



May 24, 2017

By Hand Delivery

Marci Todd  
Acting State Director  
U.S. Bureau of Land Management  
Nevada State Office  
1340 Financial Blvd.  
Reno, NV 89502

**Re: Protest of June 2017 Competitive Oil and Gas Lease Sale**

Dear Ms. Todd:

Pursuant to 43 C.F.R. § 3120.1-3, WildEarth Guardians hereby protests the Bureau of Land Management's ("BLM's") proposal to offer 106 publicly owned oil and gas lease parcels covering 195,653.94 acres of land in the Battle Mountain District Office of the State of Nevada for competitive sale on June 13, 2017. These protested lease parcels include the following, as identified by the BLM's in its Final June 2017 Oil and Gas Sale List:<sup>1</sup>

<b>Lease Serial Number<sup>2</sup></b>	<b>Acres</b>	<b>County</b>
NV-17-06-001	1876.98	Nye
NV-17-06-002	1201.38	Nye
NV-17-06-003	1644.43	Nye
NV-17-06-004	1898.00	Nye
NV-17-06-005	1725.00	Nye
NV-17-06-006	1910.00	Nye
NV-17-06-007	1920.00	Nye
NV-17-06-008	1549.00	Nye
NV-17-06-009	2372.00	Nye
NV-17-06-010	920.00	Nye
NV-17-06-011	2529.00	Nye
NV-17-06-012	2491.00	Nye

<sup>1</sup> This list is available on the BLM's website at [https://www.blm.gov/sites/blm.gov/files/uploads/NV\\_OG\\_20170614\\_BMDO\\_Parcel\\_List.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_20170614_BMDO_Parcel_List.pdf).

<sup>2</sup> The BLM's Notice of Competitive Lease Sale states that any protest must include the "specific serial number" of the lease being protested. Although it is unclear what "specific serial number" refers to, we presume that this is a reference to the lease numbers that are identified in the form of "NV-17-06-xxx" in the lease sale notice.

NV-17-06-013	2263.58	Nye
NV-17-06-014	2160.00	Nye
NV-17-06-015	1240.00	Nye
NV-17-06-016	1870.94	Nye
NV-17-06-017	1926.16	Nye
NV-17-06-018	1923.00	Nye
NV-17-06-019	1920.36	Nye
NV-17-06-020	1340.81	Nye
NV-17-06-021	1708.62	Nye
NV-17-06-022	2066.00	Nye
NV-17-06-023	2190.00	Nye
NV-17-06-024	2560.00	Nye
NV-17-06-025	1200.00	Nye
NV-17-06-026	1720.00	Nye
NV-17-06-027	1915.32	Lander
NV-17-06-028	1843.90	Lander
NV-17-06-029	440.00	Lander
NV-17-06-030	1914.90	Lander
NV-17-06-031	1915.38	Lander
NV-17-06-032	2541.02	Lander
NV-17-06-033	1934.76	Eureka
NV-17-06-034	2149.59	Eureka
NV-17-06-035	2560.00	Eureka
NV-17-06-036	2560.00	Eureka
NV-17-06-037	2247.34	Eureka
NV-17-06-038	2520.00	Eureka
NV-17-06-039	1920.00	Eureka
NV-17-06-040	1200.00	Eureka
NV-17-06-041	2560.00	Eureka
NV-17-06-042	1273.00	Eureka
NV-17-06-043	1280.00	Eureka
NV-17-06-044	1920.00	Eureka
NV-17-06-045	1913.00	Eureka
NV-17-06-046	1920.00	Eureka
NV-17-06-047	2560.00	Eureka
NV-17-06-048	1913.00	Eureka
NV-17-06-049	1280.00	Eureka
NV-17-06-050	1920.00	Eureka
NV-17-06-051	870.18	Eureka
NV-17-06-052	1761.35	Eureka
NV-17-06-053	1965.00	Eureka
NV-17-06-054	1952.00	Eureka
NV-17-06-055	1683.00	Eureka
NV-17-06-056	1966.00	Eureka

NV-17-06-057	1943.00	Eureka
NV-17-06-058	1925.00	Eureka
NV-17-06-059	1920.00	Eureka
NV-17-06-060	1920.00	Eureka
NV-17-06-061	1859.00	Eureka
NV-17-06-062	1280.00	Eureka
NV-17-06-063	1280.00	Eureka
NV-17-06-064	1280.00	Eureka
NV-17-06-065	1920.00	Eureka
NV-17-06-066	318.73	Eureka
NV-17-06-067	982.25	Eureka
NV-17-06-068	80.00	Eureka
NV-17-06-069	2458.30	Eureka
NV-17-06-070	2532.27	Eureka
NV-17-06-071	2551.00	Eureka
NV-17-06-072	2228.48	Eureka
NV-17-06-073	2135.40	Eureka
NV-17-06-074	2520.49	Eureka
NV-17-06-075	2418.00	Eureka
NV-17-06-076	2453.00	Eureka
NV-17-06-077	2365.68	Eureka
NV-17-06-078	2459.00	Eureka
NV-17-06-079	2475.00	Eureka
NV-17-06-080	1290.00	Eureka
NV-17-06-081	1286.00	Eureka
NV-17-06-082	2133.00	Eureka
NV-17-06-083	1190.47	Eureka
NV-17-06-084	2350.00	Eureka
NV-17-06-085	2280.00	Eureka
NV-17-06-086	2400.00	Eureka
NV-17-06-087	2560.00	Eureka
NV-17-06-088	1901.00	Eureka
NV-17-06-089	1283.00	Eureka
NV-17-06-090	1336.69	Eureka
NV-17-06-091	2219.22	Eureka
NV-17-06-092	2099.00	Eureka
NV-17-06-093	2154.00	Eureka
NV-17-06-094	1680.00	Eureka
NV-17-06-095	1025.94	Eureka
NV-17-06-096	1920.84	Eureka
NV-17-06-097	2190.00	Eureka
NV-17-06-098	1925.07	Eureka
NV-17-06-099	2506.82	Eureka
NV-17-06-100	1791.00	Eureka

NV-17-06-101	1922.96	Eureka
NV-17-06-102	1920.00	Eureka
NV-17-06-103	1251.08	Eureka
NV-17-06-104	610.00	Eureka
NV-17-06-105	1958.25	Eureka
NV-17-06-106	640.00	Nye

We protest the BLM’s proposal to offer all of the aforementioned oil and gas lease parcels for competitive sale on the following grounds:

1. The BLM’s proposed leasing runs afoul of the agency’s own statutory requirements for oil and gas leasing, which allow leasing only where there is known or believed to be oil and gas deposits. Here, by BLM’s own admission, most, if not all, of the proposed oil and gas lease parcels will not be developed if they are offered for sale, indicating there are no viable oil and gas reserves that would authorize leasing. At a minimum, the BLM appears to be proposing to lease lands where lessees do not intend to diligently develop, which is absolutely cause to withdraw most, if not all, parcels from the proposed sale.
2. The BLM inappropriately dismissed reasonable alternatives to address the fact that the proposed leasing is exceptionally speculative. Under the National Environmental Policy Act (“NEPA”), the agency was required to consider a range of reasonable alternatives to address significant issues. In spite of this, the BLM prepared an Environmental Assessment (“EA”) that purports to consider a range of actions, all of which would lead to virtually the same environmental impacts.
3. The BLM failed to adequately analyze and assess the climate implications of its proposed leasing in accordance with NEPA. The agency not only failed to address the impacts of similar oil and gas leasing occurring in neighboring states in the American West, the BLM inappropriately dismissed analyzing carbon costs of its leasing.

For the following reasons, the BLM has no legal basis to proceed with leasing the aforementioned parcels. Accordingly, we urge the agency to cancel its lease sale.

### **STATEMENT OF INTEREST**

WildEarth Guardians is a nonprofit environmental advocacy organization dedicated to protecting the wildlife, wild places, wild rivers, and health of the American West. WildEarth Guardians is headquartered in Santa Fe, New Mexico, but has offices and staff throughout the western United States. On behalf of our members, Guardians has an interest in ensuring the BLM fully protects lands, resources, and the public interest as it conveys the right for the oil and gas industry to develop publicly owned minerals. More specifically, Guardians has an interest in ensuring the BLM meaningfully and genuinely takes into account the climate implications of its oil and gas leasing decisions and objectively and robustly weighs the costs and benefits of authorizing the release of more greenhouse gas emissions that are known to contribute to global

warming. WildEarth Guardians submitted comments on the BLM’s proposed leasing on February 3, 2017.

The mailing address for WildEarth Guardians to which correspondence regarding this protest should be directed is as follows:

WildEarth Guardians  
 2590 Walnut St.  
 Denver, CO 80205

**STATEMENT OF REASONS**

WildEarth Guardians protests the BLM’s proposed oil and gas lease sale on the basis that moving forward to offer the 106 parcels for sale would violate the U.S. Mineral Leasing Act, 30 U.S.C. § 181, *et seq.*, and associated BLM oil and gas leasing regulations and directives, as well as violate NEPA and NEPA regulations promulgated by the Council on Environmental Quality (“CEQ”), 40 C.F.R. § 1500, *et seq.*

In support of the agency’s proposed leasing, the BLM prepared an EA (EA No. DOI-BLM-NV-B020-2017-0002-EA) and drafted a Finding of No Significant Impact (“FONSI”). As will be explained, this EA and FONSI fail to demonstrate that moving forward with the proposed leasing is legally acceptable.

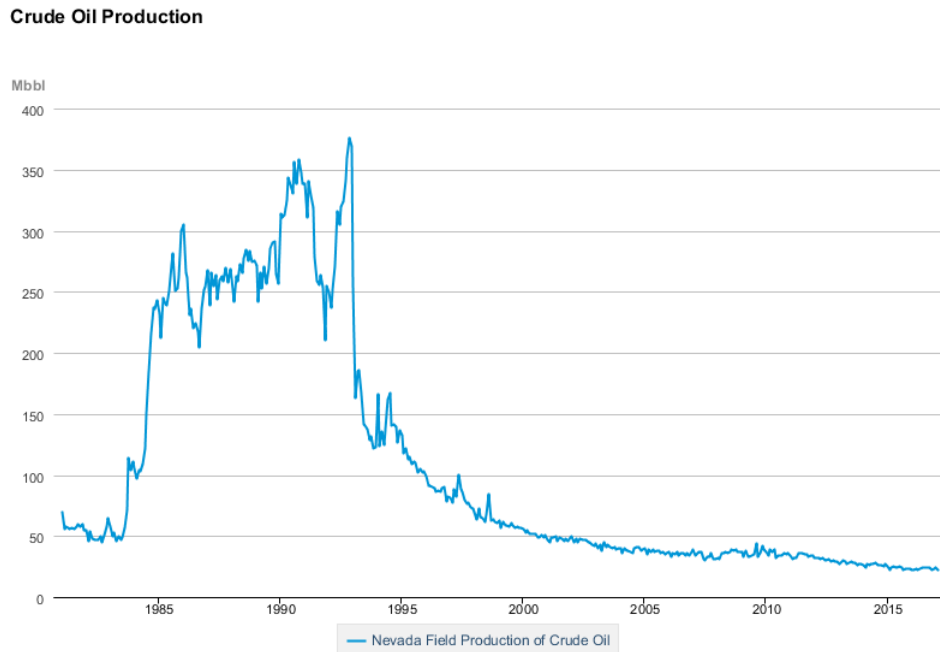
Before detailing our Statement of Reasons, it is critical to note that the BLM is moving forward with the proposed leasing despite every indication that most, if not all, of the leases will never be developed. Already, Nevada is extremely marginal for oil and gas production. While there are 627 leases covering 1,124,320 acres in the state only 37 of these leases—or 2.4% of all leased acreage—is actually producing oil and gas. On average nationally, 46% of all leased federal oil and gas acreage is in production, meaning Nevada is far, far below what is normal at the moment. *See* Table below.

**Oil and Gas Leases in Nevada**  
 (based on BLM oil and gas lease statistic data,  
<https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics>)

<b>Number of Leases</b>	<b>Leased Acres</b>	<b>Number of Producing Leases (%)</b>	<b>Acres in Production (%)</b>
627	1,124,320	37 (5.9%)	27,001 (2.4%)

This reflects the fact that Nevada’s oil and gas production is essentially a blip in terms of overall U.S. production. While the state produced upward of 350,000 barrels a month in the early 1990’s, its production has hovered below 50,000 barrels monthly since 2000. *See* Chart

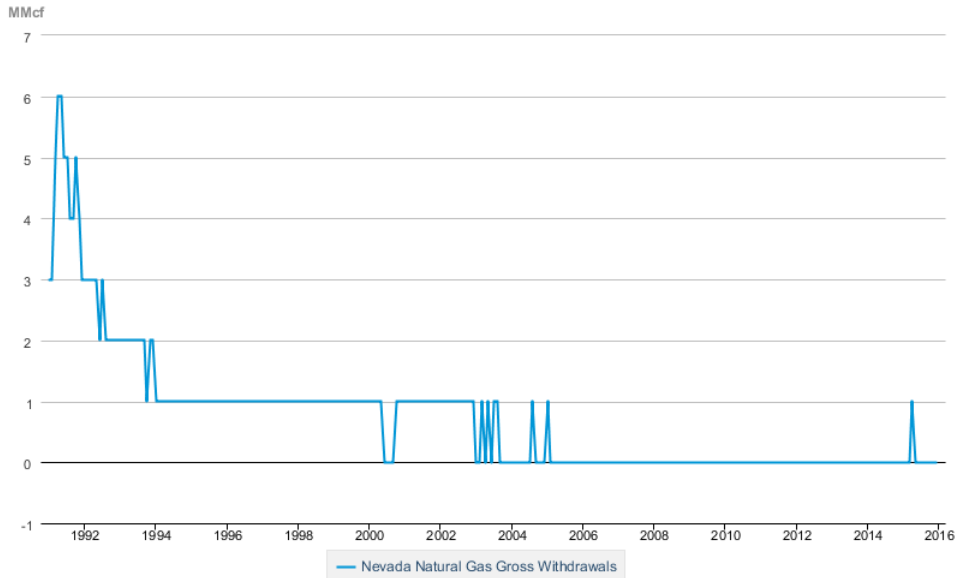
below. Furthermore, the state’s natural gas production rate is described by the U.S. Energy Information Administration (“EIA”) as “NA” as it is effectively zero. *See* Chart below.



 Source: U.S. Energy Information Administration

**Above, Oil Production in Nevada, 1980’s to the Present. Data available at [https://www.eia.gov/dnav/pet/pet\\_crd\\_crdn\\_adc\\_mbbbl\\_m.htm](https://www.eia.gov/dnav/pet/pet_crd_crdn_adc_mbbbl_m.htm). Below, Natural Gas Production in Nevada, 1990’s to the Present. Data available at [https://www.eia.gov/dnav/ng/ng\\_prod\\_sum\\_a\\_EPG0\\_FGW\\_mmcf\\_m.htm](https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_FGW_mmcf_m.htm).**

### Natural Gas Gross Withdrawals and Production

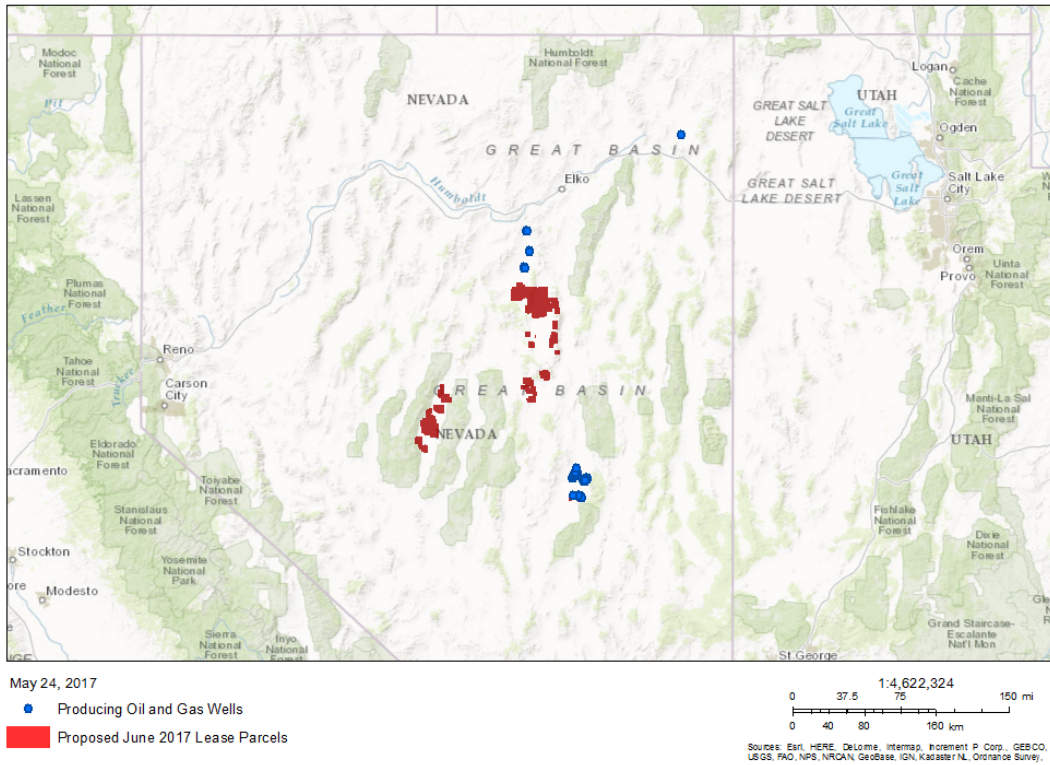


eia Source: U.S. Energy Information Administration

Although there are less than 100 oil and gas wells that are considered to be “producers” by the State of Nevada, as of 2015, the EIA reports there was one producing natural gas well and four producing oil wells. See [https://www.eia.gov/dnav/ng/ng\\_prod\\_wells\\_s1\\_a.htm](https://www.eia.gov/dnav/ng/ng_prod_wells_s1_a.htm) and [https://www.eia.gov/dnav/ng/ng\\_prod\\_oilwells\\_s1\\_a.htm](https://www.eia.gov/dnav/ng/ng_prod_oilwells_s1_a.htm).

The areas where the BLM is proposing to lease are, for the most part, not remotely near where any “producer” oil and gas wells are even located. Only one parcel—NV-17-06-106—appears to be the only lease parcel near enough to any current oil and gas development that there is any likelihood of future development. See Maps below. This parcel is in the Railroad Valley, the only location in Nevada where oil and gas production occurs.

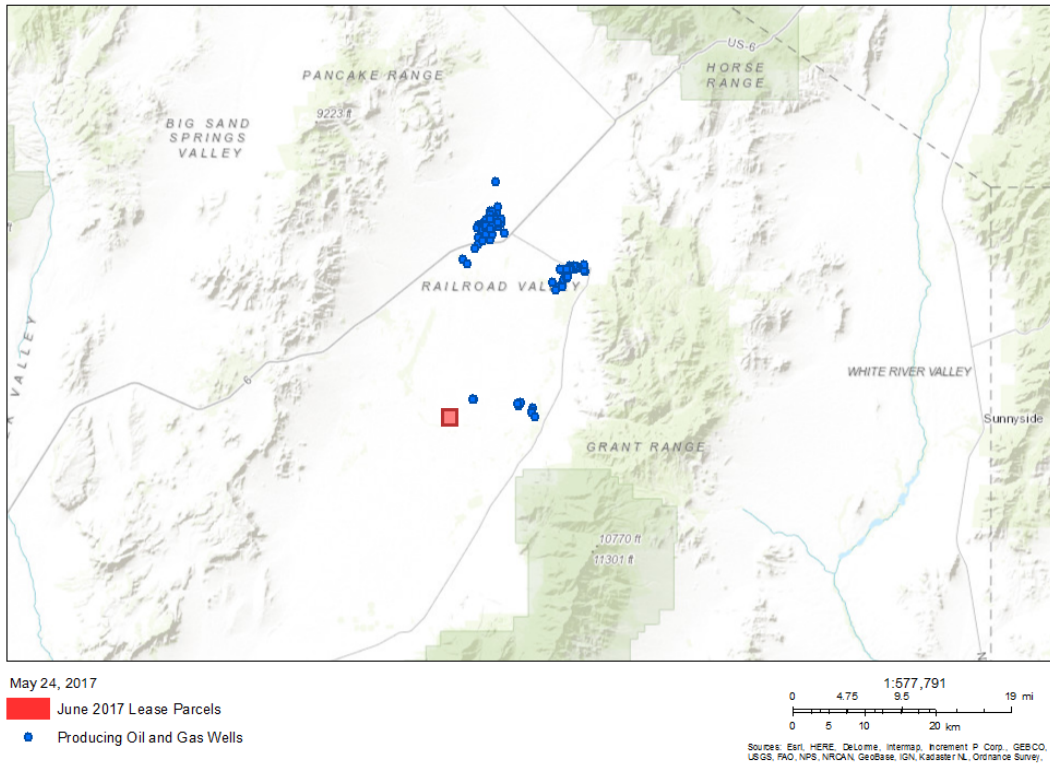
## Proposed Oil and Gas Leases and Producing Wells



## Proposed Oil and Gas Lease Parcels and “Producer” Oil and Gas Wells in Nevada.



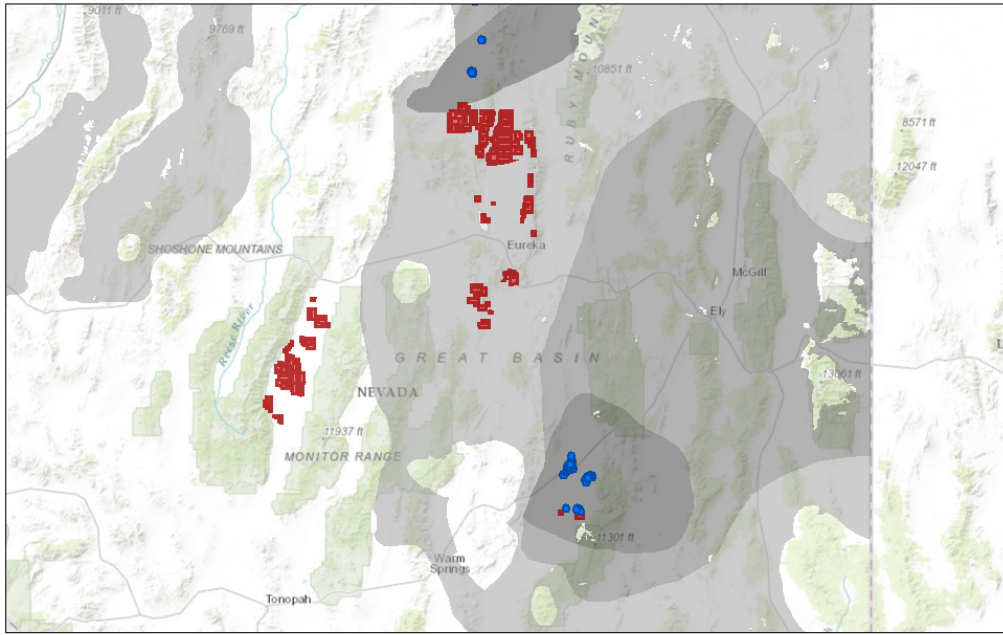
### Lease Parcel in Railroad Valley



### Proposed Lease Parcel in the Railroad Valley.

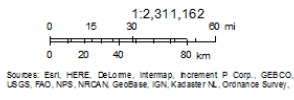
The extreme lack of potential oil and gas development is confirmed by the fact that, aside from the Railroad Valley parcel, all other parcels are located in areas considered to have low to no oil and gas development potential. See Map below. For instance, all of the parcels located in the Big Smokey Valley area of Nye and Lander Counties are in a region considered to have effectively no oil and gas potential. These include parcels NV-17-06-001—NV-17-06-032.

### Proposed Oil and Gas Leasing in Nevada

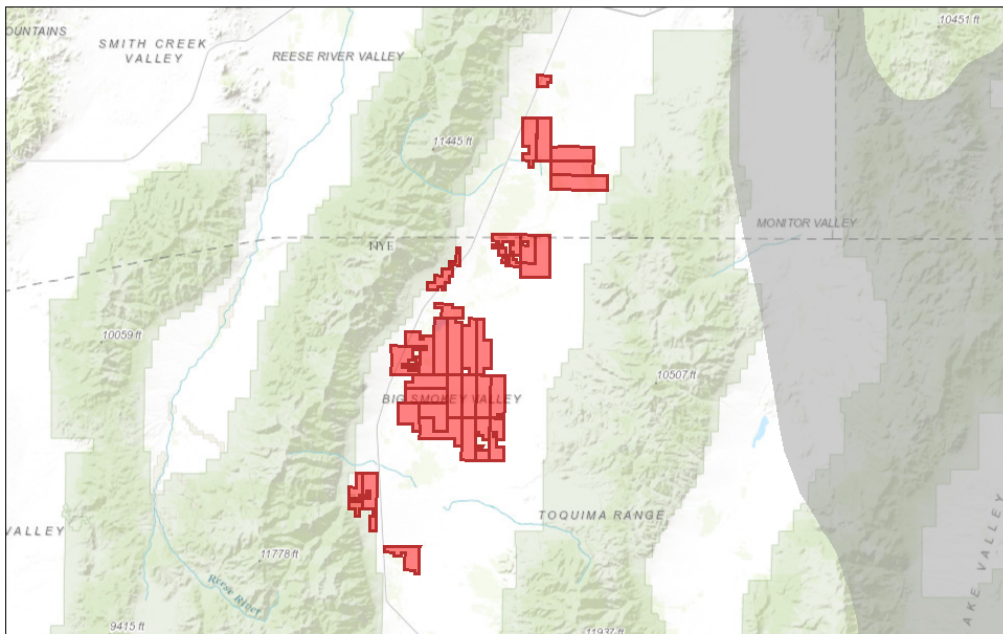


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- Producing Oil and Gas Wells
- Proposed June 2017 Lease Parcels
- Oil and Gas: Potential - Nevada Oil and Gas Potential**
- Moderate Potential
- Low Potential
- Very low to no potential - shown as white
- High Potential

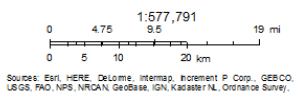


### Lease Parcels in Big Smokey Valley



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- June 2017 Lease Parcels
- Oil and Gas: Potential - Nevada Oil and Gas Potential**
- Moderate Potential
- Low Potential
- Very low to no potential - shown as white



The BLM's own analysis in the EA only confirms the unlikelihood of any development ever occurring on the proposed lease parcels. While the agency normally presumes that at least one well will be developed per lease parcel given that diligent development of leases is a prerequisite for issuance, here, the BLM cannot even reasonably estimate that one well will be developed per lease parcels. Instead, the agency projects that across the entire Battle Mountain District over the next ten years, only 25 exploratory wells are likely to be developed, including five in the Mount Lewis Field Office, where 96 of the 106 proposed lease parcels are located, and 20 in the Tonopah Field Office, where 9 of the parcels are located. *See* EA at 19-21. This means one of two things, either the BLM cannot reasonably project that any development will occur on the proposed leases or the agency projects that at best, only the nine parcels in the Tonopah Field Office and five parcels in the Mountain Lewis Field Office will ever be developed. Put another way, either none of the lease parcels will be developed or at best, 14. Either way, the BLM is effectively conceding its assumption that the vast majority of the leases will never see any kind of development activity.

It is telling that in prior lease sales held in Nevada, there has been exceptionally low interest and activity. In March of 2017, the BLM offered 67 parcels for sale in the Elko District, yet only 20—or less than 30%—received bids. *See* [https://www.blm.gov/sites/blm.gov/files/uploads/NV\\_OG\\_20170314\\_COMP\\_SALE\\_RESULTS.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_20170314_COMP_SALE_RESULTS.pdf). Further, of the 20 parcels that received bids, 19—or 95%—received only the minimum bid of \$2.00 per acre. *See* [https://www.blm.gov/sites/blm.gov/files/uploads/NV\\_OG\\_20170314\\_Elko\\_Sale\\_Summary.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_20170314_Elko_Sale_Summary.pdf). Similarly, in June of 2016, the BLM offered 42 parcels for sale in the Ely District, yet only four received bids. *See* [https://www.blm.gov/sites/blm.gov/files/uploads/NV\\_OG\\_BMDO\\_Sale\\_Competitive\\_Results\\_20160614.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_BMDO_Sale_Competitive_Results_20160614.pdf). The BLM received bids of \$2.00, \$3.00, \$4.00, and \$21.00 per acre for the four parcels. *See id.*

To say the least, it is confusing that the BLM sees a need and/or an imperative to lease additional lands for oil and gas development in Nevada. While the agency may believe it is generating revenue for the American public, the reality is the BLM is spending more taxpayer dollars to manage and administer its oil and gas leasing program in Nevada than it is gaining in return. To this end, it is important to note that nationally, revenue from federal oil and gas is primarily driven by royalty payments associated with production. As the U.S. Government Accountability Office noted in a 2013 report, only 10% of all federal oil and gas revenue was generated by bonus bids associated with leasing and only 3% of all revenue was generated by rental payments for existing leases. The vast majority of revenue—87%—was generated through royalty payments. *See* Exhibit 1, GAO, “Oil and Gas Resources: Actions Need for Interior to Better Ensure a Fair Return,” GAO-14-50 (Dec. 2013). This means that at best, the BLM in Nevada may generate only 13% of what is normally recovered when there is production of oil and gas.

Put another way, the BLM seems to be proposing more oil and gas leasing in Nevada that will certainly cost Americans more than it benefits. The only reason for the agency to move forward with the proposed leasing is to appease industry demands to acquire and hold publicly

owned oil and gas leases as assets. This is not a valid reason to lease and as will be explained, appears to run afoul of the agency's obligations under federal laws, regulations, and directives.

## **I. The Proposed Leasing Violates the Mineral Leasing Act**

The BLM's proposed leasing runs afoul of the Mineral Leasing Act in two key regards. First, it does not appear that the majority of the lease parcels contain lands that are known or believed to contain oil or gas deposits. Second, it does not appear that there is any intent of any lessee to diligently develop most, if not all, of the proposed parcels.

On the first matter, the Mineral Leasing Act allows leasing only where there are lands that are "known or believed to contain oil or gas deposits." 30 U.S.C. § 226(a). Here, it appears that there are lands included in many of the proposed lease parcels that do not contain oil and gas deposits. These primarily include the lease parcels in Lander and Nye Counties in the Big Smokey Valley area of the Mount Lewis Field Office (parcels NV-17-06-001—NV-17-06-032), which are located in an area that appears to have no documented oil and gas development potential. The BLM admits as much in its EA, in which it acknowledges the only likelihood of development in the Mount Lewis Field Office is in the eastern portion of the Field Office in Eureka County near the Railroad Valley. *See* EA at 20.

At a minimum, the BLM has a duty to confirm where lands proposed for leasing are known or believed to contain oil and gas deposits. Here, the agency appears to have undertaken no such diligence in confirming whether the oil and gas industry's supposed interest in the proposed lease parcels is rooted in the existence or believed existence of oil and gas deposits.

On the second matter, the BLM cannot lease lands for oil and gas development if there is no intent to diligently develop. The agency confirmed this in a recent decision denying the issuance of an oil and gas lease to a lessee, explaining:

A fundamental requirement of every oil and gas lease, as stated in Section 4 on page 3 of Form 3100-1, is the requirement that the "Lessee must exercise reasonable diligence in developing and producing, and must prevent unnecessary damage to, loss of, or waste of leased resources." This diligent development requirement has its basis in the Mineral Leasing Act of 1920, as amended. See 30 U.S.C. § 187. Thus, an expressed intent by a person offering to purchase a lease to not develop and produce the oil and gas resources on the leasehold would directly conflict with the diligent development requirement and require that the offer be rejected.

Exhibit 2 to WildEarth Guardians' February 3, 2017 Comments on the BLM's Proposed Leasing. Here, the BLM appears to explicitly acknowledge that there is no explicit intent to develop any of the proposed lease parcels. The agency itself discloses in the EA that it is reasonable to presume that most, if not all, of the parcels, will never be developed.<sup>3</sup> Given this, it is completely evident that any lessee would have no intent to diligently develop most, if not all,

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<sup>3</sup> The only parcel that may actually be developed is NV-17-06-106.

of the proposed lease parcels and that the BLM is not legally justified in proceeding to offer them for sale.

More recently, the BLM confirmed that leasing in areas with low development potential and little to no industry interest warrants removing parcels from proposed sales. In Colorado, the agency recently removed 20 parcels totaling 27,529 acres in Grand County from a proposed lease sale, citing “low energy potential and reduced industry interest in the geographic area[.]” Exhibit 2, BLM, “BLM modifies parcel list for June 2017 oil and gas lease sale” (April 17, 2017).

At a minimum, the BLM cannot proceed to lease the proposed lands without conducting some kind of verification that there is intent to develop. Here, the agency appears to have undertaken no such verification. In fact, in response to a Freedom of Information Act request in which WildEarth Guardians requested records pertaining to any instance in which the BLM evaluated the likelihood of development of oil and gas leases in Nevada, the agency responded that “there are no records responsive[.]” Exhibit 3, BLM to WildEarth Guardians, Final Response to FOIA No. BLM-2017-00604 (May 23, 2017). The BLM cannot blindly offer to lease public lands for oil and gas development without undertaking some steps to confirm that there exists reasonable development potential. If the agency does not, then it is failing to verify that potential lessees will exercise diligent development in accordance with the Mineral Leasing Act.

As it stands, there is no basis for concluding that the lands proposed for leasing are known or believed to contain oil and gas deposits, or that there is any intent to diligently develop any of the proposed leases. Accordingly, the BLM is not legally justified under the Mineral Leasing Act in proceeding with the proposed leasing and the June lease sale must be canceled.

## **II. The Proposed Leasing Violates NEPA**

NEPA is our “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The law requires federal agencies to fully consider the environmental implications of their actions, taking into account “high quality” information, “accurate scientific analysis,” “expert agency comments,” and “public scrutiny,” prior to making decisions. *Id.* at 1500.1(b). This consideration is meant to “foster excellent action,” meaning decisions that are well informed and that “protect, restore, and enhance the environment.” *Id.* at 1500.1(c).

To fulfill the goals of NEPA, federal agencies are required to analyze the “effects,” or impacts, of their actions to the human environment prior to undertaking their actions. 40 C.F.R. § 1502.16(d). To this end, the agency must analyze the “direct,” “indirect,” and “cumulative” effects of its actions, and assess their significance. 40 C.F.R. §§ 1502.16(a), (b), and (d). Direct effects include all impacts that are “caused by the action and occur at the same time and place.” 40 C.F.R. § 1508.8(a). Indirect effects are “caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* at § 1508.8(b). Cumulative effects include the impacts of all past, present, and reasonably foreseeable actions, regardless of what entity or entities undertake the actions. 40 C.F.R. § 1508.7.

An agency may prepare an environmental assessment (“EA”) to analyze the effects of its actions and assess the significance of impacts. *See* 40 C.F.R. § 1508.9; *see also* 43 C.F.R. § 46.300. Where effects are significant, an Environmental Impact Statement (“EIS”) must be prepared. *See* 40 C.F.R. § 1502.3. Where significant impacts are not significant, an agency may issue a Finding of No Significant Impact (“FONSI”) and implement its action. *See* 40 C.F.R. § 1508.13; *see also* 43 C.F.R. § 46.325(2).

Within an EA or EIS, the scope of the analysis must include “[c]umulative actions” and “[s]imilar actions.” 40 C.F.R. §§ 1508.25(a)(2) and (3). Cumulative actions include action that, “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. § 1508.25(a)(2). Similar actions include actions that, “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together.” 40 C.F.R. § 1508.25(a)(3). Key indicators of similarities between actions include “common timing or geography.” *Id.*

Within an EA or EIS, agencies must analyze a range of reasonable alternatives. *See* 42 U.S.C. § 4332(C)(iii) and (E). A consideration of alternatives is the “heart” of any environmental review under NEPA. 40 C.F.R. § 1502.14. Based on the information and analysis presented in the sections on the Affected Environment (§1502.15), and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public. Within a NEPA document, agencies must:

- (a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
- (b) Devote substantial treatment to each alternative considered in detail including the proposed action so that the reviewers may evaluate their comparative merits.
- (c) Include reasonable alternatives not within the jurisdiction of the lead agency.
- (d) Include the alternative of the no action.

40 C.F.R. § 1502.14. Even in EAs, the BLM must rigorously explore and objectively evaluate a range of reasonable alternatives, particularly where there are “unresolved conflicts about the proposed action with respect to alternative uses of available resources.” 43 C.F.R. § 46.310(b).

Here, the BLM fell short of complying with NEPA with regards to considering a range of reasonable alternatives and in analyzing and assessing the potentially significant climate impacts of oil and gas leasing. In support of its proposed leasing, the agency prepared an EA. In the EA, however, the BLM inappropriately rejected reasonable alternatives. Further, the agency failed to analyze the reasonably foreseeable greenhouse gas emissions both from the proposed leasing and

from cumulative and similar actions and further failed to assess the significance of any emissions, particularly in terms of carbon costs. Below, we detail how BLM's proposal fails to comply with NEPA.

### **1. The BLM Inappropriately Rejected Reasonable Alternatives**

In comments on the BLM's EA, WildEarth Guardians urged the BLM to consider in detail alternatives to address the fact that the proposed leasing appeared to be entirely speculative and not reasonably likely to lead to any actual oil and gas development. Specifically, we asked the agency to consider in detail the following alternatives:

- An alternative that imposes a minimum bonus bid higher than \$2.00 per acre. Under 43 C.F.R. § 3120.1-2(c), BLM is prohibited from accepting a competitive oil and gas leasing bid that is less than \$2.00 per acre. However, there is nothing that prohibits the BLM from establishing a minimum bid that is higher than \$2.00 per acre. Here, we request the agency give detailed consideration to an alternative that requires a minimum bonus bid higher than \$2.00 per acre as a condition of selling the lease parcels. This will ensure that only serious industry interest in the proposed oil and gas leasing parcels and help to prevent companies from stockpiling federal oil and gas leases as a means to increase their assets and enhance their own financial bottomline.
- An alternative that defers offering the proposed lease parcels for sale until at least 50% of all leased federal oil and gas acres in Nevada are put into production. This could happen as a result of leases expiring before being put into production (currently, there are many leases due to expire in the near future, including six parcels in Nevada on March 31, 2017), by industry relinquishing leases that have not produced for many years, or by leases being put into production by companies. This alternative would help to incentivize industry to start producing and generating revenue or to give up their ownership of federal oil and gas leases. This alternative would be a reasonable measure for the BLM to impose as a means for protecting the public interest and maximizing revenue for the American public where leases have been already been issued.

WildEarth Guardians' Comments at 2. These alternatives were offered in response to the obvious fact that the proposed leasing did not appear to be based on any reasonable development potential, but rather based on industry speculation and asset hoarding.

In response to our comments, the BLM simply asserted, "This suggestion is beyond the scope of this EA, as it is counter to existing federal policies." EA at 226. This response, however, is baseless.

As to the agency's claim that the alternatives are "beyond the scope" of the purpose and need of the EA, this is preposterous. For one thing, the purpose and need, as stated in the EA, is incredibly broad, vague, and appears to provide no real constraints on the consideration of the alternatives recommended by WildEarth Guardians. If anything, the purpose and need appears only to support the reasonableness of the alternatives suggested in comments. As stated in the EA, the purpose and need is, among other things, to provide for the "orderly development of

fluid mineral resources.” EA at 9. This is exactly what the alternatives suggested by WildEarth Guardians would accomplish. Rather than leasing lands where no development would happen, the suggested alternatives would temper leasing to maximize production and revenue and minimize speculation.

As to BLM’s claim that WildEarth Guardians’ suggested alternatives are counter to existing federal policy, this is also specious. For one thing, the agency does not even cite the policies that conflict with the suggested alternatives. Furthermore, there is nothing in the Mineral Leasing Act or BLM’s regulations or guidance that indicates the suggested alternatives are, in fact, contrary to policy. The rationale provided by the BLM appears to be nothing more than an arbitrary and capricious assertion that is not rooted in reality or rationality. To this end, the BLM’s rejection of WildEarth Guardians’ alternatives is contrary to NEPA and the agency cannot proceed with the proposed leasing.

## **2. The BLM Failed to Fully Analyze and Assess the Direct, Indirect, and Cumulative Impacts of Greenhouse Gas Emissions that Would Result from Issuing the Proposed Lease Parcels**

Although we are pleased to see the BLM finally develop estimates for reasonably foreseeable direct and indirect greenhouse gas emissions associated with the proposed leasing (*see* EA at 33), it appears the agency’s analysis fails to fully comply with NEPA and to demonstrate support for a FONSI.

Notably, the BLM’s estimates of greenhouse gas emissions fails to account for emissions from cumulative and similar actions. As NEPA requires, an agency must analyze the impacts of “similar” and “cumulative” actions in the same NEPA document in order to adequately disclose impacts in an EIS or provide sufficient justification for a FONSI in an EA. *See* 40 C.F.R. §§ 1508.25(a)(2) and (3). Here, the BLM failed to take into account the greenhouse gas emissions resulting from other proposed oil and gas leasing in Nevada and other neighboring states, as well as related oil and gas development, and to analyze the impacts of these actions in terms of their direct, indirect, and cumulative greenhouse gas emissions.

From a cumulative standpoint, it is first and foremost disconcerting that BLM’s analysis is entirely devoid of any consideration of greenhouse gas emissions from oil and gas development within the Battle Mountain District Office, as well as throughout the Rocky Mountain West. On a Field Office level, the underlying Final EISs prepared for the Mount Lewis and Tonopah Field Office’s Resource Management Plan nowhere analyze or assess greenhouse gas emissions associated with oil and gas development. Regionally, including in other Field Offices in Nevada as well as Field Offices in the neighboring states of Utah, Colorado, New Mexico, and Wyoming, BLM has never attempted to analyze or assess cumulative greenhouse gas emissions from oil and gas development.

Although the EA generally acknowledges there will be future greenhouse gas emissions from reasonably foreseeable development of the leases, there is no attempt to analyze these emissions in the context of oil and gas development within the actual cumulative impact area. The EA simply remarks that greenhouse gas emissions will be produced in the future (*see* EA at



29), yet the BLM makes no effort to quantify these emissions or provide any information that would inform the decisionmaker and the public as to the significance of the reasonably foreseeable greenhouse gas emissions.

In terms of similar actions, we are particularly concerned that the BLM failed to analyze and assess greenhouse gas emissions resulting from oil and gas leasing within Nevada and in the neighboring Rocky Mountain States of Utah, Colorado, Montana, New Mexico, and Wyoming. It is notable that at the same time and in this same region, the BLM has sold, is selling, and will be selling thousands of acres of oil and gas leases, including:

- Colorado: In May 2016, the BLM sold six lease parcels covering 6,960.48 acres. See [https://www.blm.gov/sites/blm.gov/files/May\\_2016\\_Results.pdf](https://www.blm.gov/sites/blm.gov/files/May_2016_Results.pdf). And on December 8, 2016, the BLM sold 31 parcels totaling 20,101 acres. See [https://eplanning.blm.gov/epl-front-office/projects/nepa/69808/92231/111121/December\\_2016\\_CO\\_Sale\\_Results.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/69808/92231/111121/December_2016_CO_Sale_Results.pdf). The BLM also has lease sales scheduled for February 9, 2017, May 11, 2017, August 10, 2017, and November 9, 2017. See <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado>.
- Montana: In May of 2016, the BLM sold seven lease parcels totaling 913.86 acres. See <https://www.blm.gov/sites/blm.gov/files/MT-DAKs%20MCFO%2005-04-16%20Comp%20Results.pdf>. And on December 8, 2016, the BLM sold 91 parcels totaling 19,790.175 acres. See [https://www.blm.gov/sites/blm.gov/files/MT-DAKs%20Competitive%2012-08-2016%20Sale%20Results%20List%20%281%29\\_0.pdf](https://www.blm.gov/sites/blm.gov/files/MT-DAKs%20Competitive%2012-08-2016%20Sale%20Results%20List%20%281%29_0.pdf). The BLM also has lease sales scheduled for January 24, 2017, May 3, 2017, July 11, 2017, and October 17, 2017. See <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/montana-dakotas>.
- New Mexico: In April of 2016, the BLM sold 43 lease parcels totaling 36,841.03 acres. See <https://www.nm.blm.gov/oilGas/leasing/leaseSales/2016/april2016/SALE%20RESU LTS.pdf>. And in September of 2016, the BLM sold 36 lease parcels totaling 13,876.08 acres. See [https://www.nm.blm.gov/oilGas/leasing/leaseSales/2016/july2016/09\\_01%20SALE%20RESULTS%20FIN.pdf](https://www.nm.blm.gov/oilGas/leasing/leaseSales/2016/july2016/09_01%20SALE%20RESULTS%20FIN.pdf). The BLM also had a lease sale on January 25, 2017, [https://eplanning.blm.gov/epl-front-office/projects/nepa/68428/96009/116065/Jan2017\\_SaleResults.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/68428/96009/116065/Jan2017_SaleResults.pdf). The agency has sales scheduled for June 8, 2017, and September 4, 2017. See <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/new-mexico>.
- Utah: The BLM sold numerous oil and gas lease parcels across thousands of acres on February 16, 2016 and May 3, 2016. In 2017, the BLM has lease sales scheduled in Utah for February 21, 2017, May 16, 2017, August 15, 2017, and November 21,

2017. See <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/utah>.

- **Wyoming:** On May 3, 2016, the BLM sold 95 oil and gas lease parcels totaling 86,608.8 acres. See <https://eplanning.blm.gov/epl-front-office/projects/nepa/64290/77266/85818/0516results.pdf>. And on November 1, 2016, the BLM sold 21 oil and gas lease parcels totaling 32,422.02 acres. See [https://eplanning.blm.gov/epl-front-office/projects/nepa/64290/88959/106465/Sale\\_Results.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/64290/88959/106465/Sale_Results.pdf). The BLM also has lease sales scheduled for February 7, 2017, May 2, 2017, August 1, 2017, and November 1, 2017. See <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=94042>.

Without any analysis of past, present, and reasonably foreseeable greenhouse gas emissions from these similar oil and gas leasing actions, the agency’s proposed FONSI is unsupported under NEPA.

The BLM appears to attempt to argue that an analysis of greenhouse gas emissions is more appropriate at the drilling stage. We have yet to see the BLM actually prepare such a site-specific analysis in conjunction with an oil and gas lease development proposal.

What’s more, BLM’s argument has no merit as the agency has proposed no stipulations that would grant the agency discretion to limit, or outright prevent, development of the proposed leases on the basis of greenhouse gas emissions and/or climate concerns. The BLM is effectively proposing to make an irreversible commitment of resources, which is the hallmark of significance under NEPA. See 42 U.S.C. § 4332(c)(v) and 40 C.F.R. § 1502.16. The failure to prepare an EIS—or any analysis for that matter—to address the potentially significant reasonably foreseeable greenhouse gas emissions that would result from the proposed leases is contrary to NEPA.

### **3. The BLM Failed to Analyze the Costs of Reasonably Foreseeable Carbon Emissions Using Well-Accepted, Valid, Credible, GAO-Endorsed, Interagency Methods for Assessing Carbon Costs that are Supported by the White House**

Compounding the failure of the BLM to make any effort to estimate the greenhouse gas emissions that would result from reasonably foreseeable oil and gas development is that the agency also rejected analyzing and assessing these emissions in the context of their costs to society. It is particularly disconcerting that the agency did not analyze and assess costs using the social cost of carbon protocol, a valid, well-accepted, credible, and interagency endorsed method of calculating the costs of greenhouse gas emissions and understanding the potential significance of such emissions.

The social cost of carbon protocol for assessing climate impacts is a method for “estimat[ing] the economic damages associated with a small increase in carbon dioxide (CO<sub>2</sub>) emissions, conventionally one metric ton, in a given year [and] represents the value of damages

avoided for a small emission reduction (i.e. the benefit of a CO2 reduction).” Exhibit 3 to Guardians’ February 3, 2017 Comments, U.S. Environmental Protection Agency (“EPA”), “Fact Sheet: Social Cost of Carbon” (Nov. 2013) at 1, available online at <https://www.epa.gov/climatechange/social-cost-carbon>. The protocol was developed by a working group consisting of several federal agencies.

In 2009, an Interagency Working Group was formed to develop the protocol and issued final estimates of carbon costs in 2010. *See* Exhibit 4 to Guardians’ February 3, 2017 Comments, Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” (Feb. 2010). These estimates were then revised in 2013 by the Interagency Working Group, which at the time consisted of 13 agencies. *See* Exhibit 5 to Guardians’ February 3, 2017 Comments, Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” (May 2013). This report and the social cost of carbon estimates were again revised in 2015. *See* Exhibit 6 to Guardians’ February 3, 2017 Comments, Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866” (July 2015). Again, this report and social cost of carbon estimates were revised in 2016. *See* Exhibit 7 to Guardians’ February 3, 2017 Comments, Interagency Working Group on Social Cost of Carbon, “Technical Support Document: Technical Update of the Social Cost of Greenhouse Gases for Regulatory Impact Analysis Under Executive Order 12866” (Aug. 2016).

Most recently, as an addendum to previous Technical Support Documents regarding the social cost of carbon, the Department of the Interior joined numerous other agencies in preparing estimates of the social cost of methane and other greenhouse gases. *See* Exhibit 8 to Guardians’ February 3, 2017 Comments, Interagency Working Group on Social Cost of Greenhouse Gases, United States Government, “Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide” (Aug. 2016).

Depending on the discount rate and the year during which the carbon emissions are produced, the Interagency Working Group estimates the cost of carbon emissions, and therefore the benefits of reducing carbon emissions, to range from \$10 to \$212 per metric ton of carbon dioxide. *See* Chart Below. In its most recent update to the Social Cost of Carbon Technical Support Document, the White House’s central estimate was reported to be \$36 per metric ton. *See* Exhibit 9 to Guardians’ February 3, 2017 Comments, White House, “Estimating the Benefits from Carbon Dioxide Emissions Reductions.” In July 2014, the U.S. Government Accountability Office (“GAO”) confirmed that the Interagency Working Group’s estimates were based on sound procedures and methodology. *See* Exhibit 10 to Guardians’ February 3, 2017 Comments, GAO, “Regulatory Impact Analysis, Development of Social Cost of Carbon Estimates,” GAO-14-663 (July 2014), available online at <http://www.gao.gov/assets/670/665016.pdf>.

**Table ES-1: Social Cost of CO<sub>2</sub>, 2010 – 2050 (in 2007 dollars per metric ton of CO<sub>2</sub>)**

Year	5% Average	3% Average	2.5% Average	High Impact (95 <sup>th</sup> Pct at 3%)
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

**Most recent social cost of carbon estimates presented by Interagency Working Group on Social Cost of Carbon. The 95th percentile value is meant to represent “higher-than-expected” impacts from climate change. See Exhibit 7 to Guardians’ February 3, 2017 Comments.**

Although often utilized in the context of agency rulemakings, the protocol has been recommended for use and has been used in project-level decisions. For instance, the EPA recommended that an EIS prepared by the U.S. Department of State for the proposed Keystone XL oil pipeline include “an estimate of the ‘social cost of carbon’ associated with potential increases of GHG emissions.” Exhibit 11 to Guardians’ February 3, 2017 Comments, EPA, Comments on Supplemental Draft EIS for the Keystone XL Oil Pipeline (June 6, 2011).

More importantly, the BLM has also utilized the social cost of carbon protocol in the context of oil and gas approvals. In other recent Environmental Assessments for oil and gas leasing, the agency estimated “the annual SCC [social cost of carbon] associated with potential development on lease sale parcels.” Exhibit 12 to Guardians’ February 3, 2017 Comments, BLM, “Environmental Assessment for October 21, 2014 Oil and Gas lease Sale,” DOI-BLM-MT-0010-2014-0011-EA (May 19, 2014) at 76, available online at [http://www.blm.gov/style/medialib/blm/mt/blm\\_programs/energy/oil\\_and\\_gas/leasing/lease\\_sale/2014/oct\\_\\_21\\_2014/july23posting.Par.25990.File.dat/MCFO%20EA%20October%202014%20Sale\\_Post%20with%20Sale%20\(1\).pdf](http://www.blm.gov/style/medialib/blm/mt/blm_programs/energy/oil_and_gas/leasing/lease_sale/2014/oct__21_2014/july23posting.Par.25990.File.dat/MCFO%20EA%20October%202014%20Sale_Post%20with%20Sale%20(1).pdf). In conducting its analysis, the BLM used a “3 percent average discount rate and year 2020 values,” presuming social costs of carbon to be \$46 per metric ton. *Id.* Based on its estimate of greenhouse gas emissions, the agency estimated total carbon costs to be “\$38,499 (in 2011 dollars).” *Id.* In Idaho, the BLM also utilized the social cost of carbon protocol to analyze and assess the costs of oil and gas leasing. Using a 3% average discount rate and year 2020 values, the agency estimated the cost of carbon to be \$51 per ton of annual CO<sub>2</sub>e increase. See Exhibit 13 to Guardians’ February 3, 2017 Comments, BLM, “Little Willow Creek Protective Oil and Gas Leasing,” EA No. DOI-BLM-ID-B010-2014-0036-EA (February 10, 2015) at 81, available online at [https://www.blm.gov/epl-front-office/projects/nepa/39064/55133/59825/DOI-BLM-ID-B010-2014-0036-EA\\_UPDATED\\_02272015.pdf](https://www.blm.gov/epl-front-office/projects/nepa/39064/55133/59825/DOI-BLM-ID-B010-2014-0036-EA_UPDATED_02272015.pdf). Based on this estimate, the agency estimated that the total carbon cost of developing 25 wells on five lease parcels to be \$3,689,442 annually. *Id.* at 83.

To be certain, the social cost of carbon protocol presents a conservative estimate of economic damages associated with the environmental impacts climate change. As the EPA has noted, the protocol “does not currently include all important [climate change] damages.” Exhibit 3 to Guardians’ February 3, 2017 Comments. As explained:

The models used to develop [social cost of carbon] estimates, known as integrated assessments, do not currently include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature because of a lack of precise information on the nature of damages and because the science incorporated into these models naturally lags behind the most recent research.

*Id.* In fact, more recent studies have reported significantly higher carbon costs. For instance, a report published this month found that current estimates for the social cost of carbon should be increased six times for a mid-range value of \$220 per ton. *See* Exhibit 14 to Guardians’ February 3, 2017 Comments, Moore, C.F. and B.D. Delvane, “Temperature impacts on economic growth warrant stringent mitigation policy,” *Nature Climate Change* (January 12, 2015) at 2. In spite of uncertainty and likely underestimation of carbon costs, nevertheless, “the SCC is a useful measure to assess the benefits of CO<sub>2</sub> reductions,” and thus a useful measure to assess the costs of CO<sub>2</sub> increases. Exhibit 3 to Guardians’ February 3, 2017 Comments.

That the economic impacts of climate change, as reflected by an assessment of social cost of carbon, should be a significant consideration in agency decisionmaking, is emphasized by a recent White House report, which warned that delaying carbon reductions would yield significant economic costs. *See* Exhibit 15 to Guardians’ February 3, 2017 Comments, Executive Office of the President of the United States, “The Cost of Delaying Action to Stem Climate Change” (July 2014). As the report states:

[D]elaying action to limit the effects of climate change is costly. Because CO<sub>2</sub> accumulates in the atmosphere, delaying action increases CO<sub>2</sub> concentrations. Thus, if a policy delay leads to higher ultimate CO<sub>2</sub> concentrations, that delay produces persistent economic damages that arise from higher temperatures and higher CO<sub>2</sub> concentrations. Alternatively, if a delayed policy still aims to hit a given climate target, such as limiting CO<sub>2</sub> concentration to given level, then that delay means that the policy, when implemented, must be more stringent and thus more costly in subsequent years. In either case, delay is costly.

*Id.* at 1.

The requirement to analyze the social cost of carbon is supported by the general requirements of NEPA, specifically supported in federal case law. Courts have ordered agencies to assess the social cost of carbon pollution, even before a federal protocol for such analysis was adopted. In 2008, the U.S. Court of Appeals for the Ninth Circuit ordered the National Highway Traffic Safety Administration to include a monetized benefit for carbon emissions reductions in an Environmental Assessment prepared under NEPA. *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172, 1203 (9th Cir. 2008). The Highway Traffic Safety Administration had proposed a rule setting corporate average fuel economy

standards for light trucks. A number of states and public interest groups challenged the rule for, among other things, failing to monetize the benefits that would accrue from a decision that led to lower carbon dioxide emissions. The Administration had monetized the employment and sales impacts of the proposed action. *Id.* at 1199. The agency argued, however, that valuing the costs of carbon emissions was too uncertain. *Id.* at 1200. The court found this argument to be arbitrary and capricious. *Id.* The court noted that while estimates of the value of carbon emissions reductions occupied a wide range of values, the correct value was certainly not zero. *Id.* It further noted that other benefits, while also uncertain, were monetized by the agency. *Id.* at 1202.

More recently, a federal court has done likewise for a federally approved coal lease. That court began its analysis by recognizing that a monetary cost-benefit analysis is not universally required by NEPA. *See High Country Conservation Advocates v. U.S. Forest Service*, 52 F.Supp. 3d 1174 (D. Colo. 2014), citing 40 C.F.R. § 1502.23. However, when an agency prepares a cost-benefit analysis, “it cannot be misleading.” *Id.* at 1182 (citations omitted). In that case, the NEPA analysis included a quantification of benefits of the project. However, the quantification of the social cost of carbon, although included in earlier analyses, was omitted in the final NEPA analysis. *Id.* at 1196. The agencies then relied on the stated benefits of the project to justify project approval. This, the court explained, was arbitrary and capricious. *Id.* Such approval was based on a NEPA analysis with misleading economic assumptions, an approach long disallowed by courts throughout the country. *Id.*

A recent op-ed in the New York Times from Michael Greenstone, the former chief economist for the President’s Council of Economic Advisers, confirms that it is appropriate and acceptable to calculate the social cost of carbon when reviewing whether to approve fossil fuel extraction. *See Exhibit 16 to Guardians’ February 3, 2017 Comments*, Greenstone, M., “There’s a Formula for Deciding When to Extract Fossil Fuels,” *New York Times* (Dec. 1, 2015), available online at [http://www.nytimes.com/2015/12/02/upshot/theres-a-formula-for-deciding-when-to-extract-fossil-fuels.html?\\_r=0](http://www.nytimes.com/2015/12/02/upshot/theres-a-formula-for-deciding-when-to-extract-fossil-fuels.html?_r=0).

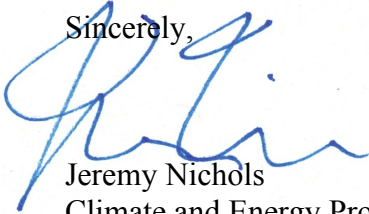
The social cost of carbon provides a useful, valid, and meaningful tool for assessing the climate consequences of the proposed leasing, and the BLM’s failure to utilize this method of assessing climate impacts would be wholly inappropriate under NEPA. This is underscored by the fact that the BLM disclosed in the EA that monetary economic benefits would result from the proposed leasing. As the agency explained:

The only direct impact of issuing new oil and gas leases on socioeconomics within the Assessment Area would be the generation of revenue from the sale of the leases, as the State of Nevada retains 40 percent of the proceeds from lease sales. From March 2010 to July 2014 total revenue generated from both competitive and non-competitive oil and gas lease sales on the Battle Mountain District was \$2,411,377.

EA at 93. While we do not suggest that a comprehensive cost-benefit analysis is required, the fact that economic benefits are disclosed in the EA indicates that costs and benefits are useful for assessing the significance of the proposed leasing.

In response to WildEarth Guardians' comments on this issue, the BLM provided no response. However, the BLM cannot cherry pick which economic benefits and costs it chooses to disclose. Although the BLM may assert it is reasonable not to disclose carbon costs, the fact that the agency discloses economic benefits in the EA indicates this is an arbitrary position and simply an attempt to avoid providing a reasoned assessment of impacts under NEPA. To this end, the BLM's failure to disclose carbon costs in order to fully assess the significance of climate impacts undermines reliance on a FONSI to justify approval of the proposed leasing.

Sincerely,



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# **Exhibit 1**

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United States Government Accountability Office

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Report to the Chairman, Committee on  
Energy and Natural Resources, U.S.  
Senate

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December 2013

# OIL AND GAS RESOURCES

## Actions Needed for Interior to Better Ensure a Fair Return

# GAO Highlights

Highlights of [GAO-14-50](#), a report to the Chairman, Committee on Energy and Natural Resources, U.S. Senate

## Why GAO Did This Study

In fiscal year 2012, companies received over \$66 billion from the sale of oil and gas produced from federal lands and waters, and they paid \$10 billion to the federal government for developing these resources according to the Department of the Interior. The federal government seeks a fair return on its share of revenue from leasing and production activities on federal lands and waters through the federal oil and gas fiscal system. Under the fiscal system, companies pay royalties, rents, and other payments—payments generally specified in lease terms—and taxes on profits from the sale of oil and gas produced from federal leases. In May 2007, GAO found, based on several studies, that the government received one of the lowest percentages of value of oil and gas produced in the world. In September 2008, GAO found that Interior had not evaluated the federal oil and gas fiscal system for over 25 years and recommended that a periodic assessment was needed.

GAO was asked to review Interior's collection of oil and gas revenues. This report examines steps Interior has taken to ensure the public receives a fair return on oil and gas resources since 2007. GAO reviewed applicable law and regulations; examined prior GAO studies, Interior policies and documents; and interviewed officials.

## What GAO Recommends

GAO recommendations include that Interior establish documented procedures for (1) periodically assessing the fiscal system and (2) determining whether and how to change new offshore lease terms. Interior concurred with GAO's recommendations.

View [GAO-14-50](#). For more information, contact Frank Rusco at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov).

December 2013

## OIL AND GAS RESOURCES

### Actions Needed for Interior to Better Ensure a Fair Return

#### What GAO Found

Interior has taken some steps intended to help ensure a fair return on federal oil and gas resources but does not have documented procedures for periodically conducting assessments of the fiscal system. Specifically, Interior has taken the following steps:

- *Changed offshore lease terms and considered but has not changed onshore lease terms.* Interior changed certain offshore lease terms—including raising royalty rates twice in response to changing market conditions. For onshore resources, which are subject to many of the same market conditions, Interior has considered but not made changes to royalty rates. Interior officials are currently unable to make timely adjustments to onshore royalty rates. Current regulations generally provide for a fixed onshore royalty rate that limits Interior's flexibility to make timely adjustments.
- *Contracted for studies of various aspects of the fiscal system.* Interior contracted for three studies examining its fiscal system including a study done in 2011, in response to GAO's September 2008 report that compared the U.S. government's oil and gas fiscal system to other resource owners. Interior officials said the reports provided some useful information such as how fiscal terms in the United States compared to other resource owners.
- *Interior is examining potential regulatory changes that could simplify royalty payments.* Interior is examining potential regulatory changes that could simplify royalty payments. GAO found in the past that complex valuation regulations can result in inaccurate royalty payments made by industry, and this could increase costs to ensure accurate royalty payments because of the need for potentially detailed and time-consuming audits of records. In May 2011, Interior published the Advance Notice Of Proposed Rulemaking for a proposed rule currently undergoing internal review. According to officials, the proposed rule is expected to be published in 2014, and officials explained that it took several years due to factors including the complexity of oil and gas valuation.

Interior does not have documented procedures in place for determining when to conduct periodic assessments of the fiscal system. Although Interior recently contracted for such an assessment, it was the first in well over 25 years. Without documented procedures, Interior will not have reasonable assurance that it will consistently conduct such assessments in the future and, without periodically conducting such assessments, Interior cannot know whether there is a proper balance between the attractiveness of federal leases for investment and appropriate returns for federal oil and gas resources, limiting Interior's ability to ensure a fair return. Further, Interior does not have documented procedures for determining whether and how to make changes to new offshore lease terms. Without documented procedures for determining whether and how to make changes to new offshore lease terms, Interior's rationale is not transparent and may result in inconsistent decisions. Such inconsistencies would undermine Interior's credibility and ability to better ensure a fair return on federal oil and gas resources.

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## Abbreviations

BLM	Bureau of Land Management
BOEM	Bureau of Ocean Energy Management
MMS	Minerals Management Service
ONRR	Office of Natural Resources Revenue

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December 6, 2013

The Honorable Ron Wyden  
Chairman  
Committee on Energy and Natural Resources  
United States Senate

Dear Mr. Chairman:

Production of oil and natural gas from leases on federal lands and waters is an important part of the nation's energy portfolio and a significant source of revenue for the federal government. Domestic and foreign companies received over \$66 billion from the sale of oil and gas produced from federal lands and waters in fiscal year 2012, according to the Department of the Interior. Interior reported collecting about \$9.7 billion in 2012 from royalties and other payments from these companies, making oil and gas resources one of the federal government's largest nontax sources of revenue. The terms and conditions under which the government collects these revenues are referred to as the "oil and gas fiscal system" and generally include royalties and other payments for the rights to explore, develop, and sell oil and gas resources. However, over the past several decades, we, and others, have identified problems with Interior's management of the federal oil and gas fiscal system. For example, in 1982, a task force convened by Interior found that management of the fiscal system needed a thorough overhaul and provided 60 recommendations for improving the fiscal accountability of the nation's onshore and offshore resources.<sup>1</sup> Upon the completion of the task force's work, the Secretary of the Interior informed Congress, in March 1983, that Interior had refined the system and that a "full and fair return" to the American people would be assured. In May 2007, we found that, based on the results of a number of studies, the government receives one of the lowest government takes—commonly understood to be the total revenue, as a percentage of the value of oil and natural gas

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<sup>1</sup>*Fiscal Accountability of the Nation's Energy Resources* (January 1982).

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produced—in the world.<sup>2</sup> In addition, in September 2008, we found that Interior did not routinely evaluate the federal oil and gas fiscal system and suggested that Congress should consider directing the Secretary of the Interior to (1) convene an independent panel to conduct a comprehensive review of the oil and gas fiscal system and (2) establish procedures to periodically evaluate the state of the fiscal system.<sup>3</sup> In 2011, in part because of the challenges identified in our past work concerning Interior not having reasonable assurance that it is collecting its share of revenue from oil and gas produced on federal lands, we added Interior’s management of federal oil and gas resources to GAO’s list of programs at high risk of fraud, waste, abuse, and mismanagement.<sup>4</sup>

Interior has oversight responsibility for the development of federal oil and gas resources located under over 260 million surface onshore acres, 700 million subsurface onshore acres, and more than 1.7 billion offshore acres in the waters of the outer continental shelf.<sup>5</sup> Companies that develop and produce oil and gas from these federal lands and waters do so over a specified period of time under leases obtained from and administered by agencies of Interior—the Bureau of Land Management (BLM) for onshore leases and the Bureau of Ocean Energy Management (BOEM) for offshore leases. Interior’s Office of Natural Resources Revenue (ONRR) is responsible for collecting revenues from onshore and offshore leases.

Interior acts on behalf of the American people to manage the federal oil and gas system to ensure a fair return to the public for the development

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<sup>2</sup>GAO, *Oil and Gas Royalties: A Comparison of the Share of Revenue Received from Oil and Gas Production by the Federal Government and Other Resource Owners*, [GAO-07-676R](#) (Washington, D.C.: May 1, 2007). The government take, which accrues to any government, is largely determined by the government’s oil and gas fiscal system. In the United States, this fiscal system consists of both terms specified in the lease, such as the royalty rate and rent, as well as the corporate taxes paid by the company on profits from the sale of oil and gas produced from federal leases.

<sup>3</sup>GAO, *Oil and Gas Royalties: The Federal System for Collecting Oil and Gas Revenues Needs Comprehensive Reassessment*, [GAO-08-691](#) (Washington, D.C.: Sept. 3, 2008). The status of these actions is discussed later in this report.

<sup>4</sup>GAO, *High-Risk Series: An Update*, [GAO-11-278](#) (Washington, D.C.: Feb. 16, 2011).

<sup>5</sup>The outer continental shelf (submerged lands) is outside the territorial jurisdiction of all 50 states but within U.S. jurisdiction and control and consists of submerged federal lands, generally extending seaward between 3 and 200 nautical miles off the U.S. coastline.



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of oil and gas resources. For offshore resources, one of the stated purposes of the Outer Continental Shelf Lands Act, as amended—which governs the management of oil and gas resources—is to ensure the public “a fair and equitable return” on the resources on the outer continental shelf. The law directs the Secretary of the Interior to conduct leasing activities to assure receipt of fair market value for the lands leased and the rights conveyed by the federal government. Further, for onshore resources, Interior relies on the competitive leasing process required by the Mineral Leasing Act, as amended, to ensure fair market value for onshore oil and gas resources. Broadly, we refer to the government collecting an appropriate share of revenue from leasing and production activities on federal lands and waters as ensuring a fair return. Because the revenues these leases generate depend, in part, on the amounts of oil and natural gas that companies produce from them, the federal government has sought to design fiscal systems that balance the goal of providing a fair return with sufficient financial incentives for companies to commit resources to exploring, developing, and producing oil and gas from their leases.

You asked us to review Interior’s collection of oil and gas revenues as part of our ongoing efforts to support congressional oversight of GAO’s high-risk areas. This report examines the steps Interior has taken to ensure that the public receives a fair return on federal oil and gas resources since 2007. To conduct this work, we reviewed applicable law, regulations, and guidance that govern Interior’s management of oil and gas resources including the Outer Continental Shelf Lands Act, the Mineral Leasing Act, and the Federal Onshore Oil and Gas Leasing Reform Act; examined our prior reports and Interior leasing program policies and documents; and interviewed Interior officials from BOEM, BLM, ONRR, and the Solicitor’s Office. We also conducted a high-level review of the Interior-contracted studies of the fiscal system in order to summarize the studies’ purpose and goals. We also compared actions that Interior took to standards for internal control in the federal government.<sup>6</sup>

We conducted this performance audit from October 2012 to December 2013 in accordance with generally accepted government auditing

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<sup>6</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

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standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

This section describes (1) the federal oil and gas fiscal system, (2) leasing processes, and (3) the history of oil and gas management challenges. Created by Congress in 1849, Interior oversees the nation's publicly owned natural resources including parks, wildlife habitat, and crude oil and natural gas resources on millions of acres onshore and offshore in the waters of the outer continental shelf. With regard to oil and gas in particular, Interior leases federal lands and waters (also referred to as submerged lands), issues permits for oil and gas drilling, and is responsible for ensuring that the federal government receives payment from the private companies that extract oil and gas from federal leases.

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## The Federal Oil and Gas Fiscal System

The oil and gas fiscal system defines the applicable payments to the government from companies that lease federal lands and waters for oil and gas development. These payments include royalties, rents, and other payments—items generally specified within the lease terms. The revenues collected by the federal government on oil and gas development are shared with states, as directed by statute, and the remaining funds are deposited in the U.S. Treasury. In addition to the collection of these payments by Interior, the federal government assesses taxes on the profits companies earn on the sale of oil and gas produced from federal leases. Under the oil and gas fiscal system, companies bid on leases that Interior makes available. Interior awards the lease to the highest bidder generally based on a lump-sum payment called a bonus bid that is due when the lease is issued. The lease is a contract and conveys the rights to explore for and produce the oil and gas in a specified area to a company that holds the lease. The company is then subject to the payment of rental rates until production begins and then to payment of royalties on any oil and gas that is eventually produced on the lease. The royalty rate is a percentage of the value of production, and the royalty owed is the volume of production times the unit value of production times the royalty rate. The federal government receives royalty payments once production starts. In fiscal year 2012, the \$9.7 billion in oil

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and gas revenue collected included royalties (about \$8.5 billion or 87 percent), bonus bids (about \$947 million or 10 percent),<sup>7</sup> and rental fees (about \$272 million or 3 percent).

Currently Interior has the authority to change certain lease terms—such as the duration of the lease, royalty rates, and rental fees—within the overall oil and gas fiscal system. For new offshore leases, Interior is allowed by statute to change the lease terms for the bonus bid structure, rent, and royalty rates.<sup>8</sup> For new onshore leases, Interior is generally allowed by statute to change these same lease terms but with certain limits on flexibility. For onshore leases, Interior’s regulations—issued in the 1980s—currently establish a royalty rate of 12.5 percent.<sup>9</sup> As such, changes to onshore royalty rates would require Interior to revise its regulations. With regard to taxes on corporate profits, only Congress may change the tax components of the oil and gas fiscal system as Interior does not have the authority to do so.

For both offshore and onshore leases, ONRR collects revenue from companies for the royalties, rents, bonuses, and other revenues generated throughout the leasing process. In this regard, ONRR has the responsibility to ensure that these revenues are accurately reported and paid in compliance with laws, regulations, and lease terms. ONRR establishes the regulations for how oil and gas are valued for royalty purposes, which affects the royalties that companies pay.

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## Leasing Processes

Interior’s processes for issuing federal leases vary depending on whether they are offshore or onshore.

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<sup>7</sup>Lease sale 222 was held in June 2012 and resulted in bonus revenues of \$1.68 billion; however, since certain bid review procedures were not completed by the end of the fiscal year, not all of these bonuses are included in the revenue amount for bonus bids.

<sup>8</sup>43 U.S.C. §1337 provides that Interior can make changes so long as there is only one bid variable or “flexible” term. The bid variable or “flexible” term does not fluctuate over the life of the lease but is the term on which bidders compete for the award through the level of the bid made.

<sup>9</sup>By statute, the Secretary of the Interior must first offer parcels at competitive lease sales and may only issue noncompetitive leases after the department has offered the lands competitively at an oral auction and not received a bid. For onshore leases issued noncompetitively, the Mineral Leasing Act sets a 12.5 percent royalty rate by statute.

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## Offshore Leases

For offshore leases, management of oil and gas resources is primarily governed by the Outer Continental Shelf Lands Act, which sets forth procedures for leasing, exploration, and development and production of those resources. BOEM is the bureau within Interior responsible for implementing these requirements of the act related to preparing the leasing program. The act calls for the preparation of an oil and gas leasing program designed to best meet the nation's energy needs while also taking into account a range of principles and considerations specified by the act. Specifically, the act provides that "[m]anagement of the outer Continental Shelf shall be conducted in a manner which considers economic, social, and environmental values of the renewable and nonrenewable resources contained in the outer Continental Shelf, and the potential impact of oil and gas exploration on other resource values of the outer Continental Shelf and the marine, coastal, and human environments."<sup>10</sup> Furthermore, the act provides that the outer continental shelf is a "vital national resource reserve held by the federal government for the public, which should be made available for expeditious and orderly development, subject to environmental safeguards, in a manner which is consistent with the maintenance of competition and other national needs."<sup>11</sup> The act grants the Secretary the authority to issue leases and states that "leasing activities shall be conducted to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government."<sup>12</sup>

The Outer Continental Shelf Lands Act requires the Secretary of the Interior to prepare an oil and gas leasing program that consists of a 5-year schedule of proposed lease sales that shows the size, timing, and location of leasing activity as precisely as possible. Every 5 years, Interior selects the areas it will offer for leasing and establishes a schedule for individual lease sales. These leases are offered for competitive bidding, and all eligible companies are invited to submit written sealed bids for the lease and rights to explore, develop, and produce oil and gas resources on these leases. These rights last for a set period of time, referred to as

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<sup>10</sup>43 U.S.C. §1344(a)(1).

<sup>11</sup>43 U.S.C. §1332(3).

<sup>12</sup>43 U.S.C. §1344(a)(4).

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the initial period of the lease,<sup>13</sup> which varies depending on the water depth.<sup>14</sup> Interior estimates the fair market value of each lease, and the minimally acceptable bid is derived from this estimate. The bidder that submits the highest bonus bid that meets or exceeds Interior's minimum bid is awarded the lease. If a high bid does not satisfy any of the required conditions, the bid is rejected. In the event that no bid is received or no bids equal or exceed the minimum bid, Interior may choose to withdraw the lease—possibly offering it again at a future date.

## Onshore Leases

For onshore leases, BLM's current leasing process was established in the Mineral Leasing Act of 1920, as amended, and the Mineral Leasing Act for Acquired Lands of 1947, as amended. Interior relies on the competitive leasing process required by the Mineral Leasing Act to ensure fair market value for onshore oil and gas resources. In addition, the Federal Land Policy and Management Act, though not specific to federal oil and gas resources, calls for the management of public lands in a manner that protects historical and environmental resources, provides for recreational and other uses, and ensures "fair market value" is received for their use and resources. BLM offers parcels of land nominated by industry and the public, as well as some it identifies. As with offshore leases, Interior initially offers onshore leases through a competitive bidding process; however, bonus bids are received in an oral auction rather than in a sealed written form, and Interior does not evaluate bid adequacy on a parcel-by-parcel basis. Instead, by law, it requires a uniform national minimum acceptable bid of \$2 per acre that the Secretary has the authority to raise. If Interior receives any bids on an offered lease, the lease is awarded to the highest bidder. All onshore leases that do not receive any bids in the initial offer must be offered noncompetitively the day after and remain available for noncompetitive

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<sup>13</sup>If a discovery is made within the initial term of the lease, the lease is extended for as long as oil and/or natural gas is produced in paying quantities or approved drilling operations are conducted. The term of the lease may also be extended if a suspension of production or suspension of operations has been granted or directed.

<sup>14</sup>In the Gulf of Mexico, in a recent notice of sale in 2012, BOEM offered leases with an initial term of 5 years extended to 8 years if drilling begins during the initial 5-year period targeting hydrocarbons below a depth of at least 25,000 feet subsea for leases in less than 400 meters of water. For leases in 400 to 800 meters of water, the initial term was 5 years extended to 8 years if drilling begins during the initial 5-year period. For leases in 800 to 1,600 meters of water, the initial period was 7 years extended to 10 years if drilling begins during the initial 7-year period. For leases in over 1,600 meters of water, the initial period was 10 years.

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leasing for a period of 2 years after the competitive lease sale. Any of these available leases may be acquired noncompetitively on a first-come, first-served basis for the minimum acceptable bid. About 40 percent of existing BLM oil and gas leases were issued as noncompetitive leases.<sup>15</sup> For all competitively issued leases, the winning bidder must pay Interior the full amount of the bonus bid to become the lessee. The lessee then pays a fixed amount of rent each year until the lease begins producing or the lease terminates, expires, is cancelled, suspended, or relinquished.

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## History of Oil and Gas Management Challenges

In the 1970s and early 1980s, Interior's management of the oil and gas revenue collection system faced criticism by us and Interior's Office of the Inspector General. Interior's Inspector General issued five reports critical of the program between 1969 and 1977 and, in 1981, we reported that Interior was not collecting potentially hundreds of millions in royalties due from federal oil and gas leases.<sup>16</sup> In response, in 1981, the Secretary of the Interior established the Commission on Fiscal Accountability of the Nation's Energy Resources, better known as the Linowes Commission named for the chairman of the commission, to investigate allegations of irregularities in royalty payments, among other issues. The Linowes Commission raised a number of serious concerns and in its report stated that "management of royalties for the nation's energy resources has been a failure for more than 20 years. Because the Federal government has not adequately managed this multibillion dollar enterprise, the oil and gas industry is not paying all the royalties it rightly owes."<sup>17</sup> The report cited a range of problems, including the failure to verify data reported by companies and late payments and underpayments, and concluded that, "[i]n short, the industry is essentially on an honor system." Among its 60

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<sup>15</sup>BLM, *Public Land Statistics 2012*, Volume 197 (June 2013). As of September 30, 2012, BLM reported 27,747 competitive oil and gas leases covering 22.2 million acres and 18,411 noncompetitive oil and gas leases covering 14.8 million acres.

<sup>16</sup>GAO, *Oil and Gas Royalty Collections: Longstanding Problems Costing Millions*, [GAO/AFMD-82-6](#) (Washington, D.C.: Oct. 29, 1981). In our October 1981 report, we recommended that Interior, as part of its efforts to develop a new royalty accounting system, should (1) monitor the development of the new system and (2) include as part of these redesign efforts a plan for, among other actions, monitoring and reconciling records, inspecting leases, and verifying production and sales data. Interior did not take action to implement either of these recommendations in part because it had initiated a new review of its revenue collection system that covered many of the same issues we identified.

<sup>17</sup>*Fiscal Accountability of the Nation's Energy Resources* (January 1982).

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recommendations for improving the fiscal accountability of onshore and offshore resources, the commission called for raising onshore royalty rates to “appropriate levels.” Specifically, the commission recommended that the onshore royalty rate for oil and gas be raised from 12.5 percent to 16.67 percent generally for new and renegotiated leases consistent with offshore royalty rates of 16.67 percent in place at that time.

Following the work of the commission, Interior and Congress took several actions aimed at improving management of revenue collection. In particular, the Secretary of the Interior, by secretarial order, reorganized the task of administering revenue collection under a new bureau; specifically, the Minerals Management Service (MMS) was created within Interior, in part, from the division of the U.S. Geological Survey—which was originally tasked with administering revenue collection, among other duties—to improve management of federal leasing revenues.<sup>18</sup> In addition, Congress passed legislation aimed at improving the collection of revenue including the Federal Oil and Gas Royalty Management Act of 1982 and the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

In 2007, Interior’s Subcommittee on Royalty Management—a subcommittee of the Royalty Policy Committee chartered to provide advice on royalty management issues and other mineral-related policies to the Secretary and other departmental officials responsible for managing mineral leasing activities—reported that a number of aspects of royalty management activities required prompt and, in some cases, significant management attention to ensure public confidence.<sup>19</sup> In particular, the report included over 100 recommendations to improve Interior’s management of oil and gas resources, including those aimed at revising its valuation regulations and guidelines that govern the valuation

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<sup>18</sup>In 2010, following the explosion of the *Deepwater Horizon* drilling rig in the Gulf of Mexico, Interior announced that it was going to reorganize its offshore oversight and revenue collection functions. Specifically, Interior eventually restructured MMS into three separate bureaus—BOEM, responsible for offshore leasing and resource management; the Bureau of Safety and Environmental Enforcement, responsible for issuing oil and natural gas drilling permits, environmental safety and regulation, and conducting inspections for offshore leases; and ONRR, responsible for revenue collection for both offshore and onshore leases.

<sup>19</sup>Subcommittee on Royalty Management, Royalty Policy Committee, *Report to the Royalty Policy Committee: Mineral Revenue Collection from Federal and Indian Lands and the Outer Continental Shelf* (Washington, D.C.: 2007).

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of oil and gas resources for royalty purposes. According to Interior documentation, as of August 2012, 15 recommendations remain open.

In our May 2007 report, we found that, based on results of a number of studies, the government receives one of the lowest government takes in the world.<sup>20</sup> In September 2008,<sup>21</sup> we found that the fiscal system needed comprehensive reassessment and that Interior did not routinely evaluate the federal oil and gas fiscal system. Interior disagreed with recommendations in the draft report that it perform a comprehensive review of the fiscal system using an independent panel and adopt policies and procedures to keep abreast of important changes in the oil and gas market and in other countries' efforts to adjust their oil and gas management practices in light of these changes. Thus, in the final report, we suggested that Congress should consider directing the Secretary of the Interior to (1) convene an independent panel to perform a comprehensive review of the federal system for collecting oil and gas revenue and (2) establish procedures for periodically collecting data and information and conducting analyses to determine how the federal government take and the attractiveness for oil and gas investors in each federal oil and gas region compare to those of other resource owners and report this information to the Congress. Actions taken in response to this suggestion are discussed later in this report. In 2011, in part because of the challenges identified in our past work, we added Interior's management of federal oil and gas resources to our list of programs at high risk of fraud, waste, abuse, and mismanagement.<sup>22</sup> In the 2013 update of the high-risk list, we found that some progress had been made related to Interior's management of federal oil and gas resources and narrowed the federal oil and gas high-risk area to focus, in part, on the remaining issues related to revenue collection and ensuring that the public is getting an appropriate share of oil and gas revenues.<sup>23</sup>

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<sup>20</sup> [GAO-07-676R](#).

<sup>21</sup> [GAO-08-691](#).

<sup>22</sup> [GAO-11-278](#).

<sup>23</sup> GAO, *High-Risk Series: An Update*, [GAO-13-283](#) (Washington, D.C.: Feb. 14, 2013).



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## Interior Has Taken Some Steps to Help Ensure a Fair Return but Does Not Have Procedures for Periodically Conducting Assessments of the Fiscal System

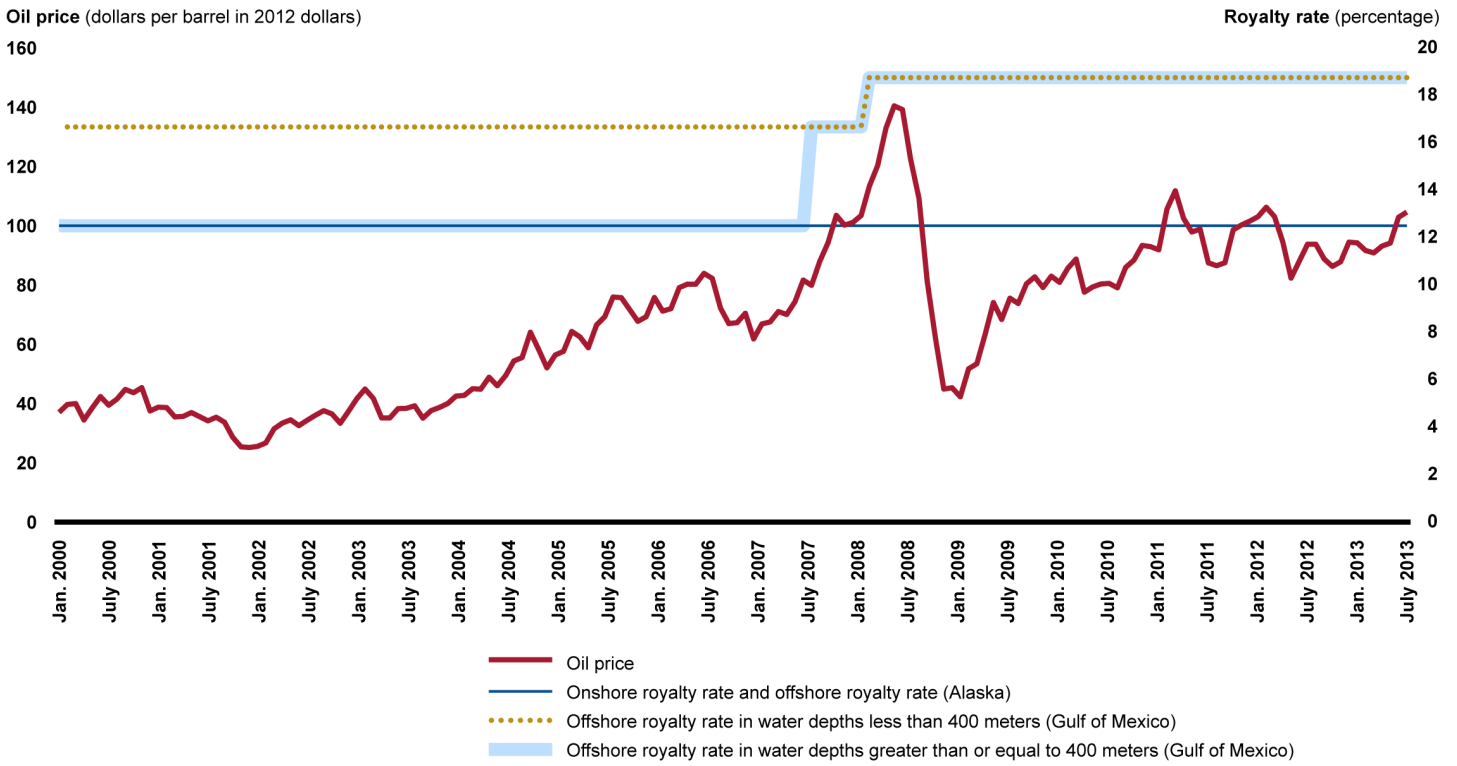
Interior has taken some steps to help ensure a fair return on federal oil and gas resources since our 2007 report, including: (1) changing offshore lease terms, while considering but not making changes to onshore lease terms; (2) contracting for studies of various aspects of the fiscal system; and (3) examining potential regulatory changes that could simplify royalty payments and collections. However, Interior does not have documented procedures in place for determining when to periodically conduct assessments of the fiscal system to ensure a fair return or for determining whether and how to make changes to lease terms for new offshore leases.

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## Interior Has Taken Some Steps Aimed at Ensuring a Fair Return

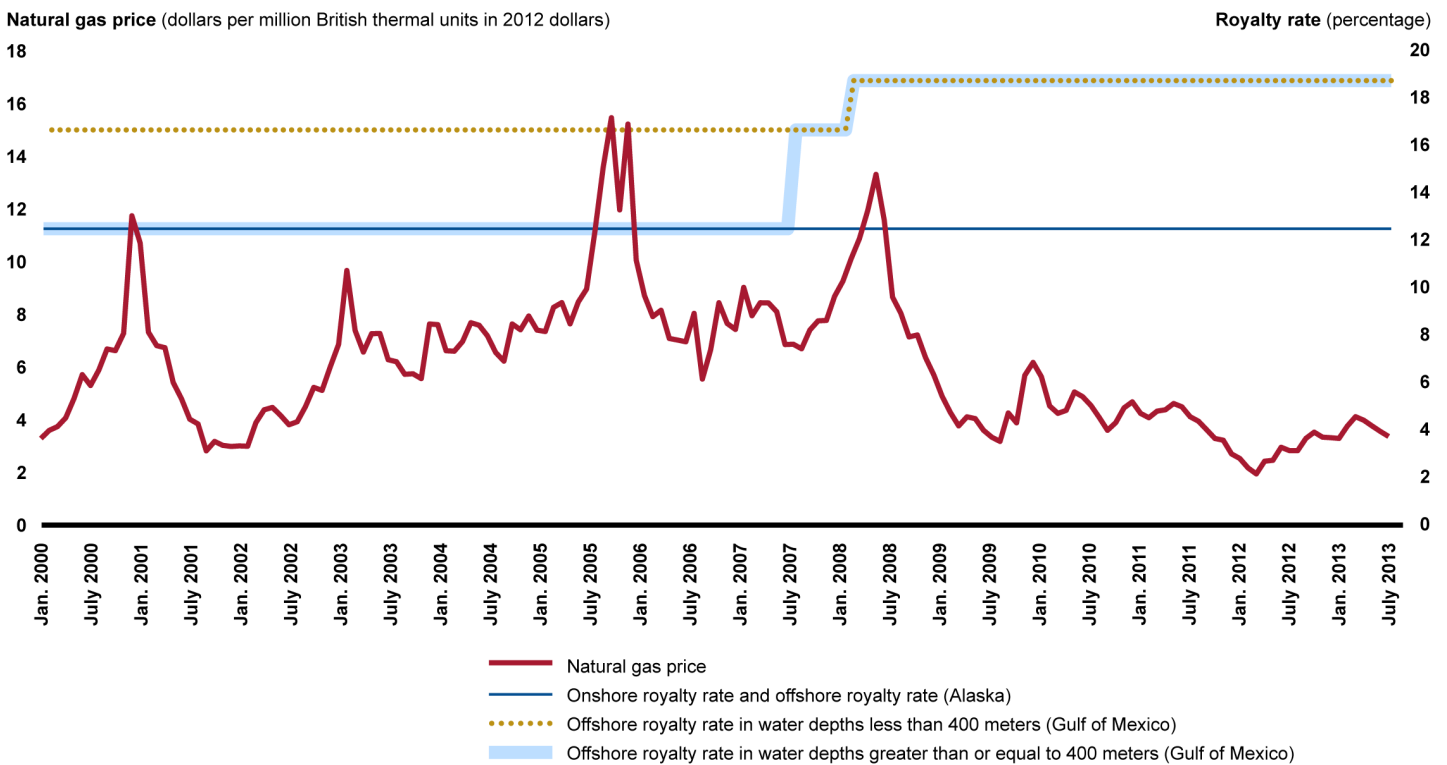
Interior has taken some steps aimed at ensuring a fair return, including changing offshore lease terms—such as increasing royalty rates, minimum bids, and rental rates—but onshore lease terms have not changed in recent years though onshore and offshore leasing programs are subject to many of the same market conditions. For example, while onshore royalty rates have remained at 12.5 percent, certain offshore royalty rates began increasing in 2007 to the current offshore royalty rate of 18.75 percent. Figures 1 and 2 depict changes to offshore and onshore royalty rates along with oil and gas price fluctuations, respectively, from January 2000 through July 2013. In addition, Interior has contracted for studies of various aspects of its fiscal system, including an assessment of how the federal fiscal system compared with the systems of other oil and gas resource owners (including owners in other countries); an analysis of policies that affect the pace of leasing in the Gulf of Mexico; and an analysis of the benefits, costs, and economic impacts of raising onshore royalty rates. Interior is also examining potential regulatory changes that could simplify royalty payments and collections.

**Figure 1: Royalty Rates and Oil Prices, January 2000 through July 2013**



Sources: GAO analysis of Energy Information Administration and Interior data.

**Figure 2: Royalty Rates and Gas Prices, January 2000 through July 2013**



Sources: GAO analysis of Energy Information Administration and Interior data.

### Interior Changed Offshore Lease Terms

In recent years, Interior changed some offshore lease terms in an effort to ensure a fair return on oil and gas resources. Since 2007, Interior increased offshore lease terms including royalty rates, rental rates, and the minimum bid for certain offshore leases as follows:

- Increased royalty rates.** From 2007 through 2008, Interior increased royalty rates for new leases by 50 percent. In 2007, Interior increased the royalty rate for new Gulf of Mexico leases from 12.5 percent to 16.67 percent for new leases in water depths greater than 400 meters. In 2008, Interior increased the rate again for all Gulf of Mexico leases to 18.75 percent. As of August 2013, all Gulf of Mexico royalty

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rates for new leases are 18.75 percent.<sup>24</sup> According to Interior officials and documents, incremental increases in royalty rates were instituted in response to a variety of factors including (1) increased oil and gas prices; (2) perceived improvements in exploration and production technologies, especially in deep water; and (3) the competitive market for offshore leases. Interior estimated that the royalty rate increase from 16.67 percent to 18.75 percent would result in a net increase in the total Gulf of Mexico federal revenues from bonuses, rents, and royalties from new leases of \$4.3 billion, a 5 percent increase from \$87.4 to \$91.7 billion over 30 years.<sup>25</sup> After this 2008 royalty rate increase, Interior documents stated that demand remained strong for newly offered leases in the Gulf of Mexico and that Interior observed strong bidding interest in the three subsequent lease sales.<sup>26</sup>

- *Escalating and increased rental rates.* Interior established escalating rental rates—rates that increase over the duration of the lease—to encourage faster exploration and development of leases, or earlier relinquishment when exploration is unlikely to be undertaken by the lessee. Specifically, in 2007, Interior implemented escalating rental rates for leases offered in less than 400 meters of water—and in 2009, for leases offered in at least 400 meters of water.<sup>27</sup> Also, in

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<sup>24</sup>Although the outer continental shelf leases for the Gulf of Mexico have increased royalty rates, the outer continental shelf leases for Alaska have remained at a 12.5 percent royalty rate for about 30 years.

<sup>25</sup>The revenue estimates are nominal dollars unadjusted for inflation.

<sup>26</sup>Interior's analysis included estimates for increasing royalty rates beyond 18.75 percent. Specifically, it estimated that royalty rate increases from 18.75 to 21.875 percent would cause production losses of 2 to 6 percent with royalty revenue increases of 11 to 17 percent. According to the analysis, the effect of increased royalty rates, depending on the size of the change, would be less production, but with the potential for higher revenues from royalties in the future. Interior found that a large increase in the royalty rate could curtail expected returns to lessees to such a large extent that it might unduly reduce leasing and future production by proportions greater than suggested in its analysis. Much higher royalty rates could also curtail production from new leases in the future as production declines in the later phases of a lease's productive life.

<sup>27</sup>Under this change, the prevailing rental rates for new leases in water depths of less than 200 meters would be \$7/acre for the first 5 years with increases to \$14/acre in year 6, \$21/acre in year 7, and \$28/acre in year 8. For new leases in water depths from 200 to 400 meters, rental rates increase from \$11/acre to \$22/acre in year 6, \$33/acre in year 7, and \$44/acre in year 8. For new leases in water depths from 400 to 800 meters, rental rates increase from \$11/acre to \$16/acre in years 6 through 8. For new leases in water depths greater than 800 meters, rental rates increase from \$11/acre to \$16/acre in years 6 through 10.

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2009, Interior increased rental rates for new Gulf of Mexico leases in all water depths. Interior estimated that the increased rental rates and escalating rent rates in water depths greater than 400 meters would result in five fewer lease tracts receiving bids but an increase in rental revenue of \$57 million over the initial lease term for leases resulting from that sale. \$27 million of this \$57 million was attributed to the increase in base rental rates.<sup>28</sup> In addition, the increased rental rates did not appear to reduce the number of lease blocks to be explored, according to Interior documents.

- *Increased minimum bids.* In 2011, Interior increased the minimum bid for leases offered in at least 400 meters of water in the Gulf of Mexico to \$100 per acre, up from \$37.50 per acre.<sup>29</sup> According to Interior's *Proposed Final Outer Continental Shelf Oil & Gas Leasing Program 2012-2017*, the minimum bid was raised, in part, to account for increases in oil prices and to encourage optimal timing of leasing. Interior officials told us that a review of the minimum bid was initiated because the minimum bid had not been changed in some time. In addition, Interior analysis showed that a minimum bid of \$100 per acre would be generally equivalent to the cost of the minimum bid in the past, going back to 1999, adjusted for differences in prices, costs, and royalty rates.

For details on the recent history of lease terms in the Gulf of Mexico, see table 1; changes in lease terms are highlighted in gray.

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<sup>28</sup>The revenue estimates are in nominal dollars unadjusted for inflation for leases resulting from sale 208 and the revenue estimates for the increase in base rental rates include estimates for the initial lease term.

<sup>29</sup>The Gulf of Mexico minimum bid remains at \$25 per acre in water depths of less than 400 meters. The most recent minimum bids in Alaska were \$25 per hectare (about \$10 per acre) in the Chukchi Sea, Cook Inlet, and in Zone B (deeper water areas) of the Beaufort Sea; and \$37.50 per hectare (about \$15 per acre) in Zone A (near shore areas) of the Beaufort Sea.

**Table 1: History of Lease Terms for Gulf of Mexico Outer Continental Shelf Oil and Gas Leases 2005-2013**

Lease sale	Sale date	Lease terms	Water depth (meters)					
			0-200	200-400	400-800	800-1,600	1,600-2,000	>2,000
196	8/17/2005	Rent (\$/acre)	6.25	9.50	9.50	9.50	9.50	9.50
		Minimum bid (\$/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	16.67% <sup>a</sup>	16.67%	12.50% <sup>a</sup>	12.50% <sup>a</sup>	12.50% <sup>a</sup>	12.50% <sup>a</sup>
198 and 200	3/15/2006 - 8/16/2006	Rent (\$/acre)	6.25	9.50	9.50	9.50	9.50	9.50
		Minimum bid (\$/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	16.67% <sup>a</sup>	16.67% <sup>a</sup>	12.50% <sup>a</sup>	12.50% <sup>a</sup>	12.50% <sup>a</sup>	12.50% <sup>a</sup>
204 and 205	8/22/2007 - 10/3/2007	Rent (\$/acre)	<b>6.25<sup>b</sup></b>	<b>9.5<sup>b</sup></b>	9.50	9.50	9.50	9.50
		Minimum bid (\$/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	16.67% <sup>a</sup>	16.67% <sup>a</sup>	<b>16.67%<sup>a</sup></b>	<b>16.67%<sup>a</sup></b>	<b>16.67%<sup>a</sup></b>	<b>16.67%<sup>a</sup></b>
224	3/19/2008	Rent (\$/acre)				9.50	9.50	9.50
		Minimum bid (\$/acre)				37.50	37.50	37.50
		Royalty rate				<b>18.75%</b>	<b>18.75%</b>	<b>18.75%</b>
206 and 207	3/19/2008 - 8/20/2008	Rent (\$/acre)	6.25 <sup>b</sup>	9.5 <sup>b</sup>	9.50	9.50	9.50	9.50
		Minimum bid (\$/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	<b>18.75%<sup>a</sup></b>	<b>18.75%<sup>a</sup></b>	<b>18.75%<sup>a</sup></b>	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75% <sup>a</sup>
208	3/18/2009	Rent (\$/acre)	<b>7.00<sup>b</sup></b>	<b>11.00<sup>b</sup></b>	<b>11.00<sup>b</sup></b>	<b>11.00<sup>b</sup></b>	<b>11.00<sup>b</sup></b>	<b>11.00<sup>b</sup></b>
		Minimum bid (\$/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75% <sup>a</sup>
210 and 213	8/19/2009 - 3/17/2010	Rent (\$/acre)	7.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>
		Minimum bid (\$/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75% <sup>a</sup>
218 to 229	12/14/2011 - 3/20/2013	Rent (\$/acre)	7.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>
		Minimum bid (\$/acre)	25.00	25.00	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>	<b>100.00</b>
		Royalty rate	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75%	18.75%	18.75%	18.75%
233	8/28/2013	Rent (\$/acre)	7.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>	11.00 <sup>b</sup>
		Minimum bid (\$/acre)	25.00	25.00	100.00	100.00	100.00	100.00
		Royalty rate	18.75% <sup>a</sup>	18.75% <sup>a</sup>	18.75%	18.75%	18.75%	18.75%

Source: GAO analysis of Interior data.

Note: One meter equals about 3.28 feet.

<sup>a</sup>Leases may be eligible for royalty relief. Certain leases include royalty relief provisions for shallow water deep gas, and other leases may be eligible to apply for shallow water deep gas royalty relief. Leases resulting from sales held after 2000 may be issued with certain royalty relief provisions, and all leases obtained after 2000 in water depths greater than 200 meters are also eligible to apply for royalty relief.

<sup>b</sup>Rent per acre is for years 1 through 5 of the lease; then the rental rate escalates in year 6 and, in some cases, increases again in subsequent years as well.

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Interior Has Considered but  
Has Not Changed Onshore  
Lease Terms

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Interior has also taken actions to encourage the development of oil and gas resources, which reduces the time from when federal leases are issued and the federal government receives its share of revenue from them, in response to our October 2008 recommendation that the Secretary of the Interior develop a strategy to evaluate options to encourage faster development of its oil and gas leases.<sup>30</sup> Specifically, in 2010, Interior shortened lease terms by reducing the duration of the initial period for Gulf of Mexico leases in water depths of 400 to less than 800 meters from an 8-year initial period to a 5-year initial period. For water depths of 800 to less than 1,600 meters, it reduced leases from a 10-year initial period to a 7-year initial period. According to Interior documents, these lease terms can generally be extended if the lessee begins drilling a well during the initial period.

For onshore resources, Interior has considered, but not made, changes to onshore lease terms in order to provide greater assurance that the public is getting a fair return on federal oil and gas resources. Interior acts on behalf of the American people to manage the federal oil and gas system to ensure a fair return to the public for the development of oil and gas resources. Interior officials told us that since 2009 the department has been considering increasing the onshore royalty rate—which is currently established in its regulations at 12.5 percent for both oil and gas.<sup>31</sup> According to the officials, several factors prompted efforts to consider changing the royalty rates, including our September 2008 report,<sup>32</sup> oil and gas prices, and Office of Management and Budget initiatives calling for increased revenue from onshore royalties.<sup>33</sup> Although both onshore and

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<sup>30</sup>GAO, *Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development*, [GAO-09-74](#) (Washington, D.C.: Oct. 3, 2008).

<sup>31</sup>For onshore leases issued noncompetitively, the Mineral Leasing Act sets a 12.5 percent royalty rate by statute.

<sup>32</sup>[GAO-08-691](#).

<sup>33</sup>According to Interior's *Fiscal Year 2014 Budget Justifications and Performance Information*, the administration proposed a package of legislative and administrative proposals to reform the management of Interior's onshore and offshore oil and gas leasing programs, with a key focus on improving the return to taxpayers from the sale of these federal resources and on improving transparency and oversight. Proposed changes included advancing royalty reforms such as evaluating minimum royalty rates for oil, gas, and similar products; adjusting onshore royalty rates; analyzing a price-based tiered royalty rate; and repealing legislatively-mandated royalty relief. The budget proposals for the past 4 years have included the goal of increasing onshore royalty rates.

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offshore leasing programs are subject to many of the same market conditions, Interior officials are currently unable to make timely adjustments to onshore royalty rates because BLM's regulations generally establish a set royalty rate of 12.5 percent. This limits the bureau's flexibility because making adjustments to that rate require going through the rulemaking process, and the process can take several years according to Interior officials. Specifically, officials said that the public notice and comment period required as part of the rulemaking process could take 1 to 2 years, and proposed rules must also undergo review by the Office of Management and Budget.

Interior officials told us that the department planned to publish a notice of proposed rulemaking in July 2012 to change BLM's regulations to set an onshore royalty rate of 18.75 percent for oil production on new federal competitive leases but leave the royalty rate for gas production unchanged at 12.5 percent. The planned regulatory revisions would have allowed the Secretary to review and revise royalty rates for new competitive leases as appropriate—similar to the authority that the Secretary has for revising offshore royalty rates. Officials told us that including the requirement for periodic review and revision of royalty rates would have given the Secretary greater flexibility to go forward with such reviews and revisions in the future.

Interior discontinued its efforts to pursue the revised regulations because, according to Interior officials, the department does not have enough information to determine how to adjust onshore royalty rates. Rather, Interior plans to ask the public to comment on whether and how royalty rates for new federal onshore competitive oil and gas leases should be revised to better ensure a fair return to the public. Specifically, Interior officials told us they plan to ask for comments on the types of royalty rate structures that should be considered, such as whether BLM should develop a uniform rate for all leases or different rates by region, state, geologic formation, or resource type. Furthermore, Interior officials told us they would also ask for comments on whether sliding scale royalty rates—or rates that vary with the price of the commodity—might be appropriate in specific circumstances. An Advance Notice Of Proposed Rulemaking is under development, but officials told us that higher priority rulemaking initiatives, such as regulations for hydraulic fracturing and revisions to its oil and gas measurement regulations, precede it and that limited resources constrain their ability to meet program demands. As a result of not successfully changing federal regulations to provide itself with the flexibility needed to make timely adjustments to onshore lease terms, Interior's ability to ensure that the public is receiving a fair return is



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Interior Contracted for Studies  
of Various Aspects of the Fiscal  
System

limited. Moreover, Interior continues to offer onshore leases with lease terms—terms lasting the life of the lease—that have not been adjusted in response to changing market conditions, potentially foregoing a considerable amount of revenue. For example, in 2011, Interior estimated that onshore royalty rate changes could increase revenue collections by about \$1.25 billion over 10 years.<sup>34</sup>

Interior contracted for several studies—including a study of how the federal oil and gas fiscal system compared with fiscal systems of other resource owners—that reviewed various aspects of the federal oil and gas fiscal system since 2007. In our September 2008 report,<sup>35</sup> we found that Interior collected a lower government take for oil and gas production in the deep water of the U.S. Gulf of Mexico than all but 11 of 104 oil and gas resource owners whose revenue collection systems were evaluated in a comprehensive industry study, which included other countries as well as some states.<sup>36</sup> We also found that Interior had not routinely evaluated the federal oil and gas fiscal system, monitored what other governments or resource owners were receiving for their resources, or evaluated and compared the attractiveness of federal lands and waters for investment

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<sup>34</sup>According to officials, Interior developed this estimate in support of the budget in 2011. The estimate is based on a royalty rate of 18.75 percent for oil and gas. Actual changes in revenue collections resulting from a royalty rate increase would be highly dependent on market prices and production.

<sup>35</sup>[GAO-08-691](#).

<sup>36</sup>Wood Mackenzie, *Government Take: Comparing the Attractiveness and Stability of Global Fiscal Systems* (June 2007).

with that of other regions.<sup>37</sup> In response to our 2008 findings, Interior contracted for a study—the 2011 *Comparative Assessment of the Federal Oil and Gas Fiscal System* study—that compared the federal oil and gas fiscal systems of selected federal oil and gas regions to that of other resource owners. In addition, Interior contracted for two other studies on the effect of different leasing and royalty rate policies on revenue, exploration, and production. See table 2 for a description of these studies.

**Table 2: Interior-Contracted Studies of the Oil and Gas Fiscal System 2009-2013**

Study	Description of analysis conducted
Comparative Assessment of the Federal Oil and Gas Fiscal System (October 2011) <sup>a</sup>	<p>Examines 29 fiscal systems—including the current systems relating to federal offshore oil and gas resources in the Gulf of Mexico and onshore gas resources in Wyoming—and describes the impact of various lease term changes on other aspects of the system such as the system’s stability and competitiveness, pace of leasing, and revenue. The study provided information on fiscal system components, such as royalty rates and taxes, for specific areas within the United States and other countries.</p> <p>Identifies four fiscal-related factors—government take, internal rate of return, profit-investment ratio, and progressivity—and constructs a hypothetical, composite index using these measures to compare fiscal systems. The report provides an assessment of how changes to the royalty rate could potentially affect industry interest in federal offerings.</p>
Benefit-Cost and Economic Impact Analysis of Raising the Onshore Royalty Rates Associated with New Federal Oil and Gas Leasing (April 2011) <sup>b</sup>	<p>Assesses the impacts of raising onshore royalty rates associated with new competitive leases and considers both fixed and sliding scale royalty rates. The study also addresses changes to the net economic benefits to the states and federal government, changes to the demand for federal leases and changes to production.</p> <p>Estimates the impact of royalty rate changes—including sliding scale scenarios—on revenue and other parts of the revenue stream, such as bonus bids, and analyzes high and low price scenarios for oil and gas.</p>

<sup>37</sup>In the draft of our September 2008 report that we sent to Interior for comment, we made recommendations to address these issues. In its response, Interior stated that it did not fully concur with our recommendations because it had already contracted for a study that would address many of the issues we raised. However, because Interior’s ongoing study was limited in scope and to a specific region in the Gulf of Mexico, rather than a review of the entire federal oil and gas fiscal system as we recommended, we did not find the department’s stated rationale for not agreeing fully with our recommendations to be convincing. After Interior disagreed with our draft recommendations, for our final report we changed our recommendation to Interior into a “Matter for Congressional Consideration” that Congress should consider directing the Secretary of the Interior to (1) convene an independent panel to perform a comprehensive review of the federal system for collecting oil and gas revenue and (2) establish procedures for periodically collecting data and information and conducting analyses to determine how the federal government take and the attractiveness for oil and gas investors in each federal oil and gas region compare to those of other resource owners and report this information to Congress. Although Interior initially disagreed with this recommendation, in 2010, it contracted for the study comparing the federal oil and gas fiscal systems with those of other countries.

Study	Description of analysis conducted
Policies to Affect the Pace of Leasing and Revenues in the Gulf of Mexico (August 2009/December 2010) <sup>c</sup>	<p>Examines alternative leasing policies for outer continental shelf oil and gas resources in the Central and Western Gulf of Mexico. The study focuses on tracts to be leased in the Central and Western Gulf of Mexico planning areas over the 50-year period from 2010 – 2060.</p> <p>Considers several leasing policies and estimates the impact on exploration, production, and revenues. The study analyzes alternative leasing systems and describes the goals and criteria for assessing alternative leasing systems. The study models the various potential leasing systems and compares them with the status quo. Leasing systems' alternatives considered include slowing the pace of leasing, changing royalty rates, raising minimum bids, profit sharing, raising area rental payments, using different bidding systems, implementation of work commitments, and reducing the length of the primary lease period.</p>

Source: GAO analysis of Interior-contracted studies.

<sup>a</sup>IHS Cambridge Energy Research Associates, *Comparative Assessment of the Federal Oil and Gas Fiscal System* (October 2011).

<sup>b</sup>Enegis, LLC, *Benefit-Cost and Economic Impact Analysis of Raising the Onshore Royalty Rates Associated with New Federal Oil and Gas Leasing* (April 2011). This report was contracted by BLM to help guide the decision-making process with regards to a proposed royalty rate rulemaking. The rulemaking is still under deliberation by the agency, and all materials related to this process are considered pre-decisional in nature by Interior.

<sup>c</sup>Economic Analysis, Inc. and Marine Policy Center, *Policies to Affect the Pace of Leasing and Revenues in the Gulf of Mexico* (August 2009/December 2010). Each version of this study evaluates the same policy alternatives under different assumptions about the basic conditions for future development in the Gulf of Mexico such as the ultimate resource size in the Gulf of Mexico and lessee actions related to potential future effective tax rates.

According to Interior officials, the study conducted in response to our 2008 findings—the 2011 *Comparative Assessment of the Federal Oil and Gas Fiscal System*—provided some useful information about the fiscal system such as how fiscal terms in the United States compared with other resource owners, but it has not directly led to any changes to the fiscal system or lease terms for new federal oil and gas leases. Similarly, Interior officials told us that the other two studies have not yet led to revisions to the fiscal system or lease terms for new offshore or onshore leases. Rather, according to officials, additional internal analyses and modeling, as well as consultation with stakeholders—including oil and gas companies and the public—will continue to primarily inform future changes to the fiscal system. Moreover, Interior did not document any internal discussions or analysis of the three studies' findings. As part of the 2011 *Comparative Assessment of the Federal Oil and Gas Fiscal System* study, officials said that they obtained a model that can be employed in the future to conduct comparative analyses but currently have no plans to update the model or the data inputs used by the model. Officials told us that the study's findings reassured them that their own internal assessment related to the competitiveness of the offshore fiscal system was appropriate. In addition, officials said that the study provided

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Interior Is Examining Potential Regulatory Changes that Could Simplify Royalty Payments and Collections

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additional information—mainly raising the issue of whether an appropriate return was being received for onshore resources—but that the study was not adequate to determine next steps for onshore lease terms.

Interior is examining potential regulatory changes that could simplify royalty payments and collections. As we found in our past work,<sup>38</sup> complex valuation regulations can result in inaccurate royalty payments made by industry, and this could increase ONRR's costs to ensure accurate royalty payments because of the need for potentially detailed and time-consuming audits of records. In May 2011, Interior published an Advance Notice Of Proposed Rulemaking requesting comments to inform potential changes to regulations intended to simplify royalty payments and collections. In addition to our work, others have identified numerous shortcomings in ONRR's royalty collection programs, in part because of its valuation regulations' complex requirements for calculating the value of oil and gas and associated deductions and allowances for activities such as transportation.

In December 2007, Interior's Subcommittee on Royalty Management recommended that, by the end of fiscal year 2008, Interior publish proposed revisions to the gas valuation regulations to, among other goals, simplify the calculation of royalties and deductions for gas transportation and processing. Interior did not meet this time frame due to several factors including the complexity of oil and gas valuation, according to Interior officials. In May 2011, Interior published the Advance Notice Of Proposed Rulemaking in the *Federal Register* for the proposed rule, which according to Interior documents is intended, in part, to provide greater simplicity, certainty, clarity, and consistency in production valuation; decrease ONRR's costs to ensure compliance; decrease industry's compliance costs; and provide more certainty to ONRR and industry that companies pay every dollar due to the government.<sup>39</sup> According to ONRR officials, the proposed regulations were undergoing internal review as of September 2013 and are expected to be published in the *Federal Register* in 2014.

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<sup>38</sup>GAO, *Mineral Revenues: MMS Could Do More to Improve the Accuracy of Key Data Used to Collect and Verify Oil and Gas Royalties*, [GAO-09-549](#) (Washington, D.C.: July 15, 2009).

<sup>39</sup>76 Fed. Reg. 30878 (May 27, 2011).

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**Interior Does Not Have Documented Procedures for Conducting Periodic Assessments of the Fiscal System or for Supporting Potential Changes to New Lease Terms**

Interior does not have documented procedures in place for determining (1) when to conduct periodic assessments of the overall fiscal system or (2) whether and how to make changes to lease terms for new offshore leases.

**Interior Does Not Have Documented Procedures for Determining When to Conduct Periodic Assessments of the Overall Fiscal System**

Interior does not have documented procedures in place for determining when to periodically conduct assessments of the overall fiscal system as a whole. Although Interior recently contracted for such an assessment, it was the first in well over 25 years. Without documented procedures, Interior cannot ensure that it will consistently conduct such assessments in the future, and without periodically conducting such assessments, Interior cannot know whether there is a proper balance between the attractiveness of federal leases for investment and appropriate returns for federal oil and gas resources, limiting Interior's ability to ensure a fair return on federal oil and gas resources. Internal control standards in the federal government call for agencies to clearly document internal controls and the documentation is "to appear in management directives, administrative policies, or operating manuals."<sup>40</sup> Documented procedures of when Interior is to conduct such assessments—whether within specific time frames or the occurrence of certain market or industry changes—could help provide the department with reasonable assurance that its staff knows when to conduct assessments of the overall fiscal system to help ensure those reviews are conducted systematically and consistently.

In our September 2008 report, we found that the last time Interior conducted a comprehensive assessment of the federal oil and gas fiscal system was over 25 years ago. Additionally, we reported that, without routinely evaluating the federal oil and gas system as a whole, including monitoring what other resource owners worldwide are receiving for their energy resources or evaluating and comparing the attractiveness of the United States for oil and gas investment with that of other oil and gas regions, Interior cannot provide reasonable assurance that the public is getting an appropriate share of revenues.<sup>41</sup> As mentioned previously, in

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<sup>40</sup> [GAO/AIMD-00-21.3.1.](#)

<sup>41</sup> [GAO-08-691.](#)

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response to our 2008 findings, Interior contracted for a study that compared the federal oil and gas fiscal system to that of other resource owners. As part of this study, officials said that they obtained a model that can be employed in the future to conduct comparative analyses; however, there are currently no plans to update the model or the data inputs used by the model. Interior officials told us that this type of comprehensive assessment would only be undertaken if fundamental shifts in the market occurred. According to officials, however, Interior does not have procedures or criteria in place for determining when such an assessment of the fiscal system should take place or what changes in the market or industry would signal that such a study should be done. Without procedures for determining when to conduct periodic assessments of the fiscal system as a whole, Interior cannot be reasonably assured that it will consistently conduct such assessments in the future, limiting its ability to be confident that the system is ensuring a fair return on federal oil and gas resources. According to the Office of Management and Budget, rigorous program evaluations can help determine whether government programs are achieving their intended outcomes to the extent possible.<sup>42</sup>

Moreover, Interior's oversight of federal land and waters is subject to the federal government's multiple, diverse objectives—fair return, protection of historical and environmental resources, and expeditious and orderly development, among other goals. Thus, Interior is confronted with evaluating these objectives in light of a complex set of factors—including market prices and how development opportunities in the United States compare with those of other resource owners. By having documented procedures, the department could help ensure that its evaluations take all of these factors into consideration. Further, these factors may change over time as the market for oil and gas changes, the technologies used to explore and produce oil and gas change, or as the broader economic climate changes, making it even more important that Interior has documented procedures for conducting periodic assessments of the federal oil and gas fiscal system.

In addition, Interior has conducted some analyses to support changes to offshore lease terms in advance of offshore lease sales, which typically occur a few times a year—but the analyses conducted to support these

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<sup>42</sup>Office of Management and Budget, *Increased Emphasis on Program Evaluations*, M-10-01, Memorandum for the Heads of Executive Departments and Agencies (Washington, D.C.: The White House, Oct. 7, 2009).

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changes are not a substitute for periodically assessing the oil and gas fiscal system as a whole. Since 2007, Interior has conducted some analyses for offshore lease sales in support of changes to royalty rates, rental rates, and the minimum bid. Based on our review of Interior documents from several lease sales from 2007 to 2011, we found that the analyses the department conducted to support proposed changes to offshore lease terms generally involved estimating the impacts of a proposed change on revenue, bidding activity, and potential oil and gas production. In addition, Interior's documentation shows that the department took into consideration technological and market conditions; policy goals, such as promoting development or enhancing revenues; and administrative benefits, such as making lease terms consistent across water depths. However, these analyses did not include an evaluation of what other resource owners worldwide are receiving for their energy resources or a comparison of the attractiveness of the United States for oil and gas investment with that of other oil and gas resource owners. In our September 2008 report, we suggested that Congress should consider directing the Secretary of the Interior to establish procedures for periodically collecting data and information and conducting analyses to determine how the federal government take and the attractiveness for oil and gas investors in each federal oil and gas region compare with those of other resource owners and report this information to Congress. Moreover, Interior has not conducted similar analysis for onshore lease sales. Interior officials explained that the mechanism for determining the value of onshore resources is directed by statute to be market-driven.<sup>43</sup> Specifically, officials stated that fair market value for onshore lease sales is determined through the oral competitive bidding process required by the Mineral Leasing Act, rather than an evaluation of the geology and

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<sup>43</sup>The Federal Onshore Oil and Gas Leasing Reform Act of 1987 requires that all public lands available for oil and gas leasing be offered first by competitive leasing. BLM is required to accept the highest bid received that exceeds the minimum bid value of \$2 per acre or fraction thereof. 30 U.S.C. § 226(b)(1). The law allows the Secretary to increase the \$2 an acre minimum bid and directs that the House and Senate Committees on Natural Resources be notified 90 days before doing so. By statute, the Secretary of the Interior must first offer parcels at competitive lease sales and may only issue noncompetitive leases after the department has offered the lands competitively at an oral auction and not received a bid. The annual rental rate is \$1.50 per acre for the first 5 years and \$2.00 per acre each year thereafter. Royalty rates for onshore are generally 12.5 percent for both competitive and noncompetitive leases. However, there are a few exceptions such as sliding scale royalties on older leases and reduced royalty rates on certain oil leases with declining production and reinstated leases. See 43 C.F.R. § 3103.2-3.

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Interior Does Not Have Documented Procedures for Determining Whether and How to Make Changes to New Offshore Lease Terms

potential value of the oil and gas resource.<sup>44</sup> Because the leasing process is established by statute, Interior officials told us that it has not recently examined whether alternative leasing systems might be more effective in ensuring fair market value.

Interior does not have documented procedures for determining whether and how to make changes to new offshore lease terms—which are specified a few times per year ahead of each lease sale—consistent with federal standards for internal control. Without documented procedures for determining whether and how to make changes to new offshore lease terms, Interior is at risk of making inconsistent determinations about lease terms. Such inconsistent determinations would undermine its credibility and its ability to better ensure a fair return on oil and gas resources. Officials told us Interior does not have documented procedures or criteria for determining whether and how to make changes to offshore lease terms. Rather Interior officials said that they follow an informal process and establish offshore lease terms for each sale but that they do not have the time or resources to evaluate each lease term prior to each lease sale. However, based on our review of Interior documents, the analyses the department conducted to support proposed changes to offshore lease terms were inconsistent in the array of conditions and factors the department considered, and the level of analysis conducted in support of decisions to change lease terms varied and was not consistently or clearly documented. For example, as mentioned previously, escalating rental rates were implemented in two different sales—first, in 2007, in water depths less than 400 meters and then, in 2009, in water depths greater than 400 meters. The rationale provided for the first change was the policy goal to expedite drilling and compensate Interior, while the rationale in 2009 included specific estimates of the effects of an escalating rental rate on potential revenue and bidding, as well as consideration of market conditions. While both justifications may be warranted, because Interior does not have documented procedures

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<sup>44</sup>Interior is prohibited by statute from evaluating the value of the lands proposed for lease onshore. 30 U.S.C. §226(b)(1). Concerned that BLM's onshore leasing system was not generating revenues comparable to what might be obtained through competitive leasing, Congress passed the Federal Onshore Oil and Gas Leasing Reform Act of 1987, which amended the Mineral Leasing Act of 1920. This act significantly changed the way BLM issues leases. Prior to the act, BLM was required to evaluate federal lands for oil and gas potential. The act requires the market, rather than administrative determinations, to set the value of leases by making all leases available for competitive leasing.



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specifying whether and how to support changes to its lease terms, Interior's approach to revising its lease terms appears to be inconsistent.

In addition, our review of documents supporting two separate royalty rate changes in 2007 and 2008—the first in 25 years—found that Interior did not consistently document the justifications and analysis supporting the increases. Specifically, Interior documents for the 2008 royalty rate increase cite reasons similar to the 2007 royalty rate increase—generally significant changes in market conditions—but because the second increase took place less than a year after the implementation of the first increase, it is unclear what significant changes in market conditions occurred to prompt the consideration of the second increase in royalty rates. Internal control standards in the federal government call for agencies to clearly document transactions and other significant events and that documentation should be readily available for examination.<sup>45</sup> While both royalty rate increases may have been warranted, clear documentation of the justifications and analysis supporting royalty rate increases would make Interior's decisions to change the royalty rates transparent and could inform future decision making related to changing rates. Such transparency can be particularly helpful in the event that key staff retire or leave federal service. Documentation of internal discussions that took place prior to the second royalty rate increase show that prior to being able to assess the impacts of increasing the royalty rate from 12.5 percent to 16.67 percent in 2007, Interior was considering an additional royalty rate increase. In addition, Interior documents show Interior program officials' concerns about an additional increase in royalty rates; specifically, officials urged the need to analyze the impact of the first increase, and they also noted potential negative effects of an increase including delaying investment and production in certain areas of the Gulf of Mexico. By having documented procedures for determining whether and how to make future changes to offshore leasing terms, Interior could increase its consistency and thus enhance its credibility in the conditions and factors the department considered and the level of analysis conducted.

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## Conclusions

Interior has taken several steps intended to help ensure that the public receives a fair return on oil and gas produced from federal leases.

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<sup>45</sup>[GAO/AIMD-00-21.3.1.](#)

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However, even with these recent steps, it is not clear that Interior's efforts, by themselves, provide long-lasting assurance that federal resources will provide a fair return. This is especially true in light of the absence of documented procedures for Interior to determine when it will periodically conduct assessments of the overall federal oil and gas fiscal system and whether and how to make changes to new offshore lease terms, as well as Interior's limited flexibility to make changes to new onshore lease terms. Ensuring that the federal government is obtaining fair return for the resources it manages on behalf of its citizens is especially important as the country faces ongoing fiscal challenges.

Although leasing programs for both onshore and offshore areas are subject to many of the same market conditions, and Interior has increased offshore royalty rates, officials overseeing onshore leasing are currently unable to make timely adjustments to onshore royalty rates because, in general, BLM's regulations fix the rate at 12.5 percent, potentially limiting Interior's ability to ensure that the public is receiving a fair return and potentially resulting in foregone revenue. In particular, while Interior has changed offshore lease terms several times over the past few years in response to changes in market conditions—many of which also affect onshore areas—to better ensure a fair return, Interior has not successfully changed BLM's regulations to provide itself with the flexibility needed to change onshore lease terms in a timely manner despite considering increasing the onshore royalty rate since 2009. As a result, Interior continues to offer onshore leases with lease terms—terms lasting the life of the lease—that have not been adjusted in response to changing market conditions, potentially foregoing a considerable amount of revenue.

Key among Interior's efforts to ensure a fair return, to address a GAO recommendation, Interior completed an assessment—the *Comparative Assessment of the Federal Oil and Gas Fiscal System*—which examined how the fiscal system of selected federal oil and gas regions compared with fiscal systems of other resources owners. Interior officials told us, however, that it has no plans to update the assessment, increasing the risk that this progress may be fleeting and that, as we found in 2008, it could be years before another assessment is completed during which time there could be significant changes in market conditions. Furthermore, without documented procedures in place for conducting periodic assessments of the fiscal system—such as when such an assessment of the fiscal system should take place or what changes in the market or industry would signal that such a study should be done, Interior cannot know whether there is a proper balance between the

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attractiveness of federal leases for investment and appropriate returns for federal oil and gas resources, limiting Interior's ability to ensure a fair return.

Finally, while Interior has made changes to its offshore lease terms, for example increasing royalty rates in some instances from 12.5 percent to 18.75 percent, Interior does not have documented procedures for determining whether and how to make changes to lease terms for new offshore leases. Without such documented procedures, Interior's rationale is not transparent, and it is at risk of making inconsistent determinations about lease terms. Such inconsistency would undermine its credibility and ability to better ensure a fair return on oil and gas resources. Additionally, Interior has not clearly documented the justifications and analysis supporting changes to lease terms, including royalty rate increases. As a result, the department's decisions to change lease terms are not transparent and, without documentation of these decisions, its future efforts to change rates may be impeded.

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## Recommendations for Executive Action

To better ensure that the government receives a fair return on its oil and gas resources, we recommend that the Secretary of the Interior take the following three actions:

- Take steps, within existing authority, to revise BLM's regulations to provide for flexibility to the bureau to make changes to onshore royalty rates, similar to that which is already available for offshore leases, to enhance Interior's ability to make timely adjustments to the terms for federal onshore leases.
- Establish documented procedures for determining when to conduct periodic assessments of the overall fiscal system. Such procedures should identify generally when such an assessment should be done or what changes in the market or industry would signal that such an assessment should be done. Additionally, the assessment should include determining how the government's share of revenue from the federal oil and gas fiscal system and the attractiveness for oil and gas investors in each federal oil and gas region compare with those of other resource owners.
- Establish documented procedures for determining whether and how to adjust lease terms for new offshore leases, including documenting the justification and analysis supporting any adjustments.

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## Agency Comments

We provided a draft of this report to Interior for review and comment. Interior generally agreed with our findings and concurred with our recommendations.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Secretary of the Interior, the appropriate congressional committees, and other interested parties. In addition, this report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff members who made major contributions to this report are listed in appendix II.

Sincerely yours,



Frank Rusco  
Director,  
Natural Resources and Environment

# Appendix I: Comments from the Department of the Interior



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

NOV 25 2013

Mr. Frank Rusco  
Director, Natural Resources and Environment  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Rusco:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled, *OIL AND GAS RESOURCES: Actions Needed for Interior to Better Ensure a Fair Return* (GAO-14-50). The draft GAO report includes three recommendations for the Department of the Interior (DOI). GAO's recommendations are to revise Bureau of Land Management (BLM) regulations to provide for flexibility in making changes to onshore royalty rates and adjusting federal onshore lease terms, establish documented procedures for periodically reviewing the overall oil and gas fiscal systems, and establish documented procedures for determining whether and how to adjust new offshore lease terms.

DOI generally agrees with GAO's findings and concurs with the recommendations. Technical comments have been provided separately. Additionally, DOI appreciates your consideration of comments provided at the exit conference in September 2013.

In response to Recommendation One, the BLM will move forward with a rulemaking process to revise its existing regulations to allow the Secretary broad flexibility in setting onshore royalty rates.

In response to Recommendation Two, the Bureau of Ocean Energy Management (BOEM) and the BLM will periodically examine the need for conducting updated assessments regarding the overall configuration and parameters of onshore and offshore oil and gas fiscal systems. The factors to be considered in determining when to conduct these assessments could include consideration of the extent of recent changes in market conditions, resource prices, new discoveries, technological advances, and the portion of economic rents captured by the Federal Government. The Department also recognizes the importance of evaluating the Federal oil and gas fiscal system relative to other resource owners.

In response to Recommendation Three, BOEM proposes to document the procedures it will follow for analyzing fiscal terms for individual lease sales under prevailing and expected future market conditions. These procedures could include a description of the variables to be considered, the types of analysis these variables will be subject to, the outputs to be generated by the analysis, and suggestions on how the findings could be used to develop policy recommendations on program configuration.

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**Appendix I: Comments from the Department of  
the Interior**

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If you have any questions about this response, please contact Andrea Nygren, BOEM Audit Liaison Officer, on (202) 208-4343; LaVanna Stevenson-Harris, BLM Audit Liaison Officer, on (202) 912-7077; or Gwenna Zacchini, Office of Natural Resource Revenue Audit Liaison Officer, on (303) 231-3513.

Sincerely,



Rhea Suft  
Assistant Secretary  
Policy, Management and Budget

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact

Frank Rusco, (202) 512-3841 or [ruscof@gao.gov](mailto:ruscof@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Jon Ludwigson (Assistant Director), Janice Ceperich, Glenn Fischer, Cindy Gilbert, Michael Kendix, Alison O'Neill, Dan Royer, Kiki Theodoropoulos, and Barbara Timmerman made key contributions to this report.

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Katherine Siggerud, Managing Director, [siggerudk@gao.gov](mailto:siggerudk@gao.gov), (202) 512-4400, U.S. Government Accountability Office, 441 G Street NW, Room 7125, Washington, DC 20548

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Chuck Young, Managing Director, [youngc1@gao.gov](mailto:youngc1@gao.gov), (202) 512-4800 U.S. Government Accountability Office, 441 G Street NW, Room 7149 Washington, DC 20548





# **Exhibit 2**

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## BLM modifies parcel list for June 2017 oil and gas lease sale

DENVER – The Bureau of Land Management Colorado has removed 20 parcels totaling 27,529 acres in Grand County from its June 8, 2017, oil and gas lease sale. The BLM will now offer 86 parcels totaling 73,288 acre in Jackson, Routt, Rio Blanco and Moffat counties.

The BLM removed these 20 parcels due to low energy potential and reduced industry interest in the geographic area, as well as concern from local government and the public. The parcels were nominated before the latest revision to the land use plan for the area was completed.

“We understand concerns raised by Grand County and other stakeholders about offering these parcels at this time,” said acting BLM Deputy State Director for Energy Lands and Minerals Kent Walter. “We want to be sure they are still appropriate for leasing.”

To find out more about this and other BLM Colorado lease sales, visit [https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado \(/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado\)](https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado (/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/colorado)). In Fiscal Year 2016, oil and gas development on public lands directly contributed \$796 million to Colorado’s economy. BLM Colorado received more than \$98 million in federal revenues, including royalties, rents and bonus bids, from oil and gas development on public lands. The state of Colorado receives 49 percent of these revenues. Statewide, more than 22,900 jobs are tied to mineral and energy development on public lands.

### [\(/basic/press-release-footer-boiler-plate\)](#)

The BLM manages more than 245 million acres of public land, the most of any Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. The BLM’s mission is to sustain the health, diversity, and productivity of America’s public lands for the use and enjoyment of present and future generations. In Fiscal Year 2015, the BLM generated \$4.1 billion in receipts from activities occurring on public lands.

[Return to the Press Releases \(/news\)](#)

#### RELEASE DATE

Monday, April 17, 2017

#### ORGANIZATION

Bureau of Land Management

#### CONTACTS

**Name:** Courtney Whiteman

**Email:** [cwhiteman@blm.gov \(mailto:cwhiteman@blm.gov\)](mailto:cwhiteman@blm.gov)

**Phone:** 303-239-3668

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# **Exhibit 3**

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# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Nevada State Office  
1340 Financial Boulevard  
Reno, Nevada 89502-7147  
<http://www.blm.gov/nv>

**MAY 23 2017**

In Reply Refer To:  
1278 (NV954)  
EFTS No. BLM-2017-00604

Via Electronic Mail

Laura King  
Western Environmental Law Center  
103 Reader's Alley  
Helena, MT 59601

Dear Ms. King:

This letter is the final response to your Freedom of Information Act (FOIA) request assigned tracking number BLM-2017-00604. You requested:

- "All agency records pertaining to any instance in which a Nevada BLM office evaluated prospectively—that is, before granting or rejecting a bid on an oil and gas lease—the ability or intention of a bidder to exercise "diligence" in developing a lease (e.g., in order to test compliance with Section 4 of Lease Form 3100-11 or the Mineral Leasing Act at 30 U.S.C. § 187).
- All agency records pertaining to low or no likelihood that a lease or leases would be developed (either in the short or long term). This includes but is not limited to statements to bidder(s) or environmental group(s), or internally, that there is a low or no likelihood that a lease or leases will be developed, or that a lease or leases will have a low risk of impact to the environment, will be "benign," or similar."

After a thorough search of our files, the BLM has determined there are no records responsive to your request.

### Appeal Rights

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 90 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the

BLM's response is in error. You must also include with your appeal copies of all correspondence between you and the BLM concerning your FOIA request, including your original FOIA request and the BLM's response. Failure to include with your appeal all correspondence between you and the BLM will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Address your appeal to:

Department of the Interior  
Office of the Solicitor  
1849 C Street, NW, MS-6556 MIB  
Washington, DC 20240  
Attn: FOIA/Privacy Act Appeals Office

Additional Contact Information:  
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Fax: (202) 208-6677  
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Beginning October 1, 2012, the inclusion of the following statement is mandatory for all BLM FOIA response letters: For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Should you have any questions, please contact Michelle Piland, BLM Nevada's FOIA Specialist at (775) 861-6496, or via email at NV\_FOIA@blm.gov.

Sincerely,

  
Holly J. Vinall  
Deputy State Director  
Support Services