

GAO

Report to the Chairman, Committee on
Natural Resources, House of
Representatives

July 2010

ONSHORE OIL AND GAS

BLM's Management of Public Protests to Its Lease Sales Needs Improvement



GAO

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Highlights of [GAO-10-670](#), a report to the Chairman, Committee on Natural Resources, House of Representatives

Why GAO Did This Study

The development of oil and natural gas resources on federal lands contributes to domestic energy production but also results in concerns over potential impacts on those lands. Numerous public protests about oil and gas lease sales have been filed with the Bureau of Land Management (BLM), which manages these federal resources.

GAO was asked to examine (1) the extent to which BLM maintains and makes publicly available information related to protests, (2) the extent to which parcels were protested and the nature of protests, and (3) the effects of protests on BLM's lease sale decisions and on oil and gas development activities. To address these questions, GAO examined laws, regulations, and guidance; BLM's agencywide lease record-keeping system; lease sale records for the 53 lease sales held in the four BLM state offices of Colorado, New Mexico, Utah, and Wyoming during fiscal years 2007-2009; and protest data from a random sample of 12 of the 53 lease sales. GAO also interviewed BLM officials and industry and protester groups.

What GAO Recommends

GAO recommends that BLM (1) revisit the way it tracks protest information and in so doing ensure that complete and consistent information is collected and made publicly available and (2) improve the transparency of leasing decisions and the timeliness of lease issuance. Interior concurred with GAO's recommendations.

View [GAO-10-670](#) or [key components](#). For more information, contact Frank Rusco at (202) 512-3841 or ruscof@gao.gov.

ONSHORE OIL AND GAS

BLM's Management of Public Protests to Its Lease Sales Needs Improvement

What GAO Found

While BLM has taken steps to collect agencywide protest data, the data it maintains and makes publicly available are limited. Although in 2007 BLM required its staff to begin using a module, added to its lease record-keeping system, to capture information related to lease sale protests, GAO found that the information BLM collected was incomplete and inconsistent across the four reviewed BLM state offices and, thus, of limited utility. Moreover, in the absence of a written BLM policy on protest-related information the agency is to make publicly available during the leasing process, each state office developed its own practices, resulting in state-by-state variation in what protest-related information was made available. As a result, protester groups expressed frustration with both the extent and timing of protest-related information provided by BLM. In May 2010, the Secretary of the Interior announced several agencywide leasing reforms that are to take place at BLM. Some of these reforms may address concerns raised by protester groups, by providing earlier opportunities for public input in the lease sale process, thereby potentially giving stakeholders more time to assess parcels and decide whether to file a protest.

A diverse group of entities protested the majority of parcels BLM identified in its lease sale notices during fiscal years 2007 through 2009 in the four states, for a variety of reasons. GAO found that 74 percent of parcels whose leases were sold competitively during this period by BLM state offices in Colorado, New Mexico, Utah, and Wyoming were protested. In examining a random sample of lease sales, GAO found that protests came from various entities, including nongovernmental organizations representing environmental and hunting interests, state and local governments, businesses, and private individuals. Their reasons for protesting ranged from concerns over wildlife habitat to air or water quality to loss of recreational or agricultural land uses.

The extent to which protests influenced BLM's leasing decisions could not be measured because BLM's information does not include the role protests played in its decisions to withdraw parcels from lease sale. Regardless, BLM officials stated that the protest process can serve as a check on agency decisions to offer parcels for lease. In reviewing BLM's lease sale data in the four selected states during fiscal years 2007 through 2009, GAO found that 91 percent of the time, BLM was unable to issue leases on protested parcels within the 60-day window specified in the Mineral Leasing Act. Industry groups expressed concern that these delays increased the cost and risk associated with leasing federal lands. GAO found that, despite industry concerns, protest activity and delayed leasing have not significantly affected bid prices for leases; if protests or subsequent delays added significantly to industry cost or risk, it would be expected that the value of, and therefore bids for, protested parcels would be reduced. In addition, because federal lands account for a small fraction of the total onshore and offshore nationwide oil and gas output, the effects of protests to BLM leasing decisions on U.S. oil and gas production are likely to be relatively modest.

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Abbreviations

BLM	Bureau of Land Management
LR2000	Legacy Rehost System 2000
NEPA	National Environmental Policy Act

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United States Government Accountability Office
Washington, DC 20548

July 30, 2010

The Honorable Nick J. Rahall, II
Chairman
Committee on Natural Resources
House of Representatives

Dear Mr. Chairman:

As development of the nation's domestic sources of oil and natural gas intensified during the past decade, so did concern over the environmental impact of such development. The number of challenges by the public, largely in the form of protests, or objections, to federal onshore oil and gas leasing decisions has also been high, prompting debate over the effects of these protests on leasing and development activities on federal lands. Disagreement among and criticism by interested parties—ranging from energy industry and conservation groups to state and local governments—have been escalating, with potential ramifications for oil and gas development on federal lands, as well as for proposed legislation and policy reforms. Differences center on who or what kind of entities object to oil and gas development decisions, the responsiveness of federal agencies to protests, and whether such protests encourage the responsible management of these resources or, rather, unnecessarily impede industry access to federal energy resources.

The Bureau of Land Management (BLM), within the Department of the Interior (Interior), is responsible for managing oil and gas resources that lie under federal lands and under private lands for which the federal government retains mineral rights; in fiscal year 2009, federal lands accounted for 5.8 percent of the nation's total oil production and 12.8 percent of total natural gas production.¹ The majority of oil and gas development on federal lands occurs in the western states, particularly in the Mountain West. For example, in fiscal year 2009, the states of Colorado, New Mexico, Utah, and Wyoming accounted for 70 percent of the oil produced on federal lands and 93 percent of the natural gas.

¹The Bureau of Ocean Energy Management, Regulation, and Enforcement (formerly the Minerals Management Service), also within Interior, is responsible for managing offshore oil and gas resources under federal jurisdiction. This report does not include offshore leases.

To manage its responsibilities, BLM administers its programs through its headquarters office in Washington, D.C.; 12 state offices; and several subsidiary field offices. BLM headquarters develops regulations and guidance for the agency, and the state offices are responsible for administering the leasing of federal oil and gas resources. Each BLM state office is required to conduct oil and gas lease sales at least four times a year if public lands it manages are available for leasing, and BLM receives nominations of lands for leasing. At such lease sales, energy companies bid competitively to buy the right to lease the parcels for oil and gas exploration and extraction. The highest bidder is declared the winner and typically then buys a lease, paying the amount bid for the parcel(s). The lease holder also pays BLM rent each year on nonproducing land or royalties on any oil or gas that is extracted.

At the various phases of oil and gas resource development—from planning and leasing to exploration and operations—several mechanisms allow the public to challenge BLM’s decisions. During the leasing phase, the public can present challenges through protests, appeals, and litigation. Through protests, challengers essentially ask BLM to reconsider its proposed decision to offer a parcel or parcels of land for lease. An appeal is a request to the Interior Board of Land Appeals—a body of administrative judges within Interior—to review BLM’s decision to dismiss or deny a protest.² The public can also challenge BLM’s leasing decisions through litigation brought in a federal court.

In 2004, we reported on the extent to which BLM gathered and used data on protests and other public challenges to manage its oil and gas program.³ We found that BLM’s agencywide system for recording leasing information was used inconsistently across the agency to track protest information and that the system tracked only limited protest data. We also found that BLM state offices used multiple independent data collection systems, and these systems could not be integrated with one another or with the agencywide system. Because BLM lacked consistent and readily available nationwide data on public challenges related to its leasing decisions, we recommended that BLM standardize the collection of public

²The Interior Board of Land Appeals is part of Interior’s Office of Hearings and Appeals. It reviews and adjudicates appeals concerning Interior’s land management and mineral resource decisions, including leasing decisions made by BLM state offices.

³GAO, *Oil and Gas Development: Challenges to Agency Decisions and Opportunities for BLM to Standardize Data Collection*, [GAO-05-124](#) (Washington, D.C.: Nov. 30, 2004).

challenge data in its new agencywide automated system for selling leases and issue clear guidance on how public challenge data should be entered into the new system. In 2007, BLM added a module to its lease record-keeping system to capture, among other things, information related to lease protests.

In light of continuing debate about public challenges, including protests, you asked us to review federal oil and gas lease sale decisions since our last report. Our objectives were to examine (1) the extent to which BLM maintains and makes publicly available information related to protests, (2) the extent to which parcels were protested and the nature of protests, and (3) the effects of protests on BLM's lease sale decisions and on oil and gas development activities.

To conduct this work, we reviewed relevant laws, regulations, and BLM guidance. We interviewed officials in BLM headquarters and BLM state offices in Colorado, New Mexico, Utah, and Wyoming.⁴ We also interviewed representatives from the energy industry, state government, and nongovernmental organizations and discussed their concerns about BLM's lease sale and protest process, including the effects—both actual and potential—associated with protests to oil and gas lease sales. We analyzed BLM's agencywide lease record-keeping system, called Legacy Rehost System 2000 (LR2000), to determine what protest data the agency maintains, how the data are used by the agency, and the data's reliability. We also reviewed the process followed by each BLM state office for reviewing protests and providing information related to such decisions to the public, which included assessing information available on BLM's Web site and through other sources and synthesizing information gathered during our interviews. To understand the extent to which parcels were protested and the nature of protests, we reviewed protest information available in LR2000, information available in notices of lease sales, and sales results from BLM state offices for the 53 lease sales held in the four state offices from fiscal year 2007 through fiscal year 2009. These lease sales comprised 6,451 parcels covering roughly 6.9 million acres of land. We also randomly selected for further analysis a sample of 12 of these 53 lease sales, to include 1 lease sale in each of the four state offices in each fiscal year from 2007 through 2009. The 12 lease sales comprised 1,244

⁴The New Mexico state office has jurisdiction over Kansas, Oklahoma, and Texas, as well as New Mexico, and the Wyoming state office has jurisdiction over Wyoming and Nebraska. The data presented in this report for the New Mexico and Wyoming state offices include data for all the states under their jurisdiction.

parcels covering approximately 1.4 million acres of land. For each lease sale in our sample, we obtained all submitted protest letters and BLM's responses to these letters, analyzed whether each parcel included in the lease sale was protested, and interviewed BLM state office leasing officials. For protested parcels, we analyzed information on who filed the protest and for what reasons, the outcome of the protest, reasons for BLM's withdrawing any parcels from lease sales, and whether BLM's decision was appealed or litigated. To further examine the effects of protests, we reviewed BLM data on time frames and competitive bid prices for all pending and issued leases during fiscal years 2007 through 2009 in the four state offices. To examine long-term relationships between various measures of energy development and nationwide market prices of oil and gas, we analyzed U.S. oil and gas production data from the Energy Information Administration over the period from 1990 through 2009. We assessed the reliability of these data and found them to be sufficiently reliable for the purposes of this report. Appendix I presents a more detailed description of our scope and methodology.

We conducted this performance audit from June 2009 through July 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Mineral Leasing Act of 1920 charges Interior with responsibility for oil and gas leasing on federal lands and on private lands where the federal government has retained mineral rights.⁵ Several other statutes and regulations also affect oil and gas leasing and development on federal lands. For instance, the protection of resources that may be affected by oil and gas activity is governed by resource-specific laws, such as the Clean Air Act, the Clean Water Act, and the Endangered Species Act. Under the

⁵The Mineral Leasing Act of 1920 (Pub. L. No. 66-146 (1920)), as amended, and the Mineral Leasing Act for Acquired Lands (Pub. L. No. 80-382 (1947)), as amended, provide the legislative authority for federal oil and gas leasing. BLM's oil and gas leasing regulations are located at 43 C.F.R. pt. 3100. BLM cannot issue leases for National Forest System lands over the objection of the U.S. Forest Service. 43 C.F.R. § 3101.7-1(c). Generally, for lands administered by other agencies, BLM must either obtain the consent of (for acquired lands) or consult with (for public-domain lands) the agency responsible. 43 C.F.R. § 3101.7-1(a),(b).

National Environmental Policy Act (NEPA), federal agencies are to evaluate the likely environmental effects of proposed projects, including oil and gas lease sales, through an environmental assessment or, if projects are likely to significantly affect the environment, a more detailed environmental impact statement.⁶ In addition, under the Federal Land Policy and Management Act, BLM manages federal lands for multiple uses, including recreation; range; timber; minerals; watershed; wildlife and fish; and natural scenic, scientific, and historical values, as well as for the sustained yield of renewable resources. BLM manages oil and gas development on federal lands using a three-step process. First, BLM develops areawide land use plans, called resource management plans, specifying what areas will be open to oil and gas development and the conditions to be placed on such development. Second, BLM may issue leases for the development of specific sites within an area, subject to requirements in the plans. Finally, a lessee may file an application for a permit to drill, which requires BLM review and approval.

BLM's lease sale process includes several key steps:

- *Nomination of lands for sale.* Interested members of the public and industry can nominate lands for competitive lease by sending to a particular BLM state office letters expressing interest in specific tracts of land desired for lease. BLM itself may also identify parcels for potential lease, although the majority of parcels leased in recent years have been nominated by the oil and gas industry. Parcels nominated for lease can vary in size; in the contiguous 48 states, the maximum size of a parcel nominated for competitive lease is 2,560 acres.⁷
- *Review of parcels.* Parcels nominated for lease are evaluated by BLM field staff to determine whether the proposed land is available to be leased and whether it conforms with BLM policies, regulations, and land use plans. If the parcel is determined to be available, the potential impacts of oil and gas leasing on the environment are then evaluated as required under NEPA. If required, leasing restrictions (called stipulations) are added to the proposed parcel to mitigate potential impacts of leasing.

⁶BLM also documents compliance with NEPA using a "determination of NEPA adequacy," where the agency determines that a proposed action is adequately covered by an existing environmental assessment or environmental impact statement.

⁷In Alaska, the maximum size of a competitively leased parcel is 5,760 acres.

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- *Notice of lease sale.* Once BLM has completed its reviews of nominated parcels, it identifies those parcels it has determined may be offered at the lease sale. These eligible parcels are included in a public “notice of competitive lease sale,” which is to be published at least 45 days before the lease sale. BLM may, however, withdraw, or defer, parcels included in the lease sale notice at any time before the lease sale takes place. Such parcels may be subsequently offered in a future lease sale if the agency conducts further review and determines the parcels’ suitability for leasing.
 - *Public protest period.* The publication of a lease sale notice starts the public protest period, in which concerned entities can file a protest to BLM’s inclusion of any or all parcels in that lease sale notice. Included in the lease sale notice is guidance to the public on the process to follow for protesting BLM’s decision to offer lands identified in the notice. Under BLM guidance, the agency considers only protests received at least 15 calendar days before the date of the lease sale, generally providing 30 days for the public to submit protests. BLM dismisses a protest if the protest lacks a statement of reasons to support it. Although BLM aims to review and resolve protests before lease sales, if it cannot do so, it may elect to include protested parcels in a lease sale. In such cases, BLM resolves the protests before issuing leases for those parcels. If BLM finds a protest to have merit, the agency does not issue leases for the affected parcels, and it refunds any payments made.
 - *Competitive lease sale.* The lease sale itself is a public auction, with leases sold to the highest qualified bidder. Federal oil and gas leases operate under a system in which the lessee receives the right to develop and produce oil and gas resources under a specified time frame and conditions in exchange for certain payments, including a lump-sum payment called a bonus bid.⁸ Under the Mineral Leasing Act, “leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year,”⁹ thus completing the lease transaction.¹⁰ BLM policy also directs agency staff to

⁸This bonus bid is a onetime amount equal to the amount of the highest bid. There is a minimum bonus bid that BLM will accept of \$2 per acre or fraction thereof, but there is no maximum bid.

⁹30 U.S.C. § 226(b)(1)(A). On the day of the lease sale, the minimum bonus bid of \$2 per acre and the first year’s rent are due to BLM. Winning bidders then have an additional 10 business days to pay the remainder of any additional bid amount that was made above the \$2 minimum.

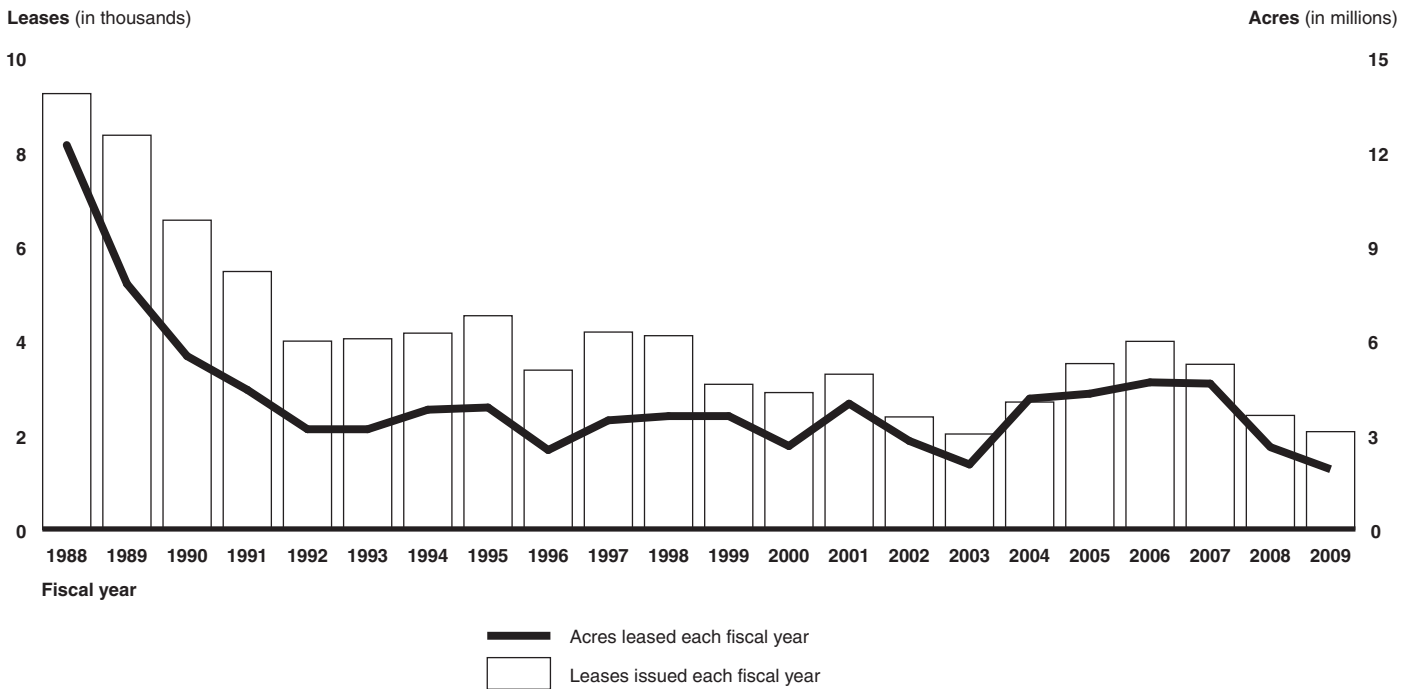
¹⁰*SUWA v. Norton*, 457 F.Supp.2d 1253, 1255-56 (D. Utah 2006).

resolve any protests related to a parcel before issuing the lease on that parcel.¹¹ The company pays annual rent on the leased parcel until it begins to produce oil or gas (at which time, the lease owner or operator pays royalties on the volume of oil and gas produced) or until the lease expires or ends. Parcels that do not receive competitive bids are available noncompetitively the day after the sale and remain available for leasing for up to 2 years after the competitive lease sale date. The Energy Policy Act of 1992 requires BLM to offer all competitive and noncompetitive leases at 10-year primary terms.

Over the past two decades, the number of federal onshore oil and gas leases BLM has issued, as well as the number of acres, have varied. Leasing activity was highest at the beginning of the period, with more than 9,000 leases and over 12 million acres leased in fiscal year 1988. Both the number of leases and area leased then fell sharply for several years, and in recent years the number has fluctuated between 2,000 and about 4,500 leases, and the area did not exceed 5 million acres leased (see fig. 1).

¹¹Bureau of Land Management, *Oil and Gas Adjudication Handbook: Competitive Leases*, BLM Manual Handbook H-3120-1 (Washington, D.C., 1993), 39. BLM regulations state that the authorized officer may suspend the offering of a specific parcel while considering a protest or appeal against its inclusion in a notice of competitive lease sale. 43 C.F.R. § 3120.1-3.

Figure 1: Onshore Oil and Gas Leasing Activity on Federal Lands, Fiscal Years 1988-2009



Source: BLM.

The issuance of a lease starts a series of steps toward exploring for and producing oil, gas, or both on the leased land. Along the way, variables such as the market price of oil and gas and the costs of infrastructure influence industry’s estimates of the economic viability of pursuing development on leased lands. Lease owners may analyze available geologic information and conduct seismic or other testing to ascertain the land’s oil or gas potential and find the resource. Companies may also try to acquire leases for surrounding parcels to ensure they have sufficient acreage to make exploration and production worthwhile. If companies believe that economically viable reserves exist on their leased lands, they may begin preparing for drilling, including completing environmental studies required to apply for drilling permits. Before an oil and gas company can drill on federally leased lands, it must submit to BLM an application for a permit to drill. Once such permits are approved, companies may begin exploration or development activities, including building roads to well sites, drilling wells, and constructing pipelines and pipeline facilities needed to transport the oil and gas to market. This entire process can take as little as a few years or as long as 10 years, and

ultimately, leased areas may not necessarily contain oil and gas in commercial quantities.

BLM Maintains and Makes Publicly Available Incomplete and Inconsistent Information Related to Protests to Its Lease Sales

Although BLM has taken steps to collect information related to protests to its lease sales, we found that the information it maintained and made available publicly was incomplete and inconsistent across the four state offices we reviewed. In addition, protester groups have raised concerns about the timing and extent of publicly available information. In May 2010, the Secretary of the Interior announced several agencywide leasing reforms that are to take place at BLM, some of which may address concerns raised by protester groups, by providing the public with earlier and more consistent data on which parcels may become available for leasing, thereby giving these groups longer to consider or prepare protests.

BLM Collects Agencywide Protest Data, but These Data Are of Poor Quality and Limited Utility

Although BLM has taken steps to collect agencywide protest data, we found that these data were incomplete, inaccurate, inconsistent or ambiguous, and therefore of limited utility. To better track protests, BLM in 2007 required its staff to begin using a new module, which it had added as a component of its LR2000 lease record-keeping system specifically to capture, among other things, information related to lease sale protests. All parcels included in a lease sale notice are to be entered into LR2000, each with an assigned serial number and other basic information, including location and acreage. In addition, for each protested parcel, staff are to enter into the LR2000 module who filed the protest; reasons for the protest; and the outcome, or status, of the protest. The module should therefore contain complete information on every parcel listed in lease sale notices that was protested during the lease sale process. These parcels include parcels deferred before a competitive lease sale, parcels sold at a competitive lease sale, and parcels that did not receive a bid at a competitive lease sale.

Concerning the completeness of the data, we found that some data identifying parcels that had been protested were missing from the module, particularly in the case of parcels that were deferred. We compared the module's data with protest records obtained from BLM state offices for a random sample of 12 of the 53 lease sales held in Colorado, New Mexico, Utah, and Wyoming during fiscal years 2007 through 2009. For this sample, we found that the four state offices varied in the extent to which data identifying protested parcels had been entered into the module, ranging from fully complete to missing information on deferred parcels, and potentially missing information on parcels that had not been sold at a

competitive lease sale (see table 1). Specifically, data obtained from BLM state offices in our sample showed that 68 parcels were protested and deferred. When we looked for these same data in the module, however, we found that 28 of the parcels—over 40 percent of deferred and protested parcels in our sample—were missing. Although the results from our sample of 12 lease sales cannot be generalized to all 53 lease sales, the extent of missing information we found suggests that information on protested parcels beyond our sample could also be missing.

Table 1: Extent to Which BLM’s Module Is Missing Protested Parcels, from a Sample of 12 Lease Sales, by State Office, Fiscal Years 2007-2009

BLM state office	Deferred parcels	Sold at a competitive lease sale	Not sold at a competitive lease sale
Colorado	No parcels missing	No parcels missing	No parcels missing
New Mexico	Three parcels missing	One parcel missing	Not possible to determine if parcels missing ^a
Utah	Seventeen parcels missing	No parcels missing	No parcels missing
Wyoming	Eight parcels missing	No parcels missing	Not possible to determine if parcels missing ^a

Source: GAO analysis of BLM data.

Note: The sample included 12 lease sales, with 1 lease sale in each state office each year, in fiscal years 2007, 2008, and 2009.

^aThe state office used different tracking codes for parcels listed in lease sale notices than it used to identify parcels entered in the module. When these parcels were not sold at a competitive lease sale, we were unable to reliably match the tracking codes for these parcels with the tracking codes in the module to determine whether all protested parcels had been entered into the module. We were able to match these codes, using the competitive lease sale results, when parcels were sold at a competitive lease sale.

Further, when we examined protest data available in the module for all 53 lease sales, we found that protest information recorded in the module was inaccurate, inconsistent or ambiguous, and therefore of limited utility. For example, we found that the field in the module identifying the status of a protest was left blank or read “pending” for more than 1,100 parcels, even when leases for those parcels had already been issued. In such cases, any protests would presumably have been resolved, either because the protest was deemed to have no merit or because concerns raised in the protests were addressed. We also found that BLM state offices often used the same term in the module to describe different outcomes in the leasing process. For example, in some cases, the term “dismissed” was used for protests to

parcels that had been deferred, without indicating whether the agency had deemed the protest to have merit. In other cases, the term “dismissed” was applied to parcels for which protests had been found by the agency to be without merit, and the parcels had been leased. In addition, much of the information was entered into the module so generically that it was difficult to discern what the information meant. Specifically, BLM guidance calls for staff to enter the reason for a protest, but the corresponding data field is limited to 255 characters (approximately three lines of text). In practice, staff in the four state offices entered only basic information, such as two- or three-word phrases, without explanation or a reference to fuller information contained in the protests themselves. For example, staff in the Colorado and Wyoming state offices often listed “environmental concerns” as the issue raised in protests. In matching descriptions of issues in the module with the original protest letters, however, we found that “environmental concerns” included a broad range of issues, including concerns over threats to sensitive species or water quality, as well as economic issues such as loss of recreational or agricultural land uses.

BLM officials at both headquarters and state offices told us that although staff are entering protest data into the module, they are not using protest information from the module to monitor protest activity but instead rely on other sources of information. According to a BLM headquarters official, to monitor protests to lease sales, headquarters officials rely on regular briefing memos provided by the state offices for each lease sale, rather than review information in the module. Similarly, across each of the four state offices, BLM officials said that instead of the module, they use their own detailed, informal spreadsheets to track protest activity and their responses, which they can easily maintain and organize, often lease sale by lease sale. BLM officials acknowledged that maintaining protest information is important, although they also said that the LR2000 module is not the most efficient or effective way to do so. BLM state officials added that not only is the module’s software unable to extract and summarize data easily, but it is also inefficient for entering certain information into the module. For example, if a protest letter covers multiple parcels, initial protest information, including who protested and the reasons for the protest, can be entered into the module once and automatically applied to multiple parcels in a single batch. But after BLM resolves and responds to the protest, the module’s software does not allow the response to be entered once and applied automatically to the batch of parcels, instead forcing the outcome of the protest to be entered separately for each of the parcels. According to BLM state office officials, this process can be time-consuming. (During the period of our review, the total number of parcels in a lease sale notice ranged from 13 to 265.)

Protest-Related Information Varies across BLM State Offices, and Protester Groups Have Raised Concerns about This Information

We found that the amount of protest-related information BLM makes publicly available varies across the four state offices in our review. For example, the Utah state office is the only office of the four to provide protest letters, as well as BLM's responses, on its Web site.¹² Similarly, only the New Mexico state office publishes on its Web site an advance list of the parcels under consideration for inclusion in a notice of lease sale. The other three state offices do not make this information available on their Web sites, although a BLM Wyoming state office program manager said the office would provide this information upon request. According to BLM guidance, the agency uses preliminary parcel lists primarily to request concurrence and stipulation recommendations from selected federal or state entities. Generally, such lists are not available to the public and do not constitute official notice of a proposed BLM action, according to the guidance. Nonetheless, protester groups we spoke with stated that they wanted information in a time frame that was more conducive to meaningful public participation. Specifically, several representatives of protester groups said that because the protest period was generally the one opportunity BLM provided for public input during the lease sale decision-making process, it was critical that they have enough time to thoroughly review each parcel included in a lease sale notice before the formal 30-day protest period.¹³

In addition, we found that the four state offices rarely make publicly available detailed reasons for deferring parcels before a competitive lease sale or provide information on whether or when deferred parcels might be considered for a future lease sale. According to BLM officials, the agency did not have written policy or guidance that included the specific information the agency was to make publicly available or when. Instead, each state office developed its own practices, resulting in state-by-state variation in both what information was made available and the timing of

¹²In March 2010, BLM's Wyoming state office posted on its Web site the protest letters it received from its June 2008 lease sale forward.

¹³During its land use planning under the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. § 1701 et seq.), in which BLM determines, among other things, which lands in a planning area may be available for leasing, BLM provides opportunities for public involvement and comment, as well as a specific protest period, before finalizing its land use plans. It is not uncommon, however, for many years to pass between the time the land use plan is issued and when a specific parcel is reviewed for lease sale. Our review focuses only on the information made publicly available during the lease sale process.

its release.¹⁴ BLM officials also said that in general, all documents supporting a lease sale decision—including parcel reviews conducted with other federal, state, and local entities; recommendations from BLM field offices regarding the leasing of parcels; and protest letters and decisions—would be available for review by the public upon request. Some protester groups we spoke with stated that although BLM’s deferral of protested parcels from a lease sale achieved their intended result, they nevertheless could not determine from publicly available information whether this outcome was tied to reasons raised in their protests. They also said they lacked information from BLM as to whether deferred parcels would be offered at a future sale or to what extent their concerns would be factored into BLM’s future decision making on those parcels.

In May 2010, the Secretary of the Interior announced several agencywide leasing reforms that are to take place at BLM. Some of these reforms may address some concerns raised by protester groups, by providing the public with earlier and more consistent data about which parcels may become available for leasing. BLM field offices are to provide a new 30-day public review-and-comment period that precedes the 30-day protest period. Doing so will potentially give stakeholders longer to review parcels and decide whether to file a protest and, if so, longer to prepare the protest. The reforms also require BLM state offices to make available on their Web sites their responses to protest letters filed during the protest period after a notice of lease sale. According to BLM, among other goals, the intent of these changes (which we have not evaluated) is to provide meaningful public involvement, as well as more predictability and certainty, in the leasing process.

¹⁴In contrast, for its land use planning, BLM has developed specific agencywide policy for the process to be followed for reviewing protests, including a goal of resolving protests to the land use plan within 100 days of the close of the protest period and making final reports on the resolution of protests available to the public via the Internet.

Most Parcels Identified for Lease Were Protested by a Diverse Group of Entities for a Variety of Reasons

Most parcels identified in BLM lease sale notices from fiscal year 2007 through fiscal year 2009 in Colorado, New Mexico, Utah, and Wyoming were protested; protests came from a diverse group of entities, including nongovernmental organizations representing environmental and hunting interests, state and local governments, businesses, and private individuals. These groups and individuals listed a wide variety of reasons for their protests, including concerns that oil and gas activity would (1) impair fish and wildlife habitats or air and water quality or (2) adversely affect recreational or agricultural uses of the land.

Most Parcels Identified for Lease Sale Were Protested

Overall, we found that 74 percent of parcels whose leases were competitively sold in the 53 lease sales that took place in the four state offices from fiscal years 2007 to 2009 were protested, although this percentage varied considerably by state (see table 2).

Table 2: Protest Information on Parcels Whose Leases Were Competitively Sold, by State Office, Fiscal Years 2007-2009

BLM state office	Parcels with competitively sold leases	Parcels protested	Percentage protested
Colorado	677	630	93
New Mexico	1,008	575	57
Utah	624	478	77
Wyoming	2,745	2,043	74
Total	5,054	3,726	74

Source: GAO analysis of BLM data.

Note: In analyzing the universe of data available for the four state offices, we evaluated only leases that were sold competitively. We did so because our sample showed that protest data from BLM's module were generally complete for parcels that were sold competitively, while data for deferred and unsold parcels were potentially incomplete. Competitively sold leases represented 5,054 (78 percent) of the 6,451 parcels contained in the 53 lease sale notices for the four state offices.

Similarly, in our review of a sample of lease sales, we found that most parcels were protested. To gain a further understanding of the extent of protests beyond those parcels competitively sold (in other words, to capture parcels deferred before lease sale and those that did not sell competitively), we examined protest information for our random sample of 12 of the 53 lease sales. Overall, we found that 1,035 of the 1,244 parcels (about 83 percent) in our sample were protested over the 3 fiscal years, although the number of parcels that were protested varied across the state offices (see table 3). We also found that at least half the parcels were

protested for each lease sale in our sample (see app. II). Of the 1,035 protested parcels in our sample, 68 parcels (about 7 percent) were deferred before lease sales; BLM dismissed protests for 763 parcels (about 74 percent); and as of March 2010, BLM had yet to issue responses for protests to 204 parcels (about 20 percent).

Table 3: Protests Filed in a Sample of 12 Lease Sales, Fiscal Years 2007-2009

BLM state office	Parcels in lease sale notices	Parcels protested	Percentage protested
Colorado	193	173	90
New Mexico	281	205	73
Utah	201	198	99
Wyoming	569	459	81
Total	1,244	1,035	83

Source: GAO analysis of protest data obtained from BLM state offices.

Parcels Were Protested for a Variety of Reasons by Nongovernmental Organizations, Governments, Businesses, and Individuals

We found that a diverse group of entities filed protests for parcels included in our sample of lease sales, including nongovernmental organizations, governments, businesses, and individuals (see app. II). Many of the nongovernmental organizations were environmental organizations; for example, the Center for Native Ecosystems was listed as a party on 13 of the 86 protest letters across three state offices in our sample.¹⁵ Other nongovernmental organizations representing hunting, fishing, and recreational interests also commonly filed protests. Governments included both state and local governments, such as a state natural resource department and county commissioners. Businesses were represented by ranching and recreational interests, and private individuals were often residents concerned that their lifestyles or properties would be affected by the proposed leasing activity. In many instances, several groups jointly filed a single protest letter. For example, for one lease sale in New Mexico, multiple businesses—representing ranching, recreational, and other interests—and several nongovernmental organizations submitted a protest letter. Similarly, in one lease sale in Wyoming, an association of churches signed a protest letter alongside five

¹⁵The stated mission of the Center for Native Ecosystems is to use the best available science to participate in policy and administrative processes, legal actions, and public outreach and education to protect and restore native plants and animals in the Greater Southern Rockies.

nongovernmental conservation organizations. In addition, according to BLM officials, the agency also often received “repeat” protests, where the same groups raised issues they had previously raised in protests that BLM had dismissed in earlier lease sales; “blanket” protests, where all the parcels identified in a lease sale notice were protested for general reasons; or “mass duplicate protests,” where multiple entities filed the same letter. For our sample of protest letters, we did not analyze the extent to which any of the protests fell into these categories.

In our analysis of each of the 86 protest letters in our sample, we found that the reasons cited for the protests varied considerably. We found that the reasons outlined in the letters generally fell into four broad areas: alleged impacts on fish and wildlife and their habitats; degradation of the natural environment, such as air or water quality; effects on human uses, such as recreation or agriculture; or potential violations of statutes or policies (see app. II). For instance, many of the letters stated that certain parcels identified for oil and gas leasing were located on lands of high conservation value and that oil and gas activities would disrupt important species’ habitats, such as sage grouse breeding and nesting sites; migratory routes and winter ranges for big game, such as elk and mule deer; or the riparian habitats of sensitive fish species, such as cutthroat trout. Several of the letters stated that because some of the parcels were located in areas that had been proposed for or had received a wilderness or other conservation designation, leasing the area to oil and gas development would come into direct conflict with that proposed designation. Many of the letters also raised concerns that oil and gas development on the land would affect use of the land for recreational or business-related purposes, including hunting, fishing, hiking, horseback riding, ranching, and other agricultural uses. In addition, entities filing protests frequently raised concerns that offering certain parcels for lease would violate particular statutes or policies. For instance, a number of the protest letters stated that offering certain parcels for lease would be in potential violation of the Federal Land Policy and Management Act because leasing those parcels would be inconsistent with BLM’s current land use plans or responsibility to ensure that public lands were not unnecessarily or unduly degraded. Other protest letters stated that BLM had potentially neglected to (1) conduct sufficient site-specific environmental analyses, (2) identify potential adverse environmental effects, or (3) consider an adequate range of alternatives when selecting certain parcels for lease sale—allegations that, if true, could put BLM in violation of NEPA.

Effects of Protests on BLM's Leasing Decisions and Overall Oil and Gas Development Activities Were Difficult to Determine

We could not measure the extent to which protests influenced BLM's leasing decisions through the information BLM maintains because the agency did not document the role protests played in its decisions to defer parcels; protests were, however, associated with delays in leasing. In addition, we found that despite industry concerns, protests did not significantly affect bid prices and that the effects of protests on nationwide oil and gas production in the near term are not likely to be significant.

The Extent to Which Protests Affected BLM's Lease Sale Decisions Could Not Be Measured

We could not measure the extent to which protests affected BLM's lease sale decisions because of limited information BLM maintains on protests. Not only were protest data incomplete, but BLM did not consistently document the reasons for its deferrals or the extent to which it found protests to have merit. In our review of a sample of 12 lease sales in the four state offices, we found that when BLM deferred a protested parcel before the lease sale, the agency did not provide the reasons for the deferral in its response to the protest letter. Rather, BLM stated that because the parcel was deferred, the protest was "dismissed as moot" or the parcel was "not subject to protest." For such deferrals, BLM did not indicate whether the protest had merit or to what extent, if at all, the protest factored into the agency's decision to defer the parcel. Similarly, although in principle a protest could also play a role in BLM's decision to modify the acreage or stipulations on a parcel, in reviewing BLM's responses to the protest letters in our sample, we could not determine if BLM made any such changes because of a protest.

BLM officials explained that many interacting factors influenced leasing decisions, and it was not always possible to specify the extent to which protests affected their decisions. In our sample of protested parcels deferred before lease sales, however, we found that issues similar to those raised in the protest letters were often cited by BLM officials as the reason for deferrals. Specifically, we found that for 56 of the 68 deferred protested parcels in our sample, the reasons BLM cited were similar to issues raised in the protest letters for those same parcels. For example, several conservation groups protested the lease sale of several parcels in Utah's February 2007 lease sale because, according to the protest letter they filed jointly, recent archaeological research showed that a particular mountain gap had special significance as an ancient astronomical observatory. According to BLM officials, BLM deferred the sale of these parcels, on which they had already placed some restrictions to oil and gas

development, so they could further review the area's importance as a cultural resource and the potential need for additional protection. On the other hand, some protested parcels were deferred for administrative reasons unrelated to issues cited in protest letters. For example, the New Mexico state office deferred one parcel from its July 2008 lease sale after it determined that land within the parcel was already under lease.

BLM officials provided anecdotal accounts in which protests influenced their decisions, and they acknowledged that the protest process can serve as a check on agency decisions to offer parcels for lease sale. In some instances, according to the officials, protests brought issues to their attention that they may not otherwise have factored into their decision making and therefore ultimately improved their decisions. For example, according to a BLM Colorado state office program manager, the office deferred the lease sale of several parcels after a conservation group alerted the office through the protest process that the parcels potentially contained habitat for a threatened plant species, as well as areas that had been designated for state and national historic and natural preservation. Similarly, officials in the New Mexico state office said they deferred the lease sale of multiple parcels after reviewing information submitted by protesters, including a letter submitted by the New Mexico Department of Game and Fish, and determining that the areas contained key habitat for the desert bighorn sheep, a state endangered species, and that further review of the lands' leasing suitability would therefore be warranted.

In addition, some protests resulted in appeals to the Interior Board of Land Appeals or litigation in federal court, which could have ultimately affected BLM's leasing decisions. Although data were not available to determine how many appeals or legal challenges were associated with the protests submitted during the period of our review, we did examine appeals and litigation associated with our sample of lease sales. Within our sample, one appeal to the Interior Board of Land Appeals was filed by a group that had protested parcels included in Wyoming's April 2008 lease sale. The board dismissed this appeal in October 2009, holding that the protesting organization lacked standing to appeal because it failed to establish that it or any of its members had used, or in the future would use, any of the protested parcels. In addition, groups filed lawsuits challenging BLM's lease sale decisions from New Mexico's July 2008 lease sale and Colorado's August 2008 lease sale; both cases were pending as of May 2010 (see app. III).

Leases on Protested Parcels Were Often Delayed

We found that a majority of leases for protested parcels in the four state offices from fiscal year 2007 through 2009 were issued after the 60-day window specified in the Mineral Leasing Act.¹⁶ BLM officials explained that, starting in the early 2000s, the overall number of protests rose in tandem with an increase in oil and gas development activities and an increase in activities in contentious areas, such as those potentially containing wilderness-quality lands or areas that had not before been leased for oil and gas. According to BLM officials, responding to the large number of protests, some of which raised complex issues, increased staff workloads and made it difficult for them to respond to protests and issue leases within the 60-day window.

When we examined lease issuance time frames for all competitively sold leases for parcels from the 53 lease sales held in the four state offices during fiscal years 2007 through 2009, we found that BLM was able to issue leases within the 60-day window for almost all unprotested parcels.¹⁷ But BLM was not able to meet this window for almost 91 percent of the protested parcels it sold competitively during this time. The percentage varied by state office: In New Mexico the percentage was about 52 percent, while in the other three state offices it was more than 91 percent, ranging up to almost 100 percent in Wyoming (see table 4). The Wyoming state office prepared one consolidated response to all protest letters filed for a particular lease sale, and thus, a BLM official explained, leases were not issued for any protested parcels until concerns raised in each of the protests were resolved and BLM had responded.

¹⁶We express no view on whether the Mineral Leasing Act requires BLM to issue leases before the 60-day period expires, even if protests are pending for those leases, because this issue is in litigation in federal district court in Utah. See appendix III for a description of this litigation.

¹⁷Of the 1,316 competitively sold leases for parcels that were not protested, we found that all leases were issued within the 60-day window, except for leases on 23 parcels. For these leases, BLM officials explained that lease issuance was delayed because they were waiting for the lessee to submit required paperwork to join the parcel to a unit already in place or they were resolving protests for other parcels in the lease sale; for one lease, issuance was delayed because of staffing issues.

Table 4: Numbers of Protested Parcels and Timeliness, by State Office, Fiscal Years 2007-2009

BLM state office	Protested parcels					
	Late		On time		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Colorado	581	94.8	32	5.2	613	100
New Mexico	299	52.3	273	47.7	572	100
Utah	403	91.4	38	8.6	441	100
Wyoming	2,039	99.9	2	0.1	2,041	100
Total	3,322	90.6	345	9.4	3,667	100

Source: GAO analysis of BLM data.

Note: The 3,667 parcels evaluated in this analysis whose leases were competitively sold include protested parcels for which leases were issued, as well as protested parcels whose leases were sold as of March 2010 but whose leases had not been issued. In total, leases for 3,726 protested parcels were competitively sold during our review period, but we excluded 59 of these parcels from our analysis because BLM indicated that leases for these parcels had been canceled or because errors in the data precluded their use.

The time it took BLM to issue the leases also varied. For the protested parcels for which leases were issued, about 46 percent were issued within 6 months, about 54 percent were issued within 6 months to 1 year, and less than 1 percent took up to 2 years.¹⁸ In addition, as of March 2010, BLM had not issued leases for more than 1,200 protested parcels (representing about 24 percent of all parcels sold competitively during this time), the majority of which were from lease sales held during fiscal year 2009 in Utah and Wyoming. While our analysis is consistent with the assertion from BLM officials that an increased workload from protests resulted in delays issuing leases, it was not sufficient to establish a cause-and-effect relationship because the available data did not allow us to examine whether factors other than protests, such as other workload demands in the state office, may also have contributed to lease issuance delays.

¹⁸An additional five leases, which represent less than 0.25 percent of the leases issued during this period for protested parcels, were issued after 2 years.

Despite Concerns, Protest Activity and Delayed Leasing Have Not Significantly Affected Bid Prices, and Near-Term Effects on Nationwide Oil and Gas Production Are Not Likely to Be Significant

We found that protest activity did not systematically decrease bid prices for leases during the period we reviewed and that overall effects on near-term nationwide oil and gas production are not likely to be significant, despite industry concerns over protests and delays in issuing leases. Specifically, industry officials we spoke with said that if an energy company cannot count on timely issuance of leases, it could be hard-pressed to make fully informed decisions on how to develop a group of leased parcels. If the lease on one parcel within a group is delayed, for example, a company may not find it cost-effective or feasible to develop the rest of the parcels in that group. In some cases, companies are concerned that capital may be tied up while BLM is resolving protests and deciding whether to issue the companies' leases. Because companies make payments to BLM at the time of lease sale, they may find themselves financially constrained while awaiting BLM's decision and at the same time have no assurance that BLM will grant their leases.¹⁹ According to industry representatives, uncertainty over protested parcels—including delays in lease issuance, parcels' ultimate availability, and additional restrictions that may be placed on them—might lower the amount potential lessees may be willing to bid for those parcels. In addition, industry representatives expressed concern that the delays and uncertainty related to protests could result in reduced acreage available for leasing and therefore ultimately also limit domestic oil and gas production.

The results of our analysis showed no systematic effect of measures of protest activity on bid prices, although our analysis did not account for all possible determinants of bid prices.²⁰ For example, when we compared the average bid price per acre for protested parcels against the average bid price per acre for unprotested parcels for lease sales held in the four state offices during fiscal years 2007 through 2009, we did not find a systematic effect of protest activity on bid price. In the 29 lease sales where estimation was possible, we found that for 3 lease sales in Wyoming, the average bid price per acre was significantly higher for unprotested parcels

¹⁹According to BLM officials, as of May 2010, the agency was holding more than \$84 million in industry payments for unissued leases in Wyoming and more than \$10 million in Utah.

²⁰Energy companies take a number of factors into consideration when making leasing and other oil and gas development decisions. These factors may include the regulatory environment, the proximity of parcels to existing productive wells, and geologic information likely to indicate the potential productivity of a parcel. We were unable to control for all these factors in our analysis, although we did control for parcel size, factors that vary over time (such as oil and gas prices), and state office location.

than for protested ones.²¹ In 3 other lease sales in Colorado, New Mexico, and Utah, however, we found a significant association between higher bid price per acre and protested parcels. In the 23 other sales, we found no statistically significant correlation. Similarly, when we analyzed the number of protests per parcel and average bid prices, we did not find a systematic effect. Here, in the 36 lease sales where estimation was possible, we found that for 4 of them—1 in Colorado and 3 in Wyoming—higher average bid prices per acre were associated with fewer protests. For 2 lease sales in New Mexico and Utah, the converse was true, and lower average bid prices per acre were associated with fewer protests. In the 30 other sales, there was no significant relationship. Finally, for the number of days of delay in issuing leases on protested parcels, we found no consistently significant statistical relationship with lower average bid price.²²

While industry representatives also expressed concern that protest activity could result in reduced acreage available for leasing, it was not possible to determine the extent to which acreage was withheld from leasing as a result of protests because BLM did not document whether protests influenced its decisions to defer parcels from lease sales. During the period of our review, about 1 million acres, or 15 percent, of the approximately 6.9 million acres of land included in the lease sale notices in the four state offices were deferred before lease sale. Given the limitations of BLM's data, however, we could not determine how much of this deferred acreage was protested or, for deferred acreage that was protested, whether it was subsequently leased in a later sale. This deferred acreage thus represents an upper limit to the potential acreage that could have been withheld from leasing because of protests to date in the four state offices. In addition, BLM had not yet resolved protests filed on another 1.4 million acres, or about 20 percent, of the approximately 6.9 million acres of land identified in the lease sale notices, and resolution

²¹Although a total of 53 lease sales were held during this period in the four state offices, some of the lease sales had too few observations to conduct the analyses. For example, for lease sales where all parcels in the lease sale were protested—so no comparison with unprotested parcels was possible—it was not possible to measure any effect on bonus bid per acre.

²²Because delays in issuing leases occur *after* a lease sale (that is, after leases have been sold to a winning bidder), a delay itself could not directly affect bids during that sale. Nevertheless, delays are often associated with protests, as our analysis showed, and delays may reflect features of protested parcels that bidders might already know of that would cause them to offer lower bids, or bidders may be reluctant to bid as much if potential delays are possible.

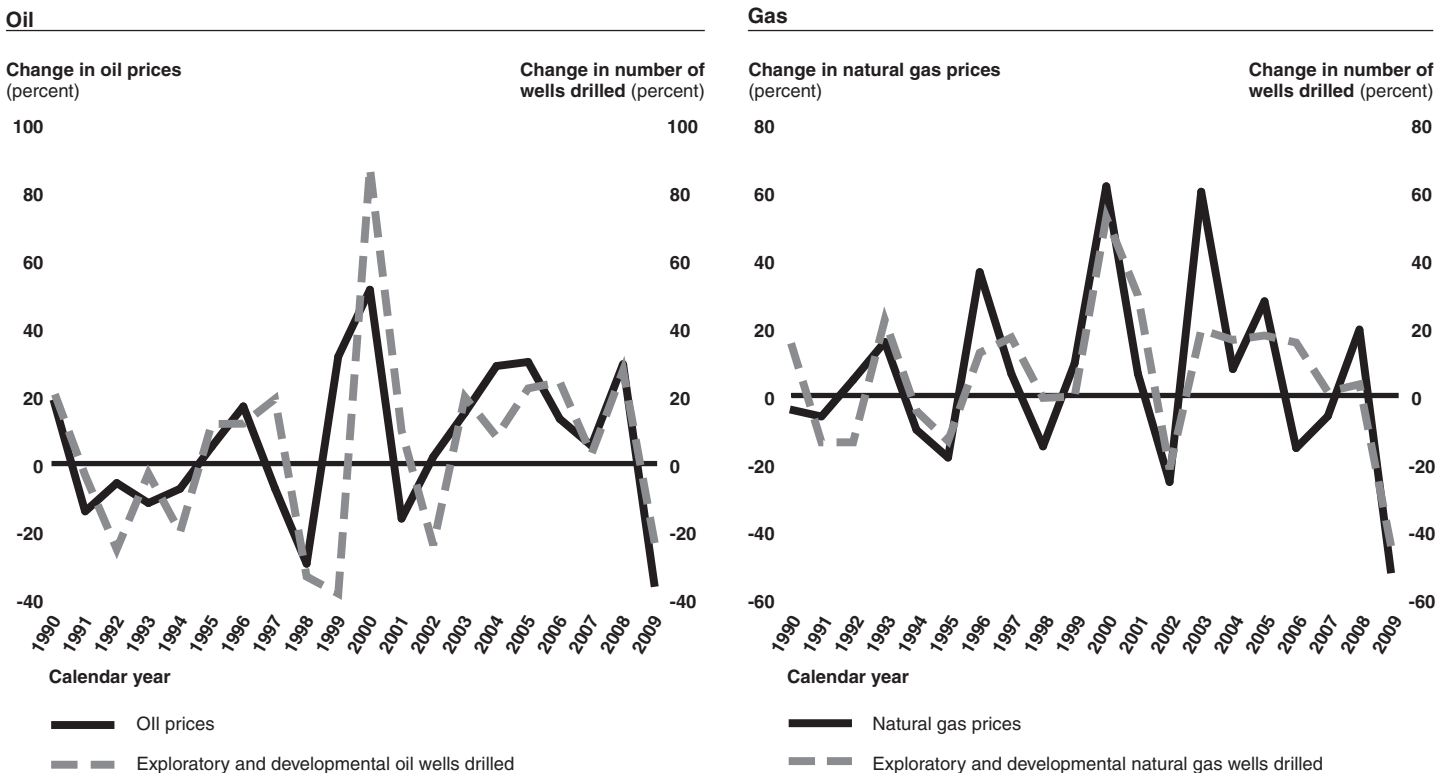
of many of these protests has been on hold following direction from BLM headquarters to await specific policy changes before resolving pending protests. For instance, according to officials in the Wyoming state office, the office was directed not to issue protest responses for its protested parcels—which included more than 1,000 parcels covering approximately 1.2 million acres for parcels protested during our review period—until the parcels’ suitability for leasing was reviewed in light of new guidance covering sage grouse habitat and wilderness policy. As a result, it is too early to determine the effects of protests on the acreage where protests have yet to be resolved, and ultimately it may not be possible to distinguish the effects of protests from the effects of simultaneous policy changes. Further, because oil and gas producers generally have up to 10 years from a lease’s issuance in which they can begin developing the lease, the effect of leasing decisions may not be felt for several years after the lease sale.

At the national level, the near-term effect of protests on U.S. oil and gas production is likely to be relatively modest because federal lands account for a small fraction of the total onshore and offshore nationwide oil and gas output. Specifically, in fiscal year 2009, federal lands accounted for 5.8 percent of the nation’s total oil production and 12.8 percent of total natural gas production. Assuming the federal share of production remains comparable in the future, and production on federal lands falls by 15 percent (the percentage of deferred acreage), nationwide oil production would be reduced by 0.9 percent, and natural gas production would fall by 1.9 percent. If, in addition to the 15 percent of deferred acreage, BLM were to withdraw the acreage represented by the additional 20 percent of protested parcels whose protest decisions were still pending—a total reduction of 35 percent—the corresponding combined loss nationwide would be 2.0 percent for oil and 4.5 percent for natural gas.

With the current supply of federal lands already under lease, however, oil and gas development and production may be able to increase along with any demand for such production. Of federal lands that are currently leased, 12 million acres are producing oil or gas, whereas 33 million acres have not been developed. Factoring in both federal onshore and offshore leases, a total of 67 million acres have not been developed, while 22 million acres are producing oil or natural gas. While they may not all contain viable resources, some of these 67 million acres may provide a buffer for the energy industry—federal lands or waters that could be developed—if producers wanted to respond to market conditions with a rapid rise in development and production activity. Energy industry representatives said that while various factors influence a company’s

decision to develop leases, the prices of oil and gas are a big driver. We examined the movements of oil and gas prices from 1990 through 2009 in relation to development activities as measured by oil and gas wells drilled and found that percentage changes in the prices of oil and gas closely paralleled percentage changes in development activity (see fig. 2). The peaks and troughs in the patterns of these variables largely overlapped, strongly suggesting that during the past two decades, development activity reacted quickly and proportionally to changes in the prices of oil and gas.²³

Figure 2: Prices of Crude Oil and Natural Gas in Relation to U.S. Oil and Gas Development Activity, 1990-2009



Sources: GAO analysis of data from the Bureau of Labor Statistics and the Energy Information Administration.

²³The relationships illustrated by the figure reflect correlation coefficients between percentage change in oil prices and percentage change in wells drilled for oil, and between percentage change in gas prices and percentage change in gas wells drilled, equal to 62 percent and 77 percent, respectively.

Note: Prices and development measures reflect nationwide onshore and offshore oil and gas activity. Oil prices are given in 2009 dollars per barrel, prices for natural gas in 2009 dollars per 1,000 cubic feet. Change is plotted as (1) the percentage change from year to year in oil or gas prices and (2) the percentage change from year to year in the number of exploratory and developmental wells drilled, which shows how the two variables have moved together over the past two decades.

Conclusions

BLM must continue to balance interest in developing the nation's domestic sources of oil and natural gas on federal lands with ensuring that such development is done in an environmentally responsible manner and in line with its mandate to manage these lands for multiple uses. The protest period provided before new oil and gas leases are issued allows the public an opportunity to comment on a parcel before the right to develop that parcel passes to a private company, and protests provide an opportunity for BLM to carefully examine lease sale decisions in light of the issues that protests raise. This protest process has its trade-offs, however. Specifically, issues raised in protests can help BLM ensure that the best leasing decisions are made, but protests have also been associated with delays and may increase industry uncertainty over the availability of federal lands for oil and gas leasing. Although BLM has taken steps to collect agencywide protest data, when we tried to evaluate the effects of protests, we were hindered by the incompleteness, inconsistency, and ambiguity of these data. Protester groups have also been dissatisfied with BLM's lack of protest-related information. Without more robust protest information, BLM, Congress, and the public lack a full picture of protest activity and how protests affect leasing decisions. As Interior reforms the leasing process, BLM has an ideal opportunity to (1) revisit how it maintains protest-related information and makes it publicly available and (2) develop the means to respond to protests and issue leases with fewer delays, without compromising the thoroughness of review.

Recommendations for Executive Action

To improve the efficiency and transparency of BLM's process with regard to protests of its lease sale decisions and to strengthen how BLM carries out its responsibilities under the Mineral Leasing Act, we recommend that the Secretary of the Interior direct the Director of BLM to take the following two actions:

- revisit the agency's use of the module for tracking protest information and, in so doing, determine and implement an approach for collecting protest information agencywide that is complete, consistent, and available to the public and

-
- in implementing the Secretary of the Interior’s leasing policy reform issued in May 2010, take steps to improve (1) the transparency of leasing information provided to the public, including information to explain the basis of agency decisions to include or exclude particular parcels in a lease sale and, to the extent feasible, documentation of the role, if any, that protests played in final lease decisions, and (2) the timeliness of lease issuance, without compromising the thoroughness of review.

Agency Comments

We provided the Department of the Interior with a draft of this report for review and comment and received a written comment letter from Interior (see app. IV). In its written comments, Interior generally agreed with our findings and concurred with our recommendations. The department also identified specific actions it has taken and plans to take to implement these recommendations. With regard to our first recommendation, about revisiting BLM’s use of the module for tracking protest information, Interior wrote that by the end of calendar year 2011, BLM will determine if the module can be redesigned or if another application would be more effective and will implement an approach to better track protest-related information. In addressing our second recommendation, on improving the transparency of its lease decisions and the timeliness of lease issuance, Interior wrote that its onshore leasing reform policies will provide the increased public participation, transparency, and timeliness called for in the recommendation. Interior’s letter states that with leasing reform, there will be additional environmental review and a new opportunity for public comment and that adjustments to the “lease parcel list” may be made on the basis of public comments received. We stress, however, that as any adjustments to parcel lists are made, it will be important for BLM to explain and document the rationale behind its decisions to include or exclude particular parcels in a lease sale. Interior’s letter also stated that the department believes its ability to adequately address a protest within required time frames will be addressed by posting the lease sale notice 90 days before lease sale (instead of 45 days), extending the period BLM has to evaluate and respond to protests before a lease sale.

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

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

Sincerely yours,

A handwritten signature in black ink that reads "Frank Rusco". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right from the end of the name.

Frank Rusco
Director, Natural Resources and Environment

Appendix I: Objectives, Scope, and Methodology

This report examines (1) the extent to which the Bureau of Land Management (BLM) maintains and makes publicly available information related to protests, (2) the extent to which parcels were protested and the nature of protests, and (3) the effects of protests on BLM's lease sale decisions and on oil and gas development activities.

For all three report objectives, we reviewed relevant laws, regulations, and Department of the Interior and BLM guidance. We interviewed officials in BLM headquarters and visited and interviewed officials from BLM state offices in Colorado, New Mexico, Utah, and Wyoming. (The New Mexico state office has jurisdiction over Kansas, Oklahoma, and Texas, as well as New Mexico, and the Wyoming state office has jurisdiction over Wyoming and Nebraska. The data presented in this report for the New Mexico and Wyoming state offices include data for all the states under their jurisdiction.) We selected these four states because collectively they accounted for 69 percent of oil and 94 percent of natural gas produced on federal lands from fiscal year 2007 through fiscal year 2009 and, according to BLM headquarters officials with whom we spoke, received a high number of protests to their lease sales over this same period. In addition, we interviewed stakeholder groups, including representatives from the energy industry, state government, and nongovernmental organizations, to discuss their concerns about BLM's lease sale and protest process, including the effects—both actual and potential—associated with protests to BLM oil and gas lease sales.

To conduct our work, we obtained and analyzed BLM data from three different sources. First, using lease sale records from the BLM state offices for the 53 lease sales held in the four selected state offices from fiscal year 2007 through 2009, we gathered data on each of the parcels contained in the lease sale notices, including parcel number, acreage amount, and whether the parcel was deferred or the acreage was modified before lease sale.¹ The 53 lease sales comprised 6,451 parcels covering 6.9 million acres of land. For those parcels that were offered at lease sale, we gathered data on final acreage amounts and whether the parcels sold competitively (that is, during the lease sale auction; parcels unsold at auction may be leased noncompetitively later). For parcels that sold competitively, we also recorded the winning bid amount per acre, as well as the total bid amount. Second, we obtained lease information from the agency's lease record-

¹Colorado held 12 lease sales during this period, New Mexico held 12, Utah held 11, and Wyoming held 18, for a total of 53.

keeping system, Legacy Rehost System 2000 (LR2000), for all leases issued in the four state offices from fiscal year 2007 through March 25, 2010, including the type of lease (competitive or noncompetitive), the lease sale date, and the date the lease was issued. Third, for fiscal years 2007-2009, we obtained protest information from BLM's "public challenge module," which it developed as a component of LR2000 to track protests, among other things, to its lease sales. (BLM required staff to begin entering protest information in the module starting in 2007.) Using unique identifiers assigned to each parcel, we then matched the records obtained from the three data sources and merged them to conduct various data analyses.

To determine the reliability of the three data sources, we interviewed officials responsible for the data and data systems; reviewed system documentation including manuals, users' guides, and guidance; and performed electronic and logic tests of the data. On the basis of our assessment, we concluded that the lease sale record data and the LR2000 lease data were sufficiently reliable for our purposes. To further assess the completeness of the protest information contained in the module, we compared the module's data with protest records obtained from BLM state offices for a random sample of 12 of the 53 lease sales held in the four state offices during fiscal years 2007-2009.² The 12 lease sales comprised 1,244 parcels covering roughly 1.4 million acres of land.³ From our assessment of the module, we found that it did not contain complete records: While the module was sufficiently reliable in containing parcels that sold competitively, it did not always contain records for parcels BLM withdrew (deferred) before lease sales. Additionally, we found that the protest-related information the module did contain was not always complete, accurate, or consistent and therefore was not reliable.

To determine what information BLM makes publicly available related to protests, we reviewed the process followed by each BLM state office for reviewing protests and providing information about such decisions to the

²To ensure representation of each state office (Colorado, New Mexico, Utah, and Wyoming) in each fiscal year in our overall sample, we randomly sampled the lease sales from each state office and each fiscal year separately and compiled our overall sample from these results. We excluded Utah's December 2008 lease sale from the list of sales from which we drew our sample because this sale was the subject of Interior-level reviews, and the status of this sale is the subject of pending litigation (see app. III).

³Because of small sample size, we cannot generalize the results from our sample to the entire population of lease sales.

public, which included interviewing BLM state office officials, reviewing protest-related information available on BLM's Web site and through other sources, and synthesizing information gathered during our interviews with stakeholder groups. To determine the extent to which parcels were protested and the nature of protests, we compared BLM's lease sale records with the data available in BLM's public challenge module. In addition, we further reviewed protest information for our random sample of 12 lease sales. Specifically, for each lease sale in our sample, we obtained and analyzed all submitted protest letters, which totaled 86, and BLM's responses to these letters. We analyzed information on whether each parcel included in the notice for each of these lease sales was protested and, for protested parcels, the outcome of the protests, including whether BLM's protest decisions were subsequently appealed or litigated. We also analyzed information on the groups filing the protests and their reasons for filing them (see app. II).⁴ For protested parcels BLM deferred from lease sales, we also interviewed BLM state office leasing officials about the reasons they deferred these parcels and compared their reasons with the protest letters for the same parcels.

To determine the extent to which protests could affect the timing of BLM's lease sale decisions, we analyzed data on all parcels BLM sold competitively in the four state offices during fiscal years 2007-2009, using BLM's lease sale records, lease issuance dates from LR2000, and protest information from the public challenge module. Specifically, for all parcels sold competitively during this period whose leases had been issued or remained unissued as of March 25, 2010, we calculated the length of time between each parcel's sale date and lease issuance date. We based our determination of whether a lease was issued late on the date of the lease sale plus 15 days to allow for the 10 business days that winning bidders have to submit required payments to BLM. We cross-tabulated the data into a three-way table and examined the association among whether a parcel was issued late, whether it was protested, and the state in which the parcel was located. In conducting tests of statistical significance, we found that protested parcels were significantly more likely to be issued late, even after accounting for state office. Given the data available, however, we were unable to examine the association between whether a lease was issued late and other potentially relevant factors, including workload in

⁴We found that for some lease sales in our sample, additional protest letters were filed after BLM's deadline. We reviewed these letters, but because BLM declined to consider these letters, we did not include them in our count of protests or our analyses of who protested and why.

the state offices, the number of protests, the validity of concerns raised in protest letters, and the amount of review that was required by BLM to resolve protests. Thus, although our analysis is consistent with the hypothesis that protests contribute to lease delays, it is not sufficient to establish a cause-and-effect relationship.

To examine the extent to which protests could affect the bid prices of leases, we analyzed BLM's lease sale and protest data for all competitively sold leases for parcels in the four state offices during fiscal years 2007-2009. Specifically, to determine if bids and protest activity were associated, we conducted several statistical analyses. We analyzed data on the price of bids per acre and several measures of protest activity, including whether the lease sale was protested, the number of protests received for a specific parcel, and various measures of delay in issuing leases on protested parcels after a lease sale.⁵ We conducted a separate statistical analysis for each lease sale in each of the four state offices, which allowed us to control for location (at the state office level) and for factors that might vary over time, such as oil and natural gas prices.⁶

To analyze the extent to which protests could affect oil and gas development activities, we collected and analyzed national data on oil and gas development and production activities, specifically, the number of exploratory and developmental wells drilled and data on oil and gas prices from the Bureau of Labor Statistics and the Energy Information Administration. To assess the ability of development and production in the oil and gas industries to respond to changes in oil and natural gas prices, we analyzed how movements in those prices from 1990 through 2009 changed in relation to development and production activities over the same period. To determine the proportion of federal lands that were leased, the proportion leased and under production, and how these proportions compared with total oil and gas production nationwide, we obtained from BLM and analyzed oil and gas leasing and production data on federal lands, and we obtained U.S. production data from the Energy

⁵We recognize that delays in issuing leases do not occur until after the lease sale, so such delays cannot affect sale bids directly. It is still possible, however, that long delays might reflect other factors potentially affecting lease development that are not captured in the data, and such factors might be known to bidders before the lease sale and affect their behavior or bid pricing.

⁶Other factors—such as proximity to existing productive wells, geologic information, and other technical information about the likely productivity of the area—may affect bid prices, but we were unable to control for them because data were not available.

Information Administration; these data were for fiscal year 2009. We assessed the reliability of these data and found them to be sufficiently reliable for the purposes of this report.

We conducted this performance audit from June 2009 through July 2010, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Protest Information from a Sample of Lease Sales in Four Selected State Offices, Fiscal Years 2007-2009

The following tables present information based on our review of a sample of 12 lease sales held in the state offices of Colorado, New Mexico, Utah, and Wyoming from fiscal year 2007 through fiscal year 2009. The tables are based on a total of 86 protest letters associated with the 12 sampled lease sales.

Table 5: Count of Protests Filed in a Sample of 12 Lease Sales, by State Office, Fiscal Years 2007-2009

BLM state office (lease sale)	Parcels in lease sale notice	Parcels protested	BLM action on protested parcels		
			Deferred	Dismissed	Pending ^a
Fiscal year 2007					
Colorado (August)	109	104	10	94	0
New Mexico (July)	114	73	1	72	0
Utah (February)	79	76	14	5	57
Wyoming (April)	159	96	0	96	0
Total	461	349	25	267	57
Fiscal year 2008					
Colorado (August)	46	31	0	31	0
New Mexico (July)	80	80	2	78	0
Utah (June)	13	13	3	0	10
Wyoming (April)	265	218	0	218	0
Total	404	342	5	327	10
Fiscal year 2009					
Colorado (September)	38	38	10	28	0
New Mexico (April)	87	52	9	43	0
Utah (March)	109	109	11	98	0
Wyoming (February)	145	145	8	0	137
Total	379	344	38	169	137
Total for 3 fiscal years	1,244	1,035	68	763	204

Source: GAO analysis of protest data obtained from BLM state offices.

^aAs of March 2010.

**Appendix II: Protest Information from a
Sample of Lease Sales in Four Selected State
Offices, Fiscal Years 2007-2009**

Table 6: Groups and Individuals Filing Protest Letters in a Sample of 12 Lease Sales, by State Office, Fiscal Years 2007-2009

BLM state office, lease sale date (parcels in lease sale notice/parcels protested)	Group or individual filing protest letter	Number of protested parcels in letter
Colorado, August 2007 (109/104)	Alamosa Riverkeeper	9
	Amigos Bravos	9
	Center for Native Ecosystems	104
	Conejos County Board of Commissioners	9
	Costilla County Board of Commissioners	9
	Private individuals (2)	9
	Private individuals (2)	9
	Private individual	9
	Private individual	9
	Private individual	9
	Private individual	9
	Private individual	9
	Private individual	9
	Private individual	9
	Private individual	4
	Private individuals (2)	1
	Private individuals (2)	1
	San Luis Valley Ecosystem Council	9
	The Wilderness Society, Colorado Environmental Coalition, San Juan Citizens Alliance, Western Colorado Congress, Friends of the Yampa, San Luis Valley Ecosystem Council	11
	Theodore Roosevelt Conservation Partnership	56
Western Resources Advocates on behalf of the Colorado Environmental Coalition, Colorado Mountain Club, San Juan Citizens Alliance, The Wilderness Society	9	
Colorado, August 2008 (46/31)	Aspen Valley Land Trust	1
	Center for Native Ecosystems	31
	Colorado State Department of Natural Resources	31
	Earthjustice and Western Resource Advocates on behalf of Colorado Environmental Coalition, Colorado Mountain Club, Center for Native Ecosystems, Colorado Trout Unlimited, Environment Colorado, National Wildlife Federation, Natural Resources Defense Council, Rock the Earth, Sierra Club, The Wilderness Society, Wilderness Workshop	31
	Gunnison County Board of County Commissioners	31
	National Wildlife Federation, Colorado Wildlife Federation	31
	Pitkin County Commissioners	31

**Appendix II: Protest Information from a
Sample of Lease Sales in Four Selected State
Offices, Fiscal Years 2007-2009**

BLM state office, lease sale date (parcels in lease sale notice/parcels protested)	Group or individual filing protest letter	Number of protested parcels in letter
	Private individuals (13,031)	31
	Private individuals (1,600)	31
	Private individual	31
	Private individual	31
	Private individual	31
	Sierra Club and private individuals (2,239)	31
	Trout Unlimited National, Colorado Trout Unlimited	31
Colorado, September 2009 (38/38)	Center for Native Ecosystems	35
	Colorado State Department of Natural Resources, Division of Wildlife	5
	Congressman John T. Salazar	4
	National Wildlife Federation, Colorado Wildlife Federation	7
	Private individual	38
	Theodore Roosevelt Conservation Partnership	19
	Western Resource Advocates on behalf of Colorado Environmental Coalition, Center for Native Ecosystems, San Luis Valley Ecosystem Council	16
	Wolf Springs Ranches Inc.	2
New Mexico, July 2007 (114/73)	Forest Guardians, Dine CARE, New Mexico Wildlife Federation	73
New Mexico, July 2008 (80/80)	Western Environmental Law Center on behalf of Amigos Bravos; Albuquerque Wildlife Federation; Arroyo Hondo Land Trust; Back Country Horsemen of New Mexico, Lower Rio Grande Chapter and Middle Rio Grande Chapter; Bell Fine Jewelry; Caudill Enterprises/Caudill Custom Stocks; Common Ground United; Defenders of Wildlife; EcoFlight; Environment New Mexico; Masonry Structures, Inc.; New Mexico Trout; New Mexico Wilderness Alliance; New Mexico Wildlife Federation; Oil and Gas Accountability Project, a program of EARTHWORKS; Rancho Cerro Pelon; Reflective Images, Inc.; Rio Grande Return; Rocky Mountain Clean Air Action; San Juan Citizens Alliance; Southwest Environmental Center; Upper Gila Watershed Alliance; Viva Rio Arriba Ranch	51
	Private individual	51
	WildEarth Guardians	80
New Mexico, April 2009 (87/52)	Western Environmental Law Center on behalf of Amigos Bravos, Center for Biological Diversity, Common Ground United, Natural Resources Defense Council, New Mexico Wildlife Federation, San Juan Citizens Alliance, Southwest Consolidated Sportsmen, WildEarth Guardians	52

**Appendix II: Protest Information from a
Sample of Lease Sales in Four Selected State
Offices, Fiscal Years 2007-2009**

BLM state office, lease sale date (parcels in lease sale notice/parcels protested)	Group or individual filing protest letter	Number of protested parcels in letter
Utah, February 2007 (79/76)	Center for Native Ecosystems, Forest Guardians	69
	Southern Utah Wilderness Alliance, Natural Resources Defense Council, The Wilderness Society, National Trust for Historic Preservation	14
	Vessels Coal Gas, Inc.	3
Utah, June 2008 (13/13)	Center for Native Ecosystems	10
	Red Rock Forests, private individual	13
	Theodore Roosevelt Conservation Partnership	12
Utah, March 2009 (109/109)	Center for Native Ecosystems	97
	Private individual	95
	Red Rock Forests	29
	Theodore Roosevelt Conservation Partnership	67
Wyoming, April 2007 (159/96)	Biodiversity Conservation Alliance, Wyoming Outdoor Council, Center for Native Ecosystems, Powder River Basin Resource Council, Clark Resource Council, Friends of the Red Desert	68
	Center for Native Ecosystems, Biodiversity Conservation Alliance	47
	Theodore Roosevelt Conservation Partnership	21
Wyoming, April 2008 (265/218)	Biodiversity Conservation Alliance, Center for Native Ecosystems, Wyoming Outdoor Council, Clark Resource Council, Wyoming Wilderness Association	45
	Center for Native Ecosystems, Biodiversity Conservation Alliance	209
	National Audubon Society	33
	Private individuals (2)	2
	Private individual	2
	Private individual	2
	Private individual	2
	Private individual	2
	Private individual	2
	Private individual	2
	Private individual	2
	Private individual	2
	Private individual	2
	Private individual	2
	Private individual	2

**Appendix II: Protest Information from a
Sample of Lease Sales in Four Selected State
Offices, Fiscal Years 2007-2009**

BLM state office, lease sale date (parcels in lease sale notice/parcels protested)	Group or individual filing protest letter	Number of protested parcels in letter
Wyoming, February 2009 (145/145)	Theodore Roosevelt Conservation Partnership	73
	Wyoming Outdoor Council, Natural Resources Defense Council, Wyoming Chapter of the Sierra Club, The Wilderness Society, Biodiversity Conservation Alliance, Wyoming Association of Churches	2
	Wyoming Wilderness Association	2
	Biodiversity Conservation Alliance, Wyoming Outdoor Council	145
	Center for Native Ecosystems, Biodiversity Conservation Alliance	106
	National Outdoor Leadership School, High Wild and Lonesome Horseback Adventures, LLC	5
	Theodore Roosevelt Conservation Partnership	72
	Trout Unlimited	1
Wyoming, February 2009 (145/145)	Western Resource Advocates on behalf of National Audubon Society, Audubon Wyoming	28
	Wyoming Outdoor Council, The Wilderness Society, Natural Resources Defense Council, Biodiversity Conservation Alliance, Greater Yellowstone Coalition	8

Source: GAO analysis of protest data obtained from BLM state offices.

To analyze the reasons for filing protests, we reviewed each of the 86 protest letters associated with the 12 lease sales in our sample. To document the concerns raised in each letter, we developed categories through an inductive process that involved reviewing a small number of protest letters and then identifying natural groupings, or categories, of concerns. Two analysts then independently reviewed the letters and compared the categories. Table 7 presents the overall categories of concern we encountered and illustrates the types of concerns we identified in reviewing the protest letters.

**Appendix II: Protest Information from a
Sample of Lease Sales in Four Selected State
Offices, Fiscal Years 2007-2009**

Table 7: Reasons for Filing Protests, as Cited in Protest Letters from a Sample of 12 Lease Sales in Four State Offices, Fiscal Years 2007-2009

Category of concern	Concerns cited
Fish and wildlife and their habitats	<ul style="list-style-type: none"> • Effects on sensitive species or their habitats, including species listed as endangered, threatened, or candidates under the Endangered Species Act, or species otherwise identified as sensitive, such as sage grouse, native fish species, or bald eagles • Effects on fish and wildlife species not identified as sensitive, including impacts on population, health, behavior, or habitats, such as the breeding and nesting sites of birds, migratory routes and winter ranges for big game such as elk and mule deer, or the riparian habitats of fish species
Natural environment	<ul style="list-style-type: none"> • Water quality, such as impacts from sedimentation, polluted runoff contaminating surface or ground water, water supply or drinking water quality, or watershed health • Air quality, including increased emissions of carbon dioxide, carbon monoxide, nitrous oxide, methane, or air particulates, or impacts on the ozone layer • Other environmental concerns, such as noise pollution, climate effects from greenhouse gas emissions, soil erosion, or wilderness characteristics
Human use	<ul style="list-style-type: none"> • Public enjoyment and use, including impacts on hunting, fishing, hiking, biking, camping, horseback riding, scenic views, and human health and safety • Cultural sites, such as potential harm to ancestral grounds, historic sites, and other archaeological or paleontological resources • Livelihood and economies, such as concerns about livestock and agricultural productivity, impacts on local businesses, state revenues from leasing, and rural and noneconomic values including ways of life and suburban encroachment
Alleged violations of statute or policy	<ul style="list-style-type: none"> • Potential violations of federal laws, including the Clean Air Act, Clean Water Act, Endangered Species Act, Federal Land Policy and Management Act, National Environmental Policy Act, Mineral Leasing Act, and National Historic Preservation Act • Potential violations of Interior or BLM policies or guidance, including Interior policy on analyzing potential climate change impacts when undertaking planning and management activities and BLM guidance on how to manage species with special status or on determining the adequacy of environmental analyses before making leasing decisions

Source: GAO analysis of protest data obtained from BLM state offices.

Appendix III: Description of Litigation on Selected Lease Sales

This appendix describes litigation surrounding several of BLM's oil and gas lease sales held during fiscal years 2007-2009: New Mexico's April and July 2008 lease sales of parcels across New Mexico, Colorado's August 2008 lease sale of parcels atop the Roan Plateau in northwestern Colorado, and Utah's December 2008 lease sale of parcels in eastern Utah.¹

New Mexico's April and July 2008 Lease Sales

In March 2008, several environmental and community organizations filed a protest opposing the leasing of all 51 parcels located in the state of New Mexico that BLM identified in its lease sale notice for its April 2008 lease sale, arguing, among other things, that BLM failed to adequately analyze the environmental effects of greenhouse gas emissions that would result from past, present, and future oil and gas development on BLM lands. In April 2008 BLM carried out the lease sale after removing 40 of the 100 originally proposed parcels from the sale, and in July it dismissed the protests on the remaining parcels that were offered at the lease sale.² The agency noted that on receipt of the groups' protest letter, it directed each BLM field office in New Mexico to prepare a new environmental assessment to analyze the potential impacts from lease exploration and development and to account for potential greenhouse gasses during exploration, development, and transportation.

In May 2008, BLM announced the next lease sale, identifying 80 parcels, to be held in July. Numerous groups filed protests against all the parcels located in New Mexico, raising issues similar to those that were raised at the April sale. BLM field offices completed their greenhouse gas environmental assessments just before the July sale. BLM held the sale in July, offering 78 parcels for lease, and dismissed all the protests the following October. In January 2009, several of the groups that had filed protests challenged the April and July 2008 New Mexico lease sales in federal court.³ The groups argued, among other things, that BLM's planning and decision-making process for the lease sales failed to address the global-warming impacts of the oil and gas development, in violation of the National Environmental Policy Act, the Federal Land Policy and

¹GAO expresses no views as to the merits of any of the legal arguments in these pending cases.

²According to BLM officials, the agency removed 39 of these 40 parcels from the sale for reasons related to litigation not associated with the protests.

³*Amigos Bravos et al v. United States Bureau of Land Management et al.*, Civ. No. 09-37 (D.N.M. filed Jan.14, 2009).

Management Act, and Department of the Interior Secretarial Order 3226.⁴ As of May 2010, this case was pending.

Colorado’s August 2008 Lease Sale

In June 2007, BLM approved a resource management plan providing for oil and gas development on the Roan Plateau. In August 2008, BLM conducted a lease sale including parcels on top of the plateau, all of which were protested by multiple groups. The Assistant Secretary of the Interior for Lands and Minerals dismissed the protests related to the parcels on the plateau, and BLM issued these leases in September 2008. Environmental organizations filed a lawsuit challenging both the resource management plan and the lease sale, arguing that these actions violated the National Environmental Policy Act and the Federal Land Policy Management Act.⁵ Four settlement conferences have occurred, the most recent in May 2010, but the parties did not reach agreement, and as of May 2010, the case was pending. See table 8 for a more detailed chronology of the events surrounding the Roan Plateau lease sale.

Table 8: Chronology of Events Surrounding the Roan Plateau Lease Sale

Date	Action
November 1997	National Defense Authorization Act for Fiscal Year 1998 (Pub. L. No. 105-85, § 3404(a)) transfers management authority over the Roan Plateau Planning Area from the Department of Energy to BLM.
November 2000	BLM begins its resource management plan amendment process for the transferred lands.
November 2004	BLM issues a draft environmental impact statement for the resource management plan amendment.
October 2006	BLM receives 42 protest submissions by the close of the public protest period.
June 2007	BLM amends the Glenwood Springs Field Office resource management plan to provide for oil and gas development atop the Roan Plateau. BLM dismisses all protests against the proposed plan.
December 2007	Colorado’s governor requests BLM to limit oil and gas development atop the plateau.

⁴Section 3 of Order 3226, as in effect at the time the complaint was filed, states: “Each bureau and office of the Department [of the Interior] will consider and analyze potential climate change impacts when undertaking long-range planning exercises, when setting priorities for scientific research and investigations, when developing multi-year management plans, and/or when making major decisions regarding the potential utilization of resources under the Department’s purview.” This direction specifically applies to “planning and management activities associated with oil, gas and mineral development on public lands.” Two days after the Amigos Bravos complaint was filed, Interior amended Order 3226 to, among other things, remove the specific reference to oil, gas, and mineral development activities. Order 3226, amendment No. 1 (Jan. 16, 2009). In September 2009, Interior repealed the amendment, thus restoring the original language of the order.

⁵*Colorado Environmental Coalition v. Salazar*, Civ. No. 08-1460 (D. Colo. filed July 11, 2008).

Appendix III: Description of Litigation on Selected Lease Sales

Date	Action
March 2008	BLM further amends the resource management plan to designate additional protected acreage atop the plateau, although less than the amount Colorado requested.
June 2008	BLM announces it will offer for leasing in August all BLM lands available for mineral development on the plateau.
July 2008	Environmental groups challenge BLM's approval of the resource management plan amendment and proposed lease sale in federal court, alleging that these actions violated (1) the National Environmental Policy Act by, among other things, failing to analyze a reasonable range of alternatives to the plan's oil and gas development approach and (2) Federal Land Management Policy Act by failing to ensure compliance with the Clean Air Act's ozone requirements (<i>Colorado Environmental Coalition v. Salazar</i> , D. Col., Case 1:08-cv-01460-MSK-KLM). The state of Colorado files a protest to the lease sale, asserting that the sale fails to protect valuable fish and wildlife habitat, will not maximize economic return to the state, and could result in the state's not receiving its share of mineral bonuses and royalties. Several environmental groups file protests as well, making arguments similar to those in the lawsuit.
August 2008	BLM holds a lease sale for all of its lands atop the plateau designated as available for oil and gas development.
September 2008	Assistant Secretary of the Interior for Lands and Minerals dismisses the protests against the lease sale. Because the Assistant Secretary, rather than a BLM official, dismisses the appeals, protesters cannot appeal the dismissals to the Interior Board of Land Appeals.
October 2008	BLM issues the leases for all parcels sold at the lease sale.
March 2009	Settlement discussions begin in <i>Colorado Environmental Coalition v. Salazar</i> .
May 2010	Latest settlement discussions fail to produce agreement.

Source: GAO analysis.

Utah's December 2008 Lease Sale

In December 2008, BLM's Utah state office held a lease sale offering over 100 parcels in eastern Utah, many of which were protested. In January 2009, in response to a lawsuit by several environmental groups, a federal district court entered a temporary injunction against the sale of 77 of the parcels after concluding that the groups had established a likelihood of success on their claims that the lease sale violated the National Environmental Policy Act, the Federal Land Policy and Management Act, and the National Historic Preservation Act.⁶

In February 2009, the Secretary of the Interior concluded that the issues raised by the court, along with other concerns that had been raised about the lease sale, merited a special review. Citing controversy over the degree of coordination between BLM and the National Park Service regarding some of the parcels offered for sale, as well as over the adequacy of BLM's environmental analyses associated with the parcels, the Secretary issued a

⁶*Southern Utah Wilderness Alliance v. Allred*, 2009 WL 765882, Civ. No. 08-2187 (D.D.C. Jan. 17, 2009).

memorandum to BLM's Utah state office, directing it to withdraw the 77 parcels covered by the injunction from further consideration in this lease sale.⁷

In May 2009, several winning bidders and three Utah counties filed suits in federal district court in Utah, seeking to compel the government to issue the leases.⁸ The bidders and counties argued, among other things, that the Secretary's action violated a provision of the Mineral Leasing Act stating that "leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year."⁹ The government contends that nothing in the 60-day provision prevents the Secretary from withdrawing a parcel from consideration in a lease sale at any time before lease issuance. As of May 2010, these cases were still pending.

⁷The Secretary directed BLM not to accept the high bids on the 77 contested leases and withdrew the leases from further consideration. By this time, however, BLM had already accepted the winning bidders' initial payments (including bonus bids and first-year rents) of each lease sold. The agency subsequently refunded those payments. In the *Allred* case, plaintiffs challenged the adequacy of the lease sale, as well as certain resource management plans in Utah that identified specific areas as available for oil and gas leasing. Because the leases were withdrawn, plaintiffs did not pursue the lease sale portion of the case, but as of March 2010, the resource management plan portion of the case was pending. A list of the 77 leases is available at http://www.blm.gov/wo/st/en/info/newsroom/2009/february/table_of_utah_oil.html (visited April 27, 2009).

⁸*Impact v. Salazar*, Civ. No. 09-435 (D. Utah filed May 13, 2009); *Twilight Resources v. Salazar*, Civ. No. 09-442 (D. Utah filed May 13, 2009); *Uintah County v. Salazar*, Civ. No. 09-440 (D. Utah filed May 13, 2009).

⁹30 U.S.C. § 226(b)(1)(A).

Appendix IV: Comments from the Department of the Interior



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240



JUL 14 2010

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

Dear Mr. Rusco:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report entitled, "BLM's Management of Public Protests to Its Lease Sales Needs Improvement," (GAO-10-670). The Department of the Interior (Department) appreciates the recognition of its efforts toward collecting agency-wide protest data and implementing leasing reform policies to improve public involvement and transparency for lease sales. The GAO's draft report contains two recommendations "[t]o improve the efficiency and transparency of BLM's process with regard to protests of its lease sale decisions and to strengthen how BLM carries out its responsibilities under the Mineral Leasing Act." The Department generally agrees with the findings and concurs with the two recommendations.

The GAO first recommends that BLM "revisit the way it tracks protest information and in doing so ensure that complete and consistent information is collected and made publicly available." The Department concurs with Recommendation 1. The Public Challenge Module reviewed in the draft report has not been a useful tool for the Bureau of Land Management (BLM) or the public. While policy and data entry standards have been established to collect relevant information regarding protests, appeals, and litigation, the system as established has limited utility because the collection of public challenge data has been incomplete and inconsistent. The BLM will revisit the agency's use of this module and determine if the module can be redesigned, if a commercial off the shelf (COTS) application would be more effective, or if the existing LR2000 case recordation system can be modified to effectively collect and make available public challenge data. Once analyzed, the BLM will implement an approach to better track protest-related information by the end of calendar year 2011.

The GAO next recommends that the BLM improve (a) "the transparency of leasing information provided to the public" with respect to the basis for its leasing decisions; and (b) "the timeliness of lease issuance, without compromising the thoroughness of review". The Department concurs with Recommendation 2. As acknowledged in the draft report, the BLM is implementing new onshore leasing reform policies that will provide earlier opportunities for public input in the lease sale process. The Department believes that these reform policies will provide the increased public participation and transparency suggested under Recommendation 2. Prior to leasing reform, most lease sales were based solely on the prior NEPA analysis conducted in support of

the Resource Management Plan (RMP). Prospective lease sale parcels received a field office review prior to the sale to ensure conformance with the RMP. With leasing reform, prospective lease parcels will now undergo additional environmental review and a new opportunity for public comment. Adjustments to the unsigned NEPA documents and lease parcel list may be made based on the public comments received. Prior to the lease sale the public will be afforded the opportunity to protest individual parcels. The results of the protest resolution may also be incorporated into the NEPA document and associated decision. The BLM will post all associated NEPA documents along with all protest response decisions for each sale on that state's web page. The posted NEPA documents and protest response decisions will provide the public with insight into the role these protests played on lands offered, and if these protests influenced the BLM's decision to lease a parcel. The Department believes implementation of this new process will address the transparency and public access concerns under Recommendation 2.

Recommendation 2 also called for improving the timeliness of lease issuance. To address this concern, the Notice of Competitive Oil and Gas Lease Sale will now be posted 90 days before a sale (as compared to using the required minimum period of 45 days). This extended timeframe will continue to provide the public with an opportunity to protest specific parcels in a lease sale, and will also provide a better opportunity for the BLM to evaluate and respond to protests prior to the sale. The Department believes that this will improve the BLM's ability to adequately address a protest within the timeframes required for lease issuance under the Mineral Leasing Act.

If you have any questions about this response please contact LaVanna Stevenson-Harris, BLM Audit Liaison Officer, at 202-912-7077.

Sincerely,



Wilma A. Lewis
Assistant Secretary
Land and Minerals Management

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

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Acknowledgments

In addition to the individual name above, Tim Minelli, Assistant Director; Catherine Bombico; Adam Bonnifield; Mark A. Braza; Ellen W. Chu; Bernice Dawson; Justin Fisher; Charlotte Gamble; Alyssa M. Hundrup; Richard P. Johnson; Michael Kendix, Michael Krafve; Jena Sinkfield; Douglas Sloane; and Jeff Tessin made key contributions to this report.

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