

# CRS Report for Congress

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## **Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service**

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# Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service

## Summary

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

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

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

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

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

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

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

This report replaces CRS Issue Brief IB10076. It will be updated as actions on the various issues warrant.

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# Federal Lands Managed by the Bureau of Land Management (BLM) and the Forest Service

Congress is considering actions that affect the various uses and management of federal lands administered by the BLM and the Forest Service. These actions include legislation, administrative or regulatory proposals, and litigation and judicial decisions. Issues areas include access to energy resources on federal lands, especially implementation of the Energy Policy Act of 2005; management, protection, and disposal of wild horses and burros; wilderness designation and management; and wildfire management and protection.

## Background and Analysis

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

The BLM and FS have similar management responsibilities for their lands, and many key issues affect both agencies' lands. However, each agency also has unique emphases and functions. For instance, most rangelands are managed by the BLM, and the BLM administers mineral development on all federal lands. Most federal forests are managed by the FS, and only the FS has a cooperative program to assist nonfederal landowners. Moreover, development of the two agencies has differed, and historically they have focused on different issues. Nonetheless, there are many parallels. By law, BLM and FS lands are to be administered for multiple uses, although slightly different uses are specified for each agency. In practice, the land uses considered by the agencies include recreation, range, timber, minerals, watershed, wildlife and fish, and conservation. BLM and FS lands also are required to be managed for sustained yield — a high level of resource outputs in perpetuity, without impairing the productivity of the lands. Thus, the two agencies' lands are often discussed together, as is done in this report.

## History of the Bureau of Land Management

For the BLM, many of the issues traditionally center on the agency's responsibilities for land disposal, range management (particularly grazing), and minerals development. These three key functions were assumed by the BLM when it was created in 1946, by the merger of the General Land Office (created in 1812)

and the U.S. Grazing Service (created in 1934). The General Land Office had helped convey land to settlers, issued leases, and administered mining claims on the public lands, among other functions. The U.S. Grazing Service had been established to manage the public lands best suited for livestock grazing under the Taylor Grazing Act of 1934 (43 U.S.C. §§315, et seq.).

Congress frequently has debated how to manage federal lands, and whether to retain or dispose of the remaining public lands or to expand federal land ownership. In 1976, Congress enacted the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. §§1701, et seq.), sometimes called BLM's Organic Act because it consolidated and articulated the agency's responsibilities. Among other provisions, the law establishes a general national policy that the BLM-managed public lands be retained in federal ownership, establishes management of the public lands based on the principles of multiple use and sustained yield, and generally requires that the federal government receive fair market value for the use of public lands and resources. BLM public land management encompasses diverse uses, resources, and values, such as energy and mineral development, timber harvesting, livestock grazing, recreation, wild horses and burros, fish and wildlife habitat, and preservation of natural and cultural resources.

## **History of the Forest Service**

The FS was created in 1905, when forest lands reserved by the President (beginning in 1891) were transferred from DOI into the existing USDA Bureau of Forestry (initially an agency for private forestry assistance and forestry research). Management direction for the national forests, first enacted in 1897 and expanded in 1960, identifies the purposes for which the lands are to be managed and directs “harmonious and coordinated management” to provide for multiple uses and sustained yields of the many resources found in the national forests — including timber, grazing, recreation, wildlife and fish, and water.

Many issues concerning national forest management and use have focused on the appropriate level and location of timber harvesting. In part to address these issues, Congress enacted the National Forest Management Act of 1976 (NFMA; P.L. 94-588) to revise timber sale authorities and to elaborate on considerations and requirements in management plans.

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

## **Scope of Report**

The missions of the BLM and FS are similar, and many issues, programs, and policies affect both agencies. For these reasons, BLM and FS lands often are discussed together, as in this report. It focuses on several issues affecting both

agencies' lands that are of interest to the 109<sup>th</sup> Congress, including energy resources, wild horses and burros, wilderness wildfire protection, and others. It does not comprehensively cover general issues affecting management of these and other federal lands. For background on federal land management generally, see CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*, coordinated by Carol Hardy Vincent. For other information, see the CRS website at [<http://www.crs.gov/>].<sup>1</sup>

## **Energy Resources** (by Marc Humphries)

**Background.** A controversial issue is whether and how to increase access to federal lands for energy and mineral development. A BLM study in 2000 determined that (1) about 165 million acres of lands with federally-owned mineral rights<sup>2</sup> (24% of all federal mineral acreage) have been withdrawn from mineral entry, leasing, and sale, subject to valid existing rights, and (2) mineral development on another 182 million acres (26% of all federal mineral acreage) is subject to the approval of the surface management agency<sup>3</sup> and must not be in conflict with land designations and plans. The oil and gas industry contends that entry into currently unavailable areas is necessary to ensure future domestic oil and gas supplies. Opponents maintain that the restricted lands are unique or environmentally sensitive and that the United States could realize equivalent energy gains through conservation and increased exploration elsewhere.<sup>4</sup>

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

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<sup>1</sup> For brief, general information on natural resource issues, see CRS Report RL32699, *Natural Resources: Selected Issues for the 109<sup>th</sup> Congress*, coordinated by Carol Hardy Vincent, Nicole T. Carter, and Julie Jennings. Information on FY2007 appropriations for the BLM and FS (and other agencies and programs funded in the Interior appropriations bills) is included in CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*, coordinated by Carol Hardy Vincent and Susan Boren. For information on park and recreation issues, see CRS Report RL33484, *National Park Management* coordinated by Carol Hardy Vincent; and CRS Report RL33525, *Recreation on Federal Lands*, coordinated by Kori Calvert and Carol Hardy Vincent. For information on oil and gas leasing in the Arctic National Wildlife Refuge (ANWR), see CRS Report RL33523, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109<sup>th</sup> Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin. For information on local compensation for the tax-exempt status of federal lands, see CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn; and CRS Report RS22004, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*, by Ross W. Gorte.

<sup>2</sup> Most of these are federal lands, but in some cases, the U.S. government owns the minerals under privately-owned lands.

<sup>3</sup> The BLM administers mineral resources under all federal lands, regardless of which agency has responsibility for administering the surface.

<sup>4</sup> See CRS Report RL33014, *Leasing and Permitting for Oil and Gas Development on Federal Public Domain Lands*, by Aaron M. Flynn and Ryan J. Watson.

are located on FS lands, the FS must perform a leasing analysis and approve leasing decisions for specific lands before BLM may lease minerals. The Energy Policy Act of 2005 (P.L. 109-58) made significant changes to the laws governing federal energy resources, including the management of energy development on BLM and FS lands. Implementation of these changes is discussed below.

**Administrative Actions.** The Administration has begun to respond to the 2005 Energy Policy Act. For example, BLM is soliciting comments and holding a series of meetings to prepare a report for Congress analyzing agency policy on management of split estates.<sup>5</sup> The report is expected to analyze the respective rights and responsibilities of owners of mineral leases, private surface owners, and the federal government under existing law. It is also to compare the surface owner consent provisions found in other mining laws to those provisions applicable to federal oil and gas. Finally, the report is to recommend legislative changes necessary to authorize any policy changes the Department wishes to implement.

Pursuant to §352 of the 2005 act, BLM has issued a final rule that allows ownership of oil and gas leases covering greater acreages.<sup>6</sup> The law generally limits a single entity to owning leases of up to 246,080 acres in one state. The new regulation exempts from the overall limitation the area attributable to producing leases and leases committed to “communitization agreements.”<sup>7</sup> The final regulation also amends the lease reinstatement petition process; now, if a lease is terminated for late or non-payment of rent, a lessee may petition for reinstatement for up to 24 months from the date of termination (the previous deadline was 15 months).

Additionally, in response to §§353 and 354 of the Energy Policy Act, BLM is seeking public comment on two advanced notices of proposed rulemaking. Possible BLM regulations could provide various incentives to develop natural gas hydrates, both onshore and offshore. Others could provide incentives to companies using underground injection of carbon dioxide to increase production from federal oil and gas leases. On August 6, 2006, the DOI deferred rulemaking on §§353 and 354 because MMS concluded that royalty incentives would not increase production from gas hydrates and the BLM concluded that royalty incentives were unnecessary for increasing oil recovery through carbon dioxide injection.

In January 2006, BLM completed a final programmatic environmental impact statement (EIS) for developing wind energy facilities on BLM lands.<sup>8</sup> This document supports land management plan amendments providing for wind energy development in the western states. The review was undertaken in compliance with Executive

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<sup>5</sup> A split estate is where the surface is owned by one entity and rights to the subsurface minerals are owned by a different entity.

<sup>6</sup> 71 *Fed. Reg.* 14821, March 24, 2006.

<sup>7</sup> A communitization agreement is an agreement among all parties holding interests in a particular formation (usually determined by a state oil and gas commission) to combine those interests for operating efficiency and other communal benefits.

<sup>8</sup> 71 *Fed. Reg.* 1768, Jan. 11, 2006.

Order 13212,<sup>9</sup> and seeks to comply with congressional directives within the Energy Policy Act directing renewable energy development on public lands.

Under §369 of the 2005 act, BLM has begun a programmatic EIS to support a tar sands and oil shale leasing program for research and development.<sup>10</sup> Regulations to govern this leasing program are also required, and implementation of a commercial leasing program is also underway.

BLM has held meetings and taken a variety of other actions to begin implementing the Energy Policy Act of 2005, including changes in geothermal leasing and in oil and gas leasing.<sup>11</sup> Prior to the Energy Policy Act, BLM and FS proposed significant changes to the regulations governing the approval of oil and gas leases.<sup>12</sup> Proposed changes included new requirements for development on split estates, a new approval process for multiple wells based on a single environmental review and Master Development Plan, and additional bonding requirements. The proposal also would have encouraged the use of various best management practices to reduce surface, visual, and wildlife impacts. Because of the passage of the Energy Policy Act, BLM extended the comment period on this proposed rule through October 25, 2006, and may issue a significant revision in the future.

**Legislative Activity.**<sup>13</sup> On October 7, 2005, the House passed additional energy policy legislation, the Gasoline for America's Security Act (H.R. 3893). Among other provisions, the bill would require the President to designate federal lands as suitable for refinery construction or expansion and provide an expedited permitting process for refineries sited in the designated area. Additional energy-related legislation has been introduced in response to the Gulf Coast hurricanes and the ensuing increases in energy prices. Various bills (e.g., H.R. 3710, H.R. 4479) would suspend any royalty relief program applicable to oil or natural gas production from federal lands as well as other federal resource production incentives contained in the Energy Policy Act of 2005. Finally, numerous other bills have been introduced, addressing such issues as geothermal energy access, potash or soda ash royalties, and coal leasing procedures.

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<sup>9</sup> "Actions to Expedite Energy-Related Projects," 66 *Fed. Reg.* 28357, May 22, 2001.

<sup>10</sup> 70 *Fed. Reg.* 73791, Dec. 13, 2005.

<sup>11</sup> 71 *Fed. Reg.* 41516, July 21, 2006, and 70 *Fed. Reg.* 50262, Aug. 26, 2005, respectively.

<sup>12</sup> 70 *Fed. Reg.* 43349, July 27, 2005.

<sup>13</sup> Possible oil and gas development in the Outer Continental Shelf (OCS) and in the Arctic National Wildlife Refuge (ANWR) continue to be contentious issues in the energy debate; these issues are discussed in other CRS documents specific to these topics. See CRS Report RL33493, *Outer Continental Shelf: Debate Over Oil and Gas Leasing and Revenue Sharing*, by Marc Humphries, and CRS Report RL33523, *Arctic National Wildlife Refuge (ANWR): Controversies for the 109<sup>th</sup> Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin.



## **Wild Horses and Burros** (by Carol Hardy Vincent)

**Background.** The Wild Free-Roaming Horses and Burros Act of 1971 (16 U.S.C. §§1331, et seq.) seeks to protect wild horses and burros on federal land and places them under the jurisdiction of BLM and the FS. For years, management of wild horses and burros has generated controversy and lawsuits. Controversies include the method of determining the “appropriate management levels” (AMLs) for herd sizes, as the statute requires; whether and how to remove animals from the range to achieve AMLs; alternatives to adoption for reducing animals on the range, particularly fertility control and holding animals in long-term facilities; whether appropriations for managing wild horses and burros are adequate; and the slaughter, or potential for slaughter, of horses.<sup>14</sup>

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

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

There are about 8,200 animals available for sale, with 1,900 having been sold and delivered as of August 2006, according to BLM. The sale price is determined on a case by case basis. Currently, BLM is promoting sales of animals through two new efforts. First, BLM and the Public Lands Council (a private interest group) have

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<sup>14</sup> See CRS Report RS22347, *Wild Horse and Burro Issues*, by Carol Hardy Vincent.

appealed to BLM grazing permit holders to purchase wild horses and burros. Second, BLM, Ford Motor Company, and Take Pride in America are making a similar appeal to wild horse and equine rescue groups, with the “Save the Mustangs Fund” providing \$100 for each animal purchased by these groups. In both cases, the animals would be sold for \$10 each and BLM would deliver 20 or more animals to the purchaser.

As of February 2006, there were about 31,201 wild horses and burros on the range. The national maximum AML is set at 28,186. BLM has been pursuing a multi-year effort to achieve AML. Some critics assert that the current AMLs are set low in favor of livestock. BLM manages about 26,000 other animals in holding facilities, as of August 2006. The cost per animal per year in long-term holding facilities is about \$500, according to BLM. Currently, BLM needs additional space in long-term holding facilities for wild horses and burros. The agency is soliciting bids for contracts for two new long-term holding facilities, which must be able to hold 1,500 animals each.

For FY2007, the President has requested continuing funding for management of wild horses and burros at \$36.4 million, with an additional \$0.7 million in fees expected to be collected from adoptions. The House approved, and Senate Appropriations Committee recommended, these funding levels in H.R. 5386, the FY2007 Interior appropriations bill.

**Legislative Activity.** H.R. 297 and S. 576 seek to overturn the changes to wild horse and burro management enacted during the 108<sup>th</sup> Congress. H.R. 2993 and S. 1273 aim to foster the sale and adoption of wild horses and burros while establishing further protections. Changes include eliminating the limit of four animals per adopter per year; reducing the minimum adoption fee from \$125 to \$25 per animal; removing the provision that excess, unadoptable animals be destroyed in a humane and cost-effective manner and making them available for sale; imposing a one-year wait period for buyers to obtain title to sold animals; and removing the provision for sale of animals “without limitation.” Some opponents fear that additional sales or adoptions could increase the risk of slaughter. In the FY2007 Interior appropriations bill, the House included a provision (at §425) prohibiting use of funds for the sale or slaughter of wild free-roaming horses and burros.

## **Wilderness** (by Ross W. Gorte and Pamela Baldwin)

**Background.** The 1964 Wilderness Act established the National Wilderness Preservation System and directs that only Congress can designate federal lands as part of the national system. Designations are often controversial because commercial activities, motorized access, and roads, structures, and facilities generally are restricted in wilderness areas.<sup>15</sup> Similarly, agency wilderness studies are controversial because many uses also are restricted in the study areas to preserve wilderness characteristics while Congress considers possible designations.

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<sup>15</sup> See CRS Report RS22025, *Wilderness Laws: Permitted and Prohibited Uses*, by Ross W. Gorte.

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

One significant issue is when the agencies must review the wilderness potential of their lands. The Wilderness Act directed the review of administratively designated national forest primitive areas and of National Park System and National Wildlife Refuge System lands. *Release language*, in statutes designating national forest wilderness areas, and FS planning regulations (36 C.F.R. §219.7(a)(5)(ii)) provide for periodic review of potential national forest wilderness areas in the FS planning process. For BLM lands, §603 of FLPMA requires the agency to review potential wilderness and to not impair the wilderness character of wilderness study areas (WSAs) “until Congress has determined otherwise.” In 1996, then-Secretary Bruce Babbitt used the general BLM authority to inventory lands and resources (§201 of FLPMA; 43 U.S.C. §1711) to identify an additional 2.6 million acres in Utah as having wilderness qualities. The State of Utah challenged the inventory, and in September 2003, DOI settled the case and issued new wilderness guidance (IM Nos. 2003-274 and 2003-275) prohibiting further reviews and limiting the *nonimpairment* standard to the previously designated WSAs.<sup>16</sup>

**Legislative Activity.** Many wilderness recommendations remain pending, including some FS areas and many BLM and Park System areas. As shown in the table below, more than 30 bills to designate wilderness areas in more than a dozen states have been introduced in the 109<sup>th</sup> Congress; three (for areas in New Mexico, Puerto Rico, and Utah) have been enacted, and several have passed one chamber.

Bills were introduced in the 106<sup>th</sup>-108<sup>th</sup> Congresses to prohibit future BLM wilderness reviews and to place time limits on WSA status. No similar legislation has been introduced in the 109<sup>th</sup> Congress.

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<sup>16</sup> Section 603(c) of FLPMA directs management of WSAs so as not to impair the wilderness characteristics of the areas. See CRS Report RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by Ross W. Gorte and Pamela Baldwin.

**Table 1. 109<sup>th</sup> Congress Legislation to Designate Wilderness Areas**

Bill Title	State	Bill No.	Most Recent Action
Alaska Rainforest Conservation Act of 2005	AK <sup>a</sup>	H.R. 1155	Introduced 3/8/05
America's Red Rock Wilderness Act of 2005	UT	H.R. 1774/ S. 882	Both introduced 4/21/05
Browns Canyon Wilderness Act	CO	H.R. 4235/ S. 1971	H.R. 4235 hearings held 7/27/06 S. 1971 introduced 11/7/05
California Desert & Mountain Heritage Act	CA	H.R. 6270	Introduced 9/29/06
California Wild Heritage Act of 2006	CA	H.R. 5006/ S. 2432	Both introduced 3/16/06
Caribbean National Forest Act of 2005	PR	H.R. 539/ S. 272	H.R. 539 became P.L. 109-118 12/1/05
Cascade-Siskiyou National Monument Voluntary and Equitable Grazing Conflict Resolution Act	OR	S. 3858	Introduced 9/6/06
Central Idaho Economic Development and Recreation Act	ID	H.R. 2514/ H.R. 3603	H.R. 2514 introduced 5/19/05 H.R. 3603 passed House 7/24/06; Senate hearings held 9/27/06
Chattahoochee National Forest Act of 2006	GA	H.R. 5612	Introduced 6/14/06
Colorado Wilderness Act of 2005	CO	H.R. 4587	Introduced 12/16/05
Eastern Sierra Rural Heritage and Economic Enhancement Act	CA	H.R. 5149/ S. 2567	H.R. 5149 hearings held 7/27/06 S. 2567 hearings held 5/24/06
Lewis and Clark Mount Hood Wilderness Act of 2006	OR	S. 3854	Hearings held 9/27/06
Mount Hood Stewardship Legacy Act	OR	H.R. 5025	H.R. 5025 passed House 7/24/06; Senate hearings held 9/27/06
New England Wilderness Act of 2006	NH/ VT	S. 2463, as amended; S. 4001 <sup>b</sup>	S. 2463 passed Senate 9/19/06 S. 4001 passed Senate 9/29/06
New Hampshire Wilderness Act of 2006	NH	H.R. 5059/ H.R. 5062/ S. 2463 <sup>c</sup>	House bills not agreed to under suspension 9/26/06 S. 2463 passed Senate 9/19/06, amended; see New England Wilderness Act of 2006
Northern California Coastal Wild Heritage Wilderness Act	CA	H.R. 233/ S. 128	H.R. 233 passed House 7/24/06; passed Senate 9/29/06 S. 128 passed Senate 7/26/05
Ojito Wilderness Act	NM	H.R. 362/ S. 156	S. 156 became P.L. 109-94 on 10/26/05
Rockies Prosperity Act	<sup>d</sup>	H.R. 1204	Introduced 3/9/05
Rocky Mountain National Park Wilderness Act	CO	H.R. 3193/ S. 1510; H.R. 6245/ S. 3986 <sup>e</sup>	H.R. 3193 introduced 6/30/05 S. 1510 hearings held 4/6/06
Rocky Mountain National Park Wilderness and Indian Peaks Wilderness Expansion Act	CO	H.R. 4935	Introduced 3/9/06

Bill Title	State	Bill No.	Most Recent Action
Udall-Eisenhower Arctic Wilderness Act [no official title to Senate bill]	AK <sup>f</sup>	H.R. 567 & S. 261 <sup>g</sup>	Both introduced 2/2/05
Utah Test and Training Range Protection Act	UT	H.R. 1503	Enacted 1/6/06 in Subtitle G, Title III of P.L. 109-163
Vermont Wilderness Act of 2006	VT	H.R. 5157/ S. 2565 <sup>h</sup>	Both introduced 4/6/06
Virginia Ridge and Valley Act of 2005	VA	H.R. 1975/ S. 942	Both introduced 4/28/2005
Washington County Growth and Conservation Act of 2006	UT	H.R. 5769/ S. 3636	H.R. 5769 introduced 7/12/06 S. 3636 introduced 7/11/06; hearing scheduled for 11/16/06
White Pine County Conservation, Recreation, and Development Act of 2006	NV	S. 3772	Introduced 8/1/06
Wild Sky Wilderness Act of 2005	WA	H.R. 851/ S. 152	H.R. 851 introduced 2/16/05 S. 152 passed Senate 7/26/05

<sup>a</sup> Affects the Tongass National Forest.

<sup>b</sup> S. 4001 reduced the acreage for one area, in response to concerns expressed by the Governor of Vermont.

<sup>c</sup> Bills have the same title, but differ. H.R. 5059 would designate one new wilderness area, while H.R. 5062 would add to an existing area; S. 2463 includes both designations.

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

<sup>e</sup> Latter two bills differ somewhat from the former two in management guidance and other provisions, and do *not* explicitly add the areas to the National Wilderness Preservation System.

<sup>f</sup> Affects the Arctic National Wildlife Refuge (ANWR).

<sup>g</sup> Bills are not identical, but designate same acreage as wilderness.

<sup>h</sup> Similar provisions added to S. 2463, originally the New Hampshire Wilderness Act of 2006, by SA 5019, which renamed the bill the New England Wilderness Act of 2006.

## Roadless Areas in the National Forest System

(by Pam Baldwin and Ross W. Gorte)

**Background.** Roadless areas in the National Forest System were examined as potential wilderness areas in the 1970s and early 1980s; 60 million acres of roadless areas were inventoried in the FS's second *Roadless Area Review and Evaluation* (RARE II). The RARE II Final Environmental Statement presented the agency's wilderness recommendations in January 1979, but many recommended areas still have not been designated by Congress. Some observers believe that the remaining roadless areas should be protected from development, while others argue that the areas should be available for development-type uses.

**Administrative Actions.** The Clinton Administration issued several rules affecting roadless areas in the National Forest System (NFS). The principal rule resulted in a nationwide approach to management that curtailed — but did not eliminate — most road construction and timber cutting in roadless areas.<sup>17</sup> National guidance was justified by the Clinton Administration as avoiding litigation and

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<sup>17</sup> 66 *Fed. Reg.* 3244, Jan. 12, 2001.

delays when decisions were made at each national forest. The rule was enjoined twice.

The Bush Administration issued a new final rule, called the State Petitions Rule, to replace the Clinton rule and allow governors 18 months to petition the FS for a special rule for roadless areas in all or part of their state.<sup>18</sup> The FS can decide whether or not to approve the roadless area management requested by a state. Until such a new regulation in response to a petition is finalized, the FS is to manage roadless areas in accordance with interim directives that place most decisions with the regional forester or the chief. These decisions remain in effect until each forest plan is amended or revised to address roadless area management.<sup>19</sup> This returns decision-making on the management of roadless areas to the individual forest plans, essentially reversing the Clinton nationwide roadless rule.

Oregon has petitioned for a rule allowing any state to petition for an expedited restoration of full protections for roadless areas in that state; this petition was denied. Virginia, North Carolina, South Carolina, New Mexico, and California have submitted petitions for a special rule to protect roadless areas in those states. The petitions for Virginia, North Carolina, and South Carolina have been approved by the FS. The governors of several other states have decided not to petition.

**Judicial Actions.** California, Oregon, New Mexico, and Washington have jointly sued the FS to challenge the new roadless area rule; an environmental group coalition has similarly sued the FS challenging the roadless area rule.<sup>20</sup> The plaintiffs argued that the State Petitions Rule offered less protection and a more localized approach than the Clinton rule, and thus required environmental analysis under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§4321-4347) and consultation under the Endangered Species Act (ESA; 16 U.S.C. §§1531-1540). In a summary judgment on September 19, 2006, the U.S. District Court for Northern California set aside the State Petitions Rule and reinstated the Clinton rule until the State Petitions Rule complied with NEPA and ESA. The decision has already been appealed by the Silver Creek Timber Company, and further judicial challenges on the rules over roadless area protection seem likely.

**Legislative Activity.** Pending legislation could affect roadless area management and protection. H.R. 3563 would direct that roadless areas be managed in accordance with the 2001 regulations. S. 2364 would essentially enact the 2001 roadless rule. S. 1897 would provide stricter protections for roadless areas than the 2001 rule did.

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<sup>18</sup> 70 *Fed. Reg.* 25654, May 13, 2005.

<sup>19</sup> 69 *Fed. Reg.* 42648, July 16, 2004.

<sup>20</sup> Respectively: *California, et al. v. U.S. Dept. of Agriculture, et al.*, C-05-3508 EDL; and *Wilderness Society, et al. v. U.S. Forest Service, et al.*, C-05-4038.

## Wildfire Protection (by Ross W. Gorte)

**Background.** Recent fire seasons have killed firefighters, burned homes, threatened communities, and destroyed trees. More acres burned in the 2005 fire season — 8.7 million acres — than in any year since record-keeping began in 1960. Through October 2, more than 9.1 million acres have burned already in 2006 (11% more than by that date in 2005 and 77% above the 10-year average). Many assert that the threat of severe wildfires has grown, because many forests have unnaturally high fuel loads (e.g., dense undergrowth and dead trees) and increasing numbers of structures are in and near the forests (the *wildland-urban interface*). Reducing fuels on federal lands has been urged to reduce the threats from fire.

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

**Administrative Actions.** The Bush Administration has made several regulatory changes to facilitate fire protection activities, aside from P.L. 108-148. First, two new categories of actions can be excluded from analysis and documentation under the National Environmental Policy Act (NEPA; P.L. 91-190, 42 U.S.C. §§4321-4347): certain fuel reduction and post-fire rehabilitation activities.<sup>22</sup> Second, the administrative review processes were revised to clarify that some emergency actions may be implemented immediately and others after complying with publication requirements, and to expand emergencies to include those “that would result in substantial loss of economic value to the Government if implementation of the proposed action were delayed.”<sup>23</sup> A U.S. District Court found that these and other regulations violate the legal requirements for public review of FS decisions. (See “Other Issues,” below.)

The Administration has made other regulatory changes that could affect fuel reduction, public involvement, and environmental impacts. For example, new categorical exclusions for small timber harvesting projects and new regulations for FS planning have been completed.<sup>24</sup> The total impact of the regulatory changes is likely to be greater discretion for FS action without environmental studies and with fewer opportunities for the public to comment on, or to request administrative review of, those actions.

**Legislative Activity.** The 109<sup>th</sup> Congress is overseeing wildfire protection efforts. Several hearings have been held by various committees on progress in, and

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<sup>21</sup> See CRS Report RS22024, *Wildfire Protection in the 108<sup>th</sup> Congress*, by Ross W. Gorte.

<sup>22</sup> 68 *Fed. Reg.* 33814, June 5, 2003.

<sup>23</sup> 68 *Fed. Reg.* 33582, June 4, 2003, for the FS; 68 *Fed. Reg.* 33794, June 5, 2003, for the BLM.

<sup>24</sup> 68 *Fed. Reg.* 44598, July 29, 2003, and 70 *Fed. Reg.* 1023, Jan. 5, 2005, respectively.

various aspects of, wildfire protection. Hearings have addressed the airworthiness of firefighting airtankers and litigation over the use of chemical fire retardant.<sup>25</sup> Other hearings have addressed the litigation over NEPA categorical exclusions (see below) for fuel reduction and post-fire recovery projects.

Bills have been introduced to improve research and expedite action for rehabilitation of areas after catastrophic events. H.R. 4200 and S. 2079 would establish a permanent program to assess significant events affecting forests and allow pre-authorized management activities or use of alternative NEPA arrangements; they would also direct the establishment of appropriate research protocols. The House passed H.R. 4200 on May 17, 2006. H.R. 3973 would establish a three-year pilot program of up to 10 multi-activity projects to rehabilitate lands and resources affected by “uncharacteristic disturbances.”

Congress has addressed wildfire protection through appropriations. The FY2006 Interior Appropriations Act (P.L. 109-54) included \$2.54 billion for the National Fire Plan. For FY2007, the Administration has requested \$2.57 billion, an increase of \$23.2 million (1%) from FY2006. The House included \$2.62 billion for the FY2007 National Fire Plan (\$48.2 million, 2%, more than the request), and the Senate Appropriations Committee recommended \$2.60 billion (\$20.2 million, 1%, less than the House and \$28.0 million, 1%, more than the request).<sup>26</sup> The conference report on the FY2007 Defense appropriations bill (H.R. 5631) included \$100.0 million each for FS and BLM wildfire fighting. In addition, the House-passed FY2007 Interior appropriations act (at §422) and the Senate Appropriations Committee reported bill (at §430) would prohibit competitive sourcing studies for wildfire management or protection. Further, bills have been introduced to alter firefighter and fire organization compensation and safety practices, and §210 of P.L. 109-58 authorized grants for producing energy from biomass fuels removed from forests to reduce wildfire risks.

## Other Issues

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

**Grazing Management.** (by Carol Hardy Vincent) BLM issued new grazing regulations, effective August 11, 2006.<sup>27</sup> The agency revised its grazing regulations on the grounds that changes were needed to comply with court decisions, increase flexibility of managers and permittees, improve administrative procedures and

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

<sup>26</sup> See CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*, coordinated by Carol Hardy Vincent and Susan Boren.

<sup>27</sup> The new grazing regulations, and related information about the reform effort, are available on the BLM website at [<http://www.blm.gov/grazing/>].



business practices, and promote conservation. While lauded by some, the reform effort was criticized by others as unnecessary or harmful. Some of the regulatory changes would (1) allow title to range improvements to be shared by the BLM and permittees, (2) allow permittees to acquire water rights for grazing if consistent with state law, (3) change the definition of “grazing preference” to include an amount of forage, (4) eliminate conservation use grazing permits, (5) extend the time to remedy rangeland health problems, and (6) reduce occasions where BLM is required to consult with the public. BLM did not address some controversial issues, such as revising the grazing fee. BLM had expected to return to the consideration of related grazing policy changes once the new regulations were in effect. Oversight hearings have been held on the regulatory changes and other grazing issues.

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

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

A significant amendment to the General Mining Act was considered (but not included in the bill) during budget reconciliation. The amendment would have altered the existing requirement demonstrating the existence of minerals to allow fee payments to establish a claimant’s right to use and occupy the public lands for mineral development. The proposal also would have repealed the current prohibition on patenting lands encompassed in mining claims. It would have expressly maintained a general requirement that discovery of a valuable mineral deposit precede approval of land patents; however, it would have established several specific circumstances in which title could be purchased without a discovery requirement. Finally, the provision would have increased the amounts that must be paid to patent lands, setting fees at the greater of \$1,000 per acre or fair market value.

**Forest Service NEPA Categorical Exclusions.** (by Pamela Baldwin and Ross W. Gorte) The FS has historically identified certain activities as not having significant environmental impacts, and exempted them from analysis and associated public participation under the National Environmental Policy Act of 1969 (NEPA; 43 U.S.C. §§4321-4347), except in extraordinary circumstances. Various statutes and regulations have expanded categorical exclusions, including those for biomass fuel reduction projects, “small” timber sales, and forest plans.<sup>28</sup> The agency also has modified its application of extraordinary circumstances.<sup>29</sup> Previously, the rule appeared to automatically preclude an action from being categorically excluded if extraordinary circumstances were present; the new rule gives the responsible official discretion to determine whether extraordinary circumstances warrant NEPA analysis and public involvement in otherwise exempt projects. Several of the regulations were challenged. On July 2, 2005, a U.S. District Court ruled that five regulations violated the Forest Service Decision Making and Appeals Reform Act (§322 of P.L. 102-381; 16 U.S.C. §1612 note) by excluding decisions from the public comment and appeals process and for other reasons.<sup>30</sup> The agency initially responded to the ruling by suspending more than 1,500 permits, projects, and contracts. The court in the dispute (now under the name *Earth Island Institute v. Ruthenbeck*) issued a clarifying order that allowed many minor activities to go forward as categorical exclusions. Section 426 of H.R. 5386 (the FY2007 Interior appropriations bill), as reported by the Senate Appropriations Committee (S.Rept. 109-275), includes a provision exempting activities categorically excluded from NEPA by the agency’s rules from administrative challenges under the Appeals Reform Act.

**Federal Land Sales.** (by Ross W. Gorte and Carol Hardy Vincent) The President’s FY2007 budget request included proposals for federal land sales. For the BLM, the proposal would alter the distribution of proceeds from sales authorized under the Federal Land Transaction Facilitation Act (FLTFA; Title II of P.L. 106-248, 43 U.S.C. §§2301-2306). The proposal also would direct using updated land management plans for determining which lands to sell. Legislation would be needed to effect these changes, and no such legislation has been introduced in Congress to date.

Current FS authorities for selling or otherwise disposing of national forest lands are narrow, so legislation would be needed to authorize the President’s proposal. The Administration has sent to Congress draft legislation to sell national forest lands, but related legislation has not been introduced to date. The draft contains criteria for determining lands eligible for sale, such as lands that are inefficient or difficult to manage because they are isolated or scattered. The proceeds would be used to pay for a five-year extension of FS payments under the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106-393). That act created an alternative to the traditional FS 25% payments for county roads and schools, because the decline in timber sales had reduced payments enormously in some areas, but

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<sup>28</sup> 68 *Fed. Reg.* 33814, June 5, 2003; 68 *Fed. Reg.* 44598, July 29, 2003; and 70 *Fed. Reg.* 1023, Jan. 5, 2005, respectively.

<sup>29</sup> 67 *Fed. Reg.* 54622, Aug. 23, 2002.

<sup>30</sup> *Earth Island Institute v. Pengilly*, 376 F.Supp. 2d 994 (E.D. Cal. 2005).

payments under the act expire at the end of FY2006.<sup>31</sup> H.R. 517 and S. 267 would reauthorize the 2000 act for five years, but neither includes FS land sales; other bills address the program in other ways, such as providing funding sources (e.g., H.R. 4761 and S. 2485) or authorizing the program permanently (e.g., H.R. 3420).

Pending legislation pertaining to land sales is not covered in this report. Such legislation includes proposals to direct disposal of specific sites, grant federal lands to states for state educational purposes, offset acquisitions with disposals, and inventory federal property to identify land no longer required to be in federal ownership.

**R.S. 2477: Rights of Way Across Public Lands.** (by Pamela Baldwin)  
In 1866, in an act that became Revised Statute (R.S.) 2477, Congress granted rights of way across unreserved public lands “for the construction of highways.” This grant was repealed in 1976, but existing rights were protected. What constitutes construction of highways and whether a qualifying right of way existed by the time of repeal in 1976 can be contentious. These issues are important because possible rights of way may affect the management of federal lands, perhaps degrading their wilderness suitability while increasing access for recreation and other uses.

Section 108 of the FY1997 Interior appropriations act (P.L. 104-208) states that final regulations “pertaining to” R.S. 2477 rights of way cannot take effect unless expressly authorized by an act of Congress. On January 6, 2003, the BLM finalized changes to its regulations for issuing “disclaimers of interest,” a procedure to help clear title to property or interests in property with respect to possible interests of the United States.<sup>32</sup> This procedure is to be used to acknowledge R.S. 2477 rights of way, and may constitute regulations “pertaining to” R.S. 2477. A recent case concluded that state law plays a significant role in determining the validity of R.S. 2477 highways, but also cast doubt on the use of administrative disclaimers to disclaim federal title and thereby validate such rights of way.<sup>33</sup> On March 22, 2006, then-Secretary Norton issued guidance on determining R.S. 2477 highways and indicated the disclaimer process would be used. H.R. 3447 in the 109<sup>th</sup> Congress would establish an administrative process and criteria for resolving R.S. 2477 claims.

## Additional Reading

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

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

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<sup>31</sup> See CRS Report RS22004, *The Secure Rural Schools and Community Self-Determination Act of 2000: Forest Service Payments to Counties*, by Ross W. Gorte.

<sup>32</sup> 68 *Fed. Reg.* 494.

<sup>33</sup> See *SUWA v. BLM*, 2005 U.S. App. LEXIS 19381 (10<sup>th</sup> Cir. 2005).

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

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

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

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

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

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

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

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

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

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

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

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