

Accessing Energy Resources on Public Lands

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Federal land ownership affects the ability of energy developers to access energy and mineral resources. In recent decades, the energy industry and other parties have complained that environmental regulations have led to a continually shrinking level of access to such resources. In contrast, environmental groups maintain that energy industry access to public lands is extensive and growing. A review of these perspectives indicates that energy development on public lands has, in fact, declined significantly.

Energy Development on Public Lands

According to the American Petroleum Institute (API), the federal government owns 78 percent of the nation's oil and 62 percent of its

gas resources.¹ The API claims that the federal government limits access to 90 percent of offshore areas of the outer continental shelf and that litigation and permitting delays limit access to onshore lands. It also notes that in 1999 4.5 percent of oil and gas leases were challenged in court, but now nearly 50 percent are. Permit restrictions also complicate drilling and make it impossible in some leased areas.²

In contrast, the Environmental Working Group (EWG) claimed in 2005 that oil and gas development on those lands was out of control

1. API, "Why We Need Expanded Access for Drilling on Government Lands and Offshore," API, Washington, DC, 2006, <http://www.api.org/policy/exploration/expanded-access.cfm>.

2. API, "Access to Federal Lands," API, Washington, DC, 2006, <http://www.api.org/aboutoilgas/facts/index.cfm>.

and that this development affected one in three acres of federal land. To make its point, EWG used an elaborate computer mapping program that cross-referenced data from a federal Bureau of Land Management database with additional data collected from several other sources that included locations of oil and gas operations around the nation. After comparing this database with the location of federal lands, it reported: “We electronically plotted the 3.45 million tracts of Western public land currently or formerly drilled, mined, offered to, or otherwise controlled by mining, oil and gas interests, as detailed in the three data sources described above.”³

The EWG report further states:

A two-and-a-half year Environmental Working Group (EWG) computer investigation has found that metal mining and oil and gas industries actively control land in and around more than two-thirds of 1,855 parks, wilderness areas, wildlife refuges, wild and scenic rivers, forests, and other treasured public lands in the American West. If present trends continue, within 20 years, metal mining and oil and gas companies will actively mine, drill, or otherwise control public lands inside or within five miles of every one of these natural treasures. EWG’s investigation of millions of federal government records belies industry claims that excessive emphasis on environmental

protection has locked companies out of public lands.⁴

A review of the EWG methodology, however, reveals serious flaws. The data are not organized in a way that reveals trends that could support the idea that industry claims about shrinking resource access are inaccurate. The report simply includes a collection of activities from several databases covering several different years. Moreover, the data are incapable of measuring the environmental impact because they simply do not contain information on the impacts of these operations. Instead, EWG notes that mining activities can theoretically affect wildlife and the environment within 100 miles of the operation. But it is also possible—in fact, quite likely—that most of these operations can be pursued without serious adverse environmental impacts. As an example, the Audubon Society drills for oil and gas on its lands, which it claims to do in a manner that is consistent with its wildlife protection goals.

Perhaps most important, EWG’s data include large numbers of development activities that were not on federal land because the group counted all activities on nonfederal lands (including private or state lands) within five miles of a federal property. One should expect that a large number of activities would reside near federal lands, given that a high percentage of the resources are mined in western states, where much of the land is owned by the government. In fact, the federal government owns more than 50 percent of the land in five

3. EWG, “Methodology,” in *Who Owns the West?: Losing Ground* (Washington, DC: EWG, 2005); EWG appears to have removed this information from its site, but it can be found in the Internet Archive at <http://web.archive.org> use the search engine to find www.ewg.org/reports/losingground/methodology.php.

4. EWG, “Executive Summary,” in *Who Owns the West?: Losing Ground* (Washington, DC: EWG, 2005), EWG appears to have removed this information from its site, but it can be found in the Internet Archive at <http://web.archive.org> use the search engine to find www.ewg.org/reports/losingground/methodology.php.

Table 1. Environmental Working Group Mining Data Categories

Type of control	Source of information	Located on federal land (number of leases or claims)
Active and proposed mines (type 1)	Active mining plans and notices from the Bureau of Land Management's LR2000 database and various industry sources	334
Active oil and gas drilling and production (type 1)	Active leases in current production according to the Bureau of Land Management's LR2000 database	13,679
Active mining claims (type 2)	Active claims according to the Bureau of Land Management's LR2000 database	70,833
Active oil and gas leases (type 2)	Active leases not in current production, according to the Bureau of Land Management's LR2000 database	20,080
Total		104,926

Source: U.S. Bureau of Land Management.

of those states, including Nevada, of which the federal government owns 80 percent.⁵ By counting activities on nearby nonfederal lands, EWG inflates the number of tracts of land affected by 67 percent.⁶

In addition, EWG counts all development-related activities—ongoing, proposed, potential, or past—as the same. Accordingly, its data set includes active drilling and mining operations, potential drilling or mining, potential leasing opportunities, and abandoned mining operations. Yet many of these activities do not accurately reflect development on public lands. For example, the fact that lands are available for leasing now (or in the past) does not mean

they will be (or were) ever used for resource extraction. Lease restrictions may make such activities unlikely or even impossible in some cases, and the land might simply not be suitable for such use.

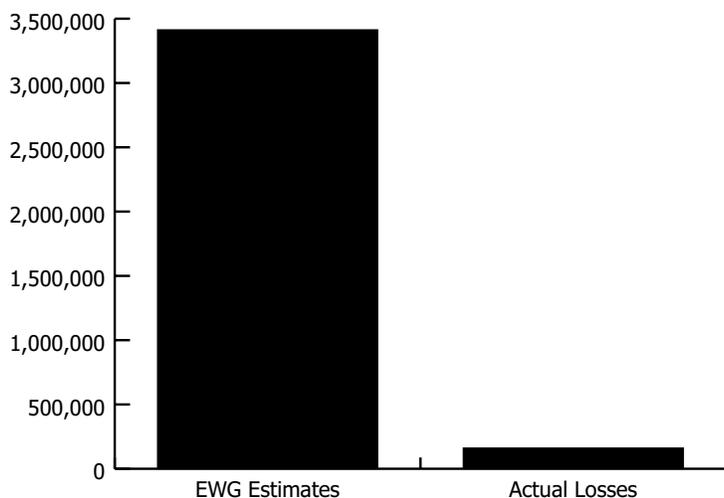
EWG does categorize the data into types. *Type 1* includes lands with active and proposed mines, as well as active oil and gas drilling and production. *Type 2* counts lands with active mining claims and active oil and gas leases. *Type 3* counts lands containing abandoned or closed mines and abandoned or closed drilling operations. *Type 4* counts closed mining claims, closed oil and gas leases, tracts of land offered for lease by the government, and leases offered and refused by industry (see table 1).

It does not make sense to count types 3 and 4 in an assessment of activities affecting lands today. Those types involve closed operations, closed claims or leasing rights, and refusals by industry to access resources on the lands. Accordingly, these data provide little information about existing land-use activities, and because they are aggregated, they provide no meaning-

5. U.S. General Accounting Office, *Land Ownership* (Washington, DC: U.S. General Accounting Office, 1996), 24.

6. According to the EWG data, there were 3,413,627 tracts of land (the total of types 1 to 4) involved in active or potential mining in the western United States. Of that total, EWG reports that 2,294,570 of them—67 percent—consisted of land actually outside the boundaries of government land. See EWG, “Methodology.”

Figure 1. EWG Estimates versus Actual Oil and Gas Leases



ful information on future trends. It is true that some of the past activities might have had environmental impacts, but EWG presents no data on such impacts and does not reveal how they relate to current or future activities.

The only relevant items for assessing existing federal activities and potential ones on federal lands would be within types 1 and 2. But type 2 represents only *potential* development. Reliance on type 1 and 2 lands indicates that ongoing and potential activities of mining operations on federal lands are much lower than what EWG claims. In fact, it decreases the total number of oil, gas, and mining activities from 3,413,627 to 160,893—reducing EWG’s total by nearly 97 percent. The final tally for active and proposed oil, gas, and mining activities is 104,926 (see figure 1).

EWG’s data do not reveal how many acres are involved in these projects, but somehow EWG extrapolates that projects affect one in three acres of western land. Given that 97 per-

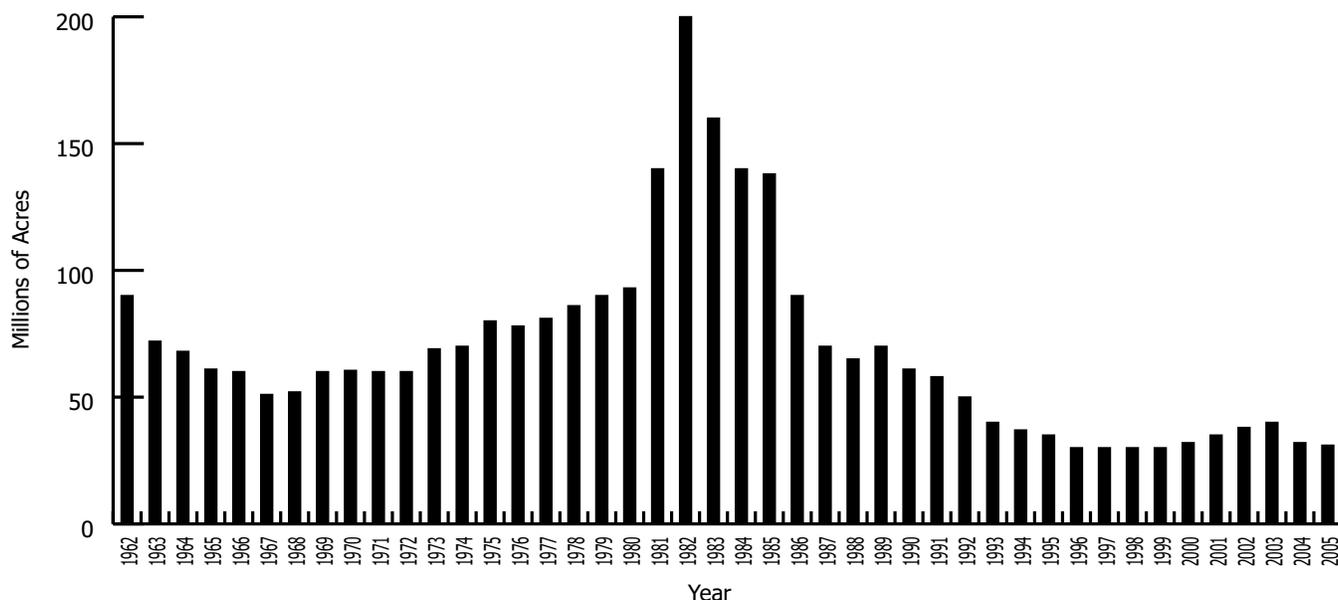
cent of its data are not particularly applicable, energy development on federal lands is likely much less than predicted.

One possible way to assess the percentage of land actually involved in such activities is to compare total acreage owned by the four environmental agencies with the acres containing leases for existing and potential oil, gas, and mining operations. The four agencies own about 629 million acres of land.⁷ The U.S. Bureau of Land Management’s most recent annual report, *Public Land Statistics 2005*, indicates that the total acreage of federal lands subject to active oil and gas leases amounted to about 35 million acres.⁸ All other

mineral leases—such as coal, geothermal, and hard rock leases—amount to about 1.2 million acres. Combined, that’s less than 6 percent of

7. Data are based on estimates for each agency: U.S. Forest Service, “About Us,” U.S. Forest Service, Washington, DC, June 8, 2006, <http://www.fs.fed.us/aboutus>; U.S. Fish and Wildlife Service, “President Seeks More than \$2 Billion for U.S. Fish and Wildlife Service in 2007 Budget,” press release, U.S. Fish and Wildlife Service, Washington, DC, February 6, 2006, <http://www.fws.gov/budget/2007/FY07%20press%20release.htm>; and National Park Service, “The National Park System Acreage,” National Park Service, Washington, DC, June 8, 2006, <http://www.nps.gov/legacy/acreage.html>. According to the National Park Service, it was responsible for managing “83.6 million acres [in 2006], of which more than 4.3 million acres remain in private ownership,” meaning 79.3 million acres were government owned.

8. U.S. Bureau of Land Management, *Public Land Statistics 2005* (Washington, DC: Department of the Interior, 2005), <http://www.blm.gov/natac/pls05/PLScover06web.pdf>. Grand totals for acreage are in charts 3-13 and 3-14.

Figure 2. Oil and Gas Leasing on Public Lands

Source: U.S. Bureau of Land Management, *Public Land Statistics*, various years.

Note: The Bureau of Land Management has reported in different formats over the years, which required that the total of existing leases for each be tallied from several tables in some cases. From 1962 to 1980, the totals were reported in one chart and required no calculations. From 1981 to 1985, the numbers were reported in three charts (competitive leases issued that year, noncompetitive leases issued that year, and all other leases continuing that year) and tallied accordingly. From 1986 through 2005, the leases were reported in two charts (all existing competitive leases and all existing noncompetitive leases), requiring the tallying of the two totals.

federal properties—far less than the EWG estimate of one in three acres.⁹

It should be noted that these data simply reflect existing leases—not active operations—which are a fraction of the number of leases. For example, although there were 34.6 million acres under lease in 2004, the Bureau of Land Management reports only 11.6 million “acres in producing status” for that year—about one-third of the lands leased.¹⁰

9. See U.S. Bureau of Land Management, *Public Land Statistics 2005*. The number of leases related to mining for all other resources was tallied from leasing totals in charts 3-13 and 3-14 (for geothermal leasing) and charts 3-18 and 3-19 for all other lease totals.

10. The figure for 2004 is used here because the 2005 report did not include statistics on acres in producing status, but the ratio would be similar. See charts 3-13 and

The Bureau of Land Management’s annual reporting of public land statistics can also provide some insight into leasing trends. The Bureau of Land Management has produced an annual statistics report every year since 1962, from which figure 2 on oil and gas leasing trends was developed. The figure shows increasing acreage under lease during the 1980s, but historically low leasing starting in the 1990s and from 2000 onward.

Figure 2 indicates that environmental claims that oil and gas leasing and drilling on public lands are growing in recent years do not hold water. In fact, it would better support the con-

3-17 in U.S. Bureau of Land Management, *Public Land Statistics 2004* (Washington, DC: U.S. Department of the Interior, 2004).

tention that industry is experiencing reduced access to these lands. However, oil and gas drilling on public lands may have declined for other reasons; hence the conclusion that environmental regulation is largely responsible cannot be drawn with any certainty. But Figure 2 does undermine claims that such access has reached historic highs. Greater support for the idea that access has been reduced comes from policy changes that have limited the scope of commercial activities on these lands. For example, the increase in federal lands designated as “wilderness” limits commercial activities on these lands.¹¹

A report produced by the U.S. Department of Energy’s Energy Information Administration shows that policy changes related to environmental concerns also have significantly reduced access to oil and gas resources.¹² The federal government owns and controls access to all offshore lands—the lands referred to as the *continental margins*. Of the three categories of these lands, the first is the *continental shelf*. It includes the shallowest regions, which run to a depth of about 650 feet and extend off the coasts 12 to 250 miles. The second is the *continental slope*, which is essentially a transitional point at which the ocean floor slopes down to depths of up to three miles. At the bottom of the slope begins the third category, the *continental rise*, where the ocean floor dips down gradually and where sediment from the slope remains.

According to the Energy Information Administration, the continental margin is impor-

tant because increasingly it is becoming the key source of oil and gas production. Natural gas production in these areas accounted for about 20 percent of all U.S. natural gas production in 2004; crude oil accessed there amounted to about 29 percent of national production.¹³ Production from those areas could be much higher, but it is limited by various federal regulations—most of them environmental in nature.

The federal government maintains jurisdiction over nearly all of the lands of the continental shelf. Under the Submerged Lands Act of 1953, states own the lands within four miles of the coast, except that Texas and Florida own lands within nine miles of their coasts. The federal government owns and controls resource use on the rest. Originally approved in 1953, the Outer Continental Shelf Lands Act (OCSLA) governs federal management of submerged lands, setting up a system for federal leasing to oil and gas firms of access to the resources contained in those lands and for setting environmental standards for resource extraction. President Ronald Reagan set the international boundaries of these lands in 1983 when he declared the U.S. Exclusive Economic Zone, which runs 200 miles from U.S. shorelines. In 1994, the International Law of the Sea Treaty recognized similar rights of all other nations of the world.

With the emergence of the environmental movement in the 1970s, OCSLA has been amended six times, reflecting environmentalist desires for increasingly restrictive leasing policies and more environmental regulation where resource extraction continues. The 1978 amendments further increased environmental considerations. It set up a system for five-year

11. Angela Logomasini, *The Green Regulatory State* (Washington, D.C.: Competitive Enterprise Institute, 2007), <http://www.cei.org/pdf/6106.pdf>, 14-20.

12. U.S. Department of Energy, Energy Information Administration, “Overview of U.S. Legislation and Regulation Affecting Offshore Natural Gas and Oil Activity,” U.S. Department of Energy, Washington, DC, September 2005.

13. U.S. Department of Energy, Energy Information Administration, “Overview of U.S. Legislation and Regulation Affecting Offshore Natural Gas and Oil Activity,” 4.

Table 3. Moratoria on Drilling on the Outer Continental Shelf

Year	Acreage removed from drilling
1983	35 million
1984	54 million
1985	45 million
1986 and 1988	8 million
1989	33 million
1990	84 million
1990	Bush blanket moratorium (effective through 2000)
2000	Clinton extension of Bush blanket moratorium (effective through 2012)

Source: U.S. Department of Energy, Energy Information Administration.

leases and held that such leasing could not continue unless the federal government had obtained information on the “environmental, social, and economic effects” of such activities.¹⁴ In addition, the amendments called for balancing environmental concerns against the economic benefits of resource extraction.

In addition to regulations in the OCSLA, the Energy Information Administration noted the following:

During the 1960s, increasing environmental awareness set the stage of development of numerous environmental laws, regulations, and executive orders that have affected natural gas and oil activities on federal offshore areas. All natural gas and oil activities must now pass through a large number of environmental reviews by federal, state, and local agencies.

The laws involved include the National Environmental Policy Act, the Clean Air Act,

14. *Ibid.*, 8.

the Coastal Zone Management Act, the Endangered Species Act, the Clean Water Act, and the National Fishing Enhancement Act.

As a result, an increasing number of areas of the continental shelf have been placed off limits for any drilling. Most of these restrictions began as moratoria on drilling included in the annual interior appropriations bill. In 1982, the first of such moratorium addressed 736,000 acres off the coast of California; more land was removed from drilling in the years that followed (see table 2).

After lands were removed from leasing for about a decade under these measures, President George H. W. Bush issued a presidential directive that placed a blanket moratorium over drilling on unleased areas off the coasts of California (with the exception of 87 tracts in southern California), Washington, Oregon, the North Atlantic, and the Eastern Gulf of Mexico, which President Clinton extended in 2000. In 2006, Congress did make a modest change, opening 8.3 million acres off the Gulf of Mexico. However, this relatively small change may have done more harm than good in the view of

those who seek opening more of the OCS lands, as it has effectively shut down debate on the issue for many years to come, leaving the vast areas closed to development for the foreseeable future.¹⁵

This history clearly shows that the desire of environmental groups to limit access to energy resources on public lands—a desire that is now reflected in public land-use policies, particularly on the outer continental shelf.

15. Ben Geman, “Leasing Bans are Likely Untouchable in Current Congress -- Bingaman,” *E&E Daily*, January 26, 2007.

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