
REPORT BY THE

Comptroller General

OF THE UNITED STATES

Deficiencies In The Department Of The Interior OIG Investigation Of The Powder River Basin Coal Lease Sale

Subsequent to the controversial Powder River Basin coal lease sale of 1982, the Office of Inspector General (OIG) of the Department of the Interior investigated and reported on issues related to the sale

GAO reviewed the reports and related investigative work and found them to be inadequate and incomplete. Numerous leads were either dismissed or not pursued to reasonable conclusions, and serious discrepancies were never resolved.

In GAO's view, these issues are important and still need to be addressed in a thorough manner. GAO believes the Secretary of the Interior should use GAO's report and the results of the Department's own investigation to resolve all unanswered questions and take such further actions as may be appropriate.



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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 20548

B-214839

The Honorable Morris K. Udall
Chairman, Committee on Interior
and Insular Affairs
House of Representatives

The Honorable Edward J. Markey
Chairman, Subcommittee on Oversight
and Investigations
Committee on Interior and Insular Affairs
House of Representatives

The Honorable James H. Weaver
Chairman, Subcommittee on Mining,
Forest Management, and Bonneville
Power Administration
Committee on Interior and Insular Affairs
House of Representatives

The Honorable William P. Clark
The Secretary of the Interior

This report responds to your requests for an examination of the adequacy of the Department of the Interior Office of Inspector General's investigation of improper disclosure of sensitive coal data related to the Powder River Basin coal lease sale of 1982. We reviewed the Office of Inspector General's reports and investigative work relative to the sale and found them to be inadequate and incomplete. We believe the Secretary of the Interior should use our report and the results of the Department's own investigation to resolve all unanswered questions and take such further actions as may be appropriate.

Because of their interest we are sending this report to the Chairman, Senate Committee on Energy and Natural Resources, and the Chairman, Subcommittee on Interior, House Committee on Appropriations. Also we are making copies available to the Department of the Interior's Inspector General and the Assistant Inspector General for Investigations, and Mr. James G. Watt, former Secretary of the Interior. Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, we will send copies to selected Committees and members of Congress and other interested parties. Copies will also be made available to others upon request.

A handwritten signature in black ink that reads "Charles A. Bowsher".

Comptroller General
of the United States



D I G E S T

The 1982 Powder River Basin coal lease sale was the largest in U.S. history. Although the Department of the Interior considered the sale a success, both the preparations for the sale and its outcome were controversial. In response to concern expressed by the Chairman, Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs, GAO, in its May 1983 report, stated its belief that the government received less than fair market value for the coal leases. GAO also reported that there may have been an improper disclosure of sensitive coal data prior to the sale. GAO referred this matter to Interior's Office of the Inspector General (OIG) on April 20, 1983, so that an investigation of the alleged disclosure could be undertaken.

Pursuant to GAO's referral, the OIG conducted an investigation of an alleged unauthorized disclosure of data related to the sale and issued three separate reports. The first and principal report, dated May 11, 1983, examined whether a leak of sensitive Interior data concerning Powder River coal tract values had occurred prior to the sale and stated that no evidence warranting further investigation to substantiate its occurrence could be found. A supplemental report, dated July 6, 1983, identified several apparent leaks but did not completely resolve the issues. The third report, dated July 25, 1983, focused on two senior Interior officials' acceptance of an expensive dinner at a restaurant from a coal industry representative.

This review focuses on the scope and conduct of the OIG's investigation of the improper disclosure issue. GAO initiated its review in response to Secretary of the Interior William Clark's February 28, 1984, request for GAO's assistance in evaluating various issues concerning the coal sale and worked cooperatively with a team assembled by the Secretary to

investigate the matter. Subsequently, on March 16, 1984, Morris K. Udall, Chairman, House Committee on Interior and Insular Affairs; Edward J. Markey, Chairman, Subcommittee on Oversight and Investigations; and James Weaver, Chairman, Subcommittee on Mining, Forest Management, and Bonneville Power Administration, also requested that GAO look into the unauthorized disclosure of proprietary coal leasing data.

Pursuant to the requests, GAO analyzed the scope and conduct of the OIG's investigation. GAO did not attempt to resolve issues left unresolved by the OIG investigation. Rather, GAO's work concentrated on determining the adequacy of the OIG's investigation and identifying the unresolved issues. GAO examined all available documents and interviewed Interior officials involved in conducting and investigating allegations related to the sale. (See p. 5.)

DEFICIENCIES IN THE INVESTIGATION

GAO's examination of the three OIG reports issued in connection with the investigation disclosed deficiencies in each of the reports which are sufficiently serious to render the reports incomplete and unreliable. GAO found that a sufficient basis existed to initiate an investigation long before GAO's April 20, 1983, referral. Furthermore, the OIG terminated the investigation prematurely, did not pursue leads concerning leaks of Interior data, and did not reconcile discrepancies in the information which was obtained. Several leads suggesting potential leaks were identified in the OIG reports, but they were either dismissed or not followed to a reasonable conclusion. In addition, the reports contained discrepancies which were never addressed. Furthermore, GAO found examples of obvious contradictions which the OIG did not adequately pursue. (See pp. 10 - 12 and 20.)

A LATE START AND PREMATURE TERMINATION OF THE INVESTIGATION

More than a year transpired between the first allegations of a leak of Interior data and the beginning of the OIG investigation. Shortly before and after the April 1982 coal lease sale, an Interior official and two news

publications expressed concern about a possible leak of the proprietary Minimum Acceptable Bids (MABs)¹ for Powder River coal tract leases. Senator Dale Bumpers expressed similar concern in a letter to then Secretary Watt. Although the particulars of the reported disclosure were unclear, the alleged release of the data raised the question of whether coal industry officials gained access to this data and then pressured Interior to reduce the coal value estimates just before the sale. Despite the concern, no action was undertaken by the OIG until late April 1983, after a referral of additional information from GAO based on its own extensive investigation of the lease sale.

Interior's Inspector General (IG) told GAO that he could not remember why he did not initiate an investigation in 1982. The Assistant Inspector General for Investigations (AIGI) stated that in May 1982 he considered opening an investigation but was advised by the IG not to initiate one in light of GAO's work in the area. OIG officials did not contact GAO to determine the specific nature and scope of GAO's efforts.

The OIG's investigation, begun on April 25, 1983, concluded sixteen days later, and resulted in a report of investigation dated May 11, 1983. OIG field investigators were told by the AIGI to discontinue their work, although they believed that various leads and discrepancies had been uncovered and required further attention. (See pp. 10 - 12.)

LEADS NOT PURSUED

The two supplemental reports of July 6 and 25, 1983, revealed that statements in the May 11, 1983, report and a subsequent accompanying news release were erroneous by disclosing evidence of several leaks and discrepancies. The AIGI told GAO that certain leads were not pursued or discrepancies were not resolved

¹A minimum acceptable bid is a presale estimate of a coal tract's value, representing both the "floor" at or above which bidding may begin and Interior's official estimate of fair market value.

because the information was not viewed as sufficiently specific to justify further action. GAO's review of the OIG investigative files and field notes, however, indicates that many leads and discrepancies were indeed very specific as to the individuals, dates, places, and other details and that such information was known by the OIG prior to issuance of the May 11, 1983, report.

Leads concerning leaks encompassed a wide variety of individuals, but none were thoroughly investigated. Leads suggesting MAB data disclosures included a newspaper reporter who read data to an Interior official before the sale and a state official who apparently also possessed similar data before the sale. The lead concerning the reporter was not discussed in any of the three OIG reports, nor did the OIG contact the state official to find out if he possessed the proprietary data and, if so, the legitimacy of his access. (See pp. 13 - 14.)

A further lead involved an industry geologist who indicated that, by happenstance, he observed MAB data on a desk at Interior's Minerals Management Service (MMS) office in Casper, Wyoming, before the sale. The OIG did investigate this lead, as detailed in the July 6 report, and, in an OIG memorandum, suggested the possibility of the geologist being "more than a casual observer." The OIG, however, did not pursue this lead to a reasonable conclusion. For example, the OIG did not corroborate the geologist's contention of accidental access to the data. In light of the geologist's subsequent distribution of the data to industry associates, GAO believes additional followup of this lead was warranted. An additional leak of data was alleged by a Bureau of Land Management geologist who told the OIG that the MMS Deputy Director may have disclosed MAB figures to various coal company representatives. Again, GAO found that the OIG did not pursue the geologist's information. (See pp. 14 - 17.)

In addition to evidence of MAB-related leaks, the OIG identified leads suggesting leaks of other coal data and documents relevant to the Powder River sale. None of these leads was resolved. (See pp. 17 - 19.)

DISCREPANCIES NOT RESOLVED

GAO found that important discrepancies, including contradictory information, were raised but not resolved in the OIG's reports. Perhaps the most obvious of these discrepancies concerned the May 11, 1983, report's statement that insufficient data was obtained to conduct further inquiry to corroborate or refute the existence of a leak. Specifically, the same report included as an exhibit a document excerpted from the May 7, 1982, issue of Inside Energy, a McGraw-Hill weekly trade publication, which indicated a leak of data. The excerpt, entitled "PRIME TRACTS IN POWDER RIVER BASIN DEVALUED BY INTERIOR BEFORE SALE," presented key data in tabular form. One column of data, labeled "Initial MAB value/cents per ton," essentially contained the same figures as those in a March 17, 1982, internal memorandum prepared by MMS for the coal sale which was never authorized for release. The IG told GAO that he was not aware of this discrepancy between the report and the exhibit. He also stated that he could not recall whether he had read the entire May 11 report and its attachments. (See pp. 20 - 21.)

Another instance of an important discrepancy not resolved by the OIG is evident in the testimony provided by then Deputy Assistant Secretary, Mr. David Russell, and an attorney, Brent Kunz, representing a company which bid at the Powder River sale. The attorney stated that he received the MABs for two or three Powder River coal tracts during a telephone conversation with the then Deputy Assistant Secretary prior to the sale. The OIG questioned Mr. Russell concerning this allegation, and Mr. Russell denied ever having discussed specific MAB figures with anyone in the private sector, including Mr. Kunz. The OIG did not resolve the discrepancy. (See p. 21.)

Important inconsistencies were also evident in the testimony of a key witness who was the initial subject of the OIG investigation. These inconsistencies involved significant points in the witness' affidavits at two different times as well as a discrepancy between his remarks and those of a coal industry representative. In the first of two affidavits, the witness provided clear evidence of his understanding

that an MAB leak had occurred. However, in a second affidavit, he expressed uncertainty as to whether the leak involved MABs or entry level bid (ELB)² data. We could find no evidence that the OIG resolved the matter.

Yet other discrepancies concern the exact date of the posting of the coal lease sale notice by MMS' Casper, Wyoming, office. Although the OIG's May 11, 1983, report indicated that the coal sale notice was posted on March 25, 1982, the OIG had available documentary evidence that the notice was actually not posted until the next day. Furthermore, the coal data published in the notice was not the MAB data alleged to have been leaked, but, instead, the ELB data. (See pp. 22 - 25.)

REPORTS DEPART FROM OIG STANDARDS

GAO found that the three reports did not comply with OIG standards regarding accuracy, completeness, and independent review and approval.

GAO believes that the OIG allowed important leads and discrepancies to remain unresolved. For example, the first report erroneously implied that the leak was the product of a simple misunderstanding about the coal lease sale notice's posting date.

The two supplemental reports did not satisfy standards of completeness. For example, the July 6 report addressed the obviously contradictory remarks of Mr. Kunz and Mr. Russell but did not reconcile them or attempt to do so. The July 25 report focused on a gratuity (an expensive dinner) received by two Interior officials from a coal industry attorney but, in spite of evidence suggesting a potentially closer relationship, did not pursue the matter thoroughly.

²An entry level bid is a "floor" bid set well below the presale estimates of a tract's value, in expectation that bidding competition at the sale itself will establish the tract's true value.

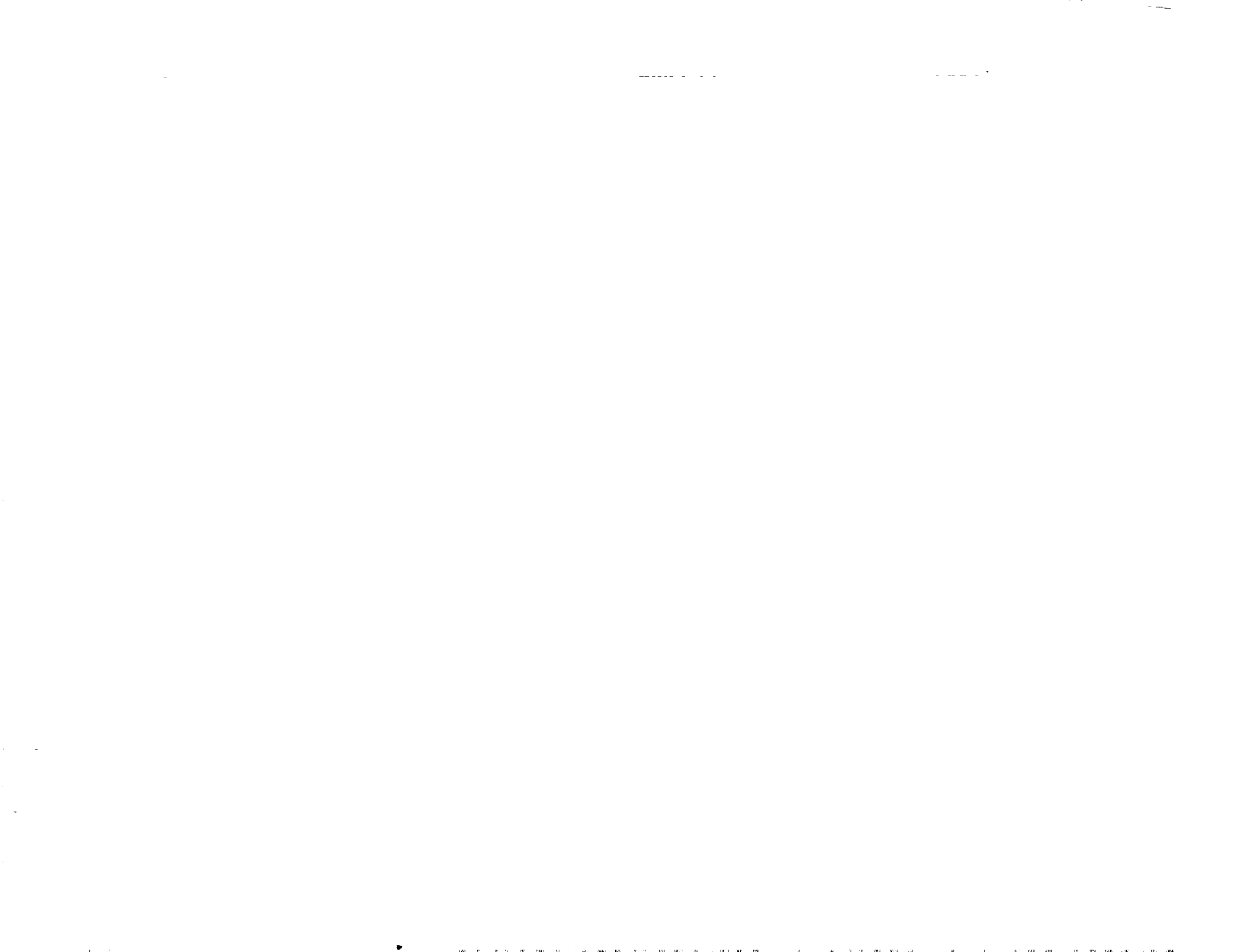
None of the three OIG reports received an independent review as required by OIG quality control procedures. The AIGI told us that he wrote the May 11 report and it was not reviewed before he signed it as the approving official. The AIGI also wrote and approved the two supplemental reports. The OIG's manual indicates procedures for preparing reports, but these procedures were not followed. (See pp. 25 - 27.)

AGENCY COMMENTS

Because of the nature of this report and because GAO's work was carried out, in part, in response to a request from the Secretary of the Interior, GAO did not obtain official agency comments on this report.

CONCLUSIONS

GAO found the three OIG reports to be incomplete and unreliable. Given the limited scope of its efforts, GAO reaches no conclusion on whether the three reports it reviewed are typical of OIG investigative efforts. Still, the issues related to the Powder River Basin coal lease sale which remain unanswered by the OIG investigation are in GAO's view significant and important. GAO believes the Secretary of the Interior should use GAO's report and the results of the Department's own investigative effort to (1) develop an investigative plan designed to shed light on all unanswered questions and (2) take such further actions as may be appropriate based on the results of the further investigation. (See pp. 32 - 34.)



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ABBREVIATIONS

AIGI Assistant Inspector General for Investigations
BLM Bureau of Land Management
DOI Department of the Interior
DOJ Department of Justice
ELB Entry Level Bid
IG Inspector General
MABs Minimum Acceptable Bids
MMS Minerals Management Service
OIG Office of Inspector General
TESI Texas Energy Services, Inc.
WSO Wyoming State Office

CHAPTER 1

INTRODUCTION

The Powder River Basin coal lease sale of April 28, 1982, was the largest in U.S. history. At the sale, the Department of the Interior offered about 1.6 billion tons of recoverable federal coal reserves for competitive leasing in southeastern Montana and northeastern Wyoming and accepted bids of \$43.5 million.

Although the Department considered the result a success, both the preparations for the sale and its outcome were controversial. Several members of Congress were particularly concerned with Interior's leasing of so much coal in what industry experts identified as a "soft" coal market and whether a fair return was received for the coal leases. A request from Chairman Edward J. Markey, Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs, to review the sale resulted in our May 11, 1983, report to the Congress.¹ In the report we stated our belief that Interior received less than fair market value for the Powder River leases sold. We also testified on our findings and views regarding the 1982 coal sale at four hearings.²

During the course of the audit for our May 11, 1983, report on the Powder River Basin coal lease sale, we obtained information suggesting that an improper disclosure of sensitive minimum acceptable bid³ data had occurred. At that time, we could not verify that an unauthorized disclosure had occurred or, if it had,

¹"Analysis of the Powder River Basin Federal Coal Lease Sale: Economic Valuation Improvements and Legislative Changes Needed," GAO/RCED-83-119, May 11, 1983.

²J. Dexter Peach, Director, RCED, May 16, 1983--Subcommittee on Oversight and Investigations, House Committee on Interior and Insular Affairs.

J. Dexter Peach, Director, RCED, May 23, 1983--Senate Committee on Energy and Natural Resources.

J. Dexter Peach, Director, RCED, June 7, 1983--House Subcommittee on Mining, Forest Management and Bonneville Power Administration, House Committee on Interior and Insular Affairs.

J. Dexter Peach, Director, RCED, September 6, 1983--Commission on Fair Market Value Policy for Federal Coal Leasing. (This commission was set up to examine the Department of the Interior's coal leasing program.)

³A minimum acceptable bid is a presale estimate of a coal tract's value, representing both the "floor" at or above which bidding may begin and Interior's official estimate of fair market value.

whether it influenced the outcome of the April sale. In accordance with GAO policy, we referred the matter by letter dated April 20, 1983, to Interior's Office of Inspector General (OIG) so that an investigation of the alleged disclosure could be undertaken. This report focuses primarily on the scope and conduct of the OIG's Powder River coal lease sale investigation.

BACKGROUND

The Powder River Basin (located in the states of Montana and Wyoming) contains coal reserves estimated at about 142.5 billion tons. The concentration of coal in the region is greater than that of any other area of comparable size in the United States. Powder River coal accounts for about two-thirds of total western coal reserves. About 80 percent of the coal in the region is federally owned and lies under surface lands that are about 73 percent privately owned.

An April 1982 Powder River Basin regional coal lease sale was planned as part of the Federal Coal Management Program established in June 1979. Under the program, Interior set a goal of leasing 1.5 billion tons of federal coal in three western regions in 1981 and 1982. Powder River Basin tracts to be offered were determined through land use planning. This process was designed to include several interests--federal, state, local, and private sector--in leasing decisionmaking. The Bureau of Land Management, Department of the Interior, screened the region for areas of high coal development potential, environmental stability, preferred mining use by the surface owner, and higher value for mining use than for other uses. Planning was done by a regional coal team consisting of Bureau field staff and Wyoming and Montana state officials during 1980 and 1981. This planning included deciding the exact location and size of the potential lease areas, and ranking and selecting the tracts to be offered.

On February 22, 1982, the Secretary of the Interior decided to offer about 2.5 billion tons of coal in the basin at the sale. To be included were 19 coal tracts--eight in Wyoming and 11 in Montana. Interior was required to offer all 19 through competitive bidding, in accordance with the Federal Coal Leasing Amendments Act of 1976.

Before the sale was held, however, Interior withdrew six of the 19 tracts--five because surface owner consents (permission to mine) had not been filed and one tract because of an error in published resource data. In addition, just prior to the sale, Interior instituted a new bidding system which it anticipated would encourage competition. The new system for this sale discontinued the prior practice of announcing Interior's estimates of coal

tract values (minimum acceptable bids) and, instead, announced only entry level bids⁴ which were generally much lower.

On April 28, 1982, 13 tracts totaling 1.6 billion tons of reserves were offered. Bids of \$54.7 million were received on 11 of 13 tracts. The \$11.2 million bid for the Rocky Butte tract was rejected, however, because it was not high enough to meet Interior's fair market value acceptance criteria adopted in connection with the revised entry level bidding procedures. Thus, the total accepted bids were \$43.5 million.

On October 15, 1982, a followup sale was held on two tracts--Rocky Butte and Fortin Draw, both in Wyoming. They brought total accepted bids of \$23.7 million. In addition to the 12 coal lease sales totaling \$67.2 million, the government will collect an annual rental on issued leases of \$3 per acre and a royalty of 12.5 percent of the value of coal produced.

CONTROVERSY RELATED TO THE SALE

The Congress and the news media have raised many questions regarding the preparation for, conduct of, and outcome of the Powder River sale in April 1982 and the followup sale in October 1982. The concerns focused on:

- Whether Interior received fair market value for the coal leases;
- Why Interior changed bidding systems just before the April sale; and
- Whether an unauthorized disclosure of Interior's proprietary coal data occurred before the sale, and if so, its significance.

Events related to these questions are summarized below:

On March 19, 1982, just over a month prior to the April sale, Interior decided to institute a new bidding system. This system was new for coal leasing, although it was similar to procedures used in conducting Alaskan National Petroleum Reserve oil and gas lease sales. Under the new system, Interior eliminated the practice of publicly announcing departmental estimates of coal tracts' values--values described as "minimum acceptable bids" (MABs)--prior to a sale. Instead, "entry level bids" (ELBs) not necessarily representing fair market value were announced on the premise that fair market value would be achieved during subsequent bidding and determined after the sale outcome when actual competitive value could be better judged. The switch to entry level bids lowered the amounts required to open bidding on 19 tracts by about

⁴An entry level bid is a "floor" bid set well below the presale estimates of tracts' value, in expectation that bidding competition at the sale itself will establish the tracts' true value.

\$46.8 million, from \$117.4 million, based on "minimum acceptable bids", to \$70.6 million, based on the new "entry level bids" procedure. In our May 1983 report we stated that Interior had no records documenting the need to change the bidding system and could provide no written quantitative basis supporting the change. Moreover, Interior's assumption that competitive bidding would occur was not borne out by the results. Virtually no competition developed for the tracts. The actual high bids were at or near the ELB level.

The new bidding procedure came under public scrutiny in May 1982 when Members of Congress voiced concerns about the sale and the national print media reported that the establishment of ELBs might have been related to an unauthorized disclosure in March 1982 of the MABs prepared by Interior's Minerals Management Service. Under the change of bidding systems, the MABs were not published by Interior. Although the particulars of the reported disclosure were unclear, the alleged release of the data raised the question of whether coal industry officials gained access to this data and then pressured Interior to reduce the published Powder River Basin coal value estimates just before the sale--i.e., Interior's change to the "entry level bid" approach. Interior received letters of inquiry from Members of Congress and, in July 1982, congressional hearings on the April sale were held.

Questions and concerns about the sale also precipitated establishment of a congressionally mandated commission to examine issues relating to Interior's coal leasing program. After 6 months of deliberations, the Commission on Fair Market Value Policy for Federal Coal Leasing (Coal Commission) issued its report on February 17, 1984, with regard to coal values. The Commission concluded that Interior probably did not receive fair market value for the Powder River sale. The Commission did not, however, attempt to quantify the amount that should have been obtained. The report also recommended that steps be taken "to ensure the security of confidential data prior to lease sales."

For the followup sale of October 1982, bidding procedures again changed, in line with new Bureau of Land Management coal regulations published on July 30, 1982. These regulations resulted from departmental streamlining aimed at simplifying the administration of the process of exploring for and developing federal coal. Post-sale fair market value determination was retained under the new regulations, but entry level bidding, adjusted by subsequent oral bidding, was replaced by single sealed bidding based on "minimum bids" set according to the type of tracts offered. This second change of bidding systems within a few months led to continuing questions among coal industry observers about Interior's rationale for its new procedures for offering coal for competitive leasing.

As a result of GAO's April 20, 1983, referral, regarding a suspected improper disclosure of MABs, the OIG, in a report dated May 11, 1983, implied that the allegation was the product of the coincidental release of coal data by Interior on the same day that

an Interior employee was called by a coal company representative regarding such data. Additional supplemental reports of investigations on the matter were issued by the OIG on July 6 and 25, 1983.

The OIG's July 6 report established that an unauthorized disclosure of sensitive data (MABS) had in fact occurred, and the OIG's July 25, 1983, report addressed the propriety of two senior Interior officials directly connected with the coal sale accepting dinner at an expensive restaurant from a coal industry representative. All three OIG reports were referred to the Department of Justice.⁵

OBJECTIVES, SCOPE, AND METHODOLOGY

On February 28, 1984, Secretary of the Interior William Clark requested GAO's assistance in evaluating various issues concerning the coal sale. On March 16, 1984, Morris K. Udall, Chairman, House Committee on Interior and Insular Affairs, Edward J. Markey, Chairman, Subcommittee on Oversight and Investigations, and James Weaver, Chairman, Subcommittee on Mining, Forest Management, and Bonneville Power Administration, also requested that we reopen our review of the unauthorized disclosure of proprietary coal leasing data. We agreed with the congressional requestors to focus our review on the scope and conduct of the OIG's investigation of the improper disclosure issue. Where the OIG investigation left issues unresolved, we did not attempt to resolve them. Rather, the scope of our work concentrated on determining the adequacy of the OIG's investigation and identifying the unresolved issues.

In addition to requesting our assistance, Secretary Clark assembled an Interior team (under the oversight of the Deputy Undersecretary) in February 1984, to review the conduct of the OIG's Powder River investigation. The Department of the Interior used individuals detailed from other departments to ensure objectivity. In order to avoid duplication, GAO and Interior entered into a cooperative agreement to apply a common investigative strategy and approach and establish a common data base by sharing information and corroborative evidence obtained by all investigatory bodies. (See Appendix I.) We prepared a separate report consistent with our reporting responsibilities to the Congress.

We conducted our review at Interior between March and May 1984. We reviewed documentation and interviewed former Secretary Watt and officials at the Assistant and Deputy Assistant Secretary level, officials at Interior's Bureau of Land Management (BLM) and

⁵The May 11, 1983, report was requested by Justice in response to congressional interest. The July 6 supplemental report was sent to Justice to keep Justice apprised of later developments. The July 25 report was referred for prosecutive consideration.

Minerals Management Service (MMS), and officials at various Interior staff offices in Washington, D.C. Our review of agency documentation included an examination of available official files, phone logs and calendars, correspondence, and personal files related to the Powder River sale. Specifically, we analyzed all documentation collected and initiated by the OIG to evaluate the adequacy of the investigation. We interviewed OIG management officials and agents involved in the investigation to better understand the rationale for decisions made throughout the investigation. We also interviewed former Interior employees who were involved in either conducting or monitoring the April 28, 1982, Powder River sale investigation. Key current and former Interior officials were interviewed under oath.

We did not interview non-governmental individuals but, instead, relied upon the information such persons had provided to the OIG during its investigation. Because the focus of our review was the OIG's conduct of its investigation, we have identified various individuals and organizations solely for the purpose of clarity of presentation. The scope of our work was not designed to either conclude or imply that any of the identified persons or organizations acted improperly.

This report focuses on the conduct of the OIG's Powder River investigation. We did not perform additional work to determine if the investigation was typical of OIG investigative activities at Interior.

AGENCY COMMENTS

Because of the nature of the report and because our work was carried out, in part, in response to a request from the Secretary of the Interior, we did not obtain official agency comments on this report.

CHAPTER 2

THE OIG'S REPORTS OF INVESTIGATION

In response to our April 20, 1983, referral, the OIG initiated an investigation of an alleged unauthorized disclosure of proprietary information. In our referral, we provided written and testimonial evidence that proprietary coal data (MABs) had been made public in violation of Interior regulations. The OIG's work culminated in three separate investigative reports dated May 11, July 6, and July 25, 1983.

Before describing the substance of the three OIG reports, it is important to keep in mind that the MABs were those figures representing the appraised value (fair market value) of the coal tracts. As indicated in Chapter 1, the MABs were prepared by MMS under the original sale procedures. Entry level bids (ELBs) were "floor" bids set well below the presale estimates of tracts' values in expectation that bidding competition at the sale itself would establish the tracts' true value. ELBs in some cases reflected 60 percent or less of the MAB value. Under the revised procedure, MABs were not public information and were proprietary Interior data. (Prior to the revision, MABs would have been published by Interior.) On the other hand, the ELBs were publicly disclosed by posting, mailing to prospective bidders, and publication in the Federal Register.

MAY 11, 1983, REPORT OF INVESTIGATION

The OIG's initial Powder River investigative efforts focused on allegations of an unauthorized disclosure of proprietary coal data by Interior officials to a coal company representative. These allegations stemmed from a memorandum written on March 26, 1982, by an MMS official in Interior's North Central Region (Casper, Wyoming) stating that proprietary coal data (MABs) for the Powder River sale had been disclosed. (This memorandum was one of the documents GAO referred to the OIG on April 20, 1983.)

During the OIG's investigation, many leads were identified that suggested the possibility of various other leaks, in addition to the one that apparently precipitated the investigation. However, although the OIG considered many of these leads, it did not follow all leads and did not reconcile conflicting information which was obtained during the preparation of the OIG's May 11, 1983 report. (See chap. 3.)

On May 12, 1983, Interior issued a press release (including the May 11, 1983, report) which stated that the Inspector General could find no evidence to substantiate that a leak occurred. The press release stated:

"Instead, * * * an official on the scene was erroneously told a leak had taken place and assumed it to be true, thereby setting off a chain of circumstances that lent an aura of accuracy to the initial mistaken impression."

It is clear from the OIG's subsequent July 6, 1983, report that the May 11 report and the Department's press release were erroneous.

SUPPLEMENTAL POWDER RIVER INVESTIGATIVE REPORTS

The OIG's July 6 and 25, 1983, reports of investigation supplemented the May 11, 1983, report by presenting information that states that industry had the proprietary MAB data before the sale--by March 17, 1982, according to the July 6, 1983, report. The reports contained information with respect to various leaks of proprietary information relating to the Powder River coal lease offering of April 28, 1982, and evidence of possible criminal misconduct by senior Interior officials.

July 6, 1983, Report of Investigation

Shortly after release of the May 11 report, the OIG reopened the investigation of improper disclosure of coal data. This action was taken as a result of a mining company attorney "clarifying" statements made to OIG field investigators after the initial investigation was completed. In contrast to the reported statement that a coal company official did not have MAB data, the attorney told the OIG that a company employee indeed had Interior's MAB data for the Powder River coal sale on or after March 19, 1982--over one month before the April 28, 1982, sale.

The OIG attempted to identify the source of the leaked MAB data and presented information suggesting that MMS employees failed to properly safeguard the MAB figures. The July 6 report suggested that this carelessness resulted in an industry consulting geologist obtaining the figures, identifying them as MAB data, and subsequently sharing them with others in the coal industry.

The report presented other testimony from various coal company representatives and Interior employees suggesting that several different leaks might have occurred. While these facts were presented in the report, this second report still did not completely resolve details surrounding leaked information.

The July 6 report included testimony provided by one coal company attorney that a senior official at Interior was a source of leaked proprietary coal data (MABs) to private industry. The Interior official, however, denied ever having discussed MAB data with anyone in industry. The official's conduct, along with that of another Interior official, was the subject of the OIG's third report.

July 25, 1983, Report of Investigation

The July 25, 1983, OIG report--the second of two supplemental reports resulting from the OIG's Powder River investigation--

focused on the implications of two senior Interior officials' coal industry relationships. Most of the investigative work done to develop issues in this report was actually completed by early July, when the first supplemental report (July 6, 1983) was issued.

The July 25 report focused on information that two Interior officials attended a \$494.45 dinner at a Washington, D.C. restaurant with their wives and two coal industry attorneys. One of the attorneys paid for this March 19, 1982, dinner, which took place on the same day that these Interior officials actively participated in the decision to change bidding procedures--MABS to ELBs--for the Powder River coal lease offering. Several of these individuals explained that they were old friends. The attorneys also were co-counsels representing a coal company that bid (with another company) on one of the Powder River coal tracts.

In addition to developing facts surrounding the gratuity, the report described a few other coal leasing activities--surface owner consent procedures, the Powder River sale, and a coal lease exchange. These activities involved the two co-counsels and either one or both of the two senior officials.

The OIG referred the July 6 and 25 reports to the Department of Justice for possible prosecutive consideration. Justice declined criminal prosecution on November 28, 1983, but suggested that actions of the two Interior officials discussed in the July 25¹ report may warrant administrative review by Interior. According to Interior, these two officials left the Department in February 1984 for reasons unrelated to the OIG's reports.

¹A Justice representative told us that the decision to decline prosecution was based on a lack of "jury appeal" due to only a single meal being involved and a contradiction between witnesses' testimony.

CHAPTER 3

THE OIG'S INVESTIGATION WAS INADEQUATE

The OIG's Powder River investigation was an inadequate examination of the alleged improper disclosure of Interior data and the effect, if any, of such a disclosure on the 1982 Powder River coal sale. The investigation was not started until over a year after the leak was alleged to have occurred and then only after we referred evidence that suggested a disclosure had occurred. Furthermore, the investigation was terminated on May 11, 1983, although investigators had not pursued several important leads, and discrepant information by key witnesses had not been resolved. The investigation was reopened when a witness clarified statements attributed to him in the May 11, 1983 report. However, the leads and discrepancies were not resolved. Moreover, the facts developed during the investigation were reported in a manner which resulted in a widespread misconception--that there had not been a leak of coal data.

OIG SLOW TO INITIATE INVESTIGATION

During the spring of 1982, before the Powder River sale was completed, Interior headquarters was informed of an unauthorized disclosure of MABs and the concern that such a disclosure would have a compromising effect on the pending coal sale. Specifically, an Interior official, Senator Dale Bumpers, and news publications, discussed an improper disclosure. For example, in a March 26, 1982, memorandum, an Interior official stated that the Department's MABs had been "distributed by unknown parties"; the data were "in the hands of some industry, state and private individuals"; and "the sale procedures may be compromised".

In his May 18, 1982, letter to Interior Secretary Watt, Senator Bumpers expressed concerns about allegations of a leak and Interior's revised sale procedures. Further, in a May 7, 1982, edition of an industry newsletter, the proprietary MAB data was published. However, the field investigator's notes indicate that the OIG did not initiate an investigation until April 25, 1983.

Interior's Departmental Manual (Part 355) sets out the OIG's responsibility and authority for investigating Interior's programs and operations. It establishes policies for the OIG to initiate investigations which would detect fraud and abuse. While the manual is silent on when an investigation should be initiated, we believe sufficient basis existed to initiate an investigation long before our April 20, 1983, referral. Further, the OIG Manual section regarding case assignment approval criteria (IGM-810.2.2.4) specifies the OIG's investigative jurisdiction as encompassing the disclosure of proprietary information by Interior employees. In light of the OIG's mandate and the interest in and publicity about possible improprieties, we asked OIG officials why they did not initiate an investigation into Powder River in 1982.

The Interior Inspector General (IG) stated that he could not remember why his office did not initiate an investigation in 1982. Interior's Assistant Inspector General for Investigations (AIGI) stated that he considered opening an investigation of the disclosure issue in 1982 but was advised by the IG not to initiate one in light of GAO's work in the area. We initiated our review of the Powder River coal sale soon after receipt of a May 10, 1982, letter from Representative Markey requesting our review. The OIG did not, however, contact GAO to determine the nature or scope of our efforts. The AIGI told us that, in May 1982, he, too, was aware of media concern about the sale. (A member of his staff had shown him a news article about the Powder River sale and the possibility of a leak.) However, he also stated that he was not aware of the March 26, 1982, internal memorandum alleging a disclosure of MAB data, or Senator Bumpers' letter until mid-1983, when the OIG finally investigated the matter.

While the specific effects of the OIG's late start on the investigation are not apparent, we believe at least four plausible effects are suggested by subsequent events. Early investigation and resolution of the questions about the disclosure and its effect on the coal sale by the OIG could have (1) better informed all parties of this aspect of the government's coal leasing activities during a time when key decisions were being made on the program, (2) mitigated the controversy that arose in May 1982 when the disclosure was widely reported in the news media, (3) reduced the likelihood of subsequent investigations and studies, including reviews by the House Committee on Appropriations (Surveys and Investigations Staff), and GAO, and (4) increased the likelihood that key witnesses could remember important details relevant to the investigation.

INVESTIGATION PREMATURELY TERMINATED

The OIG began its field work on April 25, 1983, in response to GAO's April 20, 1983, referral. On May 11, 1983, the investigation was closed without several investigative leads and information discrepancies having been adequately addressed.

The AIGI assumed full direction and control of the investigation; the AIGI received daily (and, sometimes, several times daily) briefings on the field investigators' progress. The AIGI provided continuous directions to the field agents. The field agents, in turn, provided a constant flow of information and documents to the AIGI who then determined what next the field staff would do. In this light, responsibility for the scope and adequacy of the OIG's investigation lies with the AIGI.

During the initial investigatory period (April 25-May 11), the field agents were directed to pursue a variety of leads within a short period of time, but stated that they were not permitted to thoroughly research them. In this connection, one agent stated:

"From the onset of the investigation, I presumed that procedurally I would be responsible to address and resolve all investigative leads. I constructed my investigative notes accordingly. During the conduct of the investigation [the AIGI] did not permit each lead to be thoroughly researched but rather directed our inquiries to matters he considered to be of priority."

The then acting Special Agent-in-Charge (who relinquished first-line supervision of the investigation to the AIGI, but who was briefed on the status of the effort) told us that based upon his knowledge of the case, he "would not have discontinued the investigation until all leads had been followed and issues/discrepancies resolved."

On May 11, 1983, the field staff was actively pursuing the investigation and had identified several major leads and discrepancies--matters on which the AIGI had been briefed. Yet, the field notes contain the following entry which reflected a telephone discussion with the AIGI and noted the AIGI's direction to stop work:

"AIGI Report complete [and special agents] to wrap up invest[igation]-End it today because GAO inquiry has been addressed to best of ability thru document reviews [and] interviews."

In this connection, one field agent stated his concern over the precipitous termination:

"On approximately May 11, 1983, [the AIGI] told [the field agents] to stop the fieldwork portion of the investigation. This occurred during a speaker telephone conversation between [the AIGI and two field agents]. [We] were at the BLM, Wyoming State Office at the time. We were surprised that the investigation was concluded due to conflicting statements and evidence that existed at that time. I had previously made [the AIGI] aware of the conflicting information, yet the investigation was stopped ***."

The field agents noted several leads and discrepancies which warranted further attention, but they were told not to conduct any followup work. In this light we have no basis to conclude that the field staff was either unwilling or unable to properly conduct the investigation.

INVESTIGATIVE LEADS NOT ADEQUATELY PURSUED

The OIG's Powder River investigation had major deficiencies. Leads were not pursued and information discrepancies were not reconciled. In this connection, the AIGI, who directed the field staff's activities, told us that he did not prepare a written plan or strategy for the investigation.

Management Chief. File interview notes indicate that the OIG did not completely pursue and resolve the reporter disclosure lead.¹

We believe a reasonable next step with respect to this disclosure lead would have been to corroborate the Project Manager's recollection of the reporter's call. For example, the OIG could have contacted the reporter to corroborate the date of the reporter's telephone call and obtain further information concerning the call. Such information could have been useful in establishing whether other disclosures had occurred.

With respect to the state official lead, according to the OIG field notes, on May 8, 1983, the Project Manager informed the OIG that prior to the April coal sale a Wyoming State representative to the intergovernmental Powder River coal team had MAB data.² The Project Manager also informed the OIG that, although he provided the MAB data to the state official prior to the sale, the state official had already received the proprietary MAB data about a week earlier from another state official.

There is no indication in the investigative file that this lead was pursued. For example, we did not find any evidence in the OIG case file indicating that the OIG contacted the state official to resolve questions such as: was his access to the MAB data legitimate, when did he receive the data, and what did he do with it? Furthermore, this lead is not discussed in the OIG's reports. According to investigative files, the AIGI did not recall that he instructed the field agents not to interview the state official because he did not want to involve state officials in the investigation. The AIGI told us that he assumed that this lead had been addressed by the House Committee on Appropriations.

Lead Involving an Industry Geologist

During the course of the investigation the OIG learned that an industry geologist obtained MAB data on March 17, 1982. The geologist explained that, by happenstance, he observed the data at an MMS office in Casper, Wyoming. During the investigation the

¹The file does indicate that the OIG interviewed the Coordinator on May 5, 1983, and (1) confirmed that the Project Manager had called, and (2) requested a memorandum detailing the date, time, and dissemination of the information obtained from the Project Director. (We did not find any evidence of this memorandum in the OIG case file.) In addition, the OIG interviewed the Management Chief on May 10, 1983, and July 15, 1983, and learned about the BLM posting of the Powder River sale notice and general sale management but did not discuss the reporter lead. The matter was not addressed in any of the three OIG reports.

²The coal team was essentially an advisory board, usually consisting of two State Governors' representatives and three Bureau of Land Management State Directors.

When asked why certain leads were not pursued or discrepancies resolved, the AIGI stated that the information was not viewed as sufficiently specific to justify further action. The record, however, indicates that many leads and discrepancies were indeed very specific as to the individuals, dates, places, and detail of information.

Leads Not Pursued

We found that the failure by the OIG to pursue investigative leads encompassed a number of separate but related categories of information. These leads involved leaks of Interior data as well as indications of agency-industry relationships which warranted further scrutiny.

Leads Suggesting MAB Disclosures Not Pursued

The OIG either did not pursue at all, or did not pursue to a reasonable conclusion, several important MAB disclosure leads. These leads involved the news media, a state official, and industry representatives and indicated that a disclosure of MAB data had occurred during the March-April 1982 time period.

Leads Involving the News Media and a State Official

In early May 1983, the BLM Wyoming State Office (WSO) Project Manager for the Powder River coal sale reported two leads that the OIG did not pursue. One lead involved a reporter who read MAB data to the Project Manager on or about March 24, 1982, and the other lead involved the knowledge of MAB data by a Wyoming state official prior to the sale.

According to the OIG field notes, on May 6, 1983, the BLM/WSO Project Manager informed the OIG that on or about March 24, 1982, a reporter telephoned him and asked when MABs would be released. (The reporter read the proprietary MAB data to him.) The files also indicate that the manager named two reporters and indicated that one of the two had the MAB data which he surmised came from a March 2, 1982, internal Interior memorandum. Subsequent to his discussion with the reporter, the BLM/WSO Project Manager called the BLM Powder River coal sale Project Coordinator in Washington, D.C. and notified him about the disclosure of MABs. The Coordinator then reportedly notified the BLM Acting Division Chief for Coal Management regarding the disclosure. In this regard, the OIG's files also indicate that the AIGI agreed to obtain affidavits from the Coordinator and the Management Chief.

We did not find any evidence in the OIG investigative file that either reporter was contacted. Furthermore, the case file does not contain affidavits from the Project Coordinator or the

"CUNNINGHAM stated he went to two other buildings in the City of Casper that housed offices of MMS and upon returning to the new Federal Building, met Douglas HILEMAN in a hallway outside the reception area where he had observed the coal values. CUNNINGHAM and HILEMAN walked through the reception area and into HILEMAN's office * * * CUNNINGHAM did not, at any time, reveal the fact that he had seen the coal values to HILEMAN or any other Government employee."

In a July 7, 1983, memorandum the OIG identified Mr. Cunningham as a representative of the Hampshire Energy Project--a group of companies which had requested federal assistance for a synthetic fuels plant.⁴ In addition, the OIG document stated that there was a possibility that Hampshire's project was contingent upon one of the consortium companies' (TESI's) acquisition of one of the Powder River coal tracts. As a consequence, the memorandum suggested that:

"* * * the OIG should consider the possibility that CUNNINGHAM was more than a casual observer of the MAB data on March 17, 1982, at the MMS Office, Casper, Wyoming."

Although the OIG interviewed a few of the individuals involved, we could find no evidence in the case file to indicate that the OIG contacted the two MMS employees Mr. Cunningham stated he was there to meet. In light of Mr. Cunningham's subsequent use of the MAB data and Mr. Cunningham's possible economic interest in obtaining this data for at least one of his clients (TESI/Hampshire), we believe additional followup of this lead would have been reasonable.

Lead Involving Coal Company Representatives

On May 11, 1983, the OIG obtained a statement from a BLM geologist indicating that in early 1982, the geologist heard a rumor that the then MMS Deputy Director may have disclosed MAB figures to various coal company representatives. This disclosure purportedly took place in the Deputy Director's meeting with representatives from various coal companies. The geologist also stated that he heard that other company officials called MMS in Casper, Wyoming in attempts to receive a copy of the MABs.

⁴This lead was developed from information GAO provided to the OIG on April 20, 1983. The OIG field notes indicate that Mr. Cunningham, President, Arnex, worked for the Hampshire Energy Project in 1982. Furthermore, OIG files indicate that TESI was a wholly owned subsidiary of Kaneb Services, Inc., one of the five Hampshire Energy Project general partners.

OIG also learned that the geologist provided this data to other industry representatives while discussing or soliciting business for his consulting firm. In light of the geologist's subsequent use of the data and his possible economic interest in obtaining the data, we believe corroboration of his accidental access to verify the details of his explanation would have been reasonable.

On June 20, 1983, the OIG learned from Mr. Ebzery that Mr. Arnold Cunningham, an industry geologist, obtained MAB data while at an MMS office in Casper, Wyoming.³ On June 21, 1983, Mr. Cunningham explained to the OIG the circumstances surrounding his access to the MABs. These circumstances are detailed in the OIG July 6, 1983, report. This report also details Mr. Cunningham's subsequent distribution of the MAB data to industry associates within a few days while he was soliciting or providing his consulting services.

The July 6, 1983, report specified that Mr. Cunningham stated the following:

"* * * he [Mr. Cunningham] was at Casper, Wyoming on March 17, 1982, for the purpose of attending a previously scheduled meeting* * * with MMS employees, Whitney Bradley, Frank Kissner, and possibly Douglas HILEMAN. CUNNINGHAM stated he attempted to locate these individuals by going to a large common reception area/work room immediately outside the private office of Douglas HILEMAN, and two other private offices * * *"

"* * *he waited in the reception area for approximately 20 minutes. In this area, he observed two desks that were placed end to end forming what appeared to be a work table. The only items on the top of these desks were a telephone and two tablets of paper. CUNNINGHAM stated he observed handwriting on one of the tablets which identified the names of approximately six to eight Federal coal tracts that were to be offered at the Government's Powder River Coal Sale. CUNNINGHAM stated the coal tract names had corresponding dollar values which he deduced were the MMS dollar values [MABs] per acre for the tracts. CUNNINGHAM stated he made a mental note of the values and subsequently left the office to seek out the persons with whom he had an appointment. Upon leaving the office, he wrote the values on an airline ticket folder he had in his pocket."

³Mr. Ebzery was a co-counsel for Texas Energy Services, Inc. (TESI), a company that bid on one of the Powder River coal tracts. Mr. Cunningham was the president of Arnex Corporation (consulting geologists and engineers).

draft of the announcement suggested premature disclosure of the lease sale document. The AIGI acknowledged that Trujillo Land Services may have obtained the ELB information through other than legitimate channels. Yet, no action was taken to identify how Carter Mining Company (through Trujillo) obtained a draft of the final lease announcement.

In this regard, the AIGI told us that the lead was not pursued "due to [a] lack of investigative resources" (staff) and his belief that there was "no obvious harm to the Department" because the ELBs had been made public.⁵

Leak of Post-Sale Deliberations

After the lease sale was held on April 28, 1982, Interior officials began to analyze and evaluate the bids received. Several events were involved. For example, Interior's staff prepared a post-sale analysis report dated May 4, 1982, and, on May 24, 1982, a post-sale panel met to decide whether to accept the bids.

An OIG field investigator's notes indicate that the publishing firm of McGraw-Hill apparently had the May 4, 1982, post-sale analysis report and the May 24, 1982, post-sale panel meeting minutes before the sale was finalized. The investigator's notes also indicate that he requested another OIG investigator to attempt to determine how McGraw-Hill obtained this information on bid evaluation and acceptance. However, this lead was not pursued.

Leak of Another OIG Coal Investigation and Related Document

In addition to leads suggesting other disclosures of data and information directly related to the Powder River sale which were not pursued, we determined that there may have been yet another leak of departmental documents. Specifically, an OIG investigator's field notes of May 5, 1983, contained an entry concerning a reporter claiming to have copies of two sensitive Interior documents:

- (1) An OIG report focusing on the trespass onto federally controlled coal tracts at which time drilling occurred and mineral samples were obtained; and

⁵While it is true that disclosure of the ELBs would not have been as significant to the coal lease sale as a disclosure of the MABs (the ELBs were a starting point for bidding and were publicly released), it is nevertheless important that another leak of data was indicated which, if pursued, might have identified an individual also responsible for a leak of the MABs.

We could not find any evidence that the OIG pursued the geologist's information. If this lead was followed to its reasonable conclusion, we believe the investigation might have confirmed yet another disclosure. OIG investigators could have contacted the MMS Deputy Director to confirm the existence, timing, and nature of his alleged meeting and to obtain a complete list of participants. We also believe investigators could have verified the participants' attendance at the meeting and interviewed some or all of them to determine whether the allegations of the disclosure had further investigative merit. The OIG discounted the information as too general to warrant inquiry.

Indications of Other Data/Information Leaks

As noted, we believe that not only was the OIG's investigation deficient because leads were not pursued, but the leads themselves indicated that several improper disclosures may have occurred. In addition to leads suggesting a leak of MABS, the OIG also obtained information indicating leaks of ELBs, Interior's post-sale evaluation deliberations, and another OIG coal-related report of investigation.

ELB Leak

The OIG's report of May 11, 1983, stated that an MMS field employee concluded that a leak of MAB data had occurred after speaking with a coal company employee who called to discuss MABS. The OIG report also stated that BLM released coal data (the March 25, 1982, Powder River lease sale public announcement) on that same day. A department press release on May 12, 1983, reported that the employee, unaware of BLM's announcement, erroneously believed a leak occurred.

The OIG learned that the industry representative, Mr. Doug Fuller, Carter Mining Company, had obtained the data from Trujillo Land Services (Trujillo). In its interview of a Trujillo representative, the OIG staff was told that the representative observed the lease announcement on March 25, 1982, on BLM's public bulletin board. The representative said she called Fuller that same day with the announced coal data and sent a photocopy of the document in the mail to Carter Mining Company. The Trujillo representative reportedly took this action pursuant to Trujillo's agreement with Carter Mining Company to provide documents on the Powder River coal sale that were placed in the BLM, Wyoming, public room.

OIG case file notes of May 10, 1983, indicate that Carter Mining Company provided the OIG with copies of the documents which Trujillo Land Services furnished Carter. Among the documents sent to the OIG was a copy of the draft of the coal lease sale notice prepared by BLM. Significantly, the date stamp on Carter's copy of the BLM lease notice is March 23, 1982--not March 25, 1982, the date of the official announcement. Because the official BLM lease document was dated March 25, 1982, it is clear that Carter Mining's submission to the OIG of a copy of the March 23, 1982,

participants in the March 19 decision to determine whether the change in bidding procedures was justified on technical grounds. (As noted on page 4, Interior was not able to provide documentation or a quantified basis supporting the need for the change in bidding systems.)

In the process of obtaining facts surrounding the dinner, an OIG investigator interviewed Mr. Russell's former secretary who stated that Mr. Russell was entertained by various associates from the private sector on several occasions. (Mr. Russell indicated that "Kunz and Ebzery paid the dinner bill that evening [March 19, 1982], as they usually do when they come to Washington * * *.") An investigator also obtained leads regarding other meals that Mr. Russell might have attended. The OIG did not pursue these leads and attempt to put the known gratuity in the context of other engagements and possible gratuities. Accordingly, we believe if the OIG had pursued these leads, Justice would have been in a better position to evaluate whether the actions of Russell and Pendley typified their industry relationships or whether the dinner was a singular occurrence, and to decide whether the facts warranted further investigation or action. (As noted on page 9, Justice told us that the decision to decline prosecution was based upon a lack of "jury appeal" due to only a single meal being involved and a contradiction in the two witnesses' testimony.)

DISCREPANCIES NOT RESOLVED

The OIG's investigation of the Powder River coal lease sale did not identify and resolve important discrepancies. We found that there were inconsistencies in the information which the OIG obtained during the investigation, but no action was taken to reconcile the contradictory information. The discrepancies were of two types: either obvious in the text of the reports or not apparent due, for example, to the omission from the reports of countervailing information obtained during the investigation. Regardless of the character of the discrepancies, the failure to resolve conflicts led to a situation in which the investigation relied, in some cases, upon unverified evidence or statements which were used to support critical conclusions.

Evidence of an MAB leak

Perhaps the most obvious of the apparent discrepancies involved the OIG's May 11, 1983, report. The report states:

"This OIG investigation disclosed other statements of allegations of leaks which were too general, and lacked specificity as to timing, circumstances, or industry/press sources. In general, insufficient data was provided to conduct further inquiry to corroborate or refute this issue."

(2) A BLM analysis summarizing the coal trespass situation.

The Powder River Project Manager provided this information to the OIG.

Because the OIG did not pursue these leads to determine whether there was a connection to the other indications of leaks of Powder River coal sale data, questions remain unanswered about who may have disclosed the information and the potential impact of the disclosures on the coal lease sale.

Leads Regarding Interior Officials'
Ties to Coal Industry Representatives

In the process of gathering data relevant to the alleged unauthorized disclosure of proprietary coal information, the OIG obtained information suggesting that two Interior officials involved in administering the coal sale had associations with coal company representatives which may have violated Interior's standards for employees. The OIG found that these officials socialized with the coal company representatives and during the period of the sale accepted a gratuity paid for by a potential coal bidder. The OIG referred the matter to the Department of Justice. Justice decided that a criminal prosecution was not warranted. However, the OIG did not pursue leads involving the Interior officials' ties to coal industry representatives which, we believe, if fully developed, might have placed their conduct in a different perspective.

Interior officials' acceptance of a gratuity

The OIG obtained information that Messrs. David Russell (then Deputy Assistant Secretary, Land and Water Resources) and William Pendley (then on detail as Acting Director, Minerals Management Service) attended a \$494.45 dinner at a Washington, D.C., restaurant with their wives and Messrs. Brent Kunz and Tom Ebzery, coal company representatives. (This dinner was the subject of the OIG's July 25, 1983 report.) The OIG also found that Messrs. Kunz and Ebzery were attorneys representing TESI, a bidder at the April 1982 sale, and that Mr. Kunz charged the dinner to TESI. Mr. Kunz provided a restaurant receipt which established that this dinner took place on the same day that Messrs. Russell and Pendley actively participated in the decision to use ELBs rather than MABs for the Powder River coal lease offering.

In response to questioning by the AIGI, Mr. Russell explained that he and Mr. Pendley were long time friends of Messrs. Kunz and Ebzery, and that they usually socialized when the coal company representatives were visiting in Washington, D.C. The OIG investigation did not determine whether this social engagement in any way influenced Messrs. Russell and Pendley's March 19, 1982, participation in the policy decision to change from MABs to ELBs. We believe the OIG could have interviewed all of the other

Testimonial discrepancies

Mr. Douglas Hileman, manager of the MMS Casper, Wyoming, Resource Evaluation Staff, was the initial subject of the OIG disclosure investigation and a key witness. Mr. Hileman's reported March 25, 1982, telephone conversation with an industry representative about coal values helped to instigate the investigation. However, his subsequent position regarding the substance of that conversation contributed to the OIG terminating its investigation on May 11, 1983. During the investigation, the OIG obtained contradictory information from Mr. Hileman and the industry representative he reportedly spoke with on March 25, 1982. These discrepancies were not resolved.

On April 20, 1983, when we sent the OIG information on the unauthorized disclosure of Interior data, we provided a summary of our June 10, 1982, interview with Mr. Hileman. At that time, Mr. Hileman stated that his industry contact (the OIG subsequently learned that this contact was Mr. Fuller, a Carter Mining Company representative) knew the difference in MABs down to three decimal points and indicated that at least three other companies knew the MAB data. On April 29, 1983, Mr. Hileman provided an affidavit to the OIG that evidenced his understanding of the difference between MABs and ELBs when he stated the following:

"Entry Level Bid: This term means a value that the owner of a property desires to use as a floor for bidding.

Minimum Acceptable Bid: This term means a bid at Fair Market Value."

Mr. Hileman's affidavit continued by discussing MABs and the procedures for their development. He also stated:

"In approximately mid-March 1982, I received a telephone call at my office from Doug FULLER, Environmental Scientist, Carter Mining Company, 505 So. Gillette, Ave., Gillette, Wyoming, Telephone 307/682-8881. FULLER inquired why there was a difference in the MAB's on the Rocky Butte and Spring Draw tracts. FULLER knew the difference in the MAB's down to 2 decimal points and said 'At least 3 other companies have them' [MAB's]. FULLER is the only person I spoke with that I felt actually had the MAB information. During the telephone conversation with FULLER he told me he had the MAB figures in front of him at the time. FULLER read the Spring Draw and Rocky Butte MAB information to me and was accurate down to 2 decimal points." (Emphasis added.)

Mr. Hileman's May 6, 1983, affidavit provided a different explanation of the March 25, 1982, telephone conversation after he learned from the OIG that ELB data reportedly had been made public on March 25, 1982. He stated:

The quoted statement was made in the context of the OIG's determination that the initial suspicion of an MAB leak was the result of BLM's posting of coal data on the same day an MMS employee was called by an industry representative about coal values.

However, the May 11, 1983, OIG report also included as an exhibit a document which is an excerpt of the May 7, 1982, issue of Inside Energy, a McGraw-Hill weekly trade publication. The excerpt was an article entitled, "PRIME TRACTS IN POWDER RIVER BASIN DEVALUED BY INTERIOR BEFORE SALE." The article presented, in tabular form, key data relevant to the sale. One column of data was labeled "Initial MAB value/cents per ton." The figures in this column (the MABs) are essentially those contained in a March 17, 1982, internal memorandum prepared by MMS for the coal sale (after rounding). Interior had not, at the time of the article, or at any other time before or after the sale, publicly disclosed the MABs. Thus, the inclusion of the MABs in the article indicates that a leak of the data had occurred.

This discrepancy, however, was not resolved. When we asked the IG whether he was aware of the inconsistency between the report and the exhibit, he responded that he was not and he stated that he could not recall whether he had read the entire May 11 report of investigation or the exhibit. The AIGI stated that, at the time, he did not recognize the connection between the exhibit and a leak.

Statements regarding the disclosure of
MAB data by a Deputy Assistant Secretary

On June 24, 1983, Mr. Brent Kunz, a co-counsel for TESI at the time of the April 1982 coal sale, provided an affidavit to the OIG. He stated that he received the MABs for two or three Powder River coal tracts during a mid-March 1982 telephone conversation with Mr. David Russell, then Deputy Assistant Secretary, Land and Water Resources. When questioned on this matter by the OIG, Mr. Russell denied ever discussing specific MAB figures with anyone in the private sector, including Mr. Kunz. Faced with contradictory statements from two key witnesses in the investigation, the OIG did not resolve this discrepancy.

The subject of the OIG investigation focused directly on allegations that MAB data was improperly disclosed. The accuracy of Messrs. Kunz's or Russell's statements was important to the investigation because Mr. Kunz's statements identified a senior Interior official--Mr. Russell--as a source of disclosure. To attempt to reconcile these conflicting statements, we believe OIG investigators could have placed Mr. Russell under oath and asked that he prepare an affidavit. Further, the investigators could have examined each element of the discrepancy to arrive at a set of verifiable facts. For example, they could have attempted to establish the existence, date, and time of the Kunz/Russell telephone conversation and obtained any notes made by either party during the conversation.

- (4) The OIG obtained documentation which indicated that the coal lease sale notice including the ELBs was not posted until March 26, 1982, in the location where Mr. Fuller indicated he may have obtained the information he discussed with Mr. Hileman on March 25, 1982. (This matter is detailed later in this report.)

In addition to these contradictory statements, the OIG learned from a May 25, 1983, Carter Mining Company letter that Mr. Fuller had MAB data at the time of his discussion with Mr. Hileman. We could not find any evidence in the OIG case file that the OIG resolved Mr. Hileman's or Mr. Fuller's discrepant statements regarding the MABs and ELBs by additional questioning, particularly in light of the subsequent revelations from Mr. Fuller that he had MAB data at the time he talked to Mr. Hileman on March 25, 1982. In addition, the July 6, 1983, report of investigation stated that a number of companies had MAB data prior to the Powder River coal sale.

Posting Discrepancy

As discussed earlier, the OIG commenced its Powder River investigation based on our referral of evidence of a disclosure, including an internal Interior memorandum that expressed concerns by MMS Casper, Wyoming, employees that an improper disclosure of proprietary data (MABs) had occurred. On May 12, 1983, Interior reported to the public that the OIG could find no evidence of an improper disclosure. This Interior press release attached the May 11, 1983, OIG report and the report stated that a Powder River coal lease sale announcement that included tract values had been made public on March 25, 1982--the same day the improper disclosure was alleged to have occurred. This statement in the press release directly contradicts evidence obtained by OIG investigators on May 6, 1983. OIG files indicate that on May 6, 1983, investigators documented that the Powder River coal lease sale notice was actually not posted in Cheyenne, Wyoming (the location where the industry official purportedly obtained his information for his March 25, 1982, discussion with one of the concerned MMS Casper employees) until March 26, 1982--one day after the ELBs were known to be in the hands of some coal industry officials. On May 10, 1983, an OIG field investigator interviewed the BLM employee who initialed the "certificate of posting." The Cheyenne, Wyoming State Office employee stated that the lease notice was posted on March 26, 1982, as reflected by the certificate.⁶

⁶On May 10, 1983, OIG investigators also learned from another BLM employee that the lease sale notice that was posted was not even sent to the State Director for signature until late in the afternoon on March 25, 1982. This also contradicts the industry representative's contention that the lease sale notice was obtained from the Wyoming State Office Public Bulletin board in the morning of March 25, 1982.

"On May 5, 1983, I was telephonically notified at my residence by [an OIG field investigator] and advised that on March 25, 1982, the BLM, Wyoming State Office, posted for public knowledge, a document titled "United States Department of Interior, Bureau of Land Management, Lease Sale Schedule and Notice of Coal Lease Offering, Powder River Federal Coal Production Region." On May 6, 1983, I researched the Resource Evaluation Office files and discovered a copy of the BLM document date stamped as received at the Resource Evaluation Office (MMS, Casper, Wyoming) on March 19, 1982. This document is dated March 25, 1982, by the BLM.

"On May 6, 1983, I read the BLM Notice of Sale document dated March 25, 1982. I have observed in this document the MMS entry level bid data.

"On March 25, 1982, I was not aware the BLM had completed a Notice of Sale and had placed the Entry Level Bid data in the document. I was still treating the Entry Level Bid data as confidential.

"On March 25, 1982, during my telephone conversation with Fuller, I recall that I became upset due to the accuracy of Fuller's bid quotations. I know at that time, I would have been equally upset whether Fuller had the Minimum Acceptable Bids or the Entry Level Bids because I was concerned with keeping all bid data confidential. At this time, based solely upon my recollection of the telephone conversation, I recall becoming upset with the fact that Fuller had what I thought was confidential data. I do not recall whether Fuller had the Minimum Acceptable Bid Data or the Entry Level Bid data described in the BLM, March 25, 1982, Notice of Sale." (Emphasis added.)

Several important aspects of the BLM lease notice and Interior's Powder River tract value estimates should be emphasized so that Mr. Hileman's 1982 interview with GAO and the affidavits he gave the OIG in 1983 can be placed in context.

- (1) The BLM lease notice listed ELBs not MABs--Interior did not publish the MABs for the Powder River sale.
- (2) The BLM notice containing the ELBs listed the Rocky Butte tract at 2.5 cents per ton and the Spring Draw tract at 8.0 cents per ton.
- (3) At the time of Mr. Hileman's telephone conversation with Mr. Fuller, a March 17, 1982, internal Interior memorandum listed the two tracts with the specificity indicated by Mr. Hileman's comments--Spring Draw at 16.166 cents per ton and Rocky Butte at 5.970 cents per ton.

that they were directed to terminate their investigation on May 11 and were surprised by the premature termination. They also said that they only later learned that the report was filed that day with the investigators designated as the report preparers. Further, they stated that they only read the report after it was circulated with Interior's May 12, 1983, press release. The AIGI also told us that the report was not reviewed by anyone before he signed it as the approving official. The AIGI also wrote and approved the July 6 and 25, 1983, supplemental reports based on facts gathered by the investigators.

OIG manual IGM-860.1.3 specifies the responsibilities of those involved in preparing, reviewing, and approving reports of investigation. It states that the reporting agent must prepare each report in conformance with OIG standards. It further states that during report review, substantive changes should be made only with the knowledge of the reporting agent. Finally, guidelines assign to the AIGI approval authority, which can be delegated to a Special-Agent-In-Charge or Branch Chief. We believe independent report review and approval before issuance are necessary to ensure independence, objectivity, and due professional care. If the reports had been subjected to an independent review, we believe many of the inaccuracies contained in the reports might have been identified and resolved (with additional field work) before the reports were issued. The AIGI offered no explanation as to why these procedures were not followed.

Report Contents not Accurate or Complete

OIG general guidelines for preparing all investigative reports (IGM-860.1.4.2) require that report contents be accurate and complete. The guidelines indicate that, to be accurate, a report must be factual and impartial. OIG guidelines require that (1) the information "should be verified by as many sources as are necessary and reasonable to establish the validity of such information" and (2) the "tone of the report must not be slanted for or against any party." The standard for completeness requires that reports present "enough factual, adequate, and convincing evidence to allow decisionmaking authorities to draw proper conclusions and to initiate appropriate actions."

As detailed, each report contained information that was incomplete or not verified by enough sources to validate its accuracy. For example,

- The May 11, 1983, report stated that the coal lease sale notice was issued on March 25, 1982, even though the OIG had evidence indicating that the notice was not posted at the location a key witness reported until March 26, 1982. (See page 24.)
- The July 6, 1983, report did not resolve the discrepant testimony of Messrs. Kunz and Russell. (See page 21.)

The AIGI stated that he was aware of the documents indicating that the public announcement was not posted until March 26, 1982. He also stated that (1) he was convinced that the sale notice information (ELB data) was available in Cheyenne, Wyoming, on March 25, 1982, and (2) Interior "leaks like a sieve." He explained that he concluded that the information was either publicly posted on March 25, 1982, or available and obtained by Trujillo Land Services on March 25, 1982.

On May 10, 1983, the investigator contacted Ms. Trujillo and Mr. Fuller to discuss the March 26, 1982, posting. Ms. Trujillo reiterated her contention that she obtained the data from the BLM Cheyenne, Wyoming, bulletin board (an apparent impossibility). Mr. Fuller stated that he could not recall the specific source for the coal data he discussed with Mr. Hileman, i.e., whether it came from Ms. Trujillo or Carter Mining Company "research."

This critical discrepancy was not resolved and not discussed in the OIG's reports even though the timing of this industry access to Interior coal data coupled with Mr. Hileman's recollection of what data were discussed with Mr. Fuller on March 25, 1982, were the key evidence for the May 11, 1983, OIG report. We believe the OIG could have obtained sworn affidavits for the Trujillo/Fuller statements. Further, if not for the termination of the investigation and issuance of the May 11, 1983, report, investigators may have resolved these key discrepancies by reviewing telephone billing records and/or reviewing BLM public room photocopying charge documents, if available (a step suggested in the OIG field notes).

REPORTS NOT PREPARED IN ACCORDANCE WITH OIG STANDARDS

The three reports of investigation were not prepared in accordance with the OIG's standards. The reports were not subjected to existing OIG quality control procedures and did not meet the OIG's general reporting guidelines. Specifically, the reports are incomplete and/or inaccurate. In many respects we believe the reporting deficiencies are the result of the investigative deficiencies previously discussed, i.e., unpursued leads and unresolved discrepancies. Furthermore, the May 11, 1983, report and the subsequent press release describing the report misled the Congress and the public during a time when issues on the nation's coal program were being debated. The supplemental reports of July 6 and 25, 1983, provided additional information on the results of the investigation, but these reports were also incomplete.

No Independent Review or Approval

According to the AIGI, none of the three OIG reports received the normal independent review--OIG quality control procedures were not followed. For example, although the May 11 report stated that it was prepared by two field investigators, the AIGI said that he prepared the report. In this regard, the two investigators said

Concerning the latter stages of the OIG investigation culminating in the July 6 and 25, 1983, reports, we have been unable to obtain any evidence indicating why the project was mismanaged.

As noted, we interviewed former Secretary Watt, the IG, and the AIGI to gain insight into their perspective of how the investigation was conducted, the progress being made as time passed, and the basis on which key decisions (such as early termination of the investigation) were made. In this connection, we obtained affidavits from each of them regarding the investigation. Their perceptions of the investigation diverge, and we have taken excerpts from their affidavits to highlight these differences.

Mr. Watt's position may be summarized, in part, as his wanting the May 11, 1983, report to be completed in time for his May 12, 1983, congressional testimony, if possible, but he did not set a deadline. He received frequent briefings on the progress of the investigation from Mr. Mulberry.

According to Mr. Mulberry, the Powder River investigation did not seem particularly significant or sensitive at the outset. He was not impressed by news articles about the leaks, because he does not regard the media as a reliable source of information. The OIG works on several hundred investigations each year. He had no specific recollection of briefing Mr. Watt or receiving a briefing from Mr. Yohe on Powder River. He did not remember when he first knew that Secretary Watt would be testifying on May 12, and he did not set a "deadline" for completing the investigation.

Mr. Yohe testified that he personally directed the investigation because he said there was a vacancy in a key regional position, and he considered the Powder River disclosure issue sensitive. He closed the initial investigation based on his judgment that further investigation would be fruitless. He also testified that Mr. Mulberry from the outset expressed an interest in its development, progress, and estimated completion date. He did not, nor did any other OIG personnel to his knowledge, prepare a written plan or strategy for the investigation.

Further details amplifying these views are presented in the excerpts below.

EXCERPTS OF SELECTED
KEY RESPONSES

I. ON WHETHER THE POWDER RIVER INVESTIGATION WAS CONSIDERED
IMPORTANT OR NOTEWORTHY:

A. Former Secretary Watt:

"I did want the investigation completed before my Congressional testimony of May 12, 1983, if possible. Several Congressional committees and the GAO were reviewing the Department's coal leasing policies. This disclosure

--The July 25, 1983, report was not complete because the investigation as to other meals and industry relationships was not thorough. (See page 19.)

INSIGHTS GAINED FROM DISCUSSIONS WITH
RESPONSIBLE OFFICIALS INVOLVED
IN THE INVESTIGATION

We did not obtain evidence or information indicating that any of the reports were written to a preordained conclusion. Without such evidence, we cannot, therefore, conclude or imply that there were any improper efforts to influence the positions taken in the three reports.

There are indications, however, that the premature termination of the investigation (on May 11, 1983) may have been the product of perceived pressure to complete the investigation. Specifically, the AIGI told us that IG Mulberry, from the outset, expressed an interest in the investigation and asked him about the development and progress of the work and regularly inquired when it would be completed. (In this connection, IG Mulberry stated that, while he did not recall any specific discussions on the Powder River matter, his philosophy is to pursue substantive allegations with logical and provable leads and to conduct a thorough investigation.) Moreover, former Secretary Watt told us that he, in all probability, may have pressed IG Mulberry for completion of the investigation in view of his having to testify before a congressional committee.⁷ According to Watt, the IG frequently briefed him on the status of this work. Mulberry had no specific recollections of the briefings and told us he did not initially view the matter as a significant undertaking.

Thus, while we cannot say that the AIGI terminated the first phase of the investigation in time for former Secretary Watt's May 12, 1983, testimony (the AIGI, in fact, said he was not aware of the upcoming testimony), we believe the AIGI may have done so at least in partial response to Mulberry's pressure. Again, former Secretary Watt acknowledged he probably pressed IG Mulberry for a product--a point Mulberry could not recall. There is no evidence indicating Mulberry notified the AIGI either of Secretary Watt's concern for a product or why Secretary Watt was anxious for a report.

In view of the foregoing, we believe that the initial investigation may have been expedited due to the AIGI's perceived need for an early end. It is not unreasonable to conclude that doing so exacerbated the inherent flaws already present in the manner in which the work was directed.

⁷Secretary Watt testified before a subcommittee of the House Committee on Appropriations on May 12, 1983, one day after the report was issued. At that time, the Secretary stated that the OIG had found no evidence that there was a leak of data.

* * * * *

"The termination of this investigation was not predicated on the timing of his [Watt's] testimony."

III. ON WHY THE INVESTIGATION WAS NOT INITIATED IN SPRING 1982 WHEN THE SUSPECTED LEAK WAS FIRST REPORTED:

A. AIGI Yohe:

"I was first aware of alleged leaks regarding Minimum Acceptable Bids for the PRB [Powder River Basin] sale through a Washington Post newspaper article on May 13, 1982. The article quoted David Russell, Land & Water Resources, U.S. Department of Interior, that an investigation was being conducted into these alleged leaks. I was unaware of such an investigation and I discussed this with Inspector General Mulberry, who advised me that we would not investigate this matter because it would be a duplication of an on-going GAO investigation."

* * * * *

"Had it not been for the GAO request, I would not have initiated an investigation based solely on the alleged leak of information reported in a news article."

B. IG Mulberry:

"I do not recall that James Yohe told me of the alleged leak based on news articles in the Spring 1982, or that I told him that we should not initiate an investigation at that time because GAO was already investigating the matter. These articles would not have made an impression on me in any case because I do not consider the news media to be a reliable source of information."

IV. ON THE FREQUENCY AND SPECIFICS OF BRIEFINGS REGARDING THE INVESTIGATION:

A. Former Secretary Watt:

"I was the Secretary of Interior during 1982 and until November, 1983. In this capacity I received frequent briefings from Inspector General Richard Mulberry concerning the progress of his office's investigation of the alleged unauthorized disclosure of PRB coal data. I do not recall at this time all of the specific discussions between IG Mulberry and myself on this subject."

B. IG Mulberry:

"I wish to make it clear that we work on several hundred investigations in the course of each year. I do not even attempt to remember details of any of them and the Powder River questions were no more significant than many others."

allegation arose during GAO's review of the Department's coal leasing policies. In so far as possible, I wanted to resolve the questions relating to coal issues at the May 12th Congressional hearing if possible."

B. AIGI Yohe:

"Secondly, I personally directed this investigation because the position of Special Agent in Charge, Central Region, was vacant and I considered it to be sensitive based on the GAO and House Appropriations Committee interest."

C. IG Mulberry:

"At the outset of the investigation, I did not consider it to be particularly significant or sensitive. I did so only after one of the individuals previously interviewed phoned to report that he had not told the investigator the information he had."

II. ON WHETHER PRESSURE WAS BROUGHT TO CAUSE EARLY OR PREMATURE TERMINATION OF THE INITIAL INVESTIGATION:

A. Former Secretary Watt:

"I am sure that I strongly encouraged him [Mulberry] to complete the investigation as quickly as reasonably possible. I did not, however, set a deadline, nor did anyone else to my knowledge."

B. AIGI Yohe:

"My decision to close our initial investigation, resulting in the May 11, 1983, report, was based entirely on my judgment that further investigation would be fruitless."

* * * * *

"My decision to close the initial investigation was not influenced by Secretary Watt's pending Congressional testimony. I was not aware until the morning of May 12, 1983, that the Secretary was to testify that day. I was also not aware until that day that he would be giving a copy of our Report of Investigation to the House Appropriations Committee and making it available to the news media and at least 35 other Congressional Members or Committees."

C. IG Mulberry:

"I cannot recall that Secretary Watt or anyone else on his behalf ever gave me instructions or suggestions as to what should be investigated, how an investigation should be conducted, or a deadline for completing an investigation."

reading the Report of Investigation or the attachments in detail."

"I am sure that I briefed Secretary Watt on the conclusion that our investigation indicated there was no leak. I do not remember if this was a private briefing for him or Steve Shipley or given at one of the regular Friday AM meetings."

* * * * *

"As noted, I do not recall if I read the entire Report of Investigation, dated May 11, 1983, in detail. In any case, Secretary Watt's characterization of the report concluding 'no leak' in his Congressional testimony was not significant to me. I do not remember Yohe telling me that the Secretary's testimony was a mischaracterization of what the report showed."

VII. ON ALERTING SENIOR OFFICIALS OF THE REFERRALS TO JUSTICE:

A. IG Mulberry:

"While the Russell/Pendley case was at DOJ [Department of Justice], I was aware that Mr. Pendley's name was submitted to the U.S. Senate as a Presidential appointee at DOI [Department of the Interior]. I did not recommend to then Secretary Watt that he might wish to advise the President or the U.S. Senate of this referral for criminal prosecution. I did not advise either the President or the U.S. Senate myself. I know that eventually Pendley's name was withdrawn from consideration."

B. Former Secretary Watt:

"I was briefed by IG Mulberry regarding the acceptance of a dinner by David Russell and Perry Pendley as paid for by attorney Brent Kunz, who represented one of companies that bid on the PRB tracts but was not granted the lease in the first go around. I did not see this one incident as a criminal violation. When the IG advised me that the investigative report concerning this matter was being sent to DOJ, I thought, and still think, that the intention was to obtain an opinion with respect to the ethical conduct of Messrs. Russell and Pendley. Having reviewed the July 25, 1983, memorandum in which the IG apprised me of the DOJ referral, I still find no mention that this case was referred for criminal prosecutive consideration."

CONCLUSIONS

The shortcomings in the OIG's investigation of Powder River leaks are sufficiently serious to render the resulting reports incomplete and unreliable. Major shortcomings include:

"I do not have a specific recollection of any discussion/briefings I had with James Yohe, Secretary Watt, or anyone else concerning the Powder River Basin disclosure investigation."

* * * * *

"The investigation, along with others, were discussed on many occasions, but I have little recollection of specific details discussed."

C. AIGI Yohe:

"From the outset, Inspector General Mulberry expressed an interest in the development, progress, and estimated completion date of this investigation."

V. ON STEPS TAKEN TO AVOID DUPLICATING OTHER WORK DONE BY GAO OR CONGRESSIONAL STAFF:

AIGI Yohe:

"It was my intention that our (DOI-OIG) investigation be limited to GAO request for assistance and should not duplicate that which had already been done, or was being done, by other investigative offices. Although I reviewed the S&I Staff report, I did not discuss with their investigators what they had specifically developed in their investigation. My office's work was not coordinated with either of these investigative staffs. No written plan or strategy was prepared by me, or any other OIG personnel to my knowledge, outlining how this investigation was to be conducted."

VI. ON SECRETARY WATT'S CHARACTERIZING THE MAY 11, 1983, REPORT AS CONCLUDING THAT "NO LEAK" WAS FOUND:

A. AIGI Yohe:

"In the memorandum dated May 11, 1983, from the Inspector General to the Secretary, prepared by me, neither did I write that 'no leak occurred', nor did I so characterize the results of the investigation in my briefings to the Inspector General."

"I first knew that Secretary Watt had said the Inspector General's Report of Investigation concluded there was 'no leak of information' when I read the report of his testimony in the newspaper, I believe on May 13, 1983. That day, or the next, I brought this discrepancy to the Inspector General's attention. I do not know what the Inspector General did with this information."

B. IG Mulberry:

"I do not recall Yohe ever specifically saying that the investigation determined there was no leak. I do not recall

As stated earlier, we found the three OIG reports incomplete and unreliable. Given the limited scope of our efforts, we reach no conclusion on whether the three reports we reviewed are typical of OIG investigative efforts. Still, the issues related to the Powder River coal leases which remain unanswered by the OIG investigation are, in our view, significant and important. We believe the Secretary of the Interior should use our report and the results of the Department's own investigative effort to (1) develop an investigative plan designed to shed light on all unanswered questions and (2) take such further actions as may be appropriate based on the results of the further investigation.

- the investigation was not initiated in a timely manner;
- leads were not pursued;
- discrepant testimony was not resolved; and
- established OIG policy on preparing and presenting reports was not followed.

Viewed in this context, we conclude that the OIG's investigation was neither thorough nor logical.

Although the OIG was aware of indications and concerns as early as Spring 1982 that there may have been a leak of sensitive coal data, no investigation was undertaken until Spring 1983, and then only in response to our April 20, 1983, referral to the OIG.

Had the OIG investigated the disclosure issue on a more timely basis, it could have (1) better informed all parties of this aspect of the government's coal leasing activities during a time when key decisions were being made concerning the program, (2) mitigated the controversy that arose in May 1982 when the disclosure was widely reported in the news media, (3) reduced the likelihood of subsequent investigations and studies, and (4) increased the likelihood that key witnesses would remember important details relevant to the investigation.

Our analysis established that numerous leads were not pursued to a reasonable conclusion. In this category of deficiency there were many specific leads as to who may have possessed what information on a date or within a certain timeframe. We believe that there were many leads of "sufficient specificity" that were not pursued to a reasonable conclusion. This contributed to the investigation's inadequacies.

We also believe that the failure to reconcile contradictory evidence resulted in the reports of investigation being based on information which, in fact, had not been established. As a consequence, many of the key findings or statements in the reports are demonstrably incorrect or rest on unproven assumptions or interpretations of unverified information.

Finally, the three OIG reports were not subjected to existing OIG quality control procedures and general reporting guidelines. For example, because none of the reports was subjected to quality control, there was no independent review of the documents to evaluate whether reporting criteria were satisfied. As discussed earlier, OIG reporting guidelines require a complete and logical presentation of the investigative findings. Our analysis established that, in many respects, the reports were incomplete.

COOPERATIVE AGREEMENT BETWEEN THE U.S. DEPARTMENT OF THE INTERIOR AND THE U.S. GENERAL ACCOUNTING OFFICE REGARDING THE REVIEWS OF THE POWDER RIVER COAL LEASE SALE CONDUCTED BY THE OFFICE OF INSPECTOR GENERAL

--GAO and the Department of the Interior will conduct a cooperative inquiry staffed through representatives of each entity.

--Specifically, GAO and Interior will:

- a. Work to define and agree upon a common investigative strategy and approach.
- b. Establish a common data base through drawing on work done by all investigatory bodies and through a coordinated field investigation which includes joint interviews wherever possible. To the extent possible and appropriate, duplication of work is to be avoided.
- c. Share information and corroborative evidence throughout the investigations.
- d. Retain the prerogative to prepare separate reports consistent with GAO's and Interior's reporting responsibilities. Any separate GAO report to the interested congressional committees will also be made available to the Secretary of the Interior. Likewise, the Comptroller General will receive a copy of any separate Interior report.

--Interior and GAO recognize each others independence and the possibility of separate referrals to the Department of Justice if facts suggest the existence of criminal misconduct.

--The timing and nature of reporting will be dictated by investigative requirements, with the understanding that the work will proceed as expeditiously as possible. For planning purposes, Interior and GAO have established a tentative reporting date of May 1984.

Agreed:

For the Department of the Interior

For the General Accounting Office

4/3/84
Date

4/3/84
Date

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