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# Noncompetitive Oil & Gas Leasing on Federal Lands



The Bureau of Land Management (BLM) within the Department of the Interior manages approximately 700 million acres of onshore subsurface mineral estate in the U.S. The BLM is obligated to manage the development of the natural resources from that estate so that taxpayers receive fair market value. But over the years policies have not kept pace with technological developments or energy markets, including free on-site use of natural gas and low royalty rates, The BLM's onshore oil and gas program often fails to generate the return on development taxpayers are due. **One egregious giveaway is the ability of oil and gas interests to lease federal land extremely cheaply through a noncompetitive process.**

- Millions of acres are leased noncompetitively. From 2001 to 2020, the BLM issued 6,450 leases covering 11,260,000 acres through the noncompetitive system.
- If private interests had been made to pay **even the minimum bid** for these leases, taxpayers could have gotten **\$23 million more in bid revenue**.
- Noncompetitive leases almost never end up producing oil and gas. Because leases often take years to develop, the productivity of noncompetitive leases from more than 10 years ago is most telling. From FY2003 to FY2009, only one percent entered into production. The leases that did enter production produced little oil and gas and account for just one percent of royalties generated from all leases issued FY2003 to FY2009.<sup>1</sup>
- Speculators use the noncompetitive system to get leases for extensive acreage. Two well-known speculators in Nevada held title to 78 leases covering more than 200,000 acres as of May 2021.

- Raising the minimum bid for onshore oil and gas leases to \$10 per acre and requiring noncompetitive leases to pay it would generate **\$50 million in federal revenue over 10 years** according to CBO, with **another \$50 million directed to states**.

In 1987, lawmakers created a new leasing system<sup>2</sup> expressly because they determined competitive auctions would generate more revenue from leasing valuable federal land than the previous process, which allowed more than 95 percent of leases to be issued noncompetitively.<sup>3</sup> Despite this intent, a backdoor process to sidestep the auctions was left in and noncompetitive leases covering thousands of acres continue to be scooped up for next to nothing by speculators each year.

Over the last 20 years, approximately 6,450 leases were issued through the **noncompetitive leasing system**. These leases cover 11.3 million acres, or 28 percent of all leased federal land. Oil and gas interests have disproportionately used the noncompetitive system to avoid paying bonus bids on parcels with more acreage.

## The Competitive Leasing Process

In the competitive leasing process, oil and gas companies and other private interests submit their nominations, known as 'Expressions of Interest,' anonymously to the BLM. After eliminating nominations for land that is unavailable for leasing, the BLM assesses the potential environmental effects of oil and gas development on the remaining parcels. The agency then publishes a Notice of Sale including the refined list of parcels and the date and location where they will be auctioned off.

On the day of a lease sale, each parcel is offered and the highest bidder wins the rights to lease it and then must pay the BLM the final bid amount – the “bonus bid” – first year’s rent for the parcel, and a small administrative fee. Through this transaction, the BLM begins to recover the value of holding federal land for developing public oil and gas resources. In these auctions, bidders must make offers at or above the national minimum acceptable bid.

## The Noncompetitive Problem

After the auction, if a parcel does not receive a bid, it then becomes available for **noncompetitive leasing**. Companies or other parties may submit noncompetitive offers for the parcel the very next day after a lease sale is held. If multiple offers are submitted, the BLM holds a drawing to see who gets the right to lease the parcel. If no offers are submitted on the first day, the parcel is eligible for noncompetitive lease for the next two years, and the BLM will award a lease to the first eligible party to submit an offer. If the parcel is leased, the new lessee is required to pay an administrative fee, first year’s rent, and...that’s it. **No bonus bid is collected for parcels leased noncompetitively.**

In this way, speculators and other industry interests can gain access to federal land for almost nothing. Moreover, the ability to lease federal land noncompetitively provides an obvious incentive to not bid on a parcel during a lease auction. Why pay a bonus bid for the same lease terms for the same federal land if you don’t have to? And why speak up during an auction, where rivals can note your interest and outbid you, if you can get the lease noncompetitively a day later?

Oil and gas interests and speculators have taken advantage of the loophole in some states more than others. Of the 11.3 million acres leased noncompetitively since 2001, more than half were in Nevada. Montana, followed by Wyoming and Utah, accounted for the next most acreage leased noncompetitively.

## Acreage and Prevalence of Noncompetitive BLM Oil & Gas Leases (2001-2020)

State	Acres	Portion of All Acres Leased
<b>Nevada</b>	5,971,288	61%
<b>Montana</b>	1,296,696	47%
<b>Wyoming</b>	1,065,786	9%
<b>Utah</b>	994,552	23%
<b>All States</b>	11,261,434	28%

### Actual Producers Don't Need Noncompetitive Leasing

Noncompetitive leasing does not benefit companies that follow the standard competitive process and bid on parcels at auction. Ending this practice would not impact the ability of drillers to produce oil and gas and bring it to market for consumers and taxpayers. It would also make land that is unlikely to produce oil and gas more readily available for other energy development and recreational use. Industry spokespeople acknowledge that letting “bad actors” nominate huge swathes of land with little oil and gas potential and then refrain from bidding on them at auction makes the industry look bad and wastes BLM resources.<sup>4</sup>

### An End-Run around Auction Bidding

In December 2017, a BLM field office lease sale offered 204 parcels of land in Montana for auction and received bids on 55 of them, which was on par with the level of industry interest in previous sales. However, on the day after the sale, the BLM field office reported that 132 of the remaining 149 parcels of land received noncompetitive offers made by one company, Highlands Montana Corporation. But December 2017 lease sale was only part of the company’s land grab effort— throughout fiscal year 2018, Highlands Montana Corporation secured 227 leases covering more than 113,000 acres of federal land, all through noncompetitive leasing process.

Had the minimum bid of \$2 per acre been charged for the 113,000 acres leased noncompetitively instead of \$0 per acre, taxpayers would have gained more than \$175,000 in additional revenue, net of fee differences. If Montana’s average bid price of \$32 per acre in 2017 had been charged for those 113,000 acres, taxpayers would have received \$3.6 million in additional revenue.

## Widespread Leasing Leading to Nothing

From 2001 to 2020, close to six million acres in Nevada were leased through the noncompetitive process, which accounts for 53% of all federal land leased noncompetitively nationwide. BLM records indicate that out of 2,500 noncompetitive leases issued since 1999 in Nevada, only two entered production. Millions of acres of federal land is currently locked up in nonproducing oil and gas leases that are unlikely to ever enter production and are unavailable for other, more optimal uses like recreation, wildlife and fish, grazing, timber, etc. Had the minimum bid of \$2 per acre been charged for the 6 million acres leases noncompetitively, taxpayers would have gained \$12 million in additional revenue, half of which would have gone to the state of Nevada.

All the statistics point to one driver of federal oil and gas leasing in Nevada: speculation. Noncompetitive leasing, along with low bids and rental rates have encouraged private entities, or speculators, to lease lands and seek to profit by reselling leasing rights to a production company. Oil and gas companies might acquire parcels, either directly or through speculators, without ever developing them to inflate their undeveloped acreage numbers reported to investors. It is a cheap way to aggrandize a company's production prospects, even when the leased lands have little to no potential for development.

## Conclusion

Congress made it policy that taxpayers should get fair market value for the use of federal land and development of federal resources. Congress also determined the best way to get fair market value for oil and gas leases on federal land was through a competitive auction with reasonable minimum bids. The existence of the noncompetitive process and the failure of BLM to raise the national minimum bid have undermined the competitive process. Without reform, private interests will continue to sidestep competitive bidding, lock up federal land from other uses, and pay taxpayers little through the noncompetitive leasing system.

## References

- <sup>1</sup> GAO-21-138, "Oil and Gas: Onshore Competitive and Noncompetitive Lease Revenues," Dec. 2020.
- <sup>2</sup> Federal Onshore Oil and Gas Leasing and Reform Act of 1987 (FOOGLRA) – P.L. 100-203, Title V, Subtitle B
- <sup>3</sup> GAO RCED-89-108, "Mineral Revenues: Implementation of the Federal Onshore Oil and Gas Leasing Reform Act of 1987," May 1989.
- <sup>4</sup> Nevada Independent, "[A U.S. Senator, a Top Oil Lobbyist and a Hard-Line Environmentalist Question BLM Oil and Gas Leasing](#)," September 2018.