

Minutes  
Royalty Policy Committee Meeting  
March 21, 1997

Welcoming and Opening Remarks— by David Blackmon.

**CYNTHIA QUARTERMAN UPDATES:**

On March 5, 1997, MMS held a record breaking lease sale in the Gulf of Mexico. We received 1790 bids on over 1,000 offshore leases with more than \$800 million in high bids, the highest level since 1985.

MMS continues to work on implementation of RSFA, with over 20 out-reach meetings held with constituents. We are now in process of updating computer systems and drafting regulations. Also, on a parallel basis, we are considering what provisions of RSFA would be advantageous to Indian lessors.

BLM/BIA/MMS initiated a Farmington office pilot program combining all 3 organizations under the leadership of Kevin Gambrel. This effort, a 2-year pilot project, will test a reinvented approach to providing mineral leasing services to Indian owners.

In January 1997, MMS implemented several organizational changes. Jim Shaw returned to private industry mid-January, Carolita Kallaur was named Associate Director for the Offshore program, and Lucy Querques Denett is the new Associate Director for Royalty Management, with the office relocated to Washington, D.C.

**UPDATE FROM LUCY QUERQUES DENETT**

Program Re-engineering Effort - RSFA is changing the way RMP does business. While the current system is near end of its life cycle, RMP is planning system redesign incorporating RSFA. We are reviewing business approaches to lower cost while maintaining constituency responsiveness and legal compliance.

The managers have spent 4 -5 days on the concepts of Reengineering the RMP. At these sessions a number of issues were considered to give direction to the design team. Our objective is to have flexible systems to address multiple concerns. These include supporting the delegation of activities to States - for those that want delegation. Royalty collection methods must be flexible and able to support royalty in value, royalty in kind or something else in the future. Final valuation regulations and other changes may require additional system support. Last, we should be able to take on other financial services for other agencies.

The design team, which includes State representatives, will be seeking other constituent representatives and feed back on the new design. Design team should have a proposal by October. We see this as a 2 year effort with implementation in the third year.

Three RIK projects are ongoing: The one-year gas marketing pilot demonstrated feasibility but not revenue neutrality. Now we are questioning how to improve the marketing effort.

Lucy also provided a RSFA status update.

In response to a question on stationing the Royally Management AD in DC verses Denver, the Director explained the travel required of the incumbent will be extensive, but the program will benefit from more D.C. input. The Deputy Associate Director will remain in Denver to address day to day operating concerns.

Once outreach is completed with the States, RMP will hold sessions with industry on the 205 delegation rule and standards.

Since January 1997, RMP issued 3 Dear Payor letters: designation and payment responsibilities, takes vs. Entitlements reporting and the appeals extension.

When appointed the Deputy Director will chair the MMS Royalty Policy Board. Copies of all Royalty Policy Board decisions or guidance memos are available on the Internet home page.

### **APPEALS SUBCOMMITTEE REPORT**

Hugh Schaefer related the Appeals Subcommittee Findings, which generated some discussion. When a case is appealed MMS must decide if it will defend the appealed demand or order. This could involve a policy review within MMS. Such reviews could help eliminate conflicting positions before a settlement conference. The parties could decide to either use formal ADR, mediation, arbitration or fact finding. Input from IBLA indicated no major impact. Having one appeal rather than two will probably save time. If MMS does not pursue an appeal the State or the Tribe has the option to continue to defend the order. The detailed procedures and definitions are yet to be established.

The report suggests that MMS consider applying these regulations to solid minerals so that States or Tribes involved can decide to go forward with the defense of the order.

Indian Tribes and States with delegation agreements perform review work with the demands or orders actually issued by MMS. With RSFA, the authority to issue enforcement documents can be delegated to States. However, since RSFA does not apply to Indian leased lands, an order cannot be issued by Indian Tribes. Similarly, under RSFA, States have subpoena authority if

delegated. The appeals are to MMS who will process them.

Tom Shipps moved to amend the report on page 19 to delete the reference to Tribes issuing orders. The motion was seconded.

Vote -- 15 yes, no opposing. Report has been amended.

After a discussion David Blackmon and Norma Rosner proposed that 19d on page 21 be formally amended by saying that the IBLA may affirm, vacate, set aside, or modify within the statutory and regulatory authority.

Motion Seconded.

Vote -- Vote was unanimous.

Entertained any further comments from caucus. None

Entertained any motions from the floor related to subcommittee report. None

Norma Rosner--moved that the report be amended and adopted.

Brian — seconded the motion.

Votes -- 16 votes yes - none opposed.

Report has been adopted by full committee as amended.

Comments by Lucy Querques and Cynthia Quarterman -- The Director will respond to chair with MMS comments and the report forwarded to the Office of the Secretary for consideration. A written Departmental decision will be issued to the chair and the committee to explain action taken. The report will be considered as part of the comments to the proposed appeals rule.

### **PHOSPHATE SUBCOMMITTEE REPORT**

Phosphate Subcommittee Report was presented by David Farnsworth, who provided a history of the phosphate royalties over the last 30 years. With phosphate industry highly vertically integrated, product value is not usually established in an open market. The subcommittee recommended changing the valuation method from using gross domestic product implicit price deflator to a composite index methodology. What caused the move to an index was concerns about establishing the value for 99.5 percent of the production based the one-half of 1 percent sold in an open market.

A motion was made to adopt the subcommittee report.

Ed Sullivan seconded the motion.

Vote -- 11 yes, 1 no, 4 abstained.

## **SELF BONDING - RSFA**

Kenneth Vogel provided a presentation on self bonding. For oil and gas production after September 1996, RSFA provides that a company appealing an order does not have to post a surety if it is financially solvent. In the draft rule MMS proposes to include oil, gas and solids payors, and presume that all appellants with net worth over \$300 million are financially solid. This level will cover over 90 percent of the dollars currently bonded and over 50 percent of the appeals.

For appellants with net worth less than \$300 million, MMS will consult a credit reporting service at Government expense to determine solvency. Indian lands will not be included but we welcome comments from the Indian community. We will ask specifically whether or not the Indian lessors believe these standards should be applied to their lands. Because of our trust responsibility we will not propose a rule with known detrimental effect on Indian lessors. The effective date of the final rule has not yet been determined.

We are planning to publish a proposed rule with a 30 day comment period by May. This will be a separate track from the appeals rule.

In response to questions, Mr. Vogel indicated:

- The consolidated balance sheets will be used to determine if the company's net worth is over \$300 million, if the consolidated company will be responsible for payment.
- Only lessees are liable for royalties. If the lessee is a subsidiary, then that is the liable person. This becomes a question of whether the subsidiary can qualify for leasing, a determination of the BLM/BIA.
- The self bonding will cover only royalty appeals.

## **NON-CONVENTIONAL SUBCOMMITTEE**

Gary McGee indicated the subcommittee is looking at crude oil valuation and if using the Nimex would succeed.

## **COAL SUBCOMMITTEE REPORT**

The RPC discussed the procedure of the Subcommittee first presenting recommendations to the RPC with a public deliberation before submission to the Director.

Sandy Blackstone motioned that the RPC request:

1. A draft memo on policies regarding application of RSFA provisions to solid and

geothermal leases and

2. A Solicitor's opinion on the basis for the delegation to the States management of solid minerals prior to proposing rules for delegations under Section 205 of FOGRMA.

Hugh Schaefer - seconded the motion.

Vote -- 15 yes, none opposed.

### **NET RECEIPTS SHARING SUBCOMMITTEE**

Johnnie Burton indicated the Subcommittee has not met. The subcommittee may have to reconvene depending on OIG's draft report.

Tim Musil, OIG, said the draft report is now being reviewed by the Headquarter's Office before going to MMS and BLM for comments. The issue is whether or not net receipts deductions were properly identified, allocated and deducted from the State's receipts. In the current draft OIG recomputed the NRS deductions for Federal costs in fiscal years 1994, 1995 and 1996. It also stated MMS improved its methodologies for computing onshore program costs, BLM still has some problems and no errors were found in the Forest Service's calculations. The report should be issued by next month.

David Blackmon indicated the ADR and coal subcommittee will still have reports to the RPC in the future. We may not need to reconvene until the end of summer. Since RPC appointments are expiring, members will be receiving letters from MMS to submit new nominations for appointments.