

# CRS Report for Congress

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## **Federal Land Management Agencies: Background on Land and Resource Management**

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# Federal Land Management Agencies: Background on Land and Resources Management

## Summary

The federal government owns 655 million acres (29%) of the nearly 2.3 billion acres of land in the United States. Four agencies administer 628 million acres (96%) of this land: the Forest Service in the Department of Agriculture, and the Bureau of Land Management, Fish and Wildlife Service, and National Park Service, all in the Department of the Interior. The majority of these lands are in the West. They generate revenues for the U.S. Treasury, some of which are shared with states and localities. The agencies receive funding from annual appropriations laws, and from trust funds and special accounts (including the Land and Water Conservation Fund).

The lands administered by the four agencies are managed for a variety of purposes, primarily related to conservation, preservation, and development of natural resources. Yet, each of these agencies has distinct responsibilities for the lands and resources it administers. The Forest Service (FS) administers 192 million acres for multiple use and for sustained yields of various products and services, e.g., timber harvesting, recreation, grazing, watershed protection, and fish and wildlife habitats. Most of the lands are designated national forests, but there are national grasslands and other lands. National forests are created and modified by acts of Congress.

The Bureau of Land Management (BLM) manages 264 million acres, and is responsible for 700 million acres of subsurface mineral resources. BLM also has a multiple-use, sustained-yield mandate that supports a variety of uses and programs, including energy development, timber harvesting, recreation, grazing, wild horses and burros, cultural resources, and conservation. Both the BLM and FS have several authorities to acquire and dispose of lands.

The Fish and Wildlife Service (FWS) manages 94 million acres primarily to conserve and protect animals and plants. The 771 units of the National Wildlife Refuge System include refuges, waterfowl production areas, and wildlife coordination units. Units can be created by an act of Congress or executive order, and the FWS also may acquire lands for migratory bird purposes.

The National Park Service (NPS) manages 78 million acres of federal land (plus nearly 6 million acres of non-federal land) to conserve and interpret lands and resources and make them available for public use. Activities which harvest or remove resources generally are prohibited. The National Park System has diverse units ranging from historical structures to cultural and natural areas. Units are created by an act of Congress, but the President may proclaim national monuments.

There also are three special management systems that include lands from more than one agency. The National Wilderness Preservation System consists of 104 million acres of protected wilderness areas designated by Congress. The National Wild and Scenic Rivers System contains 11,292 miles of wild, scenic, and recreational rivers, primarily designated by Congress and managed to preserve their free-flowing condition. The National Trails System contains four classes of trails managed to provide recreation and access to outdoor areas and historic resources.

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# Federal Land Management Agencies: Background on Land and Resources Management

## Introduction <sup>1</sup>

### Scope and Organization

This report provides an overview of how federal lands and resources are managed, the agencies that manage the lands, the authorities under which these lands are managed, and some of the issues associated with federal land management. The report is divided into nine chapters. Chapter 1, Introduction, provides a brief historical review and general background on the federal lands. Chapter 2, Federal Lands Financing, describes: revenues derived from activities on federal lands; the appropriation processes and the trust funds and special accounts that fund these agencies; the Land and Water Conservation Fund; and programs that compensate state and local governments for the tax-exempt status of federal lands. Chapters 3 through 6 relate each of the agencies' history; organizational structure; management responsibilities; procedures for land acquisition, disposal, and designation, where relevant; current issues; and statutory authorities. Chapters 7 through 9 provide essentially the same information for the three major protection systems that are administered by more than one agency and hence cross agency jurisdictions: the National Wilderness Preservation System, the National Wild and Scenic Rivers System, and the National Trails System. Relevant CRS reports are listed following each chapter. The report concludes with an appendix of acronyms used in the text, and another defining selected terms used in the report.

Information on appropriations for land management agencies is contained in CRS Report RL30506, *Appropriations for FY2001: Interior and Related Agencies*. For other reports on related issues, see the CRS web page at [<http://www.crs.gov/>].

### Background

The federal government owns and manages approximately 655 million acres of land in the United States — 29% of the total land base of 2.3 billion acres.<sup>2</sup> Table 1 (page 4) identifies the portion of federal land that is located in each state and the District of Columbia (column 3). Such figures range from 9,122 acres of federal land

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<sup>1</sup>This section was prepared by Carol Hardy Vincent.

<sup>2</sup>U.S. General Services Administration. *Summary Report of Real Property Owned by the United States Throughout the World as of September 30, 1998*. Washington, DC: U.S. Govt. Print. Off., July 1999, p. 29.

in DC to 248,286,863 federal acres in Alaska. Further, while a dozen states contain less than ½ million acres of federal land, another dozen have more than 10 million federal acres within their borders. Table 1 also identifies the total size of each state (column 2), and the percentage of land in each state that is federally owned (column 4). These percentages point to significant variation in the size of the federal presence within states. Specifically, the figures range from 0.4% of New York land that is federally owned to 83.1% of land in Nevada that is federally owned. All 12 states where the federal government owns at least 26% of the land are located in the West (including Alaska).

Four agencies administer about 628 million acres (96%) of the total 655 million acres of federal land.<sup>3</sup> These four agencies are the Forest Service in the Department of Agriculture, and the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service, all in the Department of the Interior.<sup>4</sup>

The Bureau of Land Management (BLM) has jurisdiction over approximately 264 million acres (40.3%) of the federal total. The Forest Service (FS) has jurisdiction over approximately 192 million acres (29.3%) of the total federal acreage. The Fish and Wildlife Service (FWS) administers approximately 94 million acres (14.3%), and the National Park Service (NPS) administers about 78 million acres of federal land (11.9%) (plus nearly 6 million acres of non-federal land, for a total of nearly 84 million federal and nonfederal acres). Figure 1 shows the percent of land managed by each agency and table 2 (page 6) displays the acreage for each of these four agencies in each state and territory.

The lands administered by these four agencies are managed for a variety of purposes, primarily relating to the conservation, preservation, and development of various natural resources. Although there are some similarities among the agencies, each agency has a distinct mission and special responsibilities for the lands under its jurisdiction. The majority of the 655 million acres of federal lands are in the West,

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<sup>3</sup>In this report, the term “federal land” refers to any land owned or managed by the federal government, regardless of its mode of acquisition or managing agency. “Public domain land” is used when the historical distinction regarding mode of land acquisition is relevant, *i.e.*, when a law specifically applies to those lands that originally were ceded by the original states or obtained from foreign sovereigns (including Indian tribes) as opposed to being acquired from individuals or states. “Public land” refers to lands managed by the Bureau of Land Management.

<sup>4</sup> Several other agencies manage some of the remaining 27 million acres of federal land. The Department of Defense (DoD), including the Army Corps of Engineers, is the fifth largest federal land manager. Because land management is not DoD’s primary mission, these lands are not discussed in this report. Nonetheless, military lands are often noteworthy for their size, which can provide important open space, and for their historic, cultural, and biological resources. Moreover, because access is sometimes severely restricted, these lands may contain ecological resources in nearly pristine condition. In addition, the General Services Administration owns or rents lands and buildings to house federal agencies and also administers the excess/surplus system of property disposal.

**Table 1. Federally Owned Land by State, as of September 30, 1998**

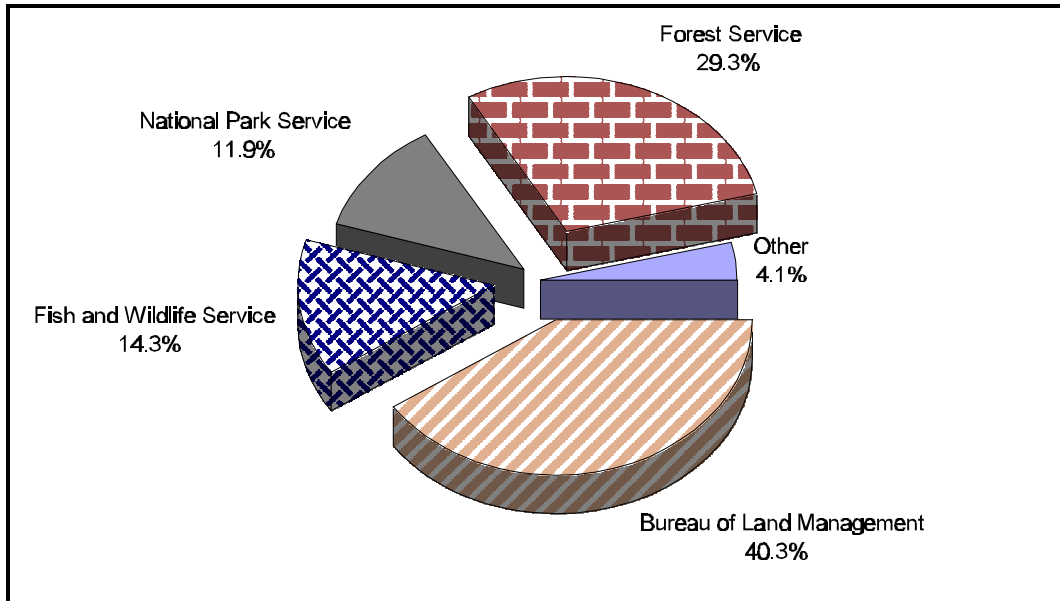
State	Total Acreage in State	Acreage of Federally Owned Land in State	% of Land Federally Owned in State
Alabama	32,678,400	1,109,546	3.4
Alaska	365,481,600	248,286,863	67.9
Arizona	72,688,000	33,130,067	45.6
Arkansas	33,599,360	3,259,660	10.2
California	100,206,720	45,027,292	44.9
Colorado	66,485,760	24,223,955	36.4
Connecticut	3,135,360	15,112	0.5
Delaware	1,265,920	26,710	2.1
District of Columbia	39,040	9,122	23.4
Florida	34,721,280	2,889,080	8.3
Georgia	37,295,360	2,080,239	5.6
Hawaii	4,105,600	605,362	14.7
Idaho	52,933,120	33,073,325	62.5
Illinois	35,795,200	627,748	1.8
Indiana	23,158,400	510,228	2.2
Iowa	35,860,480	234,388	0.7
Kansas	52,510,720	664,987	1.3
Kentucky	25,512,320	1,235,647	4.8
Louisiana	28,867,840	1,284,689	4.5
Maine	19,847,680	192,070	1.0
Maryland	6,319,360	199,417	3.2
Massachusetts	5,034,880	78,216	1.6
Michigan	36,492,160	4,087,471	11.2
Minnesota	51,205,760	4,437,324	8.7
Mississippi	30,222,720	1,774,075	5.9
Missouri	44,248,320	2,137,473	4.8
Montana	93,271,040	26,136,138	28.0
Nebraska	49,031,680	738,183	1.5
Nevada	70,264,320	58,375,263	83.1
New Hampshire	5,768,960	758,816	13.2
New Jersey	4,813,440	165,773	3.4
New Mexico	77,766,400	26,594,276	34.2
New York	30,680,960	122,070	0.4
North Carolina	31,402,880	2,508,402	8.0
North Dakota	44,452,480	1,849,709	4.2
Ohio	26,222,080	396,905	1.5
Oklahoma	44,087,680	1,280,559	2.9
Oregon	61,598,720	32,431,303	52.6
Pennsylvania	28,804,480	677,831	2.4
Rhode Island	677,120	3,880	0.6
South Carolina	19,374,080	1,188,350	6.1
South Dakota	48,881,920	2,753,704	5.6
Tennessee	26,727,680	1,643,374	6.1
Texas	168,217,600	2,804,397	1.7
Utah	52,696,960	34,005,979	64.5
Vermont	5,936,640	376,249	6.3
Virginia	25,496,320	2,299,111	9.0
Washington	42,693,760	12,186,369	28.5
West Virginia	15,410,560	1,177,927	7.6
Wisconsin	35,011,200	1,957,425	5.6
Wyoming	62,343,040	31,087,680	49.9
<b>Total</b>	<b>2,271,343,360</b>	<b>654,885,389</b>	<b>28.8</b>

More recent figures (from the *Summary Report for September 30, 1999*) are not used because of discrepancies between these figures and figures reported by individual agencies.

**Source:** Except where noted, figures are taken from: U.S. General Services Administration. *Summary Report of Real Property Owned by the United States Throughout the World as of September 30, 1998*. Washington, DC: U.S. Govt. Print. Off., July 1999. p. 29. Note that GSA obtained the state acreage figures (column two) from the U.S. Census of Population. The data do not include trust properties.



**Figure 1. Agency Jurisdiction Over Federally Owned Land in the United States**



**Note:** The National Park Service percentage reflects only federal land within the National Park System. Also, percentages do not add to 100% due to rounding.

a result of early treaties and land settlement laws and patterns. Management of these lands is often controversial, especially in states where the federal government is a predominant or majority landholder and where competing and often conflicting uses of the lands are at issue.

## Historical Review

The nation's lands and resources have been important in American history, adding to the strength and stature of the federal government, serving as an attraction and opportunity for settlement and economic development, and providing a source of revenue for schools, transportation, national defense, and other national, state, and local needs.

The formation of our current federal government was particularly influenced by the struggle for control over what were known as the "Western" lands — the lands between the Appalachian Mountains and the Mississippi River claimed by the original colonies. Prototypical land laws enacted by the Continental Congress, such as the Land Ordinance of 1785 and the Northwest Ordinance of 1787, established the federal system of rectangular land surveying for disposal and set up a system for developing territorial governments leading to statehood. During operation of the Articles of Confederation, the states which then owned the Western lands were reluctant to cede them to the developing new government, but eventually acquiesced. This, together with granting constitutional powers to the new federal government, including the authority to regulate federal property and to create new states, played a crucial role in transforming the weak central government under the Articles of Confederation into a stronger, centralized federal government under our Constitution.

The new Congress, which first met in 1789, enacted land statutes similar to those enacted by the Continental Congress. Subsequent federal land laws reflected two visions: reserving some federal lands (such as for national forests and national parks) and selling or otherwise disposing of other lands to raise money or to encourage transportation, development, and settlement. From the earliest days, these policy clashes took on East/West overtones, with easterners more likely to view the lands as national public property, and Westerners more likely to view the lands as necessary for local use and development. Most agreed, however, on measures that promoted settlement of the lands in order to pay soldiers and pay national debt, and to strengthen the nation. This settlement trend accelerated after the Louisiana Purchase in 1803, the Oregon Compromise with England in 1846, and cession of lands by treaty after the Mexican war in 1848.<sup>5</sup>

During the mid- to late-1800s, Congress passed numerous laws that encouraged and accelerated the settlement of the West by disposing of federal lands. Examples include the Homestead Act of 1862 and the Desert Lands Entry Act of 1877. Approximately 816 million acres of the public domain lands were transferred to private ownership between 1781 and 1999. Another 328 million acres were granted to the states generally, and an additional 127.5 million were granted in Alaska under state and native selection laws.<sup>6</sup> Most transfers to private ownership (97%) occurred before 1940; homestead entries, for example, peaked in 1910 at 18.3 million acres, but dropped below 200,000 acres annually after 1935, until being totally eliminated in 1986.<sup>7</sup>

Certain other federal laws were “catch up” laws designed to legitimize certain uses that already were occurring on the federal lands. These laws typically acknowledged local variations and customs. For example, the General Mining Law of 1872 recognized mineral claims on the public domain lands in accordance with local laws and customs, and provided for the conveyance of title to such lands. In

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<sup>5</sup>These major land acquisitions gave rise to a distinction in the laws between “public domain lands,” which essentially are those ceded by the original states or obtained from a foreign sovereign (*via* purchase, treaty, or other means), and “acquired lands,” which are those obtained from a state or individual by exchange, purchase, or gift. (Nearly 590 million acres, 90% of all federal lands, are public domain lands, while the other 65 million acres, 10% of federal lands, are acquired lands.) Many laws were passed that related only to the vast new public domain lands. Even though the distinction has lost most of its underlying significance today, different laws may still apply depending on the original nature of the lands involved. The lessening of the historical significance of land designations was recognized in the Federal Land Management and Policy Act of 1976 which defines “public lands” as those managed by BLM, regardless of whether they were derived from the public domain or were acquired.

<sup>6</sup>U.S. Dept. of the Interior, Bureau of Land Management. *Public Land Statistics, 1999*. Washington, DC: U.S. Govt. Printing Office, March, 2000. Table 1-2.

<sup>7</sup>U.S. Dept. of Commerce, Bureau of the Census. *Historical Statistics of the United States, Colonial Times to 1970*. Washington, DC: U.S. Govt. Printing Office, 1976. H. Doc. No. 93-78 (93<sup>rd</sup> Congress, 1<sup>st</sup> Session). pp.428-429.

FLPMA, enacted in 1976, repealed the Homestead Laws; however, homesteading was allowed to continue in Alaska for 10 years.

addition, early land disposal laws allowed states to determine the rights of settlers to use and control water. The courts later determined, however, that the federal government could also reserve or create federal water rights for its own properties and purposes.

Although some earlier laws had protected some lands and resources, such as timber needed for military use, other laws in the late 1800s reflected the growing concern that rapid development threatened some of the scenic treasures of the nation, as well as resources that would be needed for future use. A preservation and conservation movement evolved to ensure that certain lands and resources were left untouched or reserved for future use. For example, Yellowstone National Park was established in 1872 to preserve its resources in a natural condition, and to dedicate recreation opportunities for the public. It was the world's first national park, and like the other early parks, Yellowstone was protected by the U.S. Army— primarily from poachers of wildlife or timber.<sup>8</sup> In 1891, concern over the effects of timber harvests on water supplies led to the creation of forest reserves (renamed national forests in 1907).

The creation of national parks and forest reserves laid the foundation for the current development of federal agencies with primary purposes of managing natural resources on federal lands. For example, in 1905, responsibility for management of the forest reserves was joined with forestry research and assistance in a new Forest Service within the Department of Agriculture. The National Park Service was created in 1916 to manage the growing number of parks established by Congress and monuments proclaimed by the President. The first national wildlife refuge was proclaimed in 1903, although it was not until 1966 that the refuges were coalesced into the National Wildlife Refuge System. The Grazing Service (Department of the Interior, first known as the Grazing Division) was established in 1934 to administer grazing on public rangelands. It was combined with the General Land Office in 1946 to form the Bureau of Land Management (BLM).

In addition to the conservation laws and activities noted above, emphasis shifted during the 20<sup>th</sup> Century from the disposal and conveyance of title to private citizens to the retention and management of the remaining federal lands. Some laws provided for sharing revenues from various uses of the federal lands with the states containing the lands. Examples include the Mineral Leasing Act of 1920, which provides for the leased development of certain federal minerals, and the Taylor Grazing Act of 1934, which provides for permitted private livestock grazing on public lands.

During debates on the Taylor Grazing Act, some Western Members of Congress acknowledged the poor prospects for relinquishing federal lands to the states, but

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<sup>8</sup>“Yo-Semite” was established by an Act of Congress in 1864, to protect Yosemite Valley from development, and was transferred to the State of California to administer. In 1890, surrounding lands were designated as Yosemite National Park, and in 1905, Yosemite Valley was returned to federal jurisdiction and incorporated into the park.

**Table 2. Acreage Managed by Federal Agencies, by State, 1999**

State	Forest Service	National Park Service	Fish and Wildlife Service	Bureau of Land Management
Alabama	665,026	16,873	57,866	110,923
Alaska	21,998,614	51,085,035	76,981,476	86,526,170
Arizona	11,254,994	2,679,020	1,718,434	14,258,209
Arkansas	2,586,074	101,456	345,745	291,126
California	20,697,511	7,445,638	446,382	14,565,597
Colorado	14,509,188	596,794	83,785	8,364,945
Connecticut	24	6,410	775	0
Delaware	0	0	26,721	0
District of Columbia	0	6,945	0	0
Florida	1,152,824	2,443,323	976,080	25,277
Georgia	865,078	40,335	479,241	0
Hawaii	1	237,629	294,773	0
Idaho	20,458,276	99,788	89,332	11,861,600
Illinois	292,726	12	138,351	225
Indiana	196,488	10,871	12,035	0
Iowa	0	1,663	108,865	378
Kansas	108,175	698	58,538	0
Kentucky	693,746	93,941	7,487	0
Louisiana	604,210	10,731	510,615	309,611
Maine	53,040	75,241	54,875	0
Maryland	0	43,362	44,070	0
Massachusetts	0	33,744	14,179	0
Michigan	2,857,659	632,105	117,574	74,854
Minnesota	2,837,647	142,400	537,246	151,128
Mississippi	1,158,967	107,866	223,634	57,171
Missouri	1,492,915	63,437	68,694	2,161
Montana	16,893,496	1,221,473	1,279,632	8,012,351
Nebraska	352,092	5,863	174,331	6,580
Nevada	5,832,769	777,017	2,384,955	47,886,535
New Hampshire	728,151	15,385	5,911	0
New Jersey	0	38,306	68,717	0
New Mexico	9,326,785	376,312	385,027	13,378,976
New York	16,175	36,763	28,424	0
North Carolina	1,244,295	393,095	421,080	0
North Dakota	1,105,770	71,650	1,433,139	59,717
Ohio	229,838	19,968	8,353	0
Oklahoma	397,131	10,200	167,682	2,126
Oregon	15,657,819	197,301	597,441	16,221,167
Pennsylvania	513,359	50,028	10,052	0
Rhode Island	0	5	1,707	0
South Carolina	613,171	27,152	160,490	0
South Dakota	2,012,426	263,629	1,121,113	279,678
Tennessee	634,523	355,354	114,517	0
Texas	755,104	1,183,095	496,916	0
Utah	8,178,602	2,097,824	111,755	22,814,389
Vermont	376,251	21,407	32,868	0
Virginia	1,660,428	333,422	129,721	0
Washington	9,214,449	1,932,775	199,262	386,334
West Virginia	1,032,736	52,739	6,004	0
Wisconsin	1,522,524	73,361	235,160	160,106
Wyoming	9,237,617	2,393,210	97,332	18,367,411
Territories	27,978	14,846	559,938	0
<b>Total</b>	<b>192,046,672</b>	<b>77,937,494</b>	<b>93,628,302</b>	<b>264,174,745</b>

**Sources:** For FS: U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System, as of September 1999*. Data reflect land managed by the FS that is within the National

Forest System, including national forests, national grasslands, purchase units, land utilization projects, experimental areas, and other land areas, water areas, and interests in lands.

For NPS: U.S. Dept. of Agriculture, National Park Service, Land Resources Division, *National Park Service, Listing of Acreage by State, as of 09/30/1999*, unpublished document. The data consist of all federal lands managed by the NPS.

For FWS: U.S. Dept. of the Interior, Fish and Wildlife Service, *Report of Lands Under Control of the U.S. Fish and Wildlife Service, as of September 30, 1999*. They comprise all land managed by the FWS, whether the agency has sole, primary, or secondary jurisdiction, and include acres under agreements, easements, and leases.

For BLM: U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 1999*, and are current as of September 30, 1999. The data consist of lands managed exclusively by BLM, including certain types of surveyed and unsurveyed public and ceded Indian lands, as well as reserved lands.

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language included in the Act left this question open. It was not until the passage of the Federal Land Policy and Management Act (FLPMA) in 1976 that Congress expressly declared that the remaining public domain lands generally would remain in federal ownership.<sup>9</sup> This declaration of policy was a significant factor in what became known as the “Sagebrush Rebellion,” an effort that started in the late 1970s to take state or local control of federal land and management decisions. To date, judicial challenges and legislative and executive attempts to make significant changes to federal ownership have proven unsuccessful. Since current authorities for disposing of federal lands are unique to each agency, they, as well as existing authorities for land acquisition, are described in subsequent chapters of this report.

## Issues

Since the cession to the federal government of the “Western” lands of several of the original thirteen colonies, many issues and conflicts have recurred. Ownership continues to be debated, with some advocating increased disposal of federal lands to state or private ownership, and others supporting retention of federal lands by the federal government. Still others promote acquisition by the federal government of additional land, including through an increased, and more stable, funding source. A related issue is determining the optimal division of resources between federal acquisition of new lands and resources and maintenance of existing federal lands and facilities.

Another focus is whether federal lands should be managed primarily to produce national benefits or benefits primarily for the localities and states in which the lands are located. Who decides these issues, and how the decisions are made, also are at issue. Some would like to see more local control of land and a reduced federal role, while others seek to maintain or enhance the federal role in land management as the best way to represent the interests of all citizens.

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<sup>9</sup>FLPMA also established a comprehensive system of management for the remainder of the Western public lands, and a definitive mission and policy statement for the BLM.

The extent to which federal lands should be preserved, opened to recreation, and made available for development has been controversial. Significant differences of opinion exist on the amount of traditional commercial development that should be allowed, particularly involving grazing, mining, and timber cutting. Whether and where to restrict recreation, either generally or such uses as motorized vehicles off-road, also is a focus of debate. How much land to accord enhanced protection, what type of protection to accord, and who should protect federal lands are continuing questions.

## CRS Reports and Committee Prints

CRS Report RS20002, *Federal Land and Resource Management: A Primer*, Coordinated by Ross W. Gorte.

CRS Report RL30126, *Federal Land Ownership: Constitutional Authority; the History of Acquisition, Disposal, and Retention; and Current Acquisition and Disposal Authorities*, by Ross W. Gorte and Pamela Baldwin.

CRS Report 95-1117, *The Forest Service and Bureau of Land Management: History and Analysis of Merger Proposals*, by Ross W. Gorte and Betsy A. Cody.

CRS Report RL30069, *Natural Resource Issues in the 106<sup>th</sup> Congress*, by Natural Resources and Earth Sciences Section, Resource, Science, and Industry Division.

U.S. House of Representatives, Committee on Interior and Insular Affairs. *Multiple Use and Sustained Yield: Changing Philosophies for Federal Land Management? The Proceedings and Summary of a Workshop Convened on March 5-6, 1992*. Prepared by the Congressional Research Service. Washington, DC: U.S. Govt. Print. Off., Dec. 1992. Committee Print No. 11.

U.S. Senate, Committee on Energy and Natural Resources. *Outdoor Recreation: A Reader for Congress*. Prepared by the Congressional Research Service. Washington, DC: U.S. Govt. Print. Off., June 1998. Committee Print S.Prt. 105-53.

U.S. Senate, Committee on Environment and Public Works. *Ecosystem Management: Status and Potential. Summary of a Workshop Convened by the Congressional Research Service, March 24-25, 1994*. Prepared by the Congressional Research Service. Washington, DC: U.S. Govt. Print. Off., Dec. 1994. Committee Print S.Prt. 103-98.

## Federal Lands Financing<sup>10</sup>

Financial issues are a persistent concern for all federal agencies, including the federal land management agencies. However, the sale or lease of the lands and resources being managed provides these agencies with an opportunity to recover some of their operations and capital costs. This section summarizes the revenues of the four land management agencies and provides a brief overview of annual appropriations and of the trust funds and special accounts funded from revenues. It concludes with a discussion of the programs that compensate state and local governments for the tax-exempt status of federal lands.

### Revenues from Activities on Federal Lands

The federal land management agencies are among the relatively few federal agencies that generate revenues for the U.S. Treasury. However, none of these four agencies consistently collects more money than it expends. Revenues are derived from the use or sale of lands and resources. Major revenue sources include the selling of timber, fees for grazing livestock, leasing energy and mineral resources, and collecting fees for recreation uses. The FY1999 revenues collected by these four agencies, excluding deposits to trust funds and special accounts, are shown in table 3 (page 12).

### Agency Appropriations

**Annual Appropriations.** Funding for all four of the federal land management agencies is contained in the annual Department of the Interior and Related Agencies appropriations bill. The FS is a USDA agency, but has been included in the Interior bill as a “related agency” since 1955. It receives the largest appropriation of any agency in the Interior bill, with funding of \$4.4 billion (including additional fire funding) in the Interior Appropriations Act for FY2001 (P.L. 106-291). The NPS and BLM receive the next largest appropriations of the federal land management agencies, each with FY2001 funding having risen to \$2.15 billion (including additional fire funds for the BLM). The FWS has the lowest funding of the land management agencies, with FY2001 appropriations at \$1.2 billion.

**Trust Funds and Special Accounts.** The federal land management agencies also have a variety of trust funds and special accounts. Some require annual appropriations; most of these are small, but the Land and Water Conservation Fund is relatively large and controversial, and is discussed separately below.

A number of the trust funds and special accounts are permanently appropriated. This means that the agencies can spend the money in the accounts without annual appropriations by Congress. Many of these accounts (15) were established to compensate state and local governments for the tax-exempt status of federal lands; these accounts will be discussed separately below.

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<sup>10</sup>This section was prepared by Ross W. Gorte.

The FWS has the largest annual funding in permanently appropriated trust funds and special accounts. The two largest accounts, with FY2000 budget authority of \$533 million, are: the Sport Fish Restoration Trust Fund (\$306 million), established by the Federal Aid in Sport Fish Restoration Act (also known as the Dingell-Johnson Act and the Wallop-Breaux Act); and the Wildlife Restoration Special Account (\$228 million), established by the Federal Aid in Wildlife Restoration Act (also known as the Pittman-Robertson Act). These accounts are largely funded by excise taxes on equipment related to fishing and hunting, respectively, and the money is distributed to the states mostly to fund fish and wildlife restoration activities by state agencies. The FWS has several other permanently appropriated funds, with FY2000 budget authority of \$53 million. Most of this is the Migratory Bird Conservation Fund (\$42 million), which uses the revenues from selling duck stamps to hunters, refuge visitors, and others to acquire lands for the National Wildlife Refuge System.

The FS has the next largest annual funding in permanently appropriated trust funds and special accounts. The FS has 14 accounts with FY2000 budget authority of \$433 million.<sup>11</sup> Six of the 7 largest (accounting for 87% of total FS permanent appropriations) are directly or substantially related to timber sales, including: the Salvage Sale Fund (\$128 million), the Knutson-Vandenberg Fund (\$116 million), other cooperative deposits (\$50 million), the Reforestation Trust Fund (\$30 million), National Forest roads and trails (\$26 million),<sup>12</sup> and brush disposal (\$26 million).

The NPS also has numerous permanently-appropriated special accounts and trust funds, with FY2000 budget authority of \$223 million. Under these accounts, the NPS now retains 100% of its recreation and admission fees. Two funds are unique to the NPS: the concessions improvement account (\$20 million), and the Park concessions franchise fees (\$15 million). Two other funds are common to all four land management agencies, but are significantly larger for the NPS. One is the fund for maintaining employee quarters (\$15 million for the NPS, less than \$10 million total for the other 3 agencies) paid by rent from employees. Another is contributions and donations from interested individuals and groups (\$15 million for the NPS; less than \$5 million total for the other 3 agencies).

The BLM also has numerous permanently-appropriated trust funds and special accounts, but the accounts are generally much smaller than for the other federal land management agencies; total FY2000 budget authority was \$40 million. The largest account — Southern Nevada public land sales — had FY2000 budget authority of \$13 million.

Finally, all 4 agencies were authorized to participate in the recreational fee demonstration project, to test the feasibility and public acceptability of user fees to supplement or supplant appropriations for operations and maintenance (P.L. 104-134,

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<sup>11</sup>This excludes the Working Capital Fund, an intergovernmental account that maintains long-lived assets (e.g., vehicles and signs) and effectively charges depreciation to the other accounts or agencies (e.g., the timber or fire-fighting programs) as those assets are used. FY2000 budget authority for this Fund was \$174 million.

<sup>12</sup>Since FY1998, this account has been available for forest health improvement activities, as well as for building and repairing roads and trails.



§315). This project authorized new or increased entrance fees at federal recreation sites from FY1996 through FY1998; it has been extended multiple times, and now is authorized for fee collections through FY2002 (expenditures can continue through FY2005). FY2000 budget authority is \$144 million for the NPS, \$25 million for the FS, \$6 million for the BLM, and \$4 million for the FWS.

**Table 3. Gross Federal Government Revenues from Sale and Use of Agency Land and Resources for FY1999 (Excluding Deposits to Permanently Appropriated Accounts)**  
(in thousands of dollars)

Resource	BLM	FWS	NPS	FS
Mineral leases and permits	\$49,933 <sup>a</sup>	\$2,433	\$0	\$135,721 <sup>b</sup>
Sales of timber and other forest products	\$65,506	\$2,985	\$10	\$159,119
Grazing leases, licenses, and permits	\$14,023	\$952	— <sup>c</sup>	\$6,894
Recreation, admission, and user fees	\$6,688	\$1,082	\$0 <sup>d</sup>	\$48,968
Other	\$34,475	\$890	\$53	\$9,858
<b>Total</b>	<b>\$170,625</b>	<b>\$8,342</b>	<b>\$63</b>	<b>\$360,560</b>

**Sources:** For BLM: U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics 1999*, v. 184, table 3-26, at [<http://www.blm.gov/natac/pls99/99pl3-26.pdf>].

For FWS: U.S. Dept. of the Interior, *Budget Justifications and Annual Performance Plan, FY 2001: U.S. Fish and Wildlife Service*, p. 438.

For NPS: U.S. Dept. of the Interior, *Budget Justifications and Annual Performance Plan, FY 2001: National Park Service*, p. NPS-15.

For FS: U.S. Dept. of Agriculture, Forest Service, *Report of the Forest Service, Fiscal Year 1999*, draft.

<sup>a</sup> Includes mining claim and holding fees, and non-operating revenues.

<sup>b</sup> Includes collections for power licenses and estimated \$120.9 million collected by Departments of the Interior and Energy for mineral leases and power licenses.

<sup>c</sup> Included with revenues for sales of timber and forest products.

<sup>d</sup> The NPS is now authorized, through its several permanently appropriated accounts, to retain all such fees in permanently appropriated accounts, amounting to \$233 million in FY2000.

**Land and Water Conservation Fund (LWCF).** LWCF is a special account created in 1964 to provide funds for federal land acquisition and for state recreation programs. It is credited with revenues from federal recreation user fees, the federal motorboat fuel tax, and surplus property sales; these are supplemented with revenues from federal offshore oil and gas leases, up to the authorized level of \$900 million annually.

LWCF does not operate the way a “true trust fund” would in the private sector. The Fund is *credited* with deposits from specified sources, but Congress must enact appropriations annually for the agencies to spend money from the Fund. Thus, “deposits” to LWCF are only an authorization of expenditures that accumulates if the money is not appropriated. Through FY2000, the authorized, accumulated, unappropriated balance in LWCF is nearly \$12 billion. It must be recognized, however, that because these funds actually are used elsewhere in the Federal budget, the LWCF balances are only an accounting entry indicating the total amount that Congress has authorized but not appropriated.

The 106<sup>th</sup> Congress considered several versions of legislation, typically referred to as CARA (Conservation and Reinvestment Act, H.R. 701 and S. 25), that would have fully funded the LWCF for the next 15 fiscal years. CARA legislation passed the House and was reported by the Senate Energy and Natural Resources Committee, but was not enacted. In the House-passed version, \$450 million would have been provided annually for federal land acquisition from the proposed CARA Fund, subject to the annual appropriations process. This bill did not repeal the existing LWCF program, so an additional \$900 million, subject to annual appropriations, also would have been available. The version reported by the Senate Committee was similar, except that none of the other programs funded under the bill using permanent appropriations could have received those funds until Congress had approved funding for the federal portion of the LWCF, and the old LWCF program would have been replaced by CARA rather than being in addition to it.

The Clinton Administration successfully pursued another avenue to increase funding for federal LWCF land acquisition, through the annual appropriations process in FY2000 and FY2001, in its Lands Legacy Initiative. In the year preceding the initiative, FY1999, the federal agencies had been appropriated a total of \$328.1 million for land acquisition. In FY2000, the appropriation was increased to \$425 million (including \$178.6 in the lands legacy title), and to \$494 million in FY2001 (including \$179 million in the lands legacy title). This is the highest funding level for federal land acquisition since FY1980.

## **Compensation to State and Local Governments**

Because federal property is exempt from state and local taxation, Congress has enacted a variety of mechanisms to compensate state and local governments for tax revenues that would have been collected if the lands were privately owned. Many of the mechanisms provide for sharing revenues from federal lands with state and/or local governments; only the NPS has no such compensation system. The Payments In Lieu of Taxes (PILT) Program provides additional revenues.

**Revenue-Sharing.** The amount and percentage of federal revenues that are shared with state and/or local governments depends upon the history of the land and the type of activities generating the revenues. Congress created the simplest system for revenue-sharing for FS lands. Since 1908, the agency has returned 25% of its gross revenues to the states for use on roads and schools in the counties where the national forests are located. The states determine which road and school programs are to be funded, and how much goes to each program, but the amount allocated to each county is determined by the FS and the states cannot retain any of the funds. In

addition, for national forests which contain northern spotted owl habitat (and in which timber sales consequently were reduced), payments for FY1994-FY2003 have been set at a fixed percentage of historic payments, unless the revenue-sharing payments would be higher; these “owl” payments can be made “out of any money in the Treasury not otherwise appropriated.”<sup>13</sup> For the national grasslands (also administered by the FS), 25% of *net* revenues go directly to the counties, without any state intervention or control. Payments are permanently appropriated from FS revenues (except for the owl payments), with FY2000 budget authority of \$235 million.

Because of concerns over declining timber revenues in many areas, and the approaching end of the owl payments program, the 106<sup>th</sup> Congress debated bills to modify the FS revenue-sharing program. Eventually, in P.L. 106-393, Congress enacted a 6-year program allowing counties to supplant the 25% payment with the average of the three highest payments to the state between 1986 and 1999, although 15-20% of these 3-high payments must be spent on certain county programs or on projects on federal lands recommended by a local advisory committee or chosen by the FS.

For BLM lands and revenues, the revenue-sharing system is more complicated. The share going to state and local entities ranges from 0 to 90% of gross program revenues, as specified in individual statutes. For example, states and counties receive 12.5% of revenues from grazing within grazing districts (under §3 of the Taylor Grazing Act of 1934) and 50% of revenues from grazing outside grazing districts (under §15 of the Taylor Grazing Act). Another example is timber sale revenues. The states and counties receive 4% of timber revenues from most BLM lands. However, the counties receive up to 75% from the heavily timbered O&C grant lands in Western Oregon.<sup>14</sup> Counties with the Coos Bay Wagon Road grant lands (adjoining and usually identified with the O&C lands) similarly receive up to 75%, but actual payments are limited by county tax assessments. Because the O&C lands were included in the owl payments program, they were also included in P.L. 106-393 creating a 6-year program of payments at the average of the three highest between 1986 and 1999, with 15-20% spent on specific programs or projects. These examples demonstrate the complexity of the legal direction to share BLM revenues with state and local governments. The BLM revenue-sharing payments are permanently appropriated, with 9 separate payment accounts and FY2000 budget authority of \$69 million (of which \$62 million is for the O&C lands).

Finally, the FWS has a revenue-sharing program, but payments depend on the history of the land. For refuges reserved from the public domain, the payments are based on 25% of *net* revenues (in contrast to 25% of *gross* revenues from FS lands). For refuges which have been created on lands acquired from other landowners,

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<sup>13</sup>This program, enacted in the Omnibus Budget Reconciliation Act of 1993 (OBRA '93; P.L. 103-66) began at 85% of the average FY1986-FY1990 payments in FY1994 and declines by 3 percentage points annually (to 58% in FY2003).

<sup>14</sup>A third of the county payment (i.e., 25% of the total) is returned to the General Treasury to cover appropriations for access roads and reforestation; thus, the counties actually receive 50% of the revenues.

payments are based on the *greatest* of: 25% of net revenues; 0.75% of fair market value of the land; or \$0.75 per acre. The National Wildlife Refuge Fund is permanently appropriated for making these payments, but the net revenues have been insufficient to make the authorized payments. Although payments have been supplemented with annual appropriations, actual payments have consistently been less than authorized payments.

**Payments In Lieu of Taxes.** The most comprehensive federal program for compensating local governments for the tax-exempt status of federal lands was created in the 1976 Payments In Lieu of Taxes (PILT) Act (30 U.S.C. §6901-6907). PILT payments are made in addition to any revenue-sharing payments, although the payments may be limited by such revenue-sharing payments, as discussed below. Federal lands encompassed by this county-compensation program include lands in the National Forest System, in the National Park System, and those administered by the BLM, plus some of the National Wildlife Refuge System (those lands reserved from the public domain), and a few other categories of federal lands.

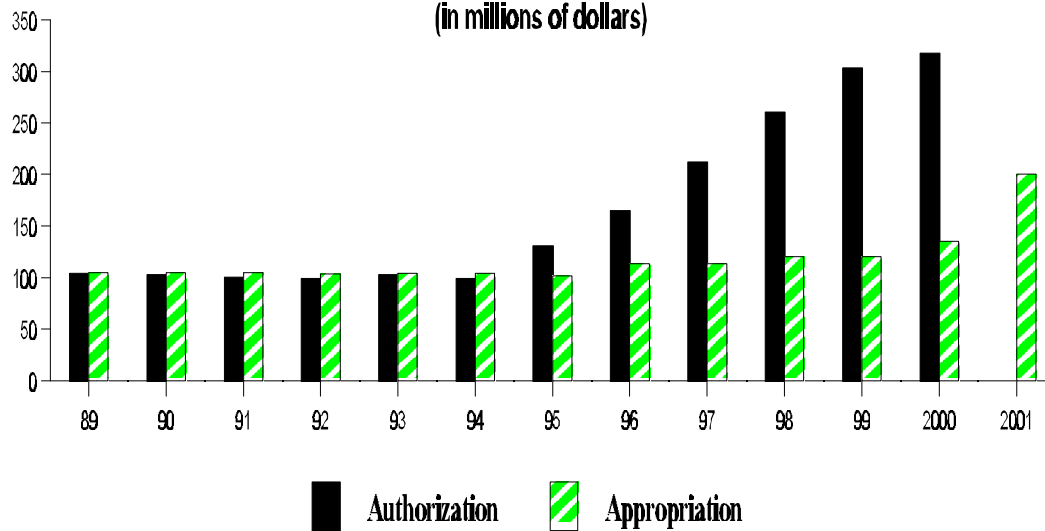
In 1994, Congress amended the PILT Act to more than double the authorized payments over 5 years, to adjust for inflation between 1976 and 1994, and to build in adjustments for future inflation. By 2000, counties were eligible to receive the *greater* of the amounts determined by the following two formulas:

- (1) The *lesser* of: (a) the county's eligible acres times \$0.25 per acre; or (b) the county's payment ceiling (determined by county population level).
- (2) The *lesser* of: (a) the county's eligible acres times \$1.87 per acre minus the previous year's total revenue-sharing payments; or (b) the county's payment ceiling minus the previous year's total revenue-sharing payments.

In contrast to most of the revenue-sharing programs, PILT requires annual appropriations from Congress. Those appropriations had generally been sufficient to compensate the counties at the authorized level prior to the 1994 amendments. Those amendments, however, only raised the authorization. Critics expressed their concern that this would raise expectations, but that Congress would not increase the appropriations to fulfill the greater authorized payments. Subsequent appropriations have been substantially below the increased authorization. Figure 2 compares the level of authorization and appropriation for each year from FY1989 through FY2001.

## Issues

Several financing themes are perennial issues for Congress, involving fees charged (or not charged) and how these revenues relate to agency activities. One issue has been the question of whether prices set administratively (rather than by markets) subsidize some resource users. This issue typically has focused on fees for private livestock grazing on federal lands. In other instances, the issue is that no fees currently are charged at all, e.g., hardrock (locatable) minerals that are currently available for private development under a claims system without royalty payments. Another issue is whether "below-cost" timber sales should continue if the government is losing money on them. In addition, whether to permanently authorize the Recreational Fee Demonstration Program has been a continuing concern.

**Figure 2. PILT Payments**

Authorization for a given year depends on receipts from previous years from other agencies. Consequently, no authorization level can be determined for FY2001.

**Sources:** The authorization levels were calculated by the BLM based on the formula in statute, while the appropriation levels were taken from laws appropriating funds for the Department of the Interior.

Federal land acquisition also has been controversial. Bills to alter the LWCF and add permanent federal land acquisition funding (as well as funding for other activities) from offshore oil and gas leasing revenues were discussed in the 106<sup>th</sup> Congress, but were not enacted.<sup>15</sup> Members of Congress or the Bush Administration may pursue this issue in the 107<sup>th</sup> Congress.

Another persistent issue is the annual appropriations for the Department of the Interior and related agencies (including the FS). The budget requests for the agencies can be controversial, and are typically modified by Congress. In addition, added environmental and resource “riders” (legislative provisions contained in the bill) are often the most controversial parts of the bill.

## Major Statutes

Department of the Interior and Related Agencies Appropriations Act for FY 2001 (the most recent in the annual series of such acts): Act of Oct. 11, 2000; P.L. 106-291.

Forest Service Revenue-Sharing Act: Act of May 23, 1908; ch. 192, 35 Stat. 251. 16 U.S.C. 500.

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<sup>15</sup> Through the appropriations process, Congress increased funding for land acquisition that was sought as part of President Clinton’s Lands Legacy Initiative.

Land and Water Conservation Fund Act of 1965: Act of Sept. 3, 1964; P.L. 88-578; 78 Stat. 897. 16 U.S.C. §460*l*.

Payments in Lieu of Taxes Act: Act of Oct. 20, 1976; P.L. 94-565, 90 Stat. 2662. 31 U.S.C. §6901-6907.

Secure Rural Schools and Community Self-Determination Act of 2000: Act of Oct. 19, 2000; P.L. 106-393.

## **CRS Reports and Committee Prints**

CRS Report RL30506, *Appropriations for FY2001: Interior and Related Agencies*, coordinated by Alfred R. Greenwood.

CRS Report RL30444, *Conservation and Reinvestment Act (CARA) (H.R. 701) and a Related Initiative in the 106<sup>th</sup> Congress*, by Jeffrey Zinn and M. Lynne Corn.

CRS Report RL30335, *Federal Land Management Agencies' Permanently Appropriated Accounts*, by Ross W. Gorte, M. Lynne Corn, and Carol Hardy Vincent.

CRS Report 98-794, *Federal Recreational Fees: Demonstration Program*, by Rosemary Mazaika.

CRS Report 98-980, *Federal Sales of Natural Resources: Allocation and Pricing Mechanisms*, by Ross W. Gorte.

CRS Report 90-192, *Fish and Wildlife Service: Compensation to Local Governments*, by M. Lynne Corn.

CRS Report RL30480, *Forest Service Revenue-Sharing: Legislative Issues*, by Ross W. Gorte.

CRS Report 97-792, *Land and Water Conservation Fund: Current Status and Issues*, by Jeffrey Zinn.

CRS Report IB10015, *Managing Growth and Related Issues in the 107<sup>th</sup> Congress: Issue Brief*, by Jeffrey Zinn.

CRS Report 98-574, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

## The National Forest System <sup>16</sup>

The National Forest System (NFS) is administered by the Forest Service (FS) in the U.S. Department of Agriculture. The NFS is comprised of national forests, national grasslands, and various other designations. Although NFS lands are concentrated in the West (87%), the FS administers more federal land in the East than all other federal agencies combined. NFS lands are administered for sustained yields of multiple uses, including outdoor recreation (camping, hiking, hunting, sightseeing, *etc.*), livestock grazing, timber harvesting, watershed protection, and fish and wildlife habitats.

### Background

In 1891, Congress granted the President the authority (now repealed) to establish forest reserves from the public domain. Six years later, in 1897, Congress stated that the forest reserves were:

to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of the citizens of the United States.

Initially, the reserves were administered by the Division of Forestry in the General Land Office of the Department of the Interior. In 1905, this division was combined with the USDA Bureau of Forestry, renamed the Forest Service, and the administration of the 56 million acres of forest reserves (later renamed “national forests”) was transferred to the new agency within the Department of Agriculture. NFS management is one of the three principal FS programs.<sup>17</sup>

In 1906 and 1907, President Theodore Roosevelt more than doubled the acreage of the forest reserves. As a result, Congress limited the authority of the President to add to the system. However, in 1911 Congress passed the Weeks Law, authorizing additions to the NFS through the purchase of private lands. Under this and other authorities, the System has continued to grow slowly, from 154 million acres in 1919 to 192 million acres in 1999. This growth has resulted from purchases and donations of private land and from land transfers, primarily from the BLM.

### Organization

The NFS includes 155 national forests with 188 million acres (97.7% of the system); 20 national grasslands with 4 million acres (2.0%); and 80 other areas, such

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<sup>16</sup>This section was prepared by Ross W. Gorte.

<sup>17</sup>The second principal FS program continues the original role of the Bureau of Forestry: to provide forestry assistance to states and to nonindustrial private forest owners. The authorities for assistance programs were consolidated and clarified in the Cooperative Forestry Assistance Act of 1978. Forestry research is the third principal FS program. Congress first authorized forestry research in 1928 “to insure adequate supplies of timber and other forest products”; the research authorities were streamlined by the Forest and Rangeland Renewable Resources Research Act of 1978.

as land utilization projects, purchase units, and research and experimental areas, with 0.5 million acres (0.3%).<sup>18</sup> The NFS units are arranged into 9 administrative regions, each headed by a regional forester. The 9 regional foresters report to the NFS Deputy Chief, who reports to the Chief of the Forest Service. In contrast to the other federal land management agencies, the Chief has traditionally been a career employee of the agency. The Chief reports to the Secretary through the Undersecretary for Natural Resources and Environment.

**Table 4. The National Forest System**

Forest Service Region		States containing <sup>a</sup> NFS lands	National Forest System Acreage <sup>b</sup>	
Region Name	No.	States	Federal	Inholdings
Northern	1	ID, MT, ND	25,409,446	2,750,115
Rocky Mountain	2	CO, NE, SD, WY	22,090,903	2,396,234
Southwestern	3	AZ, NM	20,707,503	1,677,606
Intermountain	4	ID, NV, UT, WY	31,995,229	2,271,153
Pacific Southwest	5	CA	20,093,853	3,673,147
Pacific Northwest	6	OR, WA	24,668,760	2,709,922
Southern	8	AL, AR, FL, GA, KY, LA, MS, NC, OK, PR, SC, TN, TX, VA	13,056,296	12,357,859
Eastern	9	IL, IN, ME, MI, MN, MO, NH, NY, OH, PA, VT, WI, WV	12,026,068	9,930,679
Alaska	10	AK	21,998,614	2,356,521
<b>National Forest System Total</b>			192,046,672	40,123,236

**Source:** U.S. Dept. of Agriculture, Forest Service. *Land Areas of the National Forest System, as of September 1999*. FS-383. Washington, DC: January 2000. pp. 1-3.

**Note:** In 1966, Region 7, the Lake States Region, was merged with Region 9, the Northeastern Region, to form the current Eastern Region. Although this merger left 9 regions, the numbering sequence skips 7 and ends with 10, as shown in the table.

<sup>a</sup> This column lists only states (and territories) that currently contain NFS lands.

<sup>b</sup> “Federal” is federally-owned within the boundaries of the NFS that is managed by the FS. “Inholdings” are private and other government lands within the boundaries of the NFS that are not administered or regulated by the FS.

<sup>18</sup>U.S. Dept. of Agriculture, Forest Service. *Land Areas of the National Forest System, as of September, 1999*. FS-383. Washington, DC: January 2000. p. 1.



The NFS regions often are referred to by number, rather than by name. Table 4 identifies the number, states encompassed, and acreage for each of the regions. Although the NFS lands are concentrated in the 7 Western FS regions (87%), the FS manages more than half of all federal land in the East. The “inholdings” land shown in the table is land (primarily private) within the designated boundaries of the national forests (and other NFS units) which is not owned by the federal government. Inholdings sometimes pose difficulties for FS land management, because the agency generally does not regulate the development and use of the inholdings. The uses of private inholdings may be incompatible with desired uses of the federal lands, and constraints on crossing inholdings may limit access to some federal lands. The private landowners, however, object to federal restrictions on the use of their lands and to unfettered public access across their lands. This is particularly true in the Southern and Eastern Regions, where nearly half of the land within the NFS boundaries is inholdings.

## Management

The management goals for the National Forest System were first established in 1897, as described above. Management goals were further articulated in §1 of the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), which states:

It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. The purposes of this Act are declared to be supplemental to, but not in derogation of, the purposes for which the national forests were established as set forth in the Act of June 4, 1897.... The establishment and maintenance of areas as wilderness are consistent with the purposes and provisions of this Act.

MUSYA directs land and resource management of the national forests for the combination of uses that best meets the needs of the American people. Management of the resources is to be coordinated for “multiple use” — considering the relative values of the various resources, but not necessarily maximizing dollar returns, nor requiring that any one particular area be managed for all or even most uses. The Act also calls for “sustained yield” — a high level of resource outputs maintained in perpetuity but without impairing the productivity of the land. Other statutes such as the Endangered Species Act that apply to all federal agencies also apply.

NFS planning and management is guided primarily by the Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974, as amended by the National Forest Management Act (NFMA) of 1976. Together, these laws encourage foresight in the use of the nation’s forest resources, and establish a long-range planning process for the management of the NFS. R.A. focuses on the national, long-range direction for forest and range conservation and sustain ability.<sup>19</sup> R.A. requires the FS to prepare four documents for Congress and the public: an Assessment every 10 years to inventory and monitor the status and trends of the nation’s natural resources; a

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<sup>19</sup>See U.S. Congress, Office of Technology Assessment. *Forest Service Planning: Setting Strategic Direction Under RPA*. OTA-F-441. Washington, DC: U.S. Govt. Print. Off., July 1990.

Program every 5 years to guide FS policies;<sup>20</sup> a Presidential Statement of Policy to accompany the Program and guide budget formulation; and an Annual Report to evaluate implementation of the Program.

NFMA requires the FS to prepare a comprehensive land and resource management plan for each unit of the NFS, coordinated with the national R.A. planning process.<sup>21</sup> A plan must use an interdisciplinary approach, including economic analysis and the identification of costs and benefits of all resource uses. Planning regulations (36 C.F.R. 219) were issued in 1979, then revised in 1982. Revision of the 1982 regulations was begun with an advance notice of proposed rulemaking in 1991, and proposed revised regulations were issued in 1995. In 1997, the Secretary of Agriculture chartered a Committee of Scientists to review the planning process, and its March 1999 report, *Sustaining the People's Lands*, made numerous recommendations. On October 5, 1999, new regulations were proposed (64 *Fed. Reg.* 54073), and final regulations revising the planning process were issued on November 9, 2000 (65 *Fed. Reg.* 67514). In addition to these requirements, the national grasslands also are subject to the management direction contained in the "Bankhead-Jones Act."

Congress has provided further management direction within the NFS by creating special designations for certain areas. Some of these designations — wilderness areas, wild and scenic rivers, and national trails — are part of larger management systems affecting several federal land management agencies; these special systems are described in later chapters of this report.

In addition to these special systems, the NFS includes several other types of congressionally-enacted land designations. Congress has established 19 national recreation areas (2.6 million acres), 6 scenic areas (0.1 million acres), 2 national monuments (3.3 million acres, both in the Tongass National Forest in Alaska), 2 national volcanic monuments (0.2 million acres), a scenic-research area (6,630 acres), and a national historic area (6,540 acres).<sup>22</sup> Resource development and use is generally more restricted in congressionally-designated areas than on general NFS lands, and specific guidance is typically provided with each designation.

## Land Ownership

**Designation.** As noted above, the President was authorized to proclaim national forests from the public domain in 1891 (16 U.S.C. 471, now repealed). It

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<sup>20</sup>Since 1997, provisions in the Interior Appropriations Acts have prohibited the FS from completing the overdue 1995 RPA Program, because, it has been asserted, the Government Performance and Results Act (GPRA) planning and reporting requirements have replaced the RPA program.

<sup>21</sup>See U.S. Congress, Office of Technology Assessment. *Forest Service Planning: Accommodating Uses, Producing Outputs and Sustaining Ecosystems*. OTA-F-505. Washington, DC: U.S. Govt. Print. Off., Feb. 1992.

<sup>22</sup>U.S. Dept. of Agriculture, Forest Service. *Land Areas of the National Forest System, as of September 1999*. FS-383. Washington, DC: January 2000. pp. 97-98, 108-113.

appears that no new national forests were proclaimed in the West after 1907. However, many proclamations and executive orders subsequently have modified boundaries and changed names, including establishing new national forests from existing NFS lands. National forests in the East generally were established between 1910 and 1940, with the Hoosier and Wayne Forests (in Indiana and Ohio, respectively) the last proclaimed, in 1951.

Presidential authority to proclaim forest reserves from the public domain was restricted piecemeal. The 1897 Act established management direction by restricting the purposes for the reserves. The 1907 Act that renamed the forest reserves as the national forests also prohibited the establishment of new reserves in six Western states, though President Theodore Roosevelt did not sign the law until he had reserved 16 million acres in those states. Presidential authority to establish new national forests was not formally repealed until 1976.<sup>23</sup> Today, establishing a new national forest or significantly modifying the boundaries of an existing national forest requires an Act of Congress.

**Acquisition Authority.** The Secretary of Agriculture has numerous authorities to add lands to the NFS. The first and broadest authority was in the Weeks Law of 1911 (as amended by NMA; 16 U.S.C. 515):

The Secretary is hereby authorized and directed to examine, locate, and purchase such forested, cut-over, or denuded lands within the watersheds of navigable streams as in his judgment may be necessary to the regulation of the flow of navigable streams or for the production of timber.

Originally, the acquisitions were to be approved by a National Forest Reservation Commission, but the Commission was terminated in 1976 by §17 of NMA.

Other laws also authorize land acquisition for the national forests, typically in specific areas or for specific purposes. For example, §205 of FLPMA authorizes the acquisition of access corridors to national forests across non-federal lands (43 U.S.C. 1715(a)).

Finally, the Bankhead-Jones Farm Tenant Act of 1937 authorizes and directs the Secretary of Agriculture to establish (7 U.S.C. 1010):

a program of land conservation and land utilization, in order to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting public lands, health, safety, and welfare ....

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<sup>23</sup>The 1891 authority was repealed by §704(a) of FLPMA (the Federal Land Policy and Management Act of 1976). The following day, in §9 of NFMA, Congress also prohibited the President from returning any NFS lands to the public domain.

Initially, the Act authorized the Secretary to acquire submarginal lands and lands not primarily suitable for cultivation (§1011(a)); this provision was repealed in 1962. This authority allowed the agency to acquire and establish the 20 national grasslands and 8 land utilization projects that account for 2% of the National Forest System. In addition, millions of acres acquired under this authority have been transferred to the BLM.

**Disposal Authority.** The Secretary of Agriculture has numerous authorities to dispose of NFS lands, all constrained in various ways and seldom used. In 1897, the President was authorized (16 U.S.C. 473):

to revoke, modify, or suspend any and all Executive orders and proclamations or any part thereof issued under section 471 of this title, from time to time as he deems best for the public interests. By such modification he may reduce the area or change the boundary lines or may vacate altogether any order creating a national forest.

The 1897 Act also provided for the return to the public domain of lands better suited for agriculture or mining. These provisions have not been repealed, but §9 of NMA prohibits the return to the public domain of any land reserved or withdrawn from the public domain, except by an Act of Congress (16 U.S.C. 1609).

The 1911 Weeks Law authorizes the Secretary to dispose of land “chiefly valuable for agriculture” which was included in lands acquired (inadvertently or otherwise), if agricultural use will not injure the forests or stream flows and the lands are not needed for public purposes (§519).

The Bankhead-Jones Farm Tenant Act authorizes the disposal of lands acquired under its authority, with or without consideration, “under such terms and conditions as he (the Secretary of Agriculture) deems will best accomplish the purposes of this” title, but “only to public authorities and only on condition that the property is used for public purposes” (7 U.S.C. 1011(c)). Yet the grasslands were included in the NFS in 1976 and current regulations (36 C.F.R. 213) refer to them as being “permanently held.”

The 1958 Townsites Act authorizes the Secretary to transfer up to 640 acres adjacent to communities in Alaska or the 11 Western states for townsites, if the “indigenous community objectives ... outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership” (16 U.S.C. 478a). There is to be a public notice of the application for such transfer, and upon a “satisfactory showing of need,” the Secretary may offer the land to a local governmental entity at “not less than the fair market value.”

The 1983 Small Tracts Act authorizes the Secretary to dispose of three categories of land, by sale or exchange, if valued at no more than \$150,000 (16 U.S.C. 521e):

(1) tracts of up to 40 acres interspersed with or adjacent to lands transferred out of federal ownership under the mining laws *and* which are inefficient to administer because of their size or location;

(2) tracts of up to 10 acres encroached upon by improvements based in good faith upon an erroneous survey; or

(3) road rights-of-way substantially surrounded by non-federal land and not needed by the federal government, subject to the right of first refusal for adjoining landowners.

The land can be disposed of for cash, lands, interests in land, or any combination thereof for the value of the land being disposed (§521d) plus “all reasonable costs of administration, survey, and appraisal incidental to such conveyance” (§521f).

Finally, in title II (the Education Land Grant Act) of P.L. 106-577, Congress authorized the FS to transfer up to 80 acres of National Forest System land for a nominal cost upon written application of a public school district; section 202(e) provides for reversion of title to the federal government if the lands are not used for the educational purposes for which they were acquired.

## Issues

In the past few years, three issues generally have been the focus of discussions and legislative proposals for FS management of the NFS. One issue is forest health, especially in the intermountain West. Many believe that excessive timber density and mortality contributed to the numerous severe forest fires in 1994, 1996, and 2000, and that rapid action to improve forest health, including salvage of dead and dying trees, is needed to protect NFS forests and nearby private lands and homes. Critics argue that adequate timber salvage authority already exists, that salvage sales have degraded forest health and wasted taxpayer dollars, and that there is no emergency.<sup>24</sup> Several recent Congresses have addressed this issue, but rarely have related measures been considered on the floor and no bills on point have passed either chamber. In September 2000, President Clinton requested an additional \$1.6 billion (for the Forest Service and the BLM) for fire protection including funds to pay for the 2000 summer’s fire suppression efforts and for fuel treatment to address forest health in the “wildland-urban interface” (*i.e.*, near communities threatened by potential wildfire conflagrations). Congress included much of this funding in the FY2001 Interior Appropriations Act (P.L. 106-291), but will likely face continuing funding and oversight questions about the programs supported and their effectiveness.

Another issue concerns the planning process created under the NMA. Some agency critics and Members of Congress have asserted that the Forest Service plans have failed to provide the management and budgeting guidance needed to fulfill the agency’s goals, and often have not been implemented. Legislation to provide additional guidance and to assess management under a community-based consensus model was enacted as the Herger-Feinstein Quincy Library Group Forest Recovery Act, title IV of the FY1999 Interior Appropriations Act, in the FY1999 Omnibus

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<sup>24</sup>This issue was particularly controversial during the 17-month Emergency Salvage Timber Sale Program, enacted in the 1995 Emergency Supplemental Appropriations and Rescissions Act (P.L. 104-19). See CRS Reports 96-163 A, *The “Timber Rider”: Section 2001 of the Rescissions Act*, and 96-659 ENR, *The Salvage Timber Sale Rider: Overview and Policy Issues*.

Consolidated Appropriations Act (P.L. 105-277). Others argue that any problems with the current system can be resolved administratively, without legislation. The regulations promulgated by the Clinton Administration in November 2000 significantly alter the traditional management of the national forests, making ecological sustainability the overarching principle for planning. The 107<sup>th</sup> Congress may choose to review these regulations to assess their potential impact on lands, resources, and communities and possibly to enact additional direction or guidance.

The third major issue concerns the building of forest roads. Road construction is supported by those who use the roads for access to the national forests, for timber harvesting, fire control, recreation (including hunting and fishing), and other purposes. New roads often are opposed by others, however, on the grounds that they can degrade the environment both during and after construction, alter areas that some wish to preserve as pristine wilderness, and are expensive to build and maintain. Although new road construction has declined substantially in the past decade, critics continue efforts to reduce or terminate new road construction. The Clinton Administration issued two new rules regarding forest roads, one on road planning and one on protection of roadless areas. In January 1998, the Clinton Administration proposed to revise the rules governing road planning, with a moratorium on new roads into roadless areas during rule development. The final interim rule temporarily suspending road building in roadless areas was published in February 1999. The proposed rule and policy on road planning were published in March 2000, and the final rule was promulgated and effective on January 12, 2001.

Also, in October 1999, the Clinton Administration proposed regulations to provide “appropriate long-term protection for ... ‘roadless’ areas” and proposed preparing an environmental impact statement (EIS) to examine alternatives. A draft EIS and proposed regulations were issued in May 2000. A final EIS was issued in November 2000, and the final regulations on January 12, 2001. The final regulations were to become effective on March 13, 2001. The Bush Administration has delayed the effective date of these regulations to May 12, 2001, allowing more opportunity to examine them before they become effective.

## **Major Statutes**

Cooperative Forestry Assistance Act of 1978: Act of July 1, 1978; P.L. 95-313, 92 Stat. 365. 16 U.S.C. §2101, *et seq.*

Forest and Rangeland Renewable Resources Planning Act of 1974 (R.A.): Act of August 17, 1974; P.L. 93-378, 88 Stat. 476. 16 U.S.C. §1600, *et seq.*

Forest and Rangeland Renewable Resources Research Act of 1978: Act of June 30, 1978; P.L. 95-307, 92 Stat. 353. 16 U.S.C. §1641, *et seq.*

Multiple-Use Sustained-Yield Act of 1960 (MUSYA): Act of June 12, 1960; P.L. 86-517, 75 Stat. 215. 16 U.S.C. §528, *et seq.*

National Forest Management Act of 1976 (NMA): Act of October 22, 1976; P.L. 94-588, 90 Stat. 2949. 16 U.S.C. §1601, *et al.*

Organic Administration Act of 1897: Act of June 4, 1897; ch. 2, 30 Stat. 11. 16  
U.S.C. §473, *et seq.*

Weeks Law of 1911: Act of March 1, 1911; ch. 186, 36 Stat. 961.

## **CRS Reports and Committee Prints**

CRS Report 95-15, *Below-Cost Timber Sales: An Overview*, by Ross W. Gorte.

CRS Report 98-917, *Clearcutting in the National Forests: Background and Overview*, by Ross W. Gorte.

CRS Report 98-233, *Federal Timber Harvests: Implications for U.S. Timber Supply*,  
by Ross W. Gorte.

CRS Report RS20822, *Forest Ecosystem Health: An Overview*, by Ross W. Gorte.

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

CRS Report 95-548, *Forest Health: Overview*, by Ross W. Gorte.

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

CRS Report 96-659, *The Salvage Timber Sale Rider: Overview and Policy Issues*,  
by Ross W. Gorte.

CRS Report 88-571, *Special Management Areas in the National Forest System*, by  
Ross W. Gorte.

CRS Report 96-163 A, *The "Timber Rider": Section 2001 of the Rescissions Act*,  
by Pamela Baldwin.

## Bureau of Land Management <sup>25</sup>

The Bureau of Land Management (BLM) manages approximately 264 million acres of land, 12% of the land in the United States. Most of this land is in the West, with about one-third of the total in Alaska. These lands include grasslands, forests, high mountains, arctic tundra, and deserts. They contain diverse resources, including fuels and minerals; timber; forage; wild horses and burros; fish and wildlife habitat; recreation sites; wilderness areas; archaeological, paleontological, and historical sites; and other natural heritage assets. The agency also is responsible for approximately 700 million acres of federal subsurface mineral resources throughout the nation, and supervises the mineral operations on an estimated 56 million acres of Indian Trust lands. Another key BLM function is wildland fire management and suppression on approximately 370 million acres of DOI, other federal, and certain non-federal land.

### Background

BLM was created in the Department of the Interior in 1946 by merging two agencies — the General Land Office and the U.S. Grazing Service. The General Land Office, created by Congress in 1812, helped convey lands to pioneers settling the Western lands. The U.S. Grazing Service was established in 1934 to manage the public lands best suited for livestock grazing, in accordance with the Taylor Grazing Act of 1934. This law sought to remedy the deteriorating condition of public rangelands due to their overuse as well as the drought of the 1920s and depression of the early 1930s.

The Taylor Grazing Act provided for the management of the public lands “pending [their] final disposal.” This language expressed the view that the lands might still be transferred to private or state ownership, and that the federal government was serving only as custodian until that time. However, patenting of the more arid Western lands had already slowed, and there was growing concern about the condition of resources on these lands. These factors, and a changing general attitude towards the public lands, contributed to their retention by the federal government.

Numerous management authorities regarding the use of the public lands and their resources accumulated from the early 1800s to the mid-1900s. In some cases, these authorities contributed to fragmented resource management and inefficient and sometimes inconsistent direction for land management. These laws applied not only to livestock grazing and land disposal, but also to mineral leasing and mining, timber harvesting, homesteading, and other activities.

For decades Congress debated whether to retain or dispose of the remaining public lands, and how best to coordinate their management. Studies throughout the 1960s culminated in the 1970 report of the Public Land Law Review Commission entitled *One-Third of the Nation's Land*. Three successive Congresses deliberated,

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<sup>25</sup>This section was prepared by Carol Hardy Vincent.



and in 1976 Congress enacted a comprehensive public land law entitled the Federal Land Policy and Management Act of 1976 (FLPMA).<sup>26</sup>

FLPMA sometimes is called the BLM Organic Act because portions of it consolidated and articulated the agency's responsibilities. This law established, amended, or repealed many management authorities dealing with public land withdrawals, land exchanges and acquisitions, rights-of-way, advisory groups, range management, and the general organization and administration of BLM and the public lands, which basically were defined as the lands managed by BLM.

Congress also established in FLPMA the national policy that "the public lands be retained in federal ownership, unless as a result of the land use planning procedures provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest ...." This retention policy contributed to a "revolt" during the late 1970s and early 1980s among some Westerners who continued to hope that the federal presence in their states might be reduced through federal land transfers to private or state ownership. The resultant "Sagebrush Rebellion" — objecting to federal management decisions and in some cases to the federal presence itself — was directed primarily toward the BLM.

Since the 1790s, nearly 1.3 billion acres of federal land have been transferred to individuals, businesses, and states. Of this total, approximately 287 million acres went to homesteaders, about 328 million acres have been granted to states for public schools, public transportation systems, and various public improvement projects, and more than 94 million acres were given to railroads. The last large transfer of BLM land occurred in 1980 with passage of the Alaska National Interest Lands Conservation Act (ANILCA). This Act transferred approximately 80 million acres from BLM to the other federal land management agencies. BLM also is required by law (ANILCA, the Alaska Native Claims Settlement Act, and the Alaska Statehood Act) to transfer ownership of more than 155 million acres of federal lands to the state of Alaska and Alaska Natives. Approximately 127 million acres have been conveyed (or tentatively approved), and BLM continues to transfer land to Alaska and the Alaska Native corporations.

## Organization

BLM headquarters in Washington, DC is headed by the Director, a political appointee who reports to the Secretary of the Interior through the Assistant Secretary for Lands and Minerals Management. There are 12 BLM-state offices, each headed by a State Director, and each BLM-state office administers a geographic area that generally conforms to the boundary of one or more states. There also are 132 field offices, each headed by a Field Manager responsible for "on the ground" implementation of BLM programs and policies. Line authority is from the Director to State Directors, terminating at the Field Manager level.

In addition, there are six national level support and service centers: the National Office of Fire and Aviation (Boise, ID); the National Training Center (Phoenix, AZ);

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<sup>26</sup> Pub. L. No. 94-579; 90 Stat. 2744, 43 U.S.C. §§ 1701 *et seq.*

the National Applied Resource Sciences Center (Denver, CO); the National Human Resources Management Center (Denver, CO); the National Business Center (Denver, CO); and the National Information Resources Management Center (Denver, CO).

## Management

**Overview.** FLPMA set the framework for the current management of BLM lands. Among other important provisions, the law provides that:

the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts ...

management be on the basis of multiple use and sustained yield unless otherwise specified by law ...

the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute ...

the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use ....

Thus, FLPMA established the BLM as a multiple-use, sustained-yield agency. However, some lands are withdrawn from one or more uses, or managed for a predominant use. The agency inventories its lands and resources and develops land use plans for its land units. All BLM lands (except some lands in Alaska) are covered by a land use plan. Although plans are to be amended or revised as new issues arise or conditions change, BLM estimates that more than half of its 150 land use plans are in need of substantial revision or replacement to take account of changes during recent years. For instance, the agency reports that many of its land use plans are outdated with regard to use of off-highway vehicles; many plans were developed in the 1970s or 1980s, when OHV use was relatively low. Additional funds were provided to BLM for FY2001 for revising land use plans.

**Rangelands.** Livestock grazing is permitted on an estimated 164 million acres of BLM land, and there are 18,568 permits and leases for grazing on these lands. In some Western states, more than half of all cattle graze on public rangelands at least during part of the year, although the forage consumed on federal lands is a small percentage of all forage consumed by beef cattle nationally. The grazing of cattle and sheep, and range management programs generally, are authorized and governed by the Taylor Grazing Act, FLPMA, and the Public Rangelands Improvement Act of 1978 (PRIA). The Taylor Grazing Act converted the public rangelands from a system of open grazing in common to one of exclusive permits to graze allotted lands. FLPMA set out overall public land management and policy objectives. PRIA reflected continuing concern over the condition and productivity of public rangelands

and established more specific range management provisions for BLM. An example is a new grazing fee formula that was temporary but essentially has been continued under executive order.

BLM's range programs include management of about 47,400 wild horses and burros on public land, under the Wild, Free-Roaming Horses and Burros Act of 1971. This herd size is significantly more than the agency has determined is appropriate for the range—which is approximately 27,400 (for FY1999). In an effort to attain this preferred herd size, so as to maintain an ecological balance on the range, BLM removes excess wild horses and burros and offers them for adoption. Old, sick, and lame animals may be put down, while others are retained for possible future adoption. In FY1999, removal and adoption rates fell significantly from FY1997 levels; the number of wild horses and burros removed from rangeland decreased from 10,443 to 6,078, and the number of animals adopted dropped from 8,692 to 6,287. Appropriations for FY2001 for the wild horse and burro program were increased significantly in part to stem the acceleration of the herd size.

BLM has a variety of programs that aim to improve the range—to increase productivity, restore ecosystems, prevent resource damage, and relieve conflicts in resource use. Specific activities include prescribed burns, wildlife/livestock water developments, and control of noxious weeds.

**Forests.** BLM manages approximately 47 million acres of forest land (excluding Western Oregon). Approximately 11 million of these are commercial forest, while the other 36 million are sources of woodland products, such as fence posts. BLM also manages 2.4 million acres of the country's most productive timberlands: the former Oregon and California (O&C) railroad grant lands and the Coos Bay Wagon Road grant lands in Western Oregon. Of the approximately \$68 million total receipts from BLM timber products in FY1999, these lands produced approximately \$66 million. These figures reflect a decline from recent levels of collected receipts, due to a temporary suspension of timber production in the O&C lands as a result of litigation concerning implementation of the Pacific Northwest Forest Plan.

**Energy and Minerals.** The BLM is responsible for approximately 700 million acres of federal subsurface minerals, and supervises the mineral operations on about 56 million acres of Indian trust lands. Of the approximately 700 million acres, an estimated 165 million acres have been withdrawn from mineral entry, leasing, and sale, except for valid existing rights. Lands in the National Park System (except National Recreation Areas), Wilderness Preservation System, and the Arctic National Wildlife Refuge (ANWR), are among those withdrawn. Also of the 700 million acres, mineral development on another 182 million acres is subject to the approval of the surface management agency, and must not be in conflict with the land designation. Wildlife refuges (except ANWR), wilderness study areas, and identified roadless areas, among others, are in this category. For FY2000, the total on-shore mineral revenues (including royalties, rents, and bonus bids) were \$1.6 billion, a substantial increase over FY1999 primarily due to higher oil and gas prices.

Some minerals are available for development under a claim-staking approach; others are developed through leasing or sales systems. Activities governed by statute

include the location and patenting of mining claims for hard rock (locatable) minerals; competitive and noncompetitive leasing of lands for leaseable minerals (oil, gas, coal, potash, geothermal energy, and certain other minerals); and the sale or free disposal of common mineral materials not subject to the mining or leasing laws.

Where the surface estate is managed by another agency or a private landowner, BLM must at least consult before finalizing lease sales. If an environmental impact statement (EIS) is required, the surface-managing agency typically prepares the EIS and analyzes the impacts, but BLM issues and supervises the lease. In some instances, the surface management agency may have to consent to leasing (*e.g.*, in the context of oil and gas or coal leasing). BLM administers onshore federal energy and mineral resources, while the Minerals Management Service (also in the Department of the Interior) handles outer continental shelf (OCS) leasing and collects revenues (rents and royalties) from on-shore leasing,<sup>27</sup> OCS leasing, and mineral development on Indian trust lands.

**Wildlife and Fisheries, Threatened and Endangered Species.** BLM manages the habitats of the diverse plants and animal species that live on the public lands, including hundreds of threatened and endangered species listed under the Endangered Species Act. From 1982 to 2000, the number of threatened and endangered species of animals and plants on BLM lands has risen from 71 to almost 300. The agency manages designated sensitive species including plants and animals that require priority conservation based on problems such as reduced abundance and sensitivity to human actions. Difficulties may arise in protecting these species while allowing other authorized land uses, and at times such conflicts have resulted in extensive congressional debate concerning the agency's authorities

FLPMA also requires BLM to identify Areas of Critical Environmental Concern (ACECs), where special management is needed to protect fish and wildlife resources; historic, cultural, or scenic values; and other natural systems or processes. These areas may be developed only for commercial or extractive uses compatible with the designation. There are 740 such areas totaling 13.1 million acres; slightly more than half of this acreage was designated primarily to protect biological resources.

**Recreation.** The proximity of BLM lands to many areas of population growth in the West has led to a recent increase in recreation on some BLM lands. Recreational activities on BLM lands include hunting, fishing, visiting cultural and natural sites, birdwatching, hiking, picnicking, camping, boating, mountain biking, and off-highway vehicle driving. BLM estimates there were approximately 62 million recreational visits in FY1999. The growing and diverse nature of recreation on BLM lands has increased the challenge of balancing different types of recreation, and balancing recreation with other land uses.

BLM collects money for permits for recreation on its lands, such as permits issued to hunting and fishing guide outfitters or to visitors at campgrounds. The agency also charges entrance and use fees on some of its lands, including under the

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<sup>27</sup> Most of the revenues collected from on-shore leasing are returned to the states in which the lands are located (30 U.S.C. §191).

Recreation Fee Demonstration Program authorized by Congress. Under the program, the BLM allows 100% of the fees charged to be retained at the sites where collected for improvements to local facilities. In FY1999, BLM collected approximately \$6.2 million from recreation use fees.

**Preservation.** In addition to managing land uses, BLM's multiple use mandate includes preservation of resources. Secretary of the Interior Bruce Babbitt sought to develop the BLM's role in land protection, broadening the agency's traditional focus on mining and grazing and other extractive land uses. To this end, on June 19, 2000, the BLM announced the creation of a national landscape conservation system, comprised of different types of units—national monuments, conservation areas, wilderness areas, wilderness study areas, wild and scenic rivers, scenic trails, historic trails, and other areas. It is unclear whether the new Administration will continue this system.

Approximately 39,000,000 acres are in the system, which is about 15% of the land BLM administers. According to BLM statements, these units were incorporated into a system to give them greater recognition, management attention, and resources. Areas within the system will continue to be managed based on their relevant authorities; for instance, wilderness areas will be managed in accordance with FLPMA and the Wilderness Act.

The agency's 15 national monuments and 13 national conservation areas are a particular focus of the system. One of the national monuments was created by Congress, while 14 were designated by the President under his authority in the Antiquities Act of 1906 to protect objects of historic and scientific interest on federal lands. The 13 national conservation areas were created by acts of Congress. While different management directives apply to each monument and conservation area, BLM management is expected to emphasize resource conservation overall. While in general the units would serve outdoor recreationists, visitor facilities will be located outside the areas in adjacent communities. Typically too, other activities, such as grazing and hunting, may continue if they are compatible with the designation.

The national landscape conservation system also includes 5.3 million acres of designated wilderness, and 17.3 million acres of wilderness study areas. BLM is to manage the wilderness study areas so as to maintain their suitability for wilderness designation until legislation is enacted to determine their final status. (For more information on wilderness, see the later chapter on the National Wilderness Preservation System.)

**Fire Management.** BLM carries out a fire management program on approximately 370 million acres of DOI, and certain other federal and non-federal lands. (The Forest Service provides fire protection of the national forests.) The program includes prevention and preparedness, prescribed fire, fuel reduction, suppression, and rehabilitation activities. The agency sometimes uses prescribed fire and mechanical fuels treatments to reduce hazardous fuels and improve ecosystem health. Fire suppression often is provided by federal fire crews, although the National Interagency Fire Center in Boise, ID often coordinates fire suppression when local agencies need assistance. In FY1999, BLM suppressed 2,248 wildland fires on BLM land that burned more than 2.1 million acres, and contributed to suppression of 796

fires on approximately 1.2 million acres of non-BLM land. Following fires, BLM may rehabilitate land and resources, for instance, by stabilizing erodible soil.

**Land and Mineral Records.** BLM's Public Land Survey System is the foundation of the nation's land tenure system. The agency maintains federal land title records and preserves land survey records for government and private use. The agency conducts cadastral surveys to locate and mark the boundaries of federal and Indian lands. Surveys also are a prerequisite for patenting public land. BLM maintains over 1 billion land and mineral records from the nation's history, including legal land descriptions, land and mineral ownership and entitlement records, and land withdrawal records.

BLM is in the process of making its public lands and mineral records available on the Internet to improve public access to, as well as the quality of, the information. The survey records and land descriptions comprising the Public Land Survey System are being made available in a digital, geospatial format that shows the location of a parcel of land in relationship to other parcels. The information for some states is currently available in the new system.<sup>28</sup> BLM also is involved in a joint project with the Forest Service, states, counties, and private industry to develop a National Integrated Land System which will serve as a geospatial reference for lands throughout the nation regardless of ownership. A goal is to develop a common approach to compiling and making available the documents relating to the current status of the land, so as to facilitate cooperative land management and enable users to obtain all the attributes about a chosen parcel of land.<sup>29</sup>

**Other Resources.** Nearly 24 million acres of BLM land, mostly in Alaska, are managed as riparian or wetland systems. Riparian lands may dissipate flood waters, allow for recreation, and provide crucial habitat for fish and wildlife. While these are generally multiple use lands, in some sensitive areas certain uses are incompatible. Grazing in riparian areas in the continental West has been especially controversial.

BLM also oversees the cultural properties on its lands, and inventories such resources. Nearly 14 million acres have been inventoried, and approximately 228,000 archaeological and historical sites have been identified on these acres. The agency projects approximately 4 to 4.5 million cultural sites on all its lands.

## Land Ownership

**General.** BLM lands often are intermingled with other federal or private lands. Many federal grants consisted of alternating sections of lands, often referred to as "checkerboard," resulting in a mixed ownership grid pattern. FLPMA consolidated procedures and clarified responsibilities regarding problems that arise because of this

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<sup>28</sup>The system, the Geographic Coordinate Data Base, is available on the BLM website at [<http://www.blm.gov/gcdb/>].

<sup>29</sup>More information on the National Integrated Land System is available on the BLM website at [<http://www.blm.gov/nils/>].

ownership pattern, including rights-of-way across public lands for roads, trails, pipelines, power lines, canals, reservoirs, *etc.* FLPMA also provided for land exchanges, acquisitions, disposals, and remedies for certain title problems.

**Acquisition Authority.**<sup>30</sup> BLM has rather broad, general authority to acquire lands principally under §205 of FLPMA. Specifically, the Secretary is authorized (43 U.S.C. §1715(a)):

to acquire pursuant to this Act [FLPMA] by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided*, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose.

BLM may acquire land or interests in land, especially inholdings, to protect threatened natural and cultural resources, increase opportunities for public recreation, restore the health of the land, and improve management of these areas. The agency principally acquires land by exchange, and undertakes approximately 60 land exchanges a year. Although FLPMA and NMA were amended in 1988 to “streamline ... and expedite” the process, exchanges may still be time consuming and costly because of problems related to land valuation, cultural and archaeological resources inventories, and other issues.

**Disposal Authority.** The BLM can dispose of public lands under several authorities. The primary means of disposal is through exchanges, just as the primary means of acquisition is through exchanges. Other disposal authorities are sales under FLPMA, patents under the General Mining Law of 1872, transfers to other governmental units for public purposes, the disposal of land under the Federal Land Transaction Facilitation Act, and other statutes.<sup>31</sup>

With regard to sales, §203 of FLPMA authorized the BLM to sell certain tracts of public land that meet specific criteria (43 U.S.C. §1713(a)):

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<sup>30</sup>Under Title II of Pub. L. No. 106-248, the Federal Land Transaction Facilitation Act (43 U.S.C. §2301)—the Secretary of the Interior and the Secretary of Agriculture may use funds from the disposal of certain BLM lands to acquire inholdings and other non-federal lands. A description of this act is provided under “disposal authority.”

<sup>31</sup>Other authorities provide for land sales in particular areas. A key example is the Southern Nevada Public Land Management Act of 1998 (P.L. 105-263), which provides for the disposal, by sale or exchange, of lands in Clark County, Nevada. The proceeds are to be used to acquire environmentally sensitive lands in Nevada, among other purposes.

The Homestead Act and many other authorities for disposing of the public lands were repealed by FLPMA in 1976, with a 10-year extension in Alaska. The General Services Administration has the authority to dispose of surplus federal property under the Federal Property and Administrative Services Act of 1949; however, that Act generally excludes the public domain, mineral lands, and lands previously withdrawn or reserved from the public domain (40 U.S.C. §472(d)(1)).

- (1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency; or
- (2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or
- (3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

The size of the tracts for sale is to be determined by “the land use capabilities and development requirements.” Proposals to sell tracts of more than 2,500 acres must first be submitted to Congress, and such sales may be made unless disapproved by Congress.<sup>32</sup> Tracts are to be sold at not less than their fair market value, generally through competitive bidding, although modified competition and non-competitive sales are allowed.<sup>33</sup>

The General Mining Law of 1872 allows access to certain minerals on federal lands that have not been withdrawn from entry. Minerals within a valid mining claim can be developed without obtaining full title to the land. However, with evidence of minerals and sufficient developmental effort, mining claims can be patented, with full title transferred to the claimant upon payment of the appropriate fee — \$5.00 per acre for vein or lode claims (30 U.S.C. §29) or \$2.50 per acre for placer claims (30 U.S.C. §37). Non-mineral lands used for associated milling or other processing operations can also be patented (30 U.S.C. §42). Patented lands may be used for purposes other than mineral development.

The Recreation and Public Purposes Act (43 U.S.C. §869) authorizes the Secretary, upon application by a qualified applicant, to:

dispose of any public lands to a State, Territory, county, municipality, or other State, Territorial, or Federal instrumentality or political subdivision for any public purposes, or to a nonprofit corporation or nonprofit association for any recreational or any public purpose consistent with its articles of incorporation or other creating authority.

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<sup>32</sup>43 U.S.C. §1713 (c). This procedure and certain other provisions of FLPMA may be unconstitutional under *Immigration and Naturalization Service (INS) v. Chadha*, 462 U.S. 919 (1983).

<sup>33</sup>Desert lands also can be disposed under other laws. The Carey Act (43 U.S.C. §641) authorizes transfers to a state, upon application and meeting certain requirements, while the Desert Land Entry Act (43 U.S.C. §321) allows citizens to reclaim and patent 320 acres of desert public land. These latter provisions are seldom used, however, because the lands must be classified as available and sufficient water rights must be obtained.



The Act specifies conditions, qualifications, and acreage limitations for transfer, and provides for restoring the lands to the public domain if conditions are not met.

The Federal Land Transaction Facilitation Act (Title II of Pub. L. No. 106-248, 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" at enactment. The Secretary of the Interior is to establish a program to complete the legal requirements of lands so identified for disposal, and land sales generally are to be conducted under the provisions of FLPMA. The proceeds from the sale or exchange of public land are to be deposited into a separate Treasury account (the Federal Land Disposal Account). Funds in the account are available to both the Secretary of the Interior and the Secretary of Agriculture to acquire inholdings and other non-federal lands (or interests therein) that are adjacent to federal lands and contain exceptional resources. However, the Secretary of the Interior can use not more than 20% of the funds in the account for administrative and other expenses of the program. Not less than 80% of the funds for acquiring land are to be used to purchase land in the same state in which the funds were generated, while the remaining funds may be used to purchase land in any state. The law's findings state that it would "allow for the reconfiguration of land ownership patterns to better facilitate resource management; contribute to administrative efficiency within Federal land management units; and allow for increased effectiveness of the allocation of fiscal and human resources within the Federal land management agencies..."

**Withdrawals.** FLPMA also mandated review of public land withdrawals in 11 Western states to determine whether, and for how long, existing withdrawals should be continued. A withdrawal is an action that restricts the use or disposition of public lands; for instance, some lands are withdrawn from mining. The agency continues to review approximately 70 million withdrawn acres, giving priority to about 26 million acres that are expected to be returned by another agency to BLM, or, in the case of BLM withdrawals, made available for one or more uses. To date, BLM has completed reviewing approximately 7 million withdrawn acres, mostly BLM and Bureau of Reclamation land; the withdrawals on more than 6 million of these acres have been revoked. The review process is likely to continue over the next several years, in part because the lands must be considered in BLM's planning process and the withdrawals must be supported by documentation under the National Environmental Policy Act (NEPA).

## Issues

Management of BLM lands has raised a number of issues, mostly stemming from their diverse uses. The development and titling of hardrock minerals on public lands continues to receive attention. A focus has been the BLM's revision of the hardrock mining regulations, which are expected to reduce environmental damage from mining but also decrease mining activity. A perennial debate is whether to change the 1872 mining law, which allows claimants to develop the minerals within a claim without paying royalties, and to patent the lands and obtain full title to the land and its minerals for a small fee (\$2.50 or \$5.00 an acre). The amount of land withdrawn from mineral entry or development has long been controversial and the subject of many lawsuits. Most recently, a legal opinion of the Solicitor of the Department of the Interior during the Clinton Administration restricting each mining claim to one

five-acre millsite has been contentious, and addressed in recent provisions of law (P.L. 106-113, §337).

Rangeland management issues include the terms and renewal of expiring grazing permits and leases, and recent changes in grazing regulations that in part redefined “grazing preference” and other terms. The restriction or elimination of grazing on federal land because of environmental and recreational concerns has been discussed, and the grazing fee that the federal government charges for private livestock grazing on federal lands has been controversial since its inception. Other range issues include the condition of federal rangelands, the spread of invasive plant species, consistency of BLM and Forest Service grazing programs, the role of Resource Advisory Councils, access across private lands, and management of riparian areas. Concerns about the wild horse and burro program relate to the removal, adoption, and treatment of the animals and BLM’s administration of the program.

A number of preservation and recreation matters have come to the fore. These include whether to establish or restrict protective designations; the effect of protective designations on land uses; and the role of Congress, states, and the public in making designations. Congress might examine recent executive actions designating national monuments on BLM and other federal lands under the Antiquities Act of 1906, and discuss whether to restrict the President’s authority to create monuments or the authority of BLM and other federal agencies to manage land as national monuments. Another issue is access to public lands, including restrictions such as limits on use of off-highway vehicles. Other issues are the impact of recreation on resources and facilities and the collection of fees for recreation use, for example, under the Recreation Fee Demonstration Program.

Another key topic relates to the amount of land BLM owns and how the land is managed. Contemporary questions have centered on how much land should be acquired versus conveyed to state, local, or private ownership, and under what circumstances. Congress might confront concerns about acquisition of private land, the effectiveness of land exchange programs, and the effect of public ownership on state taxes and authorities. A related issue is whether to expand the non-federal role in managing federal lands.

## **Major Statutes**

Alaska National Interest Lands Conservation Act of 1980: Act of Dec. 2, 1980; P.L. 96-487, 94 Stat. 2371. 16 U.S.C. §§3101, *et seq.*

Federal Land Exchange Facilitation Act of 1988: Act of Aug. 20, 1988; P.L. 100-409, 102 Stat. 1086. 43 U.S.C. §1716.

Federal Land Policy and Management Act of 1976: Act of Oct. 21, 1976; P.L. 94-579, 90 Stat. 2744. 43 U.S.C. §§1701, *et seq.*

Federal Land Transaction Facilitation Act: Act of July 25, 2000; P.L. 106-248, 114 Stat. 613. 43 U.S.C. §§2301, *et seq.*

General Mining Law of 1872: R.S. 2319, derived from Act of May 10, 1872; ch. 152, 17 Stat. 91. 30 U.S.C. §§22, *et seq.*

Materials Act of 1947: Act of July 31, 1947; ch. 406, 61 Stat. 681. 30 U.S.C. §§601, *et seq.*

Mineral Leasing Act for Acquired Lands: Act of Aug. 7, 1947; ch. 513, 61 Stat. 913. 30 U.S.C. §§351-359.

Mineral Leasing Act of 1920: Act of Feb. 25, 1920; ch. 85, 41 Stat. 437. 30 U.S.C. §§181, *et seq.*

Public Rangelands Improvement Act of 1978: Act of Oct. 25, 1978; P.L. 95-514, 92 Stat. 1803. 43 U.S.C. §§1901, *et seq.*

Taylor Grazing Act of 1934: Act of June 28, 1934; ch. 865, 48 Stat. 1269. 43 U.S.C. §§315, *et seq.*

Wild Horses and Burros Act of 1971: Act of Dec. 15, 1971; P.L. 92-195, 85 Stat. 649. 16 U.S.C. §§1331, *et seq.*

## **CRS Reports and Committee Prints**

CRS Report IB89130, *The 1872 Mining Law*, by Marc Humphries.

CRS Report RS20647, *Authority of a President to Modify or Eliminate a National Monument*, by Pamela Baldwin.

CRS Report 98-851, *Federal Grazing Regulations: Public Lands Council v. Babbitt*, by Pamela Baldwin.

CRS Report 97-274, *Federal Land Management: Appeals and Litigation*, by Pamela Baldwin.

CRS Report 96-450, *Grazing Fees: An Overview*, by Betsy Cody.

CRS Report RL30528, *National Monuments and the Antiquities Act: Recent Designations and Issues*, by Carol Hardy Vincent and Pamela Baldwin.

CRS Report 96-97, *Survey of Grazing Programs in Western States*, by Pamela Baldwin and Betsy Cody.

CRS Report 97-370, *Wild Horse and Burro Management*, by Betsy Cody.

## The National Wildlife Refuge System <sup>34</sup>

The National Wildlife Refuge System (NWRS) is dedicated primarily to the conservation of animals and plants. Other uses, whether hunting, fishing, recreation, timber harvest, grazing, *etc.*, are permitted only to the extent that they are compatible with the purposes for which the refuge was created.<sup>35</sup> Thus, while some have characterized the NWRS as intermediate in resource protection between the BLM and FS lands on the one hand, and NPS lands on the other, this is not entirely accurate.<sup>36</sup> In some ways, the NWRS resembles the FS or BLM lands in that some types of commercial uses are allowed, but in certain cases, various uses (most notably public access) can be substantially more restrictive than for NPS lands.

### Background

The first national wildlife refuge (nwr) was established at Pelican Island, FL, by executive order of President Theodore Roosevelt in 1903. By September 30, 1999, there were 521 refuges totaling 90.6 million acres in 50 states, the Pacific Territories, Puerto Rico, and the Virgin Islands.<sup>37</sup> (See figure 3 for numbers of units (page 40) and figure 4 for acreage (page 40). By far the largest increase in acreage occurred with the addition of 53 million acres of refuge land under the Alaska National Interest Lands Conservation Act of 1980. Currently, 76.2 million acres of refuge lands (84%) are in Alaska. Within 67 of the refuges, there are 85 designated wilderness areas, ranging from 2 acres at Green Bay NWR in Wisconsin to 8.0 million acres at Arctic NWR in Alaska.

The NWRS includes two other categories of land besides refuges: 200 Waterfowl Production Areas (WPAs), that include lands operated under agreements with the farmers and ranchers who own the land, and 50 Wildlife Coordination Areas (WCAs), operated under agreements with state agencies. These bring the NWRS to 771 units.<sup>38</sup> These two additional categories bring the total land in the NWRS (counting refuges, WPAs, and WCAs) to 93.6 million acres. In approximately 1.6 million acres of the NWRS, FWS has secondary jurisdiction: the lands are managed by FWS, but owned or administered principally by some other agency or person.

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<sup>34</sup>This section was prepared by M. Lynne Corn.

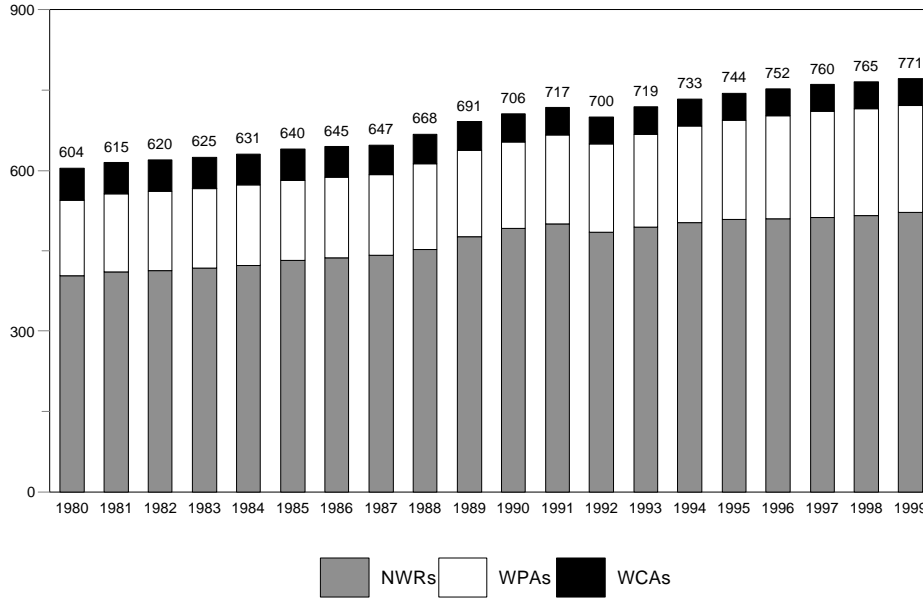
<sup>35</sup>Where there are distinct pre-existing rights (e.g., to develop minerals, oil and gas, easements, etc.), these are rarely acquired along with the land itself. Where they exist and their ownership is considered essential, these rights must be purchased from the landowners, who are otherwise able to develop them.

<sup>36</sup>For example, some refuges (especially island refuges for nesting seabirds) may be closed to the public — an unlikely restriction for an NPS area, given the NPS duty to provide for public enjoyment of park resources.

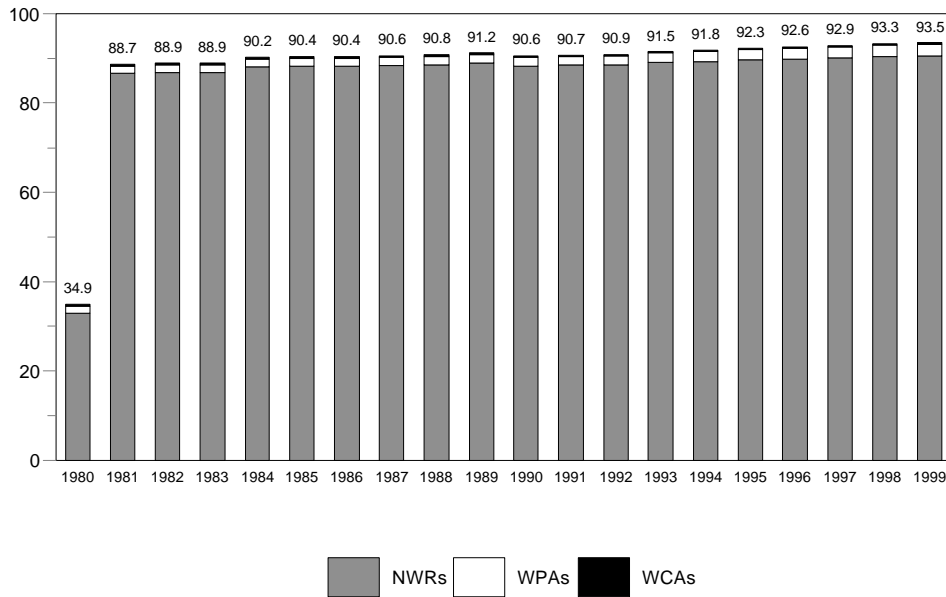
<sup>37</sup>In FY1992, there was a consolidation of units of the Refuge System. The drop in numbers of units shown in figure 3 in that year is due to this change.

<sup>38</sup>The 9 research centers, 42 administrative sites, and 67 fish hatcheries administered by FWS are not part of the System, and total only 24,000 acres.

**Figure 3. Number of Units in the National Wildlife Refuge System from Fiscal Years 1980 to 1999**



**Figure 4. Acreage in the National Wildlife Refuge System from Fiscal Years 1980 to 1999 (in millions of acres)**



Major additions to the System were made in late 1980 under ANILCA.

**Source:** *Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service*, as of the end of each fiscal year.

## Organization and Management

The National Wildlife Refuge System Administration Act of 1966, as amended, stated the purpose for establishing the System as consolidation of the several authorities of the Secretary of the Interior over lands administered for the conservation and protection of fish and wildlife. Conservation of wildlife is the primary emphasis in the three types of areas in the NWRS, but the options for alternative resource use within the areas vary.

Wildlife refuges provide habitat for various plant and animal species, particularly emphasizing habitat for migratory waterfowl and for endangered species. Individual refuges may consist of single contiguous blocks or disjunct parcels scattered over a larger area. Research on wildlife conservation is carried out by the FWS on refuges (as well as on other areas).<sup>39</sup> Energy and mineral activities are permitted in certain refuges and under certain circumstances; any mineral rights owned by the United States are administered by BLM. Hunting, fishing, and other recreational uses are frequently permitted, but only to the extent that these activities are compatible with the major purposes for which a particular refuge was established. In refuges set aside for migratory birds, waterfowl hunting is limited to 40% of the refuge area unless the Secretary determines that hunting in a greater area is beneficial.

WPAs are managed primarily to provide breeding habitat for migratory waterfowl and nearly three-fourths of the land is held under an agreement, easement, or lease, rather than owned outright.<sup>40</sup> These areas are found mainly in the potholes and interior wetlands of the north central states, a region sometimes called “North America’s Duck Factory.” In these areas, there is considerably less conflicting resource use, in part because the areas managed under lease are not subject to the federal mining and mineral leasing laws, and because the size of individual tracts is relatively small. However, the leased lands may be less secure as wildlife habitat because they may be converted later to agricultural use by the private owners. As of September 30, 1999, these areas totaled 2.6 million acres, of which 1.9 million acres are managed under leases, easements, or agreements with private landowners. The WCAs (0.3 million acres) are managed by state wildlife agencies under cooperative agreements with FWS.

The management of the NWRS is divided into three tiers: the 771 individual NWRS units under 7 regional offices, and the national office in Washington, DC. Each of the seven regional offices is administered by a Regional Director who has a considerable degree of autonomy in operating the refuges within the region. FWS is headed by a Director, a Deputy Director, and six Assistant Directors. These Assistant Directors head programs for Policy, Budget and Administration; External Affairs; Refuges and Wildlife; Ecological Services; Fisheries; and International Affairs. It is the directorate for Refuges and Wildlife which is directly responsible for management of the National Wildlife Refuge System.

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<sup>39</sup>Some parts of the research function were administratively transferred to the U.S. Geological Survey (in the Department of the Interior) in FY1996.

<sup>40</sup>This program is distinct from USDA programs run to conserve wetlands.

## Land Ownership

Growth of the NWRs may come about in a number of ways. Some units have been created by specific Acts of Congress (*e.g.*, Protection Island NWR in Washington, Bayou Sauvage NWR in Louisiana, or John Heinz NWR in Pennsylvania).<sup>41</sup> Units have also been created by executive order; FLPMA authorizes the Secretary of the Interior to withdraw lands from the public domain for additions to the NWRs, although all withdrawals exceeding 5,000 acres are subject to congressional approval procedures (43 U.S.C. §1714(c)).<sup>42</sup> Other laws provide general authority to expand the NWRs, including the Fish and Wildlife Coordination Act, the Fish and Wildlife Act of 1956, and the Endangered Species Act.

**Acquisition Authority.** The primary FWS land acquisition authority is the Migratory Bird Treaty Act (MBTA) of 1929. This Act authorizes the Secretary to recommend areas “necessary for the conservation of migratory birds”<sup>43</sup> to the Migratory Bird Conservation Commission, after consulting with the relevant governor (or state agency) and appropriate local government officials (16 U.S.C. §715c). The Secretary may then purchase or rent areas approved by the Commission (§715d(1)), and “acquire, by gift or devise, any area or interest therein ...” (§715d(2)).<sup>44</sup> In contrast to land acquisition for the National Park System (where the lands must be within the boundaries of units defined by Congress), FWS can acquire new lands that may comprise a new refuge under the general FWS authorities just cited, as well as under the Endangered Species Act and certain other laws. The MBTA is the most frequently used authority for funding reasons. (See below.)

Lands and interests in lands to create specific NWRs units may be acquired from another agency, or accepted as donations, or purchased. Purchases may be made on a willing buyer/willing seller basis or under condemnation authorities, although formal condemnation is very rarely used.<sup>45</sup> In general, new acquisitions usually result from

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<sup>41</sup>Of the 521 refuges, 34 (6.5%) were created under specific laws naming those particular refuges.

<sup>42</sup>These procedures result in congressional termination of executive actions other than by statute, and thus may be unconstitutional in light of *INS v. Chadha*, 462 U.S. 919 (1983).

<sup>43</sup>While the MBTA definition of “migratory bird” includes, potentially, almost all types of birds, in practice, the focus of acquisition has been on game birds (*e.g.*, certain ducks, geese, etc.) Non-game species tend to benefit secondarily, though areas without game birds are rarely acquired with MBTA funds.

<sup>44</sup>This authority (and its related funding mechanism) is so commonly used that the distribution of refuges is a good approximation of the four major flyways for migratory waterfowl.

<sup>45</sup>Some critics have suggested that the existence of condemnation authority has clouded some land purchases, to the extent that some sellers feel that they have little real choice in the decision to sell, even if condemnation authority was not formally used. On the other hand, a few sellers have sought formal condemnation since a sale under condemnation may offer important tax advantages under some circumstances. The extent of either of these practices is unclear, but legislation was introduced in the 105<sup>th</sup> Congress to restrict FWS land acquisitions without specific congressional approval. Ultimately, a provision was added in

(continued...)

transfers from the public domain or lands purchased outright from other owners. These purchases are rarely large. In FY1999, 122,868 acres were acquired (as opposed to transferred from other federal agencies), while \$124.9 million was spent on acquisition.<sup>46</sup>

The purchase of refuge lands is financed primarily through two funding sources: the Migratory Bird Conservation Fund (MBCF) and the Land and Water Conservation Fund (LWCF), described earlier, in the chapter entitled Federal Lands Financing. MBCF acquisitions have emphasized wetlands essential for migratory waterfowl, while LWCF acquisitions have encompassed the gamut of NWRS purposes. MBCF is supported from three sources (amounts in parentheses are FY2000 receipts deposited into the MBCF):

- ! the sale of “hunting and conservation stamps” (better known as “duck stamps”) purchased by hunters and certain visitors to refuges (\$25.0 million);
- ! import duties on arms and ammunition (\$17.0 million); and
- ! 70% of certain refuge entrance fees (\$0.21million).

MBCF funds are permanently appropriated to the extent of these receipts, and after paying the engraving, printing, and related costs, may be used for the “location, ascertainment, and acquisition of suitable areas for migratory bird refuges ... and administrative costs incurred in the acquisition” (16 U.S.C. §718d(b)). However, the acquisition must be “approved by the Governor of the State or appropriate State agency” (§715k-5). The predictability of MBCF funding makes it assume special importance in the FWS budget. This contrasts with LWCF funding, which has fluctuated significantly from year to year. In FY2001, the appropriations for the two sources were \$42.7 million from the MBCF, and \$140.0 million from the LWCF for FWS land acquisition.

**Disposal Authority.** With certain exceptions, NWRS lands can be disposed only by an Act of Congress (16 U.S.C. §668dd(a)(6)). Also, for refuge lands reserved from the public domain, FLPMA prohibits the Secretary from modifying or revoking any withdrawal which added lands to the NWRS (43 U.S.C. §1714(j)). For acquired lands, disposal is allowed only if: (1) the disposal is part of an authorized land exchange (16 U.S.C. §668dd(a)(6) and (b)(3)); or (2) the Secretary determines the lands are no longer needed and the Migratory Bird Conservation Commission

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<sup>45</sup>(...continued)

P.L. 105-277 forbidding the use of “any of the funds appropriated in this Act for the purchase of lands or interests in lands to be used in the establishment of any new unit of the National Wildlife Refuge System unless the purchase is approved in advance by the House and Senate Committees on Appropriations in compliance with the reprogramming procedures contained in Senate Report 105-56.” However, because the Migratory Bird Conservation Fund is not appropriated in that act, purchases from that fund are unaffected by this provision.

<sup>46</sup>The dollars spent were not necessarily spent on these particular acres, due to a lag between payments and transfers of title, completion of paperwork, etc.



approves (§668dd(a)(5)). In the latter case, the disposal must recover the acquisition cost or be at the fair market value (whichever is higher).

## Issues

The most enduring controversy concerning the NWRS has been that of conflicting uses, with some critics arguing that FWS has been too lenient in its decisions about commercial and extractive uses or developed recreation; others criticize its policies as too restrictive. Specific conflicts have arisen between such activities as grazing, energy extraction, power boat recreation, motorized access, and similar activities on the one hand, and the purposes for which refuges were designated on the other.<sup>47</sup>

In recent years, a controversy developed over the propriety of hunting (and, to a lesser extent, fishing) on refuge lands. The pro-hunting position is based largely on 2 arguments: (1) the purchase of migratory duck stamps by hunters has paid for a substantial portion of refuge land, mainly in areas suitable for waterfowl habitat; and (2) the animal population is the appropriate measure of conservation in their view, and removal of individual animals for human use is not harmful, and may be beneficial as long as the population growth rate is maintained. The anti-hunting argument holds that no place can be considered a “refuge” if its major wildlife residents are regularly hunted. They contend further that since fewer people now hunt<sup>48</sup> and the enjoyment of this sport hinders use of the land by others (by restricting access for safety reasons), then hunting should be eliminated to allow fuller access by non-hunting users. While various bills have been introduced over the years to eliminate or restrict hunting on refuges, others have been introduced to support it.

In the 105<sup>th</sup> Congress, the National Wildlife Refuge System Improvement Act of 1997 (P.L. 105-57) addressed these over-arching management controversies facing the System. Under this law, the purpose of the NWRS is the “conservation, management and, where appropriate, restoration of the fish, wildlife and plant resources and their habitats.” Another key provision of this law designates “compatible wildlife-dependent recreational uses involving hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority public uses of the refuge system.” It also requires that public priority uses must “receive enhanced consideration over other general public uses in planning and management within the System.” At the same time, the law continues the current statutory policy that activities that are not wildlife-dependent (*e.g.*, grazing, growing hay, etc.) may be permitted, provided they are wildlife-compatible. Final regulations governing the determination of compatibility were published on October 18, 2000 (65 FR 62457). Some interest groups argued that the regulations did not allow for

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<sup>47</sup>U.S. General Accounting Office. *National Wildlife Refuges: Continuing Problems with Incompatible Uses Call for Bold Action*. GAO/RCED 89-196. Washington, DC: U.S. Govt. Print. Off., September 1989. 84 p.

<sup>48</sup>U.S. Dept. of the Interior, Fish and Wildlife Service. *1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation*. Washington, DC: August 1997. The number of hunters did not decline significantly from the previous survey 5 years earlier, but as a percent of the total U.S. population, there was a slight decline in hunters.

sufficient public access for some forms of recreation, such as off-road vehicles or personal watercraft. Congressional hearings are possible.

**Centennial Observation and System Maintenance.** The centennial of the NWRS will be observed in 2003. The celebration is expected to be marked by activities at the refuges. FWS anticipates expanding visitor outreach and interpretation, as well as refurbishing existing facilities. At the same time, an 18-member coalition (ranging from the Wilderness Society to the National Rifle Association) is pressing for using the centennial as an occasion to address a backlog of operations and maintenance needs (estimated by some at over \$800 million<sup>49</sup>). The former Chairman of the House Interior Appropriations Subcommittee, Rep. Ralph Regula, also has emphasized the need for addressing the backlog.<sup>50</sup> That and other issues also were covered in a report on 10 specific “refuges in crisis,” by the National Audubon Society.<sup>51</sup> Congress may consider whether to fund additional efforts to improve the system as part of the centennial observation.

## Major Statutes

Alaska National Interest Lands Conservation Act of 1980: Act of December 2, 1980; P.L. 96-487, 94 Stat. 2371. 16 U.S.C. §3101, *et seq.*

Fish and Wildlife Act of 1956: Act of August 8, 1956; ch. 1036, 70 Stat. 1120. 16 U.S.C. §742a, *et seq.*

National Wildlife Refuge System Administration Act of 1966: Act of October 15, 1966; P.L. 90-404, 80 Stat. 927. 16 U.S.C. §668dd-668ee.

National Wildlife Refuge System Improvement Act of 1997. Act of October 9, 1997; P.L. 105-57. 16 U.S.C. §668dd.

San Francisco Bay National Wildlife Refuge: Act of June 30, 1972; P.L. 92-330, 86 Stat. 399. 16 U.S.C. §668dd note. (This is a typical statute establishing a refuge.)

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<sup>49</sup>Grunwald, Michael. *Refuges' Resurgence Faces Uncertainty*. Washington Post. February 7, 2001, p. A3.

<sup>50</sup>U.S. House of Representatives. Department of Interior and Related Agencies Appropriations for 2001. Hearings, Part 7. P. 280-284. (Questions from Chairman Regula and responses from FWS Director Jamie Rappaport Clark.) In this discussion, the agency's combined maintenance and operations backlog estimate is much higher: \$1.8 billion. The reason for the difference is unclear. In response to questions submitted by Rep. Norman Dicks, in May 2000 the DOI Budget Office estimated the backlog (for maintenance only) at \$790 million to \$1.1 billion.

<sup>51</sup>See [[http://www.audubon.org/campaign/refuge\\_report/index.html](http://www.audubon.org/campaign/refuge_report/index.html)].

## **CRS Reports and Committee Prints**

CRS Report 90-120, *Fish and Wildlife Service: Compensation to Local Governments*, by M. Lynne Corn.

CRS Report 86-722, *A Guide to Trust Funds, Special Accounts, and Foundations in the Fish and Wildlife Budget*, by M. Lynne Corn.

CRS Report 92-597, *National Wildlife Refuges: Places to Hunt?*, by Jennifer A. Heck.

## The National Park System <sup>52</sup>

Perhaps the federal land category best known to the public is the National Park System. The National Park Service (NPS) currently manages 380 System units, including 55 units formally entitled “national parks” (often referred to as the “crown jewels” of the System), as well as national monuments, battlefields, military parks, historical parks, historic sites, lakeshores, seashores, recreation areas, reserves, preserves, and scenic rivers and trails. The System has grown to a total of 83.6 million acres—77.9 million acres of federal land plus 5.7 million acres of non-federal land—in 49 states, the District of Columbia, and U.S. territories. Passage of ANILCA in 1980 roughly doubled the acreage of the National Park System because of the large size of the new parks in Alaska. The acreage has been relatively stable in recent years, as new authorizations and land acquisitions have been modest.

In FY1999, there were approximately 287 million recreation visits to units of the National Park System.<sup>53</sup> The NPS has the often contradictory mission of facilitating access and serving visitors while protecting and preserving the natural, historic, and cultural resources of the lands and resources it manages.

### Background

By the Act of March 1, 1872, Congress established Yellowstone National Park in the then-territories of Idaho, Montana, and Wyoming “as a public park or pleasuring ground for the benefit and enjoyment of the people.”<sup>54</sup> The Park was placed under the exclusive control of the Secretary of the Interior who was responsible for developing regulations to “provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition.”<sup>55</sup> Other park functions were to include developing visitor accommodations, building roads and trails, removing trespassers (mostly poachers) from the park, and protecting “against wanton destruction of fish and game.”

When Yellowstone National Park was authorized, there was no concept or plan for the development of a system of such parks. The concept now firmly established as the National Park System, embracing a diversity of natural and cultural resources nationwide, evolved slowly over the years. This idea of a national park was an American invention of historic proportions, marking the start of a global conservation movement that today accounts for hundreds of national parks (or equivalent conservation preserves) throughout the world. The American National Park System continues to serve as an international model for preservation.

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<sup>52</sup>This section was prepared by David Whiteman.

<sup>53</sup>See the NPS website at: [<http://www.aqd.nps.gov/stats/>].

<sup>54</sup>16 U.S.C. §21.

<sup>55</sup>16 U.S.C. §22. In the early years, the Interior Department relied on the U.S. Army for enforcement of the regulations and protection of the park units.

At the same time that interest was growing in preserving the scenic wonders of the American West, efforts were underway to protect the sites and structures associated with early Native American cultures, particularly in the Southwest. In 1906, Congress enacted the Antiquities Act to authorize the President “to declare by public proclamation [as national monuments] historic and prehistoric structures and other objects of historic or scientific interest.”<sup>56</sup> In the years following the establishment of Yellowstone, national parks and monuments were authorized or proclaimed, principally from the public domain lands in the West, and were administered by the Department of the Interior (initially with help from the U.S. Army). However, no single agency provided unified management of the varied federal parklands.

On August 25, 1916, President Woodrow Wilson signed the Act creating the National Park Service, a new federal agency in the Department of the Interior with the responsibility for protecting the national parks and many of the monuments then in existence and those yet to be established. This action reflected a developing national concern for preserving the nation’s heritage. The “Organic Act” states “the [National Park] Service then established shall promote and regulate the use of Federal areas known as national parks, monuments and reservations . . . to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”<sup>57</sup> By executive order in 1933, President Franklin D. Roosevelt transferred 63 national monuments and military sites from the Forest Service and War Department to the National Park Service. This action was a major step in the development of a truly national system of parks.

Of the four federal land management agencies, the NPS manages the most diverse collection of units. More than 20 different designations are used for park sites or areas, ranging from the traditional national park designation to scenic rivers and trails, memorials, battlefields, historic sites, historic parks, seashores, lakeshores, recreation areas, and monuments. Because of this variety of park unit designations and the public perception of lesser status for units lacking the “national park” designation, Congress sought to establish that all units in the System are to be considered of equal value. A 1970 law stated that all NPS units are part of “one national park system preserved and managed for the benefit and inspiration of all people of the United States. . .”.<sup>58</sup> In 1978, Congress amended that law to reassert the system-wide standard of protection for all areas administered by the NPS.<sup>59</sup>

## Organization and Management

The National Park Service manages the National Park System. The Director of the National Park Service, headquartered in Washington, DC, is the chief administrative officer of the Service, with an immediate staff of two Deputy Directors,

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<sup>56</sup>16 U.S.C. §431.

<sup>57</sup>16 U.S.C. §1.

<sup>58</sup>The General Authorities Act of 1970, 16 U.S.C. §1a-1, §1c.

<sup>59</sup>The Redwoods National Park Act, 16 U.S.C. §1a-1.

five Associate Directors, and a number of policy and program office managers. Directly overseeing NPS operations is the Interior Department's Assistant Secretary for Fish, Wildlife, and Parks. In addition, the National Park Service Advisory Board, composed of private citizens with requisite experience and expertise, advises on management policies and on possible additions to the System.<sup>60</sup>

The individual park units are arranged in 7 regional offices, each headed by a Regional Director. The NPS had traditionally operated with 10 regional offices but recently eliminated 3, while at the same time forming a system of park clusters. The reorganization, a part of the Clinton Administration's "reinvention" of government that involved downsizing and streamlining, was primarily designed to shift resources and personnel from central offices to field units. Regional offices and cluster support offices provide certain administrative functions and specialized staff services and expertise which were not believed to be practicable to have in each park unit. This shared assistance is particularly important to the smaller units. The individual units are overseen by a park superintendent, with staff generally commensurate with the size, public use, and significance of the unit. The park units in Alaska are an exception to this, with relatively few personnel in comparison to the large size of the holdings.

As stated, the basic NPS mission is twofold: to conserve, preserve, protect, and interpret the natural, cultural, and historic resources of the nation for the public and to provide for their enjoyment by the public.<sup>61</sup> To a considerable extent, the NPS contributes to meeting the public demand for certain types of outdoor recreation. Scientific research is another activity encouraged in units of the Park System. Management direction is provided in the general statutes and in those that create and govern individual units. In general, activities which harvest or remove the resources within units of the System are not allowed. Mining, for instance, is generally prohibited, although in a limited number of national parks and monuments some mining is allowed, in accordance with the Mining in the Parks Act of 1976. Also, in authorizing certain additions to the System, Congress has specified that certain natural resource uses, such as oil and gas development or hunting, may — or shall — be permitted in specific units; examples include national preserves such as Big Cypress and national recreation areas such as Glen Canyon. Other uses are dealt with in specific enactments, such as the 1911 law dealing with rights-of-way through Park System units.

## Land Ownership

**Designation and Acquisition Authority.** Most units of the National Park System have been created by Acts of Congress. In 1998, Congress amended existing law pertaining to the creation of new units to standardize procedures, improve information about potential additions, prioritize areas, focus attention on outstanding

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<sup>60</sup> The National Park Service Advisory Board has begun an ambitious undertaking to produce recommendations for a Park Service guiding agenda for the 21<sup>st</sup> century.

<sup>61</sup> Detailed guidance on NPS management practices can be found on the NPS website at: [<http://www.nps.gov/planning/mngmtplc/npsmpint.html>].

areas, and ensure congressional support for studies of possible additions.<sup>62</sup> The Secretary of the Interior is to investigate, study, and monitor nationally significant areas with potential for inclusion in the System. The Secretary is to submit annually to Congress a list of areas recommended for study for potential inclusion in the National Park System. The Secretary also is required to submit to Congress each year a list of previously-studied areas that contain primarily historical resources, and a similar list of areas with natural resources, with areas ranked in order of priority for possible inclusion in the System. In practice, NPS performs the functions assigned to the Secretary.

In assessing whether to recommend a particular area, the NPS is required by law to consider: whether an area is nationally significant, and would be a suitable and feasible addition to the National Park System; whether an area represents or includes themes, sites, or resources “not adequately” represented in the system; and requests for studies in the form of public petitions and congressional resolutions. An actual study requires authorization by Congress, although the NPS may conduct certain preliminary assessment activities. In preparing studies, NPS must consider certain factors also established in law. After funds are made available, NPS must complete a study within three fiscal years.

Under the Antiquities Act of 1906, the President is authorized to proclaim national monuments on federal land, and to date about 120 monuments have been created by presidential proclamations. Many areas initially designated as national monuments were later made into national parks. Before 1940, Presidents used this authority frequently (for proclaiming 87 national monuments), but in 1978 President Carter set aside more land as national monuments (56 million acres in Alaska) than any other President.<sup>63</sup> President Clinton used his authority under the Antiquities Act 22 times to proclaim 19 new monuments and enlarge 3 others. The Forest Service, the BLM, and other agencies also manage some monuments, including several of the new monuments created by President Clinton.

In addition to establishing a unit of the National Park System, an act of Congress may set the boundaries of the unit and authorize the NPS to acquire the non-federal lands within those boundaries. The principal funding source for land acquisition has been the Land and Water Conservation Fund, described above in the chapter entitled “Federal Lands Financing.” The Secretary is to include, in a report to Congress at least every 3 years, a “comprehensive listing of all authorized but unacquired lands within the exterior boundaries of each unit” (16 U.S.C. §1a-11(a)) and a “priority listing of all such unacquired parcels” (16 U.S.C. §1a-11(b)). Further, the general management plan for each unit is to include “indications of potential modifications to the external boundaries of the unit, and the reasons therefor” (§1a-7). The Secretary is to identify criteria to evaluate proposed boundary changes (§1a-12). Further, the Secretary is authorized to make minor boundary adjustments for “proper preservation, protection, interpretation, or management” and to acquire the nonfederal lands within the adjusted boundary (16 U.S.C. §460l-9(c)).

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<sup>62</sup> P.L. 105-391, 16 U.S.C. §1a-5.

<sup>63</sup> Congress rescinded these withdrawals and reestablished most of the lands as national monuments or other protective designations (such as national parks) in §1322 of ANILCA.

**Disposal Authority.** Units (and lands) of the National Park System established by Acts of Congress can be disposed of only by Acts of Congress. Non-NPS lands encompassed by minor boundary adjustments can be acquired through land exchanges, but, unlike for some of the other federal land management agencies, the Secretary may not convey property administered as part of the National Park System in order to acquire lands by exchange.<sup>64</sup> Finally, the Secretary cannot modify or revoke any withdrawal creating a national monument.<sup>65</sup> Thus, with minor exceptions, National Park System lands can be changed from that status or disposed of only by an Act of Congress.

## Issues

On-going disputes center on how to balance appropriate public use of national park land for recreation with protection of park resources. In the 106<sup>th</sup> Congress, a national policy for regulating commercial air tour flights over national parks was enacted (P.L. 106-181). NPS regulations for managing the use of personal watercraft (*e.g.*, water bikes and jet skis) have proven controversial as a possible precedent for other land managers. Finally, appropriate use of “snow machines” (*e.g.*, snowmobiles) in Park units was the subject of several contentious hearings in the 106<sup>th</sup> Congress, has been the subject of NPS regulations, and continued to figure in appropriation and budget debates right to the end of that Congress.

Over the years, Congress has continued to add new units to the Park System as well as expand the management responsibilities of the NPS. These changes, together with increased numbers of visitors, have added pressure to the Park System’s resources and contributed to a multibillion dollar backlog of deferred maintenance.<sup>66</sup> In FY1996, the temporary government shutdowns included temporary closure of NPS units. Public objections to the park unit closures and concerns about deteriorating facilities have led Congress to increase overall NPS appropriations each year since FY1996.

Congress also has authorized a recreation fee demonstration program to supplement NPS appropriations with higher entrance and recreation user fees. The temporary program was initiated in the FY1996 Omnibus Consolidated Rescissions and Appropriations Act, and allows most of the higher fees (at a limited number of sites for each agency) to be retained where the money is collected, rather than returned to the U.S. Treasury. The program continues to be tested by NPS and the other federal land management agencies and has been extended by Congress through FY2002. Many citizens have objected to paying additional fees for previously free or

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<sup>64</sup> 16 U.S.C. §460l-9(c).

<sup>65</sup> 43 U.S.C. §1714(j). While Presidents may modify monument boundaries, it is not certain that a President can revoke a national monument. (See CRS Report RS20647)

<sup>66</sup>U.S. General Accounting Office. *National Park Service: Maintenance Backlog Issues*. GAO/T-RCED-98-61. Washington, DC: U.S. Govt. Print. Off., Feb. 4, 1998.



low-cost recreation in the national forests, but have expressed few objections to higher fees for the National Park System.<sup>67</sup>

In recent Congresses, as an alternative to creating new NPS units, Congress also has designated a number of “heritage areas,” where the NPS supports state and community conservation goals through “seed money” (usually for a set number of years), recognition, and technical assistance. Heritage areas are a new form of partnership to conserve and protect locally important natural, scenic, historic, cultural, and recreational resources that may lack the stature and national significance to qualify for inclusion in the National Park System. Under the Heritage Partnership Program, the NPS assists communities in attaining designation and in initial planning for the area’s management, but without obligating long-term NPS management responsibilities or financial support. Proponents claim that heritage areas help control congressional pressures to create new, costly, and perhaps inappropriate Park System additions. Opponents fear that the heritage program could be used to extend federal control over non-federal lands.

In recent years, congressional leaders have at times packaged a large number of diverse park, public land, and recreation related bills into omnibus measures for expedited passage in the closing days of a Congress. An omnibus park and public land bill, led by the Presidio Trust management provision, was enacted at the end of the 104<sup>th</sup> Congress (P.L. 104-333). In the 105<sup>th</sup> Congress, a House measure (H.R. 4570) containing about 90 separate bills was soundly defeated on the House floor (123-302) after the Administration promised a veto and environmental groups campaigned against numerous provisions. A 105<sup>th</sup> Congress Senate bill (S. 1693) that focused on comprehensive NPS management reform was enacted (P.L. 105-391) after negotiations with the Secretary of the Interior produced a compromise on concessions reform, the central provision of the bill. In addition, the law provides clear criteria and standards for additions to the Park System, reinvigorates the NPS science program, and requires the NPS to establish a general management strategy for the System. The 106<sup>th</sup> Congress did not consider an omnibus parks bill.

### **Major Statutes**<sup>68</sup>

Mining in National Parks: Act of Sept. 28, 1976; P.L. 94-429, 90 Stat. 1342. 16 U.S.C. §1901-1912.

The National Park Service Organic Act of 1916: Act of Aug. 25, 1916; ch. 408, 39 Stat. 535. 16 U.S.C. §1-4.

National Parks Omnibus Management Act of 1998: Act of Nov. 13, 1998; P.L. 105-391, 112 Stat. 3497. 16 U.S.C. §5901 *et seq.*

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<sup>67</sup>U.S. General Accounting Office. *Recreation Fees: Demonstration Fee Program Successful in Raising Revenues but Could Be Improved*. GAO/RCED-99-7. Washington, DC: U.S. Govt. Print. Off., Nov. 1998.

<sup>68</sup> There are hundreds of laws establishing or modifying specific units of the National Park System, in addition to the few general laws listed here.

Omnibus Parks and Public Lands Management Act of 1996: Act of Nov. 12, 1996; P.L. 104-333, 110 Stat. 4093. 16 U.S.C. §1 *et seq.*

Preservation of American Antiquities: Act of June 8, 1906; ch. 3060, 34 Stat. 225. 16 U.S.C. §431-433.

Yellowstone National Park Act: R.S. 2474, derived from Act of March 1, 1872; ch. 24, 17 Stat. 32. 16 U.S.C. §21, *et seq.*

## **CRS Reports and Committee Prints**

CRS Report 98-794, *Federal Recreational Fees: Demonstration Program*, by Rosemary Mazaika.

CRS Report 96-161, *Mining in National Parks and Wilderness Areas: Policy, Rules, Activity*, by Duane A. Thompson.

CRS Report RL30528, *National Monuments and the Antiquities Act: Recent Designations and Issues*, by Carol Hardy Vincent and Pamela Baldwin.

CRS Report RS20158, *National Park System: Establishing New Units*, by Carol Hardy Vincent.

CRS Report 95-105, *State Operation of National Parks During Government Budgetary Shutdowns*, by David Whiteman.

## Special Systems on Federal Lands

There are currently three special management systems that include lands from more than one federal land management agency: the National Wilderness Preservation System, the National Wild and Scenic Rivers System, and the National Trails System. These systems were established by Congress to protect special features or characteristics on lands managed by the various agencies. Rather than establish new agencies for these systems, Congress directed the existing agencies to administer the designated lands within parameters set in statute.

### The National Wilderness Preservation System<sup>69</sup>

Wilderness is defined in law as federal land that is primarily affected by the forces of nature, relatively untouched by human activity, where solitude and primitive recreation are dominant values. Lands eligible for inclusion in the System are areas that generally contain more than 5,000 acres or that can be managed to maintain their pristine character.

#### Background

The National Wilderness Preservation System was established in 1964 by the Wilderness Act. It was based on a FS system that was established administratively in 1924, but reserves to Congress the authority to include areas in the System. The Wilderness Act designated 9.1 million acres of national forest lands as wilderness, and required the FS, NPS, and FWS to review the wilderness potential of lands under their jurisdiction. These reviews were completed within the required 10 years, with wilderness recommendations presented to Congress. The FS also chose to expand its review to all NFS roadless areas (RAREII), and presented wilderness recommendations in 1979. A comparable review of BLM lands was required by FLPMA in 1976, and the BLM finalized wilderness recommendations in 1991.

#### Organization and Management

The National Wilderness Preservation System contains more than 104 million acres in 44 states, as shown in Table 5 (data column 1). This amounts to nearly one-sixth (16%) of all federal land. More than half of all wilderness acres are in Alaska (57 million, 55%); this accounts for about a quarter of the federal land in the state. Another 42 million acres of wilderness (41%) is in the 11 Western states. In total, this wilderness acreage represents 12% of the federal land in those states, ranging from 1% in Nevada to 38% in Washington. The remaining 4 million acres (4%) are in the other 38 states (the Atlantic Coast through the Great Plains, plus Hawaii). This is 8% of the federal land in those states, ranging from 0% in several states to 52% in Florida.

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<sup>69</sup>This section was prepared by Ross W. Gorte.

No one agency manages the System. Rather, all four agencies currently manage wilderness areas (see Table 5). The FS manages nearly 35 million acres of designated wilderness. This comprises 18% of all NFS lands. Nearly 6 million acres of NFS wilderness land (16%) are in Alaska, and another 27 million acres (78%) are in the 11 Western states. The FS also manages 2 million acres of wilderness in the other states (6%), and 26 of those 38 states have wilderness areas.

More than half of the NPS lands are designated wilderness (43 million acres, 56%). Approximately three-quarters of all NPS wilderness land is in Alaska (33 million acres, 76%), and significant NPS wilderness areas also are in California, Florida, and Washington.

The FWS manages nearly 21 million acres of wilderness. This represents 22% of FWS lands. Nearly 19 million acres of FWS wilderness areas (90%) are in Alaska, and significant FWS wilderness areas also are in Arizona. Overall, about half of the states have wilderness areas within the purview of the FWS.

The BLM currently manages more than 5 million acres of wilderness (as shown in table 5), a small fraction of all BLM lands (2%). Approximately two-thirds of BLM wilderness is in the California desert, and another quarter is in Arizona. BLM also manages relatively small amounts of wilderness in several other states.

The Wilderness Act defines wilderness as “undeveloped federal land ... without permanent improvements.” Thus, wilderness areas are generally managed to protect and preserve natural conditions. Permanent improvements, such as buildings and roads, and activities which significantly alter existing natural conditions, such as timber harvesting, generally are prohibited. The Wilderness Act allowed mineral exploration and leasing for 20 years (through December 31, 1983), and directed that valid existing mineral rights be permitted to be developed under “reasonable regulations” to attempt to preserve the wilderness characteristics of the area. The Wilderness Act also specified that livestock grazing and use of motorboats or airstrips be allowed to continue. In addition, Congress has included exceptions to the Act’s management limitations in subsequent laws designating specific areas.

## **Designation**

The Wilderness Act reserved to Congress the authority to designate wilderness areas as part of the National Wilderness System. Congress has designated many wilderness study areas, in addition to the broader agency reviews required under the Wilderness Act and FLPMA. For how long study areas must be administered to preserve their wilderness character depends on the language of the law requiring the study; some areas are available for other uses when the agency recommends against designation, but others must be protected until Congress releases them.

Congress began expanding the System in 1968, 4 years after it was established. The most significant expansion was included in the Alaska National Interest Lands Conservation Act of 1980, which established 35 new wilderness areas in Alaska with more than 56 million acres. This action more than tripled the System at that time.

**Table 5. Federally Designated Wilderness Acreage,  
by State and Agency**

State	Total Acreage	Forest Service	National Park Service	Fish and Wildlife Service	Bureau of Land Management
Alabama	41,367	41,367	0	0	0
Alaska	57,499,339	5,752,541	33,061,778	18,685,020	0
Arizona	4,529,468	1,345,008	444,550	1,343,444	1,396,466
Arkansas	153,655	116,578	34,933	2,144	0
California	13,890,605	4,432,634	5,842,918	9,172	3,605,881
Colorado	3,380,981	3,165,900	60,066	2,560	152,455
Connecticut	0	0	0	0	0
Delaware	0	0	0	0	0
Florida	1,422,247	74,495	1,296,500	51,252	0
Georgia	485,484	114,537	8,840	362,107	0
Hawaii	142,370	0	142,370	0	0
Idaho	4,005,653	3,961,608	43,243	0	802
Illinois	29,688	25,638	0	4,050	0
Indiana	12,945	12,945	0	0	0
Iowa	0	0	0	0	0
Kansas	0	0	0	0	0
Kentucky	16,779	16,779	0	0	0
Louisiana	17,025	8,679	0	8,346	0
Maine	19,392	12,000	0	7,392	0
Maryland	0	0	0	0	0
Massachusetts	2,420	0	0	2,420	0
Michigan	249,218	91,891	132,018	25,309	0
Minnesota	815,952	809,772	0	6,180	0
Mississippi	10,683	6,046	4,637	0	0
Missouri	70,928	63,198	0	7,730	0
Montana	3,443,038	3,372,503	0	64,535	6,000
Nebraska	12,429	7,794	0	4,635	0
Nevada	918,520	787,085	125,000	0	6,435
New Hampshire	102,932	102,932	0	0	0
New Jersey	10,341	0	0	10,341	0
New Mexico	1,625,117	1,388,262	56,392	39,908	140,555
New York	1,363	0	1,363	0	0
North Carolina	111,419	102,634	0	8,785	0
North Dakota	39,652	0	29,920	9,732	0
Ohio	77	0	0	77	0
Oklahoma	23,113	14,543	0	8,570	0
Oregon	2,264,867	2,073,244	0	925	190,698
Pennsylvania	8,938	8,938	0	0	0
Rhode Island	0	0	0	0	0
South Carolina	60,681	16,671	15,010	29,000	0
South Dakota	73,970	9,826	64,144	0	0
Tennessee	66,349	66,349	0	0	0
Texas	85,333	38,483	46,850	0	0
Utah	796,470	773,870	0	0	22,600
Vermont	59,421	59,421	0	0	0
Virginia	177,214	97,635	79,579	0	0
Washington	4,319,351	2,571,609	1,739,763	839	7,140
West Virginia	80,852	80,852	0	0	0
Wisconsin	42,323	42,294	0	29	0
Wyoming	3,111,232	3,111,232	0	0	0
Territories	0	0	0	0	0
<b>Total</b>	<b>104,231,201</b>	<b>34,777,793</b>	<b>43,229,874</b>	<b>20,694,502</b>	<b>5,529,032</b>

**Sources:** The sources for this table were the same as for table 2 (page 6), updated by CRS to reflect laws enacted after the publication dates.

Since the FS issued recommendations in 1979, Congress usually has addressed possible wilderness designations for all of an agency's lands within a state. Many statewide NFS wilderness bills were introduced, but their enactment was held up in the early 1980s until a compromise over "release language"<sup>70</sup> broke the legislative stalemate. This compromise led Congress to enact 21 wilderness laws designating 8.6 million acres of predominately NFS wilderness in 21 states. The 103rd Congress (1993-1994) also substantially expanded the system, with NFS wilderness areas in Colorado and BLM and NPS wilderness areas in the California desert.

Congress continues to consider further expansion of the National Wilderness Preservation System. More than 29 million acres, mostly NPS lands in Alaska, have been recommended by the agencies to Congress for inclusion in the System. Numerous areas continue to be reviewed for their wilderness potential by the federal land management agencies.

## Issues

Wilderness designations continue to be controversial. Restrictions on the use and development of designated wilderness areas often conflict with the desires of some groups, while providing the values sought by others. Compromise between development and preservation interests commonly is elusive, despite the general and specific exemptions to the general standards and prohibitions that Congress has enacted in wilderness laws.

Wilderness reviews and recommendations for BLM lands, required by the Federal Land Policy and Management Act of 1976 (FLPMA; P.L. 94-579), were sent to Congress in the early 1990s, and are still pending for most Western states. FLPMA requires the BLM to protect the wilderness characteristics of all wilderness study areas (including those not recommended for wilderness) until Congress directs otherwise. This prevents possible development in some areas that the BLM has determined are not suitable for wilderness, to the consternation of development interests. However, environmentalists are concerned about "release" of these areas, because the BLM planning process does not require a periodic review of the wilderness potential of undeveloped areas, and thus the "release" could be for decades.

Another controversial issue is the effect of wilderness designations on federal water rights. The U.S. Supreme Court has said that when Congress reserves federal lands for particular purposes, a reservation of the water necessary to carry out those purposes is implied.<sup>71</sup> At issue is whether a wilderness designation is a reservation of land that would give rise to a federal water right. Federal reserved water rights were not particularly important in NFS wilderness designations because these areas mostly

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<sup>70</sup>Release language provides congressional direction on the timing and extent of future wilderness considerations (i.e., when the land would be reviewed for possible wilderness) and on the interim management of roadless areas, pending any future wilderness reviews. See CRS Report 93-280 ENR, *Wilderness Legislation: History of Release Language, 1979-1992*.

<sup>71</sup>See CRS Report 89-11, *Wilderness Areas and Federal Water Rights*.

have been headwaters, without upstream users that could develop the areas and alter the water flowing through the areas. However, the issue is likely to be important for BLM wilderness, because BLM lands are often downstream from other users and wilderness water rights might affect such users. Congress has expressly addressed this issue in legislation, providing a variety of solutions.<sup>72</sup>

In addition, the agencies typically have administrative authority to manage lands to preserve the wilderness or natural character of areas that have not been designated as part of the Wilderness System by Congress. This has become more controversial of late because of efforts by the Clinton Administration to protect ‘roadless areas’ by regulation, rather than *via* congressional wilderness designation. In October 1999, the Clinton Administration proposed regulations to provide “appropriate long-term protection for ... ‘roadless’ areas” with an environmental impact statement (EIS) to examine alternatives. The draft EIS and proposed regulations were issued in May 2000; the final EIS was issued in November. The final regulations were issued on January 12, 2001, to become effective on March 13. The Bush Administration delayed the implementation until May 12, 2001.

## Major Statutes

Alaska National Interest Lands Conservation Act of 1980: Act of Dec. 2, 1980; P.L. 96-487, 94 Stat. 2371.

California Desert Protection Act of 1994: Act of Oct. 31, 1994; P.L. 103-433, 108 Stat. 4471.

Wilderness Act: Act of Sept. 3, 1964; P.L. 88-577, 78 Stat. 890. 16 U.S.C. §1131, *et seq.*

## CRS Reports and Committee Prints

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

CRS Report 89-11, *Wilderness Areas and Federal Reserved Water Rights*, by Pamela Baldwin.

CRS Report 98-848, *Wilderness Laws: Prohibited and Permitted Uses*, by Ross W. Gorte.

CRS Report 93-280, *Wilderness Legislation: History of Release Language, 1979-1992*, by Ross W. Gorte and Pamela Baldwin.

CRS Report 94-976, *Wilderness: Overview and Statistics*, by Ross W. Gorte.

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<sup>72</sup>See CRS Memorandum, *Water Rights Language in Wilderness Statutes*, by Ross W. Gorte and Pamela Baldwin, Jan. 26, 1993; and CRS Memorandum, *Colorado Wilderness Water Rights Language in S. 1029*, by Pamela Baldwin, Jan. 29, 1993.

## The National Wild and Scenic Rivers System <sup>73</sup>

### Background

The National Wild and Scenic Rivers System was established in 1968 by the Wild and Scenic Rivers Act. The Act established a policy of preserving selected free-flowing rivers for the benefit and enjoyment of present and future generations, to complement the then-current national policy of constructing dams and other structures (such as flood control works) along many rivers. Three classes of wild and scenic rivers were established under the Act, reflecting the characteristics of the rivers at the time of designation, and affecting the type and amount of development that may be allowed thereafter. The classes of rivers are:

- ! **Wild** rivers are free from impoundments (dams, diversions, etc.) and generally inaccessible except by trail, where the watersheds (area surrounding the rivers and tributaries) are primitive and the shorelines are essentially undeveloped;
- ! **Scenic** rivers are free from impoundments in generally undeveloped areas but are accessible in places by roads;
- ! **Recreational** rivers are readily accessible by road, with some shoreline development, and possibly may have undergone some impoundment or diversion in the past.

Rivers may come into the System either by congressional designation or state nomination to the Secretary of the Interior. Congress initially designated 789 miles in 8 rivers as part of the National Wild and Scenic Rivers System. Congress began expanding the System in 1972, and made substantial additions in 1976 and in 1978 (413 miles in 3 rivers, and 688 miles in 8 rivers, respectively). As with the National Wilderness Preservation System, the National Wild and Scenic Rivers System was more than doubled by designation of rivers in Alaska in ANILCA in 1980. In January 1981, Interior Secretary Cecil Andrus approved 5 rivers designated by the state of California, increasing the System mileage by another 20% (1,235 miles). The first additions under the Reagan Administration were enacted into law in 1984, with the addition of 5 rivers including more than 300 miles. The next large addition came in 1988, with the designation of more than 40 river segments in Oregon, adding 1,400 miles. In 1992, 14 Michigan river segments totaling 535 miles were added. The 106<sup>th</sup> Congress added 11 designations to the System which now includes 160 river units with 11,292.1 miles in 38 states.<sup>74</sup> (See table 6.)

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<sup>73</sup>This section originally was prepared by Betsy A. Cody; updated by Sandra L. Johnson.

<sup>74</sup>U.S. Dept. of the Interior, National Park Service. *River Mileage Classifications for Components of the National Wild and Scenic Rivers System*. Washington, DC: Nov. 2000.



**Table 6. Mileage of Rivers Classified as Wild, Scenic, and Recreational, by State, 2000**

State	Wild	Scenic	Recreational	Total
Alabama	36.40	25.00	0.00	61.40
Alaska	2,955.00	227.00	28.00	3,210.00
Arizona	18.50	22.00	0.00	40.50
Arkansas	21.50	147.70	40.80	210.00
California	685.80	199.60	986.85	1,872.25
Colorado	30.00	0.00	46.00	76.00
Connecticut	0.00	0.00	14.00	14.00
Delaware <sup>a</sup>	0.00	15.60	79.00	94.60
Florida	32.65	7.85	8.60	49.10
Georgia <sup>a</sup>	39.80	2.50	14.60	56.90
Idaho <sup>a</sup>	321.90	34.40	217.70	574.00
Illinois	0.00	17.10	0.00	17.10
Kentucky	9.10	0.00	10.30	19.40
Louisiana	0.00	19.00	0.00	19.00
Maine	92.50	0.00	0.00	92.50
Massachusetts	0.00	33.80	38.50	72.30
Michigan	79.00	277.90	267.90	624.80
Minnesota <sup>a</sup>	0.00	193.00	59.00	252.00
Mississippi	0.00	21.00	0.00	21.00
Missouri	0.00	44.40	0.00	44.40
Montana	161.90	66.70	139.40	368.00
Nebraska <sup>a</sup>	0.00	76.00	126.00	202.00
New Hampshire	0.00	13.50	24.50	38.00
New Jersey <sup>a</sup>	0.00	119.90	146.80	266.70
New Mexico	90.75	20.10	10.00	120.85
New York <sup>a</sup>	0.00	25.10	50.30	75.40
North Carolina <sup>a</sup>	44.40	95.50	52.00	191.90
Ohio	0.00	136.90	76.00	212.90
Oregon <sup>a</sup>	635.65	381.40	798.05	1,815.10
Pennsylvania <sup>a</sup>	0.00	111.00	298.80	409.80
South Carolina <sup>a</sup>	39.80	2.50	14.60	56.90
South Dakota <sup>a</sup>	0.00	0.00	98.00	98.00
Tennessee	44.25	0.00	0.95	45.20
Texas	95.20	96.00	0.00	191.20
Washington	0.00	108.00	68.50	176.50
West Virginia	0.00	10.00	0.00	10.00
Wisconsin <sup>a</sup>	0.00	217.00	59.00	276.00
Wyoming	20.50	0.00	0.00	20.50
<b>U.S. Total <sup>b</sup></b>	<b>5,345.00</b>	<b>2,445.70</b>	<b>3,501.40</b>	<b>11,292.10</b>

**Source:** U.S. Dept. of the Interior, National Park Service. *River Mileage Classifications for Components of the National Wild and Scenic Rivers System*, Washington, DC: Nov. 2000, and personal communication with John Haubert, Div. of Park Planning and Special Studies, NPS, U.S. Dept. of the Interior, Washington, DC, on February 7, 2001.

<sup>a</sup> This state shares mileage with some bordering states, where designated river segments are also state boundaries. Figures for each state reflect the total shared mileage, resulting in duplicate counting.

<sup>b</sup> Figure totals represent the actual totals of classified mileage in the United States and do not reflect duplicate counting of mileage of rivers running between state borders. Because the figures for individual states do reflect the shared mileage, the sum of the figures in each column exceeds the indicated column total.

## Organization and Management

Land areas along rivers designated by Congress generally are managed by one of the four federal land management agencies, where federal land is dominant. However, land use restrictions and zoning decisions affecting private land in wild and scenic corridors generally are made by local jurisdictions (*e.g.*, the relevant county, township, city, *etc.*) where appropriate. The boundaries of the areas along wild and scenic rivers are identified by either the Interior or Agriculture Secretary, depending on land ownership within the corridor. The area included may not exceed an average of 320 acres per mile of river designated (640 acres per mile in Alaska), an average of 1/4 mile width of land on each side of the river.

Where wild and scenic river corridor boundaries include state, county, or other public land, or private land, federal agencies have limited authority to purchase, condemn, exchange, or accept donations of state and private lands within the corridor boundaries. Additionally, federal agencies are directed to cooperate with state and local governments in developing corridor management plans.

In response to controversies associated with management of lands within wild and scenic river corridors, several recent designations have included language calling for creation of citizen advisory boards or other mechanisms to ensure local participation in developing management plans. Even without such direction, management plans for river corridors involving predominantly private lands usually are developed with input from local jurisdictions, prior to designation.

Management of lands within wild and scenic corridors generally is less restricted than in some protected areas, such as wilderness areas, although management varies with the class of the designated river and the values for which it was included in the System. Administration is intended to protect and enhance the values which led to the designation, but Congress also directed that other land uses not be limited unless they “substantially interfere with public use and enjoyment of these values” (§10(a) of the 1968 Act). Primary emphasis for management is directed toward protecting aesthetic, scenic, historic, archaeological, and scientific features of the area. Road construction, hunting and fishing, and mining and mineral leasing may be permitted in some instances, as long as the activities are consistent with the values of the area being protected and with other state and federal laws.

## Designation

Rivers may be added to the system either by an Act of Congress, usually after a study by a federal agency, or by state nomination with the approval of the Secretary of the Interior. Congress has identified numerous rivers as potential additions to the System. The Secretaries of the Interior and Agriculture are required to report to the President on the suitability of these rivers for wild and scenic designation, who in turn submits recommendations to Congress.

State-nominated rivers may be added to the National Wild and Scenic Rivers System only if the river is designated for protection under state law, is approved by the Secretary of the Interior, and is permanently administered by a state agency

(§2(a)(ii) of the 1968 Act). Management of these state-nominated rivers may be more complicated because of the diversity of land ownership in these areas. Fewer than 10% of the federal wild and scenic river designations have been made in this manner.

## Issues

Concern over land management issues and private property rights have been the predominant issues associated with designation of wild and scenic rivers since the inception of the 1968 Act. Initially, the river designations involved land owned and managed primarily by the federal agencies; however, over the years, more and more segments have been designated that include private lands within the river corridors. The potential use of condemnation authority in particular has been quite controversial. Congress has addressed these issues in part by encouraging development of management plans during the wild and scenic river study phase, prior to designation, and by avoiding condemnation. According to the National Park Service, condemnation has “almost ceased to be used [since] the early 1980s.”<sup>75</sup> Another issue that arises from time to time is the nature of state or federal projects allowed within a wild and scenic corridor, such as construction of major highway crossings, bridges, or other activities that might affect the flow or character of the designated river segment.

## Major Statutes

Wild and Scenic Rivers Act: Act of Oct. 2, 1968; P.L. 90-542, 82 Stat. 906. 16 U.S.C. §1271, *et seq.*

## CRS Reports and Committee Prints

CRS Report 92-575, *River and River Corridor Protection: Status of State and Federal Programs and Options for Congress*, by Betsy A. Cody, Jeffrey Zinn, and George H. Siehl.

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<sup>75</sup>U.S. Dept. of the Interior, National Park Service. *Wild and Scenic Rivers and the Use of Eminent Domain*. Washington, DC: November 1998. Condemnation and subsequent acquisition of land by the federal government (in fee title, or fee-simple) has been used along 4 rivers since 1968: the Rio Grande, the Eleven Point River, the St. Croix, and the Obed, resulting in the acquisition of 1,413 acres. Condemnation of land for easements has occurred on 8 rivers amounting to 6,339.7 acres. The FWS is the only agency that has never used condemnation to acquire land or an easement for a wild and scenic river corridor.

## National Trails System <sup>76</sup>

The National Trails System (NTS) was created in 1968 by the National Trails System Act. This Act established the Appalachian and Pacific Crest National Scenic Trails, and authorized a national system of trails to provide additional outdoor recreation opportunities and to promote the preservation of access to the outdoor areas and historic resources of the nation. The System includes four classes of national trails:

- ! **National Scenic Trails (NST)** provide outdoor recreation and the conservation and enjoyment of significant scenic, historic, natural, or cultural qualities;
- ! **National Historic Trails (NHT)** follow travel routes of national historic significance;
- ! **National Recreation Trails (NRT)** are in, or reasonably accessible to, urban areas on federal, state, or private lands; and
- ! **Connecting or Side Trails** provide access to or among the other classes of trails.

### Background

During the early history of the United States, trails served as routes for commerce and migration. Since the early 20<sup>th</sup> Century, trails have been constructed to provide access to scenic terrain. In 1921, the concept of the first interstate recreational trail, now known as the Appalachian National Scenic Trail, was introduced. In 1945, legislation to establish a “national system of foot trails” as an amendment to a highway funding bill, was considered but not reported by committee.<sup>77</sup>

As population expanded in the 1950s, an eager nation sought better opportunities to enjoy the outdoors.<sup>78</sup> In 1958, Congress established and directed the Outdoor Recreation Resources Review Commission (ORRRC) to make a nationwide study of outdoor national recreation needs. A 1960 survey conducted for the ORRRC indicated that 90% of all Americans participated in some form of outdoor recreation and that walking for pleasure ranked second among all recreation activities.<sup>79</sup> On February 8, 1965, in his message to Congress on “Natural Beauty,” President Lyndon B. Johnson called for the nation “to copy the great Appalachian Trail in all parts of our country, and make full use of rights-of-way and other public

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<sup>76</sup>This section was prepared by Sandra L. Johnson.

<sup>77</sup>Donald D. Jackson. “The Long Way ‘Round,” *Wilderness*, vol. 51, no. 181 (summer, 1998): 19-20.

<sup>78</sup>Outdoor Recreation Resources Review Commission. *Outdoor Recreation for America*. Washington, DC: Jan. 1962. p. 34.

<sup>79</sup>*Ibid.*, p. 1.

paths.”<sup>80</sup> Just 3 years later, Congress heeded the message by enacting the National Trail System Act.

The National Trails System began in 1968 with only two scenic trails. One was the Appalachian National Scenic Trail, stretching 2,160 miles from Mount Katahdin, Maine, to Springer Mountain, Georgia. The other was the Pacific Crest National Scenic Trail, covering 2,665 miles from Canada to Mexico along the mountains of Washington, Oregon, and California. The System was expanded a decade later when the National Parks and Recreation Act of 1978 designated four NHTs with more than 9,000 miles, and another NST, along the Continental Divide, with 3,100 miles. Today, the federal portion of the System consists of 22 national trails (8 scenic trails and 14 historic trails) covering almost 40,000 miles, more than 800 recreation trails, and 2 connecting and side trails. In addition, the Act has authorized more than 1,000 rails-to-trails<sup>81</sup> conversions.

## Organization and Management

Each of the 22 national trails is administered by either the Secretary of the Interior or the Secretary of Agriculture under the authority of the National Trails System Act. The NPS administers 17 of the 22 trails, the FS administers 4 trails, and the BLM administers 1 trail. The Secretaries are to administer the federal lands, working cooperatively with agencies managing lands not under their jurisdiction. Management responsibilities vary depending on the type of trail.

**National Scenic Trails.** NSTs provide recreation, conservation, and enjoyment of significant scenic, historic, natural, or cultural qualities. The use of motorized vehicles on these long-distance trails is generally prohibited, except for the Continental Divide National Scenic Trail which allows: (1) access for emergencies; (2) reasonable access for adjacent landowners (including timber rights); and (3) landowner use on private lands in the right of way, in accordance with regulations established by the administering Secretary.

**National Historic Trails.** These trails follow travel routes of national historical significance. To qualify for designation as a NHT, the proposed trail must meet all of the following criteria: (1) the route must have historical significance as a result of its use and documented location; (2) there must be evidence of a trail’s national significance with respect to American history; and (3) the trail must have significant potential for public recreational use or historical interest. These trails do not have to be continuous, and can include land and water segments, marked highways paralleling the route, and sites that together form a chain or network along the historic route.<sup>82</sup>

**National Recreation Trails.** The Park Service is responsible for the overall administration of the national recreation trails program, including coordination

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<sup>80</sup>*Congressional Record*, vol. 111 (Feb. 8, 1965): 2087.

<sup>81</sup>16 U.S.C. §1247(d); 49 C.F.R. §1152.29.

<sup>82</sup>[<http://www.nps.gov/planning/trails/newsletter/news1.htm>]

of non-federal trails, although the FS administers NRTs within the national forests. NRTs are existing trails in, or reasonably accessible to, urban areas, and are managed by public and private agencies at the local, state, and national levels.<sup>83</sup> Various NRTs provide recreation opportunities for the handicapped, hikers, bicyclists, cross country skiers, and horseback riders.

**Connecting and Side Trails.** These trails provide public access to nationally designated trails or connections between such trails. In 1990, the Secretary of the Interior designated: 1) the 18-mile Timm's Hill Trail in Wisconsin, which connects Timm's Hill to the Ice Age NST, and 2) the 186-mile Anvik Connector, a spur of the Iditarod NHT which joins that trail to the village of Anvik on the Yukon River. Connecting and side trails are administered by the Secretary of the Interior, except that the Secretary of Agriculture administers those trails located on national forest lands.

## Designation

As defined in the National Trails System Act, NSTs and NHTs are long distance trails and are designated by Acts of Congress. NRTs and connecting and side trails may be designated by the Secretaries of the Interior and Agriculture with the consent of the federal agency, state, or political subdivision with jurisdiction over the lands involved. Of the 39 feasibility studies requested by Congress since 1968, 5 NSTs and 14 NHTs have been designated.

The Secretaries are permitted to acquire lands or interest in lands for the Trails System by written cooperative agreements, through donations, by purchase with donated or appropriated funds, by exchange, and, within limits, by condemnation. The Secretaries are directed to cooperate with and encourage states to administer the non-federal lands through cooperative agreements with landowners and private organizations for the rights-of-way or through states or local governments acquiring such lands or interests.

## Issues

The 106<sup>th</sup> Congress increased appropriations for FY2001 to benefit most of the national trails; however, the level of funding continues to be a major issue. With the exception of the Appalachian and the Pacific Crest NSTs, the National Trails System Act does not provide for sustained funding of designated trails operations, maintenance, and development, nor does it authorize dedicated funds for land acquisition.<sup>84</sup>

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<sup>83</sup>[[http://www.nps.gov/pub\\_aff/naltrail.htm](http://www.nps.gov/pub_aff/naltrail.htm)]

<sup>84</sup>On June 9, 1998, President Clinton signed the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21, P.L. 105-178). TEA-21 is the 6-year reauthorization of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). ISTEA included the National Recreational Trails Fund Act (NRTFA) and established the National Recreational Trails Funding Program (Recreational Trails Program). The NRTFA (16 U.S.C. 1261-62) is not part of the National Trails System Act (16 U.S.C. 1241-1251). The Recreational Trails

One of the weaknesses of the System, according to critics, is that “a poor definition exists of which kinds of trails should be part of the System (except for NHT criteria).”<sup>85</sup> While it is relatively easy to add new trails, it has proven more difficult to provide them with adequate staffing and partnership resources.

Another issue is the appropriate number of trails. The 106<sup>th</sup> Congress considered, but did not enact, legislation to: (1) amend the National Trails System by adding “National Discovery Trails” as a new category of long-distance trails (S. 734), and (2) designate the “American Discovery Trail” (ADT) as the Nation’s first coast-to-coast National Discovery Trail (H.R. 2339). For decades, ADT proponents have envisioned a transcontinental foot trail that would extend from the Atlantic to the Pacific. In December 1995, NPS completed a study on this issue with the recommendation that the ADT be the first of this new category of long-distance trails. The ADT, as proposed, would have connected several national scenic, historic, and recreation trails, as well as many other local and regional trails. Some have questioned the need for a new category of trails, in part because there already are several categories of trails and there are limited resources for trails.

Between 1978 and 1986, Congress authorized 9 national scenic and historic trails but prohibited federal authority for land acquisition. The trails are the Oregon, Mormon Pioneer, Lewis and Clark, Iditarod, and Nez Perce National Historic Trails, and the Continental Divide, Ice Age, North Country, and Potomac Heritage National Scenic Trails. Legislation which would have given federal land management agencies the authority to purchase land from willing sellers (H.R. 2267 and S. 1729) was considered, but not enacted, by the 106<sup>th</sup> Congress. Trails authorized since 1986 typically have included land acquisition authority.

Finally, some trails supporters have advocated a nationwide promotion to inform the public about the National Trails System. They assert that most Americans are unaware of the System and the breathtaking scenes and journeys into the past which can be experienced along the national scenic and historic trails. However, there is concern that a significant increase in the number of trails users could overwhelm present staffing and resources.

## Major Statutes

National Parks and Recreation Act of 1978: Act of Nov. 10, 1978; P.L. 95-625, 92 Stat. 3467.

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<sup>84</sup>(...continued)

Program (RTP) is a state-administered, federal-aid grant program which provides funds to local governments. The fund is administered by the Department of Transportation in consultation with the Department of the Interior. The Recreational Trails Program provides funds to the states to develop and maintain recreational trails and trail-related facilities for both nonmotorized and motorized recreational trail uses. Trail uses include bicycling, hiking, in-line skating, cross-country skiing, snowmobiling, off-road motorcycling, all-terrain vehicle riding, four-wheel driving, or using other off-road motorized vehicles.

<sup>85</sup>Steven Elkinton. “How the National Trails System Has Changed Since 1968.” *Pathways Across America*, (Spring 1998): 10.

National Trails System Act: Act of Oct. 2, 1968; P.L. 90-543, 82 Stat. 919. 16 U.S.C. §1241, *et seq.*

Outdoor Recreation Act of 1963: Act of May 28, 1968; P.L. 88-29. 16 U.S.C. §4601.

## **CRS Reports and Committee Prints**

CRS Report 98-981, *The National Trails System: An Overview*, by Sandra L. Johnson.



## Appendix 1: Major Acronyms Used in Report

ACEC:	Area of Critical Environmental Concern
ADT:	American Discovery Trail
ANILCA:	Alaska National Interest Lands Conservation Act
BLM:	Bureau of Land Management
DoD:	Department of Defense
DOI:	Department of the Interior
EIS:	Environmental Impact Statement
FLPMA:	Federal Land Policy and Management Act of 1976
FS:	Forest Service
FWS:	Fish and Wildlife Service
LWCF:	Land and Water Conservation Fund
MBCF:	Migratory Bird Conservation Fund
MUSY:	Multiple-Use Sustained-Yield Act of 1960
NEPA:	National Environmental Policy Act of 1969
NMA:	National Forest Management Act of 1976
NFS:	National Forest System
NHT:	National Historic Trails
NPS:	National Park Service
NRT:	National Recreation Trails
NST:	National Scenic Trails
NWR/NWRS:	National Wildlife Refuge/National Wildlife Refuge System
O&C:	Oregon and California (grant lands)
OCS:	Outer Continental Shelf

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ORRRC:	Outdoor Recreation Resources Review Commission
PILT:	Payments in Lieu of Taxes (Act and Program)
PRIA:	Public Rangelands Improvement Act of 1978
R.A.:	Forest and Rangeland Renewable Resources Planning Act of 1974
USDA:	United States Department of Agriculture
WCAs:	Wildlife Coordination Areas
WPAs:	Waterfowl Production Areas

## Appendix 2: Definition of Selected Terms

*Acquired lands:* land obtained by the federal government from a state or individual, by exchange, or through purchase (with or without condemnation) or gift. One category of federal lands.

*Entry:* occupation of public land as first step to acquiring title; can also mean application to acquire title.

*Federal land:* any land owned or managed by the federal government, regardless of its mode of acquisition or managing agency.

*Homesteading:* the process of occupying and improving public lands in order to obtain title. Almost all homesteading laws were repealed in 1976 (extended to 1986 in Alaska).

*Impoundment:* man-made impediment to the free flow of rivers or streams, such as a dam or diversion.

*Inholdings:* state or private land inside the designated boundaries of lands owned by the federal government, such as national forests or national parks.

*Land and Water Conservation Fund:* the primary source of federal funds to acquire new lands for recreation and wildlife purposes to be administered by federal land management agencies. The fund is derived largely from receipts from the sale of offshore oil and gas (16 U.S.C. 4601), but funds must be appropriated annually.

*Land withdrawal:* an action that restricts the use or disposition of public lands, *e.g.*, for mineral leasing.

*Leaseable minerals:* minerals that can be developed under federal leasing systems, including oil, gas, coal, potash, phosphates, and geothermal energy.

*Lease:* contractual authorization of possession and use of public land for a period of time.

*Mining claim:* a mineral entry and appropriation of public land that authorizes possession and the development of the minerals and may lead to title.

*Multiple use land:* federal lands which Congress has directed be used for a variety of purposes.

*Patent:* a document that provides evidence of a grant from the government—usually conveying legal title to public lands.

*Payments in Lieu of Taxes:* a program administered by BLM which provides payments to local governments which have eligible federal lands within their boundaries.

*Public domain land:* One category of federal lands consisting of lands ceded by the original states or obtained from a foreign sovereign, through purchase, treaty, or other means. By contrast, “acquired lands” are obtained from an individual or state.

*Public land:* various meanings. Traditionally has meant the public domain lands subject to the public land disposal laws. Defined in FLPMA to refer to the lands and interests in land owned by the United States that are managed by the BLM, whether public domain or acquired lands.

*Rangeland:* land with a plant cover primarily of grasses, forbes, grasslike plants, and shrubs. Most federal rangeland is managed by the BLM and the FS and is leased (or used under permit) for private grazing use.

*Release language:* congressional direction on the timing and extent of future wilderness considerations, and on the management of roadless areas pending future wilderness reviews, if any.

*Reservation:* public land withdrawn for a specific public purpose or program.

*Right-of-way:* a permit or easement that authorizes the use of lands for specific purposes, such as construction of a forest access road, installation of a pipeline, or placement of a reservoir.

*Subsurface mineral estate:* typically refers to a property interest in mineral resources below ground.

*Surface estate:* typically refers to a property interest in surface lands and the above-ground resources.

*Sustained yield:* a high level of resource outputs maintained in perpetuity, but without impairing the productivity of the land.

*Water right:* right to use or control water. Such rights typically are granted by the states, although the United States may have federal water rights as well.

*Wetlands:* areas predominantly of soils that are situated in water-saturated conditions during part or all of the year, and support water-loving plants, called hydrophytic vegetation. They are transitional between terrestrial and aquatic systems, and are found where the water table generally is at or near the surface.

*Wilderness:* undeveloped federal land, usually 5,000 acres or more and without permanent improvements, that is managed (either administratively or by statute) to protect and preserve natural conditions.

*Wildlife refuge:* land administered by the FWS for the conservation and protection of fish and wildlife. (Hunting, fishing, and other forms of wildlife-related recreation typically are allowed, consistent with the purposes of the refuge.)