



Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service (FS): Issues in the 111th Congress

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Summary

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

Energy Resources. The Energy Policy Act of 2005 (P.L. 109-58) led to new regulations on federal land leasing for oil and gas, oil shale, geothermal, and renewable energy. The Obama Administration is reviewing some rules and has withdrawn certain oil and gas leases in Utah.

Hardrock Mining. The General Mining Law of 1872 allows prospecting for minerals in open public domain lands. Several bills to reform aspects of the Law have been introduced to require royalties on production and establish a fund to clean up abandoned mines, among other changes.

Wildfire Protection. Various initiatives seek to protect communities from wildfires by expanding fuel reduction, and one related program was established in P.L. 111-11. Cost concerns led to new fire suppression accounts in the FLAME Act (Title V of P.L. 111-88).

Wild Horses and Burros. To reduce program costs and the number of wild horses and burros on the range, the Secretary of the Interior has proposed wild horse preserves and increased fertility controls. Legislation would prohibit the slaughter of healthy wild horses and burros and more.

National Landscape Conservation System. The 111th Congress affirmed BLM's 27 million-acre land protection system by establishing it legislatively (P.L. 111-11). Questions focus on funding and management for these specially protected conservation areas.

Wilderness. P.L. 111-11 designated more than 2 million acres of wilderness, and more wilderness bills have been introduced. Many recommendations for wilderness areas are pending. Questions persist about wilderness review and managing wilderness study areas (WSAs).

National Forest System Roadless Areas. Debates persist about managing roadless areas for different values, and bills have been introduced to protect the areas. Regulations from previous administrations were challenged successfully, leading to potentially conflicting court rulings.

FS NEPA Application. The FS has altered its process for activity review under the National Environmental Policy Act of 1969 (NEPA), and has added activities that can be categorically excluded from reviews. Many of these changes and proposals have been challenged in court.

BLM Land Sales. The Federal Land Transaction Facilitation Act authorizes the sale or exchange of BLM lands and use of the proceeds for certain land acquisitions. The authority was extended to July 25, 2011. H.R. 3339 would make the authorization permanent, while S. 1787 would extend it to 2020.

National Forest Planning. The National Forest Management Act of 1976 requires land and resource management plans for the national forests. Regulations from previous administrations have not been implemented, and the Obama Administration has begun a new rulemaking effort.

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The various uses and management of federal lands administered by the Bureau of Land Management and the Forest Service raise a variety of issues for Congress. Actions discussed in this report include legislation, administrative or regulatory proposals, and litigation and judicial decisions. Issue areas include onshore energy resources, administration of hardrock mining, wildfire protection, management of wild horses and burros, designation of the National Landscape Conservation System, wilderness designation, management of national forest roadless areas, Forest Service implementation of the National Environmental Policy Act (NEPA), BLM land sales, and national forest planning. Many of these issues have been of interest to Congress and the nation for decades.

Background

The Bureau of Land Management (BLM) in the Department of the Interior (DOI) and the Forest Service (FS) in the U.S. Department of Agriculture (USDA) manage 449 million acres of land, more than two-thirds of the land owned by the federal government and one-fifth of the total U.S. land area. The BLM manages 255.8 million acres of land, predominantly in the West. The FS administers 192.8 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. Thus, merging the two agencies often has been proposed.¹ By law, BLM and FS lands are to be administered for multiple uses, although slightly different uses are specified for each agency. In practice, 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. However, each agency also has unique emphasis and functions. For instance, most rangelands are managed by the BLM, and the BLM administers mineral development on all federal lands. Most federal forests are managed by the FS, and the FS has a cooperative program to assist nonfederal forest landowners. Moreover, development of the two agencies has differed, and historically they have focused on different issues. Nonetheless, there are many parallels.

Overview of Responsibilities 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. The BLM assumed these three key functions when it was created in 1946 by the merger of the General Land Office (created in 1812) and the U.S. Grazing Service (created in 1934). The General Land Office had helped convey land to settlers, issued leases, and administered mining claims on the public lands, among other functions. The U.S. Grazing Service had been established to manage the public lands best suited for livestock grazing under the Taylor Grazing Act of 1934 (43 U.S.C. §§315, et seq.).

¹ See CRS Report RL34772, *Proposals to Merge the Forest Service and the Bureau of Land Management: Issues and Approaches*, by (name redacted), and U.S. Government Accountability Office *Federal Land Management: Observations on a Possible Move of the Forest Service into the Department of the Interior*, GAO-09-223, Feb. 2009, available on the GAO website at <http://www.gao.gov/new.items/d09223.pdf>.

Congress frequently has debated how to manage federal lands, and whether to retain or dispose of the remaining public lands or to expand federal land ownership. Congress enacted the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. §§1701, et seq.), sometimes called BLM's Organic Act because it consolidated and articulated the agency's responsibilities. Among other provisions, the law established a general national policy that BLM-managed public lands be retained in federal ownership, established management of the public lands based on the principles of multiple use and sustained yield, and generally required 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.

Overview of Responsibilities 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—including timber, grazing, recreation, wildlife and fish, and water—and directs “harmonious and coordinated management” to provide for multiple uses and sustained yields of the many resources found in the national forests.

Many issues concerning national forest management and use have focused on the appropriate level and location of timber harvesting. In part to address these issues, Congress enacted the National Forest Management Act of 1976 (NFMA; 16 U.S.C. §§1600-1614, et al.) to revise timber sale authorities and to elaborate on considerations and requirements in land and resource management plans.

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

Scope of Report

The missions of the BLM and FS are similar, and many issues, programs, and policies affect both agencies. For these reasons, BLM and FS lands often are discussed together, as in this report. This report focuses on several issues affecting the agencies' lands that appear to be of interest to the 111th Congress, including access to energy resources, administration of hardrock mining, wildfire protection, wild horses and burros management, the National Landscape Conservation System, wilderness designation, protection and use of national forest roadless areas and FS implementation of NEPA. It does not comprehensively cover general issues affecting management of these and other federal lands. For background on federal land management generally, see CRS Report R40225, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by (name redacted). For other information on the BLM, FS, and natural resources issues and agencies generally, see the CRS website at <http://www.crs.gov/>.

Issue Discussion and Analysis

Onshore Energy Resources²

(by (name redacted))

Background

Access to federal lands for energy and mineral development has been a controversial issue. A BLM-coordinated study (issued May 2008) found that 62% of the estimated oil resources and 41% of the estimated natural gas resources on the 279 million acres of federal land inventoried are classified as “inaccessible”—that is, unavailable for drilling and development.³ 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 on current leases or elsewhere.⁴

Development of oil, gas, and coal on BLM and FS lands (and other federal lands) is governed primarily by the Mineral Leasing Act of 1920 (30 U.S.C. §181). Leasing on BLM lands goes through a multi-step approval process. If the minerals are located on FS lands, the FS must perform a leasing analysis and approve leasing decisions for specific lands before the BLM may lease the land for mineral development. The Energy Policy Act of 2005 (EPAct05, P.L. 109-58) made significant changes to the laws governing federal energy resources, including management of energy development on BLM and FS lands.

Geothermal leasing on federal lands is conducted under the authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. §§1001-1028). Much of the nation’s geothermal energy potential is located on federal lands. Increasing geothermal production on federal lands while mitigating environmental impacts from increased production are at issue. The BLM administers more than 400 geothermal leases, with 29 operating geothermal power plants generating an estimated 1,250 megawatts of energy annually (equivalent to a single large nuclear power plant).⁵

Development of renewable energy such as solar and wind are governed by right-of-way authorities under Title V of FLPMA (43 U.S.C. §§1761-1771). Large tracts of land would be needed for new solar and wind energy projects if the goal is to replace or add significant capacity. In addition, new transmission capacity would be needed, increasing the need for new rights-of-way. The extent of some of the environmental impacts of renewable energy production, such as impacts on wildlife and on environmentally sensitive areas, have been controversial.

² This report does not cover energy resources offshore, such as oil and gas development in the Outer Continental Shelf, or the Arctic National Wildlife Refuge (ANWR).

³ U.S. Depts. of the Interior, of Agriculture, and of Energy, *Inventory of Onshore Federal Oil and Natural Gas Resources and Restrictions to Their Development (Phase III)*, May 2008, available on the BLM website at http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/EPCA_III.html.

⁴ For further information, see CRS Report R40806, *Energy Projects on Federal Lands: Leasing and Authorization*, by (name redacted).

⁵ U.S. Dept. of the Interior, “Kempthorne Launches Initiative to Spur Geothermal Energy and Power Generation on Federal Lands,” news release, October 22, 2008.

Administrative Actions

The Bush Administration responded to provisions of EPAct05 with a series of actions.⁶ Under §369, the BLM completed environmental assessments and issued leases for five oil shale research, development, and demonstration (RD&D) projects on federal lands in Colorado and one in Utah. On October 20, 2009, the Obama Administration announced a second round of oil shale RD&D leases. The terms and conditions—much different than those of the first round—include a smaller preference right area (480 acres) and potential commercial lease size (640 acres), higher application fees (\$6,500), and diligent development milestones. Royalty rates would be determined by the Secretary or established in regulation.

For commercial oil shale development, the BLM completed a final programmatic environmental impact statement (PEIS) on September 4, 2008, and published its final rule for a commercial oil shale and tar sands leasing program on November 17, 2008.

In addition, a 2008 BLM report highlighted the progress of a pilot project to improve efficiency of processing oil and gas permits. The report claimed improved interagency communication and a reduction in the time needed to review and process permit applications.⁷

For developing geothermal energy on federal lands, the BLM issued a final rule, effective June 1, 2007.⁸ EPAct05, §§221-236, amended the Geothermal Steam Act to change leasing procedures to offer more competitive leasing and establish a new royalty and rental rate framework, with competitive lease sale requirements, royalty incentives, improved leasing and permitting processes. Based on BLM's final PEIS, the Interior Department published a Record of Decision on December 18, 2008, to amend several resource management plans for increased development of geothermal resources on federal land. As of July 2010, there were 35 geothermal power plants extracting energy resources from federal lands, with a combined capacity of 1,300 MW.⁹

For wind energy facilities on BLM lands, the BLM completed a final PEIS (January 2006)¹⁰ supporting land management plan amendments providing for wind energy development in the western states. On December 19, 2008, BLM issued its updated wind energy development policy. The BLM has authorized 206 rights-of-way to develop wind power on public land. As of July 2010, BLM had approved 29 wind development projects with a combined capacity of 437 MW. Further, on October 6, 2010, Interior Secretary Salazar signed the first lease agreement for offshore commercial wind development (on the Outer Continental Shelf). The lease, with Cape Wind Associates LLC, is for a 130 turbine wind farm that could generate 468 MW.¹¹

⁶ For additional information on BLM implementation of EPAct05, see the agency's website at http://www.blm.gov/wo/st/en/prog/energy/epca_chart.html.

⁷ U.S. Dept. of the Interior, Bureau of Land Management, *Year Two Report: Section 365 of the Energy Policy Act of 2005—Pilot Project to Improve Federal Permit Coordination* (Feb. 2008).

⁸ 72 *Fed. Reg.* 24358 (May 2, 2007).

⁹ These figures, and other figures as of July 2010 in this section, are derived from the BLM Fact Sheet, *Renewable Energy and the BLM*, July, 2010, available on the agency's website at http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy/renewable_references.Par.95879.File.dat/2010%20Renewable%20Energy%20headed.pdf.

¹⁰ 71 *Fed. Reg.* 1768 (Jan. 11, 2006).

¹¹ U.S. Dept. of the Interior, Press Release, *Salazar Approves First "Power Tower" Solar Project on U.S. Public Lands*, October 7, 2010, available on the DOI website at <http://www.doi.gov/news/pressreleases/Salazar-Approves-First-Power-Tower-Solar-Project-on-US-Public-Lands.cfm>.

The BLM is collaborating with DOE to prepare a PEIS to evaluate solar energy development on public lands, among other matters; the comment period for public input ended September 14, 2009. On March 11, 2009, Interior Secretary Ken Salazar issued a Secretarial Order (3285) to make renewable energy a top priority of DOI and to establish a Departmental Task Force on Energy and Climate Change to identify zones on public land suitable for large-scale renewable energy development.¹² The Secretary of the Interior announced 24 solar energy study areas located on 670,000 acres in six western states (Nevada, California, Arizona, Colorado, New Mexico, and Utah). An evaluation of these lands for solar energy development is expected by the end of 2010, according to the BLM.

A “fast-tracking” process is underway to identify the most promising solar projects furthest along the permitting process. As of October 22, 2010, the Secretary of the Interior had approved five solar projects on public lands, four in California and one in Nevada. These projects would employ different technologies. For instance, the Imperial Valley Solar Project, being developed by Tesserra Solar, would use the Suncatcher technology on 6,360 acres. The plans call for construction to begin construction in 2010, with a capacity of 709 MW. Another project with plans to begin construction in 2010 is the Lucerne Valley Solar Project, to be developed by Chevron on 422 acres of public land in San Bernardino County. This project would use photovoltaic solar technology and have a capacity of 45 MW. Both projects will benefit from the American Recovery and Reinvestment Act of 2009 (ARRA) funding. Still a third project, BrightSource Energy’s Ivanpah Solar Electric Generating System, is a 370-MW proposal to be established in San Bernadino County. The project would use “power tower” technology. If construction begins before December 31, 2010, BrightSource could receive \$1.4 billion in Reinvestment Act funding. Additional projects are in the approval process, with more expected before the end of 2010. As of July 2010, there were 188 pending solar applications.

Shortly before the end of the Bush Administration, the BLM recommended an oil and gas lease sale of 241 parcels on about 360,000 acres in Utah. The National Park Service (NPS) and several environmental organizations claimed that the sales were too close to several national parks units and environmentally sensitive areas without adequate analysis of the impact on air quality. The BLM deferred the sale of numerous parcels, and announced its decision to lease 132 parcels on 164,000 acres on December 12, 2008. Several organizations filed a lawsuit against the BLM in U.S. district court to prevent the sale. While the sale took place as scheduled, the BLM agreed to allow the district court judge to review and rule on the suit before the lease sale would be finalized (30 days after the sale). In January 2009, the U.S. District Court for the District of Columbia issued a temporary restraining order halting BLM from finalizing the sale of 77 parcels (on about 110,000 acres) based on a finding of inadequate environmental review of oil and gas development in the area.¹³ On February 4, 2009, Secretary of the Interior Ken Salazar announced that the BLM would not accept the bids on the 77 parcels under the restraining order and would withdraw the leases because of what the Obama Administration considers to have been a rushed sale without adequate environmental review. A follow-up DOI review conducted a parcel-by-parcel assessment to determine which of the 77 parcels should be deferred, leased, or removed from leasing. An Interior Department Review Team concluded that 52 parcels should be deferred

¹² The Secretarial Order and a related agency news release are available on the DOI website at http://www.doi.gov/news/pressreleases/2009_03_11_releaseB.cfm.

¹³ *Southern Utah Wilderness Alliance v. Allred*, No. 08-2187 (RMU)(D. D.C. January 17, 2009).

until specific conditions are met, 17 parcels should be leased, and 8 should be removed from leasing because of other critical resource values established by BLM's Land Use Plan.¹⁴

Legislative Activity

Numerous bills have been introduced to provide a framework and incentives for developing renewable energy. Many of the bills address renewable electricity standards and global climate change issues in general (e.g., H.R. 2454), but several proposals would address permitting for renewable and non-renewable energy projects on federal lands (e.g., S. 523, H.R. 2300, and S. 1462). Among other provisions, the Clean Renewable Energy and Economic Development Act (S. 539) and American Clean Energy Leadership Act of 2009 (S. 1462) would establish renewable energy zones. Under S. 1462, the National Academy of Sciences would conduct a study on the siting, development, and management of public lands available for wind and solar energy development. Also, the study would examine the pros and cons of the current rights-of-way system and a competitive/noncompetitive leasing system for managing the development of wind and solar energy on public lands.

Hardrock Minerals¹⁵

(by (name redacted))

Background

The General Mining Law of 1872 is one of the major statutes directing federal land management policy. The law grants free access to individuals and corporations to prospect for minerals in open public domain lands, and allows them, upon making a discovery, to stake (or "locate") a claim on the deposit. A claim gives the holder the right to develop the minerals and apply for a patent to obtain full title of the land and minerals. A continuing issue is whether this law, largely unchanged since 1872, should be reformed, and if so, how to balance mineral development with competing land uses.¹⁶

The mining industry supports the claim-patent system, which offers the right to enter federal lands and freely prospect for and develop minerals. Critics consider the claim-patent system a giveaway of publicly owned resources because royalty payments are not required and the amounts paid to maintain a claim and to obtain a patent are small. Congress has imposed a moratorium on mining claim patents in the annual Interior appropriations laws since FY1995, but has not restricted the right to stake claims or extract minerals. A BLM study in 2000 estimated that about 165 million acres of lands with federally owned mineral rights¹⁷ (about 24% of all federal mineral acreage) have been withdrawn from mineral entry, leasing, and sale, subject to

¹⁴ Bureau of Land Management, *Final BLM Review of 77 Oil and Gas Lease Parcels Offered in BLM-Utah's December 2008 Lease Sale*, October 7, 2009, http://www.doi.gov/documents/BLM_Utah77LeaseParcelReport.pdf.

¹⁵ This section pertains to solid minerals covered by the General Mining Law of 1872, such as copper, silver, lead, and gold.

¹⁶ For more information on the General Mining Law and recent reform efforts, see CRS Report RL33908, *Mining on Federal Lands: Hardrock Minerals*, by (name redacted).

¹⁷ There are approximately 700 million acres of federal mineral rights, including FS and BLM lands as well as lands administered by the National Park Service, Fish and Wildlife Service, and Department of Defense and federal mineral rights underlying private lands.

valid existing rights. Mineral development on another 182 million acres (26% of all federal mineral acreage) is subject to the approval of the surface management agency¹⁸ and must not be in conflict with land designations and plans.

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

Administrative Actions

Since the late 1990s, administrative efforts have focused on new surface management regulations, with attention centering on mine reclamation efforts. New mining claim location and annual claim maintenance fees were increased in 2005 to \$30 and \$125 per claim, respectively (from \$25 and \$100). It is unclear what course of action, if any, the Obama Administration will pursue regarding the General Mining Law of 1872.

Legislative Activity

Broad-based legislation (H.R. 699) to reform the General Mining Law of 1872 was introduced on January 27, 2009. Among other provisions, this legislation would establish an 8% “net smelter return” (NSR) royalty¹⁹ on hardrock mineral production (e.g., gold, copper, silver) from new mines and mine expansions on public domain lands, and a 4% NSR royalty on existing mines. H.R. 699 would create a Locatable Minerals Fund, which would contain two accounts: the Hardrock Reclamation Account and the Hardrock Community Impact Assistance Account. Both accounts, administered by the Secretary of the Interior, would be used for reclamation and restoration of land and water from past mining activities, and to facilitate public services to those communities affected by mining conducted under the mining law. All revenues from royalties and fees specified in H.R. 699 would be credited to the Locatable Minerals Fund. H.R. 699 would also require a reclamation plan by mineral producers and impose new environmental standards.

The Hardrock Mining and Reclamation Act of 2009 (S. 796) was introduced on April 2, 2009. Like H.R. 699, S. 796 would limit the issuance of patents to federal lands to claimants whose patent applications were filed with the Secretary of the Interior on or before September 30, 1994, and met appropriate statutory requirements by that date. A royalty rate (varying according to the mineral) of not less than 2% and not greater than 5% would be based on the value of production on federal land but would not apply to mining operations already in commercial production or those with an approved plan of operations. Royalty revenues would be deposited into a newly established Hardrock Minerals Reclamation Fund. The fund would be administered by the Secretary of the Interior and used for restoration and reclamation of land and water resources

¹⁸ The BLM administers mineral resources under all federal lands, regardless of which agency has responsibility for administering the surface.

¹⁹ This is similar to a “gross income” royalty as defined in §613(c)(1) of the Internal Revenue Code of 1986.

impacted by past mining in abandoned hardrock mining states (14 western states including Alaska) and on Indian land within those states. An abandoned mine land reclamation fee would be set at between 0.3% and 1.0% of the gross value of production of current mining operations on federal lands, imposed on each mine operator (as defined in the bill), and deposited into the Reclamation Fund. Further, S. 796 would amend FLPMA to include a complete “review of land” not later than three years after enactment. The Secretary would have the authority to withdraw land from entry under the General Mining Law of 1872 based on specified criteria and would revise land use plans as appropriate to allow for a withdrawal from operations under the 1872 Mining Law.

The Locatable Mineral Royalty and Reclamation Act of 2009 (H.R. 3201), introduced on July 14, 2009, also would limit the issuance of patents as under H.R. 699 and S. 796. An annual abandoned locatable mine land fee (\$25/claim) and maintenance (\$125/ claim) would be established as well as a \$35/claim location fee. A royalty rate of 2% of net proceeds of mineral production would be established but would be waived for producers that generate net proceeds of less than \$100,000. The Secretary of the Interior also could waive, suspend, or reduce the royalty. An Abandoned Locatable Mine Reclamation Fund would be created in the Treasury and administered by the Secretary of the Interior for the proposed Abandoned Locatable Minerals Mine Reclamation Program created by the bill. Revenues from the fees and royalties created by the bill would be among those deposited in the reclamation fund.

H.R. 3201 also would establish an Office of Economic Geology (OEG) within DOI, under the supervision of the USGS. The OEG would conduct all policy, planning, and program direction for mineral and energy activities within the USGS. DOI would be required to conduct mineral assessments within the United States and insular areas, identify critical commodities, update mineral resource models, provide a historical analyses of mineral deposits, and update a USGS paper entitled *United States Mineral Resources*. Further, the bill would require the Secretaries of the Interior and Energy to convene a national summit on uranium, report to Congress an assessment of the nation’s uranium resources, and provide policy recommendations for uranium development by the private sector.

In addition, the Abandoned Mine Reclamation Act of 2009 (S. 140) seeks to address cleaning up abandoned hardrock mines throughout the United States by establishing an Abandoned Mine Cleanup Fund and imposing various fees on hardrock mining operations on federal land. A 4% “gross income” royalty would apply to existing hardrock mineral producers on federal land. Under this proposal, the annual hardrock mining maintenance fee would rise to \$300 per claim from the current \$125 per claim and would apply to claims other than oil shale claims and those with ten or fewer claims. Additionally, hardrock miners on federal lands would be required to pay an annual reclamation fee of 0.3% of their gross annual income from mining except for operators making less than \$500,000, among other specified conditions. All funds from the reclamation fee and the royalty would be deposited into the Cleanup Fund.

In the 111th Congress, the House Natural Resources Subcommittee on Energy and Mineral Resources held a hearing on the Mining Law reform bill, H.R. 699, on February 26, 2009. Testimony at the hearing highlighted the environmental and economic impacts of mining and the types of royalty regimes in place for hardrock minerals at the state level. The Senate Energy and Natural Resources Committee held a hearing on S. 796 and S. 140 on July 14, 2009. As in past Congresses, the testimony examined various types of royalty regimes, environmental permitting, abandoned mine cleanup, and withdrawals from entry under the General Mining Law.

Wildfire Protection

(by (name redacted))

Background

Fire seasons seem to have been getting more severe, with more acres burned and presumably more damage to property and resources in the past decade. More area burned in each year of 2004-2007 than in any other years since record-keeping began in 1960. Further, wildfire funding now constitutes nearly half the FS budget and has grown comparably for DOI. Many assert that the threat of severe wildfires and the cost of suppressing fires have grown because many forests have unnaturally high fuel loads (e.g., dense undergrowth and dead trees) and increasing numbers of structures in and near the forests (the *wildland-urban interface*).²⁰

Administrative Actions

Administrative efforts by the FS and DOI have focused on controlling wildfires and on reducing “hazardous fuels” (unnaturally high fuel loads of dense undergrowth, dead trees, etc.) on federal lands to improve fire control effectiveness and to reduce fire control costs and wildfire damages.²¹ Funding for fuel reduction treatments rose from \$117.0 million in FY2000 to \$493.9 million in FY2005. After stabilizing near \$500 million, fuel reduction funding rose to \$619.7 million in FY2008 and to \$791.1 million in FY2009.²² FY2010 funding dropped to \$551.5 million, and the Administration requested \$486.5 million for FY2011. Appropriations for the full 2011 fiscal year have not been enacted as of October 20, 2010. Various changes in the process for selecting and implementing fuel reduction projects have been proposed, enacted, or promulgated in regulation over the past decade, to expedite and reduce the cost of treatments. It is unclear whether changes have had a significant effect on the extent or cost of fuel reduction treatments.

In an effort to contain fire costs and to reduce the need to transfer funds from other programs to fire fighting, Congress and the Obama Administration have taken actions to alter the way funds are provided for wildland fires. The Administration has supported congressional efforts to modify the funding structure for large wildfire suppression activities and proposed a new contingency reserve fund for each agency again in its FY2011 budget request. The fund would be available for suppressing catastrophic wildfires after regular suppression appropriations and FLAME funds (described below) had been depleted and when certain conditions had been met. The Administration sought to establish the reserve funds with appropriations of \$282.0 million for the FS and \$75.0 million for DOI, in addition to funding the FLAME accounts with appropriations of \$291.0 million for the FS and \$96.0 million for DOI. Also, the Obama Administration proposed a significant decrease of \$498.3 million (36%) in suppression appropriations for FY2011—\$402.5 (40%) for the FS and \$95.8 million (25%) for DOI. The proposed decrease was to be partially offset by an increase in preparedness for the FS of \$333.2 million (49%) to return costs that had shifted to suppression funding in recent years.

²⁰ See CRS Report RS21880, *Wildfire Protection in the Wildland-Urban Interface*, by (name redacted).

²¹ See CRS Report R40811, *Wildfire Fuels and Fuel Reduction*, by (name redacted).

²² This FY2009 figure includes \$265.0 million in “stimulus funding” provided in P.L. 111-5, the American Recovery and Reinvestment Act of 2009.

Legislative Activity

For FY2010, the Interior, Environment, and Related Agencies Appropriations Act (P.L. 111-88) provided \$3.37 billion for wildland fire management—fire suppression, preparedness, and other operations (\$2.52 billion for the FS and \$0.86 billion for DOI). This included \$474.0 million for the FLAME Fund (\$413.0 million for the FS and \$61.0 million for DOI), described below. The total is \$383.4 million (10%) less than total FY2009 funding, which came to \$3.76 billion including \$250.0 million in FY2009 emergency funding in P.L. 111-32 and \$515.0 million in the stimulus law, P.L. 111-5.

The FY2010 Interior appropriations act also included the Federal Land Assistance, Management and Enhancement (FLAME) Act in Title V. Because wildfire funding constitutes nearly half the FS budget, and the agencies may use other unobligated funds after wildfire appropriations are exhausted, some Members of Congress have expressed concerns that wildfire control efforts are delaying or preventing other agency activities, including land management and cooperative assistance.²³ FLAME bills (H.R. 1404 and S. 561) had been introduced in the 111th Congress to address this situation. H.R. 1404 passed the House on March 26, 2009, and the Senate Committee on Energy and Natural Resources held hearings on the bills on July 21, 2009. As enacted, the FLAME Act creates a FLAME fund for DOI and a FLAME fund for the FS, with direct appropriations and excess (unneeded) wildfire suppression appropriations. The funds can be used for certain individual fires (those of more than 300 acres or that pose a significant threat) or after regular fire suppression appropriations have been exhausted. The act also requires a cohesive wildfire strategy, as recommended by the Government Accountability Office (GAO).²⁴ Two other provisions of H.R. 1404 and S. 561 were not included in the FLAME Act: a review of all wildfires costing more than \$10.0 million in suppression funds, and regional maps of communities most at risk from wildfire with cost-share grants for education, training, equipment, and implementing community wildfire protection plans and fire-safety programs for such communities.

The Collaborative Forest Landscape Restoration Program was enacted in Title IV of the Omnibus Public Land Management Act of 2009 (P.L. 111-11). The law requires a program to select and fund ecological restoration treatments for priority forest landscapes. It provides a collaborative (diverse, multi-party) process for geographically dispersed, long-term (10-year), large-scale (at least 50,000-acre) strategies to restore forests, reduce wildfire threats, and utilize the available biomass, and criteria for selecting landscapes. The program would require multi-party monitoring and reporting of activities. The law established a separate Treasury fund—the Collaborative Forest Landscape Restoration Fund—to pay up to 50% of the treatment costs on the national forests, authorized at \$40.0 million annually for FY2009-FY2019. The Administration used \$10.0 million of FS fuel treatment (wildfire) appropriations for the program in FY2010, and included \$40.0 million in the FY2011 request for “Integrated Resource Restoration,” a new line within the National Forest System appropriation account.

²³ See CRS Report RL33990, *Federal Funding for Wildfire Control and Management*, by (name redacted).

²⁴ U.S. General Accounting Office (now Government Accountability Office), *Western National Forests: A Cohesive Strategy Is Needed to Address Catastrophic Wildfire Threats*, GAO/RCED-99-65, April 1999, <http://www.gao.gov/archive/1999/rc99065.pdf>; and U.S. Government Accountability Office, *Wildland Fire Management: Important Progress Has Been Made, but Challenges Remain to Completing a Cohesive Strategy*, GAO-05-147, January 2005, <http://www.gao.gov/new.items/d05147.pdf>.

Wild Horses and Burros

(by (name redacted))

Background

The Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. §§1331, et seq.) seeks to protect wild horses and burros on federal land and places them under the jurisdiction of the BLM and FS. For years, management of wild horses and burros has generated controversy and lawsuits. Controversial issues 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; methods—other than adoption—for reducing animals on the range, particularly fertility control and holding animals in long-term facilities; whether appropriations for managing wild horses and burros are adequate; and the slaughter, or potential for slaughter, of horses.²⁵

Adoption has been the primary method of disposal of healthy animals, with 224,560 adopted from FY1972 to FY2009. Under this program, an individual receives title to the animal after one year of demonstrating humane care. The 108th Congress enacted controversial changes to wild horse and burro management on federal lands (P.L. 108-447, §142), primarily to provide for the *sale* of wild horses and burros. Specifically, the first change directed the agencies to sell, “without limitation,” excess animals (or their remains) that essentially are deemed too old (more than 10 years old) or otherwise unable to be adopted (offered unsuccessfully at least three times). Proceeds are to be used for the adoption program. Under the sales program, title to the animal passes immediately from the government to the purchaser. A second change removed the ban on the sale of wild horses and burros or their remains for processing into commercial products. A third change removed criminal penalties for processing into commercial products the remains of a wild horse or burro, if sold under the new authority. These changes have been supported as providing a cost-effective way to help the agencies achieve AMLs, to improve the health of the animals, to protect range resources, and to restore a natural ecological balance on federal lands. They have been opposed as potentially leading to the slaughter of healthy animals. As of August 25, 2010, the BLM had sold more than 4,200 animals since the beginning of the program.

As of February 28, 2010, there were approximately 38,400 wild horses and burros on BLM lands, according to agency estimates. The national AML is 26,582 for all herds, which some critics assert is set low in favor of livestock. There were another 3,620 wild horses and burros on FS lands as of September 30, 2008. Further, it is estimated that another 34,500 additional wild horses and burros were removed from the range and were being held in short- and long-term facilities as of August 2010. The BLM continues to be responsible for these animals.

Administrative Actions

The BLM strategy for managing wild horses and burros has focused on removing animals from the range in an attempt to reach AML, offering the animals for adoption or sale, and caring for the excess animals in long-term holding facilities. This approach has been under examination, due in part to declining interest in adoptions, slower than expected sales, and the substantial cost of holding increasing numbers of animals in facilities. BLM estimated that during FY2010, 11,500

²⁵ For more information, see CRS Report RL34690, *Wild Horses and Burros: Issues and Proposals*, by (name redacted).

animals would be removed from the range, and 3,595 would be adopted. Further, the agency expected to administer fertility control treatments to 750 mares. From FY2004 to FY2009, a total of 2,396 mares received these treatments.

Calling the current BLM wild horse and burro program “unsustainable,” on October 7, 2009, the Secretary of the Interior announced proposals aimed at reducing wild horse and burro populations, developing new options for animals removed from the range, and reducing the costs of wild horse and burro management. The Secretary called for the establishment of a set of wild horse preserves throughout the United States, particularly on the grasslands of the Midwest and East. The wild horses in these preserves would be non-producing. Land for the preserves would be acquired by BLM or “partners.” Proposals to reduce population growth included enhancing use of the fertility control drug PZP, and increasing the proportion of males to females in herds to reduce the number of foals born yearly. The Administration has indicated that it is not planning to use euthanasia to put down healthy horses, or to sell older horses without limitation, as these authorities have been controversial.

BLM has taken several subsequent actions in an effort to improve management of wild horses and burros. On June 3, 2010, the agency issued a draft strategy document to implement the Secretary’s initiative and in response to congressional interest in BLM development of a long-term plan and policy for managing wild horses and burros. The document, containing draft goals, objectives, and actions, was available for public comment through September 3, 2010. BLM expected to consider this public input in preparing the strategy to submit to Congress for consideration of authorities and appropriations needed to accomplish it.²⁶

On July 14, 2010, BLM announced the issuance of a new policy handbook on wild horse and burro management. The handbook sets out the authorities, objectives, policies, and procedures that govern management of wild horses and burros. One goal of the handbook is to ensure that the factors considered in setting AMLs are consistent across all herds.²⁷

BLM has asked the National Academy of Sciences/National Research Council (NAS/NRC) to conduct an independent review of its wild horse and burro program, according to an August 27, 2010 agency announcement. The purpose of the review is to ensure that the agency is using the best science in managing wild horses and burros. The review is expected to address population estimate methods, annual herd growth rates, and population control methods, among other issues. Many of the topics of the current review were addressed by the NAS/NRC in reports 20-30 years ago. BLM estimates that the study will begin in 2011, cost \$1.5 million, and take two years to complete. BLM expects to ask the NAS/NRC for recommendations stemming from the study.²⁸

Out of concern that thousands of excess horses and burros could be slaughtered, a private animal activist purchased a ranch in Nevada to serve as a sanctuary for these animals. A proposal from the proponent, to care for thousands of animals currently in BLM holding facilities, among

²⁶ Information on the development of the strategy, and the draft strategy itself, are available on the BLM website at <https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=14350>.

²⁷ The handbook is available on the BLM website at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.11148.File.dat/H-4700-1.pdf.

²⁸ See the BLM’s News Release, *BLM Proposes National Academy of Sciences Study*, August 27, 2010, on the agency’s website at http://www.blm.gov/wo/st/en/info/newsroom/2010/august/NR_8_27_2010.html.

others, is currently under review by BLM.²⁹ BLM had expressed doubt about an earlier proposal from the proponent, based on that proposal's expected costs and a lack of authority to allow the animals to graze on the proposed public lands in Nevada.³⁰

Legislative Activity

Legislation to amend the 1971 Act—H.R. 1018—passed the House on July 17, 2009, and was referred to a Senate committee on July 20, 2009. A companion bill, S. 1579, was introduced in the Senate and referred to committee on August 5, 2009. The bills seek to prohibit the slaughter³¹ of wild horses and burros, unless the animal is terminally ill or fatally injured, and to remove agency authority to sell excess wild horses and burros. They would limit the removal of wild horses and burros from the range to certain circumstances: (1) the immediate health or safety of the animals is threatened; (2) the health and well being of native plants or wildlife is threatened; or (3) the Secretary “has exhausted all practicable options” of maintaining the animals on the range, has determined that there is an “adoption demand” for the animals, and can “ensure humane treatment and care” through specified requirements.

Other provisions of the bills are intended to expand the area available for wild horses and burros. To the extent practicable, the acreage should not be less than the acreage where the animals roamed in 1971—51.3 million acres; currently, wild horses and burros roam on 31.9 million acres. The bills seek to facilitate the establishment of wild horse and burro sanctuaries on public lands, and identify new rangelands for wild horses and burros, including on private lands. They would require an assessment of the effects of creating new ranges, sanctuaries, or exclusive use areas for wild horses and burros, including on range health, water quality, and threatened and endangered species. Still other provisions aim to improve the methods for estimating animals on the range and determining AMLs; enhance implementation of fertility control; and promote wild horse and burro adoptions.³² Further, the bills would require annual reports to the House and Senate authorizing committees³² with information on animal populations, AMLs, acres of BLM land for wild horses and burros, sanctuaries (or exclusive use areas), and fertility control, among other topics.

The level of funding that would be sufficient to care for wild horses and burros, achieve AML, and reduce long-term budgetary needs has been a matter of debate. A particular concern has been the cost of holding animals in facilities, partially in light of declining rates of adoption. The BLM estimated that the cost of holding animals in all facilities in FY2010 would exceed \$38 million, which is more than half of its FY2010 appropriation for wild horse and burro management. The agency also estimated that in FY2011, approximately 45,000 horses will be in holding facilities and the cost of their care will be about \$48 million.

²⁹ The proposal is on the BLM website at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs.Par.76646.File.dat/SAM_pospectus.pdf. Further, for additional information on the proposal, see the website of its proponent at <http://www.madeleinepickens.com>.

³⁰ The March 16, 2009 statement on the earlier proposal is available on the BLM website at http://www.blm.gov/wo/st/en/info/newsroom/2009/march/blm_statement_regarding.html.

³¹ For information on horse slaughter legislation generally, see CRS Report RS21842, *Horse Slaughter Prevention Bills and Issues*, by (name redacted).

³² The committees are the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources.

The appropriation for wild horse and burro management for FY2010 was \$64.0 million, the highest level to date. This was a \$23.4 million (58%) increase over the FY2009 level of \$40.6 million. The increase was intended to help BLM achieve AMLs by 2013, cover increased costs of gathering and holding animals, expand adoptions and sales through new management policies, and enhance fertility control treatments, among other activities. BLM estimated that the cost of wild horse and burro management will be approximately \$85 million in FY2012 under current practices. Further, the FY2010 Interior appropriations law prohibited funds from being used for the slaughter of healthy, unadopted wild horses and burros under BLM management, or for the sale of wild horses and burros that results in their slaughter for processing into commercial products.

For FY2011, the Obama Administration is seeking \$75.7 million for BLM wild horse and burro management, an \$11.7 million (18%) increase over FY2010. The Administration seeks this increase in part to implement Secretary Salazar's proposals for wild horse and burro management, including increased fertility control treatments. The Administration requested an additional \$42.0 million to acquire lands for a wild horse preserve, as proposed by the Secretary. Appropriations for the 2011 fiscal year have not been enacted as of October 20, 2010.

In October 2008, the Government Accountability Office (GAO) released a report on BLM management of wild horses and burros.³³ GAO examined a number of issues including the BLM's progress towards setting and meeting AML; use of adoptions, sales, and holding facilities for managing wild horses and burros off the range; controls to ensure humane treatment of animals; and challenges in program management. Among other findings, GAO determined that if the costs of holding animals in facilities are not controlled, they will overwhelm the program. GAO also concluded that the BLM's options for dealing with unadoptable animals are limited, and that because the BLM is not destroying animals or selling them without limitation, it is not in compliance with 1971 Act. Among its recommendations for executive action, GAO recommended that the Secretary of the Interior direct the BLM to discuss with Congress and other interests how best to comply with the 1971 Act or to amend it so that the BLM would be able to comply.³⁴

National Landscape Conservation System

(by (name redacted))

Background

The BLM created the National Landscape Conservation System (NLCS) in 2000 to focus management and public attention on its specially protected conservation areas. According to the BLM, the mission of the system is to conserve, protect, and restore for present and future generations the nationally significant landscapes that have been recognized for their outstanding archaeological, geological, cultural, ecological, wilderness, recreation, and scientific values.³⁵ The

³³ U.S. Government Accountability Office, *Bureau of Land Management: Effective Long-Term Options Needed to Manage Unadoptable Wild Horses*, GAO-09-77, October 2008, at <http://www.gao.gov/new.items/d0977.pdf>.

³⁴ According to GAO, BLM has implemented all of its recommendations. See the GAO website at <http://www.gao.gov/products/GAO-09-77#recommendations>. Further, in a July 14, 2010, News Release, the BLM stated that it had completed the corrective actions recommended by the GAO.

³⁵ U.S. Dept. of the Interior, Bureau of Land Management, *Budget Justifications and Performance Information, Fiscal* (continued...)

system consists today of about 27 million acres of land, with 886 federally recognized units. These units include 16 national monuments,³⁶ 16 national conservation areas, 221 wilderness areas, and 545 wilderness study areas as well as thousands of miles of national historic and national scenic trails and wild and scenic rivers. The 111th Congress established the system legislatively (in P.L. 111-11). A current issue is the adequacy of funds for the system, although appropriations have increased over the past few years. For instance, appropriations have increased from \$52.1 million in FY2008, to \$66.7 million in FY2009, to \$74.6 million for FY2010.

Administrative Actions

Over the past several years, the BLM has given priority to developing new or updated land management plans for areas within the NLCS. Currently, many of these plans are completed, and the focus is on implementing them. The Obama Administration requested \$75.0 million in appropriations for the NLCS for FY2011, a slight increase (\$0.4 million) over FY2010. Appropriations for the 2011 fiscal year have not been enacted as of October 20, 2010.

In managing the NLCS lands, BLM has identified four priorities: (1) conservation, protection, and restoration; (2) communities and partnerships; (3) recreation, education, and visitor services; and (4) science.³⁷ With regard to the fourth priority, BLM asserts that NLCS lands offer unique opportunities for students and scientists to conduct research in scientific fields including geology, paleontology, biology, archaeology, history, and social science. Science on NLCS lands is guided by a 2007 Science Strategy that sets out actions to promote science on NLCS lands, implement a standard for permitting and reporting scientific research, and integrate scientific findings into management decisions, among other actions.

The Administration is undertaking a year-long celebration of the 10th anniversary of the (administrative) establishment of the NLCS with events across the country, including an NLCS science symposium. The events seek to promote the NLCS and set goals for the next decade.

Legislative Activity

The Omnibus Public Land Management Act of 2009 (P.L. 111-11) contained provisions that established the NLCS legislatively. These provisions sought to “conserve, protect, and restore nationally significant landscapes” that have outstanding values “for the benefit of current and future generations.” The George W. Bush Administration had testified in favor of establishing the NLCS legislatively. For example, at a hearing in the 110th Congress on NLCS legislation, the then-Acting Director of the BLM testified that DOI supported the bill as a way to provide legislative support and direction to the BLM and to formalize and strengthen its conservation system within the context of the agency’s multiple-use mission.³⁸

(...continued)

Year 2011, p. IV-235.

³⁶ Nearly all of the monuments were established presidentially under the authority in the Antiquities Act of 1906. For a discussion of this authority and related issues, see CRS Report R41330, *National Monuments and the Antiquities Act*, by (name redacted) and (name redacted).

³⁷ *Ibid.*

³⁸ Mr. Jim Hughes, Acting Director, Bureau of Land Management, *Hearing to Receive Testimony on Current Legislation*, U.S. Senate Energy and Natural Resources Subcommittee on Public Lands and Forests (May 3, 2007).

There had been concern over whether establishing the NLCS legislatively would affect how the areas in the system were managed. One concern was that lands in the system might be given a higher emphasis on conservation with resulting restrictions on land uses, such as energy development; livestock grazing; or hunting, fishing, and trapping. Another was that it could have the effect of establishing new, standardized requirements for disparate areas in the system.³⁹ The intent appeared to be not to alter the way the areas are currently managed. For example, when introducing a similar measure (S. 1139) in the 110th Congress, Senator Bingaman expressed that “[t]he bill does not create any new management authority and does not change the authorities for any of the previously designated areas within the system.”⁴⁰

The law included provisions intended to address these concerns over how areas in the NLCS were to be managed. The law stated that it does not enhance, diminish, or modify any law, proclamation, or related regulations under which components of the system were established or are managed. Other provisions stated that the establishment of the NLCS is not to be construed as (1) affecting state authority to manage fish and wildlife, including the regulation of hunting, fishing, trapping, and recreational shooting on BLM land, and (2) limiting access for hunting, fishing, trapping, or recreational shooting.

P.L. 111-11 also made several federal land designations and added them to the NLCS. Specifically, the law established a total of 1.2 million acres of new BLM wilderness areas, national monuments, and national conservation areas, and designated additional wild and scenic rivers segments and national scenic trails. Other pending bills would make additional federal land designations (e.g., wilderness and national conservation area) and add the BLM areas to the NLCS.

Questions about the adequacy of funds for the NLCS have been recurring. Some have centered on whether recent funding for management and law enforcement have been sufficient to address vandalism and other damage to cultural resources in the system. Whether BLM is sufficiently safeguarding NLCS lands from damage has been raised. Some development advocates question the need for the system, given the extent of other lands for conservation and recreation outside BLM, such as the National Park System managed by the National Park Service (NPS), and given the limitations on some NLCS lands on commercial uses of the land. Some conservation advocates contend that the lands in the NLCS should be managed by another federal agency with more of a focus on conservation and recreation, such as the NPS or the Fish and Wildlife Service, citing BLM’s historical focus on extractive land uses.

Wilderness

(by (name redacted))

Background

The 1964 Wilderness Act (16 U.S. C. §§1131-1136) established the National Wilderness Preservation System and directed that only Congress can designate federal lands as part of the national system. Designations often are controversial because commercial activities, motorized

³⁹ Mr. Orie Williams, Chief Executive Officer, Doyon Limited, *Legislative Hearing on H.R. 2016*, U.S. House Natural Resources Subcommittee on National Parks, Forests, and Public Lands (June 7, 2007).

⁴⁰ Senator Jeff Bingaman, Remarks in the Senate on S. 1139, April 18, 2007, *Congressional Record*, p. S. 4679.

access, and roads, structures, and facilities generally are restricted in wilderness areas.⁴¹ Similarly, agency wilderness studies can be controversial, first because uses are restricted while the study is conducted and while Congress considers possible designations, and second, because the study recommendations and Congress's decision may permanently determine the future management of the areas.

Some observers believe that a nationwide Clinton Administration rule protecting national forest roadless areas (see below) was prompted by a belief that Congress had lagged in designating areas as wilderness. Others assert that the Bush Administration—in promulgating new guidance to preclude additional, formal BLM wilderness study areas and in replacing the nationwide protections of the Clinton Administration with a state-petition rule—was 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. The Obama Administration has not issued any general rulings on wilderness and roadless area protection.

One significant issue is when (and whether) the agencies must review the wilderness potential of their lands. The Wilderness Act directed the review of administratively designated national forest primitive areas and of National Park System and National Wildlife Refuge System lands. “Release language” in statutes designating national forest wilderness areas and FS planning regulations (36 C.F.R. § 219.7(a)(5)(ii)) provide for periodic review of potential national forest wilderness areas in the FS planning process. For BLM lands, § 603 of FLPMA requires the agency to review potential wilderness, to present recommendations to the President, and to not impair the wilderness character of wilderness study areas (WSAs) “until Congress has determined otherwise.” In 1996, then-DOI Secretary Bruce Babbitt used the general BLM authority to inventory lands and resources (FLPMA § 201; 43 U.S.C. §1711) to identify an additional 2.6 million acres in Utah as having wilderness qualities. The State of Utah challenged the inventory as violating the review required by § 603, and in September 2003, DOI settled the case and issued new wilderness guidance (IM Nos. 2003-274 and 2003-275) prohibiting further reviews and limiting the “non-impairment” standard (i.e., protecting wilderness characteristics of the areas) to previously designated § 603 WSAs.⁴²

Legislative Activity

Information on 111th Congress bills to designate wilderness areas (as of October 20, 2010) is contained in **Table 1**. The Omnibus Public Land Management Act of 2009, P.L. 111-11, was enacted on March 30, 2009. It included wilderness designations totaling 2,050,964 acres, as well as numerous land, water, and other provisions. Title I included subtitles designating wilderness areas in various locales, some of which had already been introduced in wilderness bills in the 111th Congress (as shown), and Title II included another such subtitle. The wilderness subtitles of P.L. 111-11 are as follows:

- Subtitle A, Wild Monongahela (WV) Wilderness (H.R. 1109, Wild Monongahela Act: A Legacy for West Virginia's Special Places)
- Subtitle B, Virginia Ridge and Valley Wilderness

⁴¹ See CRS Report RL33827, *Wilderness Laws: Permitted and Prohibited Uses*, by (name redacted).

⁴² See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by (name redacted) and (name redacted).

- Subtitle C, Mt. Hood Wilderness, Oregon
- Subtitle D, Copper Salmon Wilderness, Oregon
- Subtitle E, Cascade-Siskiyou National Monument, Oregon
- Subtitle F, Owyhee (ID) Public Land Management
- Subtitle G, Sabinoso Wilderness, New Mexico (H.R. 921, Sabinoso Wilderness Act of 2009)
- Subtitle H, Pictured Rocks National Lakeshore (MI) Wilderness (S. 109, Beaver Basin Wilderness Act)
- Subtitle I, Oregon Badlands Wilderness
- Subtitle J, Spring Basin Wilderness, Oregon
- Subtitle K, Eastern Sierra and Northern San Gabriel Wilderness, California
- Subtitle L, Riverside County Wilderness, California (H.R. 369, California Desert and Mountain Heritage Act of 2009)
- Subtitle M, Sequoia and Kings Canyon Wilderness, California
- Subtitle N, Rocky Mountain National Park Wilderness, Colorado (H.R. 419/S. 190, Rocky Mountain National Park Wilderness and Indian Peaks Wilderness Expansion Act)
- Subtitle O, Washington County, Utah
- Title II, Subtitle E, Dominguez-Escalante (CO) National Conservation Area (H.R. 170/S. 183, Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness Area Act)

Legislation to broadly modify WSA non-impairment protection under § 603 of FLPMA was offered in earlier Congresses (106th, 107th, and 108th), but was not enacted and has not been introduced in the 111th Congress. Some bills in the 111th Congress would release specific areas while designating other areas as wilderness; this area-specific release of WSA protection is not shown in **Table 1**. The only pending bill to amend the Wilderness Act, H.R. 2809, would establish a right for qualified recreation organizations to cross wilderness areas without restrictions on numbers of users in a group.

Table 1. Wilderness Legislation in the 111th Congress

Bill Title	Acreege^a	State	Bill No.	Most Recent Action
Alpine Lakes Wilderness Additions and Pratt and Middle Fork Snoqualmie Rivers Protection Act	22,173	WA	H.R. 1769/ S. 721	H.R. 1769 passed House 3/18/10 S. 721 reported 3/2/10
America's Red Rock Wilderness Act of 2009	9,409,840	UT	H.R. 1925/ S. 799	H.R. 1925 hearing held 10/1/09 S. 799 introduced 4/2/09
Beauty Mountain and Agua Tibia Wilderness Act of 2009	21,431	CA	H.R. 4304	Introduced 12/14/09
Beaver Basin Wilderness Act	11,740	MI	S. 109	Enacted as Pictured Rocks National Lakeshore Wilderness in P.L. 111-11, 3/30/09

Bill Title	Acreage^a	State	Bill No.	Most Recent Action
Big Sur Forest Service Management Unit Act of 2009	2,098 ^b	CA	H.R. 4040	Introduced 11/6/09
California Desert and Mountain Heritage Act of 2009	146,824 ^c	CA	H.R. 369	Enacted as Riverside County Wilderness in P.L. 111-11, 3/30/09
California Desert Protection Act of 2010	346,108	CA	S. 2921	Hearing held 5/20/10
Cathedral Rock and Horse Heaven Wilderness Act of 2010	16,477	OR	S. 2963	Hearing held 4/21/10
Central Idaho Economic Development and Recreation Act	332,928	ID	H.R. 5205/ S. 3294	H.R. 5205 introduced 5/4/10 S. 3294 hearing held 6/16/10
Central Idaho National Forest and Public Land Management Act	318,765	ID	H.R. 192	Introduced 1/6/09
Colorado Wilderness Act of 2009	813,612 ^d	CO	H.R. 4289	Hearing held 3/11/10
Devil's Staircase Wilderness Act of 2009	30,520/ 29,650	OR	H.R. 2888/ S. 1272	H.R. 2888 reported 11/16/09 S. 1272 reported 8/5/10
Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness Area Act	66,280	CO	H.R. 170/ S. 183	Enacted in P.L. 111-11, 3/30/09
Eagle and Summit County Wilderness Preservation Act	81,790	CO	H.R. 6280	Introduced 9/29/10
Forest Jobs and Recreation Act of 2009	669,060	MT	S. 1470	Hearing held 12/17/09
Manzano Mountain Wilderness, Cibola NF (no short title)	896	NM	H.R. 5388	Reported 9/16/10
Monongahela Conservation Legacy Act of 2010	6,042	WV	H.R. 5965/ S. 3863	H.R. 5965 hearing held 9/16/10 S. 3863 introduced 9/28/10
National Park Service Authorities and Corrections Act of 2009	18,460	CA	H.R. 3804, §304	Senate committee reported 8/5/10
Northern Rockies Ecosystem Protection Act	24,034,575	e	H.R. 980	Hearing held 5/5/09
Omnibus Public Land Management Act of 2009	2,050,964 ^f	g	H.R. 146/ S. 22	H.R. 146 enacted as P.L. 111-11, 3/30/09
Organ Mountains-Desert Peaks Wilderness Act	241,400 ^h	NM	S. 1689	Reported 9/27/10
Pinnacles National Park Act	2,905	CA	H.R. 3444/ S. 3744	H.R. 3444 hearing held 11/17/09 S. 3744 hearing held 9/29/10
Rio Grande del Norte National Conservation Area Establishment Act	21,420	NM	H.R. 5334/ S. 874	H.R. 5334 introduced 5/18/10 S. 874 reported 3/2/10
Rocky Mountain National Park Wilderness and Indian Peaks Wilderness Expansion Act	253,534	CO	H.R. 419/ S. 190	Enacted as Rocky Mountain National Park Wilderness in P.L. 111-11, 3/30/09
Sabinoso Wilderness Act of 2009	16,030	NM	H.R. 921	Enacted in P.L. 111-11, 3/30/09
San Juan Mountains Wilderness Act of 2010	33,383	CO	H.R. 3914/ S. 2762	H.R. 3914 reported 9/16/10 S. 2762 hearing held 4/28/10

Bill Title	Acreage^a	State	Bill No.	Most Recent Action
Sleeping Bear Dunes National Lakeshore Conservation and Recreation Act	32,557	MI	H.R. 4558/ S. 2976	H.R. 4558 introduced 2/2/10 S. 2976 hearing held 5/19/10
Tennessee Wilderness Act of 2010	19,556	TN	S. 3470	Introduced 6/9/10
Tony Dean Cheyenne River Valley Conservation Act of 2010	48,025	SD	S. 3310	Hearing held 6/16/10
Tumacacori Highlands Wilderness Act	83,300	AZ	H.R. 6155	Introduced 9/16/10
Udall-Eisenhower Arctic Wilderness Act (H.R. 39); no short title to S. 231	1,559,538	AK ⁱ	H.R. 39/ S. 231	H.R. 39 introduced 1/6/09 S. 231 introduced 1/14/09
Wasatch Wilderness and Watershed Protection Act of 2010	15,541	UT	H.R. 5009	Hearing held 6/10/10
Wild Monongahela Act: A Legacy for West Virginia's Special Places	37,771	WV	H.R. 1109	Enacted as Wild Monongahela Wilderness in P.L. 111-11, 3/30/09

Source: CRS acreage calculation from the pertinent legislation.

Notes: Excludes legislation with minor boundary adjustments of wilderness areas.

- a. Acreage as identified in the latest version—as enacted, passed, reported, or introduced.
- b. Net acreage, after 6 wilderness area deletions totaling 232 acres.
- c. Also designates potential wilderness of 43,300 acres, to be added when current non-conforming uses have ceased and sufficient inholdings have been acquired to make a manageable unit.
- d. Also designates potential wilderness of 36,522 acres, to be added when current non-conforming uses have ceased.
- e. Contains acreage in several states: ID, MT, OR, WA, and WY.
- f. Also designates potential wilderness of 46,419 acres, to be added when non-conforming uses have ceased, land exchanges have been completed, or other conditions have been met.
- g. Acreage is within several states: CA, CO, ID, MI, NM, OR, UT, VA, and WV. Includes Beaver Basin Wilderness Act (S. 109), California Desert and Mountain Heritage Act of 2009 (H.R. 369), Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness Area Act (H.R. 170/S. 183) Rocky Mountain National Park Wilderness and Indian Peaks Wilderness Expansion Act (H.R. 419/S. 190), Sabinoso Wilderness Act of 2009 (H.R. 921), and Wild Monongahela Act: A Legacy for West Virginia's Special Places (H.R. 1109), plus several bills from the 110th Congress.
- h. Also designates potential wilderness of 100 acres when communication site is no longer used and associated right-of-way is relinquished or not renewed.
- i. Affects Arctic National Wildlife Refuge (ANWR).

Roadless Areas in the National Forest System

(by (name redacted) and (name redacted))

Background

Potential wilderness areas in the National Forest System were examined in the 1970s and early 1980s; about 60 million acres of “roadless” areas were inventoried in the process. Some contend

that the remaining roadless areas (that have not been designated as wilderness by Congress) should be protected from development; others contend that the areas should be available for development-type uses.⁴³

Administrative Action

In 2001, the Clinton Administration issued a nationwide rule for roadless areas, resulting in a nationwide approach that curtailed most road building and timber cutting in roadless areas.⁴⁴ In 2005, the Bush Administration issued the state-petition rule to replace the nationwide rule, allowing governors 18 months to petition the FS for a special rule for roadless areas in all or part of their state.⁴⁵ Until such a new regulation was finalized or until each forest plan was amended or revised, the FS was to manage roadless areas in accordance with interim directives that placed most decisions with the regional forester or the Forest Service Chief. The state-petition rule was enjoined. However, the Bush Administration allowed states to petition for a special rule regarding their roadless areas under the Administrative Procedure Act (5 U.S.C. §§701, et seq.). Idaho and Colorado filed petitions for managing the roadless areas in those states. A final rule for Idaho was published on October 16, 2008.⁴⁶ A modified Colorado petition was submitted on April 4, 2010, after originally being submitted in 2006. Agriculture Secretary Tom Vilsack accepted the modified petition and announced that “this petition will be put out for public comment to allow for additional public input into protection of roadless areas on Colorado’s National Forests.”⁴⁷ Proponents contend that the state petitions provide public agreement on appropriate management for those roadless areas. Critics have characterized the Colorado petition as “a roadless forest management rule that could set a dangerous precedent for the nation’s roadless forests, paving the way for fewer forest protections nationwide.”⁴⁸

In light of conflicting court orders (discussed below), on May 28, 2009 and again on May 28, 2010, Secretary Vilsack issued one-year directives reserving to himself the authority to approve most decisions on road building and timber harvesting in inventoried roadless areas.⁴⁹ On July 13, 2009, the Secretary approved the first timber sale in a roadless area under the new policy, in the Tongass National Forest (AK). Roadless areas in Idaho are not covered by these directives because Idaho’s roadless area rule was established pursuant to a petition. Colorado also could be exempt if the special rule is promulgated.

⁴³ For more detailed information, see CRS Report RL30647, *National Forest System (NFS) Roadless Area Initiatives*, by (name redacted) and (name redacted).

⁴⁴ 66 *Fed. Reg.* 3244, Jan. 12, 2001.

⁴⁵ 70 *Fed. Reg.* 25654, May 13, 2005.

⁴⁶ 73 *Fed. Reg.* 61456-61496, Oct. 16, 2008.

⁴⁷ USDA Office of Communication, *Statement from Agriculture Secretary Vilsack on Colorado Roadless Petition*, Release No. 0167.10, <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2010/04/0167.xml>.

⁴⁸ Susannah Clark, *Under Threat Again: Will the Obama Administration Protect Roadless Forests?* The Wilderness Society, <http://wilderness.org/content/threat-colorado-roadless>.

⁴⁹ See http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5167211.pdf.

Legislative Action

Just as in past Congresses, legislation has been introduced in the 111th Congress to make the nationwide rule law. The House (the National Forest Roadless Area Conservation Act, H.R. 3692) and Senate (the Roadless Area Conservation Act of 2009, S. 1738) bills are similar, in that each establishes a nationwide policy that roadless areas may not be developed. However, they differ in how they define roadless areas. The House bill defines roadless areas as those in the final environmental document for the nationwide rule, which would include areas both Idaho and Colorado planned to develop; the Senate bill defines the term as “an area identified in a roadless area map.” The Senate bill could have the effect of redesignating areas the Idaho rule had identified to allow some development, since Idaho continues to identify those areas as “roadless” despite permitting roads.

Judicial Action

Numerous lawsuits have tracked the roadless rules’ courses. In April 2001, the nationwide rule was enjoined by the U.S. District Court for Idaho,⁵⁰ but that decision was overturned by the Ninth Circuit.⁵¹ In July 2003, the U.S. District Court for Wyoming stopped application of the nationwide rule—the second injunction, after the first was overturned.⁵² The Tenth Circuit vacated the decision, finding that the case had been made moot by the state-petition rule.

In September 2006, the U.S. District Court for Northern California found that the state-petition rule violated NEPA and the Endangered Species Act. The court set aside the state-petition rule and reinstated the nationwide rule.⁵³ On August 5, 2009, the Ninth Circuit upheld the Northern California court’s decision that the nationwide rule applied. An existing Bush Administration exemption for the Tongass National Forest is in question, however, because the Ninth Circuit did not extend the exemption. On December 22, 2009, a lawsuit was filed to rescind the Tongass exemption.

While litigation was underway in the Ninth Circuit to reestablish the nationwide rule, litigation in the Tenth Circuit sought to have that rule nullified. On August 12, 2008, the U.S. District Court for Wyoming again held that the nationwide rule had violated NEPA and the Wilderness Act, and enjoined it.⁵⁴ The Wyoming court said it had the authority to do this despite the California court’s order because it (the Wyoming court) was the only court to consider the legality of the nationwide rule, and so there was no conflict between the court decisions. The Tenth Circuit is considering an appeal of the Wyoming court’s decision. Depending on the court’s decision, the FS could face conflicting judicial orders. This potential dilemma for the agency could be avoided by a Supreme Court ruling on the issue, a statutory decision by Congress on roadless area management, or a new administrative rule that replaces both the nationwide and state-petition rules.

⁵⁰ *Kootenai Tribe of Idaho v. Veneman*, 142 F. Supp. 2d 1231 (D. Idaho 2001).

⁵¹ *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094 (9th Cir. 2002).

⁵² *Wyoming v. U.S. Dept. of Agriculture*, 277 F. Supp. 2d 197 (D. Wyo. 2003).

⁵³ *California v. U.S. Dept. of Agriculture*, 459 F. Supp. 2d 874 (N.D. Cal. 2006).

⁵⁴ *Wyoming v. U.S. Dept. of Agriculture*, 570 F. Supp. 2d 1309 (D. Wyo. 2008).

Forest Service NEPA Application and Categorical Exclusions

(by (name redacted) and (name redacted))

Background

The FS historically has identified certain activities as not having significant environmental impacts, and has exempted them from analysis and associated public participation under NEPA, except in “extraordinary circumstances” (e.g., the presence of endangered species habitat). Some “categorical exclusions” (CEs) and other controversial NEPA-related decisions have been based on the belief that FS management and activities have been thwarted by litigation based on the statute. Proponents of CEs see them as a way to expedite actions and reduce agency costs. Opponents charge that some of the excluded actions could have significant impacts, and should be examined and subject to public involvement.

Administrative Action

In 2008, the FS shifted many of its NEPA policies from the *Forest Service Handbook* (FSH) to the *Code of Federal Regulations* (C.F.R.).⁵⁵ As part of the rulemaking to make the switch, some provisions were modified. For example, the NEPA process now incorporates “incremental alternative development,” to allow FS decision-making to develop alternatives without issuing those versions for notice and comment.⁵⁶ The rule also was changed to allow the FS to consider only one alternative when preparing an environmental assessment (EA), if there are no unresolved conflicts concerning alternative uses of available resources.⁵⁷ Another rule change limits consideration of cumulative impacts to only those past actions found to be “relevant and useful.”⁵⁸

Since 2003, the FS has expanded the types of activities that can be conducted without environmental review, increasing the number of types from 18 to 27.⁵⁹ Some of the nine newer CEs include hazardous fuels reduction projects, “small” timber sales, and forest plans.⁶⁰ Additionally, the FS has modified its application of extraordinary circumstances.⁶¹ Previously, the rules appeared to preclude automatic use of a CE in the presence of extraordinary circumstances. The new rule gives the responsible official discretion to determine whether extraordinary circumstances warrant NEPA analysis and public involvement in otherwise exempt projects. Further, the FS issued new regulations (36 C.F.R. Part 215) changing its notice, comment, and appeals procedures for land management planning, particularly including a change that a decision to use a CE could not be administratively appealed.⁶²

⁵⁵ 73 *Fed. Reg.* 43084, July 24, 2008.

⁵⁶ 36 C.F.R. §220.5(e).

⁵⁷ 36 C.F.R. §220.7(b)(2).

⁵⁸ 36 C.F.R. §220.4(f).

⁵⁹ FSH 1909.15, ch. 30, §§30.12, 31.2; under the rule, the CEs are found at 36 C.F.R. §220.6.

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

⁶¹ 67 *Fed. Reg.* 54622, Aug. 23, 2002.

⁶² 68 *Fed. Reg.* 33581, June 4, 2003; 36 C.F.R. part 215.

Legislative Activity

Typically, few measures pertaining to CEs are introduced each Congress. None addressing FS use of CEs generally has been introduced in the 111th Congress as of October 19, 2010.

Judicial Action

Several of the CE regulations have been challenged in court (see below). Nevertheless, all the new appeals regulations remain in place, except that the FS cannot use the hazardous fuels reduction CE.

In 2005, a California federal court ruled that the new CE appeals regulation violated the Forest Service Decision Making and Appeals Reform Act (ARA) (P.L. 102-381, §322; 16 U.S.C. §1612, note) by excluding decisions from the public comment and appeals process and for other reasons.⁶³ On appeal, the Ninth Circuit reversed the lower court, holding that the challenges to the regulations in Part 215 were premature, except for §215.12(f).⁶⁴ That section—which provided that CE projects could not be appealed—had been applied by the FS, and therefore was ripe for review. The court held that the rule violated the ARA. The U.S. Supreme Court ruled that the parties lacked standing to make the challenge, reversing the Ninth Circuit’s holding that the rule violated the ARA.⁶⁵ This effectively reinstates §215.12(f).

In addition, five of the new CE types, including those for fire management activities and limited timber harvesting, were challenged in the U.S. District Court for Alabama.⁶⁶ The challenges were to the NEPA process (i.e., did the FS comply with NEPA). Challenges also addressed whether the regulation complied with other laws. In January 2007, the court upheld the regulations on the NEPA process, finding that the FS complied with NEPA in adopting the CEs.⁶⁷ However, it refused to consider other issues (e.g., ARA challenges to the Appeal Rule), finding they were not ripe for review because the rule had not been applied yet.

Despite the Alabama District Court’s holding, the hazardous fuels reduction CE is not in effect. In December 2007, the Ninth Circuit Court of Appeals ruled that the CE violated NEPA.⁶⁸ The court found that the FS had failed to consider the environmental consequences of such a broad program, and stopped the use of that CE until NEPA had been followed.

In other cases regarding NEPA reviews, but not reviewing new regulations, the Ninth Circuit found in favor of the FS. In one case, the Ninth Circuit acknowledged that the lower court had overly scrutinized FS actions in some cases.⁶⁹ The Ninth Circuit said it should not act as a panel of scientists, instead deferring to the FS’s expertise regarding the disputed timber sale. In the second case, the Ninth Circuit found that the FS took the requisite “hard look” at possible impacts

⁶³ *Earth Island Institute v. Pengilly*, 376 F. Supp. 2d 994 (E.D. Cal. 2005).

⁶⁴ *Earth Island Institute v. Ruthenbeck*, 459 F.3d 954 (9th Cir. 2007).

⁶⁵ *Summers v. Earth Island Institute*, 129 S.Ct. 1142 (2009).

⁶⁶ The challenged regulations are found at FSH 1909.15, ch. 30, §§ 31.2(10) through (14).

⁶⁷ *Wildlaw v. U.S. Forest Service*, 471 F. Supp. 2d 1221, 1242-43 (M.D. Ala. 2007).

⁶⁸ *Sierra Club v. Bosworth*, 510 F.3d 1016 (9th Cir. 2007).

⁶⁹ *Lands Council v. McNair*, 537 F.3d 981, 1001 (9th Cir. 2008) (“to the extent our case law suggests that a NEPA violation occurs every time the Forest Service does not affirmatively address an uncertainty in the EIS, we have erred”).

on wildlife populations in its EIS and determined that the hazardous fuels reduction project did not endanger the viability of species. In support of the viability conclusions, the court found that the FS appropriately relied on studies conducted by qualified scientists and its own wildlife biologist's evaluation.⁷⁰ The Ninth Circuit's review of a FS plan to allow commercial logging and a prescribed burn held that NEPA was followed, but that NFMA had not been.⁷¹

BLM Land Sales

(by (name redacted))

Background

The Federal Land Transaction Facilitation Act (FLTFA, 43 U.S.C. §2301) provides for the sale or exchange of land identified for disposal under BLM's land use plans "as in effect on the date of enactment"—July 25, 2000. All BLM lands (except some lands in Alaska) are covered by a land use plan. Most of the proceeds are to be used for land acquisitions, as described below. The law's purposes include allowing for the reconfiguration of land ownership patterns to better facilitate resource management, improving administrative efficiency, and increasing the effectiveness of the allocation of fiscal and human resources. This authority to sell or exchange BLM lands briefly expired on July 25, 2010—ten years after enactment. On July 29, 2010, it was subsequently extended for one year.⁷² An issue for the 111th Congress is whether to retain this authority and, if so, in what form.

Currently, proceeds from the sale or exchange of BLM lands under FLTFA are split between the state in which the lands were disposed of (4%) and a separate Treasury account (96%). The funds in the account are available to both the Secretary of the Interior and the Secretary of Agriculture to acquire inholdings⁷³ and other nonfederal lands (or interests therein) that are adjacent to federal lands and contain exceptional resources, with no more than 20% for administrative expenses related to the land disposal program. Of the funds for acquisitions, at least 80% are to be used in the state in which the funds were generated, and the remaining funds may be used in any state. Further, not less than 80% of the funds for land purchases within a state are to be used to acquire inholdings.

Since the enactment of FLTFA, BLM has used the authority to sell a total of 309 parcels with 29,437 acres and a value of approximately \$113.4 million. Acquisitions by the agencies have been smaller in terms of number of parcels, acreage, and value. Specifically, since enactment of FLTFA, the agencies have acquired a total of 28 parcels with 16,738 acres and a value of approximately \$43.8 million.⁷⁴

⁷⁰ *Native Ecosystems Council v. Kimbell*, No. 07-35360, 2008 WL 5272518, at 2 (9th Cir. Dec. 19, 2008).

⁷¹ *Hapner v. Tidwell*, No. 09-35896, 2010 WL 3565255 (9th Cir. 2010).

⁷² Sec. 3007(a), P.L. 111-212.

⁷³ FLTFA defines "inholding" as "any right, title, or interest, held by a non-Federal entity, in or to a tract of land that lies within the boundary of a federally designated area."

⁷⁴ Sales and acquisition information in this paragraph is current as of November 2009. See Mr. Robert V. Abbey, Director, Bureau of Land Management, *Legislative Hearing on H.R. 2889, H.R. 3339, H.R. 3444, H.R. 3538, and H.R. 3726*, U.S. House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, November 17, 2009, p. 2, http://resourcescommittee.house.gov/images/Documents/20091117/testimony_abbey.pdf.

Administrative Action

The Obama Administration's FY2011 budget supported making FLTFA permanent, and using current land management plans for determining which lands to sell or exchange. The Administration testified in support of related House and Senate bills (see below). The Administration noted the difficulty of relying on land exchanges under other BLM authorities, important acquisitions made under FLTFA, and the role of FLTFA as a "critical tool for enhancing our Nation's treasured landscapes."⁷⁵ The George W. Bush Administration also supported using updated land management plans for determining which lands to sell or exchange, and proposed extending FLTFA until January 1, 2018.⁷⁶

The changing nature of land use plans has prompted interest in amending FLTFA to allow the most current land use plans to be used as the basis of land disposals. In 2001, BLM began a multiyear effort to develop new land use plans and to update existing ones to address changing circumstances, such as increased demand for energy resources. BLM estimates that, from the start of that effort through FY2009, it has completed 86 new or revised plans. Further, the agency anticipates that in FY2011, at least 34 major plans will be under development or revision.

The FLTFA sales authority was not tied to future land use plans due to concerns that BLM might revise plans to pursue a broad land disposal program as a way to generate funds. BLM asserts that its authorities to dispose of public lands would preclude this. Under FLPMA, for example, BLM is authorized to sell certain tracts of land only if they meet specified criteria. The agency also has asserted that land use plan revisions since 2000 have not changed significantly the acreage identified for disposal. Further, a 2008 report of the Government Accountability Office (GAO) concluded that, while BLM land use plans identified areas for disposal, BLM had not made sale of lands under FLTFA a priority.⁷⁷

Legislative Activity

Legislation to amend FLTFA has been introduced in both the House and Senate. H.R. 3339 as introduced would make FLTFA permanent. S. 1787, which is pending on the Senate calendar, would extend the law for 10 years (until July 25, 2020). Both bills would allow for updated land management plans to be used as the basis for identifying lands for disposal and exchange. The bills have somewhat different language on using updated plans. The Senate bill calls for use of plans in effect as of its enactment, while the House bill simply calls for use of approved land use plans, which would imply the most current plans.

Other pending legislation (H.R. 6206 and S. 3762) seeks to reinstate the monies that were in the FLTFA account when the law (briefly) expired on July 25, 2010. Under FLTFA, any funds in the account when the law terminated were to become available for appropriation under the Land and

⁷⁵ Ibid, p. 1-2.

⁷⁶ The Bush Administration's FY2009 budget request contained this proposal.

⁷⁷ U.S. Government Accountability Office, *Federal Land Management: Federal Land Transaction Facilitation Act Restrictions and Management Weaknesses Limit Future Sales and Acquisitions*, GAO-08-196, February 5, 2008, <http://www.gao.gov/new.items/d08196.pdf>. For the list of GAO recommendations related to FLTFA, see the GAO website at <http://www.gao.gov/products/GAO-08-196#recommendations>. For information on agency actions related to the recommendations, see U.S. Government Accountability Office, *Federal Land Management: Challenges to Implementing the Federal Land Transaction Facilitation Act*, GAO-10-259T, November 17, 2009, at <http://www.gao.gov/new.items/d10259t.pdf>, p. 9-10. Hereafter cited as "GAO Testimony."

Water Conservation Fund (LWCF) Act.⁷⁸ Because a law extending FLTFA was not enacted until July 29, 2010, the monies in the account ceased to be available for FLTFA purposes (the administrative costs of BLM land sales and the agencies' land acquisitions). Both the House and Senate bills specify that the balance in the FLTFA account as of July 24, 2010 is to be reinstated, and available until expended, for the purposes covered by the FLTFA law. BLM estimates that nearly \$52 million was in the account on that date.⁷⁹ H.R. 6206 was introduced on September 23, 2010, while S. 3762 is on the Senate calendar.

None of the pending bills would not make other changes in areas that have been under recent debate. One such area is whether to retain the current allocation of proceeds. One question has been whether to continue to allow the proceeds of land sales to be retained by the agencies, or whether to return them to the general fund of the Treasury as traditionally had been the case before the enactment of FLTFA. Under one proposal in the FY2009 Bush Administration budget, for instance, 70% of the net proceeds would have been deposited in the general fund of the Treasury. The proposal was promoted to reduce the federal deficit, to ensure that the public would benefit from land sales, and to reduce the amount of money not subject to oversight during the appropriations process. However, such a change would have reduced funds for land acquisition at a time of declining funds from the primary acquisition source—the Land and Water Conservation Fund. Since then, funds for land acquisition have increased.⁸⁰ A related question has been whether some of the funds should be used for other federal lands purposes. For instance, the FY2009 Bush Administration proposal had sought to dedicate “a portion” of the funds to BLM for restoration projects.

Another issue regarding the allocation of proceeds is whether to retain the requirement that most of the funds for land acquisition be used in the state where the funds were generated. GAO concluded in 2008 that this requirement has made it difficult to acquire priority lands in states that sell relatively little land. Currently, most of the revenue for land acquisitions is available in Nevada. GAO testified in 2009 that approximately 78% of the revenues raised—\$88 million—has come from land sales in Nevada.⁸¹ Nevada has generated the most revenue from land sales due to the large BLM holdings in areas of population growth, the high demand for such land to develop, and the experience of BLM with selling land in Nevada under another land sale program.⁸²

Still another focus has been on whether changes are desirable to increase the pace of spending FLTFA funds to acquire lands. In its 2008 report, GAO determined that agencies had spent \$13.3 million of the \$95.7 million in the FLTFA account. The pace of acquisitions has quickened since that time. In its 2009 testimony, the Administration stated that the agencies had spent \$43.8 million of the \$108.9 million in the account. Among the challenges to completing land acquisitions, GAO has identified the time, cost, and complexity of acquisitions; difficulty in

⁷⁸ For information on the operation of the Land and Water Conservation Fund, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by (name redacted)

⁷⁹ This estimate was provided by David Beaver, Senior Realty Specialist, BLM, on October 20, 2010.

⁸⁰ For information on recent funding for land acquisition through the Land and Water Conservation Fund, see CRS Report R41258, *Interior, Environment, and Related Agencies: FY2011 Appropriations*, coordinated by (name redacted).

⁸¹ The information is current as of August 2009. See GAO Testimony, p. 3.

⁸² Under the Southern Nevada Public Land Management Act, the Secretary of the Interior, through the BLM, is authorized to sell or exchange certain land around Las Vegas. Revenues from these land sales have totaled \$3.34 billion as of March 31, 2010, significantly larger than had been expected.

identifying a willing seller; insufficient realty staff to conduct acquisitions; lack of funding for some states; and public opposition to land acquisitions.

National Forest Planning

(by (name redacted) and (name redacted))

Background

The FS is required by the National Forest Management Act of 1976 (NFMA) to prepare comprehensive, integrated land and resource management plans for the national forests.⁸³ The plans are to be developed and revised with public involvement (16 U.S.C. §1604(d)), must provide for the multiple use and sustained yield of goods and services (16 U.S.C. §1604(e)), and must be prepared in accordance with NEPA (16 U.S.C. §1604(g)(1)). Regulations for forest planning were adopted in 1979 and substantially revised in 1982.⁸⁴

The Clinton Administration finalized rules (that were to be phased in) that emphasized planning for the biological sustainability of the national forests.⁸⁵ The Bush Administration delayed implementing the Clinton rules, then in 2005 replaced them before they went into effect. The final (2008) Bush rules were to balance biological and socioeconomic sustainability, to make fewer decisions nationally by reducing regulatory guidelines, and to alter public input in the planning process. The rules also exempted plans from NEPA and ESA, because the Bush Administration viewed plans as guides to decision-making that would not include site-specific decisions.⁸⁶

Administrative Action

In August 2009, Secretary Vilsack announced the intent to develop a new planning rule after the 2008 (Bush) rule was rejected by a court. The FS published a notice of intent to prepare an environmental impact statement (EIS) on new planning rules, and in the interim is using the 2000 (Clinton) planning rules.⁸⁷ The comment period on the notice of intent closed in February 2010, and the agency conducted a series of public meetings regionally and in Washington from March through May of 2010. The *Federal Register* notice included the agency's expectation to have a draft EIS in December 2010 and a final EIS in October 2011, with a decision—a new planning rule—in November 2011.

Legislative Activity

Typically, few, if any, bills on national forest planning generally are introduced each Congress. None have been introduced in the 111th Congress as of October 19, 2010.

⁸³ Technically, the requirement is in the Forest and Rangelands Renewable Resources Planning Act of 1974, as amended (16 U.S.C. §§ 1600-1614). However, NFMA provided substantial detail on the considerations and analysis to be included in the plans. Hence, forest planning is also often called NFMA planning.

⁸⁴ 47 *Fed. Reg.* 43037 (Sept. 30, 1982).

⁸⁵ 65 *Fed. Reg.* 67514 (Nov. 9, 2000).

⁸⁶ 70 *Fed. Reg.* 1022 (Jan. 5, 2005).

⁸⁷ 74 *Fed. Reg.* 67165 (Dec. 18, 2009).

Judicial Action

The Bush planning rules were challenged, with plaintiffs asserting that the rules reduced environmental protection without adequate opportunities for public comment and consideration of the effects on endangered species. In 2007, the U.S. District Court for Northern California remanded the Bush rules because they violated NEPA, ESA, and APA.⁸⁸ The FS reissued the 2005 rule as a proposed rule to meet the court's requirement to provide notice.⁸⁹ To comply with the court's other mandates, the FS issued a draft environmental impact statement and consulted with the Fish and Wildlife Service under the ESA. The final planning rules were issued in April 2008.⁹⁰ They were invalidated by the Northern District of California in June 2009 for failing to comply with NEPA and ESA.⁹¹ The court held that the rules were put in place without adequate opportunities for public comment and consideration of the effects on endangered species.

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⁸⁸ *Citizens for Better Forestry v. U.S. Dept. of Agriculture*, 481 F. Supp. 2d 1059 (N.D. Cal. 2007).

⁸⁹ 72 *Fed. Reg.* 48513 (Aug. 23, 2007).

⁹⁰ 73 *Fed. Reg.* 21467 (Apr. 21, 2008).

⁹¹ *Citizens for Better Forestry v. U.S. Dept. of Agriculture*, 632 F.Supp.2d 968 (N.D. Cal. 2009).

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