
The Department of the Interior's Role in National Emergencies

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The Department of the Interior (DOI) has one of the most diverse missions of all cabinet agencies in the United States. Within DOI, the Minerals Management Service (MMS) collects royalties from oil and gas production on federal lands and regulates drilling platforms and production from the Outer Continental Shelf. The Bureau of Reclamation (BOR) operates dams to provide flood control, irrigation, power, and recreation. Oversight of state programs regulating surface mining is provided by the Office of Surface Mining Reclamation and Enforcement (OSMRE). Lands held in trust for American Indians are managed by the Bureau of Indian Affairs, and the Office of Territorial and International Affairs provides oversight for the territories of the United States, such as Guam and Saipan. The National Park Service (NPS) provides for recreation and preserves scenic, historic, and cultural values. The U.S. Geological Survey provides information from its extensive network of earthquake and seismic monitoring stations, and other sources, to help others manage, develop, and protect the nation's water, energy, mineral, land, and biological resources, and minimize or mitigate the effects of natural and human-induced hazards. The Bureau of Land Management (BLM) manages federal lands for a diverse set of values including resource extraction, preservation of historic and scenic sites, recreation, and wildlife conservation. Finally, the United States Fish and Wildlife Service (FWS) manages the National Wildlife Refuge System and enforces federal wildlife laws across the United States. All told, DOI manages approximately 25 percent of the nation's surface estate.

Given that DOI manages such a wide variety of lands, and facilities ranging from oil wells and pipelines to dams, power plants, and roads are located on federal lands, one can envision numerous types of terrorist acts and other man-made emergencies on DOI-managed federal lands. There have been a number of articles in the press since September 11, 2001 about the possible disruptions that terrorism could have on industry. The same types of disruptions could occur on the federal lands.

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DOI has the authority to require users of federal lands and resources to take measures to prevent terrorist attacks and restore lands and facilities after terrorist attacks. DOI also has the authority to take action itself to protect federal lands, prevent terrorist attacks, conduct rescues, and rehabilitate federal lands after a terrorist attack. DOI can have a major role in assisting with law enforcement, rescue, and rehabilitation of lands and resources after a terrorist attack. Many of the natural resources managed by DOI can be used by the nation in a time of war or in certain other situations. Where DOI does not have independent statutory authority to respond to a terrorist act or other emergency situation, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42, U.S.C. §§ 5121 *et seq.*, allows DOI to respond if the President declares an emergency. This article discusses the authorities DOI can use in preventing and responding to terrorist attacks and natural disasters, either on or off federal lands.

Federal Onshore Land Management

BLM is responsible for 264 million acres of federal lands, or approximately one-eighth of the land in the United States, primarily in the western states. BLM manages an additional 300 million acres of subsurface estate where some or all of the minerals were reserved by the United States when the surface estate was patented into private ownership. The public lands managed by BLM are "multiple use" lands. Thus, they are used for many purposes including grazing, recreation, conservation, oil and gas production, mineral extraction, and right-of-way corridors. Some 83 million acres of federal lands are managed by NPS. In addition, FWS manages 93 million acres of federal lands in the National Wildlife Refuge System providing refuges for migratory birds and other wildlife and recreation. BLM, NPS and FWS each has authority to conduct emergency operations on lands it manages, as well as some emergency operations on nearby lands.

In the event of a plane crash, explosion, or other emergency on the federal lands, BLM can assist local governments and other agencies with law enforcement and search-and-rescue operations for persons lost, injured, or killed on the federal lands. 43 U.S.C. § 1742. NPS and FWS also have authority to provide assistance to people visiting the lands they manage in case of

emergencies. 16 U.S.C. §§ 12, 668dd(k). The authority of FWS is quite extensive; it can temporarily suspend, allow, or initiate any action within the national wildlife refuge system to protect the health and safety of the public or any fish and wildlife population. 16 U.S.C. § 668dd(k). This authority is more extensive than other agency authorities because it specifically allows the FWS to initiate actions itself, such as a restoration activity that BLM and NPS may not have the explicit authority to do. In an emergency, BLM, NPS, and FWS all have authority to close areas they manage to prevent harm to persons or resources; for example, to restrict access to areas threatened by fire, to keep persons away from dangerous logging operations, or for security reasons. 43 U.S.C. § 1742; 16 U.S.C. §§ 3, 668dd(k). As an example, NPS closed the Washington Monument to visitors after the September 11, 2001 terrorist attacks for security reasons.

Under the Mineral Leasing Act, 30 U.S.C. §§ 181-242, and the Federal Land Policy Management Act (FLPMA), 43 U.S.C. §§ 1701-1748, BLM regulates mining, drilling, and oil and gas exploration on public lands, and the reclamation and restoration of the lands after completion of mining and drilling. 43 U.S.C. § 1732(b); 30 U.S.C. § 189; 43 C.F.R. §§ 3162.3-1, 3162.5-1 and 3162.5-3. This authority gives BLM the ability to regulate the process of cleanup, restoration, and rebuilding in the event oil and gas production activities on the public lands are disrupted. For example, BLM could require operators to take increased security measures in the face of terrorist threats by imposing additional requirements in permits. BLM could also impose requirements for cleanup and restoration to pre-disaster standards, before allowing activities to resume. In cases where economics force abandonment of a project, BLM could still force cleanup and restoration to pre-disaster standards. These authorities to force the cleanup and restoration activities could be quite expensive and could become controversial.

If a national emergency causes an energy shortage, the United States has various options to obtain energy supplies from federal lands. A significant amount of domestic oil and gas is produced from federal onshore lands, and the United States has the option to take royalties owed to it under its leases with oil companies in the form of oil or gas produced from the property rather than as a monetary payment. 30 U.S.C. § 192. The United States can then sell the oil or gas to other government agencies at market value. *Id.* The Mineral Leasing Act also allows the United States to purchase

any of the products of mines that are on the public lands, if these products are needed by the Army or Navy, at a reasonable price fixed by the President. 30 U.S.C. § 193a. This would allow the United States to acquire supplies of coal or other minerals if needed in case of war, although the statute is not limited to use in wartime. Finally, another law allows the federal or state governments to take and use common varieties of gravel, sand, and other nonmineral materials from the public lands for public purposes, without payment to the United States. 30 U.S.C. § 601.

In addition to sources of energy, the public lands provide crucial transportation corridors in many areas of the country. Although it does not regulate federal highways, BLM designates and provides right-of-way corridors over the public lands for pipelines, electric transmission lines, and communication lines and facilities, and approves activities on these right-of-way corridors. 43 U.S.C. §§ 1761-71. FLPMA directs BLM to use rights-of-way for multiple projects as much as possible to minimize the number of rights-of-way and adverse impacts on the environment. 43 U.S.C. § 1763. While most long-distance pipelines and transmission facilities cross a combination of federal, state, tribal, or privately owned lands, BLM often has jurisdiction over a significant portion of the right-of-way corridors in the western part of the country. BLM considers national security and public safety, along with all state and local land use policies, environmental quality, economic efficiency, and good engineering and technological practices when it specifies right-of-way boundaries and issues right-of-way permits. 30 U.S.C. § 185; 43 U.S.C. §§ 1763, 1765; 43 C.F.R. Subparts 2800 and 2880. Terms and conditions included in right-of-way permits require the operators to take whatever actions are necessary to abate a problem, such as a spill or explosion, whether the problem is caused by a natural disaster or as a result of terrorism, vandalism, or other man-made causes. For example, recently BLM required the Alyeska Pipeline Service Company, which manages the Alaska Pipeline, to abate an oil spill caused by an apparent act of vandalism—a bullet punctured the pipeline. Alyeska discovered the spill during a helicopter flight to monitor the safety of the pipeline. ANCHORAGE DAILY NEWS, Oct. 5, 2001.

In addition to imposing terms and conditions in right-of-way permits that require the operator to abate problems, BLM has authority to immediately suspend oil and gas transmission activities on a right-of-way for any reason to protect public health and safety. 30 U.S.C.

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§ 185(o). Presumably, BLM would exercise this authority only if there were a direct threat of terrorism to the facilities.

If the Department of Defense (DOD) has a need for additional lands to conduct training of troops, it can request that BLM withdraw lands it manages from the operation of the public land laws which allow persons to use the lands for mining, grazing or other purposes. 43 U.S.C. §§ 155-158; U.S.C. § 1714; 43 C.F.R. Part 2300. Withdrawals of more than 5,000 acres for DOD purposes must be approved by an act of Congress, except in a time of war or national emergency declared by the President. 43 U.S.C. §§ 155-158; 43 C.F.R. § 2300.0-3(a)(3). When BLM lands are withdrawn in this manner, the persons holding grazing permits will be paid for their losses from the cancellation of their grazing permits, at a rate determined by the Secretary. 43 U.S.C. § 315q.

Fire suppression is a major concern on the federal lands. The 2000 fire season was one of the worst in fifty years, burning more than 8 million acres of DOI and National Forest lands. BLM, NPS, BIA and FWS each have the authority to provide fire protection on the federal lands it manages, 43 U.S.C. § 1732(b); 16 U.S.C. §§ 1b(1), 668d(k), and DOI has a major program to restore healthy landscapes and reduce the number and severity of catastrophic wildfires. In addition, in many areas BLM, NPS, BIA and FWS have entered into mutual aid agreements with other government bodies or agencies for fire suppression purposes. 42 U.S.C. § 1856a-1. Under a mutual aid agreement, the federal agency and the other government entity will respond to fires on each other's lands. These mutual aid

agreements are important to BLM, NPS, BIA, FWS and the other government entities because they allow the most efficient use of firefighting equipment and crews over large geographic areas. Even without a mutual aid agreement, BLM, NPS, BIA and FWS can also provide emergency fire suppression on nearby lands to preserve life and property, if the assistance is in the best interest of the United States. 16 U.S.C. §§ 1b(1), 668d(k); 42 U.S.C. § 1856b. The ability of DOI agencies to respond to fires in other jurisdictions, and the use of mutual aid agreements, could help in fighting fire caused by a natural disaster or terrorist act.

In addition to statutes that allow DOI's land management agencies to consider national security and other emergency concerns in carrying out their missions or in providing assistance to other jurisdictions, the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370d, has a provision for emergencies. 40 C.F.R. § 1506.11. NEPA typically requires an environ-

mental analysis before federal agencies engage in a major federal action. However, the Council on Environmental Quality (CEQ) regulations provide a process for emergencies. In an emergency, an agency can consult with CEQ to make alternative arrangements that may allow it to take action before completing an environmental analysis. BLM has used this authority several times, typically when it needed to build a road to provide access to a forest or range fire on BLM lands.

Each of DOI's land managing agencies has authority to enforce laws with respect to its lands. BLM has broad authority to prevent "unnecessary or undue degradation" on the public lands, 43 U.S.C. § 1732(b), and its employees can take actions to protect public lands and resources. 43 U.S.C. § 1733(a). BLM has law enforcement authority to protect public lands and resources, 43 U.S.C. § 1733, as well as to investigate and prevent the setting of fires on the public lands, 43 C.F.R. Subpart 9212. Federal criminal statutes give BLM authority to prevent crimes and to investigate crimes

on the public lands. 18 U.S.C. §§ 1361, 1362, 1366, 1367, 1864. For example, it is a crime to willfully or maliciously injure or destroy, or attempt to injure or destroy, any energy facility—such as oil and gas wells and equipment, a gas processing plant or gas pipeline—on the federal lands. BLM has law enforcement agents with the authority to enforce these laws. 43 U.S.C. § 1733.

Similarly, NPS and FWS each has the authority to enforce federal laws on its respective lands. BLM, NPS and FWS also have the ability to enter into law enforcement agreements with other federal agencies

or bureaus and other governmental entities to share law enforcement duties. 43 U.S.C. § 1733(c). For example, BLM often enters into law enforcement agreements with counties, so that the counties can enforce federal laws on BLM lands.

One law enforcement tool is the ability to close federal lands to various uses. BLM, NPS and FWS each can close lands it manages, provided that the closure is reasonably related to the perceived threat or cause of the closure. Each of these agencies frequently exercises this ability, closing particular areas to hiking or other activities during construction or logging operations, if there is a danger of fire, or flood or other natural events, for example. Another potential use of this authority would be for NPS to restrict the public from areas during presidential visits. In each case, the extent of the closure must be related to the threat; a large-scale closure for law enforcement reasons would be scrutinized closely if challenged in court.

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DOI has approximately 4,300 highly trained law enforcement agents, and rangers who are trained and certified as law enforcement agents. DOI personnel interdict drug smugglers crossing the public lands, enforce laws against smuggling of illegal wildlife and wildlife parts, conduct crowd control in downtown Washington, D.C. during events such as the World Bank demonstrations in April 2000, and investigate crimes that occur on federal lands. The law enforcement personnel in each of DOI's bureaus are fully trained as federal law enforcement agents, and many also have special training in search and rescue, crowd control, and other skills. When deputized as federal marshals, these agents are available to assist in law enforcement outside of DOI's jurisdiction. The 2002 Winter Olympics provide an example of such a use of DOI law enforcement agents. During the Winter Olympics, a number of NPS law enforcement rangers with wilderness survival skills will be skiing in the high mountain areas around the alpine events, providing security for contestants and visitors.

Outer Continental Shelf

The Outer Continental Shelf provides 30 percent of the natural gas and 25 percent of the oil consumed by the United States. The Outer Continental Shelf consists of submerged lands that lie beyond the borders of the submerged lands controlled by coastal states—typically three miles. It extends to or beyond the Exclusive Economic Zone of 200 miles. 43 U.S.C.

§§ 1301(a), 1331(a). MMS is a major player in providing these energy supplies to the American public, due to its mandate to manage the exploration and development of oil and gas resources on the Outer Continental Shelf. MMS seeks to ensure that all exploration and development activities are conducted safely, and with appropriate environmental protection and impact mitigation. MMS conducts lease sales and approves leases, issues drilling permits, approves drilling plans, monitors the production process, collects royalties, and ensures that production structures are decommissioned at the end of the production process.

The Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1301-1356, first enacted in 1953, is the core of the Secretary's, acting through MMS, regulatory authority. That statute gives the Secretary specific authorities in a time of national emergency. During a war or if the President declares a national emergency, the Secretary, upon recommendation of the Secretary of Defense, can

require suspension of oil and gas operations and can restrict Outer Continental Shelf areas from exploration and production, regardless of the contractual provisions between MMS and the production companies. 43 U.S.C. § 1341(c); 30 C.F.R. § 250.173(b). Leases must contain or are construed to contain a just compensation clause. *Id.* While it might prove unpopular with the affected production company, this ability could be important if security concerns warrant suspension of operations to protect public safety or to prevent property damage from acts of war or terrorism.

In addition, the United States has the right of first refusal to purchase all products produced from the Outer Continental Shelf, for which it must pay market rates. 43 U.S.C. § 1341(b). While MMS has not exercised this right to date, it could provide needed energy supplies if a war were to interrupt the supply of imported oil and gas. Similar to its rights with respect to public lands, the United States can also elect to take royalties on production from Outer Continental Shelf lands "in kind" in the form of oil or gas rather than in money, and then can transfer the products so obtained to the Secretary of Defense or General Services Administration, for use by the federal government. 43 U.S.C. § 1353(a). MMS is currently collecting

some in-kind royalties to fill the Strategic Petroleum Reserve. MMS also may sell the products from the in-kind royalties to small refiners who do not have access to adequate oil or gas supplies at reasonable prices. 30 C.F.R. § 208.4. National interest and defense is a primary consideration in any decision by MMS to sell the in-kind products to small refiners, and the agency's regulations set out a process to notify the public and interested refiners. 30 C.F.R. Part 208. Any uranium or other materials found on the Outer Continental Shelf that are used for production of fissionable material are reserved by the Outer Continental Shelf Lands Act for use by the United States. 43 U.S.C. § 1341(e). The

ability to purchase oil and gas products produced from the Outer Continental Shelf and to take royalty production in-kind could be a significant help to the United States if there is an energy shortage or energy supplies are cut off in a time of war. The Secretary also has a panoply of enforcement mechanisms—criminal and civil—against "any person . . . who violates any regulation . . . designed to protect health, safety, or the environment or conserve natural resources." 43 U.S.C. § 1350(b), (c). Each day of violation constitutes a separate violation warranting the potential fine of

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\$10,000 or imprisonment for not more than ten years, or both. *Id.* at (c).

Water and Power

BOR manages power plants, canals, and more than 600 dams and reservoirs in the seventeen western United States. These facilities provide irrigation water and flood control. In fact, BOR is the second largest producer of hydroelectric power in the country, with fifty-eight power plants providing 40 billion kilowatt-hours annually. Disruptions at facilities managed by BOR, whether due to structural problems, natural causes such as storms or earthquakes, or terrorist attacks, could result in severe flooding, crop failure, or power outages.

Congress has provided several means of protecting operations at dams and power facilities, and providing for public safety. First, beginning in 1948, Congress authorized the use of the fund reserved for construction of irrigation projects for use in correcting “unusual” or emergency conditions threatening or causing an interruption in water or electrical power service. 43 U.S.C. §§ 502-503. Emergency conditions for which these funds are available would include natural disasters and terrorist-caused fires, floods, or other facility failures. For the construction funds to be used for emergency conditions, Congress must specifically authorize the expenditure, something that it has done a number of times.

In addition, BOR has a Dam Safety Office that monitors dams that could pose a significant hazard, and BOR can take measures necessary to modify the construction of dams to ensure the safety of the dams. The Dam Safety Office has an extensive program to notify jurisdictions that could be potentially impacted in an emergency. This program provides early warning to the populations at risk. 43 U.S.C. §§ 506-509. However, BOR does not have authority to provide public evacuation services, and therefore must rely on other government entities in the affected jurisdictions to actually notify the public and provide evacuation services. Finally, BOR has the authority to close facilities to the public if the structural integrity of the facility is threatened. 16 U.S.C. § 4601-33(a)(2)(B). BOR is currently developing regulations to allow temporary closure to the public of dams, power plants, and other facilities managed by it, if needed to protect public safety. As a result of the security concerns after the September 11, 2001 terrorist attacks, the

Secretary of the Interior closed Hoover Dam to the highly popular public tours. Since then, DOI has attempted to achieve the appropriate balance between security and tourism. On December 12, 2001, Hoover Dam reopened to abbreviated public tours that provide limited access into the dam and power plant.

Regulation of Activities on Nonfederal Lands

DOI has regulatory authority over a number of actions that government or private parties can take both on and off the federal lands. Some of these statutes create exceptions for national security purposes or in the cases of emergencies. The Endangered Species Act (ESA) is one example of a statute that contains some exceptions to its regulatory commands for national security or emergency purposes. The ESA prohibits the take of species that are listed as threatened or endangered, on or off the federal lands. 16 U.S.C. § 1538(a)(1)(B). It also requires all federal agencies to

coordinate with FWS (or the National Marine Fisheries Service for certain species) before taking actions on federal lands, or issuing permits for activities on federal lands, if the proposed activities are likely to jeopardize the continued existence of any threatened or endangered species. 16 U.S.C. § 1536(a)(2).

The ESA established a committee to review applications by federal agencies for exemptions from the prohibition on jeopardizing an endangered or threatened species. 16 U.S.C. § 1536(e). The Endangered Species Committee is composed of the Secretaries of Agriculture, Army, and the Interior, the chairman of the Council on Economic Advisors, the administrator of the Environmental Protection Agency, the administrator of the National Oceanic and

Atmospheric Administration, and a member from each affected state, appointed by the President. 16 U.S.C. § 1636(e)(3). The ESA authorizes the committee to grant an exemption if there are no reasonable and prudent alternatives to the proposed federal activity, the benefits of the activity clearly outweigh the benefits of other courses of action that would better conserve the species, the activity is in the public interest, the activity is of regional or national significance, and the applicant agency has followed all procedures in applying for the exemption. 16 U.S.C. § 1536(h).

If the President has declared a major disaster, the President rather than the committee can determine that

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an exemption from the prohibition on jeopardizing an endangered or threatened species is necessary for a federal activity proposed to replace or repair a public facility to its pre-disaster condition. To find that an exemption is needed, the President must determine that repair or replacement of the public facility is necessary to prevent recurrence of the natural disaster and to reduce the potential loss of human life, and that ordinary procedures cannot be followed. 16 U.S.C. § 1536(p). The ESA also directs the committee to grant an exemption for any proposed federal activity if the Secretary of Defense determines that the activity is necessary for national defense purposes. 16 U.S.C. § 1536(j). Although the committee has convened several times to consider exemptions, it has never considered an exemption for national defense purposes.

Another example of DOI's regulatory authority is the Surface Mining Control and Reclamation Act (SMCRA), administered by the OSMRE. 30 U.S.C. §§ 1201-1328. OSMRE has delegated the regulatory program to a number of states; these states enforce SMCRA with oversight from OSMRE. OSMRE has expansive authority to enter onto public, state or private lands, but only where there is an emergency related to adverse effects of coal mining. OSMRE can take actions to restore, abate, reclaim, control or prevent adverse effects of coal mining and protect public health and safety. This authority may give the Secretary broad powers to go upon any lands, public or private, to respond to an emergency, if a terrorist attack impacted coal mines or if the safety of mines were a factor in responding to a nearby terrorist attack. 30 U.S.C. § 1240; 30 C.F.R. Part 882.

The Stafford Act

The Stafford Act provides another avenue through which DOI responds to national emergencies, especially in providing assistance in the initial response to the disaster, and during the immediate aftermath. When the President makes a finding that federal assistance is needed to supplement state and local efforts in a major disaster, the Act authorizes FEMA to request the assistance of other federal agencies. 42 U.S.C. § 5121. FEMA can request assistance even from federal agencies that do not have specific statutory authority to provide the assistance. *Id.* FEMA, assisted by a number of other federal agencies, developed the Federal Response Plan that outlines the types of assistance provided by each agency and the procedures for coordination. This plan was updated in 1999. The Federal Response Plan can be found at www.fema.gov/r-n-r/frp/index.htm. The

Response Plan details the procedures FEMA will use to contact the agencies, contact points within the agencies, the various tasks to be performed by the agencies, and how agencies will coordinate these tasks.


The process set out in the Response Plan was called into play by the events of September 11, 2001. President Bush declared major disasters at the Pentagon and the World Trade Center within hours of the attacks, triggering FEMA's coordination activities. At FEMA's request, DOI responded by mobilizing three Incident Management Teams. These teams provided radio communication and incident management expertise to rescuers at the World Trade Center and at the Pentagon.

In addition to a formal role in the National Response Plan, DOI employees have a wide range of expertise that can be used by FEMA in an emergency. For instance, BOR personnel have expertise in public works and engineering, and scientists at the U.S.

Geological Survey have a wide variety of scientific expertise. BLM and MMS personnel have expertise in oil and gas operations, and MMS employees also have expertise that would be crucial in response and recovery to emergencies involving oil spills, explosions or accidents in harbors or on the ocean, especially if an oil spill is involved. As noted previously, the land management agencies have highly trained law enforcement agents who can be used to assist in situations where their special skills and training in wilderness survival and search and

rescue would be crucial. All of these personnel can be called upon in a national emergency.

Through the Stafford Act, DOI can provide a number of different, highly valuable services to the nation if the President declares an emergency, regardless of whether DOI has specific statutory authority to take action. If a plane crashes or there is an explosion or terrorist act in a remote area of the country, DOI's assistance through its rangers, law enforcement personnel, search and rescue and firefighting teams could be crucial. And even if the President does not declare an emergency, DOI has sufficient statutory authority to begin rescue operations on federal lands and nearby private lands.

As this article has shown, DOI's mission is extensive, including management of a quarter of the nation's surface, the Outer Continental Shelf, and actions of other parties on nonfederal lands. Along with these duties comes the responsibility to assist in the fight against terrorism. DOI is prepared to use the legal authorities granted to it and the expertise of its personnel to the maximum extent possible to provide rescue, recovery, and rehabilitation of lands and activities in the event of a terrorist action or natural disaster. 

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