

GAO

Report to the Honorable Richard Pombo
Chairman, Committee on Resources,
House of Representatives

November 2004

OIL AND GAS DEVELOPMENT

Challenges to Agency Decisions and Opportunities for BLM to Standardize Data Collection



G A O

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Highlights of [GAO-05-124](#), a report to the Chairman, Committee on Resources, U.S. House of Representatives

Why GAO Did This Study

U.S. consumption of oil and natural gas increasingly outpaces domestic production, a gap that is expected to grow rapidly over the next 20 years. There has been increasing concern about U.S. reliance on foreign energy sources. One option being considered is to increase domestic production of resources on land under the jurisdiction of the Department of the Interior's Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA) and Minerals Management Service (MMS) and the Department of Agriculture's Forest Service.

GAO determined (1) the stages when agency decisions about oil and gas development can be challenged by the public, (2) the extent to which BLM gathers and uses public challenge data to manage its oil and gas program, and (3) for fiscal years 1999-2003, the number of MMS offshore development decisions that were challenged.

What GAO Recommends

GAO recommends actions to improve BLM management of its oil and gas program by standardizing the collection of public challenge data at the leasing stage for onshore federal lands.

Interior said that BLM would continue its efforts to standardize public challenge data collection at the leasing stage. Agriculture said that the report is a good summary of the complex management of the oil and gas programs.

www.gao.gov/cgi-bin/getrpt?GAO-05-124.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Anu K. Mittal at (202) 512-3841 or mittala@gao.gov.

OIL AND GAS DEVELOPMENT

Challenges to Agency Decisions and Opportunities for BLM to Standardize Data Collection

What GAO Found

At the four stages of developing oil and gas resources—planning, exploration, leasing, and operations, BLM, the Forest Service, BIA, and MMS allow for public challenges to agency decisions. However, the agencies have different procedures for processing challenges that occur within the stages. For example, BLM leasing decisions can be challenged to a BLM state director, further appealed to the Interior Board of Land Appeals (IBLA), and litigated in federal court. Forest Service leasing decisions, however, sometimes can be appealed through the Forest Service supervisory chain of command and litigated in federal court. The Forest Service has no separate appeals board within the Department of Agriculture, such as IBLA, to review decisions. In addition, unlike BLM, the Forest Service has specific time frames during which appeals must be decided. BIA procedures offer opportunities for public challenges at the exploration and leasing stages, which are the only stages BIA makes decisions related to oil and gas development. MMS regulations do not provide for appeals at the planning or leasing stages, but do provide for appeals to IBLA during the exploration and operations stages. All MMS decisions could potentially be litigated in federal court.

BLM does not systematically gather and use nationwide information on public challenges to manage its oil and gas program. BLM has a system that state offices use to collect data on public challenges during leasing, but the state offices use it inconsistently because they lack clear guidance from headquarters on which data to enter. As a result, the system does not provide consistent information that BLM headquarters can use to assess workload impacts on its state offices and to make staffing and funding resource allocation decisions. Because this system does not track all the public challenge data necessary for managing workload, headquarters and state offices also use multiple, independent data collection systems that are not integrated with one another or BLM's system. BLM is in the process of developing a new system that provides an opportunity to standardize collection of data on public challenges at the leasing stage. However, it has not decided whether the new system will be used to track public challenge information.

Between fiscal years 1999 and 2003, MMS was challenged on only one of its 1,631 decisions approving offshore oil and gas development and production and only one of its 1,997 decisions approving offshore oil and gas exploration. Both decisions concerned land on the outer continental shelf off the coast of Alaska and were challenged by Alaskans, a Native American tribe, or an environmental interest group on the basis that the decisions violated the National Environmental Policy Act and other laws. One of the decisions was litigated in federal court and the court decided against the challenges. The other decision was appealed to IBLA but the company discontinued work before a decision was reached.

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Abbreviations

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
FWS	Fish and Wildlife Service
GAO	Government Accountability Office
IBIA	Interior Board of Indian Appeals
IBLA	Interior Board of Land Appeals
MMS	Minerals Management Service
NPS	National Park Service
NEPA	National Environmental Policy Act

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United States Government Accountability Office
Washington, D.C. 20548

November 30, 2004

The Honorable Richard Pombo
Chairman, Committee on Resources
House of Representatives

Dear Mr. Chairman:

U.S. energy consumption increasingly outpaces domestic production, and this demand is increasingly being met by imports of oil and natural gas. In 1982, domestic consumption of oil was about 15 million barrels per day: 73 percent (11 million) from domestic production and 27 percent (4 million) from imports. By 2003, domestic consumption of oil had increased to about 20 million barrels per day, with 45 percent (9 million) from domestic production and 55 percent (11 million) from imports. Natural gas consumption experienced a similar trend. In 1982, natural gas consumption was almost 18 trillion cubic feet per year, which essentially equaled domestic production. By 2003, natural gas consumption was about 22 trillion cubic feet per year, with 86 percent (19 trillion) from domestic production and 14 percent (3 trillion) from imports. The Department of Energy projects that dependence on foreign oil and gas will continue to grow rapidly over the next 20 years.

With continuing instability in many foreign energy-exporting regions including the Middle East, there has been increasing concern about U.S. reliance on foreign energy sources. One way being considered is to increase domestic production by further developing onshore resources on land under jurisdiction of the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) within the Department of the Interior, and the Forest Service within the Department of Agriculture, and offshore resources under the jurisdiction of Interior's Minerals Management Service (MMS). Among these agencies, BLM has the major federal role in managing the development of onshore oil and gas resources. It not only issues leases and permits for oil and gas development on land it manages directly but also for onshore land under the jurisdiction of the other federal agencies. BLM also assists BIA, Indian tribes, and tribal members in managing land owned by Indian tribes and individual Native Americans for oil and gas development. MMS is the sole agency responsible for managing offshore oil and gas development. BLM and Forest Service must also manage their lands for a variety of other uses such as fish and wildlife, grazing, outdoor recreation, timber, and watersheds.

Agency procedures for developing oil and gas resources provide opportunities for the public to challenge agency resource management decisions. Public challenges can occur in the form of protests, appeals, and litigation.¹ Through protests and appeals, challengers ask an agency or appeals board to review a decision—procedures that provide an opportunity for the agency to correct its own mistakes before it is called into court. In addition, agency administrative review procedures help promote judicial efficiency by resolving controversies before they are litigated in the courts, or at least by developing an extensive factual record on which the court may base its review.

In this context, you asked us to (1) identify the stages when agency decisions about oil and gas development can be challenged by the public, (2) determine the extent to which BLM gathers and uses public challenge data to manage its onshore oil and gas program, and (3) determine for fiscal years 1999-2003 the number of offshore oil and gas development decisions by MMS that were challenged, who challenged them, and the grounds, time frames, and outcomes of the challenges.

To identify the stages when the public can challenge oil and gas development decisions, we reviewed and analyzed applicable statutes, agency regulations, and documentation, and also interviewed BLM, Forest Service, BIA, and MMS officials.² To determine the extent to which BLM gathers and uses data on public challenges to manage its program, we reviewed and analyzed BLM documents including database manuals, internal memorandums, and agencywide procedures for gathering oil and gas activity data. In addition, we interviewed BLM officials in both headquarters and selected state offices to determine what data on public challenges are gathered and used. To obtain information on offshore oil and gas development decisions and challenges, we interviewed agency

¹A protest is an objection to a proposed decision, while an appeal is filed after the decision is made. In this report we use the term “litigation” to mean a challenge to an agency or departmental decision that is brought in federal court. All litigation is subject to certain threshold defenses that may prevent the suit from being decided in court. A person must have *standing* to bring the suit, the case must be *ripe* for decision, the case must not have been made *moot* by external events, and the person must generally have *exhausted* administrative remedies. Discussion of these complex doctrines is beyond the scope of this report, but when we state that a particular decision may be litigated, that does not mean that a member of the public is entitled to or will necessarily receive a decision on the merits.

²In this report, we use the word public to refer to third-party challengers to oil and gas decisions. Thus, the term excludes lessees, operators, and states. The procedures we describe in this report apply to operators and lessees as well.

officials and analyzed information from MMS databases that recorded the number of oil and gas decisions and challenges made in fiscal years 1999 through 2003. We discussed the results with agency officials in headquarters and regional offices to corroborate our analysis and to obtain additional information on the public challenges. We conducted our work in accordance with generally accepted government auditing standards.

Results in Brief

BLM, Forest Service, BIA, and MMS procedures allow for public challenges to agency decisions during the four stages of developing oil and gas resources—planning, exploration, leasing, and operations. However, the agencies have different procedures for processing challenges that occur within the stages. For example, decisions made at the planning stage on land managed by BLM can first be challenged to the BLM director at headquarters. Following the challenge, planning decisions can be litigated in federal court. BLM leasing decisions can be challenged to the appropriate BLM state office director, appealed to the Interior Board of Land Appeals (IBLA), and litigated in federal court. At the Forest Service, planning and leasing decisions sometimes can be appealed through the supervisory chain of command. For example, a forest supervisor's decision can be appealed to the regional supervisor or the regional supervisor's decision can be appealed to the Forest Service Chief. Following an appeal, planning and leasing decisions can sometimes be litigated in federal court. Unlike BLM, the Forest Service does not have a separate appeals board within the Department of Agriculture, such as IBLA, to review Forest Service decisions. In addition, the Forest Service has specific time frames for deciding appeals whereas BLM and IBLA have no specific time frames for deciding protests or appeals. BIA procedures offer opportunities for public challenges at the exploration and leasing stages, which are the only stages BIA makes decisions related to oil and gas development. MMS regulations do not provide for appeals at the planning or leasing stages, but do provide for appeals to IBLA during the exploration and operations stages. All MMS decisions could potentially be litigated in federal court.

BLM headquarters does not systematically gather and use nationwide information on public challenges to manage its oil and gas program. While there is an agencywide system that collects data on public challenges during one of the four oil and gas development stages—leasing—there is no clear guidance on which data the state offices are to enter into the system. Current guidance allows states the latitude to choose where to begin recording data within the leasing process. As a result, state offices use this system inconsistently, leading to gaps in the data. Specifically, some state

offices enter data on public challenges for all land parcels included in a lease sale, whether or not the parcels receive a bid. Other states offices only enter data on land parcels that receive a bid at lease sale; excluding those that did not receive a bid. According to officials at these state offices, entering data on all land parcels creates extra work because they only use the agencywide system to track leases, not unsold land parcels. However, the state offices that do use the system to track public challenges for unsold parcels believe that the information is useful for managing workload. Due to this discrepancy, headquarters cannot use the data in the agencywide system to track all public challenges and assess the impact on the workload of their state offices. Because the system does not keep all public challenge data, headquarters and state offices also use multiple, independent data collection systems for the various stages of oil and gas development. These systems vary, and include nonintegrated electronic spreadsheets and paper files.

Headquarters does not have ready access to the state office data and therefore, the stand-alone systems do not supplement the information available in the agencywide system. According to BLM officials, to manage the oil and gas development program, headquarters must specifically request such data from its state offices, as it recently did in June 2004. In this instance, the data were received in a couple of weeks. BLM is in the process of developing an automated agencywide system to manage the leasing process that will supplement the existing system. BLM is creating the new system because it recognizes a need to eliminate duplicative, nonintegrated systems currently used by its state offices. The development of this new system provides an opportunity to standardize collection of data on public challenges at the leasing stage and to eliminate data gaps that currently exist. However, BLM officials told us that they have not yet decided whether the new leasing system will include information on public challenges, in part because state offices are reluctant to abandon their current methods for gathering public challenge data. We are making recommendations to the Department of the Interior to include information on public challenges in the new agencywide automated system for selling leases and to issue clear guidance on which data on public challenges should be entered into the system.

According to data provided by MMS officials, between fiscal years 1999 and 2003, the agency was challenged on only one of its 1,631 decisions approving offshore oil and gas development and production, and only one of its 1,997 decisions approving offshore oil and gas exploration. Both of

the challenged MMS decisions, described below, concerned access to mineral resources on the outer continental shelf off the coast of Alaska.

- MMS's approval of a development and production plan in September 1999 was litigated the next month in federal appeals court. Several Alaskans and an environmental interest group challenged MMS's decision on grounds that the plan violated the National Environmental Policy Act and the Oil Pollution Act. A federal appeals court ruled against the challenges in September 2001.
- MMS's approval of an exploration plan in February 2002 was appealed to IBLA by a Native American tribe in Alaska and three tribal members on the grounds that the plan violated the National Environmental Policy Act and the Administrative Procedure Act. No decision was reached on the appeal before the company discontinued work on the plan in July 2003.

For the period we examined, MMS reported no lawsuits challenging its 5-year offshore management plan or the land parcels included in its 13 lease sales. MMS also reported that there were no challenges to the 2,850 drilling permits it issued.

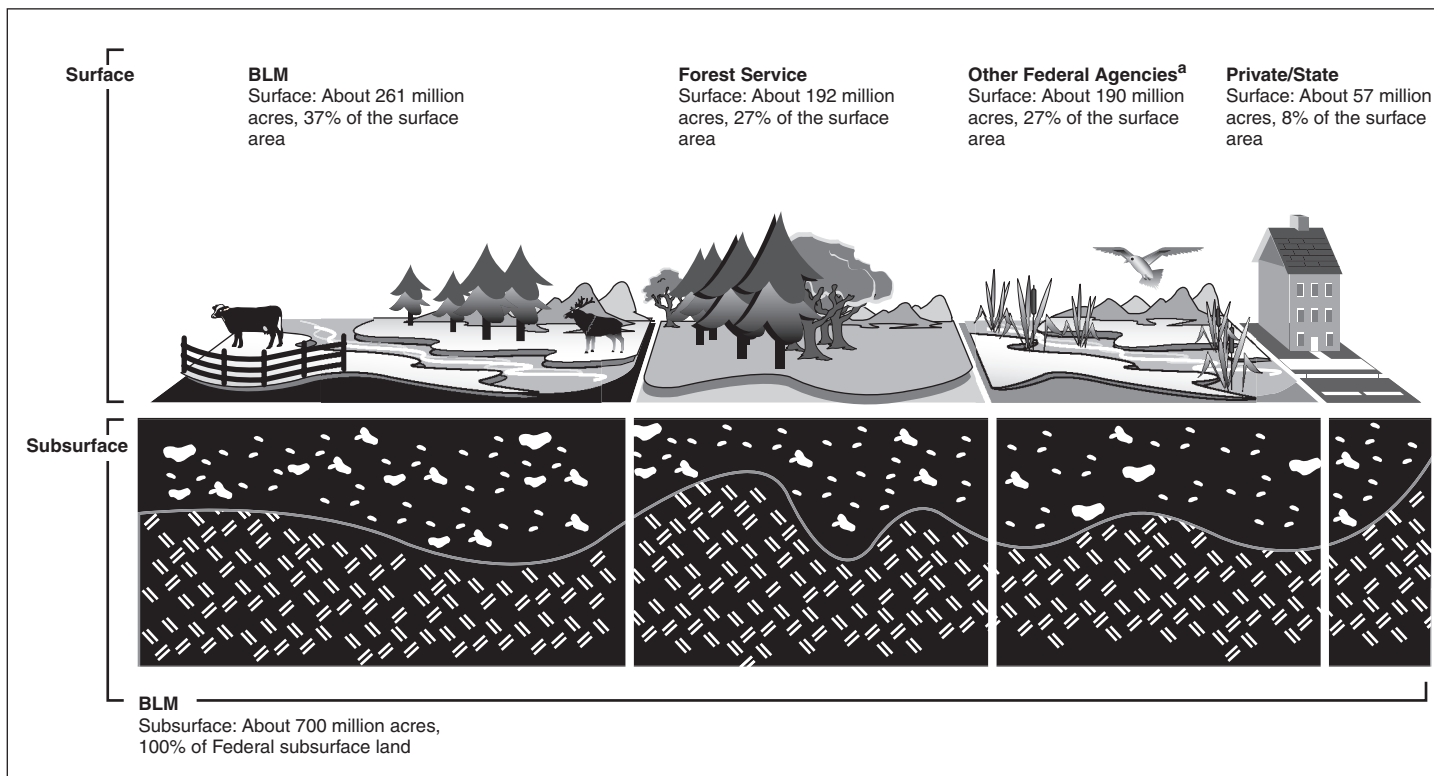
In commenting on a draft of this report, the Department of the Interior reinforced that the new national Lease Sale System being designed will track public challenge data on oil and gas lease sales. The Department of Agriculture said that the report is a good summary of the complex process that BLM and the Forest Service use to jointly manage and make decisions concerning the oil and gas programs, and appeals related to agency decisions. Both Interior and Agriculture also provided technical clarifications to the report. We modified the report as appropriate to reflect their technical comments.

Background

The federal government owns onshore mineral resources, including oil and gas, under about 700 million acres of land. These resources are located below the surface land—known as the subsurface. While the federal government owns all or part of the mineral resources in the subsurface, it does not necessarily own the surface land. Of the 700 million acres of federal mineral resources, the surface and subsurface ownership on 57 million acres is “split” between private parties or state governments, which own the surface area, and the federal government, which owns the subsurface area—referred to as “split estate” land. The BLM manages the

federal mineral resources contained in the subsurface of about 700 million acres. It also manages 261 million acres of the surface areas of the 700 million acres for such purposes as grazing, recreation, and timber harvesting. BLM, headed by the BLM director, manages public lands under its jurisdiction through 12 state offices, headed by state directors, with each state office having several subsidiary field offices, headed by field office managers. The balance of the federal surface land is managed by other federal agencies such as the Forest Service. Figure 1 shows the subsurface mineral resources managed by BLM, and surface managed by BLM, Forest Service, other federal agencies, or owned by private parties or state governments.

Figure 1: Subsurface Mineral Resources Managed by BLM, and Surface Managed by BLM, Forest Service, Other Federal Agencies, or Owned by Private Parties or State Governments



Source: GAO.

Note: Not all subsurface mineral resources below federal lands are federally owned and managed by BLM. According to the Department of the Interior, mineral resources under an estimated 4 million

acres of federally managed surface lands are retained in private ownership. Percentages may not add to 100 percent due to rounding.

^aOther federal agencies include the National Park Service (NPS), the Fish & Wildlife Service (FWS), and the Bureau of Reclamation within the Department of the Interior, and the Army Corps of Engineers within the Department of Defense. Almost all NPS land has been withdrawn from mineral leasing and development. Further, mineral leasing occurs on a few FWS lands, but most have been withdrawn from leasing or have no mineral potential.

The Forest Service and BLM both have roles in managing oil and gas resources on national forest system land. Although BLM has the major role in issuing oil and gas leases and permits on national forest system land, the Forest Service is responsible for determining what land is available for leasing and under what conditions. Once leases are issued, the Forest Service regulates all surface-disturbing activities conducted under the lease. The Forest Service manages its programs through nine regional offices, 155 national forests, 20 grasslands, and over 600 ranger districts (each forest has several districts). The Forest Service Chief oversees the agency, whereas regional foresters oversee regional offices, forest supervisors oversee national forests, and district rangers oversee district offices.

BLM assists BIA in fulfilling the trust responsibilities of the United States by assisting Indian tribes and individual Native Americans in managing about 56 million acres of Indian land for oil and gas development. Indian land principally consists of lands within Indian reservations, lands owned by Indian tribes, and Indian allotments.³ BIA administers its programs through the BIA director, 12 regional offices, headed by regional directors, and over 80 agency offices, headed by agency superintendents.

MMS manages oil and gas development for offshore mineral resources on the outer continental shelf through three administrative regions: Gulf of Mexico, Alaska, and Pacific. The MMS director heads the agency and regional managers head the regions. District offices support the regional offices and are headed by district managers. The federal outer continental shelf is an area extending from 3 to 9 nautical miles,⁴ depending on the location, to about 200 nautical miles off the United States coast. Over 610 million acres of the outer continental shelf is closed to future oil and gas development due to legislative and Presidential moratoria. Figure 2 shows

³Indian allotments are parcels of land created out of Indian reservations and held in trust by the federal government for the benefit of individual Indians.

⁴A nautical mile is about 6,080 feet, or about 1.15 miles.

MMS administrative regions and the areas open or closed to oil and gas development.

Figure 2: MMS Administrative Regions and Areas Withdrawn and Not Withdrawn From Oil and Gas Leasing on the Outer Continental Shelf



Source: U.S. Department of the Interior Minerals Management Service; September 2004.

^aThe Gulf of Mexico region manages development in both the Atlantic and Gulf of Mexico areas.

^bOut of the 1.2 billion acres not withdrawn from oil and gas leasing, almost 170 million acres are currently available for lease under MMS' 5-year plan.

^cCongress has renewed the legislative moratoria annually in the Department of the Interior's annual appropriations act.

Federal Agency Processes for Managing Oil and Gas Resources

Several statutes, including the National Environmental Policy Act (NEPA), and regulations govern oil and gas development on federal and Indian land. NEPA requires BLM, Forest Service, BIA, and MMS, and all other federal agencies, to assess and report on the likely environmental impacts of any land management activities they propose or approve that significantly affect environmental quality. Specifically, if a proposed activity, such as oil and gas development, is expected to significantly impact the environment, the agency is required to prepare an environmental impact statement. When an agency is not sure whether an activity will have significant impact on the environment, the agency prepares an intermediate-level analysis called an environmental assessment. If an environmental assessment determines that the activity will significantly affect the environment, the agency then prepares an environmental impact statement.⁵ Agencies also identify certain categories of actions that normally do not significantly impact the environment, and which are excluded from preparation of an environmental impact statement or environmental assessment—referred to as categorical exclusions.

BLM, Forest Service, BIA, and MMS each have similar processes for managing oil and gas activity on land within their jurisdiction. Generally, these processes center around four stages—planning, exploration, leasing and operations.

- During the planning stage, agencies develop land-use plans, revisions, and amendments, delineating where and under what conditions oil and gas activities can take place on federal land managed by each agency.⁶ To develop land-use plans, agencies use a multistep process, which generally includes preparation of environmental analyses under NEPA.

⁵If the environmental assessment determines that the activity will not significantly affect the environment, the agency prepares a document called a “Finding of No Significant Impact.”

⁶Land-use plans developed by BLM are called Resource Management Plans while those developed by the Forest Service are called Land and Resource Management Plans. MMS develops a 5-year program plan to determine which areas of the outer continental shelf will be developed for oil and gas. BIA generally does not develop land-use plans for tribal land but may assist Indian tribes in developing plans to manage their resources.

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- Once land-use plans allowing oil and gas activities are finalized, oil and gas development companies may perform exploration activities such as geophysical exploration.⁷ Geophysical exploration activities can occur before or after the leasing stage. Development companies must obtain approval from BLM for geophysical exploration on land managed by BLM and from the Forest Service on land managed by the Forest Service.⁸ BIA may approve permits and agreements between Indian tribes or individual Native Americans and oil and gas development companies for geophysical exploration on Indian land. MMS must approve exploration activity on the outer continental shelf.
 - BLM and MMS have the primary role in the leasing stage of federal oil and gas resource development. After a land-use plan, revision or amendment is completed, development companies nominate land they are interested in leasing. Onshore and offshore leases are competitively bid on at lease sales held by BLM state offices and MMS regional offices several times throughout the year, if lands are available. BLM is required to post a lease sale notice containing land parcels available for lease at least 45 days before it holds a competitive lease sale;⁹ MMS posts a notice at least 30 days before the offshore lease sale. BLM issues leases for onshore land, and MMS issues offshore leases. Indian tribes have the option to negotiate oil and gas leases individually, or to hold competitive lease sales. BIA must approve oil and gas leases and negotiated agreements affecting Indian land.
 - BLM and MMS have the primary role in managing drilling activity for federal oil and gas resources and the Forest Service regulates surface activities on national forest system land. Once BLM and MMS issue oil and gas leases, development companies must obtain approval for

⁷Geophysical exploration means activity relating to the search for evidence of oil and gas which requires the physical presence upon the lands and which may result in damage to the lands. It includes seismic exploration, construction of roads and trails and cross-country transit of vehicles over such lands.

⁸Development companies must file a Notice of Intent to Conduct Oil and Gas Geophysical Exploration Operations (NOI) and have it approved by BLM for exploration activity on land managed by BLM. According to Forest Service officials, development companies must file a NOI for approval to the Forest Service for geophysical exploration activity on national forest system land.

⁹Land parcels offered at a lease sale that do not receive a bid are available for leasing through a noncompetitive process for a 2-year period following the first business day after the lease sale.

drilling operations. For onshore activity, development companies submit development plans and applications for drilling permits to BLM for approval. On national forest system land, the Forest Service must approve all surface-disturbing activities—called a surface-use plan—before BLM approves applications for drilling permits. BLM also approves applications for drilling permits on Indian land after consulting with BIA. For offshore development activity, MMS approves development plans and applications for drilling permits.

Public Challenges Can Occur During the Four Stages of the Oil and Gas Development Process although Procedures Differ among Agencies

Decisions by BLM, Forest Service, BIA, and MMS can be challenged during the four stages of oil and gas development—planning, exploration, leasing, and operations. However, each agency differs in how challenges can be made at the various stages. The public may pursue a number of avenues to challenge agency decisions, depending on the type and nature of the underlying decision. For example, BLM planning decisions can be protested to the BLM director prior to challenging the decision in federal court, while Forest Service planning decisions can be appealed to the next highest officer prior to any challenge of the decision that might be brought in federal court. Table 1 summarizes procedures for public challenges during each stage of oil and gas development.

Table 1: Procedures for Public Challenges to BLM, Forest Service, BIA, and MMS Decisions during the Four Stages of Oil and Gas Development

Agency	Decision that potentially can be challenged	Type of challenge and to whom	Time frames for administrative action^a
Planning stage			
BLM	Approval of land-use plans, amendments, or revisions	Protest to BLM director; land-use plan may be subject to challenge in federal court	Protest within 30 days of publishing proposed land-use plan; ^b BLM Director must respond promptly
Forest Service	Approval of land-use plans, amendments, or revisions	Appeal or objection filed with the approving officer's supervisor; ^c supervisor must respond to appeals or objections; land-use plan may be subject to challenge in federal court	Appeal within 90 days of decision; ^d Forest Service official has 160 days from date decision was appealed to decide appeal Objection within 30 days of publication of final environmental impact statement or notice of proposed amendment; no time limit on resolving objections
BIA	BIA does not approve land-use plans; therefore no challenges can be made at this stage		
MMS	5-year program decision	No administrative appeals process; suits must be filed in the U.S. Court of Appeals for the District of Columbia	
Exploration stage			
BLM	Approval of geophysical activities	Appeal to IBLA; litigate in federal court ^e	Appeal to IBLA within 30 days; if a request to halt or "stay" activities is filed, IBLA has 45 days from the time appeal period expires to grant or deny stay; IBLA is not required to rule on an appeal within a certain time frame
Forest Service	Approval of geophysical activities	Appeal to next highest officer; ^f litigate in federal court once administrative appeal is decided	Appeal within 45 days of legal notice of decision; Forest Service official has 45 days from close of appeal period to provide appeal decision; the Forest Service may implement the decision after 15 days following the appeal disposition
BIA	Approval of permits to conduct geological and geophysical activities	Appeal to regional director; appeal regional director decision to the Interior Board of Indian Appeals (IBIA); litigate in federal court ^g	Appeal must be filed within 30 days of receiving notice of decision; appeal to IBIA within 30 days of receiving decision; ^h IBIA is not required to rule on an appeal within a certain time frame
MMS	Approval of exploration plans or permits ⁱ	Appeal to IBLA; suits must be filed with court of appeals for the circuit in which the affected state is located	Appeal to IBLA within 60 days after receiving final order or decision; ^j if stay requested, IBLA has 45 days from the time appeal period expires to grant or deny stay; ^k IBLA is not required to rule on appeal within certain time frame

(Continued From Previous Page)

Agency	Decision that potentially can be challenged	Type of challenge and to whom	Time frames for administrative action ^a
Leasing stage			
BLM	Inclusion of individual land parcels in a notice of competitive lease sale	Protest to state director; appeal to IBLA; litigate in federal court	Protest during 45-day period for posting notice of competitive lease sale; no time frame for state director decision on protest; ^m appeal underlying decision to IBLA within 30 days of state director decision; if stay requested, IBLA has 45 days from the time appeal period expires to grant or deny stay; IBLA is not required to rule on an appeal within a certain time frame
	Lease issuance	Appeal to IBLA; litigate in federal court ^l	Appeal to IBLA within 30 days; if stay requested, IBLA has 45 days from the time appeal period expires to grant or deny stay; IBLA is not required to rule on an appeal within a certain time frame
Forest Service	Authorize BLM to offer specific lands for lease	Generally not subject to appeal ⁿ	
BIA	Approval of lease or mineral agreement	Appeal to regional director; appeal regional director decision to IBIA; litigated in federal court ^o	Appeal must be filed within 30 days of receiving notice of decision; appeal to IBIA within 30 days of receiving decision; ^p IBIA is not required to rule on an appeal within a certain time frame
MMS	Decision to lease OCS land	No administrative appeals; decision may be litigated in federal court	
Operations stage			
BLM	Approval of development plans or applications for drilling permits	Request a state director review; appeal state director review decision to IBLA; and litigate in federal court ^q	Request state director review within 20 business days of decision; State Director has 10 days to respond to a review request; appeal state director decision on review request to IBLA within 30 days; if stay requested, IBLA has 45 days from the time appeal period expires to grant or deny stay; IBLA is not required to rule on an appeal within a certain time frame
Forest Service	Approval of a surface use plan ^r	Appeal to next highest officer; ^s litigate in federal court once administrative appeal is decided	Appeal within 45 days of legal notice of decision; Forest Service official has 45 days from close of appeal period to provide appeal decision; the Forest Service may implement the decision after 15 days following the appeal disposition
BIA	BLM approves drilling permits after consulting with BIA; no BIA decisions can be challenged at this stage ^t		
MMS	Approval of development and production plan and drilling permits ^u	Appeal to IBLA; suits must be filed with court of appeals for the circuit in which the affected state is located	Appeal to IBLA within 60 days after receiving final order or decision; ^v if stay requested, IBLA has 45 days from the time appeal period expires to grant or deny stay; ^w IBLA is not required to rule on appeal within a certain time frame

Source: GAO.

^aThe duration of cases and the length of any injunctions that may be issued are dependent on the facts and circumstances of each case.

^bIn the case of a plan amendment documented in a decision associated with an environmental assessment, the 30-day protest period begins on the day when notice of the amendment's effective date is published.

^cThere are two sets of regulations that currently may apply to land-use plans, the "1982 regulations" and the "2000 regulations." The Forest Service is in the process of revising the 2000 regulations. Until the Forest Service promulgates new revised planning regulations, land-use plans may be developed in accordance with either the 1982 regulations or 2000 regulations at the option of the responsible Forest Service official. The administrative review process applicable to land-use plans developed under the 1982 regulations is called an "appeals" process. The administrative review process applicable to land-use plans developed under the 2000 regulations is called an "objection" process.

^dFor non-significant amendments to land-use plans, the public has 45 days to file an appeal to the next highest officer within the Forest Service.

^eBLM decisions approving geophysical activities are in full force and effective immediately. These decisions may be challenged in court without going through the administrative appeals process.

^fCertain geophysical exploration decisions can be categorically excluded from preparation of an environmental impact statement or environmental assessment. If so, these decisions are not appealable but can be challenged in federal court. To appeal, a party must have submitted substantive comments during the 30-day environmental assessment comment period and/or the 45-day environmental impact statement comment period.

^gThe Assistant or a Deputy Assistant Secretary for Indian Affairs may decide administrative appeals in certain circumstances. If the Assistant Secretary signs the appeals decision, it is considered final agency action and may be litigated. If a deputy signs the decision, it may be appealed to the IBIA.

^hA notice of appeal to the IBIA is not effective until 20 days after IBIA receives notice, during which time the Assistant Secretary for Indian Affairs has authority to assume jurisdiction over the appeal.

ⁱMMS procedures do not allow development companies to submit exploration plans until after they have obtained a lease.

^jWithin the 60-day appeal period, the public can request informal resolution of the appeal from the next highest MMS official.

^kMMS decisions are generally effective during the 60-day appeal period. If an MMS decision is appealed to IBLA, the decision is effective while the appeal is pending unless IBLA grants a stay.

^lBLM decisions approving leases generally take effect immediately and may be challenged immediately in court.

^mWhile there is no set time frame for state directors to respond to protests to the inclusion of a parcel in a lease sale, leases may not be issued on parcels receiving bids or noncompetitive offers until the protests have been resolved.

ⁿAuthorization decisions are appealable if they are documented in a decision associated with an environmental assessment or environmental impact statement. If the authorization decision is appealable, it can be appealed to the next highest officer and the underlying decision can be litigated in federal court once the appeal is decided. To appeal, a party must have submitted substantive comments during the 30-day environmental assessment comment period and/or the 45-day environmental impact statement comment period. Time frames for administrative action are the same as the exploration and operations stages. The public may also challenge BLM leasing decisions through the BLM process.

^oThe Assistant or a Deputy Assistant Secretary for Indian Affairs may decide administrative appeals in certain circumstances. If the Assistant Secretary signs the appeals decision, it is considered final agency action and may be litigated. If a Deputy signs the decision, it may be appealed to the IBIA.

^pA notice of appeal to the IBIA is not effective until 20 days after IBIA receives notice, during which time the Assistant Secretary for Indian Affairs has authority to assume jurisdiction over the appeal.

^qBLM decisions approving drilling permits are in full force and effective immediately. These decisions may be challenged in court without going through the administrative appeals process.

^fFollowing the Forest Service approval of the surface use plan, BLM decides whether to approve the complete drilling permit. The public may also challenge the drilling permit approval decision through the BLM process.

^gTo appeal, a party must have submitted substantive comments during the 30-day environmental assessment comment period and/or the 45-day environmental impact statement comment period.

^hAlthough no BIA decisions can be challenged at this stage, the public can challenge BLM decisions under BLM procedures.

ⁱDevelopment and production plans are not required for leases in the western Gulf of Mexico. Instead, the lessee must submit a Development and Operations Coordination Document with all the information necessary to assure conformance with applicable statutes, regulations, and lease provisions.

^jWithin the 60-day appeal period, the public can request informal resolution of the appeal from the next highest MMS official.

^kMMS decisions are effective during the 60-day appeal period. If an MMS decision is appealed to IBLA, the decision is effective while the appeal is pending unless IBLA grants a stay.

Bureau of Land Management

During each of the four stages of oil and gas development, the public can make one or more of the following types of challenges to BLM decisions: protests, requests for state director review, appeals, and litigation. Through protests and requests for state director review, challengers essentially ask BLM to reconsider a decision.¹⁰ An appeal is a request to the Interior Board of Land Appeals (IBLA)—a body of administrative judges within the Department of the Interior—to review a BLM decision. In this report we use the term “litigation” to mean a challenge to an agency or departmental decision that is brought in federal court.

At the planning stage, the public can challenge BLM decisions through protests and litigation. Protests to land-use plans or their amendments or revisions are submitted to the BLM Director and must be filed within 30 days of the published a proposed land-use plan.¹¹ The BLM director has no specific deadline to respond to protests; but must “promptly” provide a

¹⁰The IBLA is part of the Department of the Interior’s Office of Hearings and Appeals (OHA). IBLA reviews and adjudicates appeals concerning Interior’s land management and mineral resources decisions. IBLA is authorized to review decisions of certain departmental agencies, including BLM and MMS, and departmental administrative law judges. IBLA has the authority to provide a final decision for the Department of the Interior. The Secretary of Interior retains the authority to decide any matter at any stage of departmental review after holding any hearing required by law. A party to a case who is adversely affected by a BLM decision generally has a right to appeal to IBLA.

¹¹In BLM, land-use plans are called Resource Management Plans and are accompanied by an environmental impact statement or environmental assessment. In the case of an amendment to the land-use plan completed with an environmental assessment, the 30-day protest period begins on the day when the notice of the amendment’s effective date is published.

written decision with a statement of supportive reasons. The director's decision cannot be appealed to IBLA, but can be challenged in federal court. The duration of a court case depends on the facts and circumstances of each case.

The public can challenge agency decisions to approve geophysical exploration activities to IBLA and in federal court.¹² Once a BLM field office issues a decision approving geophysical exploration activities, the public can appeal the decision to IBLA within 30 days or challenge the decision in federal court.¹³ Following approval, a development company can commence geophysical exploration activities unless the challenger asks IBLA to halt or “stay” the activities, or asks a federal court to issue an injunction prohibiting the activity, and IBLA or federal court grants the request. IBLA has 45 days following expiration of the 30-day appeal period to render a decision on a stay request. IBLA has no deadline to respond to appeals. IBLA decisions pertaining to geophysical exploration activities can be litigated in federal court. The duration of court cases and the length of any injunctions that may be issued depend on the facts and circumstances of each case.

The public can challenge leasing decisions through protests, appeals to IBLA, and litigation. Challengers can protest the inclusion of individual land parcels in a lease sale; such protests must be filed with the relevant BLM State Director during the 45-day notice period that precedes the lease sale. In some cases, the state director may not be able to decide the protest before the lease sale. However, if BLM receives a protest on any parcel included in the lease sale, the protest must be resolved before issuing a lease on the affected parcel. BLM is required to issue leases to the highest bidder within 60 days of receiving full payment for the lease and the first year's annual rent. According to agency officials, however, BLM sometimes fails to do so because it may not have resolved pending protests within the 60-day time period. The public can appeal BLM's decision to issue a lease to

¹²A company cannot conduct geophysical exploration activities without first having BLM approve a Notice of Intent to Conduct Geophysical Exploration Operations.

¹³A person must typically exhaust administrative remedies—appeal a challenged decision to IBLA and wait for the appeal to be resolved—before challenging the decision in federal court. However, BLM geophysical exploration, leasing, and operations decisions generally take effect immediately and can therefore be challenged in court without going through the administrative appeals process.

IBLA within 30 days or challenge the decision in federal court.¹⁴ A leaseholder can seek approval for development activities unless a challenger appeals the decision to issue the lease to IBLA and asks IBLA or a federal court to halt or “stay” the activities. IBLA has 45 days following expiration of the 30-day appeal period to render a decision on a stay request.

At the operations stage, the public can challenge BLM decisions to approve oil and gas drilling through requests for state director review, appeals to IBLA, and litigation. The public may ask the state director to review a decision to approve oil and gas development projects or individual drilling permits within 20 business days of the decision, and the state director must render a decision on the request within 10 business days. The public can appeal the state director’s decision to IBLA and can challenge the department’s decision in federal court.¹⁵ Development companies can begin drilling activity once a state director approves a drilling permit following review. A challenger may attempt to halt drilling activity by requesting a stay from the state director or IBLA, or seek an injunction in federal court.

Forest Service

The public can challenge Forest Service decisions either through appeals or litigation during each stage of oil and gas development. Through an appeal, the public asks the Forest Service to review a decision. During the planning stage, the public has either 45 or 90 days to appeal planning decisions approving, amending or revising land use plans which may

¹⁴BLM decisions approving leases generally take effect immediately and may be challenged immediately in court.

¹⁵BLM decisions approving drilling permits generally take effect immediately and may be challenged immediately in court.

identify lands as available for leasing.¹⁶ Decisions are appealed to the next highest officer. For instance, a regional forester's decision to approve a land use plan, amendment, or revision can be appealed to the Chief.¹⁷ A Forest Service official has 160 days to render a decision on an appeal. Following the conclusion of the appeals process, land use plan decisions can sometimes be litigated in federal court. According to Forest Service officials, BLM normally participates in the process for developing those plans that include decisions to make areas available for oil and gas development.

During the exploration and operations stages, the public may generally challenge Forest Service decisions approving or disapproving of these actions under the agency's project appeals procedures.¹⁸ Specifically, these

¹⁶In the Forest Service, land-use plans are called Land and Resource Management Plans and are accompanied by an environmental impact statement or environmental assessment. There are two sets of regulations that currently may apply to land-use plans, the "1982 regulations" and the "2000 regulations." The Forest Service is in the process of revising the 2000 regulations. Until the Forest Service promulgates new revised planning regulations, land-use plans may be developed in accordance with either the 1982 regulations or 2000 regulations at the option of the responsible Forest Service official (usually a Forest Supervisor). The administrative review process applicable to land-use plans developed under the 1982 regulations is called an "appeals" process. The administrative review process applicable to land-use plans developed under the 2000 regulations is called an "objection" process. Under the appeal process, the public has 90 days to appeal land-use plan approvals, significant amendments, or revisions. The public has 45 days to appeal non-significant amendments to land-use plans. Under the objection process, the public may object to a proposed amendment or revision to a land-use plan within 30 days of publication of (1) the final environmental impact statement for revisions and significant amendments, or (2) notice of proposed amendment for non-significant amendments. There is no time limit on resolving objections and all objections must be resolved prior to approval of the amendment or revision.

¹⁷The next highest officer above the official deciding the appeal has discretion to review the appeal decision. For example, if a forest supervisor's decision is appealed to the regional forester, the Forest Service Chief can review the regional forester's decision.

¹⁸At the leasing stage, Forest Service decisions authorizing BLM to include parcels within a national forest in a lease sale are generally not appealable. However, if the Forest Service documents the decision to authorize BLM to include land parcels in a lease sale with a decision associated with an environmental impact statement or environmental assessment, the decisions are generally appealable. The Forest Service authorizes BLM to include the parcel in a notice of competitive lease sale under a three-step procedure. First, the Forest Service verifies that oil and gas leasing on a specific land parcel has been adequately addressed in a NEPA analysis and is consistent with the appropriate land use plan. Next, the Forest Service ensures that the appropriate conditions of the surface occupancy have been properly included as stipulations on the parcel. Finally, the Forest Service determines whether operations and development could be allowed somewhere on each proposed land parcel, except where all surface occupancy is prohibited by stipulations.

decisions include those involving (1) approving geophysical exploration activity on national forest system lands; and (2) the approval of surface use plans related to proposed drilling operations on national forest system lands. The Forest Service's appeals procedures generally apply to decisions for which the agency prepared an environmental impact statement or environmental assessment under NEPA.¹⁹

The public can appeal Forest Service decisions, other than planning decisions, to the next highest officer within 45 days of the decision. If an appeal is filed, the Forest Service has 45 days from the close of the appeal period to determine the outcome of the appeal.²⁰ Following the conclusion of the appeal process, the agency decision can be litigated in federal court. Likewise, decisions that are not appealable can be litigated in federal court. Challengers can seek an injunction from federal court to halt activities while litigation is pending. If no appeal is filed, the Forest Service may implement the decision 5 business days after the appeal period closes. If an appeal is filed, implementation may occur 15 days following the appeal's disposition.

¹⁹Certain decisions are “categorically excluded” from analysis under NEPA if the category of decisions does not individually or cumulatively have a significant effect on the human environment, and have been found to have no such effect by the relevant federal agency. Such decisions cannot be appealed, but can be litigated in federal court. Decisions approving short-term geophysical activity may be categorically excluded from preparation of an environmental impact statement or environmental assessment and cannot be appealed.

²⁰If the Forest Service officer does not render a decision on an appeal within 45 days, the original decision stands and a challenger can seek review in federal court.

Bureau of Indian Affairs

The public can challenge certain BIA decisions through appeals and litigation. Through an appeal, the public asks BIA to review decisions concerning oil and gas development on Indian land or asks the Interior Board of Indian Appeals (IBIA) to review a BIA appeal decision.²¹ The public can challenge IBIA decisions in federal court.²²

BIA is not required to prepare land-use plans for Indian land, but can assist tribes in developing such plans. Because BIA does not approve land-use plans, there are no challengeable decisions at the planning stage.

At the exploration stage, however, the public can challenge BIA decisions to approve permits to conduct geological and geophysical operations to assess whether oil and gas resources are present.²³ The public must appeal a BIA official's decision to the regional director—typically the official above the deciding official—within 30 days of the decision. After a decision is made on the appeal, the public has 30 days to file a separate appeal with IBIA. Following the appeal period, the operator can commence exploration activities unless the challenger requests a stay from IBIA. IBIA has 45 days from the expiration of the appeal period to render a decision on a stay request. If IBIA denies a stay, the operator can proceed with planned activities. IBIA decisions may be litigated in federal court. The duration of court cases and the length of any injunctions that may be issued are dependent on the facts and circumstances of each case.

Likewise, at the leasing stage, the public can challenge BIA decisions to approve leasing agreements and mineral agreements between Indian tribes and Indian landowners and oil and gas development companies. The appeal and litigation process is the same as for the exploration stage. At the operations stage, BLM has agreed to approve drilling permits for BIA.

²¹IBIA is one of three standing appeal boards of the Office of Hearings and Appeals within the Department of the Interior. IBIA is separate from Interior's various program bureaus, including BIA, whose decisions it reviews.

²²The Assistant Secretary or a Deputy Assistant Secretary for Indian Affairs may decide administrative appeals in certain circumstances. The Assistant Secretary has 20 days to exercise his authority to assume jurisdiction in the appeal and either (1) issue a decision in the appeal or (2) assign responsibility for issuing a decision to a Deputy to the Assistant Secretary. Decisions made by the Assistant Secretary are effective immediately unless the Assistant Secretary provides otherwise. If a Deputy signs the decision, it may be appealed to IBIA.

²³BIA may only approve such permits with the consent of the Indian oil and gas owner.

Consequently, there are no BIA decisions for the public to challenge at this stage. However, the public can challenge BLM permit decisions through the BLM process.

Mineral Management Service

The public can challenge MMS oil and gas development decisions through requests for informal reviews within MMS, appeals to IBLA, and in federal court. Through informal review requests, the public asks the next highest officer to review a decision made by the official at the field office. Through an appeal, the public can ask IBLA to overturn an MMS decision.

At the planning and leasing stages, MMS decisions involving its 5-year plan and lease sales are not subject to informal reviews or appeals to IBLA, but can be litigated in federal court.

During the exploration and operations stages, the public can challenge exploration plans and permits, development and production plans, and applications for oil and gas drilling through informal reviews within MMS, appeals to IBLA, and in federal court. The public can appeal exploration or operations decisions to IBLA within 60 days. Within that period, the public may ask for informal resolution with the issuing officer's next highest supervisor. During the 60-day appeal period, the development company can commence exploration or operation activities unless the challenger requests a stay from IBLA and IBLA grants the request. IBLA has 45 days from the expiration of the appeal period to render a decision on a stay request. IBLA has no time frame to decide appeals. Decisions of IBLA pertaining to exploration plans and permits, development and production plans, and applications for oil and gas drilling can be litigated in federal court.

BLM Does Not Systematically Gather and Use Public Challenge Information to Manage Its Oil and Gas Program

BLM headquarters does not systematically gather and use nationwide information on public challenges to manage its oil and gas program. While there is an agencywide system that state offices use to collect data on public challenges during leasing, it is not used to collect public challenge data during the planning, exploration, or operations stages. However, the system is used inconsistently because BLM has not issued clear guidance on which data the state offices are required to enter into the system. Because the agencywide system does not track all the public challenge data necessary for managing workload, headquarters and state offices also use multiple, independent data collection systems for the various stages of oil

and gas development. These systems include paper files and electronic spreadsheets that are not integrated with one another or the agencywide system. BLM is in the process of developing a new national Lease Sale System that provides an opportunity to standardize collection of data on public challenges at the leasing stage. However, BLM has not decided whether the new system will track public challenge information.

Agencywide System Gathers Limited Public Challenge Data and Is Used Inconsistently

BLM's nationwide system, Legacy Re-host 2000 (LR2000), has a component that state offices use to track limited public challenge information during the leasing stage but not during any of the other oil and gas development stages.²⁴ State offices use the system inconsistently because BLM guidance on the use of the system to track oil and gas leasing data is unclear, leading to data gaps.²⁵ According to BLM guidance, state offices have the option to begin recording data for a given parcel at any of three different points during the leasing stage: (1) prior to the posting of the competitive lease sale notice, (2) the day prior to the lease sale, or (3) after the lease sale. If state offices choose to start recording data at the third point—after the lease sale—the system will not capture public challenges on unsold parcels. For example, because the Wyoming State office begins recording data after the lease sale, the system does not capture public challenge data for unsold parcels, in that state office. Wyoming State office officials believe that recording information into the agencywide system prior to the lease sale creates added work and did not see any merit in tracking public challenges on parcels that are not leased. However, officials from a state office that tracks challenges for unsold parcels noted that doing so provides useful information for managing workload. Because the states are not consistent in entering data into the system, the data cannot be used by headquarters to track public challenges and to assess impacts on the workload of its state offices. According to officials at some state offices, the volume of public challenges at the leasing stage has increased over the past few years. However, BLM cannot readily provide nationwide data on the number of public challenges made. In addition, it cannot assess the extent to which such challenges affect the workload of its state offices,

²⁴This component, called Case Recordation, has the capability to track some public challenge information during the exploration and operations stages, but BLM does not use the system for these purposes, in part because, according to BLM, there are few geophysical exploration permits issued and operations activities are tracked in another system.

²⁵Current guidance on the use of LR2000 during oil and gas leasing can be found in the *Oil and Gas Adjudication Handbook: Competitive Leases* (BLM Manual Handbook H-3120-1).

which is important to understanding what additional staffing and funding resources may be needed to process public challenges.

BLM Uses Various Nonintegrated Systems to Gather Public Challenge Data

BLM headquarters, field offices, and state offices use multiple, independent data collection systems to collect additional information that they need to track public challenge information at the various stages of oil and gas development. For example, during the planning stage, BLM headquarters tracks pending protests to land-use plans in a stand-alone spreadsheet and in case files. According to a BLM official, BLM headquarters tracks protest information so it can manage its workload in responding to protests. Once a challenge is resolved, information is deleted from the spreadsheet and the data are maintained only in case files and cannot be readily analyzed in aggregate. As a result, BLM cannot readily determine how many protests occurred year-to-year, who the protesters were, what the outcomes were, and the time frames for resolving the protests.

Similarly, during the exploration stage, BLM field offices maintain case files on public challenges to geophysical exploration permits. According to a BLM official, the number of geophysical exploration permits issued is so low that it is unnecessary to aggregate information on public challenges to the permits. However, BLM did not have the data readily available for us to verify this condition.

BLM state offices have developed their own systems for gathering public challenge data during the leasing and operations stages. During the leasing stage, BLM state offices use spreadsheets and paper files as well as LR2000 to track public challenges. The spreadsheets are not integrated with LR2000 or one another. BLM state offices use the information mostly to manage workload associated with protests, appeals, and litigation. Other uses include responding to information requests from protesters and potential leaseholders concerning the status of protests.

During the operations stage, stand-alone spreadsheets and paper files are the primary methods state offices use to collect public challenge information.²⁶ As in the leasing stage, this information is gathered to

²⁶While BLM state offices use an agency wide system called the Automated Fluids Minerals Support System to track information on drilling permits during the operations stage, the system does not have the capability to track public challenges such as requests for state director reviews, IBLA appeals, or litigation of decisions regarding drilling permits.

manage workload associated with responding to public challenges. It is also used to respond to information requests from challengers concerning the status of their challenges and from permit-holders on whether they can begin operations such as road construction and drilling.

BLM Headquarters Does Not Have Ready Access to Public Challenge Data Gathered by State Offices

BLM headquarters does not have ready access to the public challenge data gathered by state offices in stand-alone electronic spreadsheets or paper files. As a result, similar to the planning stage, BLM headquarters cannot readily determine from year-to-year how many public challenges occurred, including protests; appeals and litigation; who the challengers were; what the outcomes were; whether the challenges affected split estate land; and the time frames for resolving the challenges.²⁷ To obtain such information, headquarters must make individual, resource-intensive data calls to state offices. In one instance in June 2004, BLM headquarters requested information from state offices on their backlogs of protest decisions and the affected acreage at the leasing stage. According to the BLM official, the state offices responded in a couple of weeks, and the data indicated that some state offices had a backlog in issuing protest decisions.

BLM Is Developing an Agencywide System That Could be Used to Standardize Public Challenge Data at the Leasing Stage

BLM is developing a system called the national Lease Sale System that is being designed to automate its leasing process and standardize data entered into LR2000. The Lease Sale System will replace five separate state office systems. This system is being developed because BLM recognizes that “there is a high degree of variability” in the extent to which the five systems can assist BLM state offices in managing the leasing process. In addition, according to BLM justification documentation for the Lease Sale System “all of the processes and support systems currently in place involve multiple data entry along with intricate data manipulations and data handoffs that open the processes to errors and inefficiencies.” According to BLM headquarters officials, the Lease Sale System, along with LR2000, could be used to gather public challenge data at the leasing stage, and BLM officials are in the process of determining whether to include public

²⁷Split estate lands are those lands where the surface owner does not own the subsurface minerals. BLM sometimes issues leases to develop federally owned oil and gas deposits underlying land owned by a private party. Such development creates the potential for conflict between the surface owner and the oil and gas developer. However, BLM cannot readily determine the extent of public challenges to development activities occurring on split estate lands.

challenge data in the Lease Sale System. According to BLM officials, some state offices are reluctant to abandon their current leasing systems and methods of gathering public challenge data, and a consensus has not yet been reached concerning what information should be included in Lease Sale System, including public challenge data.

Areas on the Outer Continental Shelf Open to Offshore Oil and Gas Development Experienced Few Public Challenges

According to data provided by MMS officials, during fiscal years 1999 through 2003, MMS was challenged on only one of its 1,631 decisions approving offshore oil and gas development and production and only one of its 1,997 decisions approving oil and gas exploration. Both of the challenged MMS decisions concerned access to mineral resources on the outer continental shelf off the coast of Alaska.

- In September of 1999, MMS' Alaska regional office approved a development company's plan to develop and produce oil off the northern coast of Alaska. Several Alaskans and an environmental interest group challenged the plan by filing a lawsuit in federal appeals court. MMS' decision to approve the plan was challenged on the grounds that MMS did not comply with the requirements of NEPA and the Oil Pollution Act. In September 2001, the court ruled against the challengers.
- In February 2002, MMS' Alaska regional office approved an operator's plan to conduct exploration activities off the coast of Alaska. A Native American tribe in Alaska and three tribal members challenged the regional office's decision to the IBLA in May 2002 on the grounds that MMS did not comply with the requirements of NEPA and the Administrative Procedure Act. IBLA denied the challengers' requests for a stay and the operator commenced exploration activities while IBLA considered the appeal. Prior to IBLA's appeal decision, the operator halted activities and, in July 2003, relinquished the lease.

For the period we examined, MMS reported no lawsuits challenging its 5-year offshore management plan or the land parcels included in its 13 lease sales.²⁸ MMS also reported that there were no challenges to the 2,850 drilling permits it issued.

²⁸The 13 lease sales offered 42,994 tracts covering 230,493,810 acres for lease sale. Of the tracts offered for sale, 3,541 tracts covering almost 18,659,610 acres were leased.

Table 2 shows the number of exploration and operations decisions approved by MMS between 1999 and 2003 and the number that were challenged by the public.

Table 2: The Number of Exploration and Operations Decisions Approved by MMS Between 1999 and 2003 and the Number That Were Challenged by the Public

	Gulf of Mexico	Pacific	Alaska	Total
Explorations Plans and Revisions Approved	1,995	0	2	1,997
• Public Appeals to IBLA	0	0	1	1
• Federal Lawsuits Filed by Public	0	0	0	0
Development and Production Plans and Revisions Approved ^a	1,628	2	1	1,631
• Public Appeals to IBLA	0	0	0	0
• Federal Lawsuits Filed by Public	0	0	1	1
Applications for Drilling Permits and Revisions Approved	2,800	44	6	2,850
• Public Appeals to IBLA	0	0	0	0
• Federal Lawsuits Filed by Public	0	0	0	0

Source: MMS.

^aDevelopment and production plans are not required for leases in the western Gulf of Mexico. Instead, the lessee must submit a Development and Operations Coordination Document with all the information necessary to assure conformance with applicable statutes, regulations, and lease provisions.

Conclusions

Existing laws, regulations, and agency procedures allow multiple opportunities for the public to challenge decisions made by BLM, Forest Service, BIA, and MMS during the four stages of the oil and gas development process. While BLM is the primary agency approving oil and gas activity on federal land, it cannot readily provide nationwide data on the number of public challenges made. Consequently, it cannot assess the extent to which such challenges affect the workload of its state offices, which is important to understanding what additional staffing and funding resources may be needed to process public challenges. Although each state office gathers its own data on public challenges to manage workload, the

data are not kept in a standardized format, and is not easily accessible. As a result, BLM headquarters must rely on resource intensive data calls to determine whether its state offices are experiencing backlogs of protested decisions. The new agencywide system that BLM is developing will provide an opportunity for the agency to maintain public challenge data in a standardized format at least for the leasing stage and provide it with more reliable data from which to make resource allocation decisions, but the agency has not yet determined whether it will include public challenge data in the system. We believe that including public challenge data into the new system should, at a minimum allow BLM headquarters easier access to public challenge data and provide information that will help it better manage workload impacts on its state offices from public challenges.

Recommendations for Executive Action

To standardize the collection of public challenge data at the leasing stage for onshore federal lands, we recommend the Secretary of the Interior direct BLM to take the following two actions:

- Include public challenge data in the new agencywide automated system for selling leases.
- Issue clear guidance on how public challenge data should be entered into the new system.

Agency Comments and Our Evaluation

We provided a draft of this report to the Secretaries of the Interior and Agriculture for review and comment. In commenting on our recommendation for BLM to include public challenge data in its new agencywide system for lease sales, Interior wanted to ensure that the recommendation only applied to the leasing stage and not other stages of oil and gas development, such as land use planning, geophysical exploration, drilling, and reclamation. It further said the new national Lease Sale System will be designed to track public challenge data on oil and gas lease sales, and the BLM is developing a timeline for developing and deploying the new system. Our recommendation is directed to collecting data at the leasing stage and is not intended for other stages of oil and gas development. Interior did not comment on our second recommendation that BLM issue clear guidance on entering public challenge data into the new system.

The Department of Agriculture stated that the report is complete and accurate and provides a good summary of the complex process that BLM and the Forest Service use to jointly manage and make decisions concerning the oil and gas programs, and appeals related to agency decisions.

Both the Interior and Agriculture provided us with technical comments and editorial suggestions. We have made corrections to the report to reflect these comments, as appropriate.

As arranged with your office, unless you publicly announce the contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of this report to other interested congressional committees. We will also send copies of this report to the Secretaries of Agriculture and the Interior, the Chief of the Forest Service, the director of BLM, the director of BIA, and the director of MMS. We will make copies available to others upon request. 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 have questions about this report, please contact me at (202) 512-3841. Key contributors to this report are listed in appendix III.

Sincerely yours,



Anu K. Mittal
Director, Natural Resources
and Environment

Objectives, Scope, and Methodology

This appendix presents the scope and methodology we used to gather information on the stages when agency decisions about oil and gas development can be challenged by the public and the extent to which the Bureau of Land Management gathers and uses public challenge data to manage its onshore oil and gas program. It also addresses the number of Minerals Management Service offshore oil and gas development decisions that were challenged, who challenged them, and the grounds, time frames, and outcomes of the challenges for fiscal years 1999-2003.

To describe the stages when oil and gas development decisions can be challenged by the public, we analyzed pertinent laws, rules, and regulations and interviewed agency officials pertaining to oil and gas development processes under the jurisdiction of the Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), and Minerals Management Service (MMS) in the Department of the Interior and Forest Service in the Department of Agriculture. This included a review of statutes including the Federal Land Policy Management Act, Minerals Leasing Act, National Forest Management Act, Omnibus Indian Mineral Leasing Act, Allotted Mineral Leasing Act, Submerged Lands Act, Outer Continental Shelf Lands Act, National Environmental Policy Act, and associated amendments and regulations. From our analysis of these documents, we determined the administrative procedures the agencies use to manage oil and gas development on federal lands. We also identified the primary stages when the public can challenge oil and gas development decisions—planning, exploration, leasing, and operations and the types of challenges that can occur (e.g. protests, appeals, and litigation) during each of these stages. We interviewed BLM, BIA, MMS, and Forest Service officials in their respective headquarters, regional, and field offices and in the Department of the Interior’s Solicitor’s Office to discuss the application of the laws and regulations and to enhance our understanding of them.

To determine the extent to which BLM gathers and uses data on public challenges to manage its onshore oil and gas program, we identified through discussions with BLM headquarters and state office officials the various management information systems and databases the agency maintains for managing the oil and gas program. We collected and analyzed pertinent manuals, handbooks, memorandums, spreadsheets, and procedures to ascertain the extent that BLM gathers and records public challenge data on the oil and gas program. We interviewed BLM headquarters officials to determine what, if any, public challenge data they gathered on a national level for managing the oil and gas program. We also interviewed officials from BLM’s state offices in California, Colorado,

Eastern States, New Mexico, Utah, and Wyoming to determine how public challenge data is gathered and used at the state office level and to ascertain how these offices used the agencywide systems for recording such data. We visited the Eastern States office, which has jurisdiction over the 31 states east of the Mississippi River, and the Colorado, New Mexico, Utah, and Wyoming state offices, which, according to BLM headquarters officials, are state offices with a higher volume of oil and gas development activity.

To determine for fiscal years 1999 through 2003 the number of offshore oil and gas development decisions by the MMS that were challenged, who challenged them, and the grounds, time frames, and outcomes of the challenges, we performed the following steps. We interviewed MMS headquarters officials to determine the number of planning decisions and lease sales held during fiscal years 1999 through 2003. We also analyzed information in MMS' Technical Information Management System (TIMS) to identify the number of exploration and operations plans and revisions to plans the MMS approved from fiscal years 1999 through 2003. We reviewed the procedures governing data entry into TIMS to test the reliability of the data provided. To determine the number of public challenges to MMS' decisions, we interviewed officials at MMS headquarters and its three regional offices: Gulf of Mexico, Pacific and the Alaska regional offices. Officials from the Alaska regional office indicated that they had two public challenges during this time period. Neither headquarters nor the other regions reported any other public challenges. We collected and reviewed the case files for the two challenged decisions to identify who challenged the decisions, the basis for the challenge, when the challenges occurred, and their outcomes. We also analyzed records at the Interior Board of Land Appeals and legal briefs provided by MMS Alaska region on these two challenges.

We conducted our work from November 2003 to October 2004 in accordance with generally accepted government auditing standards.

Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

November 29, 2004

Ms. Anu K. Mittal
Director, Natural Resources and Environment
U. S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Ms. Mittal:

Thank you for the opportunity to review and comment on the U. S. Government Accountability Office (GAO) draft report entitled "Oil and Gas Development – Challenges to Agency Decisions and Opportunities for BLM to Standardize Data Collection" (GAO-05-124). The Department of the Interior (DOI) offers the following comments.

The report uses the term "exploration" when meaning "geophysical exploration." This term should be clarified. A possible solution is to define "exploration" early in the document or use "geophysical exploration" throughout the document. The term "public challenges" used throughout the draft report is not a term commonly used in the DOI and is not familiar to all readers. Adding a definition might help readers unfamiliar with the GAO's use of the term. Other minor edits have been provided to the GAO orally.

Although we understand that your first recommendation is limited to public challenges at the leasing stage, we want to ensure that the recommendation is not intended to apply to data collection for other stages of oil and gas development, such as land use planning, geophysical exploration, drilling, and reclamation.

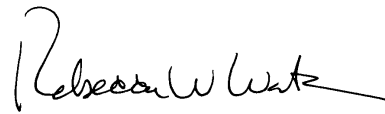
As you note in the draft report, the Bureau of Land Management (BLM) is developing the business process requirements for a national lease sale system to help process and record oil and gas lease sale information. The BLM is in the early stages of developing the system and identifying consistent business process requirements. While it will be some time before the system is developed and deployed (the BLM is developing a timeline), this system will also be designed to track public challenge data on oil and gas lease sales.

Appendix II
Comments from the Department of the
Interior

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If you have questions, please call Andrea Nygren, BLM Audit Liaison, on 202-452-5153, Jay Douglas, Senior Minerals Leasing Specialist, on 202-452-0336, or Tim Spisak, Fluid Minerals Group Manager, on 202-452-5061.

Sincerely,



Rebecca W. Watson
Assistant Secretary
Land and Minerals Management

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Staff Acknowledgments

In addition to those named above, Laura Helm, R. Denton Herring, Richard Johnson, Cynthia Norris, Matthew Reinhart, Patrick Sigl, and Walter Vance made key contributions to this report.

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