

July 1, 1998

Secretary Bruce Babbitt
Department of the Interior
Washington DC, 20240

via fax: (202) 208-6956

Secretary Babbitt,

I am writing to determine whether you are supporting Assistant Secretary Bob Armstrong's current back room dealings with the major oil companies to reopen the comment period for the proposed crude oil valuation Rule. The simple reason for these discussions is to allow the majors to craft the Rule more to their liking. I don't need to remind you that their interests are in direct contradiction with the interests of the public — including the school children who would otherwise be benefitting from the royalties these companies are stubbornly trying to avoid paying.

Why, after a two and a half year comment period, should DOI be deferring to the major oil companies now? The majors are claiming they didn't have adequate opportunity to have their say. At first, it was odd that the majors were not participating significantly during the public comment period. In fact, however, Assistant Secretary Armstrong was notified over a year ago in the attached letter from a former Independent Petroleum Association of America (IPAA) Board Member's attorney, that the majors were always dictating industry's positions on the Proposed Rule, they were simply using the independents as their more politically palatable front men.

This fact is made even more apparent by the second attachment, a memo dated last week from the General Counsel's Office of the American Petroleum Institute. This memo dictated to IPAA and the Domestic Policy Council what they will be doing — and saying — as they enter into the new "post-comment period" negotiations. Apparently the majors were not satisfied with the IPAA's efforts to represent their interests, and so they now want to start the game from scratch with their "A" team at the table after pouring another \$7.4 million into Congressional campaign coffers.

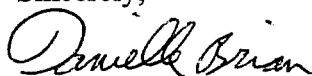
Why is the Department of Interior acquiescing to the major's demands? The entire two and a half year Rulemaking process was performed in accordance with the Administrative Procedures Act and other relevant laws. If a coalition of environmental groups petitioned DOI to reopen the comment period on an environmental Rule, would they be met with such open arms and weak knees?

Plain and simple, Secretary Babbitt, your department is engaging in the worst kind of pandering to special interests, which is all the more disappointing after DOI made such a remarkable turnaround in its pursuit of unpaid oil royalties. It is precisely these kinds of back room deals, which have been orchestrated by two of the biggest recipients of oil industry campaign contributions — Senators Hutchison and Breaux — that make the American public disdain its own government.

When I asked Secretary Armstrong's office why they are bending over backwards for the major oil companies, they weakly replied that they were asked to do so by two Democratic Senators, at the time Senator Breaux was joined by Senator Bingaman, and felt they had to oblige. Yet I know of at least three Congressional Democrats who have called Secretary Armstrong demanding that he stop these unethical, and possibly illegal, discussions. They are currently taking place between the DOI and the major oil companies, yet no other interested parties — including the American public — have access to these meetings, nor do they have the opportunity to influence the direction of the Rule the way the majors currently do.

This is why I turn to you to put a stop to the preferential treatment being given to the major oil companies. They make a mockery of the entire Rulemaking process and bring shame on the Department of the Interior.

Sincerely,



Danielle Brian
Executive Director

cc:

Assistant Secretary Bob Armstrong
Representative Carolyn Maloney
Representative George Miller
Senator Barbara Boxer
Senator Dale Bumpers
Senator Richard Durbin
Senator Jeff Bingaman
Senator John Breaux
Senator Kay Bailey Hutchison

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February 26, 1997

Mr. Bob Armstrong
Assistant Secretary, Land and Minerals Management
United States Department of the Interior
Washington, D.C. 20240

Re: API and IPAA Opposition to Proposed Oil Valuation
Regulations

Dear Mr. Armstrong:

On February 20, 1997, I attended by telephone an open, 3-1/2 hour meeting of the IPAA's valuation task force. I did so at the request of my client, Gene Wright, an active member of the IPAA and a former member of its Executive Committee. He had been invited to attend or have a representative present. Although this was an IPAA meeting, lawyers and lobbyists representing Chevron, Amoco, Conoco and other major oil companies attended.

At the meeting it was reported that the major oil companies' CEOs' Club had just met and decided that the API must become active in opposing the proposed new market value oil royalty valuation regulations.

Every oil producer, without any question, has an unrestricted right to oppose the government's proposal on its own behalf, on any grounds it deems appropriate. But it would appear to be a violation of the antitrust laws for the chief executive officers of the major oil companies to meet and combine (i.e., conspire) among themselves to try to keep federal royalty oil prices depressed below market values. That is the only possible purpose to be served by combined opposition, in the name of the API, to the proposed market value pricing regulations.

The strategy discussed at the meeting was to seek to delay the proposed regulations as long as possible, and then file suit in the name of the IPAA ("another IPAA v. Rabbitt case") to prevent them from becoming effective on whatever procedural (not substantive) grounds are available. It was suggested that the IPAA-API should consult with the tobacco industry on legal tactics, since that industry has so much more experience in litigating against government regulations than the oil industry.

The Chevron representative said he was attending the meeting to offer Chevron's financial support to the IPAA to delay and oppose the proposed market value regulations, on procedural, not substantive, grounds. On one or more occasions he said "he did not feel comfortable" with the discussions of pricing, a "substantive" matter, and he cautioned against portions of the agenda on pricing, mentioning that matters discussed here were not subject to the attorney-client or other privilege. He said some of the pricing matters on the agenda would best be taken up at a private meeting the following day.

The Chevron man said they were checking with their Democratic friends on the Hill to see if the recent statements by Senator Boxer (calling the major oil companies "deadbeats") and by Rep. Carolyn Maloney had somehow emanated from the White House, the DNC or Vice President Gore's office. (This seems an interesting manifestation of apparent paranoia. I wonder whether if I, a Republican, were able to prevail upon Bill Archer and John Kasich to support a federal production tax on Gulf OCS production equal to the Texas or Louisiana production taxes, in order to help pay for Medicare, Chevron would attribute the idea to a Machiavellian plot by the DNC or the White House?)

The Chevron man said the strategy would be to fund opposition, including litigation, against the proposed regulations in the name of IPAA, as representative of the "small producers," rather than in the name of the "giants." He said this could also provide "a forum for taking political initiatives." There was a whole series of meetings scheduled for that week and this week, including with members of Congress, to lay the groundwork for public support of litigation, and to coordinate the political and litigation aspects of the pricing problem.

There was mention of the fact that the Department of Justice had sent out more than 100 letters to different producers. There was speculation that a likely source of the DOJ list of such producers was some list Cynthia Quarterman must have, of the 125 producers she apparently mentioned, in Congressional testimony, whose royalty reports MMS would be examining for possible underpayments. I did not volunteer another possible explanation for the source of the DOJ list.

A representative of one of the majors present, Conoco I believe, mentioned it was meeting with Dodge Walls at the Justice Department the following week, and it was generally agreed that Dodge Walls must be "The Man" at the Justice Department in charge of royalty pricing matters. Someone mentioned that Shell had filed suit in federal court "in the Northern District of Oklahoma" to block subpoenas.

There was talk of using influence on the Appropriations Committee to block the expenditures needed to implement the proposed regulations. There seemed to be a consensus that there will be a coordinated FOIA request to DOI to obtain the underlying data, studies and information used by DOI in preparing the proposed regs, following a simple letter request for the information. Then there will probably be a federal suit to block the regulations on all procedural grounds devisable.

One of the female lawyers discussed the two meetings scheduled with Cynthia Quarterman the following week, the one on Tuesday to involve other matters besides pricing, but with the Wednesday afternoon meeting to be exclusively on royalty pricing, with Ms. Quarterman and her staff, including "Lucy." When there was a lot of trouble and noise on the conference call, and some of the participants were temporarily cut off, one of the ladies said, to general laughter, "that's Lucy," and I gather these ladies seem to think "Lucy" is one of the industry's main problems. (On behalf of my client, I felt somewhat slighted, but after hearing the discussion I know I would like to meet this mysterious bogey-woman).

Someone (either the IPAA or one or more of its members) has retained Attorney Marshall Duke with the law firm of Gardere & Wynne to advise the group on the False Claims Act. He was introduced as an expert on the False Claims Act, being a Past President of the ABA Section on the FCA and a life-long practitioner in the area of government contracts. (Before Duke began reading dull government contracts, when he was a younger associate of mine at the Thompson Knight firm in Dallas, he was expert at drinking beer and fair-to-middling at touch football).

The eminent Mr. Duke opined that "we think the government will file an FCA case if they think they can make it stick." He alluded to the fact that the FCA provides criminal as well as civil penalties, and he warned that even if the government can't make an FCA case stick, there is a False Statements Act that make any kind of false statement to the government actionable. Duke was careful not to make any false statements in his short speech, or to openly solicit further business in my possibly competitive presence.

I thought you might be interested in some of these matters. Enclosed is the agenda of the meeting. I am forwarding a copy of this letter to Mr. Dodge Wells.

Sincerely,

Pat S. Holloway

PSH:lw

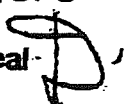
cc w/ encl. Dodge Wells, Esq.

also cc: Ms. Quarterman & "Lucy"

David T. Deal
Managing Attorney
Office of General Counsel
202 - 692 - 8297
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DealD@API.org

Date: June 26, 1998

To: SEPL 30
Ben Dillon, IPAA
Alby Modiano, MCOGA
Bill Whitsitt, DPC

From: David T. Deal 

Re: MMS Crude Oil Valuation Rulemaking

As you know, it appears that a post-comment deadline process will be employed by Congress to explore the possibility of resolving at least some of the crude oil valuation rulemaking issues before a final crude oil valuation is issued.

The Process

Although many details have not been worked out, the process will look something like this:

- initial session July 8 or 9, with 2-3 other sessions likely over the next few months;
- industry representation (at least at the initial session) limited to senior company executives (headed by Jack Little of Shell) and representing the principal industry associations;
- other stakeholders (i.e., MMS, states?, public interest groups) would be involved;
- focus on compromise and key issues.

The Issues

I have undertaken the preparation of a package intended to identify the key issues, stripped of jargon and nuance, suitable for presentation by CEOs, and suitable for discussing proposed revisions.

Attached is a draft of the first half of the package to give you a sense of what is emerging. When you receive the final draft package early next week, it will include a rough hewn second half which I envision as separate sheets for each issue with a few basic explanatory points, at least one simple example, and perhaps a recommended solution.

To date, the industry comments have properly focused on principle. If the negotiation process is to have any chance of success, however, we should add a healthy dose of pragmatism. Industry cannot expect to get everything it seeks, but we have a good chance to get something of real value if we can prioritize our issues and bend a little.

The Schedule

Although there will undoubtedly be revisions, the near term schedule looks something like:

- draft package faxed by close of business Monday, June 29;
- SEPL 30 et al. meeting Wednesday, July 1 at Shell offices in New Orleans;
- revised package completed by Friday, July 3;
- briefing of industry delegation July 6 or July 7;
- kickoff negotiation Wednesday, July 8 or Thursday, July 9.

Arrangements for Wednesday, July 1 Meeting

The July 1 meeting will be held at Shell's offices at 701 Poydras, New Orleans. The meeting will start at 9:30 and can be expected to run until 3:00. The meeting will be in conference room 1424, but attendees should go to the reception desk on the 34th floor to facilitate admission.

Finally, attendees should contact Mike Coney's secretary, Diane Dauterive, at 504-728-4644, who needs to plan for meals and assure there is ample space. Although we encourage your attendance at this important meeting, we can arrange for telephone call-in, if you so advise Ms Dauterive by close of business, Monday, June 29.

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If you have any questions, call me or Mark Rubin (202-682-8057), my E&P department counterpart.

- c: Ron Jones
- Bill Frick
- Mark Rubin
- Jerry Schanke