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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

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December 21, 1999

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I commend the decision of the Minerals Management Service (MMS) of the Department of the Interior to re-propose its pending rule on valuation of crude oil produced from leases on federal land. This complex issue has received much Congressional time and attention. I believe that the new rule must meet a number of important requirements:

- It should replace the current rule's reliance on posted prices with a system that more accurately represents a fair return to American taxpayers, who own the resources on federal lands.
- It should fairly reflect the value of the oil as it is produced and placed in marketable condition at the lease.
- It should accomplish the previous two goals in a manner that provides simplicity and consistency for all parties in the process of royalty assessment and collection.

As your Administration moves towards finalizing the language of the re-proposal, I would ask that you ensure that the following issues are addressed. All have figured prominently in previous comments from the public on the rule.

First, while the MMS and public commenters all agree that for true arm's-length transactions (i.e., those in which the buyer of the crude oil does not control the seller), the actual sale price in the transaction should be considered the value of the oil for purposes of royalty calculation, there has been considerable concern by my constituents in New Mexico that MMS will use the new rule to "second guess" producers and expect them to pay royalty based on something other than the actual fair market price they received. MMS has taken the position that this is not its intention. Thus, I believe that there should be no objection to including, in the re-proposed rule, specific language to address this widespread concern. I would suggest the following language, which I submitted during the last round of public comments after consultations with both the MMS and the Independent Petroleum Association of America:

"An arm's-length price will not be considered a breach of the duty to market solely because it is less than spot prices, NYMEX prices, or other index prices, or prices received in other arm's-length transactions."

Second, for non-arm's-length transactions, I believe that other price indicators should be used to derive the value of the crude oil, beginning with comparable arm's-length transactions, including tendering. I would note that MMS's proposed rule already allows the use of comparable sales and tendering in some parts of the country. If legitimately comparable transactions are not available for use, then index prices should be used only if adequate adjustments are made for differences in crude oil quality and location and for reasonable costs of transportation. With respect to transportation costs, I am concerned that earlier versions of the MMS rule established pipeline transportation rates in a manner inconsistent with the commonly accepted cost-of-service models used by independent regulatory agencies such as State public utility commissions and the Federal Energy Regulatory Commission. I would suggest that, if the next re-proposal of the rule continues this discrepancy, that the Office of Information and Regulatory Affairs of the Office of Management and Budget conduct a review of the MMS proposal, comparing it to other cost-of-service models, and suggest appropriate modifications to the agency.

Third, federal lessees, including many independent producers in New Mexico, have consistently asked that a provision be contained in the oil valuation rule allowing them to receive binding determinations from MMS on valuation issues after disclosure of all material facts to the MMS. This is crucial to allow them to plan prudently for investment and production of oil from federal lands. A number of federal agencies have successfully implemented various forms of binding determinations, and I trust that MMS will be able to establish a system that safeguards the federal royalty interest while providing a reasonable level of certainty to the industry. I believe that the re-proposed rule should contain such a feature.

Finally, I am concerned that information submission requirements on lessees in the rule may be unnecessarily burdensome. I would urge that data collection requirements in the rule be limited to those actually necessary to determine the fair market value of oil at the lease.

Promulgating a rule consistent with these objectives will protect the public's equity in receiving fair and accurate payments from lessees producing oil on public lands, and will help ensure a fairer, more equitable, more predictable, and more cooperative relationship between the MMS and federal lessees. I believe that promulgating such a rule will also prevent the further erosion of our nation's ability to produce crude oil domestically at a time when we are increasingly dependent on volatile foreign oil prices and oil markets.

Thank you for your attention to these important issues. Again, I want to recognize the MMS for its willingness to reopen public comment on this rule last Spring, at my request, and for its decision to re-propose the rule, also at my request, based on what it learned from those comments. I want to work with you and other members of your Administration in the coming months to come to a mutually agreeable resolution of the issues in this rule making.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Bingaman", with a long horizontal flourish extending to the right.

Jeff Bingaman
Ranking Member

cc: The Honorable Bruce Babbitt
Secretary of the Interior