

# **REPORT ON THE FEDERAL OIL AND GAS LEASING PROGRAM**

*Prepared in Response to Executive Order 14008*

U.S. Department of the Interior

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## I. INTRODUCTION

This report responds to Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, which directed the Department of the Interior (DOI) to conduct a review of Federal oil and gas leasing and permitting practices.<sup>1</sup> This report considers both onshore and offshore oil and gas leasing programs in light of the Secretary of the Interior's broad stewardship responsibilities over public lands and Federal offshore waters.

The review found a Federal oil and gas program that fails to provide a fair return to taxpayers, even before factoring in the resulting climate-related costs that must be borne by taxpayers; inadequately accounts for environmental harms to lands, waters, and other resources; fosters speculation by oil and gas companies to the detriment of competition and American consumers; extends leasing into low potential lands that may have competing higher value uses; and leaves communities out of important conversations about how they want their public lands and waters managed.

The fiscal components of the onshore Federal oil and gas program are particularly outdated, with royalty rates that have not been raised for 100 years. States with leading oil and gas production apply royalty rates on State lands that are significantly higher than those assessed on Federal lands. The Texas royalty rate, for example, can be double the Federal rate. Likewise, bonding levels have not been raised for 50 years. Federal minimum bids and rents have been the same for over 30 years. These antiquated approaches hurt not only the Federal taxpayer but also State budgets because States receive a significant share of Federal oil and gas revenues.

For decades, the Government Accountability Office (GAO) and DOI's Office of Inspector General (OIG) have sounded the alarm bell on the Federal oil and gas program. The GAO, a non-partisan independent agency that works for Congress, has consistently called for Congress and the Executive Branch to reform oil and gas leasing on Federal lands. The OIG, which provides independent oversight of DOI, has regularly highlighted energy management in its annual reports on major management and performance challenges,<sup>2</sup> saying, "many of DOI's energy programs are vulnerable to waste, fraud, and mismanagement, which can jeopardize public safety and environmental integrity and increase the financial burden on the American public."<sup>3</sup>

To inform this report, DOI reviewed studies, some going back decades, of the Federal oil and gas program's deficiencies, including from GAO and OIG. The DOI also conducted formal Tribal consultations; held a forum with expert panelists; reviewed public feedback; and met with States, members of Congress, and representatives from the oil and gas industry, labor organizations, conservation organizations, Indigenous organizations, environmental justice organizations, and academics. Issues were identified across all steps of Federal oil and gas development, from land use planning to decommissioning.

This review and outreach reconfirmed well-documented and long reported deficiencies in the Federal oil and gas program that support this report's findings and recommendations related to fiscal terms and bonding. This report identifies a number of recommendations that begin to modernize Federal land management. The reforms serve three main programmatic goals:

- Providing a fair return to the American public and States from Federal management of public lands and waters, including for development of energy resources;
- Designing more responsible leasing and development processes that prioritize areas that are most suitable for development and ensure lessees and operators have the financial and technical capacity to comply with all applicable laws and regulations; and
- Creating a more transparent, inclusive, and just approach to leasing and permitting that provides meaningful opportunity for public engagement and Tribal consultation.

These recommendations represent an overdue reform agenda, which is urgent even as the Interior Department begins to take into account new stressors and new opportunities for our public lands and waters, including addressing biodiversity loss, tackling climate change, and deploying new technology ranging from harnessing offshore wind in public waters, to sequestering carbon on public lands. Accordingly, this report focuses primarily on necessary reforms to the fiscal terms, leasing process, and remediation requirements related to deficiencies with the Federal oil and gas program, which are well documented as detailed below.

As the Department considers how to best implement the recommendations contained in this report,<sup>4</sup> the Administration will continue to work closely with Congress, State, Tribal and local officials, industry, labor organizations, environmental justice communities, and stakeholders to ensure that proper consideration is given to creating jobs, harnessing American ingenuity, and building a brighter, more sustainable future.

## **Overview: The Federal Oil and Gas Program**

### *Onshore*

The Bureau of Land Management (BLM) oversees 245 million acres of Federal public lands, including lands that are managed for outdoor recreation; development of oil, gas, coal, and renewable energy resources; grazing and timber production; safeguarding treasured cultural heritage and sacred sites; and supporting wildlife habitat and ecosystem functions.

In 1976, the Federal Land Policy and Management Act (FLPMA) established particular land and resource management authorities for BLM, bringing to the forefront multiple-use, sustained yield, and environmental protection as the guiding principles for public land management.<sup>5</sup> The FLPMA directs BLM to manage some areas for conservation to consider the best use of public lands in a broader context than economic return, and to take action necessary to prevent unnecessary or undue degradation of the lands. One of the many uses that BLM oversees is the management of energy and mineral resource development on approximately 245 million acres of Federal onshore lands and 700 million acres of subsurface Federal minerals, which is guided by the Mineral Leasing Act.<sup>6</sup>

Federal onshore oil and gas production accounts for approximately seven percent of domestically produced oil and eight percent of domestically produced natural gas. The BLM currently manages 37,496 Federal oil and gas leases covering 26.6 million acres with nearly 96,100 wells.<sup>7</sup> Of the more than 26 million onshore acres under lease today to the oil and gas industry, nearly 13.9 million (or 53 percent) of those acres are non-producing.<sup>8</sup>

The oil and gas industry has a substantial number of unused permits to drill onshore. As of September 30, 2021, the oil and gas industry holds more than 9,600 approved permits that are available to drill. In fiscal year (FY) 2021, BLM approved more than 5,000 drilling permits, and more than 4,400 are still being processed.<sup>9</sup> Industry suggests that the significant surplus of leases and permits is necessary for a successful business model, but this speculative approach contributes to unbalanced land management. When land is under contract for potential oil and gas activity, the shared public lands cannot be managed for other purposes, such as conservation or recreation.

### Offshore

The Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE) work to ensure the development of energy and mineral resources on the U.S. Outer Continental Shelf (OCS) is done in a safe and environmentally and economically responsible way. The OCS is comprised of submerged lands generally starting three nautical miles offshore the United States<sup>10</sup>—totaling nearly 2.3 billion acres in the Pacific, Atlantic, Gulf of Mexico and offshore Alaska and Hawaii. These offshore areas also have shared uses, such as supporting marine wildlife habitat, coastal tourism, subsistence uses, recreational and commercial fishing, and national defense activities.

The Outer Continental Shelf Lands Act (OCSLA) explains that the OCS is a “vital natural resource reserve held by the Federal Government for the public,”<sup>11</sup> and establishes policies and procedures to develop and manage OCS oil and gas resources, achieve national economic and energy policy goals, enhance national security, and reduce dependence on foreign sources of energy.<sup>12</sup> In recognition of the significant impacts on coastal and non-coastal areas that exploration, development, and production of OCS resources can have, OCSLA requires that development be conducted in a safe manner and subject to environmental safeguards. Amendments made to OCSLA in 1978 established the policy that oil and natural gas resources on the OCS should be preserved, protected, and developed in a manner that is consistent with the need to meet the nation’s energy needs; balance development with protection of the human, marine, and coastal environments; and ensure a fair and equitable return on resources through a competitive leasing process.

In FY 2020, the OCS produced approximately 642 million barrels of oil and 910 million cubic feet of gas, accounting for 16 percent of all oil production and 3 percent of natural gas production in the United States.<sup>13</sup> Most of this production is in the Gulf of Mexico, where the amount of acreage under lease has declined by more than two-thirds over the last 10 years.<sup>14</sup> This decline is mostly driven by market conditions and changes in companies’ strategic approach to leasing. Of the more than 12 million acres under lease, about 45 percent is either producing oil and gas or is subject to approved exploration or development plans, which are preliminary steps leading to production. The 55 percent of the leased acreage that is non-producing may be in an earlier stage of the development process, or being held for speculative reasons, indicating a sufficient inventory of leased acreage to sustain development for years to come.

## The Need for Reform

In recent decades, the nation’s energy needs and the mix of resources available on domestic and global energy markets have materially changed, while the statutes and policies underpinning the nation’s oil and gas program have remained largely static. Utility-scale renewable energy production has emerged as a viable source of energy that can be generated on public lands and in offshore waters. The direct and indirect impacts associated with oil and gas development on our nation’s land, water, wildlife, and the health and security of communities—particularly communities of color, who bear a disproportionate burden of pollution—merit a fundamental rebalancing of the Federal oil and gas program.

The Federal oil and gas program has been identified on GAO’s “High Risk List” for more than a decade, which notes programs and operations that are “vulnerable to waste, fraud, abuse, or mismanagement, or in need of transformation.”<sup>15</sup> As far back as 1989, GAO noted that BLM “is not exercising balanced stewardship over the public lands.”<sup>16</sup> In 1990, GAO observed that BLM would approve “some drilling permits without first completing the environmental studies.”<sup>17</sup> This Administration has taken action to stop that practice. Indeed, GAO has issued frequent reports outlining serious concerns with the onshore oil and gas leasing program. In just the last three years, GAO has highlighted deficiencies with noncompetitive leasing (GAO-21-138), royalty relief policies (GAO-21-169T), data collection (GAO-21-209), ensuring a fair return (GAO-19-718T), and bonding and reclamation practices (GAO-19-615). Offshore, GAO has raised recent concerns about decommissioning liabilities (GAO-16-40), safety and environmental oversight (GAO-17-293), fiscal returns from the leasing program (GAO-19-531), and pipeline safety and decommissioning (GAO-21-293).

Internally, OIG has regularly highlighted energy management in its annual reports of “Major Management and Performance Challenges facing the U.S. Department of the Interior,” stating, “many of DOI’s energy programs are vulnerable to waste, fraud, and mismanagement, which can jeopardize public safety and environmental integrity and increase the financial burden on the American public.”<sup>18</sup> In recent years, OIG has identified specific concerns with the collection, verification, and distribution of energy resource revenues; issues arising from aging onshore and offshore infrastructure; oversight and management of oil and gas production; and offshore environmental compliance and enforcement, among other issues.<sup>19</sup>

Members of Congress from both sides of the aisle have also introduced various bills in recent years to reform and reimagine the Federal leasing programs. The bills include proposals to raise royalty rates to provide a fair return to taxpayers; address bonding deficiencies to ensure that companies properly restore public lands following extractive activities; support non-extractive uses of public lands and waters; restore community input in leasing decisions; and set emissions reductions strategies, among other reforms.

## II. RECOMMENDATIONS

What follows is a high-level blueprint to begin to modernize the onshore and offshore oil and gas leasing programs in order to better restore balance and transparency to public land and ocean management and deliver a fair and equitable return to American taxpayers.<sup>20</sup>

## Providing a Fair Return to American Taxpayers and States

### Onshore

Adjusting and modernizing the fiscal terms used in the Federal onshore oil and gas program increases returns to the public and disincentivizes speculators or less responsible actors. The GAO has reported extensively that taxpayers have not received a fair rate of return due to outdated fiscal terms.<sup>21</sup> For example, Federal onshore oil and gas royalty rates are consistently lower than on State-issued leases and Federal offshore leases (see Tables 1 and 2); in fact, onshore royalty rates have never been raised. Likewise, bonding levels have not been raised for 60 years, and minimum bids and rents have been the same for over 30 years. If a lease is not sold competitively at auction, for two years it can be sold non-competitively for a modest administrative fee, with no bonus bid required. These noncompetitive leases are frequently less diligently developed as competitively issued leases. From 2013 to 2019, average revenues from competitive leases were nearly three times greater than revenues from noncompetitive leases.<sup>22</sup>

Such low prices for leases, coupled with generous 10-year lease initial terms that are frequently extended, encourage speculators to purchase leases with the intent of waiting for increases in resource prices, adding assets to their balance sheets, or even reselling leases at a profit rather than attempting to produce oil or gas. In one particularly egregious recent case, an individual purchased nearly 300 oil and gas leases and resold many of them almost immediately for up to 13 times the original purchase price.<sup>23</sup> Speculators, not taxpayers, receive the profits from these resales. Because information on lease resales is not easily accessible, local communities are often in the dark when it comes to who has the right to develop oil and gas nearby.

The BLM should improve the return to taxpayers and create an oil and gas program that is more consistent with BLM's multiple-use and sustained yield mandates. Consideration should be given to raising royalty rates and, to the extent allowed by statute, to increasing the current minimum levels for bids, rents, royalties, and bonds. Congressional passage of pending bipartisan legislation could further modernize fiscal terms. States will also benefit from a modernized fiscal system since they receive 49 percent of all oil and gas revenues generated from public lands within their borders.<sup>24</sup> Onshore revenues also fund water reclamation projects throughout the West through contributions to the Reclamation Fund, and may also contribute to the National Parks and Public Land Legacy Restoration Fund.

### *Royalties*

The Mineral Leasing Act was passed in 1920 and set royalties at a minimum of 12.5 percent for oil and gas produced from public lands. Today, 100 years later, leases are still being sold using these low rates, which are out of step with modern times. Numerous public reports provide support for raising royalty rates for leasing on public lands, and nearly all State and private lands require that operators pay a royalty rate higher than 12.5 percent.<sup>25</sup> In June 2017, GAO reported that studies showed that raising Federal royalty rates for onshore oil and gas could “decrease production on federal lands by a small amount or not at all but could increase overall federal revenue.”<sup>26</sup>

**Table 1: Oil and Gas Royalty Rates across Federal Public, Private, and State Lands<sup>27</sup>**

<b>Leasing Jurisdiction</b>	<b>Oil &amp; Gas Royalty Rate</b>
California	Negotiated lease-by-lease, but generally no less than 16.67 percent
Colorado	20 percent
Montana	16.67 percent
New Mexico	18.75-20 percent
North Dakota	16.67 or 18.75 percent depending on the county
Oklahoma	18.75 percent
Texas	20-25 percent
Utah	16.67 percent
Wyoming	16.67 percent
Private Lands	Generally, 12.5-25 percent
Federal Lands	12.5 percent, sometimes less

This table shows the oil and gas royalty rate based on jurisdiction.

Taxpayers for Common Sense released a report last year stating that the Federal Government “lost up to \$12.4 billion in revenue from oil and gas drilling on federal lands from 2010 through 2019” because Federal royalty rates are too low.<sup>28</sup> Additionally, the same report found little evidence supporting claims that increasing the Federal onshore royalty rate would drive developers away and reduce overall revenues. This finding aligns with the results seen in Colorado and Texas, where there was no significant effect on production from State lands after State royalty rates were raised.<sup>29</sup>

The BLM should begin to adjust royalties for competitive leases offered in individual lease sales and initiate a rulemaking to establish a higher minimum royalty for onshore oil and gas leases. The BLM also should consider limiting discretionary royalty relief, which it has provided extensively to lessees in the recent past, while it updates its current royalty relief guidance and reassesses the economic assumptions used during royalty relief application evaluations.

#### *Bonus Bids*

A bonus bid is the price paid at a lease sale for an oil and gas lease. The minimum bonus bid is set at \$2 per acre—an amount that has not been changed since 1987.<sup>30</sup> If an area offered for lease does not receive a bid during the lease sale, the bonus bid is waived, and the area can be acquired during the next two years by the first party that pays a nominal application fee.

The GAO found that leases purchased with a higher bonus bid of more than \$100 per acre are over 20 times more likely to be developed in their first lease term than leases purchased with the minimum bid of \$2 per acre.<sup>31</sup> The BLM should initiate rulemaking to increase the minimum bid to discourage speculators and to provide a better return to the taxpayer.



### *Rental Rates*

Companies pay rent until the lease is in production, and then they pay royalties on the oil and gas produced. The rental rates, which have not changed since 1987, are \$1.50 per acre per year for the first five years, then \$2 per acre per year for the next five years, at which point a non-producing lease would expire. The lease is automatically extended as long as production continues.

A GAO report from 2009 concluded that:

Interior does less to encourage development of federal oil and gas leases than some state and private landowners. Interior officials cited one lease provision that may encourage development—escalating rental rates. ... Compared to Interior, the eight states we reviewed undertook more efforts to encourage development on their oil and gas leases, using increasing rental rates as well as shorter lease terms and escalating royalty rates. Some states also do more than Interior to structure leases to reflect the likelihood of oil and gas production, which may encourage faster development.<sup>32</sup>

The BLM should initiate a rulemaking in order to increase rental rates for future lease sales.

### *Bonding*

Current regulations require financial assurance from all lessees to ensure compliance with lease terms and requirements, which is generally provided in the form of a lease surety bond. A lease surety bond remains in place until all lease obligations have been met, including decommissioning, which can extend beyond the expiration of the lease. A surety bond can be issued as a lease-specific bond, a statewide bond, or a nationwide bond, and additional bonds may be necessary to ensure compliance with lease obligations and regulations.

Insufficient bonding levels provide an inadequate incentive for companies to meet their reclamation obligations and increase the risk that taxpayers will be required to cover the cost of reclaiming wells in the event that the operator refuses to do so or declares bankruptcy. According to a 2019 GAO report:

... weaknesses with bonds for coal mining and for oil and gas development pose a financial risk to the federal government as laws, regulations, or agency practices have not been adjusted to reflect current economic circumstances. We have also reported that BLM has no mechanism to pay for reclaiming well sites that operators have not reclaimed.<sup>33</sup>

The risks associated with low bonding rates have become more apparent in light of the recent increase in bankruptcies. Company liquidations often result in wells becoming orphaned, which then fall to the Federal Government or States to address, while some companies have used Chapter 11 restructuring to get out of reclamation obligations.<sup>34</sup>

According to the same 2019 GAO report, oil and gas lease bonds do not provide sufficient financial assurance because, among other things, most individual, statewide, and nationwide lease bonds are set at regulatory minimum values that have not been adjusted for inflation since the 1950s and 1960s.<sup>35</sup> These minimum bond amounts and the year calculated are: individual lease, \$10,000—1960; statewide, \$25,000—1951; nationwide, \$150,000—1951.<sup>36</sup> The National Petroleum Reserve—Alaska bonds were set in 1981; an individual lease is \$100,000, and a

reserve-wide bond is \$300,000.<sup>37</sup> While individual States have bonding levels that are often too low to fully reclaim modern horizontally-drilled wells, most States require significantly higher bonds than the Federal Government, often with bonding requirements that adjust based on the depth and number of wells covered.<sup>38</sup>

The BLM should increase minimum bond amounts and set the appropriate levels taking into consideration changes in technology, the complexity and depth of modern wells, inflation, and the risk of abandonment. While such regulations are being developed, BLM should adjust bonds for individual, high risk leases through adequacy reviews and when leases are reinstated or applications for permits to drill are extended.

Offshore

*Royalties and Royalty Relief*

The BOEM evaluates lease terms on a sale-by-sale basis to ensure they are consistent with current market or resource conditions. The OCSLA sets the minimum offshore royalty rate at 12.5 percent and directs that leasing be conducted in a way that ensures the government receives fair market value (FMV). OCSLA also directs that management of the OCS be conducted in a way that considers economic, social, and environmental values, and protects the human, marine, and coastal environments.

A 2019 GAO report that assessed BOEM’s process to evaluate whether it was receiving FMV for offshore leases recommended that BOEM take steps to reform its methodology to ensure that it was capturing the full value of the lease tracts it was offering.<sup>39</sup> The BOEM is in the process of responding to several of GAO’s recommendations concerning oil and gas valuation procedures.

**Table 2: Offshore Oil and Gas Royalty Rates (BOEM)**

<b>Water Depth (meters)</b>	<b>Royalty Rate Prior to 2007<sup>40</sup></b>	<b>Royalty Rate 2007</b>	<b>Royalty Rate 2008-March 2017</b>	<b>Royalty Rate August 2017-2020 (Sale 256)</b>
0 to < 200m	16.67%	16.67%	18.75%	12.5%
200 to < 400m	16.67%	16.67%	18.75%	18.75%
400m+	12.5%	16.67%	18.75%	18.75%

This table shows the royalty rate based on water depth. Fiscal terms are evaluated and set on a sale-by-sale basis. Date ranges indicate the years in which sales were held using those terms.

Revenues from lease sales, royalties on production, and rental fees are distributed to the U.S. Treasury, several coastal States through OCSLA section 8(g) and the Gulf of Mexico Energy Security Act, the Historic Preservation Fund, the Land and Water Conservation Fund, and Legacy Restoration Fund.<sup>41</sup>

As with BLM, BOEM, and BSEE will be continuing to study the most appropriate method for revising royalty rates and other fiscal terms to monetarily account for the costs of carbon dioxide, methane, and nitrous oxide.

Also similar to BLM, BOEM and BSEE have the authority to provide discretionary royalty relief depending on economic circumstances, and those agencies likewise will be reevaluating existing royalty relief guidance and the economic assumptions used to evaluate royalty relief applications,<sup>42</sup> insofar as royalty relief can have the effect of subsidizing uneconomic production at taxpayers' expense. The BSEE recently determined, for example, that the April 2020 Special Case Royalty Relief guidance neither formalized application and evaluation procedures nor provided adequate training to implement them, and BSEE has discontinued this specific royalty relief option.

*Financial Assurances*

Financial assurance requirements for operators offshore are similar to those onshore: all lessees must provide a general lease surety bond, which covers all terms and conditions of a lease and remains in place until all lease obligations have been met, including decommissioning, which can extend beyond the expiration of the lease. A surety bond can be issued as a lease-specific bond or as an area-wide bond that guarantees obligations on all leases held by a lessee within a specified area. Additional bonds may be necessary to ensure compliance with lease obligations and regulations.

**Table 3. Bonding Amounts for Offshore Oil and Gas Activity<sup>43</sup>**

<b>Lease Activity</b>	<b>Lease-Specific Bond Amount</b>	<b>Area-Wide Bond Amounts</b>
No approved operational activity	\$50,000	\$300,000
Exploration Plan	\$200,000	\$1,000,000
Development Production Plan	\$500,000	\$3,000,000
Pipeline Right of Way (ROW)	N/A	\$300,000

This table shows the amounts for lease-specific and area-wide bonds.

Lessees, owners of operating rights, and ROW holders are jointly and severally responsible for decommissioning obligations and are required to perform this duty in a timely manner, consistent with regulations and guidance.

Recent bankruptcies have in some cases resulted in companies being unable to cover their decommissioning liabilities, leading to orphaned wells and idle infrastructure. The BSEE estimates that the liability for currently orphaned infrastructure on the OCS is approximately \$65 million, with the potential to increase if more companies go bankrupt and create additional orphaned infrastructure. The GAO recently found that there were approximately \$2.3 billion in decommissioning liabilities on the OCS that were not covered by bonds, and roughly \$33 billion in liabilities had bonds waived because the financial condition of the leaseholder was considered

strong enough.<sup>44</sup> The current regulatory structure governing financial assurances does not have the appropriate checks to intervene in advance of bankruptcies to require additional financial assurances. Financial assurance coverage should be strengthened to protect the Federal Government and taxpayers and to ensure that companies are financially able to meet their lease and decommissioning obligations.

In 2020, BOEM and BSEE published a notice of proposed rulemaking to address this issue.<sup>45</sup> The agencies will carefully consider comments received on both the proposed rule and this review to inform their approach for improving financial assurance requirements to better manage the risks associated with industry activities on the OCS.

### *Fitness to Operate*

Offshore leases are significantly more expensive to acquire than onshore leases, which, among other reasons, results in less of a role for speculators in the leasing process. However, companies with poor environmental, safety, or reclamation histories are still allowed to bid for leases or acquire them from other companies. The BOEM plans to develop a “Fitness to Operate” standard for companies seeking to be designated as oil and gas operators and evaluate how to apply such a standard to potential new lessees or current lessees seeking to gain additional properties. The Fitness to Operate standard will establish criteria that companies would need to meet in order to operate on the U.S. OCS. Requiring companies to meet minimal fitness to operate standards will ensure companies can meet their safety, environmental, and financial responsibilities.

## **Designing More Responsible Processes**

### *Onshore*

Through the land use planning process, BLM determines what lands may be available for oil and gas leasing, what lease stipulations will be applied to protect other resources and values, and what “conditions of approval” may be necessary on permits to drill for additional protection. The land use planning process requires extensive collaboration with Tribal, State, and local governments and the public regarding how Federal lands will be used and minerals will be extracted at specific locations.

As an overarching policy, BLM should ensure that oil and gas is not prioritized over other land uses, consistent with BLM’s mandate of multiple-use and sustained yield. The BLM should carefully consider what lands make the most sense to lease in terms of expected yields of oil and gas, prospects of earning a fair return for U.S. taxpayers, and conflicts with other uses, such as outdoor recreation and wildlife habitat. The BLM should always ensure it is considering the views of local communities, Tribes, businesses, State and local governments, and other stakeholders.

### *Low Potential Lands*

Common practice in BLM land use planning has been to leave the majority of Federal lands open for leasing and allow industry to drive decisions on what areas will be nominated for oil and gas leasing. Since there is no cost to nominate parcels of land for leasing, there is little disincentive for companies to identify large amounts of acreage regardless of the resource potential of that

land or how seriously the nominator is considering bidding for the nominated parcels. The burden and expense then fall on BLM to process those parcels, triggering the dedication of BLM staff resources to analyze marginal lands that companies may not be interested in bidding on and that may never be leased, much less developed. At the same time, sales of large amounts of low-potential land often ignite local community concerns (particularly since low-potential lands are more likely to be in areas that are not accustomed to local oil and gas development) and result in protests that are time-consuming and resource-intensive to adjudicate.

The BLM should evaluate operational adjustments to its leasing program that will avoid nomination or leasing of low potential lands and instead focus on areas that have moderate or high potential for oil and gas resources and which are in proximity to existing oil and gas infrastructure.

### *Bidding Requirements*

The current leasing process does not thoroughly screen buyers, which creates the potential for widespread speculative leasing, unqualified buyers, and large numbers of leases that may be issued noncompetitively. Indeed, speculative leasing has been observed in the leasing program as far back as 1980, when GAO wrote, “We found much inactive land being held by individuals who were not affiliated with oil companies and were, therefore, presumably speculators.”<sup>46</sup>

Unlike the offshore or coal leasing programs, the onshore oil and gas program does not pre-clear bidders based on their ability to responsibly and diligently pursue development. Combined with artificially low minimum bids and rental rates, the system is easily taken advantage of by speculators seeking to re-sell leases at higher prices later, and it allows bidders to shield the identity of companies purchasing leases, leaving communities in the dark as to who is seeking to develop oil and gas on nearby public lands.

The BLM should consider reforms that ensure that bidders—and any subsequent proposed leaseholders or operators—are publicly identified and financially and technically qualified to develop leases.

### *Offshore*

For future National OCS Oil and Gas Leasing Programs, BOEM should consider advancing alternatives to the practice of area-wide leasing, under which the entire planning area is offered with few exclusions for a lease sale. Area-wide leasing is not required under OCSLA; it was first implemented by Interior Secretary James Watt in 1982 and has since been applied during the majority of OCS lease sales. An early assessment of the practice by GAO in 1985 found that the first 10 area-wide lease sales resulted in an estimated loss of \$7 billion to the Federal Government,<sup>47</sup> and a review of the process published in 2006 found that area-wide leasing significantly reduced the amount of competition and the value of bids for each lease tract.<sup>48</sup> Moving to a leasing model where smaller areas are offered according to a number of criteria—including environmental protection, subsistence use needs, resource potential and financial considerations—will help ensure that American taxpayers are receiving a fair return for offshore oil and gas resources.

## **Creating a More Inclusive and Just Approach to Managing Public Lands and Waters**

The stewardship mission of DOI mandates processes for outreach and receipt of public input, including from communities that may be most affected by DOI activities. These processes have not always been adequate, fair, or equitable, which thus perpetuates environmental injustice. Practices such as allowing anonymous lease nominations and recent efforts to restrict or eliminate public notice and comment periods can leave local community voices—including, in particular, Tribal voices—out of leasing and permitting processes. The DOI should undertake meaningful Tribal consultations and solicit public input more generally regarding its leasing and permitting processes.

### **III. CONCLUSION**

Modernization of the Federal oil and gas program has been delayed for decades to the detriment of the American public, their public lands and waters, the environment, wildlife, and more. In its current form, the program falls short of serving the public interest in a number of important respects. It provides insufficient opportunities for public input, shortchanges taxpayers and States, and tilts toward opening up low potential lands without adequately considering competing multiple-use opportunities.

This report lays out actions that the Administration is considering taking, consistent with legal authorities and the Executive Branch's broad discretion, to provide a fair return to taxpayers and to steward shared resources. It also encourages Congress to act on pending legislation to provide fundamental reforms to the onshore and offshore oil and gas programs.

The DOI will continue to seek out honest and pragmatic paths forward—in concert with communities; Federal, State, local, and Tribal leaders; businesses and labor; and other stakeholders—to bring a common purpose to the management of America's public lands and waters, and the value they hold.

## IV. ENDNOTES

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<sup>1</sup> Exec. Order No. 14,008, 86 Fed. Reg. 7,619 (Jan. 27, 2021).

<sup>2</sup> U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior for Fiscal Year 2019,” November 2019, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-0>; U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior for Fiscal Year 2018, November 2018, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-1>; U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior,” November 2017, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-2>; U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior,” November 2016, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-3>.

<sup>3</sup> U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management And Performance Challenges Facing The U.S. Department Of The Interior,” November 2015, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-4>.

<sup>4</sup> This report includes only suggestions as to future Departmental actions, which will be promulgated, if at all, in compliance with the Administrative Procedure Act and other applicable law. This report is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officer or employees, or any other person.

<sup>5</sup> 43 U.S.C. § 1701.

<sup>6</sup> 30 U.S.C. § 181.

<sup>7</sup> Bureau of Land Management, *Oil and Gas Statistics*, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

<sup>8</sup> *Ibid.*

<sup>9</sup> Bureau of Land Management, *APD Status Report September 2021*, available at <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/permitting/applications-permits-drill>.

<sup>10</sup> The OCS begins nine nautical miles off the Gulf of Mexico coasts of Florida and Texas.

<sup>11</sup> 43 U.S.C. § 1332(3).

<sup>12</sup> 43 U.S.C. §§ 1331-1356.

<sup>13</sup> U.S. Department of the Interior, “Natural Resources Revenue Data,” available at <https://revenuedata.doi.gov/>; U.S. Energy Information Administration, “Crude Oil Production,” available at [https://www.eia.gov/dnav/pet/pet\\_crd\\_crpdn\\_adc\\_mbb1\\_a.htm](https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbb1_a.htm); U.S. Energy

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Information Administration, “Natural Gas Gross Withdrawals and Production,” Marketed Production data series, available at

[https://www.eia.gov/dnav/ng/ng\\_prod\\_sum\\_a\\_EPG0\\_VGM\\_mmcf\\_m.htm](https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_VGM_mmcf_m.htm).

<sup>14</sup> Bureau of Ocean Energy Management, “Combined Leasing Report July 1, 2021” and “Combined Leasing Report As of February 3, 2011,” available at <https://www.boem.gov/oil-gas-energy/leasing/combined-leasing-status-report>.

<sup>15</sup> U.S. Government Accountability Office, “OFFSHORE OIL AND GAS: Opportunities Exist to Better Ensure a Fair Return on Federal Resources,” (2019); High Risk List,” U.S. Gov't Accountability Office, <https://www.gao.gov/high-risk-list>.

<sup>16</sup> U.S. General Accounting Office, Change in Approach Needed to Improve the Bureau of Land Management’s Oversight of Public Lands 1 (1989).

<sup>17</sup> U.S. General Accounting Office, “FEDERAL LAND MANAGEMENT: Better Oil and Gas Information Needed to Support Land Use Decisions,” June 1990, available at <http://archive.gao.gov/d24t8/141709.pdf>.

<sup>18</sup> U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management And Performance Challenges Facing The U.S. Department Of The Interior,” November 2015, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-4>.

<sup>19</sup> U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior for Fiscal Year 2019,” November 2019, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-0>; U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior for Fiscal Year 2018, November 2018, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-1>; U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior,” November 2017, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-2>; U.S. Department of the Interior Office of Inspector General, “Inspector General’s Statement Summarizing the Major Management and Performance Challenges Facing the U.S. Department of the Interior,” November 2016, available at <https://www.doioig.gov/reports/other/inspector-generals-statement-summarizing-major-management-and-performance-3>.

<sup>20</sup> This report focuses on reforms to the oil and gas leasing program, but DOI will also be conducting similar analyses and reviews on the Federal coal program to identify reforms in that program as well, including exploring ways that the costs of climate change are appropriately reflected in coal leasing terms.

<sup>21</sup> U.S. Government Accountability Office, “OFFSHORE OIL AND GAS: Opportunities Exist to Better Ensure a Fair Return on Federal Resources,” September 2019, available at <https://www.gao.gov/assets/gao-19-531.pdf>.



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<sup>22</sup> U.S. Government Accountability Office, “OIL AND GAS: Onshore Competitive and Noncompetitive Lease Revenues,” November 2020, available at <https://www.gao.gov/assets/gao-21-138-highlights.pdf>.

<sup>23</sup> N. Groom, "How a Burmese immigrant profited by flipping cheap oil leases from Trump auctions," *Reuters*, March 2021, available at <https://www.reuters.com/article/us-usa-drilling-myanmar-insight/how-a-burmese-immigrant-profited-by-flipping-cheap-oil-leases-from-trump-auctions-idUSKBN2BE1C5>.

<sup>24</sup> 30 U.S.C. § 191.

<sup>25</sup> Taxpayers for Common Sense, “Royally Losing: Higher Royalties on State and Offshore Oil and Gas Production Reap Billions More than Drilling on Federal Lands,” February 2020, available at <https://www.taxpayer.net/wp-content/uploads/2020/02/TCS-Royally-Losing-2020.pdf>.

<sup>26</sup> U.S. Government Accountability Office, “OIL, GAS, AND COAL ROYALTIES: Raising Federal Rates Could Decrease Production on Federal Lands but Increase Federal Revenue,” June 2017, available at <https://www.gao.gov/assets/gao-17-540.pdf>.

<sup>27</sup> Taxpayers for Common Sense, “Royally Losing: Higher Royalties on State and Offshore Oil and Gas Production Reap Billions More than Drilling on Federal Lands,” February 2020, available at <https://www.taxpayer.net/wp-content/uploads/2020/02/TCS-Royally-Losing-2020.pdf>.

<sup>28</sup> Ibid.

<sup>29</sup> Taxpayers for Common Sense, “Royally Losing: Higher Royalties on State and Offshore Oil and Gas Production Reap Billions More than Drilling on Federal Lands,” February 2020, available at <https://www.taxpayer.net/wp-content/uploads/2020/02/TCS-Royally-Losing-2020.pdf>; U.S. Government Accountability Office, “OIL, GAS, AND COAL ROYALTIES: Raising Federal Rates Could Decrease Production on Federal Lands but Increase Federal Revenue,” June 2017, available at <https://www.gao.gov/assets/gao-17-540.pdf>.

<sup>30</sup> 30 U.S.C. § 226(b)(1)(B); 43 C.F.R. § 3120.1-2.

<sup>31</sup> U.S. Government Accountability Office, “OIL AND GAS: Onshore Competitive and Non-Competitive Lease Revenues,” November 2020, available at <https://www.gao.gov/assets/gao-21-138.pdf>.

<sup>32</sup> U.S. Government Accountability Office, “OIL AND GAS LEASING: Federal Oil and Gas Resource Management and Revenue Collection in Need of Comprehensive Reassessment,” March 2009, available at <https://www.gao.gov/assets/gao-09>

<sup>33</sup> U.S. Government Accountability Officer, “FEDERAL ENERGY DEVELOPMENT: Challenges to Ensuring a Fair Return for Federal Energy Resources,” September 2019, available at <https://www.gao.gov/assets/gao-19-718t.pdf>.

<sup>34</sup> N. Sadasivam, “How bankruptcy lets oil and gas companies evade cleanup rules,” *Grist*, June 2021, available at <https://grist.org/accountability/oil-gas-bankruptcy-fieldwood-energy-petroshare/>.

<sup>35</sup> U.S. Government Accountability Office, “FEDERAL ENERGY DEVELOPMENT: Challenges to Ensuring a Fair Return for Federal Energy Resources,” September 2019, available at <https://www.gao.gov/assets/gao-19-718t.pdf>.

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<sup>36</sup> 43 C.F.R. §§ 3104.2, 3104.3

<sup>37</sup> 43 C.F.R. § 3134.1.

<sup>38</sup> Western Organization of Resource Councils, “BLM Oil and Gas Bonding Rules Leave Lands a Mess and Taxpayers Responsible,” April 2020, available at <http://www.worc.org/publication/8671/>.

<sup>39</sup> U.S. Government Accountability Office, “OFFSHORE OIL AND GAS: Opportunities Exist to Better Ensure a Fair Return on Federal Resources,” September 2019, available at <https://www.gao.gov/assets/gao-19-531.pdf>.

<sup>40</sup> Predominant royalty rates, particularly in the decades immediately preceding 2006. But not all lease sales, particularly older ones, had these exact royalty rates.

<sup>41</sup> U.S. Department of the Interior, “Natural Resources Revenue Data,” available at <https://revenue.data.doi.gov/>.

<sup>42</sup> Congressional Research Service, “Offshore Royalty Relief: Status During the COVID-19 Pandemic,” May 2020, available at <https://crsreports.congress.gov/product/pdf/IN/IN11380>.

<sup>43</sup> 30 C.F.R. §§ 556.900, 556.901.

<sup>44</sup> U.S. Government Accountability Office, “Offshore Oil and Gas Resources: Actions Needed to Better Protect Against Billions of Dollars in Federal Exposure to Decommissioning Liabilities,” December 2015, available at <https://www.gao.gov/products/gao-16-40>.

<sup>45</sup> 85 Fed. Reg. 65,904 (Oct. 16, 2020).

<sup>46</sup> U.S. General Accounting Office, “Impact of Making The Onshore Oil And Gas Leasing System More Competitive,” March 1980, available at <https://www.gao.gov/assets/emd-80-60.pdf>.

<sup>47</sup> U.S. General Accounting Office, Early Assessment of Interior’s Area-Wide Program for Leasing Offshore Lands (1985).

<sup>48</sup> J. Boué and others, “A Question of Rigs, of Rules, or of Rigging the Rules?: Upstream Profits and Taxes in US Gulf Offshore Oil and Gas, *Oxford University Press*, 2006.