Recovering $600 Billion by Collecting the Rent on Our Public Lands

Lynn Alexander, for Resource Renewal Institute
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Introduction

This paper initiates Resource Renewal Institute’s second “Council of Elders” project:
Recovering $600 Billion by Collecting the Rent. The Council of Elders aims to improve today’s
resource and environmental management through the combined expertise of retired resource
management professionals. The paper is organized into five sections: oil and gas, mining,
grazing, water subsidies and the Public Trust.

Resource Renewal Institute (RRI) believes the Council of Elders can help bring antiquated land
management laws into the 21st century. The Council will examine federal land management
policies and identify how governmental support of resource extraction on public land affects the
Nation’s public land resources and U.S. economic well-being.

As a group of experienced former resource management professionals, the Council of Elders has
a window of opportunity to contribute our knowledge towards the goal of reforming outdated
public land use laws. The articles collected here show that the historic and current practice of
subsidizing the development of public resources and land is not only unbalanced, but extremely
damaging to our environment and economy – and requires scrutiny.

The Issue: $600 Billion Uncollected Income from Public Land and Resources

The current U.S. fiscal policy governing the lease of public lands for resource exploitation is
unsustainable, immoral and a drain on taxpayers. RRI has compiled this reader to show examples
of how U.S. economic policies regarding resource management are skewed and need reform.
Included is information from a variety of independent sources to illustrate how U.S. energy
subsidies benefit wealthy companies and private entities rather than assisting those who need it
most.

Despite a record national deficit of $1.47 trillion, our Congress continues to hand out generous
subsidies and tax breaks to a wide range of favored interests.1 We estimate that these federal
resource subsidies could amount to approximately $600 billion in federal giveaways.

For example, MIT estimates show that between 2007 and 2011, federal energy tax expenditures
benefiting the oil and gas industry have reached $11 billion.2 During this time, U.S. national debt
has grown to more than $13 trillion.3 Until now, the U.S. has viewed itself as too rich to bother.

Before our leaders cut vital programs, let us make the case for the collection of $300 billion each
year in revenues from our public lands.
Oil and Gas

The petroleum industry has established unfair and excessive political and insider clout. For example, an extremely low estimate from the U.S. Treasury shows that the petroleum industry reaps more than $2 billion a year in subsidies and tax breaks for operations on ecologically sensitive public lands, both on- and off-shore.\(^5\) Information provided in other reports and investigations show that billions more go to benefiting oil companies. During the George W. Bush Administration, individuals such as Gale Norton and Steven Griles (who served time in federal prison for making false statements) were installed as Secretary, and Deputy Secretary of the Interior because of their anti-environmental and pro-oil stances. These individuals actively sought to open up oil and gas drilling in prime habitat in the Yellowstone National Park, as well as in Arches and Canyonlands National Parks.

Record Profits for Oil Companies: Lowest Take for U.S.

The preferential treatment of large multi-national oil corporations have resulted in record profits in recent years at the taxpayer’s expense. For example: between 2001 and 2008, the five largest oil companies reported profits of $586 billion; while the federal Mineral Management Service (MMS) collected meager $8-9 billion in average annual royalties from all activity.\(^6\) As costs to taxpayers accelerate, we find that that the cost of a federal oil and gas lease has decreased in the past 25 years and is now $1,961 less per acre to lease than it was between 1954 and 1982.\(^7\) This bargain has resulted in an increase in the overall acreage controlled by these corporations.

In 2007, the Government Accounting Office reported that the U.S. receives one of the lowest government takes from oil and gas in the world (e.g. this includes bonuses, rent, royalties, corporate income taxes and special fees or taxes).\(^8\) In a 2008 report, the Energy Information Administration (EIA) calculated that energy subsidies and the tax benefit of “cost over depletion” are estimated to be $3.2 billion. This is the benefit to oil companies and the loss to the U.S. Treasury. From 1968 to 2007, the estimated taxpayer losses from the cost over depletion tax breaks were equal to $102 billion, with additional subsidies for exploration and development at roughly $53 billion (in 2007 dollars) over this same period.\(^9\) With all levels of government now searching for revenue sources to continue social services and educational programs it is absurd that no one mentions cutting subsidies that are giveaways to profitable corporations and wealthy individuals.

 Corruption and Misconduct

In recent history, no other government institution has been found to be more corrupt than the MMS. A 2009 General Accounting Office (GAO) report found many inconsistencies and erroneous information concerning the collection of royalties.\(^10\) Other investigative reports indicate that government officials were more than cozy with the industry that they were regulating. For instance, MMS employees were engaging in sexual misconduct, accepting gifts and gratuities, and even moonlighting with those they were regulating. In addition, MMS staff made egregious contracting errors resulting in billions of dollars of royalties that became uncollectible. MMS estimates that their contracting mistakes ranged from $15.7 billion to $21.2
billion of lost royalty revenues as a result of grossly mismanaging Gulf of Mexico oil field leases in 1996, 1997, and 2000.\textsuperscript{11} In another report the GAO estimated that more than $160 million in uncollected royalties were due to corporate self-reporting errors during the 2006-2007 period.\textsuperscript{12}

Benefits Offered to the Oil and Gas Industry

Purchasing a federal oil and gas lease is a steal. The price to lease 2,500 to 5,670 federal acres is only $5.90 to $9.50 annually and the average lease includes a term of 5 to 10 years.\textsuperscript{13} Oil companies have leased 47.5 million acres of on-shore federal lands, but only 13 million acres are now in production. Similar production trends occur offshore where only 10.5 million of the 44 million leased acres are producing oil and gas. Companies have stockpiled more than 100,000 extra permits to drill because it is so inexpensive to do so.\textsuperscript{14} Yet another federal giveaway limits oil company liability for damages at $75 million. As the Gulf of Mexico oil spill now demonstrates, damages can easily exceed this amount.

A 1995 Clinton administration policy exempted oil companies from paying royalties for deepwater drilling leases in \textit{The Outer Continental Shelf Deepwater Royalty Relief Act of 1995}. This created much interest in drilling offshore and in the Gulf of Mexico and gained additional momentum throughout the G.W. Bush administration. Presently, there are approximately 35,637,392 acres that are leased in the Gulf of Mexico.\textsuperscript{15} Of the 8,221 active offshore oil and gas leases, about 54\% are in deep water Gulf of Mexico. In 2005, the G.W. Bush Administration provided additional royalty relief in the \textit{Energy Policy Act of 2005} and provided more than $12 billion in industry tax breaks. For the past fifteen years most deepwater drilling has been a royalty-free-ride.\textsuperscript{16}

The MMS permits oil companies to self-report their volumes and provide royalty payments in-kind, meaning that they can exchange some of the crude oil for what they estimate that they owe in royalties. In 2006, the estimated value of Royalty-In-Kind revenues from deepwater drilling was approximately $4 billion, approximately 42 percent of the $9.74 billion in total royalties. Some of this payment of oil may go into the Strategic Oil Reserve but the rest of the oil and gas must be sold by the United States, ostensibly to make a profit; however several investigative reports indicate that this has not been the case. In fact, audits show that MMS’s Royalty-In-Kind production verification for its gas program is less adequate than that used in the oil program.\textsuperscript{17}

The Difficulty of Collecting the Rent

Despite all the tax breaks and subsidies offered to oil companies, taxpayers are still forced to litigate in order to collect some royalties. For instance, between 2000 and 2009, the Project on Government Oversight (POGO) filed and won False Claims Act lawsuits and recovered $400 million in settlements with no acknowledgement of wrongdoing by the oil companies.\textsuperscript{18} Current lawsuits by oil companies challenging price thresholds, if successful, could result in the loss of an additional $30-53 billion in royalties due to our treasury over the next 25 years.\textsuperscript{19} Federal auditors finding such inconsistencies and omissions have reported them as they should, but instead of receiving justice, they were fired. Such anomalies raise questions of how much royalty revenue has been hidden and how much is still uncollected.
Mining

Royalty-Free Mining and Cheap Federal Land

Our federal government trustees have given away more than $200 billion in mineral reserves through royalty-free mining and have accepted rock-bottom prices ($5.00 per acre) for resource-rich public lands for the benefit of the hardrock mining industry.\(^{20}\) Approximately $1 billion of hardrock minerals are taken from our public lands each year at no benefit – but rather a substantial cost – to taxpayers. The availability of modern mining technologies combined with the escalating prices for hardrock minerals and an increased need for minerals have sparked a mining boom. Since 2003, mining claims on Western public lands have increased by 80 percent.\(^{21}\)

19th Century Mining Law Unfit for Current Practices

The General Mining Law of 1872 (also known as the Mining Law of 1872) is an archaic federal statute that allows mining companies to extract valuable hardrock minerals from our public lands without paying any royalties to federal taxpayers. The law contributes to water quality degradation, destruction of fish and wildlife habitat and limits recreational opportunities. The Act allows mining companies to purchase our federal lands for the offensive price of $5.00 per acre and mining companies keep all the mineral profits. Abuses of this statute have resulted in profiteering from our public lands by speculators who have purchased federal land and then resold it to developers at maximum profit. For years, mining companies have enriched themselves on public land by mining for lucrative minerals like gold and using the latest and most efficient mining technology.

The original intent of the General Mining Law was to encourage people go west and stake individual mining claims as an incentive to settle western lands. The PEW Campaign for Responsible Mining has estimated that the lost federal revenues could be close to $160-170 million annually: this includes $40 million in lost royalties, $29 million in lost reclamation fees, and a $100 million subsidy that the industry receives annually in tax breaks. In addition to the lost royalties, American taxpayers have paid over $2.6 billion since 1998 to clean up the toxic wastes left by mining companies.\(^{22}\)

This Mining Law does not address protection of natural resources, including water quality or wildlife habitat. As a result, this law has created an epic legacy of environmental degradation. Dangerous levels of environmental contaminants that have been dumped on public lands still pose hazards to the unsuspecting public. Many abandoned hard rock mines are sources of acid mine drainage and toxic pollutants such as cyanide, arsenic, mercury and lead, and there is no dispute about the hazards that these substances pose to humans and wildlife. According to the EPA, 12,000 miles of streams and 180,000 acres of lakes and reservoirs have been polluted by mine wastes and at least 40 percent of the headwaters of western rivers and streams are still degraded from mineral activities.
The vast majority of public lands open to hardrock mining under the 1872 Mining Law are mostly in the 12 Western States, including Alaska. These mining sites are typically large, complex, and very costly to clean up. With over 161,000 abandoned hardrock mining sites existing in the United States, approximately 33,000 abandoned sites have degraded the environment.\textsuperscript{22} In 2004, the GAO estimated that the cost to clean up 63 mining sites on Superfund’s National Priorities list was approximately $7.8 billion; much of this is expected to be paid by taxpayers. Many of these sites have been long abandoned by the mining companies and are now taxpayers’ liability. More often than not, these sites take decades to clean up; this is due to the lack of accountability, the lack of adequate funds, and the complexity and extent of the environmental damages.

Pew’s Environmental Group \textit{Campaign for Responsible Mining} conducted an interesting comparison between the extraction of coal and the extraction of mineral resources on public lands. Pew reports that hardrock mining, subject to the 1872 Mining Law, exempts royalties for minerals such as gold, silver, copper and uranium mined on public lands. To the dismay of many, this law has not changed substantially in 138 years. Coal mining, on the other hand, is governed by the Mineral Leasing Law which was passed in 1920 and amended several times. This law recoups a royalty that is shared with the states. PEW estimates that from 1920 to 2000 royalties collected from coal mined on federal lands totaled more than $6 billion. In contrast, no royalties have ever been collected under the 1872 Mining Law for hardrock minerals.\textsuperscript{24}

In another example contrasting the ownership of public land for coal versus minerals, Pew found that the coal extraction laws subject to the Mineral Leasing Law allowed public land to remain in public ownership; while the 1872 Mining Law allowed hardrock mining companies to purchase public land for no more than $5 per acre.\textsuperscript{25} This purchase option has been temporarily halted through appropriations riders since 1995, but is still mummified in the Mining Law of 1872.

**Mining Creates a Trail of Toxic Waste Without Adequate Funding for Cleanup or Safety**

There is no doubt that mining is hazardous, safety issues abound. Open shafts and unmarked mines have claimed lives on public land and unfortunately, even within our National Parks. The GAO estimates that there are more than 500,000 abandoned hard rock mines in the U.S. Western states contain approximately 161,000 of these abandoned hardrock mines. The GAO estimates that approximately 332,000 mining features may pose physical safety hazards, such as open shafts or unstable or decayed mine structures. For example, the U.S. Mine Safety and Health Administration identified 33 abandoned mine fatalities between 1999 and 2007 on public and private lands in the Western United States.\textsuperscript{26} An increasing number of mines require water quality treatment and remediation that will require many years and probably decades of remediation.

BLM’s abandoned mine lands program has been persistently and radically underfunded. In its abandoned mine lands strategic plan, BLM identified funding needs of about $130 million through fiscal year (FY) 2013 for high-priority sites. The GAO found that clean-up of environmental hazards in California’s Rand Mining District alone will cost over $170 million, and the total costs to mitigate abandoned mine sites bureau-wide could ultimately amount to billions of dollars. Currently BLM’s abandoned mine lands program receives less than $10
million in annual funding from various sources including appropriations for soil, water and air; hazard management, and resource restoration. Significant progress to permanently address physical safety and environmental hazards at BLM abandoned mine sites will not be achieved unless substantial additional resources become available.

Grazing

Taxpayers Pay $1 Billion Annually to Support Grazing

The leasing of federal lands for grazing is a costly proposition for taxpayers. Approximately 48 percent, or 320 million acres, of the western lands are public lands owned by the American people. Privately owned livestock graze approximately 81 percent, or 258 million acres, of public land, but ranchers pay only a fraction of the direct costs for grazing and taxpayers subsidize the remaining costs.

The Center for Biological Diversity (CBD) estimates that full annual cost to the U.S. Treasury for grazing lands operated by the Bureau of Land Management (BLM) and Forest Service (FS) amounts to a minimum of $128 million and could approach $1 billion annually. A 2005 Government Accounting Office audit found that revenues amount to one-sixth of the cost of managing agency grazing programs. Indirect environmental costs, including long term damage to streams and negative impacts on native grassland ecosystems, add substantially to the public burden.

Public Lands Ranching Produces Little Beef and Few Jobs

American taxpayers subsidize approximately 6 percent of all livestock producers, roughly 23,600 public lands ranchers. Power estimates that public lands presently contribute only four percent of all beef and cattle consumed in the United States, including forage and feed grains. Public lands ranching accounts for only 0.1 percent of western employment and income.

Grazing Results in Incalculable Environmental Effects with Limited Benefits

Natural biological systems are substantially affected by grazing. Grazing by livestock has damaged 80 percent of the streams and riparian ecosystems in arid regions of the western United States. Fish stocks have been damaged by the removal of vegetation, trampling and other intrusions. Overgrazing and livestock trampling facilitate the loss of soils and native vegetation and increases the introduction of exotic weeds. Roads and improvements intrude on wildlife habitat and migration corridors, and native species are replaced with exotic species. If natural predation kills or injures livestock, the natural predators are typically eliminated in government-sponsored programs supported by taxpayers.

Low Ranching Fees Unchanged Since the 1970s

The low fee that ranchers pay to graze private livestock on public land was established in 1978 with the Public Rangeland Improvement Act (PRIA), where the purpose of the fee calculation was to “prevent economic disruption and harm to the western livestock industry.” The PRIA
formula used by BLM and FS to calculate grazing fees is based on the value of forage to ranchers rather than the cost to taxpayers of providing the service. The low fees charged today ($1.35 per Animal Unit Month (AUM)) \(^1\) equals the lowest allowable federal grazing fee, and lower than market-rate fees charged on private land, which in the western states is reported to average $13 per AUM. The base value of $1.35 per AUM was established in 1966 and made permanent by President Reagan in 1986. Table 1 illustrates the grazing fees charged since 1981.\(^33\)

The average monthly lease rate for grazing on private land in 11 western states in 2006 is $15.10 per head. In contrast, the fees for grazing on public lands have never exceeded $2.31 per AUM. The Government Accounting Office (GAO) found that BLM and the FS grazing fees decreased by 40 percent from 1980 to 2004, while grazing fees charged by private ranchers increased by 78 percent over the same period. To recover expenditures, BLM and FS would have had to charge $7.64 and $12.26 per animal unit month, respectively.

### Table 1

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<th>Year</th>
<th>Grazing Fee (dollars per AUM)</th>
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‘Range Betterment Fund’ Grossly Underfunded

Fifty percent of all fees collected by BLM and FS or $10 million, whichever is greater, go to a range betterment fund’ in the Treasury.\(^34\) The fund is used for range rehabilitation, protection, and improvement including grass seeding and reseeding, fence construction, weed control, water development, and restoration of fish and wildlife habitat. One-half of the fund is to be used as directed by the Secretary of the Interior or of Agriculture, and the other half is authorized to be spent in the district, region or forest that generated the fees.

Both BLM and Forest Service allocate the remaining 50 percent of the fees differently. Each agency allocates a portion of the fees to the state, which vary depending on the agency and the type of grazing authorization. Some additional increment between 25 - 37.5 percent may go to the federal treasury. Grazing fees from grazing allotments do not contribute to the federal treasury; however, the remaining 50 percent of the allotment grazing fees go to the state. For any state share, the fee revenue goes to the county in which the grazing occurs.

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\(^1\) Animal Unit Month (AUM) is the amount of forage needed to sustain one cow, five sheep, or five goats, all over 6 months of age, for one month. An animal unit is based on average daily forage consumption of 26 pounds of dry matter per day.
Unsuccessful Grazing Reforms

Environmental groups have pressed for grazing reforms for decades while the debate drags on. President Clinton proposed, and Congress considered, grazing fee reform in the 1990s, but no reforms were ever adopted. In 1993, the Clinton Administration proposed an increase in the administrative fees and revisions of grazing policies. The proposed fee formula established a new base of $3.96 per AUM and was to be adjusted to reflect annual changes in private land lease rates in the West (called the Forage Value Index). Congress did not pass the fee or policy proposals. Both the 104th and 105th Congress also looked at reforms, but no grazing fee bills have passed either chamber for several years.

The 109th Congress considered buying out the grazing leases with H.R. 3166. Congress and proposed to buy out permittees at a rate of $175 per AUM, estimated at more than twice the market rate. This would have closed the allotments permanently. The proposed buyout program would have cost the public about $3.1 billion if all permits were relinquished, but it is estimated that it would save more than that over time. There was much criticism and opposition to this proposal and it was never implemented.

Water Subsidies

Cheap Abundant Water for Agribusiness While Cities and Wildlife Pay

Water is an increasingly scarce resource, currently depleted at a high cost to taxpayers and fish and wildlife. Water law and management, particularly in the arid west, are notoriously complex. Large quantities of water and outsized subsidies for large agribusiness and rural water districts exist at the expense of taxpayers, water consumers, and the environment. Water is a carefully guarded private entitlement with a powerful lobby.

Agriculture now accounts for 80% of the nation’s consumptive water use and over 90% in many western states. In the west, 30% of harvested cropland is irrigated. Some estimates of the California Central Valley (water) Project indicate that the Project provides up to $416 million in subsidized water. In California alone, the 2002 water subsidies to the large arid Westlands Water District have been estimated at $110 million.

The agricultural sector particularly benefits from water subsidies compared to other water users such as cities. While most irrigated farms in the west are small, the largest 10 percent (with more than $500,000 in annual sales per farm) use nearly half of all agricultural water. For example, in 2002, the largest 10 percent of California farms received 67 percent of the water for an average subsidy of $349,000 each, for replacement water at market rates. Twenty-seven farms received subsidies of $1 million or more at market rates, compared to a median subsidy for all recipients of $7,076. Agricultural subsidies to the Westlands Water District in 2002 benefited 156 large California farms at a cost of $22.5 million.

Even modest changes in agricultural water use practices would free up substantial amounts of water for other agricultural uses, urban needs, and environmental restoration. However, the
extremely low cost of water encourages the production of crops that are both low-value and highly water intensive without incentives to conserve water.

Water and Water Infrastructure Costs Passed to Urban Public and Small Farms

Western water rights are based on use, not need. Consequently there is little real incentive to conserve water because allocations could be expected to decrease. Instead of allocating water for conservation or wildlife, users entitled to large amounts of water regularly sell excess water to urban communities. It is precisely these urban consumers who bear the brunt of conservation efforts, capital costs for constructing major water infrastructure, energy costs associated with water transport, and the costs of environmental spills or cleanup.

Conversely, most of the largest operators are not required to pay the true cost of infrastructure, delivery, and fees associated with water. Some reports indicate that California’s Central Valley Project subsidy recipients receive a minimum discount of 55 percent below market value, ranging up to almost a 90 percent discount for the water they procure. However, California’s urban taxpayers are responsible for pay the full market value for water to restore fish and wildlife habitat.

George Miller (D-Martinez, CA) complained that, “what is especially outrageous is that the Bureau of Reclamation is secretly negotiating long-term water contracts worth billions of dollars that would provide these same handouts to these same special interests for decades to come, while the rest of California is either running short of water or paying top dollar for it.” Congressman Miller wrote a water reform law in 1992 to end these costly giveaways. However, the Bureau of Reclamation has largely ignored the law and instead has worked to maintain the status quo.\(^{38}\)

Future Scenarios in a Climate-Changed World

While there is disagreement about how to define “economic good” or to apply the concept, a variety of new economic and pricing approaches are now contributing to the shift in international water resources development approaches.

The International Conference on Water and the Environment in Dublin, Ireland (January 26-31, 1992) sets forth four principles for water and environmental sustainability.\(^{39}\)

1. Water is a finite, vulnerable and essential resource that should be managed in an integrated manner.
2. Water resources development and management should be based on a participatory approach, involving all relevant stakeholders.
3. Women play a central role in the provision, management and safeguarding of water.
4. Water has an economic value and should be recognized as an economic good, taking into account affordability and equity criteria.

Water that is accurately priced will give a clear signal to the users that it is indeed a scarce good that should be used sparingly. It would stimulate conservation, could curb demand and encourage the use of water for high value users. Water pricing, interpreted in this sense, is
consistent with the concept of integrated water resources management and with the fourth Dublin principle. A more reasonable use of subsidy would be to use it to ensure that water will always be affordable to everyone including commercial, urban, and environmental uses that also provide public benefit.

The Public Trust

The approximately 30% of U.S. territory owned by the American people is known as its public trust resources or the Public Trust. The American public also owns water, fish and mineral resources found in the Gulf of Mexico as well as resources on and beneath its coastal shelves. Americans have entrusted our precious natural resources to the careful stewardship of the federal government, but in reality, our federal laws primarily benefit private interests over public interest. More often than not, special interests benefit at a cost to the public.

The U.S. Public Trust Doctrine holds that certain interests are so precious, especially the gifts of nature’s bounty, that they ought to be reserved for the whole of the populace. For example, federal land and water rights allocations should reasonably consider the rights and needs of others. It is incumbent upon our government to protect the interests of the public with respect to our public lands and resources. Over the past several generations, powerful interests have secured lucrative subsidies and tax incentives that harm the Public Trust as well as our economy. Although, citizen groups and non-profits have long protested the policy of providing excessive subsidies for special interest energy and water companies, federal leasing fees continue to be reduced instead of increased to fair market rates.

The Public Trust Principles

- It is morally wrong to reward resource abuse on public lands.

- Public lands and all their resources are owned by the American people and held in trust by the federal government for the benefit of all Americans, including future generations. Taxpayers should not be required to pay to restore public lands after they have been leased to private entities.

- Lease of public lands for resource extraction is a privilege, not an entitlement.

- Public servants and elected officials have a fiduciary responsibility to act in the public interest to assure that first and foremost, the public will benefit from the extraction of America’s natural resources. Resource extraction and public land leasing must be transparent. Subsidies should only be available when the cost-benefit is in the public interest. Cost benefit analysis must include evaluation of ecosystem services, environmental consequences and fair market values. Subsidies that promote double-or-triple-dipping (benefiting any set of interests over the public interest) are inequitable and must be reformed.

- Public agencies must assure full consideration of environmental impacts and mitigation for federal land management approvals, including the full costs and environmental consequences for non-renewable resource extraction on future generations. Public agencies must balance resource extraction with maintaining biological diversity and healthy ecosystems.
• Agency whistleblowers reporting waste and fraud must be protected, and public servants must be held accountable for corrupt or unethical practices that are contrary to their fiduciary responsibility.

• Legislators that do not act in the public interest must be exposed and lose the opportunity to run for future terms.

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15 BOEMRE Gulf of Mexico OCS Region Blocks and Active Leases by Planning Area. Map. 2011.


