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Bureau of Land Management Wilderness Study Areas: In Brief

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SUMMARY

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Bureau of Land Management Wilderness Study Areas: In Brief

Congress enacted the Wilderness Act (P.L. 88-577, 16 U.S.C. §§1131 et seq.) in 1964, creating the National Wilderness Preservation System and reserving to Congress the authority to designate *wilderness* areas—areas of federal land managed to preserve their natural conditions. In 1976, through the Federal Land Policy and Management Act (FLPMA; P.L. 94-579, 43 U.S.C. §§1701-1787), Congress required the Bureau of Land Management (BLM), an agency within the Department of the Interior (DOI), to study the lands it manages for wilderness potential and make recommendations to Congress regarding their designation as wilderness. FLPMA also specified management criteria for the studied lands. The lands that BLM studied pursuant to this process—and some others designated under other authorities but managed similarly—are called *wilderness study areas* (WSAs). Congress has acted on many of BLM's recommendations regarding WSAs, either by designating lands as wilderness or by releasing lands from further wilderness consideration. Questions persist over the protection and management of the areas on which Congress has not acted, which some believe should be designated as wilderness and others believe should be available for development. Questions also persist about BLM management of lands with wilderness characteristics that have not been designated as WSAs.

This report describes the Wilderness Act and the FLPMA provisions relating to protection of lands with wilderness characteristics. The report then describes BLM's wilderness study process and designation of WSAs as required by FLPMA. It subsequently examines issues related to management and designation of BLM lands with wilderness characteristics that have not been designated as WSAs. The report concludes with WSA statistics and a discussion of selected issues for Congress.

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Introduction

Congress enacted the Wilderness Act in 1964,[1] creating the National Wilderness Preservation System and reserving to Congress the authority to designate *wilderness* areas—areas of federal land managed to preserve their natural conditions. In 1976, through the Federal Land Policy and Management Act (FLPMA),[2] Congress required the Bureau of Land Management (BLM), an agency within the Department of the Interior (DOI), to study the lands it manages for wilderness potential and make recommendations to Congress regarding these lands. FLPMA also specified management criteria for the studied lands. These, along with a handful of other BLM lands designated for the study and protection of wilderness characteristics and not yet acted on by Congress, are known as *wilderness study areas* (WSAs; for more specific information on the lands included in this term, see "Bureau of Land Management Wilderness Study Areas"). Congress has acted on many of BLM's recommendations, either by designating WSAs as wilderness or by releasing them from further wilderness consideration. Questions persist over the protection and management of the WSAs on which Congress has not acted, particularly those areas that some people believe should be designated as wilderness and others contend should be available for development. Questions also persist about BLM management of lands with wilderness characteristics that have not been designated as WSAs.

This report describes the Wilderness Act and the FLPMA provisions relating to protection of lands with wilderness characteristics. The report then describes BLM's wilderness study process and designation of WSAs as required by FLPMA, as well as issues related to management and designation of other BLM lands with wilderness characteristics. The report concludes with WSA statistics and a discussion of issues for Congress.

The Wilderness Act[3]

The Wilderness Act created the National Wilderness Preservation System. As of October 13, 2022, there were 803 wilderness areas in the system, totaling approximately 112 million acres, in 44 states and Puerto Rico.[4] Four federal agencies—the BLM, National Park Service, and Fish and Wildlife Service in DOI and the Forest Service in the Department of Agriculture—manage designated wilderness. Approximately 52% of designated wilderness is in Alaska. California, the state with the second-largest amount of wilderness acreage, has approximately 14%. The remaining states account for approximately 34% of wilderness acreage.[5]

The Wilderness Act defines *wilderness* as an area where "the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."[6] The act goes on to define wilderness as

[1] Wilderness Act, P.L. 88-577, 16 U.S.C. §§1131 et seq.

[2] Federal Land Policy and Management Act (FLPMA), P.L. 94-579, 43 U.S.C. §§1701-1787.

[3] For more information about the Wilderness Act, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Anne A. Riddle and Katie Hoover.

[4] Wilderness.net, *Wilderness Statistics Reports: Acreage by State*, 2022, at https://www.wilderness.net/NWPS, as of October 13, 2022.

[5] Ibid.

[6] Wilderness Act §2, 16 U.S.C. §1131(c).

> an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.[7]

This description of wilderness is frequently considered to define *wilderness character* or *wilderness characteristics*—the essential attributes of wilderness that are the focus of wilderness management under the Wilderness Act.[8] Some key words from this definition, such as "untrammeled," "undeveloped," and others, have been formalized within wilderness management direction adopted by the federal land management agencies.[9] Wilderness characteristics have been an important component of reviews for potential wilderness designation. These attributes can serve as guidelines for determining which areas should or should not be designated wilderness, but they do not limit what areas of federal land Congress may designate.

Agencies manage wilderness to preserve its wilderness character.[10] The Wilderness Act generally prohibits motorized and mechanized access, commercial activity, roads, structures, and installations in wilderness areas.[11] The act provides numerous exceptions to prohibited activities, and subsequent wilderness statutes have included exceptions to the general prohibitions or allowed nonconforming uses to continue. Thus, wilderness areas vary in size, character, permitted activities, and management, among other aspects.

Bureau of Land Management Wilderness Study Areas

Almost all WSAs have been designated by BLM under varying provisions of FLPMA, which authorized BLM to study the lands it manages for potential wilderness designation. [12] The specific

[7] Wilderness Act §2, 16 U.S.C. §1131(c).

[8] Multiple sections of the Wilderness Act specify that wilderness is to be managed to preserve "wilderness character" (e.g., 16 U.S.C. §1131(a), 16 U.S.C. §1133(b)), among other management criteria (16 U.S.C. §1133(c)). However, the Wilderness Act does not define *wilderness character*. Agencies that manage wilderness have relied on the description of *wilderness* at 16 U.S.C. §1131(c) to define *wilderness character*, though some agencies have included other criteria or have not clearly defined in writing their interpretation of what constitutes wilderness character. For agency definitions, see Bureau of Land Management (BLM) Manual 6340, *Management of Designated Wilderness Areas*; National Park Service (NPS) Management Policy 6, "Wilderness Preservation and Management;" and Fish and Wildlife Service (FWS) Policy 610, "Wilderness Stewardship." CRS was not able to locate a definition of *wilderness character* in Forest Service (FS) policy or regulation. For more information on wilderness character, see CRS Report RL31447, *Wilderness: Overview, Management, and Statistics*, by Anne A. Riddle and Katie Hoover.

[9] See description and agency-specific direction at Wilderness.net, "Wilderness Characteristics Toolbox," at https://wilderness.net/practitioners/toolboxes/wilderness-character/default.php.

[10] Wilderness Act §2, 16 U.S.C. §1131(c); Wilderness Act §4, 16 U.S.C. §1133(b).

[11] Wilderness Act §4, 16 U.S.C. §1133(c-d).

[12] Congress also directed the FWS, FS, and NPS to study specified agency lands for wilderness potential through the Wilderness Act. 16 U.S.C. §1132(b-c). Congress has designated some lands as "wilderness study areas" on lands managed by agencies other than BLM. These wilderness study areas have no relationship to FLPMA or BLM WSAs designated pursuant to FLPMA. For more information, contact the author.

provision of FLPMA authorizing the designation affects the management of the designated land. The pertinent FLPMA provisions are described below.

Section 603

Most WSAs were designated under FLPMA Section 603. In FLPMA Section 603, Congress directed the Secretary of the Interior to review roadless areas spanning over 5,000 acres on which BLM identified wilderness characteristics through statutorily required land and resource inventories (see "Sections 201 and 202"). FLPMA required the Secretary to report to the President on the suitability or "nonsuitability" of the reviewed areas for designation as wilderness. The report was due by no later than 15 years after the October 21, 1976, enactment of FLPMA (i.e., by October 21, 1991).[13] Section 603 also required the President to make a recommendation to Congress regarding wilderness designation of each area within two years of receiving BLM's review (i.e., by October 21, 1993).[14] All BLM areas studied under the Section 603 review are designated as WSAs, referred to in this report as *Section 603 WSAs*.

Section 603 of FLPMA provided certain protections for Section 603 WSAs until Congress acted on the President's recommendations.[15] Specifically, during "the period of review and ... until Congress has determined otherwise," FLPMA required the Secretary of the Interior to manage Section 603 WSAs "in a manner so as not to impair the suitability of such areas for preservation as wilderness."[16] FLPMA required the Secretary to take any action required to prevent "unnecessary or undue degradation" of the lands and their resources or to protect the environment in the reviewed areas. This provision, often called the *non-impairment standard,* continues to govern Section 603 WSA management (see "Protection of Section 603 Wilderness Study Areas").

The purpose of the non-impairment standard was to preserve Congress's prerogative to designate an area as wilderness, if desired. BLM must protect Section 603 WSAs under the non-impairment standard unless Congress enacts legislation that releases BLM from that responsibility, either by designating the areas as wilderness or by releasing them from study. BLM must manage *all* lands designated as Section 603 WSAs (i.e., all lands studied for their potential wilderness suitability) under the non-impairment standard, whether BLM recommended these lands for wilderness designation or not.

WSAs also have been designated by other means, including under FLPMA Sections 201 and 202, described below.

Sections 201 and 202

FLPMA Sections 201 and 202 provide general direction for BLM land and resource inventory and planning.[17] Specifically, Section 201 required BLM to inventory all public lands and their resources and values on a continuing basis.[18] Section 202 required BLM to develop, maintain, and revise land use plans for public lands; these plans set the framework for management, use, and

[13] FLPMA §603, 43 U.S.C. §1782(a).

[14] FLPMA §603, 43 U.S.C. §1782(b).

[15] FLPMA §603, 43 U.S.C. §1782(c).

[16] FLPMA §603, 43 U.S.C. §1782(c).

[17] FLPMA §201-202, 43 U.S.C. §§1711-1712.

[18] FLPMA §201, 43 U.S.C. §1711.

protection of the plan area.[19] BLM may issue management decisions to implement land use plans, and such decisions may include limiting or excluding one or more of the major uses of BLM lands. Management decisions can be changed or terminated.[20]

BLM has interpreted FLPMA Sections 201 and 202 as authorizing inventories and protective management of areas with wilderness characteristics by restricting certain uses within those areas.[21] As such, BLM has used Section 202 to designate *Section 202 WSAs,* although whether such a use is authorized currently is disputed, as discussed below under "Can BLM Designate More WSAs?" Inventories conducted under Section 201 also served as the basis for the wilderness studies required under Section 603 of FLPMA (see "Section 603").

BLM Wilderness Review

Most WSAs—both Section 603 and Section 202 WSAs—were designated as part of the wilderness review conducted in accordance with Section 603 of FLPMA (hereinafter referred to as the *Section 603 review*).

To conduct the Section 603 review, BLM used the Section 201 inventory of public lands to identify roadless areas of at least 5,000 acres with wilderness characteristics. The agency used the description in the Wilderness Act (see "The Wilderness Act") to define wilderness characteristics—for example, areas that were undeveloped, were natural, or contained opportunities for solitude and primitive or unconfined recreation.[22] BLM's Section 603 review excluded Alaska, though a wilderness review was later conducted there under the Alaska National Interest Lands Conservation Act (ANILCA).[23] The Section 603 review also excluded certain lands in western Oregon that were revested to the United States upon violation of grant terms, called the *O&C lands.*[24] The Section 603 review included areas

Other Ways to Designate a Wilderness Study Area

Although the Bureau of Land Management (BLM) designated most wilderness study areas (WSAs) through the inventory and review process required by Section 603 of the Federal Land Policy and Management Act (FLPMA; P.L. 94-579, 43 U.S.C. §§1701-1787), WSAs have been designated in other ways. Examples include the following:

Instant Study Areas. Prior to the passage of FLPMA in 1976, BLM had designated some lands as *natural* or *primitive* under other laws. FLPMA required that BLM report its recommendations regarding wilderness designation of these areas to the President no later than July 1, 1980. BLM referred to these 55 areas as *instant study areas*. These areas are considered WSAs and are managed according to the non-impairment standard.

Legislative WSAs. A few WSAs have been designated through legislation. These WSAs are managed according to any provisions specified in the designating legislation.

ANILCA. Much like FLPMA, the Alaska National Interest Lands Conservation Act (ANILCA; P.L. 96–487 §1004, 16 U.S.C. §3144) required BLM to review the suitability or nonsuitability of BLM lands in Alaska for wilderness designation and to manage the studied lands so as to protect their wilderness potential.

[19] FLPMA §202; 43 U.S.C. §1712.

[20] FLPMA §202, 43 U.S.C. §1712(e)(1).

[21] BLM, "Interim Management Policy and Guidelines for Lands Under Wilderness Review," 44 *Federal Register* 72014-72034, December 12, 1979.

[22] BLM's policies and procedures for this inventory were described in the BLM wilderness inventory handbook, published in 1978. BLM, *Wilderness Inventory Handbook: Policy, Direction, Procedures, and Guidance for Conducting Wilderness Inventory on the Public Lands,* 1978. Hereinafter, *BLM Wilderness Inventory Handbook 1978.*

[23] Alaska National Interest Lands Conservation Act, P.L. 96–487 §1004, 16 U.S.C. §3144.

[24] Alaska was excluded from FLPMA Section 603 (see 43 U.S.C. §1784). Also, BLM's inventory under Section 603

BLM proposed to protect under the authorities of Section 202. Often—but not always—these were areas that did not fit the criteria identified in Section 603, such as areas that were smaller than the 5,000 acres required by Section 603 and were adjacent to Section 603 areas.[25]

Following the initial inventory of lands, BLM designated some of the inventoried areas as WSAs to study for suitability or nonsuitability for wilderness designation. BLM completed this process in 1980, identifying 919 WSAs comprising 23 million acres.[26] BLM subsequently reviewed those WSAs to determine which were suitable for wilderness designation. The agency analyzed the WSAs' values, resources, and uses and compared the benefits of wilderness and nonwilderness management for the areas. BLM developed preliminary wilderness suitability and nonsuitability recommendations and published the results in state-specific wilderness study reports.[27]

In 1991, then-Interior Secretary Manuel Lujan recommended to President George H. W. Bush that 9.6 million acres of WSAs—about 42% of total WSA acres—be designated as wilderness.[28] Presidents George H. W. Bush and William Clinton subsequently submitted wilderness recommendations to Congress.[29] BLM also sent Section 202 WSAs designated in the wilderness study reports directly to Congress. The Section 202 and 603 areas transmitted to Congress in 1993 included, but were not limited to, almost all WSAs in existence today.

Can BLM Designate More WSAs?

The Section 603 authority directed BLM to conduct a specific wilderness review, under specified time constraints (see "Section 603"). In contrast, the Section 201 and 202 authorities have no time component. Thus, some have questioned whether BLM can designate *more* WSAs, particularly under the Section 202 authority. Some aspects of this question have been addressed by the actions of past presidential Administrations and subsequent legal action; others remain unresolved.

In 1996, under the Clinton Administration, BLM used the inventory authority in FLPMA Section 201 to inventory 5.7 million acres in Utah, ultimately finding that 2.6 million acres had wilderness characteristics.[30] Although BLM did not designate the inventoried lands as a WSA, the agency managed the area under the non-impairment standard.[31] In 2003, the George W. Bush

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excluded the Oregon and California Grant Lands (O&C Lands). For more information on O&C lands, see CRS Report R42951, *The Oregon and California Railroad Lands (O&C Lands): Issues for Congress*, by Katie Hoover.

[25] Agency documentation does not always specify why particular areas were studied under Section 202 rather than Section 603, even if the areas were eligible under Section 603. For example, in BLM, *Colorado Wilderness Areas Study Report,* vol. 1, BLM specified that the Platte River Contiguous WSA, Ant Hills WSA, Chew Winter Camp WSA, Peterson Draw WSA, and Vale of Tears WSA were studied under FLPMA Section 202. However, Peterson Draw and Vale of Tears were over 5,000 acres in size, making it somewhat unclear why they were inventoried under Section 202 rather than Section 603.

[26] BLM, "Wilderness Inventory Results for Public Lands Under Administration of the Bureau of Land Management in the Contiguous United States," 45 *Federal Register* 75, 574-75, 608, November 14, 1980.

[27] BLM wilderness study reports are available at https://www.blm.gov/learn/blm-library/agency-publications/select-state-publications/state-wilderness-documents.

[28] As examples, for Utah, see transmittal letter enclosed in BLM, *Utah Statewide Wilderness Study Report,* vol. 1, October 1991. For California, see Letter from Manuel Lujan, Secretary of the Interior, to President George H.W. Bush, President, June 21, 1991, included in House Document 102-121.

[29] FLPMA required that the President submit recommendations to Congress by October 21, 1993.

[30] BLM, *Utah Wilderness Inventory 1999,* 1999. Relatedly, proposals in the 103rd Congress sought to designate varying amounts of existing BLM WSAs as wilderness. For instance, the 5.7 million acres BLM inventoried in Utah were proposed for wilderness designation in H.R. 1500.

[31] See BLM, *Interim Management Policy for Lands Under Wilderness Review,* H-85501-1, July 5, 1995; and Utah v.

Administration settled litigation with the State of Utah, in which the state alleged that the inventory violated FLPMA Section 603.[32] In the settlement, BLM acknowledged that the Section 603 authority to inventory, study, and recommend WSAs to Congress expired on October 21, 1993, and that, as a result, "there is no general legal authority for the BLM to designate lands as WSAs for management *pursuant to the non-impairment standard prescribed by Congress* for Section 603 WSAs" (emphasis added).[33] BLM further specified that the agency would not designate any new WSAs or manage any additional lands under the non-impairment standard.[34] However, according to BLM, FLPMA land use plan decisions may "accord special management protection for special values" through the land use planning process.[35]

However, the settlement agreement did not affect BLM's authority to include wilderness characteristics in its Section 201 inventories, nor did it prohibit the agency from protecting lands with wilderness characteristics under Section 202's land use planning process.[36] Thus, BLM may inventory and protect lands with wilderness characteristics by using standards and means *other* than the Section 603 authority. For example, following the settlement, BLM policy gave several options for protecting lands with wilderness characteristics through land use plan decisions, such as designating lands as open, closed, or limited to off-highway vehicles or adding protective terms to permits, leases, and other land use authorizations.[37]

BLM policy today specifies that, when lands with wilderness characteristics are present, BLM will examine options for managing these lands and determine the most appropriate land use allocations for them. Under FLPMA, BLM has full discretion in how to manage such lands. Thus, considering wilderness characteristics in the land use planning process may result in a range of outcomes, including not protecting wilderness characteristics, minimizing impacts to wilderness characteristics through management restrictions, and others.

The Wild Lands Policy

BLM's policies for protecting lands with wilderness characteristics after the settlement with Utah primarily contemplated plan-level actions. However, BLM also attempted to use the Section 201 and 202 authorities to systematically protect lands with wilderness characteristics on a national scale. The resulting policy, known as the Wild Lands Policy, was controversial and was not implemented due to political pressure, including congressional action.

On December 22, 2010, then-DOI Secretary Ken Salazar issued Order No. 3310, known as the Wild Lands Policy, which addressed how BLM would manage lands with wilderness characteristics.[38] The order specified that, under the authority of FLPMA Section 201, BLM would maintain an inventory of lands with wilderness characteristics outside WSAs and wildernesses. The order directed BLM to protect the wilderness characteristics of inventoried

Norton, No 96-CV-870 (D. Utah *Order approving settlement* April 14, 2003).

[32] See Utah v. Norton, No 96-CV-870 (D. Utah *Order approving settlement* April 14, 2003).

[33] BLM, *BLM Implementation of the Settlement of Utah v. Norton Regarding Wilderness Study*, Instruction Memorandum 2003-274, September 29, 2003. Hereinafter, *BLM IM 2003-274.*

[34] BLM, *Consideration of Wilderness Characteristics in Land Use Plans (Excluding Alaska),* Instruction Memorandum 2003-275, October 23, 2003. Hereinafter, *BLM IM 2003-275.*

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Secretary of the Interior, Order No. 3310, *Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management*, December 22, 2010.

lands when undertaking land use planning and when making project-level decisions by "avoiding impairment of such wilderness characteristics," unless BLM justified the impairment. If BLM determined that protecting wilderness characteristics was appropriate, the lands would be designated *wild lands* through land use planning.

The Wild Lands Policy was controversial. Some groups claimed the policy threatened economic development and harmed rural communities in affected states.[39] Some Members of Congress also criticized the policy, claiming it authorized administrative designation of wild lands as de facto wilderness, assuming a role otherwise reserved for Congress.[40] Further, appropriations legislation enacted for FY2011 included a provision to prevent FY2011 funds from being used to implement the order.[41] Appropriations laws enacted for subsequent fiscal years also barred funds from being used to implement the order.[42]

Citing the funding limitation, Secretary Salazar rescinded the order and stated that BLM would not designate any wild lands.[43] The Secretary specified that BLM would continue to account for wilderness values in Section 201 inventories, land use planning, and project-level decisions.

30x30

The Biden Administration's *30x30* policy piqued interest in the use of Section 202 to protect BLM lands. Specifically, Section 216 of E.O. 14008 specified that the Secretary of the Interior, in consultation with other relevant agencies, must submit a report to the National Climate Task Force recommending steps the United States should take to achieve the goal of conserving at least 30% of "our nation's lands and waters" by 2030 (leading to the colloquial term *30x30* for the policy).[44] Some stakeholders, including Members of Congress, conservation groups, tribal governments, and others, have called on the Biden Administration to use the authority of FLPMA Section 202 to protect more BLM lands.[45] These calls to action vary: for example, some encourage BLM to use Section 202 to protect lands as part of specific local planning efforts or projects, while others encourage BLM to adopt broader, regional- or national-scale policies.[46] Some calls to action are nonspecific as to their mode of action—calling for "protection" in broad

[39] For example, see MSNBC News, "'Wild Lands' Policy Reversed After GOP Pressure," June 1, 2011.

[40] For example, see U.S. Congress, House Committee on Natural Resources, *Impact of the Administration's Wild Lands Order on Jobs and Economic Growth*, 112th Cong., 1st sess., March 1, 2011.

[41] Department of Defense and Full-Year Continuing Appropriations Act, P.L. 112-10, Division B, §1769.

[42] For example, see FY2012: P.L. 112-74, §125; FY2014: P.L. 113-76, Division G, Title I, §124; FY2015: P.L. 113-235, Division F, Title I, §115; and FY2016: P.L. 114-113 Division G, Title I, §112.

[43] Memorandum from Secretary, Department of the Interior, to Director, Bureau of Land Management, *Wilderness Policy*, June 1, 2011.

[44] The concept referred to as *30x30* derives from a peer-reviewed scientific journal article that advocated for protecting 30% of lands and waters by 2030 to "avoid catastrophic climate change, conserve species, and secure essential ecosystem services." Eric Dinerstein et al., "A Global Deal for Nature: Guiding Principles, Milestones, and Targets," *Science Advances*, vol. 5, no. 4 (April 2019).

[45] For example, see letter from Richard Durbin, Senator, et al. to Debra Haaland, Secretary of the Interior, January 21, 2022; The Wilderness Society, "Now Is the Time for Bold Conservation Action by the Bureau of Land Management," September 19, 2022; Ángel Peña, "Land, Latinos, and FLPMA: We Demand Protections for Wilderness Study Areas," GreenLatinos, May 11, 2021; and Resolution of the Navajo Utah Commission of the Navajo Nation Council, *Supporting Wilderness Study Designations Pursuant to Federal Land Policy and Management Act §202 to Comply with President Biden's Climate Crisis Executive Order*, NUCMAY-849-21, May 11, 2021.

[46] For example, see Letter from Diana DeGette, Representative, to Greg Larson, Bureau of Land Management—Upper Colorado River District, August 10, 2022; and Letter from Alex Padilla, Senator, and Jared Huffman, Representative, to Dereck Wilson, District Manager, Bureau of Land Management Northern California District, June 29, 2022.

terms—whereas others are specific, such as those requesting the Biden Administration use Section 202 to designate more WSAs.

The 30x30 policy is controversial. Some opponents claim the policy will inhibit economic development or infringe on private property rights.[47] It is unclear if the Biden Administration plans to use FLPMA Section 202 to protect lands with wilderness characteristics.

Protection of Section 603 Wilderness Study Areas

BLM manages Section 603 WSAs to not impair their suitability for preservation as wilderness—the *non-impairment standard*. BLM is required to maintain WSAs' suitability for preservation as wilderness pending congressional action on those areas. This requirement applies to all WSAs, regardless of whether the WSA was recommended as suitable for permanent protection as wilderness. BLM policy specifies that BLM will protect the wilderness characteristics of all WSAs in the same or better condition than they were on October 21, 1976, until Congress determines whether to designate the areas as wilderness.[48] If wilderness characteristics have improved since 1976 for a particular WSA, BLM will not allow activities that would deteriorate the improved conditions.

BLM uses the following detailed criteria to determine if a proposed new use or facility meets the non-impairment standard.[49] A use or facility in a WSA must fulfill both criteria.

- *Temporary*: The use or facility is needed for a defined period and would be terminated and removed prior to or upon wilderness designation. Repeated short-term use does not fulfill this definition.
- *No New Surface Disturbances:* The use or facility does not create any new disruptions of the area's rock, soil, or vegetation that would necessitate restoration for the site to appear and function as it did prior to the disturbance. Although they may cause surface disturbances, certain activities allowed in designated wilderness, such as hiking and grazing, are acceptable in WSAs.

Management to the non-impairment standard does not mean the lands will be managed as though they had already been designated as wilderness.[50] In particular, some uses that could not take place in wilderness may be permitted in WSAs. For example, motorized vehicles are prohibited in wilderness, but in many cases, motorized vehicles may be used on established "primitive" routes in WSAs. However, establishing a new route for motorized vehicles in a WSA likely would not be permissible, as it would be surface disturbing and may not be temporary.

FLPMA Section 603 prescribed limited exceptions to the non-impairment standard by authorizing some grandfathered uses, such certain mining and grazing uses.[51] FLPMA directed BLM to regulate those uses on WSAs to avoid "unnecessary or undue degradation" of lands and resources. In addition, BLM has specified some exceptions to the non-impairment standard in

[47] For example, see Office of Governor of Nebraska Pete Ricketts, "Taking Action to Stop 30x30," August 2, 2021; and Office of Senator Kevin Cramer, "Speaking Against Biden Administration's 30x30 Land Grab Agenda at Lincoln Summit," press release, April 22, 2022. In the 117th Congress, several bills have been introduced in opposition to Section 216 of E.O. 14008, including S. 1682 and H.R. 3014.

[48] BLM Manual 6330, Management of Wilderness Study Areas, p.1-6. Hereinafter, *BLM Manual 6330.*

[49] *BLM Manual 6330*, p.1-10.

[50] Ibid.

[51] 43 U.S.C. §1782(c). For more information on the term "appropriation" as it relates to uses of federal resources, see

WSA management policies, such as emergency and reclamation activities, activities to enhance wilderness values, and activities to ensure public safety.[52]

Designation and Release of Wilderness Study Areas

Congress frequently considers legislation pertaining to WSAs. Some measures seek to designate WSAs as wilderness or other federal land designations.[53] Other measures seek to *release* WSAs—to specify that a WSA has been adequately studied and is no longer subject to the requirements of FLPMA Section 603.[54] Management of released WSAs is determined by the relevant land use plan in effect for the area. Most frequently, legislation pertaining to WSAs is limited in scale to a geographic region (i.e., a county or state). Occasionally, Congress has considered legislation addressing WSAs more broadly. For example, the Wilderness and Roadless Area Release Act of 2011 would have released certain BLM WSAs—those that Congress did not designate as wilderness and those that BLM identified as not suitable for wilderness designation—from the non-impairment requirement of FLPMA Section 603, among other purposes.[55]

Wilderness Study Area Statistics

As of 2020, there were 491 WSAs totaling approximately 11.6 million acres (see **Table 1**). The majority (83%) of WSAs were designated through the Section 603 process, with most of the remainder designated through BLM's planning process (Section 202). In 2020, there were two WSAs created by Congress, and one WSA designated under ANILCA.

Table 1. Wilderness Study Areas in 2020, by Authorization

Authority	Number	Total Acres
FLPMA Section 603	409	10,778,786
FLPMA Section 202	79	557,846
Public Law[a]	2	20,000
ANILCA	1	260,000
Total	**491**	**11,616,632**

Source: Congressional Research Service (CRS), from Bureau of Land Management (BLM), "National Landscape Conservation System: Wilderness Study Areas," accessed September 13, 2022, current as of September 2020.

Notes: ANILCA = Alaska National Interest Lands Conservation Act (P.L. 96–487 §1004, 16 U.S.C. §3144); FLPMA = Federal Land Policy and Management Act (P.L. 94-579, 43 U.S.C. §§1701-1787).

a. These two wilderness study areas were designated by P.L. 103-433 §105 and P.L. 100-225 §501(b).

BLM lands are concentrated in the West. WSAs exist in 12 western states: Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming (see **Table 2**). Nevada, Oregon, and Utah have the greatest WSA acreage, with over 2.5 million acres each. Washington has the least, at 5,554 acres.

[52] *BLM Manual 6330.*

[53] For more information, see CRS Report R41610, *Wilderness: Issues and Legislation*, by Anne A. Riddle, Katie Hoover, and Sandra L. Johnson.

[54] For example, S. 1750 in the 117th Congress would designate specified WSA acres in Wyoming as wilderness, a motorized recreation area, and a National Conservation Area and would release other specified WSA acres.

[55] Wilderness and Roadless Area Release Act of 2011, H.R. 1581/S. 1087, 112th Congress.

Table 2. Wilderness Study Area Acreage, by State

State	Number of WSAs	Total Acres
AK	1	260,000
AZ	2	63,930
CA	59	503,539
CO	53	546,969
ID	40	544,619
MT	35	435,084
NM	48	725,006
NV	60	2,516,855
OR	87	2,645,103
UT	77	2,795,574
WA	1	5,554
WY	42	574,401
Total	**491**[a]	**11,616,634**

Source: CRS, from BLM, "National Landscape Conservation System: Wilderness Study Areas," accessed September 13, 2022, current as of September 2020.

a. Wilderness study areas (WSAs) located in more than one state are included in the number of WSAs for each state but are counted once for the total number of WSAs. Thus, the column total is less than the sum of the column figures.

Issues for Congress

Stakeholders continue to debate several issues regarding management of BLM lands with wilderness characteristics. The appropriate treatment of the Section 603 WSAs—whether and where they should be designated as wilderness, and at what scale—continues to be a point of contention. In recent decades, debate regarding BLM management of lands with wilderness characteristics other than WSAs has emerged and has been a focus of congressional, media, and other stakeholder attention.

Treatment of Existing Wilderness Study Areas

FLPMA Section 603 was intended to preserve WSAs' characteristics until Congress could exercise its prerogative to designate the areas as wilderness, if desired. Congress has acted to designate some Section 603 WSAs as wilderness or to release them from study, but decisions on many WSAs remain pending. Each Congress typically acts legislatively on some WSAs, either to release them or to protect them under other designations (e.g., as wilderness, among others). Congressional debates regarding such legislation typically revolve around the location, current and proposed uses, and other characteristics of the WSAs in question.

An issue for Congress is whether to undertake action on Section 603 WSAs as a whole. Some assert that it was not Congress's intention to protect these lands in perpetuity and that WSAs' de

facto status as wilderness has inappropriately restricted other land uses.[56] Others contend that WSAs should be permanently protected, although the means of that protection is not always specified.[57] Should Congress seek to act systematically on Section 603 WSAs, options include the following:

- **Treat All Section 603 WSAs the Same Way.** For example, Congress could designate all Section 603 WSAs as wilderness (or another designation) or release all WSAs into multiple-use management.
- **Develop Criteria to Release or Designate WSAs.** Congress could develop criteria to designate and/or release lands, such as designating as wilderness and/or releasing lands in accordance with BLM's initial wilderness recommendations.
- **Address Management of WSAs.** Congress could address prohibited or permitted management actions in WSAs or funding for management of activities in WSAs.

The impacts of any congressional action on all WSA lands and resources would depend on what specific designation or management Congress chose.

Management of BLM Lands with Wilderness Characteristics

Another potential issue for Congress is BLM's broader management of lands that have wilderness characteristics but are not currently designated as WSAs. BLM currently has "full discretion" to manage lands with wilderness characteristics, including not protecting those characteristics, and generally makes such management decisions at the scale of individual projects or land use plans. The generality of the authorities of FLPMA Sections 201 and 202 also may allow BLM to approach management of such lands differently in the future, as was contemplated under the Wild Lands policy. Should Congress seek to more directly control management of BLM lands with wilderness characteristics, options include the following:

- **Introduce Legislation Regarding the Inventory, Management, and/or Designation of BLM Lands with Wilderness Characteristics**. For example, Congress could specify prohibited or permitted management actions in lands with wilderness characteristics. Congress also could designate lands as any federal land designation desired, specify what branch of government may designate lands, and/or create designation criteria. Congress could do so by introducing new legislation, amend existing legislation, or providing direction to the agency (e.g., through report language).
- **Address BLM's Authority to Manage Lands with Wilderness Characteristics.** The legislative options discussed above would not supersede BLM's broad authority to manage its lands and resources, for example, by issuing policies regarding areas not covered by any enacted legislation. Congress could enact legislation specifying BLM's authorities to issue regulations or policies related to lands with wilderness characteristics (e.g., by amending

[56] For example, see Jen Sieve-Hicks, "Bill Would Resolve Management Practices for Lands Stuck in Limbo," *Buffalo Bulletin,* July 7, 2021; and Office of Congresswoman Liz Cheney, "Congresswoman Cheney Introduces Bill to Implement County Commissioners' Requests and Release Wilderness Study Areas in Big Horn, Lincoln, and Sweetwater Counties," press release, September 27, 2018.

[57] For example, see Scott Braden, "Wilderness Study Areas Need Fierce Advocates to Stay Wild," *Daily Sentinel,* April 1, 2018; or Wild Montana, "Poll: Huge Majority Wants to Protect Public Lands," May 3, 2022.

- existing authorities such as FLPMA). The effects of such legislation could impact BLM's ability to manage other lands and resources.
- **Address Other Issues.** Congress could address related issues, including funding for activities in lands with wilderness characteristics or administration of BLM policies, for example.
- **Conduct Oversight.** For example, Congress could direct BLM to report on the extent, condition, and/or management of WSAs or lands with wilderness characteristics.

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