due to concerns about the slaughter of some animals sold under the new authority. On May 19, 2005, the agency resumed sales after revising its bill of sale and pre-sale negotiation procedures to protect sold animals from slaughter. For instance, purchasers now must agree not to knowingly sell or transfer ownership of animals to persons or organizations that intend to resell, trade, or give away animals for processing into commercial products. Sales contracts also now incorporate criminal penalties for anyone who knowingly or willfully falsifies or conceals information. Some horse advocates have questioned whether the new penalties would withstand legal challenge because the law provides for the sale of animals without limitation. Also, according to BLM, purchased animals are classified as private property free of federal protection. There are about 7,000

animals available for sale, with 1,445 having been sold and delivered as of September 20, 2005, according to BLM. The sale price is determined on a case by case basis.

As of February 2005, there were about 31,760 wild horses and burros on the range, with the national maximum AML set at 28,186. BLM has been pursuing a multi-year effort to achieve AML. Some critics assert that the current AMLs are set low in favor of livestock. BLM manages another 25,044 animals in holding facilities, as of November 2005. The cost per animal per year in long-term holding facilities is about \$500, according to BLM. For FY2007, the President has requested continuing funding for management of wild horses and burros at \$36.4 million, with an additional \$0.7 million in fees expected to be collected from adoptions.

Legislative Activity. H.R. 297 and S. 576 seek to overturn the changes to wild horse and burro management enacted during the 108th Congress. H.R. 2993 and S. 1273 aim to foster the sale and adoption of wild horses and burros while establishing further protections. Changes include eliminating the limit of four animals per adopter per year; reducing the minimum adoption fee from \$125 to \$25 per animal; removing the provision that excess, unadoptable animals be destroyed in a humane and cost-effective manner and making them available for sale; imposing a one-year wait period for buyers to obtain title to sold animals; and removing the provision for sale of animals “without limitation.” Some opponents fear that additional sales or adoptions could increase the risk of slaughter.

Wilderness (by Ross W. Gorte and Pamela Baldwin)

Background. The Wilderness Act established the National Wilderness Preservation System in 1964 and directs 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. (See CRS Report RS22025, *Wilderness Laws: Permitted and Prohibited Uses*, by Ross W. Gorte.) Similarly, agency wilderness studies are controversial because many uses also are restricted in the study areas to preserve wilderness characteristics while Congress considers possible designations.

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

One significant issue is when the agencies are to 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 agency’s planning process. For BLM lands, §603 of FLPMA required the agency to review potential wilderness and to not impair the wilderness character

of wilderness study areas (WSAs) “until Congress has determined otherwise.” In 1996, then-Secretary Bruce Babbitt used the BLM authority to inventory its lands and resources (§201 of FLPMA; 43 U.S.C. §1711) to identify an additional 2.6 million acres in Utah as having wilderness qualities. The State of Utah challenged the inventory, and in September 2003, DOI settled the case and issued new wilderness guidance (IM Nos. 2003-274 and 2003-275) prohibiting further reviews and limiting the *nonimpairment* standard to the previously designated WSAs. (See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by Ross W. Gorte and Pamela Baldwin.)

Legislative Activity. Many wilderness recommendations remain pending, including some FS areas and many BLM and Park System areas. As shown in the table below, more than 20 bills to designate wilderness areas in more than a dozen states have been introduced; two (for areas in New Mexico and Puerto Rico) have been enacted.

Table 1. 109th Congress Legislation to Designate Wilderness Areas

Bill No.	Bill Title	State	Most Recent Action
H.R. 233/ S. 128	North California Coastal Wild Heritage Wilderness Act	CA	H. Resource hearings 7/14/05 Senate passed S. 128 on 7/26/05
H.R. 362/ S. 156	Ojito Wilderness Act	NM	S. 156 became P.L. 109-94 on 10/26/05
H.R. 539/ S. 272	Caribbean National Forest Act of 2005	PR	H.R. 539 became P.L. 109-118 on 12/1/05
H.R. 567 & S. 261 ^a	Udall-Eisenhower Arctic Wilderness Act [no official title to Senate bill]	AK ^b	Both introduced 2/2/05
H.R. 851/ S. 152	Wild Sky Wilderness Act of 2005	WA	H.R. 851 introduced 2/16/05 Senate passed S. 152 on 7/26/05
H.R. 1155	Alaska Rainforest Conservation Act of 2005	AK ^c	Introduced 3/8/05
H.R. 1204	Rockies Prosperity Act	^d	Introduced 3/9/05
H.R. 1503	Utah Test and Training Range Protection Act	UT	Enacted 1/6/06 in Subtitle G, Title I of P.L. 109-163
H.R. 1774/ S. 882	America’s Red Rock Wilderness Act of 2005	UT	Both introduced 4/21/05
H.R. 1975/ S. 942	Virginia Ridge and Valley Act of 2005	VA	Both introduced 4/28/2005
H.R. 2514/ H.R. 3603	Central Idaho Economic Development and Recreation Act	ID	H.R. 2514 introduced 5/19/05 H. Resource hearings 10/27/05
H.R. 3193/ S. 1510	Rocky Mountain National Park Wilderness Act	CO	H.R. 3193 introduced 6/30/05 S. 1510 introduced 7/27/05
H.R. 4235/ S. 1971	Browns Canyon Wilderness Act	CO	H.R. 4235 introduced 11/4/05 S. 1971 introduced 11/7/05
H.R. 4587	Colorado Wilderness Act of 2005	CO	Introduced 12/16/05
H.R. 4935	Rocky Mountain National Park Wilderness and Indian Peaks Wilderness Expansion Act	CO	Introduced 3/9/06

^a Bills are not identical, but designate same acreage as wilderness.

^b Affects the Arctic National Wildlife Refuge (ANWR).

^c Affects the Tongass National Forest.

^d Affects lands in ID, MT, OR, WA, and WY; similar to Northern Rockies Ecosystem Protection Act introduced in previous Congresses.

The “Legislation” section of this report includes only bills to substantively amend the Wilderness Act or alter wilderness or WSA management. Bills were introduced in the 106th-108th Congresses to prohibit future BLM wilderness reviews and to place time limits on WSA status. No similar legislation has been introduced in the 109th Congress.

Wildfire Protection (by Ross W. Gorte)

Background. Recent fire seasons have killed firefighters, burned homes, threatened communities, and destroyed trees. More acres burned in the 2005 fire season — 8.7 million acres — than in any year since record-keeping began in 1960. Many assert that the threat of severe wildfires has grown, because many forests have unnaturally high fuel loads (e.g., dense undergrowth and dead trees) and increasing numbers of structures are in and near the forests (the *wildland-urban interface*). Reducing fuels on federal lands has been urged to reduce the threats from fire.

In August 2002, President Bush proposed a Healthy Forests Initiative to improve wildfire protection by expediting projects to reduce hazardous fuels on federal lands. The Healthy Forests Restoration Act of 2003 (P.L. 108-148) included many of the proposals in the President’s initiative and other provisions. Title I authorized a new, alternative process for reducing fuels on FS or BLM lands in many areas; five other titles indirectly relate to fire protection. (See CRS Report RS22024, *Wildfire Protection in the 108th Congress*, by Ross W. Gorte.)

Administrative Actions. The Bush Administration has made several regulatory changes to facilitate fire protection activities, aside from P.L. 108-148. First, two new categories of actions can be excluded from NEPA analysis and documentation: certain fuel reduction and post-fire rehabilitation activities (68 *Fed. Reg.* 33814, June 5, 2003). Second, the administrative review processes were revised (68 *Fed. Reg.* 33582, June 4, 2003, for the FS; 68 *Fed. Reg.* 33794, June 5, 2003, for the BLM) to clarify that some emergency actions may be implemented immediately and others after complying with publication requirements, and to expand emergencies to include those “that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed.” 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 has made other regulatory changes that could affect fuel reduction, public involvement, and environmental impacts. For example, new categorical exclusions for small timber harvesting projects (68 *Fed. Reg.* 44598, July 29, 2003) and new regulations for FS planning (70 *Fed. Reg.* 1023, Jan. 5, 2005) have been completed. The total impact of the regulatory changes is generally greater discretion for FS action without environmental studies and with fewer opportunities for the public to comment on, or to request administrative review of, those actions.

Legislative Activity. The 109th Congress is overseeing wildfire protection efforts. Several hearings have been held by various committees (House Resources, Senate Energy

and Natural Resources, and House Appropriations) on progress in, and various aspects of, wildfire protection. Hearings have addressed the airworthiness of firefighting airtankers and litigation over the use of chemical fire retardant (Forest Service Employees for Environmental Ethics v. U.S. Forest Service, CV 03-165-M-DVM (D. Mt. Sept. 30, 2005)). Other hearings have addressed the litigation over NEPA categorical exclusions (see below) for fuel reduction and post-fire recovery projects.

Bills have been introduced to improve research and expedite action for rehabilitation of areas after catastrophic events. H.R. 4200 and S. 2079 would establish a permanent program to assess significant events affecting forests and allow pre-authorized management activities or use of alternative NEPA arrangements; they would also direct the establishment of appropriate research protocols. H.R. 3973 would establish a three-year pilot program of up to 10 multi-activity projects to rehabilitate lands and resources affected by “uncharacteristic disturbances.” The House Resources Committee held a markup on H.R. 4200 on March 15, 2006.

Congress also has addressed wildfire protection through appropriations. The FY2006 Interior Appropriations Act (P.L. 109-54) included \$2.55 billion for the National Fire Plan.² For FY2007, the Administration has requested \$2.57 billion, an increase of \$23.2 million (1%) from FY2006. The FY2006 appropriations act also required a report on the Biscuit fire (OR) rehabilitation and consideration of the effects of competitive sourcing on wildfire protection. (See CRS Report RL32893, *Interior, Environment, and Related Agencies: FY2006 Appropriations*, coordinated by Carol Hardy Vincent and Susan Boren.) In addition, bills have been introduced to alter firefighter and fire organization compensation and safety practices, and §210 of P.L. 109-58 authorized grants for producing energy from biomass fuels removed from forests to reduce wildfire risks.

Other Issues

Several other federal lands topics are being addressed through legislation or oversight. These include grazing management, hardrock mining, FS NEPA categorical exclusions, FS roadless areas, federal land sales, and R.S. 2477 rights of way.

Grazing Management. (by Carol Hardy Vincent) The BLM had expected to publish new grazing regulations in the *Federal Register* in mid-July, but on August 9, 2005, the agency announced its intent to prepare a supplement to the Final Environmental Impact Statement (FEIS). The agency is developing a supplement for public review and comment. The FEIS, which was issued on June 17, 2005, analyzed the impact of proposed changes to grazing regulations as well as of two alternatives. (See [<http://www.blm.gov/grazing/>].) BLM asserts that regulatory changes are needed to comply with court decisions, increase flexibility of managers and permittees, improve administrative procedures and business practices, and promote conservation. Some of the changes in the FEIS 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

² Funding has risen substantially over the past decade or so. Average spending for FY1994-FY1999 was \$1.07 billion annually.

permits, (5) extend the time to remedy rangeland health problems, and (6) reduce occasions where BLM is required to consult with the public. BLM did not address some controversial issues, such as revising the grazing fee. BLM expects to return to the consideration of related grazing policy changes when the regulatory process is completed. On September 28, 2005, a Senate subcommittee held an oversight hearing on the regulatory changes and other grazing issues.

Legislation has been introduced to compensate livestock operators on federal lands. H.R. 411 seeks to require federal land management agencies to compensate holders of grazing permits when certain actions reduce or eliminate their permitted grazing, and alternative forage is not available. The bill also would authorize grazing permit holders to sublease their allotments under specified conditions. Other legislation provides for buying out grazing permittees generally or in particular areas, with the allotments then permanently closed to grazing. H.R. 3166 provides for payment to federal grazing permittees who voluntarily relinquish their permits, at a rate of \$175 per AUM. The bill also provides for payments to counties in which the relinquished allotments are located, and authorizes permittees to opt for nonuse or reduced use throughout a term. Other examples include H.R. 3701, regarding lands included in Ecosystem Protection Areas that would be created under the legislation, and H.R. 3603, for certain lands in Idaho.

Hardrock Mining. (by Aaron M. Flynn) Reform of the General Mining Act of 1872, the law governing hardrock mining on federal lands, has been proposed in the 109th Congress. The Mining Act authorizes a prospector to locate and claim an area believed to contain a valuable mineral deposit, subject to the payment of certain fees. At such time, mineral development may proceed. Comprehensive legislation to reform the development of these mineral resources, H.R. 3968, has been introduced. Among other provisions, the bill would require a royalty payment based on hardrock mineral production, resolve current disputes regarding the number of acres available for mine-associated mill sites, prohibit patenting — or purchasing — federal lands in most circumstances, and establish new standards for determining which federal lands are available for development.

Significant amendments to the General Mining Act were considered during in budget reconciliation bill, although such provisions were eventually removed. The provisions would have altered the existing discovery requirement to allow fee payments to establish a claimant's right to use and occupy the public lands for mineral development. The proposal would have also repealed the current prohibition on patenting lands encompassed in mining claims. It would have expressly maintained a general requirement that discovery of a valuable mineral deposit precede approval of land patents; however, the provisions would have established several specific circumstances in which title could be purchased without a discovery requirement. Finally, the provisions would have increased the amounts that must be paid to patent lands, setting them at the greater of \$1,000 per acre or fair market value.

Forest Service NEPA Categorical Exclusions. (by Pamela Baldwin) The FS has historically identified certain activities as not having significant environmental impacts, and exempted them from analysis and associated public participation under the National Environmental Policy Act of 1969 (NEPA; P.L. 91-190, 43 U.S.C. §§4321-4347), except in extraordinary circumstances. Various statutes and regulations have expanded categorical exclusions, including those for biomass fuel reduction projects (68 *Fed. Reg.* 33814, June 5, 2003), "small" timber sales (68 *Fed. Reg.* 44598, July 29, 2003), and forest plans (70 *Fed.*

Reg. 1023, Jan. 5, 2005). The agency also has modified its application of extraordinary circumstances (67 *Fed. Reg.* 54622, Aug. 23, 2002). Previously, the rule appeared to automatically preclude an action from being categorically excluded if extraordinary circumstances were present; the new rule gives the responsible official discretion to determine whether extraordinary circumstances warrant NEPA analysis and public involvement in otherwise exempt projects. Several of the regulations were challenged. On July 2, 2005, a U.S. District Court ruled that five regulations violated the Forest Service Decision Making and Appeals Reform Act (§322 of P.L. 102-381; 16 U.S.C. §1612 note) by excluding decisions from the public comment and appeals process and for other reasons (*Earth Island Institute v. Pengilly*, 376 F.Supp. 2d 994 (E.D. Cal. 2005)). The agency initially responded to the ruling by suspending more than 1,500 permits, projects, and contracts. The court issued a clarifying order that allowed many minor activities to go forward as categorical exclusions, now under the name *Earth Island Institute v. Ruthenbeck*.

Roadless Areas of the National Forest System. (by Pamela Baldwin) The Clinton Administration issued several rules affecting roadless areas in the National Forest System (NFS). The principal rule (66 *Fed. Reg.* 3244, Jan. 12, 2001) resulted in a nationwide approach to management that curtailed (but did not eliminate) most roads and timber cutting in roadless areas. National guidance was justified as avoiding the litigation and delays when decisions were made at each national forest. The rule was twice enjoined. The Bush Administration issued a new final rule to replace the Clinton rule and allow governors 18 months to petition the FS for a special rule for roadless areas in all or part of their state (70 *Fed. Reg.* 25654, May 13, 2005). Until such a new regulation in response to a petition is finalized, the FS is to manage roadless areas in accordance with interim directives (69 *Fed. Reg.* 42648, July 16, 2004) that place most decisions with the Regional Forester, and the Chief of the FS, until each forest plan is amended or revised to address roadless area management. This returns decisions on roadless area management to the individual forest plans, basically reversing the Clinton nationwide roadless rule. New FS planning regulations do not address roadless areas, apparently leaving decisions involving them to the project level within each forest, unless a special rule is adopted for a particular state. California, New Mexico, and Oregon have sued to challenge the new roadless area rule. Oregon also petitioned for a rule allowing any state to petition for an expedited restoration of full protections for roadless areas in that state; this petition was denied. Virginia has submitted a petition for a special rule. H.R. 3563 would direct that roadless areas be managed in accordance with the 2001 regulations; S. 2364 would essentially enact the 2001 roadless rule; and S. 1897 would provide stricter protections for roadless areas than the 2001 rule did.

Federal Land Sales. (by Ross W. Gorte and Carol Hardy Vincent) The President's FY2007 budget request includes proposals for federal land sales. For the BLM, the proposal would alter the distribution of proceeds from sales authorized under the Federal Land Transaction Facilitation Act (FLTFA). The proposal also would direct using updated land management plans for determining which lands to sell. Legislation would be needed to effect these changes. For the FS, the Administration has sent to Congress draft legislation to sell national forest lands, as a followup to a proposal in the Forest Service budget request. The proposal contains criteria for determining lands eligible for sale, such as lands that are inefficient or difficult to manage because they are isolated or scattered. The proceeds would be used to pay for a five-year extension of FS payments under the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106-393). That act created an alternative to the traditional FS 25% payments for county roads and schools, because the decline in

timber sales had reduced payments enormously in some areas, but payments under the act expire at the end of FY2006. (See CRS Report RS22004, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*, by Ross W. Gorte.) H.R. 517 and S. 267 would reauthorize the 2000 act for five years, but neither includes FS land sales. Current FS authorities for selling or otherwise disposing of national forest lands are extremely narrow, so legislation would be needed to authorize the President's proposal. Pending legislation pertaining to land sales is not covered in this brief. Such legislation includes proposals to direct disposal of specific sites, offset acquisitions with disposals, and inventory federal property to identify land no longer required to be in federal ownership.

R.S. 2477: Rights of Way Across Public Lands. (by Pamela Baldwin) In 1866, in an act that became Revised Statute (R.S.) 2477, Congress granted rights of way across unreserved public lands "for the construction of highways." This grant was repealed in 1976, but existing rights were protected. What constitutes construction of highways and whether a qualifying right of way existed by the time of repeal in 1976 can be contentious. These issues are important because possible rights of way may affect the management of federal lands, perhaps degrading their wilderness suitability while increasing access for recreation and other uses. Section 108 of the FY1997 Interior appropriations act (P.L. 104-208) states that final regulations "pertaining to" R.S. 2477 rights of way cannot take effect unless expressly authorized by an act of Congress. On January 6, 2003 (68 *Fed. Reg.* 494), the BLM finalized changes to its regulations for issuing "disclaimers of interest," a procedure to help clear title to property or interests in property with respect to possible interests of the United States. This procedure is to be used to acknowledge R.S. 2477 rights of way, and may constitute regulations "pertaining to" R.S. 2477. A recent case concluded that state law plays a significant role in determining the validity of R.S. 2477 highways, but also cast doubt on the use of administrative disclaimers to validate such rights of way. (See *SUWA v. BLM*, 2005 U.S. App. LEXIS 19381 (10th Cir. 2005).) H.R. 3447 in the 109th Congress would establish an administrative process and criteria for resolving R.S. 2477 claims.

LEGISLATION

P.L. 109-58 (H.R. 6 (Barton))

The Energy Policy Act of 2005, among other provisions, amends the Geothermal Steam Act of 1970 and the Mineral Leasing Act, requires the Secretary of the Interior to evaluate the oil and gas leasing process, and shields various energy-related activities on federal lands from review under NEPA. Signed into law August 8, 2005.

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

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

H.R. 411 (Renzi)

The Cattleman's Bill of Rights Act directs compensation for ranchers when federal actions reduce their allowed amount of grazing. Introduced January 26, 2005; referred to Committee on Resources and Committee on Agriculture.

H.R. 517 (Walden)/S. 267 (Craig)

The Secure Rural Schools and Community Self-Determination Reauthorization Act of 2005 modifies and reauthorizes payments under P.L. 106-393 through FY2013. H.R. 517 reported by House Resources Committee June 9, 2005 (H.Rept. 109-117, Part I). Senate Committee on Energy and Natural Resources held hearings on S. 267 March 8, 2005 (S.Hrg. 109-19).

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

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

H.R. 3166 (Grijalva)

The Multiple-Use Conflict Resolution Act compensates livestock operators who voluntarily relinquish grazing permits. Introduced June 30, 2005; referred to three committees.

H.R. 3447 (Udall, M.)

The Highway Claims Resolution Act of 2005 establishes an administrative process and criteria to resolve R.S. 2477 claims. Introduced July 26, 2005; referred to Committee on Resources.

H.R. 3563 (Inslee)

The National Forest Roadless Area Conservation Act directs that inventoried roadless areas of the national forests be managed in accordance with the 2001 regulations. Introduced July 28, 2005; referred to Committee on Agriculture and Committee on Resources.

H.R. 3710 (Markey)

Under certain circumstances, the bill directs the suspension of royalty relief programs for oil and natural gas production from federal lands and authorizes resulting revenues to be used for specified hurricane relief and low income energy assistance programs. Introduced September 8, 2005; referred to four committees.

H.R. 3893 (Barton)

The Gasoline for America's Security Act requires, among other things, the President to designate certain federal lands (possibly including BLM or FS lands) as suitable for refinery construction or expansion; an expedited permitting process would be available for a refinery sited in the designated area. Passed House October 7, 2005; referred to Senate Committee on Energy and Natural Resources October 24, 2005.

H.R. 3968 (Rahall)

The Federal Mineral Development and Land Protection Equity Act of 2005 requires a royalty payment based on hardrock mineral production, resolves current disputes over the number of acres available for mine-associated mill sites, prohibits patenting federal lands in most circumstances, and establishes new standards for determining federal lands available for development. Introduced October 6, 2005; referred to Committee on Resources.

H.R. 3973 (Udall, T.)

The National Forests Rehabilitation and Recovery Act of 2005 establishes a three-year pilot program of up to 10 multi-activity projects requested by local groups to rehabilitate and restore lands and resources affected by “uncharacteristic disturbances.” Introduced October 6, 2005; referred to Committee on Agriculture and Committee on Resources.

H.R. 4200 (Walden)

The Forest Emergency Recovery and Research Act establishes a permanent program to assess significant catastrophic events affecting forests and allowing pre-authorized management activities or projects using alternative NEPA arrangements. Introduced November 2, 2005; referred to three committees. Resources Committee markup held on March 15, 2006.

H.R. 4479 (Higgins)

The emergency Consumer Relief Act of 2005 seeks to reduce energy prices by requiring termination of royalty suspension programs now in place and eliminating various federal resource production incentives in the Energy Policy Act of 2005. Introduced December 8, 2005; referred to six committees.

S. 1897 (Corzine)

The Act to Save America’s Forests provides stricter protection for roadless areas than the 2001 rule did, as part of a larger bill to alter management of federal forestlands. Introduced October 19, 2005; referred to Committee on Energy and Natural Resources.

S. 2079 (Smith, G)

The Forests for Future Generations Act establishes a permanent program to assess significant catastrophic events affecting forests and allowing pre-authorized management activities or projects using EPA alternative arrangements; similar to H.R. 4200. Introduced November 18, 2005; referred to Committee on Energy and Natural Resources.

S. 2364 (Cantwell)

The Roadless Area Conservation Act essentially enacts the 2001 roadless rule; similar in effect (though not in content) to H.R. 3563. Introduced March 2, 2006; referred to Committee on Energy and Natural Resources.

FOR ADDITIONAL READING

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

CRS Issue Brief IB10143, *Energy Policy: Legislative Proposals in the 109th Congress*, by Robert L. Bamberger.

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

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

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

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

CRS Report RL32142, *Highway Rights of Way on Public Lands: R.S. 2477 and Disclaimers of Interest*, by Pamela Baldwin.

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

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

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

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

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

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

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

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