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Federal Land Management Agencies: Background on Land and Resources Management

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Federal Land Management Agencies: Background on Land and Resources Management

Summary

The federal government owns about 671.8 million acres (29.6%) of the 2.27 billion acres of land in the United States. Four agencies administer 628.4 million acres (93.5%) 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. Most of these lands are in the West, including Alaska. They generate revenues for the U.S. Treasury, some of which are shared with states and localities. The agencies receive funding from annual Interior and Related Agencies appropriations laws, trust funds, and special accounts.

The lands administered by the four agencies are managed for a variety of purposes, primarily related to preservation, recreation, and development of natural resources. Yet, each of these agencies has distinct responsibilities for the lands and resources it administers. The Bureau of Land Management (BLM) manages 261.5 million acres, and is responsible for 700 million acres of subsurface mineral resources. BLM 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. The Forest Service (FS) manages 192.5 million acres also for multiple use and sustained yields of various products and services, for example, 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 now are created and modified by acts of Congress. Both the BLM and FS have several authorities to acquire and dispose of lands.

The Fish and Wildlife Service (FWS) manages 95.4 million acres, primarily to conserve and protect animals and plants. The 793 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 79.0 million acres of federal land (and oversees another 5.4 million acres of nonfederal land) to conserve and interpret lands and resources and make them available for public use. Activities that 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 105.2 million acres of protected wilderness areas designated by Congress. The National Wild and Scenic Rivers System contains 11,303 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.

This report will be updated approximately once per Congress.

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Federal Land Management Agencies: Background on Land and Resources Management

Introduction¹

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 sections. The introduction provides a brief historical review and general background on the federal lands. “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; federal land acquisition funding, especially from the Land and Water Conservation Fund; and programs that compensate state and local governments for the tax-exempt status of federal lands. The next sections pertain to the four major federal land management agencies: the Forest Service (FS) in the Department of Agriculture, and the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), and National Park Service (NPS), all in the Department of the Interior. The sections relate each agency’s history; organizational structure; management responsibilities; procedures for land acquisition, disposal, and designation, where relevant; current issues; and statutory authorities. The final sections 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 section. 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 RL32306, *Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren. For other reports on related issues, see the CRS web page at [<http://www.crs.gov/>].

¹ This section was prepared by Carol Hardy Vincent.

Background

The federal government owns and manages approximately 671.8 million acres of land in the United States — 29.6% of the total land base of 2.27 billion acres.² **Table 1** identifies the acreage of federal land located in each state and the District of Columbia. The figures range from 5,318 acres of federal land in Rhode Island to 243,847,037 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, and the percentage of land in each state that is federally owned. These percentages point to significant variation in the size of the federal presence within states. Specifically, the figures range from 0.5% of Connecticut land that is federally owned to 91.9% of land in Nevada that is federally owned. All 12 states where the federal government owns the most land are located in the West (including Alaska).

Four agencies administer about 628.4 million acres (93.5%) of the 671.8 million acres of federal land.³ These four agencies are the Forest Service, Bureau of Land Management, Fish and Wildlife Service, and National Park Service.⁴ The BLM has jurisdiction over approximately 261.5 million acres (38.9%) of the federal total. The FS has jurisdiction over approximately 192.5 million acres (28.7%) of the total federal acreage. The FWS administers approximately 95.4 million acres (14.2%). The National Park Service (NPS) administers about 79.0 million acres of federal land (11.8%), and oversees another 5.4 million acres of nonfederal land, for a total of about 84.4 million federal and nonfederal acres. **Figure 1** shows the percent of land managed by each agency, and **Table 2** displays the acreage for each of these four agencies in each state, the District of Columbia, and the territories. The lands administered by these four agencies are managed for a variety of purposes, primarily

² U.S. General Services Administration, *Overview of the United States Government's Owned and Leased Real Property: Federal Real Property Profile as of September 30, 2003*. See Table 16 of the report on the agency's website at [http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2003-R4_R2M-n11_0Z5RDZ-i34K-pR.pdf], visited March 8, 2004.

³ 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, consistent with §103(e) of the Federal Land Policy and Management Act of 1976 (FLPMA, P.L. 94-579; 43 U.S.C. §§1701, et seq.).

⁴ Several other agencies manage some of the remaining 43.4 million acres (6.5%) 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 often are 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.

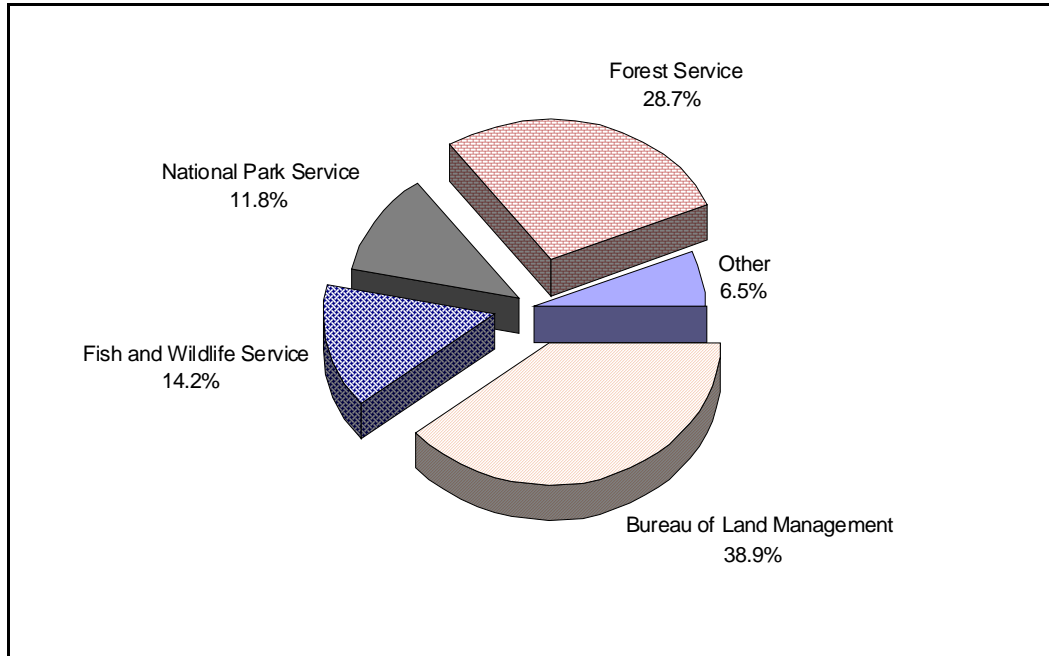
relating to the preservation, recreation, and development of natural resources. Although there are some similarities among the agencies, each agency has a distinct mission and special responsibilities for the lands under its jurisdiction.

Table 1. Federally Owned Land by State, as of September 30, 2003

State	Total Acreage in State	Acreage of Federally Owned Land in State	% of Land Federally Owned in State
Alabama	32,678,400	1,202,614	3.7
Alaska	365,481,600	243,847,037	66.7
Arizona	72,688,000	36,494,844	50.2
Arkansas	33,599,360	3,955,959	11.8
California	100,206,720	46,979,891	46.9
Colorado	66,485,760	23,174,340	34.9
Connecticut	3,135,360	15,212	0.5
Delaware	1,265,920	29,488	2.3
District of Columbia	39,040	10,284	26.3
Florida	34,721,280	4,605,762	13.3
Georgia	37,295,360	2,314,386	6.2
Hawaii	4,105,600	671,580	16.4
Idaho	52,933,120	35,135,709	66.4
Illinois	35,795,200	651,603	1.8
Indiana	23,158,400	534,126	2.3
Iowa	35,860,480	302,601	0.8
Kansas	52,510,720	641,562	1.2
Kentucky	25,512,320	1,706,562	6.7
Louisiana	28,867,840	1,501,735	5.2
Maine	19,847,680	164,003	0.8
Maryland	6,319,360	192,692	3.0
Massachusetts	5,034,880	105,973	2.1
Michigan	36,492,160	3,638,588	10.0
Minnesota	51,205,760	3,534,989	6.9
Mississippi	30,222,720	2,101,204	7.0
Missouri	44,248,320	2,237,951	5.1
Montana	93,271,040	29,239,058	31.3
Nebraska	49,031,680	1,458,802	3.0
Nevada	70,264,320	64,589,139	91.9
New Hampshire	5,768,960	830,232	14.4
New Jersey	4,813,440	180,189	3.7
New Mexico	77,766,400	26,518,360	34.1
New York	30,680,960	242,441	0.8
North Carolina	31,402,880	3,602,080	11.5
North Dakota	44,452,480	1,333,375	3.0
Ohio	26,222,080	457,697	1.7
Oklahoma	44,087,680	1,331,457	3.0
Oregon	61,598,720	30,638,949	49.7
Pennsylvania	28,804,480	724,925	2.5
Rhode Island	677,120	5,318	0.8
South Carolina	19,374,080	1,236,214	6.4
South Dakota	48,881,920	2,314,007	4.7
Tennessee	26,727,680	2,016,138	7.5
Texas	168,217,600	3,171,757	1.9
Utah	52,696,960	35,024,927	66.5
Vermont	5,936,640	450,017	7.6
Virginia	25,496,320	2,617,226	10.3
Washington	42,693,760	13,246,559	31.0
West Virginia	15,410,560	1,266,422	8.2
Wisconsin	35,011,200	1,981,781	5.7
Wyoming	62,343,040	31,531,537	50.6
Total	2,271,343,360	671,759,298	29.6

Source: U.S. General Services Administration, *Overview of the United States Government's Owned and Leased Real Property: Federal Real Property Profile as of September 30, 2003*. See Table 16, GSA website at [http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/Annual%20Report%20%20FY2003-R4_R2M-n11_0Z5RDZ-i34K-pR.pdf], visited March 8, 2004. The data do not include trust properties or Department of Defense land outside the United States.

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



Note: Percentages do not add to 100% due to rounding.

The majority of the 671.8 million acres of federal lands are in the West, 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 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 1785⁵ and the Northwest Ordinance of 1787,⁶ 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 that 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 to pay soldiers, to reduce the 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 1848.⁷

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 1862⁸ and the Desert Lands Entry Act of 1877.

⁵ For the text of the law and other information, see the Indiana Historical Bureau, *Land Ordinance of 1785*, at [<http://www.statelib.lib.in.us/www/ihb/resources/docldord.html>], visited April 1, 2004.

⁶ For the text of the law and other information, see: [<http://www.ourdocuments.gov/doc.php?doc=8>], visited April 1, 2004.

⁷ 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. (Some 601.5 million acres, 89.5% of all federal lands, are public domain lands, while the other 70.3 million acres, 10.5% 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 FLPMA, which defines *public lands* as those managed by BLM, regardless of whether they were derived from the public domain or were acquired.

For more information on the Louisiana Purchase, see [<http://www.ourdocuments.gov/doc.php?doc=18>], and on the 1848 Treaty with Mexico see [<http://www.ourdocuments.gov/doc.php?doc=26>], both visited April 1, 2004. For more information on the Oregon Compromise, see the Center for Columbia River History, *The Oregon Treaty, 1846*, at [<http://www.ccrh.org/comm/river/docs/ortreaty.htm>], visited April 1, 2004.

⁸ For more information, see the Act of May 20, 1862; ch. 75, 12 Stat. 392 and (continued...)

Approximately 815.9 million acres of the public domain lands were transferred to private ownership between 1781 and 2002. Another 328.5 million acres were granted to the states generally, and an additional 127.5 million were granted in Alaska under state and native selection laws.⁹ 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 1986.¹⁰

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 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 1872¹¹ to preserve its resources in a natural condition, and to dedicate recreation opportunities for the public. It was the world’s first national park,¹² and like the other early parks, Yellowstone was protected by the U.S. Army — primarily

⁸ (...continued)

[<http://www.ourdocuments.gov/doc.php?doc=31>], visited April 1, 2004.

⁹ U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 2002*, Table 1-2 (Washington, DC: GPO, April, 2003). Available on the BLM website at [<http://www.blm.gov/natacq/pls02/>], visited April 1, 2004.

¹⁰ U.S. Dept. of Commerce, Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (Washington, DC: GPO, 1976), H. Doc. No. 93-78 (93rd Congress, 1st Session), pp. 428-429. FLPMA, enacted in 1976, repealed the Homestead Laws; however, homesteading was allowed to continue in Alaska for 10 years. For the text of FLPMA and other information on the law, see the BLM website at [<http://www.blm.gov/flpma>], visited April 1, 2004.

¹¹ For more information, see [<http://www.ourdocuments.gov/doc.php?doc=45>], visited April 1, 2004.

¹² “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. For the text of the law, see the NPS website at [http://www.cr.nps.gov/history/online_books/anps/anps_1a.htm], visited April 1, 2004.

Still earlier is the 1832 establishment in Arkansas of Hot Springs Reservation, which was dedicated to public use in 1880 and as Hot Springs National Park in 1921.

from poachers of wildlife or timber. In 1891, concern over the effects of timber harvests on water supplies and downstream flooding 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 1916¹³ 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 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).¹⁴

In addition to the conservation laws and activities noted above, emphasis shifted during the 20th 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 1920,¹⁵ 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.¹⁶

During debates on the Taylor Grazing Act, some western Members of Congress acknowledged the poor prospects for relinquishing federal lands to the states, but language included in the act left this question open. It was not until the passage of the Federal Land Policy and Management Act of 1976 (FLPMA, P.L. 94-579, 43 U.S.C. §§1701, et seq.) that Congress expressly declared that the remaining public domain lands generally would remain in federal ownership.¹⁷ 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. Current authorities for acquiring and disposing of federal lands are unique to each agency, and are described in subsequent chapters of this report.

¹³ For the text of the law establishing the system, see the National Park Service website at [http://www.cr.nps.gov/history/online_books/anps/anps_1i.htm], visited April 1, 2004.

¹⁴ For more information, see the BLM website at [<http://www.blm.gov/flpma/organic.htm>], visited April 1, 2004.

¹⁵ For more information, see 30 U.S.C. §§ 181, et seq. and the BLM website at [<http://www.ca.blm.gov/caso/1920act.html>], visited February 12, 2004.

¹⁶ 43 U.S.C. §§ 315, et seq.

¹⁷ 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.

Table 2. Acreage Managed by Federal Agencies, by State

State	Forest Service	National Park Service	Fish and Wildlife Service	Bureau of Land Management
Alabama	665,978	16,917	59,528	111,369
Alaska	21,980,905	51,106,274	76,774,229	85,953,625
Arizona	11,262,350	2,679,731	1,726,280	11,651,958
Arkansas	2,591,897	101,549	361,331	295,185
California	20,741,229	7,559,121	472,338	15,128,485
Colorado	14,486,977	653,137	84,649	8,373,504
Connecticut	24	6,775	872	0
Delaware	0	0	26,126	0
Dist. of Col.	0	6,949	0	0
Florida	1,152,913	2,482,441	977,997	26,899
Georgia	864,623	40,771	480,634	0
Hawaii	1	353,292	299,380	0
Idaho	20,465,345	761,448	92,165	11,846,931
Illinois	293,016	12	140,236	224
Indiana	200,240	11,009	64,613	0
Iowa	0	2,708	112,794	378
Kansas	108,175	731	58,695	0
Kentucky	809,449	94,169	9,078	0
Louisiana	604,505	14,541	545,452	321,734
Maine	53,040	76,273	61,381	0
Maryland	0	44,482	45,030	548
Massachusetts	0	33,891	16,797	0
Michigan	2,865,103	632,368	115,244	74,807
Minnesota	2,839,693	142,863	547,421	146,658
Mississippi	1,171,158	108,417	226,039	56,212
Missouri	1,487,307	63,436	70,859	2,094
Montana	16,923,153	1,221,485	1,328,473	7,964,623
Nebraska	352,252	5,909	178,331	6,354
Nevada	5,835,284	777,017	2,389,616	47,874,294
New Hampshire	731,942	15,399	15,822	0
New Jersey	0	38,505	71,197	0
New Mexico	9,417,693	379,042	385,052	13,362,538
New York	16,211	37,114	29,081	0
North Carolina	1,251,674	394,833	423,948	0
North Dakota	1,105,977	71,650	1,566,026	59,642
Ohio	236,360	20,552	8,875	0
Oklahoma	399,528	10,200	170,032	2,136
Oregon	15,665,881	197,301	572,590	16,125,145
Pennsylvania	513,399	51,239	10,048	0
Rhode Island	0	5	2,179	0
South Carolina	616,970	27,488	162,958	0
South Dakota	2,013,447	263,644	1,300,465	274,960
Tennessee	700,764	362,133	116,966	0
Texas	755,363	1,184,046	534,319	11,833
Utah	8,180,405	2,099,083	112,027	22,867,896
Vermont	389,200	21,513	33,230	0
Virginia	1,662,124	336,950	132,989	805
Washington	9,273,381	1,933,972	344,956	402,355
West Virginia	1,033,882	62,707	18,595	0
Wisconsin	1,525,978	74,010	236,470	159,982
Wyoming	9,238,067	2,393,281	101,857	18,354,151
Territories	28,149	33,179	1,766,965	0
Total	192,511,012	79,005,557	95,382,237	261,457,325

Sources: For FS: See the FS website at [<http://www.fs.fed.us/land/staff/lar/LAR03/table4.htm>], visited April 1, 2004. Data are current as of September 30, 2003. They 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 the Interior, National Park Service, Land Resources Division, *National Park Service, Listing of Acreage by State, as of 12/31/2003*, unpublished document. The data consist of all federal lands managed by the NPS. For information on acreage by type of unit as of September 30, 2003, see the NPS website at [<http://www2.nature.nps.gov/stats/acresum03cy.pdf>], visited April 1, 2004.

For FWS: U.S. Dept. of the Interior, Fish and Wildlife Service, *Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service, as of September 30, 2002*. 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 more information, see the FY2002 Annual Report of Lands on the FWS website at [<http://realty.fws.gov/brochures.html>], visited April 1, 2004.

For BLM: U.S. Dept. of the Interior, Bureau of Land Management, *Public Land Statistics, 2002*, and are current as of September 30, 2002. The data consist of lands managed exclusively by BLM, including certain types of surveyed and unsurveyed public and ceded Indian lands as well as withdrawn or reserved lands. For more information, see the BLM website at [<http://www.blm.gov/natacq/pls02/>], visited April 1, 2004.

Issues

Since the cession to the federal government of the western lands of several of the original 13 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 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 to represent the interests of all citizens.

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

The debate over land uses perhaps has intensified with the increase over the decades in visitors to federal lands. Current agency figures on visitor use point to recreation as a fast-growing use of agency lands overall. For FY2003, recreation

visits totaled 265 million for the National Park System, 53 million for BLM lands, and 39 million for the National Wildlife Refuge System. For FY2002, recreation visits to the National Forest System totaled 211 million.

CRS Reports and Committee Prints¹⁸

CRS Issue Brief IB10076, *Bureau of Land Management (BLM) Lands and National Forests*, coordinated by Ross W. Gorte and Carol Hardy Vincent.

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 Issue Brief IB10093, *National Park Management and Recreation*, coordinated by Carol Hardy Vincent.

U.S. Congress, 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*, committee print prepared by the Congressional Research Service, No. 11 (Washington, DC: GPO, Dec. 1992).

U.S. Congress, Committee on Energy and Natural Resources, *Outdoor Recreation: A Reader for Congress*, committee print prepared by the Congressional Research Service, S.Prt. 105-53 (Washington, DC: GPO, June 1998).

U.S. Congress, 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*, committee print prepared by the Congressional Research Service, S.Prt. 103-98 (Washington, DC: GPO, Dec. 1994).

¹⁸ The most current copies of CRS products are available at [<http://www.crs.gov/>].

Federal Lands Financing¹⁹

Financial issues are a persistent concern for federal agencies, including the 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, the trust funds and special accounts funded from revenues, and land acquisition funding. 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 timber sales, grazing livestock fees, energy and mineral leases, and fees for recreation uses. The FY2003 revenues collected by these four agencies, excluding deposits to trust funds and special accounts, are shown in **Table 3**.

Table 3. Revenues from the Sale and Use of Agency Lands and Resources for FY2003

(thousands of dollars; excluding deposits to trust funds and special accounts)

Resource	BLM	FWS	NPS	FS
Mineral Leases & Permits	\$103,857 ^a	n/a ^b	\$0	\$187,114 ^c
Sales of Timber & Other Forest Products	\$11,501	n/a ^b	\$12	\$58,548
Grazing Leases, Licenses, & Permits	\$11,828	n/a ^b	— ^d	\$4,351
Recreation, Admission, & User Fees	\$0 ^e	n/a ^b	\$0 ^f	\$44,381
Other	\$135,941 ^g	n/a ^b	\$15	\$12,072
Total	\$263,127	\$6,895	\$27	\$306,466

Sources: For BLM: U.S. Dept. of the Interior, *Budget Justifications and Performance Information, Fiscal Year 2005: Bureau of Land Management*, p. II-1.

For FWS: U.S. Dept. of the Interior, *Budget Justifications and Performance Information, Fiscal Year 2005: U.S. Fish and Wildlife Service*, p. 445.

For NPS: U.S. Dept. of the Interior, *Budget Justifications and Performance Information, Fiscal Year 2005: National Park Service*, p. Overview-26.

For FS: U.S. Dept. of Agriculture, Forest Service, *USDA Forest Service FY2005 Budget Justification*, pp. A-9 - A-10.

¹⁹ This section was prepared by Ross W. Gorte.

- a. Includes mineral leasing on national grasslands, the Naval Oil Shale Reserve, and the National Petroleum Reserve-Alaska, and mining claim and holding fees.
 - b. n/a: data are not available in published form.
 - c. Includes estimated \$154.5 million collected by Departments of the Interior and Energy for mineral leases and power licenses.
 - d. Included with revenues for sales of timber and forest products.
 - e. All BLM recreation fees are now deposited in its Recreation Fee Demonstration Account, totaling \$10 million.
 - f. The NPS is now authorized through several permanently appropriated accounts to retain all such fees in permanently appropriated accounts, totaling \$245 million.
 - g. Includes Treasury deposits from land sales (\$13 million), sale of helium (\$87 million), other fees, charges, and collections (\$33 million), and earnings on investments (\$2 million).
-

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 \$4.54 billion (including emergency fire funding) in the Interior Appropriations Act for FY2004 (P.L. 108-108). The NPS receives the next largest appropriations of the federal land management agencies, with FY2004 funding of \$2.26 billion. For FY2004, the BLM received \$1.79 billion (including emergency fire funding). The FWS has the lowest funding of the land management agencies, with FY2004 appropriations at \$1.31 billion. For more information on annual funding for these agencies, see CRS Report RL32306, *Appropriations for FY2005: Interior and Related Agencies*, available on the CRS website at [<http://www.crs.gov/products/appropriations/apppage.shtml>].

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 used for federal land acquisition is relatively large and controversial, and is discussed separately below.

A number of the trust funds and special accounts are permanently appropriated (also known as mandatory spending). This means that the agencies can spend the receipts deposited 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. Others receive funds from particular sources (e.g., excise taxes, timber sales, recreation fees) for grants or for agency operations. The receipts deposited in these accounts are *in addition to* the Treasury receipts shown in **Table 3**.

The FWS has the largest annual funding in permanently appropriated trust funds and special accounts, with FY2003 budget authority of \$661 million. The two largest accounts are the Sport Fish Restoration Trust Fund (\$330 million), established by the

Federal Aid in Sport Fish Restoration Act,²⁰ and the Wildlife Restoration Special Account (\$235 million), established by the Federal Aid in Wildlife Restoration Act.²¹ 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 third largest account is the Migratory Bird Conservation Fund (\$44 million), which uses the revenues from selling duck stamps to hunters, refuge visitors, stamp collectors, and others to acquire lands for the National Wildlife Refuge System (as noted below, under “Land Acquisition Funding”).

The BLM and NPS have numerous permanently appropriated trust funds and special accounts, with total budget authority of \$305 million for each in FY2003. Most of the BLM accounts are much smaller than for the other federal land management agencies, but the one largest account — Southern Nevada public land sales — had FY2003 budget authority of \$279 million (92% of BLM permanent appropriations for operations).

The NPS permanently appropriated special accounts and trust funds allow the agency to retain 100% of its recreation and admission fees. The largest is the Recreational Fee Demonstration Program, described below. Two funds are unique to the NPS: the concessions improvement account and park concessions franchise fees (a combined total of \$54 million in FY2003). 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 (\$16 million for the NPS, less than \$11 million total for the other three agencies) paid by rent from employees. Another consists of contributions and donations from interested individuals and groups (\$29 million for the NPS; less than \$3 million total for the other three agencies).

The FS has the least annual funding in permanently appropriated trust funds and special accounts. The FS has 20 accounts with FY2003 budget authority of \$285 million. Six of the eight largest are directly or substantially related to timber sales, including the Salvage Sale Fund (\$58 million), the Knutson-Vandenberg Fund (\$48 million), other cooperative deposits (\$41 million), the Reforestation Trust Fund (\$30 million), National Forest roads and trails (\$12 million),²² and brush disposal (\$12 million).

Finally, two programs were established to authorize the four agencies to retain recreation fees. The first, recreation fee collection costs (P.L. 103-66, §10002(b)), allows the agencies to retain up to 15% of recreation fees to cover the costs to collect the fees. The second, much larger program is the Recreational Fee Demonstration Program, created to allow the agencies to test the feasibility and public acceptability of user fees to supplement appropriations for operations and maintenance (P.L. 104-134, §315). This “Fee Demo” program authorized new or increased entrance fees at

²⁰ This is also known as the Dingell-Johnson Act and the Wallop-Breaux Act.

²¹ This is also known as the Pittman-Robertson Act.

²² Since FY1998, this account has been available for forest health improvement activities, as well as for building and repairing roads and trails.

federal recreation sites from FY1996 through FY1998; it has been extended multiple times, and now is authorized for fee collections through December 31, 2005 (with expenditures through FY2008). FY2003 collections are \$124 million for the NPS, \$37 million for the FS, \$9 million for the BLM, and \$4 million for the FWS.

Land Acquisition Funding. The largest source of funding for federal land acquisition is the Land and Water Conservation Fund. LWCF is a special account created in 1964 specifically to fund federal land acquisition and state recreation programs. It can be credited with revenues from federal recreation user fees (other than those collected under the Recreational Fee Demonstration Program and the Fee Collection Cost Program), 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. Through FY2004, \$27.2 billion has been credited to the LWCF, and \$13.8 billion has been appropriated. Unappropriated funds remain in the U.S. Treasury and can be spent for other purposes.

The 105th, 106th, and 107th Congresses considered legislation that would have supplemented or supplanted the LWCF and fully funded it for 15 years. The Clinton Administration successfully pursued another avenue (the Lands Legacy Initiative that led to the creation of the Conservation Spending Category) to increase funding for LWCF federal land acquisition through the annual appropriations process and to use some of the LWCF authorization for other (non-acquisition) federal programs. President Bush has expanded on this latter approach, proposing in FY2005 to fully fund LWCF — requesting \$900.2 million — but use more than half of the total for non-acquisition federal programs, including several Fish and Wildlife Service and Forest Service programs. In FY2003, LWCF appropriations for federal land acquisition alone totaled \$313.0 million, and in FY2004 they declined to \$169.7 million, both down from the FY1998 peak of \$897.1 million. For FY2005, President Bush has requested \$220.2 million for LWCF federal land acquisition.

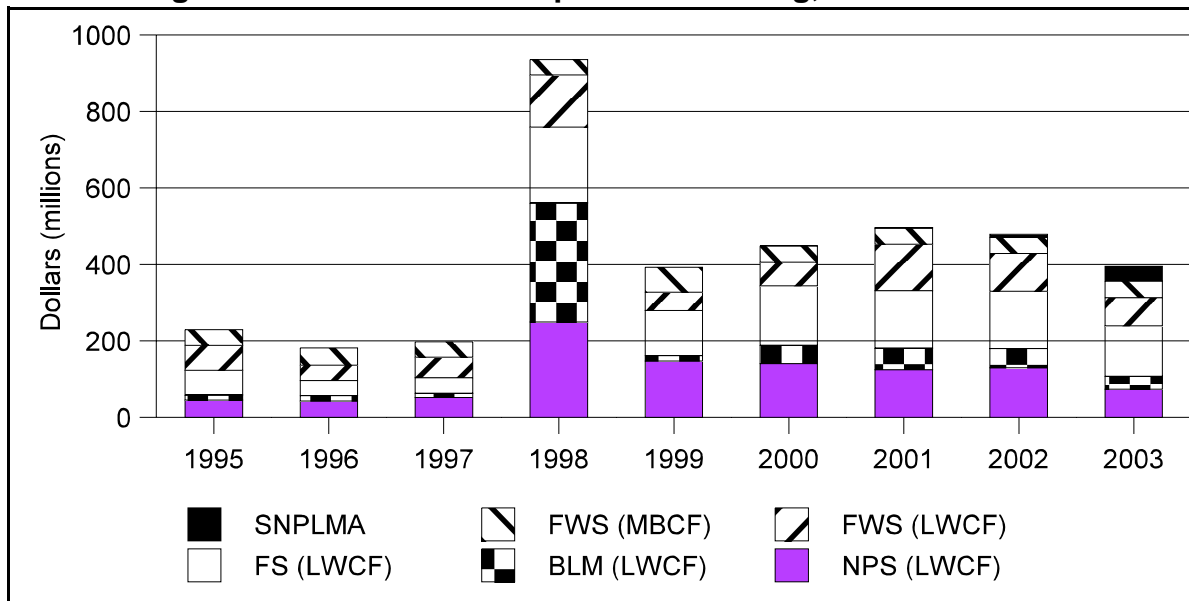
Other federal programs also provide funding for federal land acquisition. The largest is the FWS’s Migratory Bird Conservation Fund (MBCF). Receipts from the sale of duck stamps to hunters, refuge visitors, stamp collectors, and others are deposited in this account. The funds are permanently appropriated to the FWS to acquire lands for the National Wildlife Refuge System, and often provide more than half the total FWS land acquisition funding. In FY2003, the FWS used \$43.8 million of MBCF for land acquisition.

The BLM has a mandatory spending program for land acquisition and other activities in Nevada, funded from sales of BLM land in that state (Southern Nevada Public Land Management Act, SNPLMA, P.L. 105-623). This program allows money from BLM land sales in Nevada to be used for land acquisition by the federal land management agencies, but also for capital improvements on federal lands and state and local government purposes. Since 2000, this program has generated more than \$400 million, and it is projected to generate \$338 million in FY2004 and \$846

million in FY2005. The portion spent on federal land acquisition varies, and totaled \$38.6 million in FY2003. This relatively small amount is attributable in part to the newness of the program and it is expected to increase in coming years. In addition, the FS has a very small program (about \$1 million annually) for acquiring lands in certain parts of Utah and California.

Figure 2 shows federal land acquisition funding since FY1995. Total funding rose from a low of \$181.5 million in FY1996 to a peak of \$936.7 million in FY1998, then declined to \$395.4 million in FY2003. Funding for federal land acquisition (excluding SNPLMA) is estimated at \$212.0 million for FY2004, and at \$263.4 million under President Bush's FY2005 budget request.²³

Figure 2. Federal Land Acquisition Funding, FY1995-FY2003



Compensation to State and Local Governments

Because federal property is exempt from state and local taxation, Congress has enacted 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 agency-specific compensation system. The Payments In Lieu of Taxes (PILT) Program provides additional revenues.

²³ Funding for land acquisition under SNPLMA is excluded from FY2004 and FY2005 figures because funds are released after (1) monies from federal lands sales have been collected, and (2) lands have been nominated for acquisition. For FY2004, the SNPLMA budget for lands nominated for acquisition is \$110.6 million, but not all nominated lands will be acquired. Nominations for FY2005 will not be completed until after the end of FY2004.

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. For the national grasslands, 25% of *net* revenues go directly to the counties. In addition, three counties in Minnesota receive a special payment of 0.75% of the appraised value of the Superior NF lands in the county. Payments for these FS programs are permanently appropriated from any FS revenues; in FY2003, total FS payments were \$393 million.

Because of concerns over declining timber revenues in many areas, and the approaching end of the special “spotted owl payments” program,²⁴ the 106th Congress debated bills to modify the FS revenue-sharing program. In the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106-393), Congress enacted a six-year program allowing counties to supplant the historic 25% payment with the average of the three highest payments to the state between 1986 and 1999. Of these high-3 payments, 15%-20% must be spent on certain county programs or on projects on federal lands recommended by a local advisory committee or chosen by the FS. This program accounted for 72% of the \$393 million in FS payments in FY2003.

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 Oregon & California (O&C) railroad grant lands in Western Oregon.²⁵ Counties with the Coos Bay Wagon Road (CBWR) 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 and CBWR payments have been largely from timber sales, which have declined since the late 1980s, they were included with national forest lands (see above) in the spotted owl payments program and the six-year program of payments at the average of the three highest, under P.L. 106-393.

These examples demonstrate the complexity of the legal direction to share BLM revenues with state and local governments. The BLM revenue-sharing payments are

²⁴ For national forests that contain northern spotted owl habitat, which led to lower timber sale levels, payments were set at 85% of the FY1986-FY1990 average for FY1994, and declining by 3 percentage points annually, to 58% in FY2003.

²⁵ 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.

permanently appropriated, with 10 separate payment accounts; FY2003 budget authority was \$157 million, of which \$111 million was for the O&C and CBWR lands and \$38 was related to oil leasing in the National Petroleum Reserve-Alaska.

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 other than national grasslands). For refuges which have been created on lands acquired from other landowners, 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 net revenues have been insufficient to make the authorized payments. Although payments have been supplemented with annual appropriations, total payments — \$14 million in FY2003 — consistently have been less than the authorized level.

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. PILT payments are made in addition to any revenue-sharing payments, although the payments may be reduced by such revenue-sharing payments, as discussed below. Federal lands encompassed by this county-compensation program include lands in the National Forest System, lands in the National Park System, and those administered by the BLM, plus the National Wildlife Refuge System 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 five years, to adjust for inflation between 1976 and 1994, and to build in adjustments for future inflation. The two formulae used to calculate the FY2003 authorized payment level for each county with eligible federal lands are:

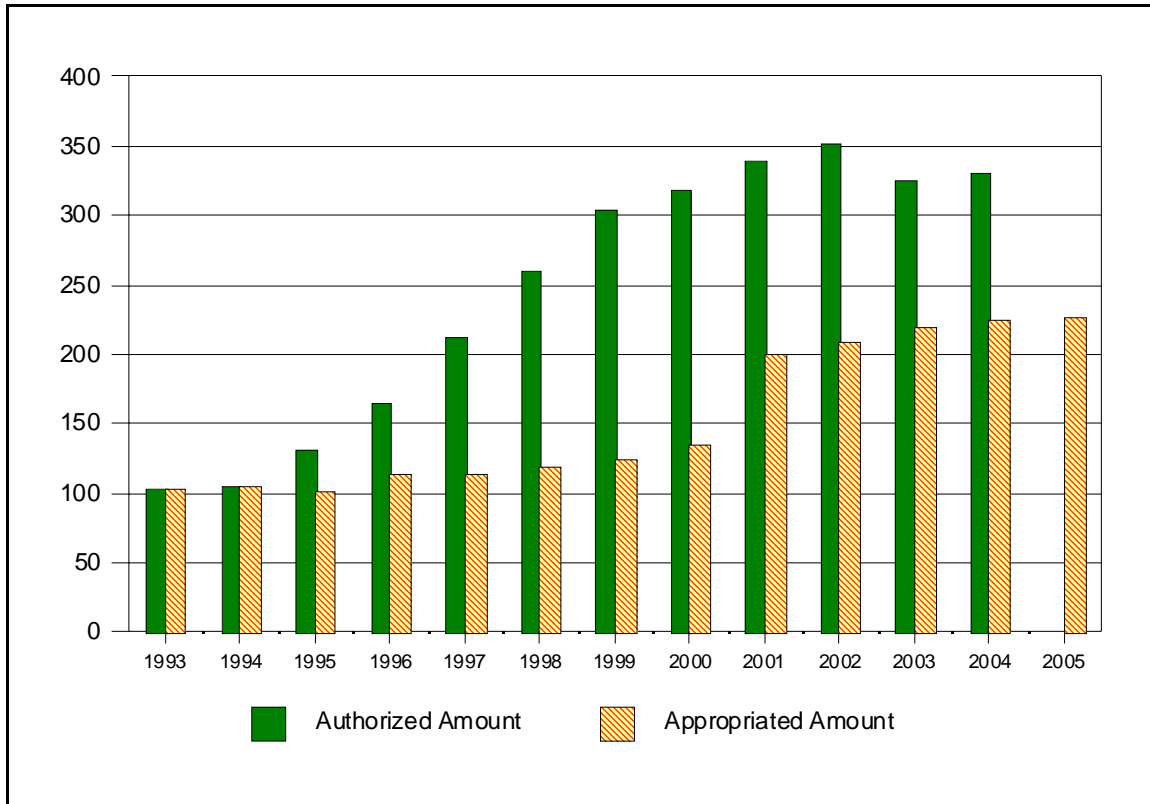
- (1) Which is *less*: (a) the county's eligible acres times \$0.27 per acre; or (b) the county's payment ceiling (determined by county population level). Pick the lesser of these two. This option is called the *minimum provision*.
- (2) Which is *less*: (a) the county's eligible acres times \$2.02 per acre; or (b) the county's payment ceiling (determined by county population level). Pick the lesser of these two, and from it subtract the previous year's total payments under other payment or revenue-sharing programs of the agencies that control the eligible land (as reported by each state to the BLM). This option is called the *standard provision*.

The county is authorized to receive whichever of the above calculations (1 or 2) is *greater*. This calculation must be made for all counties individually to determine the national authorization level.

In contrast to most of the revenue-sharing programs, PILT requires annual appropriations from Congress. Those appropriations generally had been sufficient to compensate the counties at the authorized level prior to the 1994 amendments. Those amendments raised the authorization; however, subsequent appropriations

have been substantially below the increased authorization. **Figure 3** compares the level of authorization and appropriation for each year since FY1993.

Figure 3. PILT: Authorized and Appropriated Amounts, FY1993-FY2005
(in millions of \$)



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.

Notes: The FY2004 authorized amount is an estimate; the FY2005 authorized amount is not yet estimated. The FY2005 appropriation level reflects the Administration's request. Authorization for a given year depends on receipts from the previous year from the agencies that administer the eligible lands. Consequently, no authorization level can be determined for FY2005.

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 and for 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, and which agencies' lands and programs to include, is a continuing congressional focus.

Another persistent issue is determining the annual appropriations for the Department of the Interior and related agencies (including the FS). The budget levels for the agencies often are controversial, especially in today's climate of increasing budget deficits and expenditures for the war on terrorism. Legislative provisions and directions/restrictions on spending contained in appropriations bills, commonly referred to as environmental and resource "riders," often are the most controversial parts of these bills.

Funding for wildfire protection has grown significantly in recent years, following the severe fire seasons of 2000 and 2002. Annual appropriations for fire suppression operations have not been sufficient, and the agencies have used their authority to borrow from other accounts to fund fire suppression. These borrowings typically are repaid in an emergency supplemental appropriation bill or in the subsequent annual appropriations bill. However, the borrowed funds are not always repaid promptly, leading to funding shortfalls in the accounts from which the funds were borrowed (such as land acquisition).

Major Statutes

Department of the Interior and Related Agencies Appropriations Act for FY2004 (the most recent in the annual series of such acts): Act of Nov. 10, 2003; P.L. 108-108.

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

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 Prints²⁶

CRS Report RL32306, *Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren. (The most recent in an annual series of such reports.)

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

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

²⁶ The most current copies of CRS products are available at [<http://www.crs.gov/>].

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

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

CRS Report RS21503, *Land and Water Conservation Fund: Current Status and Issues*, by Jeffrey Zinn.

CRS Issue Brief IB10093, *National Park Management and Recreation*, coordinated by Carol Hardy Vincent.

CRS Report RL31392, *PILT (Payments in Lieu of Taxes): Somewhat Simplified*, by M. Lynne Corn.

The National Forest System²⁷

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 (87%) in the West, 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.

Background²⁸

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 (renamed *national forests* in 1907) was transferred to the new agency within the Department of Agriculture. NFS management is one of the three principal FS programs.²⁹

In 1906 and 1907, President Theodore Roosevelt more than doubled the acreage of the forest reserves. In 1907, Congress limited the authority of the President to add to the system in certain states.³⁰ Then in 1910, Congress repeated the limitation in the Pickett Act. 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 192.5

²⁷ This section was prepared by Ross W. Gorte.

²⁸ For more information, see the Forest History Society, *U.S. Forest Service History*, at [<http://www.lib.duke.edu/forest/usfscoll/>], visited February 20, 2004.

²⁹ 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.

³⁰ Congress enacted the limitation in response to Roosevelt’s 1906 reservations. Roosevelt needed the funds provided in the 1907 act, but proclaimed additional reserves after it was enacted, but before he signed it into law.

million acres in 2003. 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 (97.6% of the system); 20 national grasslands with 4 million acres (2.0%); and 121 other areas, such as land utilization projects, purchase units, and research and experimental areas, with 0.8 million acres (0.4%).³¹ The NFS units are arranged into nine administrative regions, each headed by a regional forester. The nine regional foresters report to the NFS Deputy Chief, who reports to the Chief of the Forest Service. In contrast to the heads of other federal land management agencies, the Chief traditionally has 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 NFS lands ^a	National Forest System Acreage ^b	
Region Name	No.	States	Federal	Inholdings
Northern	1	ID, MT, ND	25,441,585	2,727,271
Rocky Mountain	2	CO, NE, SD, WY	22,069,840	2,380,838
Southwestern	3	AZ, NM	20,805,767	1,668,087
Intermountain	4	ID, NV, UT, WY	32,003,788	2,250,034
Pacific Southwest	5	CA	20,137,345	3,629,680
Pacific Northwest	6	OR, WA	24,737,016	2,660,525
Southern	8	AL, AR, FL, GA, KY, LA, MS, NC, OK, PR, SC, TN, TX, VA	13,273,000	12,324,182
Eastern	9	IL, IN, ME, MI, MN, MO, NH, NY, OH, PA, VT, WI, WV	12,061,766	9,895,489
Alaska	10	AK	21,980,905	2,375,273
National Forest System Total			192,511,012	39,911,379

Source: U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System, as of Sept. 30, 2004*, Tables 1 & 2, from [<http://www.fs.fed.us/land/staff/lar/LAR03/>], visited Feb. 20, 2004.

Notes: 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.

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

b. *Federal* is federally owned land managed by the FS. *Inholdings* are private and other government lands within NFS boundaries that are not administered or regulated by the FS.

³¹ U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System, as of September 30, 2004*, Table 1 at [<http://www.fs.fed.us/land/staff/lar/LAR03/>], visited Feb. 20, 2004.

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 seven western FS regions, including Alaska (87%), the FS manages more than half of all federal land in the East. *Inholdings* shown in **Table 4** is land (primarily private) within the designated boundaries of the national forests (and other NFS units) which is not administered by the FS. 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. Many 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 forests 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. RPA focuses on the national, long-range direction for forest and range conservation and sustainability.³² RPA requires the FS to prepare four documents for Congress and the public: an Assessment every 10 years

³² 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). Available on the Princeton University website, at [http://www.wws.princeton.edu/~ota/disk2/1990/9019_n.html], visited February 12, 2004.

to inventory and monitor the status and trends of the nation's natural resources; a Program every five years to guide FS policies; a Presidential Statement of Policy to accompany the Program and guide budget formulation; and an Annual Report to evaluate implementation of the Program.³³

NFMA requires the FS to prepare a comprehensive land and resource management plan for each unit of the NFS, coordinated with the national RPA planning process.³⁴ The plans 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.³⁵ On October 5, 1999, the Clinton Administration proposed new regulations (64 *Federal Register* 54073), with final regulations revising the planning process on November 9, 2000 (65 *Federal Register* 67514). These regulations would have increased emphasis on ecological sustainability, and would have been implemented over several years.

On December 6, 2002, in response to concerns about whether the Clinton regulations could be implemented and about the lack of emphasis on economic and social sustainability, the Bush Administration proposed new regulations (67 *Federal Register* 72700) to supplant the Clinton regulations before they were implemented. The proposed Bush regulations seek to balance ecological sustainability with economic and social considerations, and would reduce national direction in FS decision-making. Final regulations have not been issued.

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

³³ Since 1997, provisions in the Interior Appropriations Acts have prohibited the FS from completing the overdue 1995 and 2000 RPA Programs, because, it has been asserted, the Government Performance and Results Act (GPRA) planning and reporting requirements have replaced the RPA Program. A Presidential Statement of Policy accompanied the first (1976) RPA Program, and Congress enacted a second Statement of Policy (1980), but no subsequent Statements of Policy have been issued. The *Report of the Forest Service* is printed annually, although no report was published for FY1999 or FY2000, and the reports typically are published several months later than required by law. They are required to be presented to Congress with the annual budget justifications. The Assessments continue to be prepared.

³⁴ 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). Available on the Princeton University website, at [http://www.wws.princeton.edu/~ota/disk1/1992/9216_n.html], visited February 12, 2004.

³⁵ Available on the Forest Service website at [<http://www.fs.fed.us/emc/nfma/includes/cosreport/Committee%20of%20Scientists%20Report.htm>], visited February 12, 2004.

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 land designations. The NFS contains 21 national game refuges and wildlife preserves (1.2 million acres), 20 national recreation areas (2.9 million acres), 4 national monuments (3.7 million acres), 2 national volcanic monuments (167,427 acres), 6 scenic areas (130,435 acres), a scenic-research area (6,637 acres), a scenic recreation area (12,645 acres), a recreation management area (43,900 acres), 3 special management areas (91,265 acres), 2 national protection areas (27,600 acres), 2 national botanical areas (8,256 acres), a primitive area (173,762 acres) and a national historic area (6,540 acres).³⁶ Resource development and use is generally more restricted in these specially designated areas than on general NFS lands, and specific guidance typically is provided with each designation.

Land Ownership

Designation. As noted above, in 1891, the President was authorized to reserve lands from the public domain as forest reserves (16 U.S.C. §471, now repealed), but this authority was subsequently limited by Congress, and it appears that no new NFS lands were reserved 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 1950, 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, although President Theodore Roosevelt did not sign the law until he had reserved 16 million acres in those states. Presidential authority to withdraw public lands to establish new national forests was not formally repealed until 1976.³⁷ Today, establishing a new national forest from public domain lands or significantly modifying the boundaries of an existing national forest created from the public domain requires an act of Congress.³⁸

³⁶ U.S. Dept. of Agriculture, Forest Service, *Land Areas of the National Forest System, as of September 30, 2003*, Tables 10-12 and 15-26, at [<http://www.fs.fed.us/land/staff/lar/LAR03/>], visited February 20, 2004.

³⁷ The 1891 authority was repealed by §704(a) of FLPMA. The following day, in §9 of NFMA, Congress also prohibited the return of any NFS lands to the public domain without an act of Congress.

³⁸ The President can still create new national forests from lands acquired under the Weeks Law of 1911 (16 U.S.C. §521).

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 NFMA; 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 NFMA.

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 nonfederal lands (43 U.S.C. §1715(a)). The Southern Nevada Public Land Management Act of 1998 authorizes acquisition of environmentally sensitive lands in Nevada, some of which have been added to the National Forest System. Also, under the Federal Land Transaction Facilitation Act, the Secretary of Agriculture may acquire inholdings and other nonfederal land. (See discussion of BLM “Disposal Authority,” below.)

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

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 6 land utilization projects that account for 2% of the NFS. 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 NFMA

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 (16 U.S.C. §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 nonfederal 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 (16 U.S.C. §521d) plus “all reasonable costs of administration, survey, and appraisal incidental to such conveyance” (16 U.S.C. §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 NFS 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, the focus of discussions and legislative proposals on FS management of the NFS has been forest health and wildfires, especially in the intermountain West. The 2000 and 2002 fire seasons were, by most standards, among the worst since 1960. Many believe that excessive accumulations of biomass — dead and dying trees, heavy undergrowth, and dense stands of small trees — reflect degraded forest health and make forests vulnerable to conflagrations. These observers advocate rapid action to improve forest health — including prescribed burning, thinning, and salvaging dead and dying trees — and that rapid action is needed to protect NFS forests and nearby private lands and homes. Critics counter that authorities to reduce fuel levels are adequate, treatments that remove commercial timber degrade forest health and waste taxpayer dollars, and expedited processes for treatments are a device to reduce public oversight of commercial timber harvesting.

In September 2000, President Clinton requested an additional \$1.6 billion (for the FS 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., wildlands near communities threatened by potential wildfire conflagrations). Congress included much of this funding in the FY2001 Interior Appropriations Act (P.L. 106-291), and has continued to fund FS and BLM wildfire programs at more than double the level of the 1990s. Nonetheless, fuel treatment funding is still far below the amount that would be needed to reduce fuels on the federal lands many identify as at high risk of significant ecological damage from wildfire. (For further information, see "Current Issues" section of CRS Report RL30755, *Forest Fire/Wildfire Protection*, by Ross W. Gorte.)

In August 2002, President Bush proposed a Healthy Forests Initiative to expedite fuel reduction treatments for federal forests. Because the 107th Congress did not enact legislation on this initiative, portions of it were accomplished through regulatory changes. These include categorically excluding some fuel reduction treatments from NEPA environmental reviews and public involvement (68 *Federal Register* 33814, June 5, 2003); modifying the FS administrative appeal process (68 *Federal Register* 33582, June 4, 2003); categorically excluding small timber sales from NEPA environmental reviews and public involvement (68 *Federal Register* 44598, July 29, 2003); and allowing agencies to consult their own personnel on ESA impacts, known as *counterpart* regulations (68 *Federal Register* 68254, December 8, 2003).

On December 2, 2003, Congress enacted the Healthy Forests Restoration Act of 2003 (P.L. 108-148) containing parts of the President's Healthy Forests Initiative. One title, which garnered most of the attention in debates over the legislation, established an expedited process for fuel reduction activities. Other titles provide research and financial assistance in using forest biomass; direction on surveying and controlling insects and diseases; watershed forestry assistance to states and private landowners; and payments to private landowners for protecting special forestlands.

Another major issue concerns whether, when, and where to build 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 are opposed by others, on the grounds that they can degrade the environment both during and after construction, exacerbate fire risk and spread invasive species, alter areas that some wish to preserve as pristine wilderness, and be expensive to build and maintain. Decisions over road building and protecting roadless areas generally have been made locally, which led to much local litigation.

In October 1999, the Clinton Administration proposed a nationwide rule to provide “appropriate long-term protection for ... ‘roadless’ areas.” Final regulations were to become effective on March 13, 2001, but the Bush Administration delayed the effective date and subsequent court actions have prevented implementation. On July 15, 2003, the Bush Administration issued an advanced notice of proposed rulemaking to gather comments on roadless area management (68 *Federal Register* 41864). On December 30, 2003, the Administration provided a temporary exemption from the roadless rule for the Tongass NF in Alaska (68 *Federal Register* 75136). Final regulations on roadless area protection are still in development. However, interim guidance has returned decisions about roadless area protection to the local or regional level, raising the possibility of litigation over local decisions.

Major Statutes

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

Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA): 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.

Healthy Forests Restoration Act of 2003: Act of December 3, 2003; P.L. 108-148, 117 Stat. 1887. 16 U.S.C. §§6501-6591.

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 (NFMA): 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.

Pickett Act: Act of June 25, 1910; ch. 421, 36 Stat. 847.

Weeks Law of 1911: Act of March 1, 1911; ch. 186, 36 Stat. 961. 16 U.S.C. §§515, et al.

CRS Reports and Committee Prints³⁹

CRS Issue Brief IB10076, *Bureau of Land Management (BLM) Lands and National Forests*, coordinated by Ross W. Gorte and Carol Hardy Vincent.

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/Wildfire Protection*, by Ross W. Gorte.

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

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

CRS Issue Brief IB10124, *Wildfire Protection in the 108th Congress*, by Ross W. Gorte.

CRS Report RS21880, *Wildfire Protection in the Wildland-Urban Interface*, by Ross W. Gorte.

³⁹ The most current copies of CRS products are available at [<http://www.crs.gov/>]. Also, for further information on the Forest Service, see its website at [<http://www.fs.fed.us/>], visited February 12, 2004.

Bureau of Land Management⁴⁰

The Bureau of Land Management (BLM) manages 261.5 million acres of land, nearly 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 nonfederal lands.

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 1934.⁴¹ 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.

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, and in 1976 Congress enacted a comprehensive public land law entitled the Federal Land Policy and Management Act of 1976 (FLPMA).⁴²

⁴⁰ This section was prepared by Carol Hardy Vincent.

⁴¹ For more information, see 43 U.S.C. §§315, et seq. and the website of the University of New Mexico School of Law at [<http://ipl.unm.edu/cwl/fedbook/taylorgr.html>], visited April 1, 2004.

⁴² P.L. 94-579; 90 Stat. 2744, 43 U.S.C. §§ 1701, et seq.

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 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 1780s, nearly 1.3 billion acres of federal land have been transferred to individuals, businesses, and states. This total includes approximately 287 million acres for homesteaders; 328 million acres to states for public schools, public transportation systems, and various public improvement projects; and 94 million acres for railroads.

The last large transfer of BLM land occurred in 1980 with passage of the Alaska National Interest Lands Conservation Act (ANILCA).⁴³ 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 Land 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. Under each state office there are 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); the National Science and Technology Center (Denver, CO); the National Human

⁴³ For the text of the law, see the FWS website at [<http://www.r7.fws.gov/asm/nilca/toc.html>], visited April 1, 2004.

Resources Management Center (Denver, CO); the National Business Center (Denver, CO); and the National Information Resources Management Center (Denver, CO).⁴⁴

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. The agency conducts cadastral surveys to locate and mark the boundaries of federal and Indian lands. BLM's Public Land Survey System is the foundation of the nation's land tenure system. BLM is making its public lands and mineral records available on the Internet to improve public access to, and the quality of, the information. The survey records and land descriptions are being converted to digital, geospatial format.⁴⁵ BLM also is involved in a joint project with the Forest Service, states, counties, and private industry to develop a National Integrated Land System, 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 status of land so users can obtain all the attributes about a chosen parcel.⁴⁶

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

⁴⁴ For information on the six support and service centers, see the BLM website at [<http://www.blm.gov/nhp/directory/index.htm>], visited April 1, 2004.

⁴⁵ The system, the Geographic Coordinate Data Base, is available on the BLM website at [<http://www.blm.gov/gcdb/>], visited March 16, 2004.

⁴⁶ More information on the National Integrated Land System is available on the BLM website at [<http://www.blm.gov/nils/>], visited March 16, 2004.

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), as well as the 700 million acres of mineral resources managed by BLM, are covered by a land use plan. Although plans are to be amended or revised as new issues arise or conditions change, a large number of land use plans were developed in the 1970s or 1980s and are in need of substantial revision or replacement to take account of changes during recent years. In FY2001, BLM began a multiyear effort to develop new land use plans and update existing ones, driven by such changes as increased demands for energy resources, a rise in use of off-highway vehicles and other types of recreation, additions to the National Landscape Conservation System, new listings of species under the Endangered Species Act, a buildup of biomass fuels on public lands, and a need to mitigate the effects of wildfires.

Rangelands. Livestock grazing is permitted on an estimated 162 million acres of BLM land. In some western states, more than half of all cattle graze on public rangelands during at least 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 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 common open grazing 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 wild horses and burros under the Wild, Free-Roaming Horses and Burros Act of 1971.⁴⁷ Currently there are about 60,000 wild horses and burros under BLM management — 36,000 on public land and 24,000 in long-term holding facilities. The herd size on the range is significantly more than the agency has determined is appropriate (ecologically sustainable) — approximately 26,400. BLM seeks to reduce animals on the range through adoption, fertility control, permanent or temporary holding facilities, and other means. In its FY2005 Budget Justification, BLM cites insufficient funds to remove animals from the range and care for those in holding facilities. For years, management of wild horses and burros has been controversial.

Energy and Minerals. BLM administers onshore federal energy and mineral resources. The agency 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. An estimated 165 million of the 700 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 System, and the Arctic National Wildlife Refuge (ANWR) are among those withdrawn. Mineral development on 182 million acres is subject to the approval of

⁴⁷ For more information, see 16 U.S.C. §§1331, et seq. and the BLM website at [<http://www.wildhorseandburro.blm.gov/theact.htm>], visited April 1, 2004.

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.

There are three approaches to development of federal mineral resources. One approach is locating and patenting mining claims for hard rock (locatable) minerals. A second approach is competitive and noncompetitive leasing of lands for leaseable minerals (oil, gas, coal, potash, geothermal energy, and certain other minerals). A third approach is the sale or free disposal of common mineral materials (e.g., sand and gravel) not subject to the mining or leasing laws.

In 2003, 42% of the coal, 11% of the natural gas, and 5% of the oil produced in the United States were derived from BLM managed resources.⁴⁸ These resources generate large revenues. For FY2003, the total on-shore mineral revenues (including royalties, rents, and bonus bids) were \$2.2 billion, a substantial increase over recent years primarily due to higher oil and gas prices. The demand for energy from BLM managed lands continues to increase, and a goal of the Bush Administration is to augment energy supply from federal lands.

National Landscape Conservation System. In 2000, BLM created the National Landscape Conservation System, comprised of different types of units — national monuments, conservation areas, wilderness areas, wilderness study areas, wild and scenic rivers, and scenic and historic trails. Approximately 42 million acres currently are in the system (excluding trails and rivers), to give them greater recognition, management attention, and resources, according to BLM statements. Areas are managed based on their relevant authorities; for instance, the 6.5 million acres of designated wilderness are managed in accordance with FLPMA and the Wilderness Act. Another 15.6 million acres of wilderness study areas are to be managed by BLM to maintain their suitability for wilderness designation until legislation is enacted to determine their final status. (For more information on wilderness, see “The National Wilderness Preservation System,” below.)

The agency’s 15 national monuments and 17 national conservation areas are a particular focus of the system. BLM management emphasizes resource conservation overall and in general units are to serve outdoor recreationists. Other activities, such as grazing and hunting, may continue if they are compatible with the designation.

The proximity of BLM lands to many areas of population growth in the West has led to an increase in recreation on some agency lands. Recreational activities include hunting, fishing, visiting cultural and natural sites, birdwatching, hiking, picnicking, camping, boating, mountain biking, and off-highway vehicle driving. BLM collects money for permits for recreation on its lands, such as permits issued to hunting and fishing guide outfitters. The agency also charges entrance and use fees on some of its lands under the Recreational Fee Demonstration Program authorized by Congress. The growing and diverse nature of recreation on BLM lands

⁴⁸ Fifty percent of the revenues collected from on-shore leasing are returned to the states (except Alaska which receives 90%) in which the lands are located (30 U.S.C. §191).

has increased the challenge of balancing different types of recreation, such as hiking and driving off-highway vehicles, and balancing recreation with other land uses.

Fire Management. Recent fire seasons have been among the most severe in decades due to long-term drought, build-up of fuels, and increased population in the wildland-urban interface. BLM carries out fire management on approximately 370 million acres of DOI, and certain other federal and nonfederal lands.⁴⁹ The Forest Service provides fire protection of the national forests. A focus of both agencies is implementation of the national fire plan, under a 10-year strategy developed jointly by the agencies and other partners. Goals of the strategy are to improve fire prevention and suppression, reduce fuels, restore fire-adapted ecosystems, and promote community assistance. Another focus of the agencies is implementation of the Healthy Forests Restoration Act of 2003 (P.L. 108-148), which sought to expedite fuel reduction on federal lands and authorized other forest protection programs.

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 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.⁵⁰ 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

⁴⁹ For BLM wildland fire statistics, see the agency’s website at [<http://www.fire.blm.gov/stats/>], visited April 1, 2004.

⁵⁰ Under Title II of P.L. 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 nonfederal lands. Also, the Southern Nevada Public Land Management Act of 1998 (P.L. 105-263) provides for the disposal, by sale or exchange, of lands in Nevada. The proceeds are used to acquire environmentally sensitive lands in Nevada, among other purposes. A description of these funding sources is provided under “disposal authority.” The Land and Water Conservation Fund, addressed in the chapter on “Federal Lands Financing,” is a primary means of funding BLM land acquisition.

often acquires land by exchange, and completed 132 exchanges in FY2003. Although FLPMA and NFMA 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. Recent concerns about the BLM exchange program, including regarding the determination of fair market value and the extent of public benefit of exchanges undertaken, prompted BLM to change the requirements and procedures of the program.⁵¹

Disposal Authority. The BLM can dispose of public lands under several authorities. A primary means of disposal is through exchanges, just as a primary means of acquisition is through exchanges. Disposal authorities include sales under FLPMA, patents under the General Mining Law of 1872, transfers to other governmental units for public purposes, and other statutes.⁵²

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)):

- (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

⁵¹ Other authorities provide for acquisitions in particular areas.

⁵² Desert lands 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. Other authorities provide for land sales in particular areas.

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)).

by Congress.⁵³ 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.

The General Mining Law of 1872⁵⁴ 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)⁵⁵ 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.

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.

BLM also conducts land disposals under two recent laws providing for land disposal and establishing funding sources for subsequent land acquisition. First, the Federal Land Transaction Facilitation Act (Title II, P.L. 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. Land sales are being 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 nonfederal 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

⁵³ 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).

⁵⁴ For a description of the law, see the BLM website at [<http://www.blm.gov/nhp/300/wo320/minlaw.htm>], visited April 1, 2004.

⁵⁵ For a description of the law, see the BLM website at [<http://www.blm.gov/nhp/what/lands/realty/rppa.htm>], visited April 1, 2004.

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...”

Second, the Southern Nevada Public Land Management Act (P.L. 105-623) allows the Secretary of the Interior, through the BLM, to sell or exchange certain land around Las Vegas. The Secretary, through the BLM, and the relevant local government unit jointly choose the lands offered for sale or exchange. State and local governments get priority to acquire lands under the Recreation and Public Purposes Act. Much of the money from the sales is deposited into a special account that may be used for purposes including the acquisition of environmentally sensitive lands in Nevada. Some of the proceeds of land sales are set aside for other purposes, such as the State of Nevada general education program.

Withdrawals.⁵⁶ 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 8 million withdrawn acres, mostly BLM and Bureau of Reclamation land; the withdrawals on more than 7 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

The public continues to value and use BLM lands for their diverse attributes and opportunities — open spaces, cultural resources, recreational pursuits, energy development, livestock grazing, timber production, etc. Issues and conflicts arise from these diverse and often opposing interests, with energy issues being among the most contentious. The President is promoting an expanded role for federal lands in supplying energy, and Congress is debating the extent, type, and location of development on federal lands. BLM has adopted regulatory changes to increase access to energy resources, such as streamlining the permitting process for oil and gas exploration and development. The emphasis on expanded production has exacerbated old controversies over the balance of uses of federal lands.

The development and patenting of hardrock minerals on public lands continues to receive attention. A focus has been the effect of BLM’s revised hardrock mining regulations on the environment and the level of mining activity. A perennial debate is whether to change the 1872 mining law, which allows claimants to develop the

⁵⁶ For a table identifying public land withdrawals 1942-2003, see the BLM website at [<http://www.blm.gov/nhp/what/plo/plo7394.htm>], visited April 1, 2004.

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. A recent Legal Opinion of the Solicitor of the Department of the Interior allowed for multiple millsites per mining claim, reversing a 1997 Opinion and continuing concerns over the environmental impact of mining and the availability of lands for mineral development.

Rangeland management presents an array of issues. They include recent proposed changes in grazing regulations that would allow shared title of range improvements and private acquisition of water rights, reduce requirements for public input into grazing decisions, and make other changes. Another issue involves the terms and renewal of expiring grazing permits and leases, with recent law authorizing the automatic renewal of permits and leasing expiring through FY2008. The restriction or elimination of grazing on federal land because of environmental and recreational concerns is being 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 FS 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 focus is BLM's current efforts to achieve its identified optimal herd size on the range.

Recent, severe wildfires have challenged BLM's fire management program and prompted the adoption of the National Fire Plan and the Healthy Forests Restoration Act. One issue is reducing the risk of wildland fire on federal lands through fuels reductions and other treatments. A second issue is the sufficiency of funds and procedures for suppressing fires, and the effect of borrowing funds from other programs for fire fighting. A third issue is the effect of fire on resource conditions, a compounding factor in areas experiencing drought, invasive species, and other changes.

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 is examining executive actions designating national monuments on BLM and other federal lands under the Antiquities Act of 1906,⁵⁷ and discussing whether to restrict the President's authority to create monuments. Conflicts over different types of recreation, especially high-impact (e.g., OHV use) versus low-impact uses (e.g., backpacking), appear to have become more prevalent. With dramatic population growth in the West in the vicinity of BLM lands, and the public value on federal lands for recreation, these conflicts can be expected to remain prevalent. Another issue is access to public lands, including restrictions such as limits on use of off-highway vehicles. Other issues are the impact

⁵⁷ For the text of the law, see the NPS website at [<http://www.cr.nps.gov/local-law/anti1906.htm>], visited April 1, 2004.

of recreation on resources and facilities and the collection of fees for recreation use, for example, under the Recreational 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 confronts 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.

Southern Nevada Public Land Management Act of 1998: Act of Oct. 19, 1998; P.L. 105-263, 112 Stat. 2343. 31 U.S.C. §6901 note.

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 Prints⁵⁸

CRS Issue Brief IB10076, *Bureau of Land Management (BLM) Lands and National Forests*, coordinated by Ross W. Gorte and Carol Hardy Vincent.

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

CRS Report RS21232, *Grazing Fees: An Overview and Current Issues*, by Carol Hardy Vincent.

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

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

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

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

CRS Report RS21423, *Wild Horse and Burro Issues*, by Carol Hardy Vincent.

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

⁵⁸ The most current copies of CRS products are available at [<http://www.crs.gov/>]. Also, for further information on BLM, including on many of the programs and responsibilities addressed in this section, see the agency’s website at [<http://www.blm.gov/>], visited April 1, 2004.

The National Wildlife Refuge System⁵⁹

The National Wildlife Refuge System (NWRS) is dedicated primarily to the conservation of animals and plants. Other uses — 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.⁶⁰ In 1997, Congress established compatible wildlife-dependent recreation as a priority for the NWRS. Some have characterized the NWRS as intermediate in protection between the BLM and FS lands and NPS lands, but this is not entirely accurate.⁶¹ The NWRS resembles the FS or BLM lands in allowing some commercial uses, but in certain cases, uses (e.g., public access) can be substantially more restricted than for NPS lands.

Background

The first national wildlife refuge was established at Pelican Island, FL, by executive order of President Theodore Roosevelt in 1903. By September 30, 2002, there were 540 refuges totaling 92.1 million acres in 50 states, the Pacific Territories, Puerto Rico, and the Virgin Islands (see **Figures 4 and 5**.)⁶² The largest increase in acreage by far occurred with the addition of 53 million acres of refuge land under the Alaska National Interest Lands Conservation Act of 1980. Alaska now has 76.8 million acres of refuge lands — 80.5% of the system. Within 63 of the refuges are 78 designated wilderness areas, ranging from 2 acres at Green Bay National Wildlife Refuge (NWR) in Wisconsin to 8.0 million acres at Arctic NWR in Alaska.⁶³

The NWRS includes two other categories of land besides refuges: (1) the 203 Waterfowl Production Area (WPA) districts, private lands managed in accordance with agreements between the farmers and ranchers who own the land and the FWS; and (2) 50 Wildlife Coordination Areas (WCAs), owned primarily by FWS, but also by other parties, including some federal agencies; they generally are managed by state agencies under agreements with the FWS. These bring the NWRS to 793 units.⁶⁴ These two additional categories bring the total land in the NWRS (counting refuges, WPAs, and WCAs) to 95.4 million acres. In approximately 1.7 million acres of the NWRS, FWS has secondary jurisdiction: the FWS has some influence over activities on these lands, but the lands are owned or managed principally by some other agency, subject to the mandates of that agency.

⁵⁹ This section was prepared by M. Lynne Corn.

⁶⁰ Distinct pre-existing rights (e.g., to develop minerals, easements, etc.) are rarely acquired along with the land. Where they exist and their ownership is considered essential, these rights must be purchased from the landowners, who are otherwise able to exercise them.

⁶¹ 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 mandate to provide for public enjoyment of park resources.

⁶² In FY1992, there was a consolidation of units of the Refuge System. The drop in numbers of units shown in **Figure 5** in that year is due to this change.

⁶³ There is also one wilderness area at an FWS National Fish Hatchery in Colorado.

⁶⁴ The 482 administrative sites and 69 fish hatcheries administered by FWS are not part of the system, and total only 22,671 acres.

Figure 4. Acreage in the National Wildlife Refuge System (FY1980-FY2003)

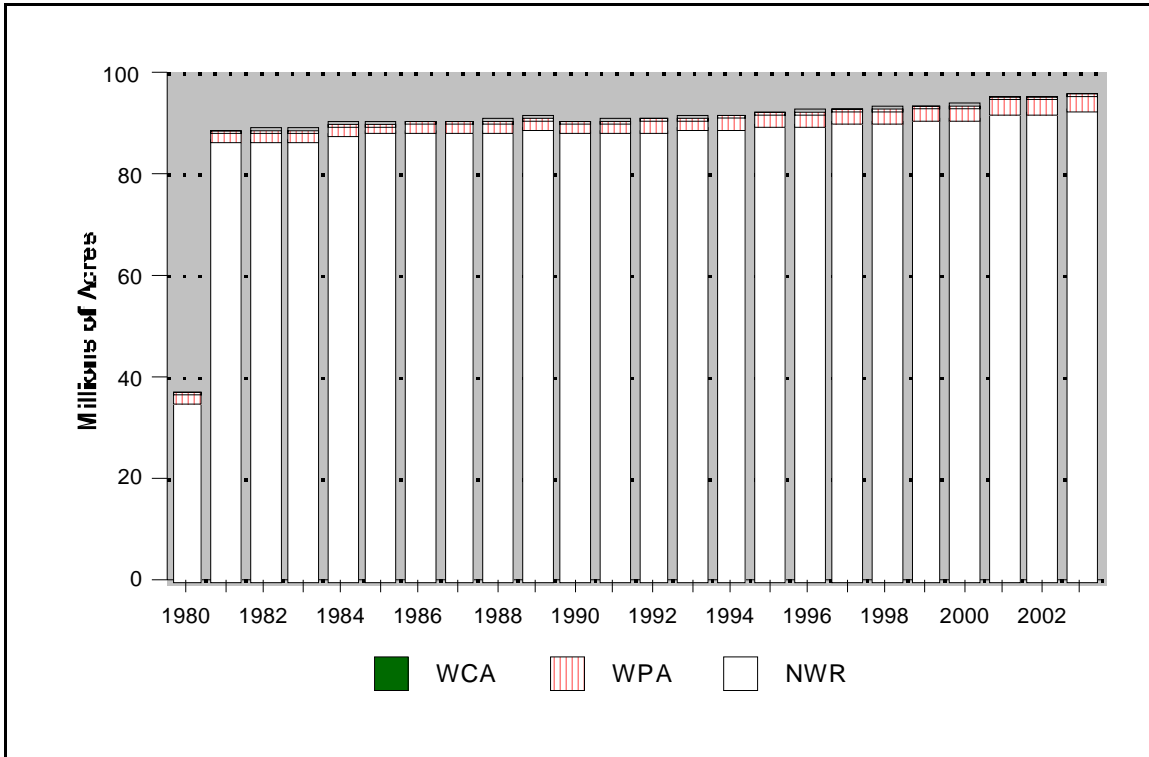
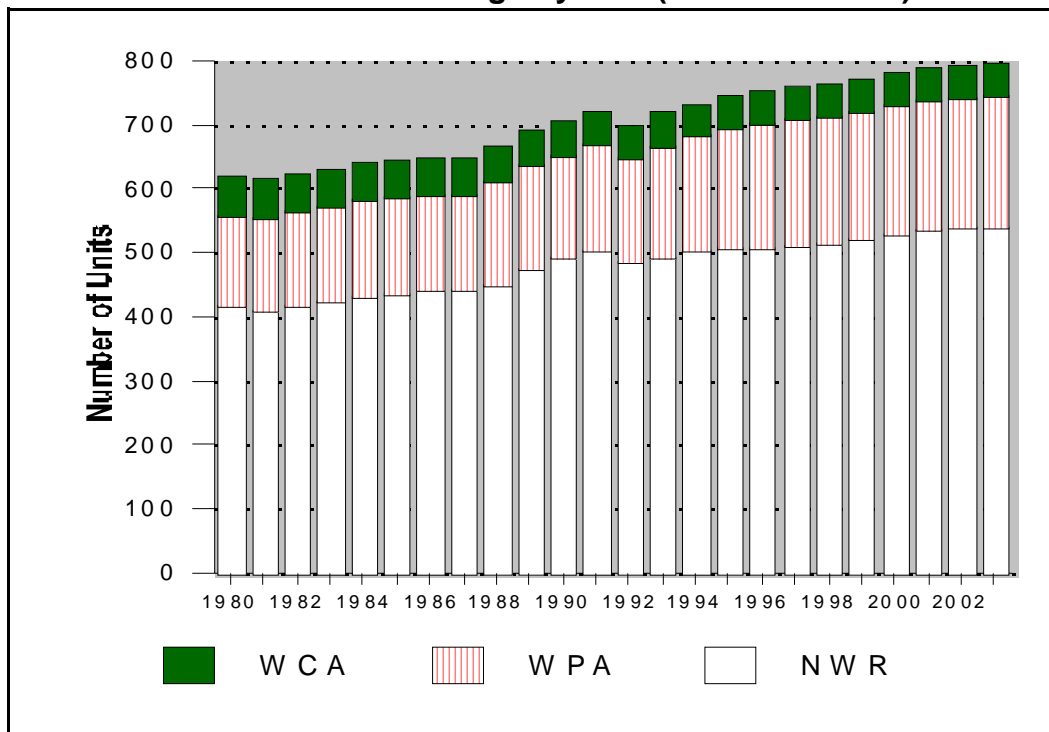


Figure 5. Number of Units in the National Wildlife Refuge System (FY1980-FY2003)



Source: Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service, as of Sept. 30 of each fiscal year.
Notes: Major acreage was added to the system in December 1980 under ANILCA. ANILCA also consolidated a number of existing Alaskan refuges. In 1992, the number of units dropped due to consolidation of various refuges.

Organization and Management

The National Wildlife Refuge System Administration Act of 1966,⁶⁵ as amended, stated the purpose for establishing the system as consolidating 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.

In the 105th Congress, the National Wildlife Refuge System Improvement Act of 1997 (P.L. 105-57)⁶⁶ addressed overarching refuge management controversies facing the FWS. This law clarified that 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 designated “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 required that priority public uses must “receive enhanced consideration over other general public uses in planning and management within the System.” At the same time, the law continued the statutory policy that activities that are not wildlife-dependent (e.g., grazing, growing hay, etc.) may be permitted, provided they are compatible with wildlife. Some interest groups argued that the resulting regulations did not allow for sufficient public access for some forms of recreation, such as off-road vehicles or personal watercraft.

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).⁶⁷ 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 frequently are 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.⁶⁸ As of September 30, 2002, these areas totaled 2.9 million acres, of which 0.7 million acres were federally owned and 2.2 million acres were managed by the private landowners under leases, easements, or agreements with FWS. These

⁶⁵ For the text of the law and other information, see the FWS website at [<http://refuges.fws.gov/policyMakers/mandates/index.html>], visited Feb. 13, 2004.

⁶⁶ For the text of the law and other information, see the FWS website at [<http://refuges.fws.gov/policyMakers/mandates/HR1420/index.html>], visited Feb. 13, 2004.

⁶⁷ Most of the research function was administratively transferred to the U.S. Geological Survey (in the Department of the Interior) in FY1996.

⁶⁸ This program is distinct from USDA programs to conserve wetlands.

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. The WCAs (0.3 million acres) are owned primarily by FWS, but also by other parties, including some federal agencies; they are managed by state wildlife agencies under cooperative agreements with FWS.

The management of the NWRS is divided into three tiers: the 793 individual NWRS units under seven regional offices, and the national office in Washington, DC. Each of the seven regional offices is administered by a regional director who has considerable autonomy in operating the refuges within the region. FWS is headed by a director, a deputy director, and 11 assistant directors who head programs not only for the National Wildlife Refuge System, but also for Wildlife and Sport Fish Restoration; Migratory Birds; Fisheries and Habitat Conservation; Endangered Species; Law Enforcement (titled “Chief”); International Affairs; External Affairs; Budget, Planning, and Human Resources; Business Management and Operations; and Information Resources Technology Management.

Land Ownership

Growth of the NWRS may come about in a number of ways. Certain laws provide general authority to expand the NWRS, including primarily the Migratory Bird Treaty Act (MBTA) of 1929,⁶⁹ but also the Fish and Wildlife Coordination Act, the Fish and Wildlife Act of 1956, and the Endangered Species Act.⁷⁰ These general authorities allow the FWS to add lands to the Refuge System without specific congressional action.

Some units have been created by specific acts of Congress (e.g., Protection Island NWR, WA; Bayou Sauvage NWR, LA; or John Heinz NWR, PA).⁷¹ Other units have been created by executive order. Also, 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)).⁷²

Acquisition Authority. The primary acquisition authority has been the MBTA. This act authorizes the Secretary to recommend areas “necessary for the

⁶⁹ For the text of the law and other information, see the FWS website at [<http://migratorybirds.fws.gov/intrnltr/treatlaw.html>], visited Feb. 13, 2004.

⁷⁰ For the text of the law and other information, see the FWS website at [<http://migratorybirds.fws.gov/intrnltr/treatlaw.html>], visited Feb. 13, 2004.

⁷¹ Of the 540 refuges, 34 (6.3%) were created under specific laws naming those particular refuges.

⁷² 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).

conservation of migratory birds”⁷³ 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)).⁷⁴

New acquisitions result from transfers from the public domain or lands acquired from other owners. Nonfederal lands and interests in lands to create or add to specific NWRs units may be accepted as donations or purchased. Purchases may be made on a willing buyer/willing seller basis or under condemnation authorities. Condemnation authority was last used, under congressional direction contained in P.L. 99-333, for Protection Island NWR in 1986.⁷⁵ Purchases, regardless of authority or funding source, are rarely large. In FY2002, 68,014 acres were acquired (as opposed to transferred from other federal agencies), while \$90.6 million was spent on acquisition.⁷⁶ As might be expected, refuges in western states tend to be formed from lands reserved from the public domain, while eastern refuges tend to be acquired lands.

The purchase of refuge lands is financed primarily through two funding sources: the Migratory Bird Conservation Fund (MBCF) and the Land and Water

⁷³ While the MBTA definition of “migratory bird” includes, potentially, almost all species 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.

⁷⁴ 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.

⁷⁵ Personal communication from FWS Realty Office, Feb. 9, 2004. Not counted are 11 instances of so-called “friendly condemnations,” in which FWS, in cooperation with a willing seller, used the courts to achieve favorable tax treatment, or to settle questions of fair market value, clouded title, or similar problems. Some critics of condemnation authority have suggested that the existence of so-called “hostile” condemnation authority has affected some land sales, to the extent that some sellers feel intimidated — that they have little real choice in the decision to sell, even if condemnation authority was not formally used. If such intimidation exists, its extent is unclear, but legislation was introduced in the 105th Congress to restrict FWS land acquisitions without specific congressional approval. Ultimately, a provision was added in 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.” This or a similar provision has been incorporated in subsequent appropriations acts. Because the Migratory Bird Conservation Fund and the Southern Nevada Public Lands Management Act funds are not appropriated in annual appropriations acts, purchases from those funds are unaffected by such provisions.

⁷⁶ The dollars spent were not necessarily spent on those particular 68,014 acres, due to a lag between payments and transfers of title, completion of paperwork, and other factors.

Conservation Fund (LWCF, see “Federal Lands Financing,” above).⁷⁷ 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 FY2003 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 (\$25.1 million);⁷⁸
- import duties on arms and ammunition (\$18.5 million); and
- 70% of certain refuge entrance fees (\$0.15 million).

MBCF funds are permanently appropriated to the extent of these receipts and (after paying for engraving, printing, and distribution of the stamps) may be used for the “location, ascertainment, and acquisition of suitable areas for migratory bird refuges ... and administrative costs incurred in the acquisition” of the new acquisitions whose number varies from year to year (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 FY2003, the MBCF received \$43.8 million from its permanently appropriated sources, and Congress appropriated \$72.9 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 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

⁷⁷ See “Land Ownership” in BLM chapter, above, for information on a funding source created under the Southern Nevada Public Land Management Act. Funds obtained under this act from federal land sales may be used to acquire environmentally sensitive lands in Nevada, among other purposes. Some of these Nevada acquisitions have become additions to the National Wildlife Refuge System.

⁷⁸ For information on how “duck stamp” money is spent, see the FWS website at [<http://duckstamps.fws.gov/Conservation/conservation.htm>], visited February 13, 2004.

similar activities on the one hand, and the purposes for which refuges were designated on the other.⁷⁹

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 two 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, 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 hunt⁸⁰ 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.

Over the past several years, the backlog of unmet maintenance needs of the federal land management agencies has been an issue of focus of the Congress and the Administration. Although there is debate over the amount of FWS money that should be spent on the deferred maintenance backlog versus the acquisition of additional federal lands, there is broad consensus that maintenance of the NWRS has lagged. The funding for deferred maintenance projects in the NWRS increased from \$48.1 million in FY2002 to \$66.5 million in FY2004. The maintenance backlog is expected to figure in the debate over appropriations in future years.

One refuge — the Arctic National Wildlife Refuge — remains locked in a decades-long controversy regarding proposals for energy development in the biologically and geologically rich northern part of this refuge. This complex issue is covered extensively in CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*, coordinated by M. Lynne Corn, and in CRS Issue Brief IB10111, *Arctic National Wildlife Refuge (ANWR): Controversies for the 108th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin.

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.

⁷⁹ U.S. General Accounting Office, *National Wildlife Refuges: Continuing Problems with Incompatible Uses Call for Bold Action*, GAO/RCED 89-196 (Washington, DC: GPO, Sept. 1989), 84 p.

⁸⁰ U.S. Dept. of the Interior, Fish and Wildlife Service, *2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* (Washington, DC: 2001). The survey is available on the FWS website at [<http://fa.r9.fws.gov/surveys/surveys.html>], visited Feb. 13, 2004. The number of hunters did not decline significantly from the previous surveys, but as a percent of the total U.S. population, there has been a general downward trend over approximately 30 years.

Endangered Species Act of 1973: Act of Dec. 28, 1973; P.L. 93-205, 87 Stat. 884. 16 U.S.C. 1531-1544.

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

Fish and Wildlife Coordination Act of 1934: Act of March 10, 1934; ch. 55, 48 Stat. 401. 16 U.S.C. §661-667e.

Migratory Bird Treaty Act of 1918: Act of July 13, 1918; ch. 128, 40 Stat. 755. 16 U.S.C. §703-712.

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. (A typical statute establishing a refuge.)

CRS Reports and Committee Prints⁸¹

CRS Report RL31278, *Arctic National Wildlife Refuge: Background and Issues*, M. Lynne Corn, coordinator.

CRS Issue Brief IB10111, *Arctic National Wildlife Refuge (ANWR): Controversies for the 108th Congress*, by M. Lynne Corn, Bernard A. Gelb, and Pamela Baldwin.

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

⁸¹ The most current copies of CRS products are available at [<http://www.crs.gov/>]. Also, for further information on the National Wildlife Refuge System, including on many of the programs and responsibilities addressed in this chapter, see the FWS website at [<http://www.fws.gov/>], visited February 13, 2004.

The National Park System⁸²

Perhaps the federal land category best known to the public is the National Park System. The National Park Service (NPS) currently manages 388 system units, including 56 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, scenic rivers and trails, and other designations. The system has grown to a total of 84.4 million acres — 79.0 million acres of federal land, 1.2 million acres of other public land, and 4.2 million acres of private 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. The NPS has the often contradictory mission of facilitating access and serving visitors while protecting and preserving the natural, historic, and cultural integrity 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.”⁸³ 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.”⁸⁴ 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.”⁸⁵

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.

⁸² This section was prepared by David Whiteman.

⁸³ 16 U.S.C. §21.

⁸⁴ 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.

⁸⁵ For more information on the establishment of Yellowstone National Park, see Aubrey L. Haines, *Yellowstone National Park: Its Exploration and Establishment* (Washington, DC: 1974), available on the NPS website at [http://www.cr.nps.gov/history/online_books/haines1/], visited Mar. 8, 2004.

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.”⁸⁶ 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. This “Organic Act” states that 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.”⁸⁷ 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.⁸⁸

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....”⁸⁹ In 1978, Congress amended that law to reassert the system-wide standard of protection for all areas administered by the NPS.⁹⁰

⁸⁶ 16 U.S.C. §431.

⁸⁷ 16 U.S.C. §1.

⁸⁸ For more information, see U.S. Dept. of the Interior, *History of the National Park Service*, available on the NPS website at [<http://www.cr.nps.gov/history/hisnps/NPSHistory.htm>], visited Mar. 8, 2004.

⁸⁹ National Park System General Authorities Act of 1970, P.L. 91-383; 16 U.S.C. §1a-1, §1c.

⁹⁰ Redwood National Park Expansion Act, P.L. 95-250; 16 U.S.C. §1a-1.

Organization and Management

The National Park Service manages the 388 units of 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, 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 potential additions to the system. In 2001, the Advisory Board issued a report with recommendations on the future of the National Park System.⁹¹

The individual park units are arranged in seven regional offices, each headed by a regional director. The NPS had traditionally operated with 10 regional offices but eliminated three, while also 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: (1) to conserve, preserve, protect, and interpret the natural, cultural, and historic resources of the nation for the public and (2) to provide for their enjoyment by the public. 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 (P.L. 94-429). 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.

⁹¹ *Rethinking the National Parks for the 21st Century*, National Park Service Advisory Board Report 2001, available on the NPS website at [<http://www.nps.gov/policy/futurereport.htm>], visited Mar. 8, 2004.

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 areas, and ensure congressional support for studies of possible additions.⁹² 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 these 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 converted into national parks by acts of Congress. 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.⁹³ President Clinton used his authority under the Antiquities Act 22 times to proclaim 19 new monuments and enlarge 3 others. Other agencies also manage some national monuments, with the BLM managing many of the 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 nonfederal lands within those boundaries. The major funding source for such land acquisition has been the Land and Water Conservation Fund, described above in the section entitled “Federal Lands Financing.” The Secretary is to include, in a report to Congress at least every three 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,

⁹² National Parks Omnibus Management Act of 1998, P.L. 105-391; 16 U.S.C. §1a-5.

⁹³ Congress rescinded these withdrawals and reestablished most of the lands as national monuments, national parks, or national preserves in ANILCA.

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” (16 U.S.C. §1a-7). The Secretary is to identify criteria to evaluate proposed boundary changes (16 U.S.C. §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)).

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 to acquire lands by exchange.⁹⁴ Finally, the Secretary cannot modify or revoke any withdrawal creating a national monument.⁹⁵ Thus, with minor exceptions, National Park System lands can be changed from that status or disposed of only by an act of Congress.

Issues

Striking a balance between appropriate public use of National Park System lands for recreation and protecting the integrity of park resources is a continuing challenge to the NPS and the congressional committees providing agency oversight. Motorized recreation in NPS units presents particular challenges, with debates over the economic and environmental impacts of, safety of, and level of access for such types of recreation and the adequacy of existing laws and regulations governing motorized use. Manufacturers and user groups fear that NPS limits would be economically damaging to communities and industries serving users, unfairly restrict access, and set a precedent for other federal land managers. Others, including environmentalists, fear that failure to adequately manage motorized use will damage resources and other park users, and increase pressure for additional forms of motorized access.

One focus of the motorized recreation debate is commercial air tours over NPS units. Currently, the NPS and the Federal Aviation Administration (FAA) are developing air tour management plans for park units to implement a law regulating commercial air tours over park units, and the FAA has proposed a rule providing safety standards for commercial air tours including over park units. Other issues relate to NPS regulation of the use of personal watercraft (PWC), such as jet skis, and snowmobiles in national parks. The NPS is developing regulations governing PWC for 16 park units to settle a successful lawsuit over unrestricted PWC use. Litigation and appeals continue over different versions of snowmobile regulations that would either restrict or allow snowmobile use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller Jr. Memorial Parkway.

⁹⁴ 16 U.S.C. §460l-9(c).

⁹⁵ 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, *Authority of a President to Modify or Eliminate a National Monument*, by Pamela Baldwin.)

Over the years, Congress has added new units to the Park System as well as expanded the management responsibilities of the NPS. These new obligations, together with increased numbers of visitors, have stretched the Park System's operational capabilities and contributed to a multibillion dollar backlog of deferred maintenance. While overall NPS appropriations have increased annually in recent years, they have not kept pace with operational and maintenance needs. Increased priorities on security and protection also have affected park funding. The NPS claims to be implementing President Bush's initiative, begun in FY2002, to eliminate a then-estimated \$4.9 billion maintenance backlog over five years; there is disagreement about whether the Administration is on track to eliminate the maintenance backlog. By the end of FY2004, the NPS expects to have completed a computerized inventory and assessment of every facility in the Park System, and by FY2006, estimated costs of repairing facilities and a list of maintenance priorities.

Congress authorized a Recreational Fee Demonstration Program to supplement NPS and other land management agency appropriations with higher entrance and recreation user fees (described above under "Federal Lands Financing"). There is controversy over whether to make the program permanent and if so in what form and for which agencies — for the NPS only, all four land management agencies currently participating in the program, or additional federal agencies (such as the federal water project agencies — the Bureau of Reclamation and the Corps of Engineers). The temporary program was initiated in the FY1996 Omnibus Consolidated Rescissions and Appropriations Act (P.L. 104-134, §315), and allows most of the higher fees charged by participating agencies to be retained at the sites where the money is collected, rather than returned to the U.S. Treasury. It continues to be tested by the agencies and has been extended in appropriations laws, most recently through December 2005 for fee collection to give the authorizing committees time to consider establishing a permanent program. Many citizens have objected to paying additional fees for previously free or low-cost recreation in the national forests, but have expressed few objections to higher fees for the National Park System. The Administration has asked Congress to make the program permanent for the four major federal land management agencies.

Over the last two decades, Congress has created two dozen National Heritage Areas (NHAs) to conserve, commemorate, and promote areas and their resources. There is disagreement over whether to enact generic legislation for the creation and management of NHAs, to continue allowing variety in their creation and operation, or to cease creating and funding these areas. For NHAs, the NPS assists communities in attaining the designation, and supports state and community efforts through seed money, recognition, and technical assistance. Proponents claim that heritage areas protect important resources and traditions; promote tourism and community revitalization; and help prevent new, and perhaps costly or inappropriate, additions to the Park System. Opponents fear that the heritage program is potentially costly and could be used to extend federal control over nonfederal lands.

Congressional leaders have at times packaged a large number of diverse park, public land, and recreation related bills into omnibus measures to expedite passage in the closing days of a Congress. Neither the 106th nor the 107th Congress enacted an omnibus parks bill. Because of the growing number of park and recreation related bills that have passed in one chamber or been reported by an authorizing committee,

some observers feel that prospects are favorable for development of an omnibus measure late in the 108th Congress.

Major Statutes⁹⁶

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

National Park Service General Authorities Act of 1970: Act of Aug. 18, 1970; P.L. 91-383, 84 Stat. 825. 16 U.S.C. §1a-1, §1c.

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.

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.

Recreational Fee Demonstration Program: §315 of the Interior and Related Agencies Appropriations Act, 1996, §101(c) of the Omnibus Consolidated Rescissions and Appropriations Act, 1996, Act of Apr. 26, 1996; P.L. 104-134, 110 Stat. 1321-200. 16 U.S.C. §460l — 6a Note.

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 Prints⁹⁷

CRS Issue Brief IB10126, *Heritage Areas: Background, Proposals, and Current Issues*, by Carol Hardy Vincent and David Whiteman.

CRS Issue Brief IB10093, *National Park Management and Recreation*, coordinated by Carol Hardy Vincent.

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

CRS Report RL31149, *Snowmobiles: Environmental Standards and Access to National Parks*, by James E. McCarthy.

⁹⁶ There are hundreds of laws establishing or modifying specific units of the National Park System, in addition to the few general laws listed here.

⁹⁷ The most current copies of CRS products are available at [<http://www.crs.gov/>]. Also, for further information on the National Park System, see the NPS website at [<http://www.nps.gov/>], visited Mar. 8, 2004.

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 System⁹⁸

The Wilderness Act defines wilderness as “undeveloped federal land ... without permanent improvements.” Further, wilderness generally consists of *federal* land that is primarily affected by the forces of nature, relatively untouched by human activity, and primarily valued for solitude and primitive recreation. 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 (the first and second Roadless Area Review and Evaluation, RARE and RARE II), 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

Wilderness areas generally are managed to protect and preserve their 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 existing livestock grazing and motorboat or airstrip uses be allowed to continue. In addition, Congress has included exceptions to the act’s management limitations in subsequent laws designating specific areas.

⁹⁸ This section was prepared by Ross W. Gorte.

The National Wilderness Preservation System contains more than 105 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%) are 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 states (the Atlantic Coast through the Great Plains, plus Hawaii). This is 8% of the federal land in other states, ranging from 0% in six states to 52% in Florida.

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 other 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 6 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.

Designation

The Wilderness Act reserves to Congress the authority to designate wilderness areas as part of the National Wilderness System. Congress has designated many particular wilderness study areas, in addition to the broader agency reviews required under the Wilderness Act and FLPMA. 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, four 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	57,522,408	5,753,448	33,079,611	18,689,349	0
Arizona	4,528,973	1,345,008	444,055	1,343,444	1,396,466
Arkansas	153,655	116,578	34,933	2,144	0
California	14,154,062	4,430,849	6,122,045	9,172	3,591,996
Colorado	3,345,091	3,142,035	60,466	3,066	139,524
Connecticut	0	0	0	0	0
Delaware	0	0	0	0	0
Florida	1,426,327	74,495	1,300,580	51,252	0
Georgia	485,484	114,537	8,840	362,107	0
Hawaii	155,590	0	155,590	0	0
Idaho	4,005,712	3,961,667	43,243	0	802
Illinois	32,782	28,732	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	18,097	18,097	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	249,219	91,891	132,018	25,310	0
Minnesota	815,952	809,772	0	6,180	0
Mississippi	6,046	6,046	0	0	0
Missouri	71,113	63,383	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	1,581,871	823,585	0	0	758,286
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	2,274,152	2,086,504	0	925	186,723
Pennsylvania	9,031	9,031	0	0	0
Rhode Island	0	0	0	0	0
South Carolina	60,681	16,671	15,010	29,000	0
South Dakota	77,570	13,426	64,144	0	0
Tennessee	66,349	66,349	0	0	0
Texas	85,333	38,483	46,850	0	0
Utah	800,614	772,894	0	0	27,720
Vermont	59,421	59,421	0	0	0
Virginia	177,214	97,635	79,579	0	0
Washington	4,317,133	2,569,391	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
Total	105,176,917	34,807,965	43,414,402	20,699,338	6,255,212

Sources: The sources for this table were generally the same as for **Table 2**, except NPS data are from their website at [<http://wilderness.nps.gov/maplocator.cfm>], visited February 24, 2004. Data in the table are updated by CRS to reflect laws enacted after the publication dates.

For the decade following the FS recommendations in 1979, Congress generally addressed possible wilderness designations for all FS lands within a state. Many statewide FS wilderness bills were introduced, but their enactment was held up in the early 1980s until a compromise over *release language*⁹⁹ broke the legislative stalemate. This compromise — which allowed but did not compel the FS to maintain wilderness attributes of released lands — 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. In an attempt to find a balance between development and protection, Congress has enacted general standards and prohibitions for wilderness protection (e.g., no motorized access), and general and specific exemptions to those standards and prohibitions (e.g., *continued* motorboat use where such use was occurring prior to the designation). Exceptions often reflect agreements for specific areas, but widespread compromise between development and preservation interests generally remains elusive.

Several current issues surround the possible protection of the remaining FS and BLM roadless areas. One issue focuses on BLM lands in Utah, but has national relevance. Central to the controversy is whether BLM may currently designate *wilderness study areas* (WSAs) — areas that are statutorily entitled to automatic and continuing protections. Section 603 of FLPMA required the BLM to review the wilderness potential of its lands, and, by 1991, to recommend areas to the President, who then could recommend areas to the Congress for possible inclusion in the National Wilderness Preservation System. In response, BLM first inventoried its lands to determine which lands met the basic size criteria and might have wilderness characteristics, then conducted a more in-depth review of these lands to determine which among them possessed wilderness characteristics. Lands found to have wilderness character were designated as WSAs and studied further. Many WSA lands were then recommended to Congress in the early 1990s for inclusion in the National Wilderness Preservation System. These wilderness recommendations are

⁹⁹ 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 RS21917, *Bureau of Land Management (BLM) Wilderness Review Issues*, by Ross W. Gorte.

still pending for Utah and many other western states. Approximately 1.9 million of 2.5 million acres of WSAs in Utah were recommended; some Utah wilderness bills before Congress have recommended more acreage, some less.

Section 603 also requires BLM to protect the wilderness characteristics of “such areas” until Congress directs otherwise. This *non-impairment* standard prevents most development, and BLM has applied it to all WSAs, including those that BLM did not recommend for wilderness designation. Therefore, whether BLM can designate new WSAs and whether the non-impairment standard can be applied to these or other lands are important issues both for those seeking to protect the lands and those seeking to develop them — either the automatic and continuing protections of the non-impairment standard apply, or protections may only be provided through the slower, less certain, and more changeable land use planning process under §202 of FLPMA.

Following debate over additional wilderness areas proposed in legislation, Secretary Babbitt in 1996 used the §201 FLPMA inventory authority to identify an additional 2.6 million acres in Utah as having wilderness qualities. Although the stated purpose of the inventory was only to ascertain which lands had wilderness characteristics and report on those, Utah filed suit alleging various flaws in this process, and alleging that the inventory was illegal, even under §201. The district court enjoined the inventory preliminarily, but the 10th Circuit remanded to the district court to dismiss (on various grounds) all but the claim that related to de facto wilderness management of the inventoried lands. (*Utah v. Babbitt* 137 F. 3d 1193 (10th Cir. 1998)). The Department of the Interior subsequently settled the case, and on September 29, 2003, issued new wilderness guidance (Instruction Memoranda No. 2003-274 and 2003-275). These directives apply to BLM lands nationwide, except for Alaska and certain categories of lands, and take the position that the §603 authority terminated in 1993, that BLM cannot administratively create more WSAs under §603 or other authority, and that the non-impairment standard cannot be applied to non-WSA lands. Rather, protective management of the remaining BLM roadless areas can occur only through the relevant land management plans. Others disagree with this interpretation, and the issues are currently in litigation. The importance of these issues is accentuated by the emphasis of the Bush Administration on energy development of the federal lands, and by the promulgation of new regulations on *disclaimers of interest* that may facilitate the validation of highway rights-of-ways in roadless areas, thereby disqualifying additional lands from further consideration.

Another Utah wilderness controversy has widespread implications for management of WSAs generally. A suit was filed to compel BLM to protect WSAs from impairment by increased off-road vehicle use. The Supreme Court ruled in *Norton v. Southern Utah Wilderness Alliance* that although the protection of WSAs was mandatory, it was a programmatic duty and not the type of discrete agency obligation that could be enforced under the APA. Also, the Court concluded that language contained in relevant FLPMA land use plans indicating that WSAs would be monitored constituted management goals that might be modified by agency priorities and available funding, and was not a basis for enforcement under the APA (5 U.S.C. §706(1)).

The management of the remaining FS roadless areas has also seen recent changes. FS roadless areas nationwide were administratively protected from most timber cutting and most roads under a Clinton Administration rule (66 Fed. Reg. 3244 (January 12, 2001)) that was subsequently enjoined, and would be replaced by a Bush Administration proposed rule (69 Fed. Reg. 42636 (July 16, 2004)). The proposed rule would provide interim management for the FS roadless areas and allow a period of time during which a state governor may petition for a special rule governing the management of roadless areas in a particular state. After this petition period, management of roadless areas would be governed by any special rules that are developed, or by the relevant forest plan.

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 Prints¹⁰⁰

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

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

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

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

CRS Report RS21290, *Wilderness Water Rights: Language in Laws from the 103rd Congress to Date*, by Pamela Baldwin and Ross Gorte.

¹⁰⁰ The most current copies of CRS products are available at [<http://www.crs.gov/>].

The National Wild and Scenic Rivers System¹⁰¹

Background

The National Wild and Scenic Rivers System was established in 1968 by the Wild and Scenic Rivers Act (P.L. 90-542, 16 U.S.C. §§1271-1287). 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). 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 106th and 107th Congresses added new designations to the system which now includes 163 river units with 11,302.9 miles in 38 states and Puerto Rico.¹⁰² (See **Table 6**.)

¹⁰¹ This section was prepared by Sandra L. Johnson.

¹⁰² U.S. Dept. of the Interior, National Park Service, *River Mileage Classifications for Components of the National Wild and Scenic Rivers System* (Washington, DC: Jan. 2002). Available on the NPS website at [<http://www.nps.gov/rivers/wildriverstable.html>], visited May 7, 2004.

Table 6. Mileage of Rivers Classified as Wild, Scenic, and Recreational, by State and Territory, 2003

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 ^a	0.00	15.60	79.00	94.60
Florida	32.65	7.85	8.60	49.10
Georgia ^a	39.80	2.50	14.60	56.90
Idaho ^a	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 ^a	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 ^a	0.00	76.00	126.00	202.00
New Hampshire	0.00	13.50	24.50	38.00
New Jersey ^a	0.00	119.90	146.80	266.70
New Mexico	90.75	20.10	10.00	120.85
New York ^a	0.00	25.10	50.30	75.40
North Carolina ^a	44.40	95.50	52.00	191.90
Ohio	0.00	136.90	76.00	212.90
Oregon ^a	635.65	381.40	798.05	1,815.10
Pennsylvania ^a	0.00	111.00	298.80	409.80
South Carolina ^a	39.80	2.50	14.60	56.90
South Dakota ^a	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 ^a	0.00	217.00	59.00	276.00
Wyoming	20.50	0.00	0.00	20.50
Puerto Rico	2.10	4.90	1.90	8.9
U.S. Total^b	5,350.60	2,457.20	3,495.10	11,302.90

Source: U.S. Dept. of the Interior, National Park Service. *River Mileage Classifications for Components of the National Wild and Scenic Rivers*, Washington, DC: Jan. 2002, available on the NPS website at [<http://www.nps.gov/rivers/wildriverstable.html>], visited May 7, 2004. Also, personal communication with John Haubert, Division of Park Planning and Special Studies, NPS, U.S. Dept. of the Interior, Washington, DC, on February 12, 2004.

- a. 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.
- b. 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, archaeologic, 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.”¹⁰³ 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 Prints¹⁰⁴

CRS Report RL30809, *The Wild and Scenic Rivers Act and Federal Water Rights*, by Pamela Baldwin.

¹⁰³ U.S. Dept. of the Interior, National Park Service, *Wild and Scenic Rivers and the Use of Eminent Domain* (Washington, DC: Nov. 1998). Available on the NPS website at [<http://www.nps.gov/rivers/publications/eminant-domain.pdf>], visited Feb. 13, 2004. 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.

¹⁰⁴ The most current copies of CRS products are available at [<http://www.crs.gov/>]. Also, for more information on the National Wild and Scenic Rivers System, see the NPS website at [<http://www.nps.gov/rivers/>], visited Feb. 13, 2004.

National Trails System¹⁰⁵

The National Trails System (NTS) was created in 1968 by the National Trails System Act (P.L. 90-543, 16 U.S.C. §§1241-1251). 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 20th 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.¹⁰⁶

As population expanded in the 1950s, the nation sought better opportunities to enjoy the outdoors.¹⁰⁷ In 1958, Congress established 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.¹⁰⁸ 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 paths.”¹⁰⁹ Just three

¹⁰⁵ This section was prepared by Sandra L. Johnson.

¹⁰⁶ Donald D. Jackson, “The Long Way ‘Round,” *Wilderness*, vol. 51, no. 181 (summer, 1998): 19-20.

¹⁰⁷ Outdoor Recreation Resources Review Commission, *Outdoor Recreation for America* (Washington, DC: Jan. 1962), p. 34.

¹⁰⁸ *Ibid.*, p. 1.

¹⁰⁹ *Congressional Record*, vol. 111 (Feb. 8, 1965): 2087.

years later, Congress heeded the message by enacting the National Trail System Act.¹¹⁰

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, ME, to Springer Mountain, GA. 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 23 national trails (8 scenic trails and 15 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 1,100 rails-to-trails¹¹¹ conversions.

Organization and Management

Each of the 23 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 16 of the 23 trails, the FS administers 4 trails, the BLM administers 1 trail, and the NPS and BLM jointly administer 2 NHTs. 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 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. Examples include the Mormon Trail and the Oregon Pioneer Trail.

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

¹¹⁰ The act is available on the NPS website at [<http://www.nps.gov/ncrc/programs/nts/legislation.html>], visited Feb.13, 2004.

¹¹¹ 16 U.S.C. §1247(d); 49 C.F.R. §1152.29.

nonfederal 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. 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, WI, which connects Timm's Hill to the Ice Age NST, and 2) the 186-mile Anvik Connector, AK, 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 trails 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 completed feasibility studies requested by Congress since 1968, 5 NSTs and 15 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 nonfederal 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.

Issues¹¹²

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. The Federal Surface Transportation Program is a major funding source for trails, shared use paths, and related projects in the United States. Prior to 1991, highway funds were to be used only for highway projects and selected bicycle transportation facilities. With the passage of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, P.L. 102-240) and subsequently reauthorized as the Transportation Equity Act for the 21st Century (TEA-21, P.L. 105-178), many trail projects paths became eligible to

¹¹² For information on current legislation related to trails, see CRS Issue Brief IB10093, *National Park Management and Recreation*, coordinated by Carol Hardy Vincent.

receive federal highway program funds. Program funding increases are being considered in the reauthorization of TEA-21.¹¹³

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).”¹¹⁴ 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 whether the federal government should be given authority to acquire land for existing trails, and the extent of any such authority. Between 1978 and 1986, Congress authorized nine 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 to authorize federal land management agencies to purchase land from willing sellers was considered, but not enacted, by the 106th and 107th Congresses. Willing seller legislation has been reintroduced in the 108th 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 Statutes¹¹⁵

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

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.

¹¹³ ISTEA also established the National Recreational Trails Funding Program, renamed the Recreational Trails Program (RTP) under TEA-21. RTP is not part of the National Trails System. Rather, 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. RTP 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.

¹¹⁴ Steven Elkinton, “How the National Trails System Has Changed Since 1968,” *Pathways Across America*, (Spring 1998): 10.

¹¹⁵ For further information on the National Trails System, see the NPS website at [<http://www.nps.gov/nrcr/programs/nts/index.html>], visited Feb. 13, 2004.

Appendix 1. Major Acronyms Used in This Report

ACEC:	Area of Critical Environmental Concern
ANILCA:	Alaska National Interest Lands Conservation Act
ANWR:	Alaska National Wildlife Refuge
BLM:	Bureau of Land Management
DOD:	Department of Defense
DOI:	Department of the Interior
EIS:	Environmental Impact Statement
FAA:	Federal Aviation Administration
FLPMA:	Federal Land Policy and Management Act of 1976
FS:	Forest Service
FWS:	Fish and Wildlife Service
ISTEA:	Intermodal Surface Transportation Efficiency Act of 1991
LWCF:	Land and Water Conservation Fund
MBCF:	Migratory Bird Conservation Fund
MUSYA:	Multiple-Use Sustained-Yield Act of 1960
NEPA:	National Environmental Policy Act of 1969
NFMA:	National Forest Management Act of 1976
NFS:	National Forest System
NHA:	National Heritage Area
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
ORRRC:	Outdoor Recreation Resources Review Commission
PILT:	Payments in Lieu of Taxes (Act and Program)
PRIA:	Public Rangelands Improvement Act of 1978
PWC:	Personal Watercraft
RPA:	Forest and Rangeland Renewable Resources Planning Act of 1974
RTP:	Recreational Trails Program
TEA-21:	Transportation Equity Act for the 21 st Century
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 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. Also, commonly used to mean all federal, state, and local government-owned land.

Rangeland: land with a plant cover primarily of grasses, forbs, 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 from general access 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.)