WildEarth Guardians
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November 13, 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 December 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 208 publicly owned oil and gas lease parcels covering 388,959.402 acres of land in the Carson City, Elko, and Ely District Offices of the State of Nevada for competitive sale on December 12, 2017. These protested lease parcels include the following, as identified by the BLM's in its Final December 2017 Oil and Gas Sale List:[1]

Lease Serial Number	Acres	District Office	County
NV-17-12-001	1890.940	Ely	White Pine
NV-17-12-002	2403.380	Ely	White Pine
NV-17-12-003	2560.000	Ely	White Pine
NV-17-12-004	1862.000	Ely	White Pine
NV-17-12-005	1925.000	Ely	White Pine
NV-17-12-006	2555.000	Ely	White Pine
NV-17-12-007	1946.070	Ely	White Pine
NV-17-12-008	2553.280	Ely	White Pine
NV-17-12-009	2551.600	Ely	White Pine
NV-17-12-010	2512.360	Ely	White Pine
NV-17-12-011	1430.240	Ely	White Pine
NV-17-12-012	2524.600	Ely	White Pine
NV-17-12-013	1880.000	Ely	Nye
NV-17-12-014	880.000	Ely	Nye

[1] This list is available on the BLM's website at https://www.blm.gov/sites/blm.gov/files/NV_OG_20171213_EYDO_Parcel_List_0.pdf.

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NV-17-12-015	2359.780	Ely	White Pine
NV-17-12-016	2443.100	Ely	White Pine
NV-17-12-017	1600.000	Ely	White Pine
NV-17-12-018	1764.880	Ely	White Pine
NV-17-12-019	1922.240	Ely	White Pine
NV-17-12-020	2080.000	Ely	White Pine
NV-17-12-021	1918.300	Ely	White Pine
NV-17-12-022	1782.580	Ely	White Pine
NV-17-12-023	1360.000	Ely	White Pine
NV-17-12-024	1993.940	Ely	White Pine
NV-17-12-025	2196.000	Ely	White Pine
NV-17-12-026	1460.440	Ely	White Pine
NV-17-12-027	2411.110	Ely	White Pine
NV-17-12-028	2295.680	Ely	White Pine
NV-17-12-029	1781.000	Ely	White Pine
NV-17-12-030	1570.000	Ely	White Pine
NV-17-12-031	1904.120	Ely	White Pine
NV-17-12-032	1921.380	Ely	White Pine
NV-17-12-033	2205.440	Ely	White Pine
NV-17-12-034	2545.320	Ely	White Pine
NV-17-12-035	1911.110	Ely	White Pine
NV-17-12-036	2358.000	Ely	White Pine
NV-17-12-037	2482.180	Ely	White Pine
NV-17-12-038	1751.000	Ely	White Pine
NV-17-12-039	1320.000	Ely	White Pine
NV-17-12-040	1280.000	Ely	White Pine
NV-17-12-041	2114.760	Ely	Nye
NV-17-12-042	2131.913	Ely	Nye
NV-17-12-043	2080.000	Ely	Nye
NV-17-12-044	640.000	Ely	Nye
NV-17-12-045	2560.000	Ely	Nye
NV-17-12-046	1920.000	Ely	Nye
NV-17-12-047	1944.790	Ely	Nye
NV-17-12-048	2280.750	Ely	Nye
NV-17-12-049	1921.000	Ely	Nye
NV-17-12-050	2070.000	Ely	Nye
NV-17-12-051	1920.000	Ely	Nye
NV-17-12-052	1951.000	Ely	Nye
NV-17-12-053	1947.000	Ely	Nye
NV-17-12-054	2240.000	Ely	Nye
NV-17-12-055	1935.000	Ely	Nye

NV-17-12-056	1937.000	Ely	Nye
NV-17-12-057	1932.000	Ely	Nye
NV-17-12-058	1280.000	Ely	Nye
NV-17-12-059	1924.120	Ely	Nye
NV-17-12-060	640.180	Ely	Nye
NV-17-12-061	1280.000	Ely	Nye
NV-17-12-062	2560.000	Ely	Nye
NV-17-12-063	1280.000	Ely	Nye
NV-17-12-064	2142.520	Ely	Nye
NV-17-12-065	2280.000	Ely	Nye
NV-17-12-066	1800.000	Ely	Nye
NV-17-12-067	2514.190	Ely	Nye
NV-17-12-085	479.580	Ely	Nye
NV-17-12-086	1272.260	Ely	Nye
NV-17-12-087	2085.290	Ely	Nye
NV-17-12-088	487.330	Ely	Nye
NV-17-12-089	1803.420	Ely	Nye
NV-17-12-090	2367.360	Ely	Nye
NV-17-12-091	2484.870	Ely	Nye
NV-17-12-092	2560.000	Ely	Nye
NV-17-12-093	1979.090	Ely	Nye
NV-17-12-094	2560.000	Ely	Nye
NV-17-12-095	2400.890	Ely	Nye
NV-17-12-096	1280.000	Ely	Nye
NV-17-12-097	1946.200	Ely	Nye
NV-17-12-098	1533.480	Ely	Nye
NV-17-12-099	1920.000	Ely	Nye
NV-17-12-100	1350.070	Ely	White Pine
NV-17-12-137	2020.220	Ely	Nye
NV-17-12-138	1276.500	Ely	Nye
NV-17-12-139	1942.000	Ely	Nye
NV-17-12-140	1440.000	Ely	Nye
NV-17-12-141	1120.000	Ely	Nye
NV-17-12-142	2541.240	Ely	Nye
NV-17-12-187	160.000	Ely	Lincoln
NV-17-12-188	2514.000	Ely	Lincoln
NV-17-12-189	1920.000	Ely	Lincoln
NV-17-12-190	1318.000	Ely	Lincoln
NV-17-12-191	1720.890	Ely	Nye
NV-17-12-192	2080.000	Ely	Nye
NV-17-12-193	840.000	Ely	Nye

NV-17-12-194	1842.360	Ely	Nye
NV-17-12-195	1920.000	Ely	Nye
NV-17-12-196	1440.000	Ely	Nye
NV-17-12-197	1800.000	Ely	Nye
NV-17-12-198	400.000	Ely	Nye
NV-17-12-199	2240.000	Ely	White Pine
NV-17-12-200	1565.940	Ely	White Pine
NV-17-12-201	240.710	Ely	White Pine
NV-17-12-202	2320.000	Ely	White Pine
NV-17-12-203	2160.000	Ely	Nye
NV-17-12-204	1280.000	Ely	Nye
NV-17-12-205	2023.480	Ely	White Pine
NV-17-12-206	1187.330	Ely	White Pine
NV-17-12-207	1129.060	Ely	Nye
NV-17-12-208	2482.880	Ely	Nye
NV-17-12-209	2073.280	Ely	Nye
NV-17-12-210	1952.190	Ely	Nye
NV-17-12-211	1920.000	Ely	Nye
NV-17-12-212	1160.000	Ely	Nye
NV-17-12-213	2517.840	Ely	White Pine
NV-17-12-214	2035.850	Ely	White Pine
NV-17-12-215	1722.920	Ely	White Pine
NV-17-12-216	720.000	Ely	White Pine
NV-17-12-217	2520.000	Ely	White Pine
NV-17-12-218	1880.000	Ely	White Pine
NV-17-12-219	1918.940	Ely	White Pine
NV-17-12-220	2002.910	Ely	White Pine
NV-17-12-221	2547.660	Ely	White Pine
NV-17-12-222	2280.000	Ely	White Pine
NV-17-12-223	2240.000	Ely	White Pine
NV-17-12-224	1920.000	Ely	White Pine
NV-17-12-225	1914.820	Ely	White Pine
NV-17-12-226	1240.000	Ely	White Pine
NV-17-12-227	2280.000	Ely	White Pine
NV-17-12-228	1280.000	Ely	White Pine
NV-17-12-229	1600.000	Ely	White Pine
NV-17-12-230	2495.210	Ely	White Pine
NV-17-12-231	2560.000	Ely	White Pine
NV-17-12-232	2520.000	Ely	White Pine
NV-17-12-233	1891.820	Ely	White Pine
NV-17-12-234	2535.500	Ely	White Pine

NV-17-12-235	2560.000	Ely	White Pine
NV-17-12-236	2560.000	Ely	White Pine
NV-17-12-237	1898.500	Ely	White Pine
NV-17-12-238	1901.660	Ely	White Pine
NV-17-12-292	1635.650	Elko	White Pine
NV-17-12-293	1896.800	Ely	White Pine
NV-17-12-294	2560.000	Ely	White Pine
NV-17-12-295	2363.520	Ely	White Pine
NV-17-12-296	2480.000	Ely	White Pine
NV-17-12-297	2560.000	Ely	White Pine
NV-17-12-298	2524.880	Ely	White Pine
NV-17-12-299	2040.000	Ely	White Pine
NV-17-12-314	593.110	Carson City	Lincoln
NV-17-12-317	2146.920	Ely	Lincoln
NV-17-12-348	800.000	Ely	Lincoln
NV-17-12-352	1880.000	Ely	Lincoln
NV-17-12-353	280.000	Ely	Lincoln
NV-17-12-356	2120.000	Ely	Lincoln
NV-17-12-358	1119.540	Ely	Lincoln
NV-17-12-359	1560.000	Ely	Lincoln
NV-17-12-360	1920.000	Ely	Lincoln
NV-17-12-361	1720.000	Ely	Lincoln
NV-17-12-362	1880.000	Ely	Lincoln
NV-17-12-363	1920.120	Ely	Lincoln
NV-17-12-364	2537.000	Ely	Lincoln
NV-17-12-365	2080.000	Ely	Lincoln
NV-17-12-366	2541.000	Ely	Lincoln
NV-17-12-367	2560.000	Ely	Lincoln
NV-17-12-368	2080.000	Ely	Lincoln
NV-17-12-369	2467.000	Ely	Lincoln
NV-17-12-370	2544.000	Ely	Lincoln
NV-17-12-371	1922.120	Ely	Lincoln
NV-17-12-372	1929.760	Ely	Lincoln
NV-17-12-373	1920.920	Ely	Lincoln
NV-17-12-374	2554.680	Ely	Lincoln
NV-17-12-375	1040.000	Ely	Lincoln
NV-17-12-376	1158.910	Ely	Lincoln
NV-17-12-377	1980.000	Ely	Lincoln
NV-17-12-378	2439.313	Ely	Lincoln
NV-17-12-379	2400.000	Ely	Lincoln
NV-17-12-380	1964.000	Ely	Lincoln

NV-17-12-381	1959.000	Ely	Lincoln
NV-17-12-382	2000.000	Ely	Lincoln
NV-17-12-383	1982.000	Ely	Lincoln
NV-17-12-384	1841.210	Ely	Lincoln
NV-17-12-385	1919.620	Ely	Lincoln
NV-17-12-386	1918.120	Ely	Lincoln
NV-17-12-387	1760.000	Ely	Lincoln
NV-17-12-388	1920.000	Ely	Lincoln
NV-17-12-389	1915.880	Ely	Lincoln
NV-17-12-390	2560.000	Ely	Lincoln
NV-17-12-391	2554.780	Ely	Lincoln
NV-17-12-392	562.600	Ely	Lincoln
NV-17-12-393	1805.120	Ely	Lincoln
NV-17-12-394	2556.630	Ely	Lincoln
NV-17-12-395	1640.000	Ely	Lincoln
NV-17-12-396	200.000	Ely	Lincoln
NV-17-12-397	314.000	Ely	Lincoln
NV-17-12-398	2499.000	Ely	Lincoln
NV-17-12-399	1618.000	Ely	Lincoln
NV-17-12-400	1449.250	Ely	Lincoln
NV-17-12-437	1281.120	Ely	Lincoln
NV-17-12-438	1281.680	Ely	Lincoln
NV-17-12-439	2560.000	Ely	Lincoln
NV-17-12-440	1920.000	Ely	Lincoln
NV-17-12-441	1920.000	Ely	Lincoln
NV-17-12-443	1920.000	Ely	Lincoln
NV-17-12-445	1920.000	Ely	Lincoln
NV-17-12-446	1744.708	Ely	Lincoln
NV-17-12-447	1131.298	Ely	Lincoln
NV-17-12-448	774.300	Ely	Lincoln

We protest the BLM's proposal to offer all of the aforementioned oil and gas lease parcels for competitive sale on the basis that the 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.

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. On behalf of our members, Guardians has an interest in ensuring the BLM fully protects public lands and resources 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 has extensively commented on, protested, and otherwise engaged the BLM on its oil and gas leasing in Nevada, as well as in other BLM State Offices in the western U.S. Most recently, we protested the BLM's June 2017 oil and gas lease sale in Nevada.[2] Furthermore, on August 24, 2017, we called on the BLM to halt further oil and gas leasing in Nevada given oil and gas industry statements indicating there was no legitimate industry interest in leasing in the state. *See* Exhibit 1, WildEarth Guardians, Request for Pause in Oil and Gas Leasing, Letter Sent to Mike Nedd, Acting BLM Director, and Marci Todd, Acting Nevada State Director. In all of our prior and ongoing engagement, Guardians has raised similar concerns over the agency's failure to adequately address climate impacts pursuant to NEPA. The BLM is well aware of our concerns.

Neither the BLM's regulations at 43 C.F.R. § 3120.1-3 nor the October 13, 2017 Notice of Competitive Lease Sale set forth criteria requiring a protesting party to have commented before filing a protest. Rather, the BLM's Notice imposes only limited requirements on the content of protests and the deadline for filing.[3] It provides that a protest must be timely filed, include a statement of reasons, be filed in hardcopy form or by fax, must be signed, must "state the interest of the protesting party," must include the name and the address of the protesting party, and must reference the lease parcel number identified in the sale notice. More importantly, the BLM consistently and routinely reviews protests filed by interested parties.[4] In any case, given that WildEarth Guardians submitted a detailed request for a halt to new leasing on August 24, 2017, Guardians can be considered to have commented on the proposed lease sale prior to filing this protest.

[2] *See* Protest of June 2017 oil and gas lease sale, https://www.blm.gov/sites/blm.gov/files/uploads/NV_OG_20170614_BMDO_Protest_WildEarth_Guardians.pdf.
[3] Notice at 9.
[4] For example, the Wyoming State Office of the BLM reviewed protests filed by the City of Casper and Wyoming Land Acquisition Partners over the inclusion of parcels in the agency's February 2016 Notice of Competitive Lease Sale, even though the BLM acknowledged, "the City of Casper and the WLAP did not submit written comments to the BLM on the EA." *See* BLM, Response to Protests of February 7, 2017 Competitive Oil and Gas Lease Sale (Feb. 6, 2017) at 3, available online at https://eplanning.blm.gov/epl-front-office/projects/nepa/65707/96629/116695/0217ProtestDecision.pdf. Although the BLM ultimately dismissed these protests as moot, the agency did not dismiss the protests for a failure to provide written comments or to meet criteria not explicitly set forth at 43 C.F.R. § 3120.3-1 or the Notice of Competitive Lease Sale.

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 208 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.

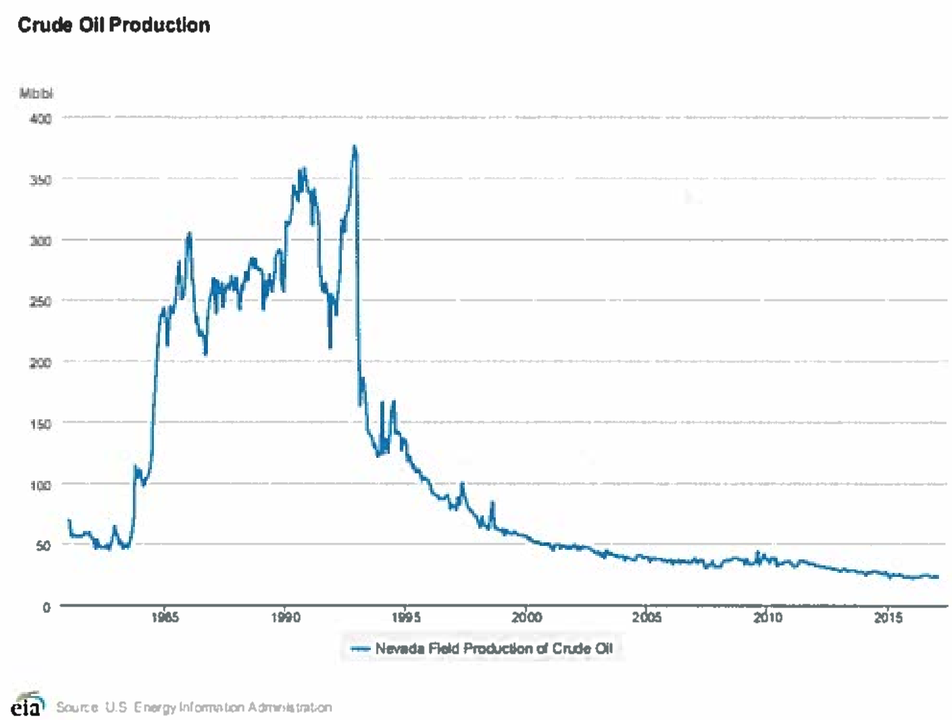
In support of the agency's proposed leasing, the BLM prepared an EA (EA No. DOI-BLM-NV-L030-2017-0021-EA) and drafted a Finding of No Significant Impact ("FONSI"). As will be explained, this EA and FONSI fail to demonstrate that moving forward with the proposed leasing is legally acceptable.

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.

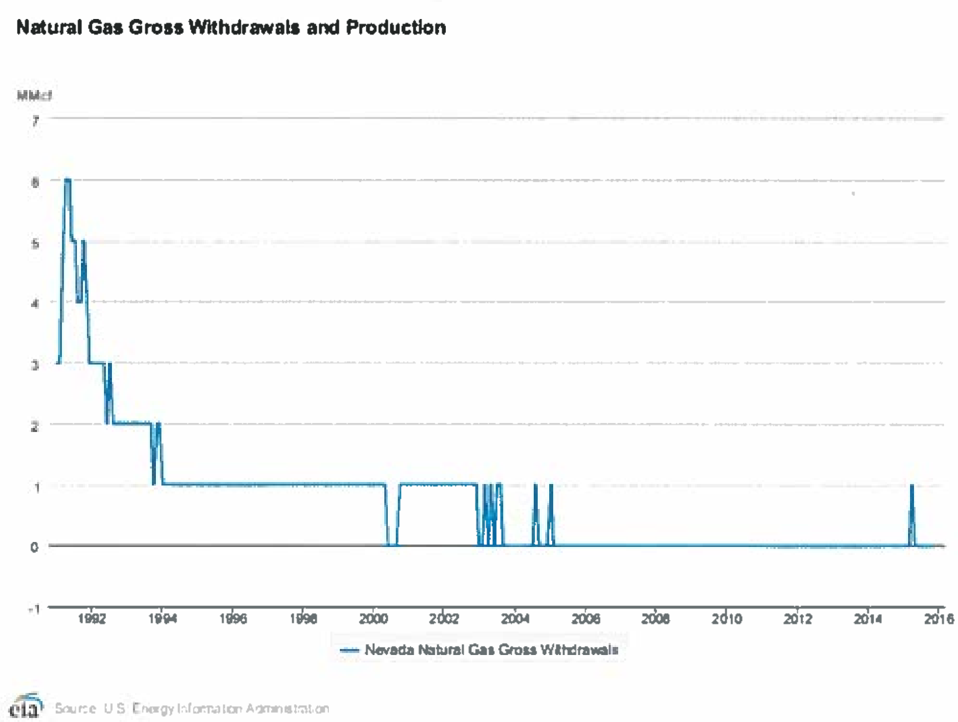
Oil and Gas Leases in Nevada
(based on BLM oil and gas lease statistic data, https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics)

Number of Leases	Leased Acres	Number of Producing Leases (%)	Acres in Production (%)
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.



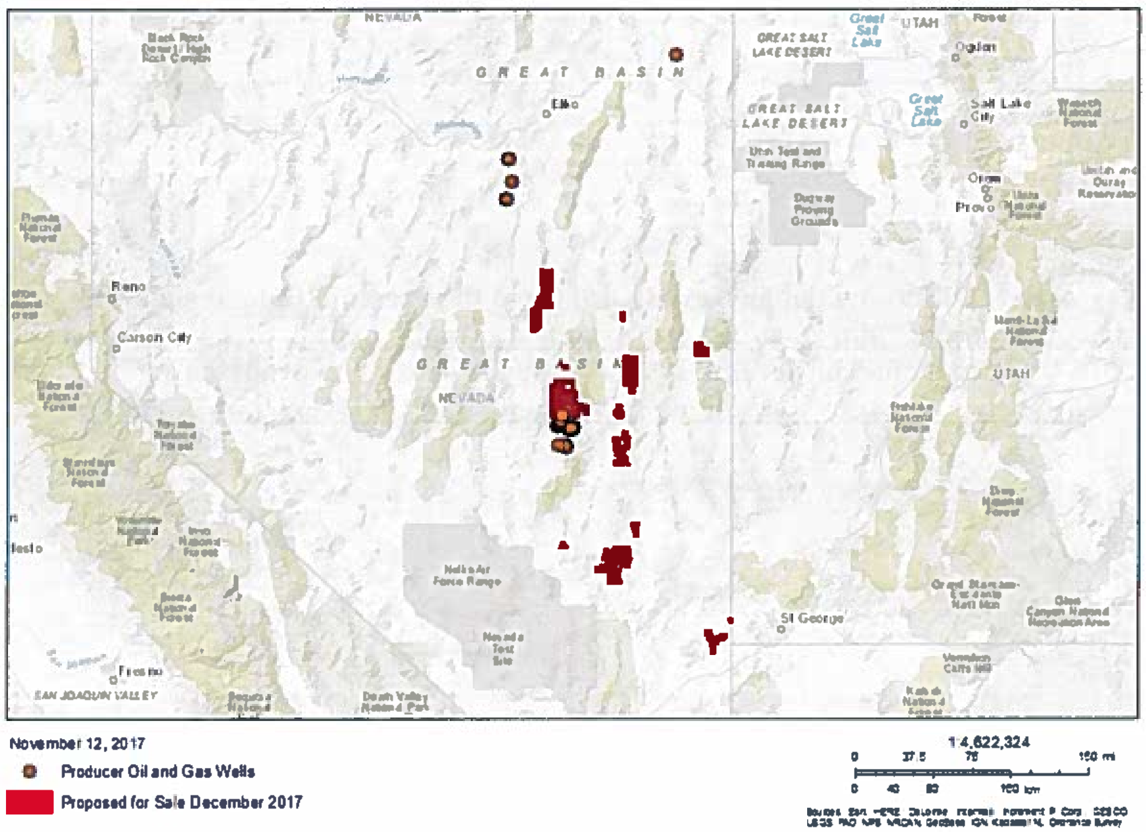
Above, Oil Production in Nevada, 1980's to the Present. Data available at https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_m.htm. Below, Natural Gas Production in Nevada, 1990's to the Present. Data available at https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_FGW_mmcf_m.htm.



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 and https://www.eia.gov/dnav/ng/ng_prod_oilwells_s1_a.htm.

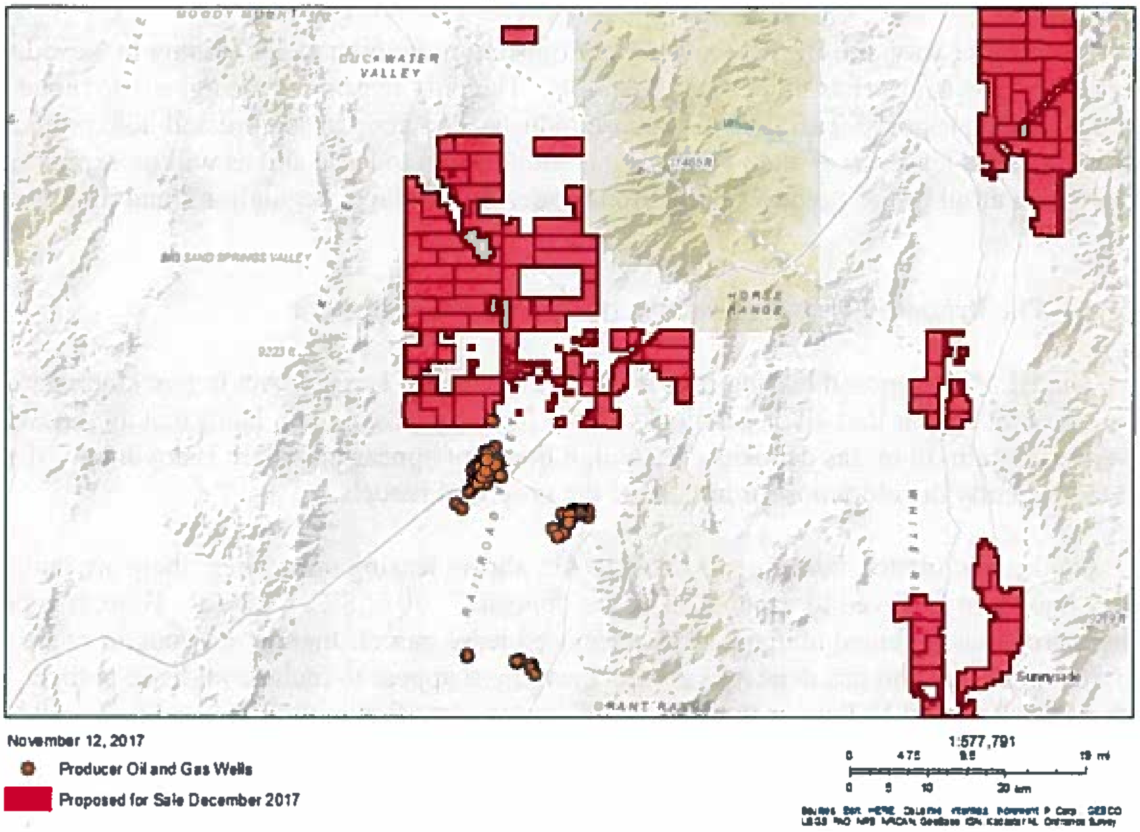
The areas where the BLM is proposing to lease are, for the most part, not remotely near where any "producer" oil and gas wells are even located. Only a handful of parcels, including NV-17-12-044, NV-17-12-045, NV-17-12-046, NV-17-12-047, and NV-17-12-089, appear to be near enough to any current oil and gas development that there is any likelihood of future development. *See* Maps below. These parcels are in the Railroad Valley, the only location in Nevada where oil and gas production currently occurs.

Public Lands Oil and Gas Leasing in Nevada



Proposed Oil and Gas Lease Parcels and "Producer" Oil and Gas Wells in Nevada.

Public Lands Oil and Gas Leasing in Nevada



Proposed Lease Parcel in the Railroad Valley.

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 is a prerequisite for issuance, here, the BLM has not even estimated that one well will be developed per lease parcels. Instead, in its EA, the BLM discloses it expects only 100 wells to be drilled in the Ely District, where 206 of the proposed lease parcels are located. *See* EA at 27. This means at most, the BLM expects less than half of the proposed leases will ever be developed.

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. 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 2, GAO, "Oil and Gas Resources: Actions Needed 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 all or a 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 or are not known to contain oil and gas deposits. At the least, these appear to include all lease parcels outside of the Railroad Valley, or the "Group D" leases identified in the EA.

At a minimum, the BLM has a duty to confirm that 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. Although the BLM may claim its underlying Resource Management Plan ("RMP") conducted such diligence, this is not reflected in the RMP.

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. <u>See</u> 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 3, BLM Decision Rejecting Lease Offers (Oct. 18, 2016). 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. Given this, it is completely evident that any lessee would have no intent to diligently develop most, if not all, of the proposed lease parcels and that the BLM is not legally justified in proceeding to offer all the proposed parcels 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 4, 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 5, 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 December 2017 lease sale must be canceled.

Although the BLM may claim it is mandated to offer the proposed leases for sale due to the submission of an "expression of interest," this is absolutely not true. The Mineral Leasing Act provides that "[a]ll lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits ***may be*** leased by the Secretary." 30 U.S.C. § 226(a)(emphasis added). In 1931, the Supreme Court found that the MLA "goes no further than to empower the Secretary to lease [lands with oil and gas potential] which, exercising a reasonable discretion, he may think would promote the public welfare." *U.S. ex rel. McLennan v. Wilbur*, 283 U.S. 414, 419 (1931). And in 1965, the Supreme Court held the Mineral Leasing Act "left the Secretary discretion to refuse to issue any lease at all on a given tract." *Udall v. Tallman*, 85 S.Ct. 792, 795 (1965) *reh. den.* 85 S.Ct. 1325.

When a leasing application is submitted to the federal government but before the actual lease sale, no right has been vested in the applicant or potential bidders, and BLM retains the authority not to lease. "The filing of an application which has been accepted does not give any right to lease or generate a legal interest which reduces or restricts the discretion vested in the Secretary whether or not to issue leases for the lands involved." *Duesing v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), *cert. den.* 383 U.S. 912 (1966). *See also Bob Marshall Alliance v.*

Hodel, 852 F.2d 1223, 1230 (9th Cir. 1988) ("[R]efusing to issue [certain petroleum] leases ... would constitute a legitimate exercise of the discretion granted to the Secretary of the Interior"); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) ("While the [MLA] gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory"); *Burglin v. Morton*, 527 F.2d 486, 488 (9th Cir. 1975) ("[T]he Secretary has discretion to refuse to issue any lease at all on a given tract"); *Pease v. Udall*, 332 F.2d 62 (9th Cir) (Secretary of Interior has discretion to refuse to make any oil and gas leases of land); *Geosearch, Inc. v. Andrus*, 508 F. Supp. 839 (D.Wy. 1981) (leasing of land under Mineral Leasing Act is left to discretion of the Secretary of Interior). Similarly, Interior Board of Land Appeals decisions consistently recognize that BLM has "plenary authority over oil and gas leasing" and broad discretion with respect to decisions to lease. *See Penroc Oil Corp., et al.*, 84 IBLA 36, 39, GFS (O&G) 8 (1985). Thus, BLM has authority to reject the proposed leases and not move forward with the December 2017 lease sale.

Sincerely,

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
2590 Walnut St.
Denver, CO 80205
(303) 437-7663
jnichols@wildearthguardians.org

Exhibit 1

WildEarth Guardians
A FORCE FOR NATURE

August 24, 2017

By E-mail

Mike Nedd
Acting Director
U.S. Bureau of Land Management
1849 C St. Rm. 5665
Washington, D.C. 20240
mnedd@blm.gov

Marci Todd
Acting State Director
U.S. Bureau of Land Management
Nevada State Office
1340 Financial Blvd.
Reno, NV
m1todd@blm.gov

Re: Interest in Oil and Gas in Nevada is a Sham, Pause on New Leasing Needed

Dear Mr. Nedd and Ms. Todd:

We are writing to urge the Bureau of Land Management ("BLM") to immediately put a halt to new onshore oil and gas leasing in the Nevada State Office and to reassess the State Office's approach to reviewing and proposing oil and gas leases in Nevada. According to the oil and gas industry, there is no legitimate interest in leasing publicly owned oil and gas reserves in the State. The BLM must immediately halt new oil and gas leasing and conduct an assessment of the appropriateness of spending taxpayer dollars to conduct any further leasing in Nevada.

As you are aware, millions of acres of public lands and minerals in Nevada have drawn interest for their supposed oil and gas development potential. Interests purporting to represent the oil and gas industry have submitted numerous "expressions of interest" to the BLM, in effect identifying lands they believe should be offered for competitive sale. Many of these expressions of interest have come from anonymous sources. These "expressions of interest" have prompted the BLM to hold several recent competitive lease sales that have failed to generate any meaningful amount of oil and gas industry participation. In June of this year, the agency attempted to auction off 106 oil and gas lease parcels in Nevada, yet only 3 received any bids. Although the BLM reported it generated a little more than $38,000 in revenue, records indicate the agency spent far more to prepare for and conduct the lease sale.

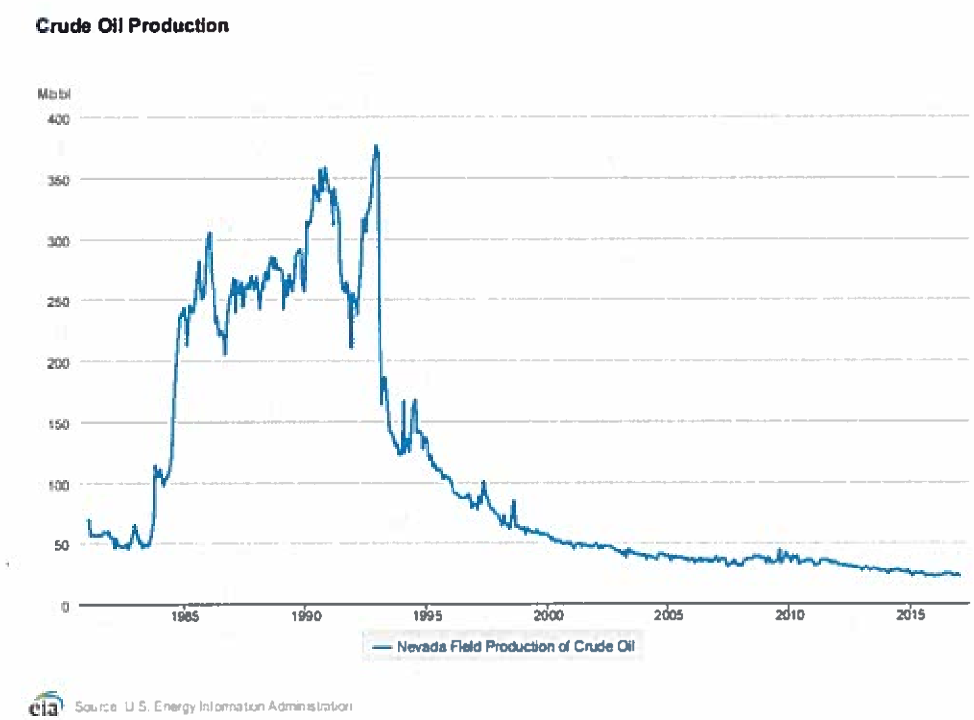
Actual and credible oil and gas industry representatives have described the expressions of interest in leasing in the Nevada State Office as not representing any legitimate industry interest. In fact, Kathleen Sgamma, the President of the Western Energy Alliance, a leading oil and gas trade association, stated that the expressions of interest currently pending in Nevada were not submitted by reputable companies. In a news article, Sgamma commented, "Something very weird is going on in Nevada[.]" *See* Exhibit 1.

Industry's observations are not a surprise. Nevada is marginal, at best, 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 (as of the end of FY 2016). 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.

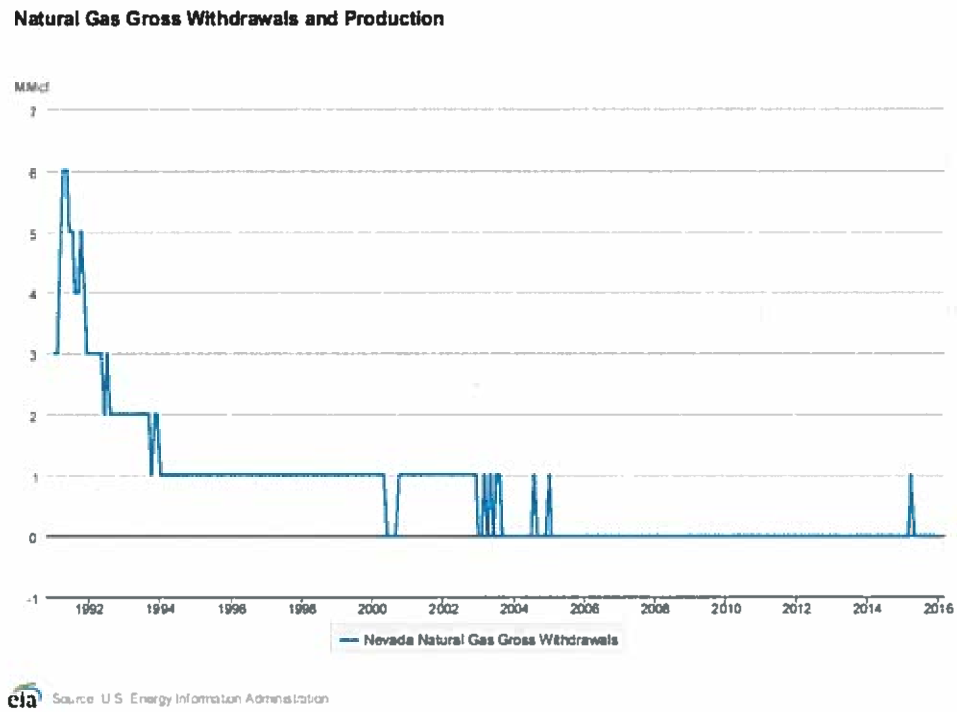
Oil and Gas Leases in Nevada

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

This reflects the fact that Nevada's oil and gas production is smaller than 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. To put this into perspective, total U.S. oil production amounted to 3.3 billion barrels in 2016. Furthermore, the state's natural gas production rate is described by the U.S. Energy Information Administration ("EIA") as "NA," or effectively zero. *See* Charts below.



Oil Production in Nevada, 1980's to the Present. Data available at https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_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.

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 and https://www.eia.gov/dnav/ng/ng_prod_oilwells_s1_a.htm.

Furthermore, the areas where purported oil and gas industry representatives have expressed "interest" in leasing are not remotely near where any "producer" oil and gas wells are even located. The only location where any amount of oil and gas development is occurring appears to be in the Railroad Valley of southern Nevada. Only a handful of proposed leases and expressions of interest have been located in this area.

In spite of this, the BLM has proposed to sell oil and gas leases in areas outside the Railroad Valley, including in areas considered to have low to no oil and gas development potential. For instance, in the June 2017 lease sale, the BLM attempted to auction off oil and gas leases in the Big Smokey Valley area of Nye and Lander Counties, a region considered to have effectively no oil and gas potential. Not surprisingly, none of these leases received any bids.

It is telling that in prior lease sales held in Nevada, there has also 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. 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. 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_Competitve_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.*

As reported, there are millions of acres of expressions of interest that have been submitted by purported industry interests since 2014 (all expressions of interest submitted for Nevada public lands are available at https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/regional-lease-sales/nevada). Just since January 20, 2017, more than 2,300 expressions of interest have been submitted. *See* map below.

For the BLM to spend taxpayer dollars and agency time and energy to process these expressions of interest, which the oil and gas industry itself says are not coming from reputable interests, would represent a serious miscarriage of public stewardship. Yet BLM appears poised to do just that.

Already, the agency is scheduled to offer competitive oil and gas leases for sale on September 12, 2017. According to the BLM, a sale is also scheduled for the week of December 11. We also presume that additional sales will be scheduled in 2018 and in future years. As is evident, in spite of industry acknowledging that there is no legitimate interest in oil and gas n Nevada, the BLM is still proceeding to propose lease sales. This is beyond irresponsible and it has to stop.

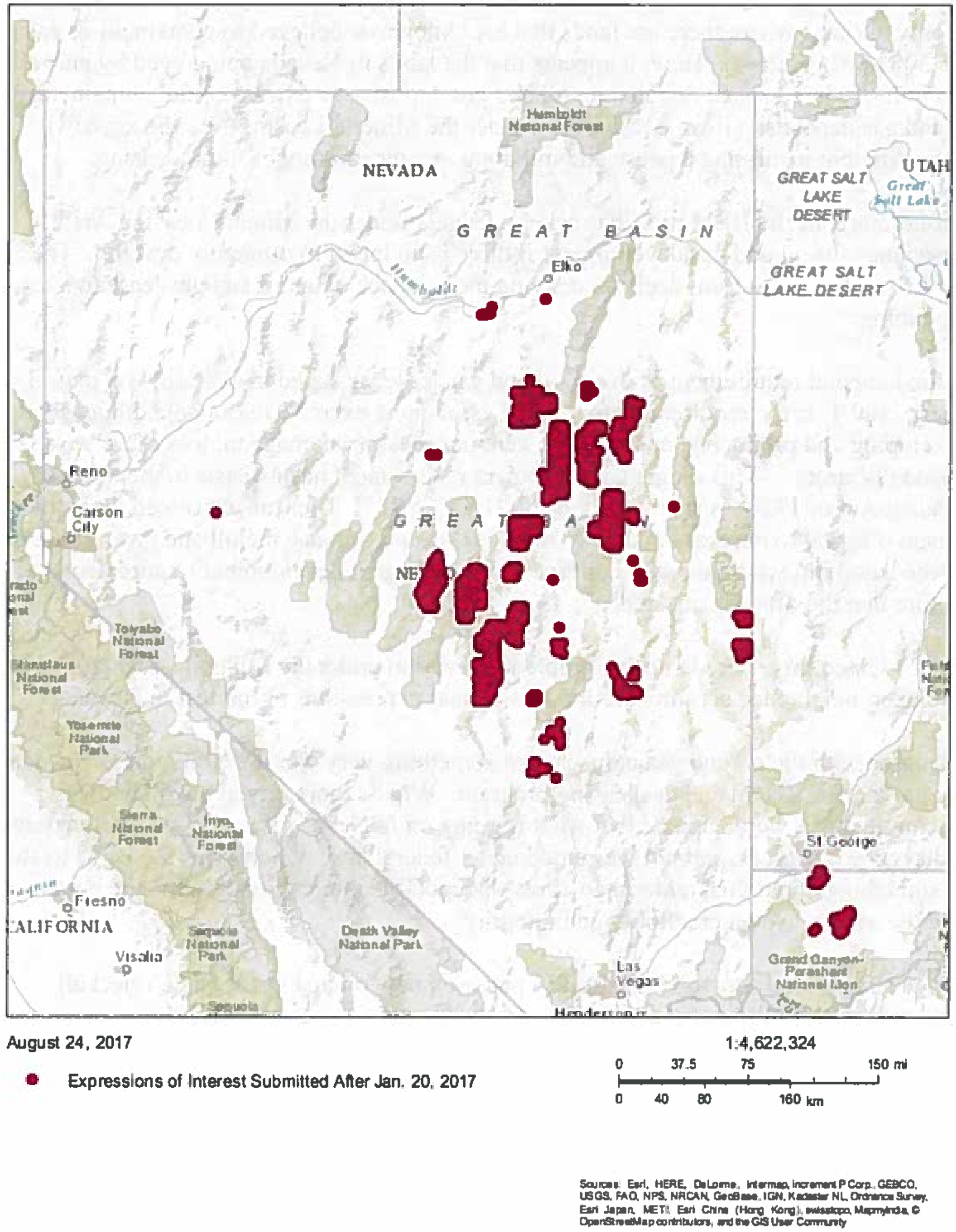
Accordingly, we call on you to immediately take the following actions in order to effectively confront the sham oil and gas leasing that is unfolding in the Nevada State Office:

1. **Institute a pause**. Immediately institute a pause on new oil and gas leasing in and on accepting new expressions of interest in the Nevada State Office. To this end, we call on you to cancel the September 12, 2017 oil and gas lease sale and the sale scheduled for the week of December 11.

2. **Reject all submitted expressions of interest.** All indications are that all expressions of interest currently before the Nevada State Office are sham expressions of interest that do not reflect legitimate industry desire to develop by reputable companies. These expressions of interest should be rejected by the BLM.

3. **Reassess the appropriateness of oil and gas leasing in Nevada.** Before accepting any new expressions of interest and undertaking any new oil and gas leasing, the BLM must conduct a rigorous and objective assessment of the viability and legitimacy of future oil and gas leasing in the Nevada State Office. We would urge the agency to conduct this assessment as part of a statewide Resource Management Plan revision that ultimately leads to a new Record of Decision governing oil and gas leasing in Nevada.

2017 Expressions of Interest in Nevada



Location of Expressions of Interest submitted in Nevada since January 20, 2017. Data from BLM's National Fluids Lease Sale System database, https://nflss.blm.gov/eoi/list.

These actions are more than justified under the U.S. Mineral Leasing Act. Indeed, leasing is only allowed 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 the lands in Nevada being eyed by purported oil and gas industry interests do not contain oil and gas deposits, or at least do not contain any viable oil and gas deposits. Given BLM's duty under the Mineral Leasing Act, the agency is more than justified in instituting a pause and initiating greater scrutiny of future leasing.

Furthermore, as the BLM itself has acknowledged, under the Mineral Leasing Act, it 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.

See Exhibit 2. Given this, there is further ample justification under the Mineral Leasing Act for the BLM to exert heightened scrutiny around leasing and expressions of interest in Nevada.

We agree with the oil and gas industry that something very weird is going on in Nevada with respect to the BLM's oil and gas leasing program. What's more, given the oil and gas industry's comments, it would appear that what is going on in Nevada is also a waste of taxpayer dollars and agency resources, and not warranted under federal law. It behooves the BLM to step up and do something about this, rather than allow disreputable interests undermine the public interest and the agency's own credibility and integrity.

Once again, we call on you to institute a pause on new oil and gas leasing, reject all outstanding expressions of interest, and to reassess the appropriateness of oil and gas leasing in the BLM's Nevada State Office.

Sincerely,

Jeremy Nichols
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jnichols@wildearthguardians.org

Exhibit 1

THE DAILY CALLER

'Something's Fishy': Oil Speculation Skyrockets In State With 'Very Little Oil'

Posted By Tim Pearce On 7:49 PM 08/19/2017 In | No Comments

Millions of acres worth of requests for oil speculation on federal lands were submitted in Nevada just years before former President Barack Obama designated two national monuments in the state, the Center for Biological Diversity (CBD) found Friday.

Expression of Interest (EOI) documents are submitted to state Bureau of Land Management (BLM) agencies for any parcel of federal land that prospectors think may produce oil. The BLM is then required by law to study the area and decide whether it should be leased to an oil company for development.

The Nevada EOIs are mostly worthless and a waste of taxpayer money, however, according to CBD Nevada state director, Patrick Donnelly.

CBD is using the information as evidence President Donald Trump's review of national monument designations, and its potential to roll back some of those, is "a complete sham," Donnelly told TheDCNF.

"It appears there could be multiple motives for the monument review including potentially opening up lands that are currently protected for oil and gas," Donnelly said. "There are certain places that should be off limits to oil and gas and these monuments ... are too special to be developed for oil and gas."

The oil industry's actual interest in Nevada is "very small" and not representative of the massive amount of EOIs submitted to Nevada BLM, Western Energy Alliance president Kathleen Sgamma told The Daily Caller News Foundation.

EOIs, while usually covering one or two million acres in Nevada, exploded in 2014, covering a total of 28 million acres, according to BLM data.

"Something very weird is going on in Nevada with those [EOIs]," Sgamma said. "The [EOIs] of just millions of acres at a time ... do not appear to be from reputable companies. They do not reflect any industry interest."

While millions of acres of federal land in Nevada is supposedly drawing interest for oil development, oil companies purchase very few leases that are auctioned off by the BLM. In 2015, BLM's most current data, of the 248 parcels of land BLM offered to lease to oil companies, only 14 were bought.

"The interest in Nevada is very small," Sgamma said. "There are some companies, there are a few number of wells that have been drilled over the last couple of years, but they are not in these monument areas [of Gold Butte and Basin and Range]."

CBD cannot explain why EOIs spiked in 2014. While blaming oil companies for wanting to downsize national monuments, CBD and the oil industry agree that developing the vast amount of land in Nevada would be a waste of money.

"There is very little oil and gas in Nevada, very little. Its not Wyoming here. We just don't have a ton of oil and gas potential so it sort of is all the more jarring to see this level of speculation," Donnelly said. "I think these speculators are waiting for some geopolitical crisis where the price of oil spikes dramatically, and then, potentially, its economically feasible to extract."

Donnelly blamed "speculators" in Texas operating out of "one man shops" for the million of acres of supposed oil interest.

Positively knowing who has been requesting the EOIs is strictly dependent on how much information is filled out on the form and released by the BLM. Many forms lack enough information to get even a general sense of the request's origin, Sgamma said.

"It could be a bad industry actor. It could be an environmental group nominating things so that they can later say, 'Hey, we need this monument designation to protect from the greedy oil and gas industry,'" Sgamma said. "[CBD is] looking at very fishy data that just are not reflective of industry interest."

Follow Tim Pearce on Twitter

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Exhibit 2

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Utah State Office
440 West 200 South, Suite 500
Salt Lake City, UT 84101
http://www.blm.gov/ut/st/en.html

IN REPLY REFER TO
3120
(UT-922000)

APR 1 5 2016

CERTIFIED MAIL – 91 7199 9991 7035 9043 6708
Return Receipt Requested

Terry Tempest Williams
dba Tempest Exploration
P.O. Box 40
Moose, Wyoming 83012-0040

Dear Ms. Williams:

I am writing to you concerning your pending noncompetitive lease offers for oil and gas parcels UTU91481 (on February 16, 2016) and UTU91574 (on February 18, 2016). I want to ensure that you understand your obligations under the leases if issued, and to request that you clarify statements you made about your intentions with respect to these leases in your essay entitled "Keeping My Fossil Fuel in the Ground," which appeared in the opinion pages of the New York Times on March 29, 2016.

Your offers to lease were made by signing and dating Form 3100-11 ("Offer to Lease and Lease for Oil and Gas"), which contains the basic terms and conditions of an issued oil and gas lease, and may be supplemented by stipulations attached to the lease parcel. Paragraph 4 on page 2 of Form 3100-11 sets out the qualifications necessary to be an offeror, and the offeror's agreement to all of the terms and conditions of the lease that is the subject of the offer and to the stipulations attached to the lease.

One of the basic terms of such a standard oil and gas lease, found in Section 4 on page 3 of Form 3100-11, is the requirement that the lessee must exercise reasonable diligence in developing and producing the leased resource. In light of that requirement, I wanted to follow up on your statements in your essay that "[w]e have every intention of complying with the law, even as we challenge it. . . . We will pay the annual rent for the duration of the 10-year lease and keep whatever oil and gas lies beneath these lands in the ground."

The diligent development requirement set forth in Section 4 of your lease forms is a requirement that is mandated by the Mineral Leasing Act of 1920, as amended. See 30 U.S.C. §187. Therefore, please advise me in writing within 30 days of your receipt of this letter whether you would accept the duty to exercise reasonable diligence in developing and producing oil and gas from the two leases you have offered to purchase rather than keeping the resources "in the ground" as stated in your essay.

I also want to make you aware of the stipulation attached to one of your lease parcels -- UTU91481 -- which is part of a unit plan for development previously established by owners of the resource pool. See 43 C.F.R. Subpart 3180. In such situations, the lease offeror is required to either join the established unit or to show the Bureau of Land Management (BLM) why such joinder is not required. In any event, a lessee in a unit is required to conform to the terms and provisions of the unit agreement with respect to operations. See 43 C.F.R. § 3101.3-1.

This requirement is in Stipulation UT-S-317 attached to Parcel UTU91481, as set forth on the Canyon Country District's February 2016 Final Oil & Gas Lease Sale List. It provides: "The successful bidder will be required to join the Crescent Unit Agreement or show reason why a joinder should not be required." The operator of the Unit is Tidewater Oil & Gas Co., 110 16th Street, Suite 405, Denver, Colorado 80202-5206. Thus, before any lease could be issued for the parcel, it would be necessary for you to join the Crescent Unit Agreement, or demonstrate why joinder should not be required. Please inform me in writing within 30 days of your receipt of this letter whether you have contacted the Unit operator to begin the process of joining the Unit or if not why joinder should not be required.

If I do not receive a response to this letter within 30 days of your receipt of it that provides the necessary information discussed above and demonstrates your compliance with the requirements that must be a part of such leases, the BLM may reject your two noncompetitive lease offers. In that case, a refund will be made of all funds submitted in connection with the offers.

If you have any questions regarding this letter or would like to discuss any aspect of it, please contact Kent Hoffman, Deputy State Director for Lands and Minerals, at (801) 539-4063.

Sincerely,

Jenna Whitlock
Acting State Director

Exhibit 2

United States Government Accountability Office

GAO

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

December 2013

OIL AND GAS RESOURCES

Actions Needed for Interior to Better Ensure a Fair Return

GAO-14-50

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.

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.

Contents

Abbreviations

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

GAO U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

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.[1] 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

[1] *Fiscal Accountability of the Nation's Energy Resources* (January 1982).

produced—in the world.[2] 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.[3] 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.[4]

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.[5] 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

[2]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.

[3]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.

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

[5]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.

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.[6]

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

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

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.

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.

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 and gas revenue collected included royalties (about $8.5 billion or 87 percent), bonus bids (about $947 million or 10 percent),[7] 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.[8] 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.[9] 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.

Leasing Processes

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

[7]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.

[8]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.

[9]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.

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."[10] 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."[11] 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."[12]

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

[10] 43 U.S.C. §1344(a)(1).

[11] 43 U.S.C. §1332(3).

[12] 43 U.S.C. §1344(a)(4).

the initial period of the lease,[13] which varies depending on the water depth.[14] 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

[13]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.

[14]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.

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.[15] 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.

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.[16] 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."[17] 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

[15]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.

[16]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.

[17]*Fiscal Accountability of the Nation's Energy Resources* (January 1982).

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.[18] 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.[19] 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

[18]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.

[19]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).

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.[20] In September 2008,[21] 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.[22] 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.[23]

[20]GAO-07-676R.

[21]GAO-08-691.

[22] GAO-11-278.

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

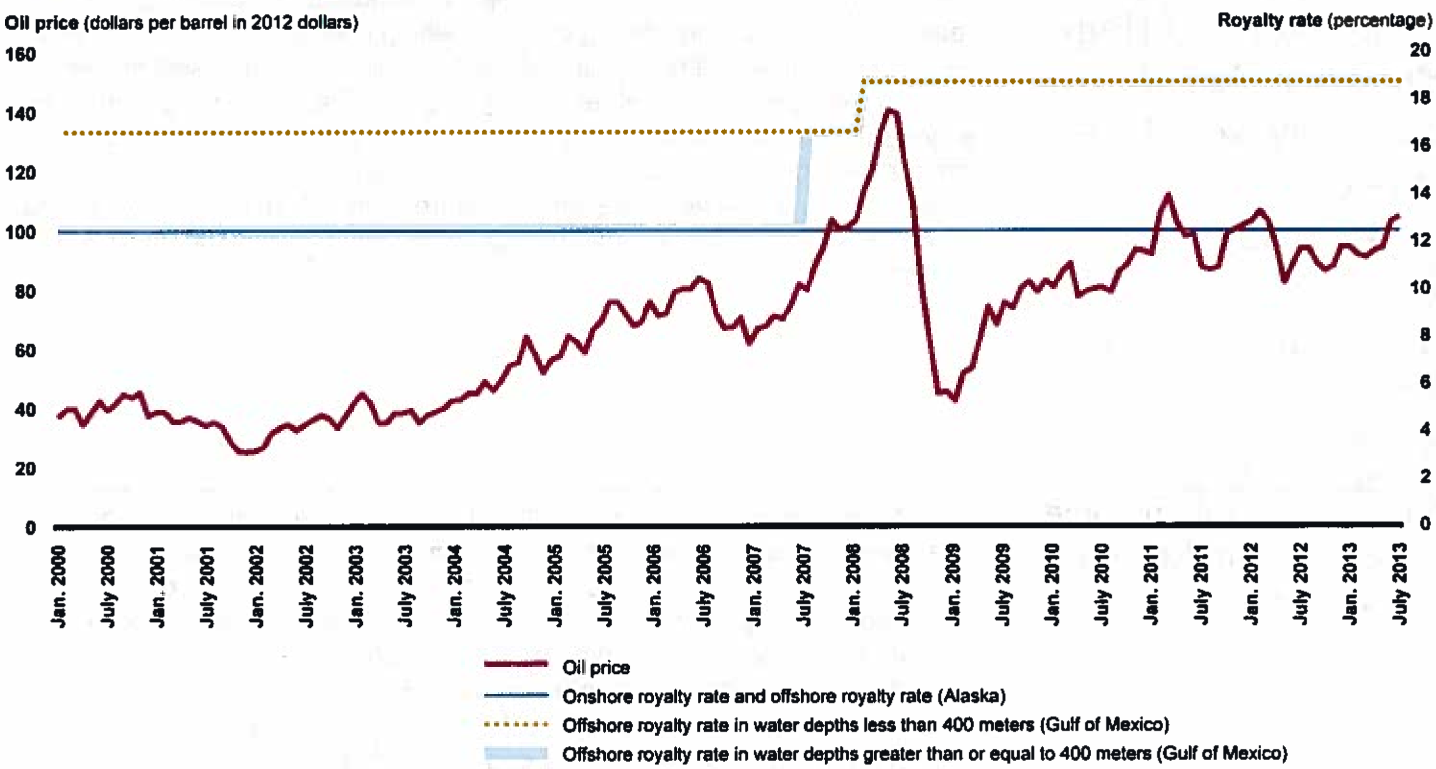
Interior Has Taken Some Steps to Help Ensure a Fair Return but Does Not Have Procedures for Periodically Conducting Assessments of the Fiscal System

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.

Interior Has Taken Some Steps Aimed at Ensuring a Fair Return

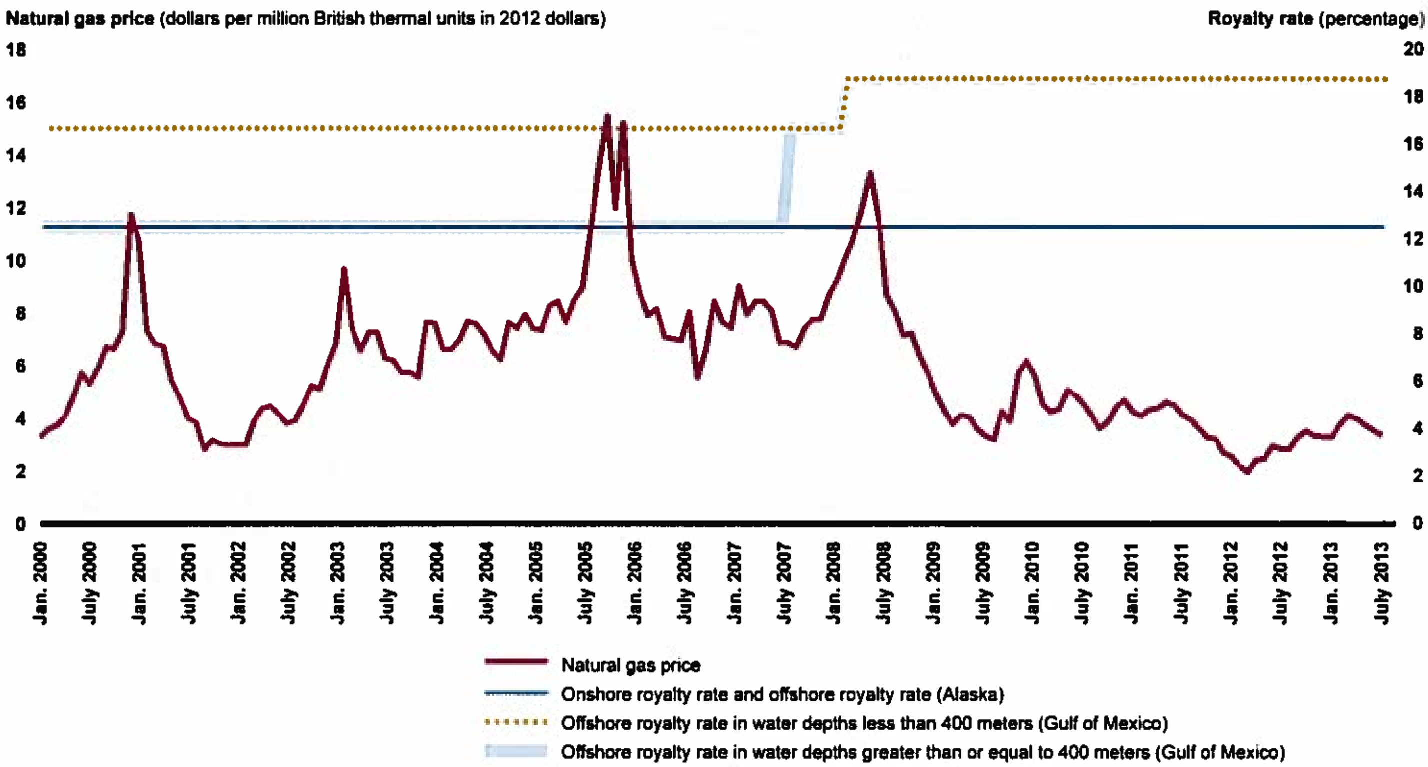
Interior has taken some steps aimed at ensuring a fair return, including changing offshore lease terms—such as increasing royalty rates, minimum bids, and rental rates—but onshore lease terms have not changed in recent years though onshore and offshore leasing programs are subject to many of the same 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 rates for new leases are 18.75 percent.[24] 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.[25] 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.[26]

- *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.[27] Also, in

[24]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.

[25]The revenue estimates are nominal dollars unadjusted for inflation.

[26]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.

[27]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.

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.[28] 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.[29] 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.

[28]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.

[29]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%[a]	16.67%	12.50%[a]	12.50%[a]	12.50%[a]	12.50%[a]
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%[a]	16.67%[a]	12.50%[a]	12.50%[a]	12.50%[a]	12.50%[a]
204 and 205	8/22/2007 - 10/3/2007	Rent ($/acre)	**6.25[b]**	**9.5[b]**	9.50	9.50	9.50	9.50
		Minimum bid ($/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	16.67%[a]	16.67%[a]	**16.67%[a]**	**16.67%[a]**	**16.67%[a]**	**16.67%[a]**
224	3/19/2008	Rent ($/acre)				9.50	9.50	9.50
		Minimum bid ($/acre)				37.50	37.50	37.50
		Royalty rate				**18.75%**	**18.75%**	**18.75%**
206 and 207	3/19/2008 - 8/20/2008	Rent ($/acre)	6.25[b]	9.5[b]	9.50	9.50	9.50	9.50
		Minimum bid ($/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	**18.75%[a]**	**18.75%[a]**	**18.75%[a]**	18.75%[a]	18.75%[a]	18.75%[a]
208	3/18/2009	Rent ($/acre)	**7.00[b]**	**11.00[b]**	**11.00[b]**	**11.00[b]**	**11.00[b]**	**11.00[b]**
		Minimum bid ($/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	18.75%[a]	18.75%[a]	18.75%[a]	18.75%[a]	18.75%[a]	18.75%[a]
210 and 213	8/19/2009 - 3/17/2010	Rent ($/acre)	7.00[b]	11.00[b]	11.00[b]	11.00[b]	11.00[b]	11.00[b]
		Minimum bid ($/acre)	25.00	25.00	37.50	37.50	37.50	37.50
		Royalty rate	18.75%[a]	18.75%[a]	18.75%[a]	18.75%[a]	18.75%[a]	18.75%[a]
218 to 229	12/14/2011 - 3/20/2013	Rent ($/acre)	7.00[b]	11.00[b]	11.00[b]	11.00[b]	11.00[b]	11.00[b]
		Minimum bid ($/acre)	25.00	25.00	**100.00**	**100.00**	**100.00**	**100.00**
		Royalty rate	18.75%[a]	18.75%[a]	18.75%	18.75%	18.75%	18.75%
233	8/28/2013	Rent ($/acre)	7.00[b]	11.00[b]	11.00[b]	11.00[b]	11.00[b]	11.00[b]
		Minimum bid ($/acre)	25.00	25.00	100.00	100.00	100.00	100.00
		Royalty rate	18.75%[a]	18.75%[a]	18.75%	18.75%	18.75%	18.75%

Source: GAO analysis of Interior data.

Note: One meter equals about 3.28 feet.

[a]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.

[b]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.

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.[30] 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.

Interior Has Considered but Has Not Changed Onshore Lease Terms

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.[31] According to the officials, several factors prompted efforts to consider changing the royalty rates, including our September 2008 report,[32] oil and gas prices, and Office of Management and Budget initiatives calling for increased revenue from onshore royalties.[33] Although both onshore and

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

[31]For onshore leases issued noncompetitively, the Mineral Leasing Act sets a 12.5 percent royalty rate by statute.

[32]GAO-08-691.

[33]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.

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 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.[34]

Interior Contracted for Studies of Various Aspects of the Fiscal System

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,[35] 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.[36] 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

[34]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.

[35]GAO-08-691.

[36]Wood Mackenzie, *Government Take: Comparing the Attractiveness and Stability of Global Fiscal Systems* (June 2007).

with that of other regions.[37] 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)[a]	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. 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.
Benefit-Cost and Economic Impact Analysis of Raising the Onshore Royalty Rates Associated with New Federal Oil and Gas Leasing (April 2011)[b]	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. 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.

[37]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)[c]	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. 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.

Source: GAO analysis of Interior-contracted studies.

[a]IHS Cambridge Energy Research Associates, *Comparative Assessment of the Federal Oil and Gas Fiscal System* (October 2011).

[b]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.

[c]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 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

Interior is examining potential regulatory changes that could simplify royalty payments and collections. As we found in our past work,[38] 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.[39] 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.

[38]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).

[39]76 Fed. Reg. 30878 (May 27, 2011).

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."[40] 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.[41] As mentioned previously, in

[40]GAO/AIMD-00-21.3.1.

[41]GAO-08-691.

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.[42]

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

[42]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).

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.[43] 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

[43]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.

potential value of the oil and gas resource.[44] 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

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

[44]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.

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.[45] 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.

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.

[45]GAO/AIMD-00-21.3.1.

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 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.

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.

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.

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. 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

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.

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,

Amy Holley for

Rhea Suh
Assistant Secretary
Policy, Management and Budget

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Frank Rusco, (202) 512-3841 or ruscof@gao.gov

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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Washington, DC 20548

Exhibit 3

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Utah State Office
440 West 200 South, Suite 500
Salt Lake City, UT 84101-1345
http://www.blm.gov/ut/st/en.html

OCT 18 2016

IN REPLY REFER TO:
3120 (UT-922)

CERTIFIED MAIL – Return Receipt Requested
91 7199 9991 7033 9329 2037

DECISION

Terry Tempest Williams	:	Oil and Gas Lease Parcel UTU91481
Brooke S. Williams	:	Oil and Gas Lease Parcel UTU91574
dba Tempest Exploration		
P.O. Box 40		
Moose, WY 83012-0040		

<u>Oil and Gas Noncompetitive Lease Offers Rejected</u>

Dear Ms. Williams:

On February 16, 2016, you submitted a noncompetitive lease offer for oil and gas parcel UTU91481 and, on February 18, 2016, you submitted a noncompetitive lease offer for oil and gas parcel UTU91574. Each offer was made by your signing, dating, and submitting Form 3100-11 ("Offer to Lease and Lease for Oil and Gas") to the Bureau of Land Management's Utah State Office (BLM), which contains required terms and conditions for an issued oil and gas lease, and may be supplemented by special stipulations attached to the lease parcel. Paragraph 1 of each Form indicates that the offer is being made by you and Brooke S. Williams doing business as Tempest Exploration.

Paragraph 4, directly above the signature line on page 2 of Form 3100-1, includes among other things, the express commitment of the person making the noncompetitive lease offer to accept and adhere to the requirements of the lease. In particular, Paragraph 4(b) provides in part that the "undersigned agrees that signature to this offer constitutes acceptance of this lease, including all terms conditions, and stipulations of which offeror has been given notice."

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. <u>See</u> 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.

Following your submission of the noncompetitive lease offers for Parcels UTU91481 and UTU91574, media reports have attributed certain statements to you, and you have made a number of representations in the media and in correspondence to BLM regarding your intentions in the event leases for the parcels are issued to you and/or Tempest Exploration, including the following:

- In your essay entitled "Keeping My Fossil Fuel in the Ground" that appeared in the Opinion Pages of the New York Times on March 29, 2016, you stated: "We will pay the annual rent for the duration of the 10-year lease and keep whatever oil and gas lies beneath these lands in the ground." In light of this statement, Jenna Whitlock, Acting State Director, wrote to you on April 15, 2016 restating the diligent development terms and conditions of an oil and gas lease, and asking that you clarify your intentions. In a letter to Ms. Whitlock dated June 17, 2016, you stated that you "choose to hold onto our leases until new technologies can be developed that will allow the oil and gas resources to be developed and burned without producing climate-warming gases…"

- In a Living on Earth radio interview with Steve Curwood recorded on July 11, 2016, you stated: "The oil and gas companies that also bought leases, they were given their leases immediately, and, truth be told, they have no intention of drilling on those lands either, maybe for different reasons.'"

- In your August 16, 2016 letter to this office, you and your husband stated: "We believe that requiring us to drill on our leases is a condition that is unique to us that does not apply to the others who purchased leases that day with no intention of drilling."

Viewed objectively and in their totality, your express statements to date show intent to not diligently explore for and produce the oil and gas resources underlying the two lease parcels for which you have submitted noncompetitive lease offers. Therefore, since you have stated publicly that you intend to keep the oil and gas resources in the ground and, therefore, not comply with the diligent development requirement plainly set forth in your noncompetitive lease offers (in Section 4 on page 3 of Form 3100-1), the lease offers are hereby rejected.

A refund of the first year's advance rental in the amount of $1,200.00 for lease offer UTU91481 and $480.00 for lease offer UTU91574, for a total amount of $1,680.00, will be authorized at the end of the appeal period unless this decision is appealed. If this decision is appealed, these advance rental payments will be held until the Interior Board of Land Appeals issues its decision on the appeal, and if it affirms this decision, the BLM will process a refund of the payments.

This decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and instructions contained in Form 1842-1 (enclosure). If an appeal is taken, the notice of appeal must be filed in this office (at the address shown on the enclosed Form) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition for a stay of this decision pursuant to 43 C.F.R. § 4.21, the petition must accompany your notice of appeal and show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

A petition for stay is required to show sufficient justification based on the standards listed in 43 C.F.R. § 4.21(b) (1) which include:

(1) The relative harm to the parties if the stay is granted or denied;
(2) The likelihood of the appellant's success on the merits;
(3) The likelihood of irreparable harm to the appellant or resource if the stay is not granted; and
(4) Whether the public interest favors granting the stay.

If a petition for stay is submitted with the notice of appeal, a copy of the notice of appeal and petition for stay must be served on each party named in the decision from which the appeal is taken, and with the IBLA at the same time it is filed with the Authorized Officer.

A copy of the notice of appeal, and statement of reasons and all pertinent documents must be served on each adverse party named in the decision from which the appeal is taken and on the Office of the Regional Solicitor, U.S. Department of the Interior, 6201 Federal Building 125 South State Street, Salt Lake City, Utah 84138-1180, no later than 15 days after filing the document with the Authorized Officer and/or IBLA.

If you have any questions, please contact Kent Hoffman, Deputy State Director for Lands and Minerals, at (801) 539-4063.

Sincerely,

FOR Edwin L. Roberson
State Director

Enclosure: Forum 1842-1, Information on Taking Appeals to the Interior Board of Land Appeals

Form 1842-1
(September 2006)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS
1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

NOTICE OF APPEAL: Bureau of Land Management, Utah State Office, 440 West, 200 South, Suite 500, Salt Lake City, Utah 84101-1345

WITH COPY TO SOLICITOR: Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO SOLICITOR: Regional Solicitor, Room 6201, 125 South State Street, Salt Lake City, Utah 84111

4. ADVERSE PARTIES

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office --------- Alaska
Arizona State Office --------- Arizona
California State Office ------- California
Colorado State Office ------- Colorado
Eastern States Office --------- Arkansas, Iowa, Louisiana, Minnesota, Missouri and, all States east of the Mississippi River
Idaho State Office ------------ Idaho
Montana State Office -------- Montana, North Dakota and South Dakota
Nevada State Office ---------- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ---------- Oregon and Washington
Utah State Office ------------- Utah
Wyoming State Office -------- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

Exhibit 4

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT (/)
(/)

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). 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)
Phone: 303-239-3668

ATTACHMENTS

1849 C STREET NW RM. 5665
WASHINGTON DC 20240
FAX: 202-208-5242
PHONE: 202-208-3801
BLM_WO_NEWMEDIA@BLM.GOV
(MAILTO:BLM_WO_NEWMEDIA@BLM.GOV)

Exhibit 5

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 2 3 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:
Telephone: (202) 208-5339
Fax: (202) 208-6677
E-mail: FOIA.Appeals@sol.doi.gov

Office of Government Information Services

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways: OGIS, NARA, 8601 Adelphi Road, College Park, Maryland 20740-6001; Email: ogis@nara.gov; Website: https://ogis.archives.gov; Telephone: 202-741-5770; Fax: 202-741-5769 or Toll-free: 1-877-684-6448. You also may seek dispute resolution services from our FOIA Public Liaison, Ryan Witt at (202) 912-7562. Using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

Records Not Covered by the FOIA (FOIA Exclusions)

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