

September 2023

Giving it Away II: How Utah Continues to Lose from Oil and Gas Development on Federal Lands

\$721 million in forgone royalty revenue under the 12.5% royalty rate, FY13-FY22. **\$17.8 million** in lost rental revenue from outdated rental rates for federal leases, FY13-FY22.

31% of acres sold from FY13-FY22 were sold for the minimum bid **and** **54%** of acres were sold for less than \$10 per acre.

\$191 million in potential reclamation liability for currently producible federal wells in Utah. **\$18.6 million** worth of federal gas wasted, FY12-FY21

\$3.5 million in lost royalty revenues from gas waste.

Federal taxpayers collectively own rich mineral resources across the United States. It is the responsibility of the Bureau of Land Management, an agency under the Department of the Interior (DOI), to oversee the vast subsurface mineral estate and to manage the development of those resources. Despite the massive value of federally owned oil and gas resources, taxpayers receive minimal returns due to outdated and below-market federal onshore leasing terms.

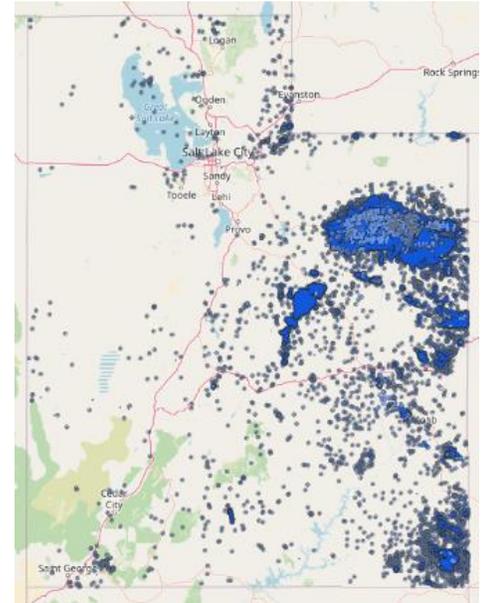
Issues within the onshore leasing system, including below-market rental and royalty rates, have cost taxpayers \$742 million in lost revenue over the last decade in Utah. Additionally, outdated bonding policies - funds secured so that any environmental liabilities from drilling can be remediated - are woefully insufficient for the scale of orphaned oil and gas wells awaiting recovery. In Utah, these outdated systems and policies have saddled taxpayers with a potential bill of \$191 million in reclamation costs from currently producing wells on federal lands.

Oil and Gas Production in Utah

As of the end of Fiscal Year (FY) 2022, 2.4 million acres of federal land in Utah were leased for oil and gas development.¹ Utah has the 4th highest acreage of leased land in the United States, behind Alaska, New Mexico, and Wyoming.

Between FY2013 and FY2022, Utah was the 6th largest producer of oil and 4th largest producer of natural gas on federal lands, accounting for 4% and 6%, respectively, of all oil and gas produced on federal lands.²

This production of oil and gas should have generated sizeable revenues for federal and Utah taxpayers alike, since revenue for royalties and other leasing terms are shared with the state. However, outdated and below-market leasing terms have not only limited much-needed revenue for taxpayers, but have also allowed oil and gas operators to skirt the responsibilities of reclaiming (cleaning up) well sites after operations cease, leaving taxpayers to cover the costs.



Oil and Gas Wells on Federal and Nonfederal Land in Utah | Utah Department of Natural Resources

The Federal Oil and Gas Program

The federal government possesses the opportunity to capture fair market value for taxpayers throughout the leasing process. Initially, DOI auctions leases to the highest bidder in a live auction, with the resulting revenue termed as “bonus bid” revenue. Following this, the federal government imposes rent on leaseholders for holding the land before production commences. Once leases begin to produce oil and gas, leaseholders are charged a fixed percentage of the production’s value, known as a royalty. Under the previous leasing system, which has only recently been updated, taxpayers lost valuable revenue at each stage of the process.

For decades, the federal government employed the same, below-market royalty rate, rental rate, and minimum bid for onshore oil and gas leases. The 12.5% royalty rate on federal lands was set by Congress as the legal minimum over 100 years ago, remaining unchanged until last year. This rate was significantly less than what is charged in federal waters (18.75%) or on many state lands (up to 25% in Texas and 18.75% in Utah³). The previous rental rate for holding land not currently

¹ “BLM Oil and Gas Statistics.” Bureau of Land Management, n.d. <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

² “Natural Resources Revenue Data.” U.S. Department of the Interior, <https://revenue.data.doi.gov/query-data/>

³ The state of Utah typically charges 16.67%, although the State of Utah School and Institutional Trust Lands Administration (SITLA) can issue oil and gas leases with more competitive rates like 18.75%.

under development – \$1.50/acre per year for years 1-5 of the lease and \$2/acre per year after – and minimum bid – \$2/acre – remained unchanged for decades before being updated last year.

Low rates and the practice of noncompetitive leasing enabled lease holders to retain federal land without engaging in development activities. Moreover, the federal government has taken limited action to dissuade companies from holding federal leases without utilizing the oil and gas resources associated with them. By the end of FY2022, approximately 11.3 million acres of federal land, constituting nearly half of all leased land designated for oil and gas development, remained non-producing.⁴ A portion of this land is leased by private entities that have little or no intention of extracting oil or gas. Instead, they aim to retain the land for alternative purposes or seek to generate profit by selling their leasing rights to production companies. This situation not only diminishes potential royalty-based revenue for taxpayers, but also restricts the utilization of valuable land for other purposes.

After production ends, oil and natural gas producers operating on federal land are required to plug their wells and clean up the surrounding sites. To guarantee that the cleanup of these potentially hazardous and environmentally harmful sites is paid for, producers must post a bond before they start drilling. If a company abandons its wells on a federal lease or goes bankrupt, the bond is intended to cover the reclamation expenses. However, for leases on federal land, the required bond amounts have not changed in over 60 years and do not cover the full cost of cleanup. Consequently, taxpayers are left paying millions of dollars to reclaim thousands of abandoned wells scattered across federal lands.

Recent Reforms

Recent legislation addressed many of these outdated and below-market fiscal terms, heralding a new era of financial returns for taxpayers. The FY2022 budget reconciliation bill, signed into law in August 2022, included several critical updates to oil and gas leasing rates for the next decade. Under the new reforms, until August 2032, the federal onshore royalty rate will be 16.67%; rental rates are raised to \$3/acre for the first two years, \$5/acre for years three to eight, and then no less than \$15/acre for years nine and ten; and the minimum bid has been raised to \$10/acre. After August 2032, these rates will become the statutory minimum and the rental rates and minimum bids are subject to inflation adjustments. The bill also eliminated the practice of noncompetitive leasing and created a new expression of interest fee for entities nominating federal land for competitive lease sales, two important measures for helping to limit speculative leasing.

⁴ “BLM Oil and Gas Statistics.” Bureau of Land Management, n.d. <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

While these changes represent a significant step toward fair returns for federal oil and gas resources, current system shortcomings persist, as seen in the below-market royalty rate and policies that permit producers to waste taxpayer-owned natural gas without adequate compensation. Moreover, the existing bonding requirements expose taxpayers to vast reclamation expenses.

DOI's current plans include additional updates to rules and policies to further secure fair returns. In late July 2023, DOI released a proposed rule that would codify reforms made by Congress in the FY2022 budget reconciliation bill, as well as other recommendations from the Department of the Interior's Report on the Federal Oil and Gas Leasing Program. In tandem with fiscal revisions, the proposed rule would increase the minimum lease bond amount to \$150,000 and the minimum statewide bond to \$500,000, and eliminate nationwide and unit bonds. The rule would also direct oil and gas leasing away from sensitive areas. These continued efforts aim to enhance taxpayer returns, protect taxpayers from shouldering the oil and gas industry's liabilities, and potentially further reduce speculative leasing.

In the proposed rule, DOI outlines the minimum royalty rate past the 10-year window at 16.67% even though DOI has previously set higher rates. In June 2022, DOI held an oil and gas lease sale that included a royalty rate of 18.75% specific to those leases. After August 16, 2032, DOI could elevate the royalty rate, thereby better capturing fair returns on federal lands.

Additional agency rulemakings on the horizon will help assure taxpayers a fair return on valuable oil and gas resources, such as improving the capture and royalty collection of vented and flared methane from federal wells.

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Noncompetitive Leasing and Low Bids

Prior to the fiscal reforms implemented last year, the practice of noncompetitive leasing, coupled with low bids and no expression of interest fee, resulted in private entities or speculators acquiring leases on federal lands with the intent of profiting from the resale of leasing rights to production companies. Oil and gas companies, either through direct acquisition or by partnering with speculators, sometimes obtain parcels of land without any intention of developing them. This strategy allows them to artificially inflate their reported numbers of undeveloped acreage, thereby enhancing their perceived production prospects. Even though these leased lands may hold minimal to no potential for actual development, this approach provides a cost-effective means for companies to amplify their growth prospects. Public lands leased speculatively almost never enter production.

Along with noncompetitive leasing, a low minimum bid has allowed companies and speculators to scoop up federal lands at rock bottom prices. Of all acres leased at auction in Utah during FY2013-FY2022, 31% of acres were sold for the minimum bid of \$2 per acre and 54% were sold for less than \$10 per acre.⁵ Leasing noncompetitively or for less than \$10 per acre, amongst other factors – like being leased by entities that are not exploration and production companies – are some of the characteristics of federal oil and gas leases that indicate they might be unreasonably speculative, given the high likelihood these leases will be terminated without ever reaching production.⁶

Noncompetitive leases and leases sold for minimum bid shortchange taxpayers both by lowering the amount of revenue taxpayers receive from bonus bids and by keeping valuable federal land from other, productive uses. In an analysis of federal oil and gas leases that started in FY2003 through FY2009, the Government Accountability Office (GAO) found that noncompetitive leases comprised about 38% of all acreage leased but only generated 11% of the revenue.⁷ From FY2003 to FY2019, competitive leases generated \$14.3 billion while noncompetitive leases generated only \$1.8 billion. Furthermore, only 1.2% of noncompetitive leases and 1.9% of leases sold for the minimum bid of \$2 per acre issued during the analysis timeframe ever entered production.⁸

Leases that have not been utilized for oil and gas production hold the potential for various valuable uses that can benefit taxpayers, such as conservation efforts, recreational activities, or

⁵ All information regarding acreage sold for the minimum bid or for less than \$10/acre was calculated by TCS through BLM reporting on oil and gas lease auctions.

⁶ “The Cost of Speculation on Oil and Gas Leases on Federal Land”, Taxpayers for Common Sense, October 2017. https://www.taxpayer.net/wp-content/uploads/ported/images/downloads/LOCKED_OUT_Energy_Report.pdf

⁷ Government Accountability Office, “Oil and Gas: Onshore Competitive and Noncompetitive Lease Revenues,” November 2020. <https://www.gao.gov/products/gao-21-138>

⁸ Ibid.

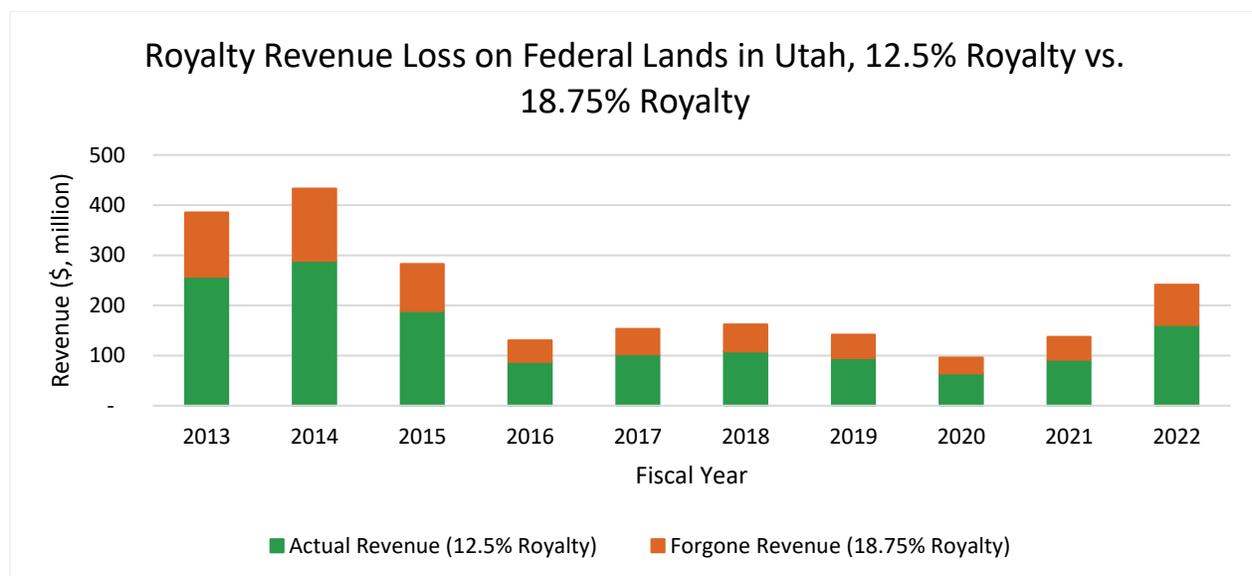
even alternative energy development, among other possibilities. Instead, outdated and ineffective federal leasing policies allow companies to lock up federal land and provide little return for taxpayers.

Revenue Losses from Onshore Leasing Terms

While recent actions have helped bring the federal onshore oil and gas leasing system into the 21st century, they are still inadequate at protecting taxpayers and ensuring a fair return from the sale of taxpayer-owned resources. Taxpayers have lost millions of dollars and, without permanent reform, may continue to lose millions more from outdated and below-market royalty rates and rental rates. Current federal policies on lost gas and bonding benefit the oil and gas industry at the expense of taxpayers, burdening the nation with growing long-term liabilities.

Royalty Rate

Between FY2013 and FY2022, the onshore federal oil and gas royalty rate was set at 12.5%. This rate, originally set over a hundred years ago, was below-market and cost taxpayers millions of dollars in potential revenue in Utah. Over the last decade, the Office of Natural Resource Revenue (ONRR) reported \$1.4 billion in royalty revenue from oil and gas production in Utah.⁹ If the current onshore royalty rate of 16.67% had been applied to this same level of production, taxpayers would have received an additional \$481 million in revenue.¹⁰ If a royalty rate more in line with what is charged in federal waters, 18.75%, had been applied over the last decade, taxpayers would have received an additional \$721 million in revenue.



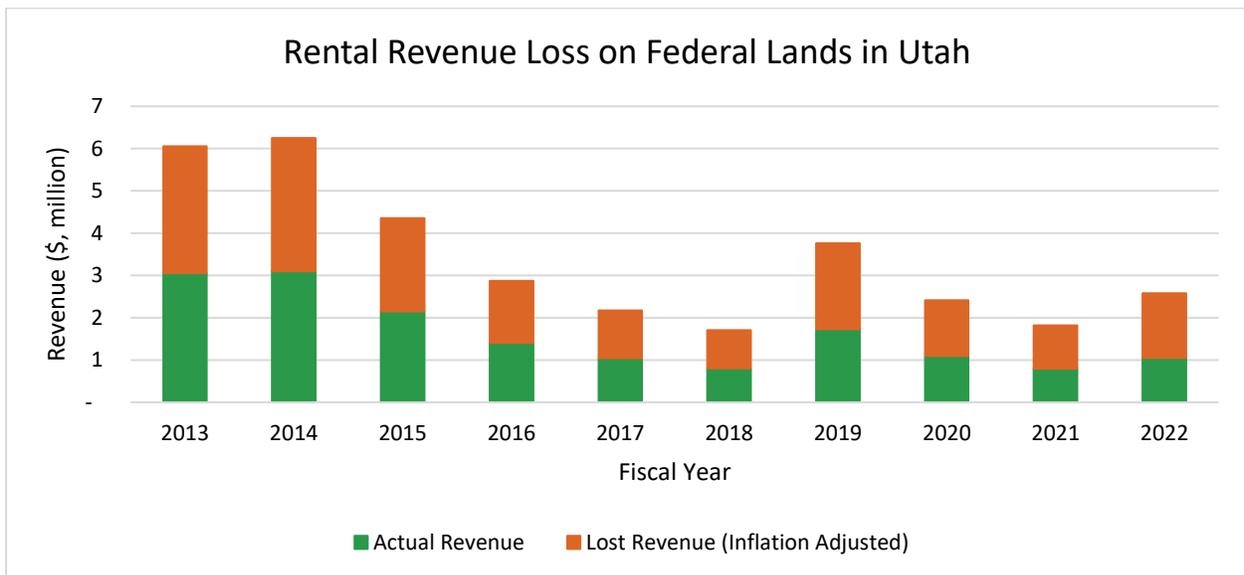
⁹ "Natural Resources Revenue Data." U.S. Department of the Interior, n.d. <https://revenuedata.doi.gov/query-data/>.

¹⁰ Lost royalty and rental revenue estimates are calculated by TCS using ONRR data.

Rental Rate

The minimum rental rates – and frequently the rental rate applied to a lease – for federal oil and gas lessees over the last decade were \$1.50/acre for the first 5 years of the lease and \$2/acre for the second half of the lease term. Prior to last year, these rates had not been updated since 1987. Adjusted for inflation, the federal rental rates should have been \$3.69/acre and \$4.92/acre, respectively, in 2022.

Between FY2013-2022, ONRR collected \$16.2 million in rental revenue from onshore oil and gas leases in Utah that had not yet entered production.¹¹ By not adjusting for inflation, federal taxpayers lost out on \$17.8 million in potential revenue from rental fees in Utah over the last decade.¹² A new proposed rule at DOI would require that base rental rates be updated annually for inflation.



Federal Bonding Requirements

Inadequate and outdated oil and gas bonding requirements have pushed the responsibilities and costs of orphaned well reclamation onto federal taxpayers. Oil and gas wells can cost hundreds of millions of dollars to properly reclaim, a cost federal minimum bonding requirements fail to cover. According to GAO, the average value of bonds held by DOI in 2019 was \$2,122 per well.¹³

¹¹ “Natural Resources Revenue Data.” U.S. Department of the Interior, n.d. <https://revenue.data.doi.gov/query-data/>.

¹² Lost royalty and rental revenue estimates are calculated by TCS using ONRR data.

¹³ “Oil and Gas: Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells.” Government Accountability Office, September 18, 2019. <https://www.gao.gov/products/gao-19-615>

Yet the true cost of reclaiming wells in Utah is far higher. According to the Utah Department of Natural Resources (DNR), the state has plugged approximately 100 wells since 1992 at a total cost of \$2.5 million, or \$25,000 per well,¹⁴ which is more than 11 times the average federal bond held to cover such costs.¹⁵ Utah DNR currently reports that there are 44 open orphan wells with no known operator in the state, 12 of which are on federal lands.¹⁶ However, some claim this number is likely an underestimate, influenced in part by the fact that Utah DNR is primarily responsible for wells on state and private lands.¹⁷

Federal taxpayers are not only paying for currently orphaned wells on federal land in Utah, but also face potential reclamation costs from currently producing wells that carry the same, outdated bonding minimum requirements. At the end of FY2022, there were 8,352 active oil and gas wells on federal lands in Utah.¹⁸ If we assume that DOI has the same average bond value as it did in 2019, these wells carried total bonds worth \$17.7 million. Using the Utah DNR average cost of well reclamation, federal bonds would fail to cover the full costs of reclamation, leaving taxpayers to cover \$191.1 million in potential future costs.

Taxpayers are already paying to reclaim orphaned wells: the Infrastructure, Investment and Jobs Act (IIJA) appropriated \$250 million for reclaiming orphaned wells on federal lands. In 2022, Utah received \$1.3 million to reclaim 14 orphaned wells on federal land across the state and to conduct an inventory and assessment of orphan wells in Glen Canyon National Recreation Area.¹⁹ This year, Utah received additional funding to reclaim one documented orphaned well in Canyonlands National Park.²⁰

Federal taxpayers are potentially on the hook for more, as the federal government often funds efforts to reclaim orphaned wells on state and private land as well. The IIJA appropriated a total

¹⁴ Some reclamation estimates for wells in Utah are much higher. The Interstate Oil and Gas Compact Commission reports 4 wells were plugged between 2018 and 2020 at a total cost of \$256.5 million, for an average cost of \$64,124 per well. Source: "Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies 2021," Interstate Oil & Gas Compact Commission, 2021, https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc_idle_and_orphan_wells_2021_final_web_0.pdf

¹⁵ "Orphan Well Program," Utah Department of Natural Resources, accessed August 17, 2023. <https://oilgas.utah.gov/orphanWells.php>

¹⁶ "Well Counts," Utah Department of Natural Resources, accessed August 31, 2023. <https://oilgas.ogm.utah.gov/oilgasweb/statistics/well-counts.xhtml>

¹⁷ "Millions of Americans live near abandoned, toxic oil and gas wells. What does the government plan to do about it?" Kyle Dunphey, *Deseret News*, January 8, 2022. <https://www.deseret.com/utah/2022/1/8/22870512/blm-toxic-abandoned-oil-gas-wells-plug-infrastructure-bill-utah-uintah-basin>

¹⁸ "BLM Oil and Gas Statistics." Bureau of Land Management, n.d. <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

¹⁹ "Investing in America: President Biden's Bipartisan Infrastructure Law is Delivering in Utah," White House, May 2023. <https://www.whitehouse.gov/wp-content/uploads/2023/05/Utah-Fact-Sheet-May.pdf>

²⁰ In June 2023, DOI allocated \$64 million for orphan well cleanup, as well as funds for orphan well inventory and analysis, across 21 states, including Utah. The amount allocated specifically to Utah was not disclosed. Source: "Biden-Harris Administration Announces \$64 Million to Address Legacy Pollution on Federal Lands and Waters, Create Good-Paying Jobs Through Investing in America Agenda," U.S. Department of the Interior, June 8, 2023. <https://www.doi.gov/pressreleases/biden-harris-administration-announces-64-million-address-legacy-pollution-federal>

of \$4.3 billion for orphaned well cleanup programs on state and private lands: \$775 million in initial grants, \$2 billion in formula grants, and \$1.5 billion in performance grants.²¹ Utah did not receive initial grant funding but is eligible for up to \$5.2 million in formula funding.²²

Royalty-Free Gas

During oil and gas production, operators regularly vent (release), flare (burn), and leak natural gas, releasing it into the atmosphere. Over the last decade, operators on federal land reported losing 5.3 million cubic feet of methane, worth approximately \$18.6 million, in Utah.²³ If all reported gas lost during that period had been properly brought to market and charged at the federal onshore royalty rate of 12.5%, taxpayers would have received \$2.3 million in revenues. Instead, ONRR reported only collecting \$24,895 in royalty revenue over that period.²⁴ Had a royalty rate of 18.75% been charged over the same period, taxpayers would have received \$3.49 million in revenue, \$3.46 million more than what was actually collected.

Conclusion

It is the responsibility of the federal government to ensure that federal taxpayers are adequately compensated for the use and development of publicly owned resources. As it stands right now, the current leasing system is not accomplishing this task, and taxpayers in Utah are being shortchanged for it. Federal and state taxpayers deserve better from their government. Reforms to the federal onshore leasing program will ensure that the people of Utah receive a fair market return for the resources we all own.

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²¹ P.L. 117-58, title VI, §40601

²² Utah was also eligible for \$25 million in Initial Grant funding but did not apply.

²³ All information regarding methane emissions on federal lands was obtained through the Office of Natural Resources Revenue via a Freedom of Information Act Request by TCS. Gas value calculations used monthly average Henry Hub Natural Gas Spot Prices obtained from the Energy Information Administration. Source: <https://www.eia.gov/dnav/ng/hist/rngwhhdM.htm>

²⁴ "Natural Resources Revenue Data." US Department of the Interior, n.d. <https://revenue.data.doi.gov/query-data/>.