

FAX TRANSMITTAL SHEET

DATE: 4/28/99

DELIVER TO: David S. Guzy
Minerals Management Service

PHONE: (303) 231-3432

FAX: (303) 231-3385

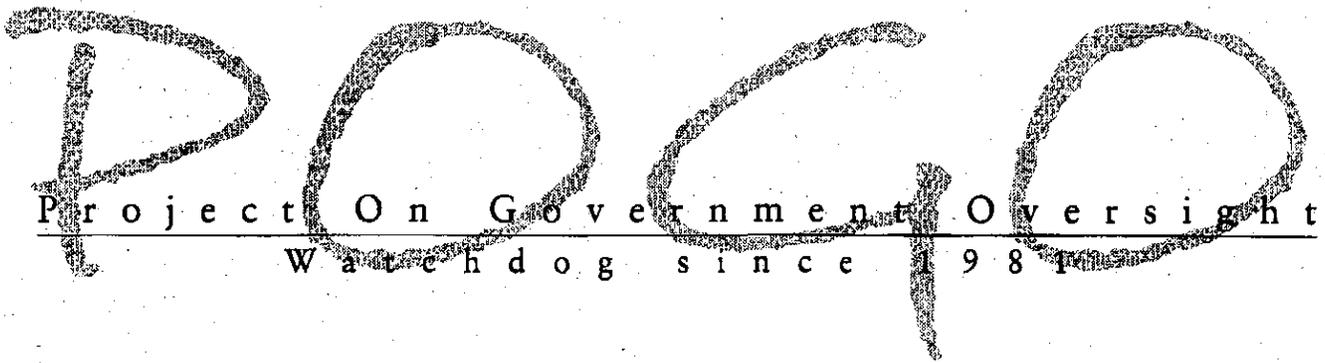
FROM: PROJECT ON GOVERNMENT OVERSIGHT
Danielle Brian

DESCRIPTION: Comments on proposed oil valuation rule

PAGES TO FOLLOW: 2

COMMENTS: _____

This facsimile is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged and confidential. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering this communication to the intended recipient, you are hereby notified that any distribution, or use or copying of this communication is prohibited. If you have received this facsimile in error, please notify the sender immediately by telephone at (202) 466-5539. THANK YOU!



WRITTEN COMMENTS FOR THE PUBLIC RECORD REGARDING MMS' PROPOSED OIL ROYALTY RULE

April 27, 1999

The oil industry has behaved during this nearly four-year process as though MMS must draft a rulemaking that the industry likes. I believe strongly that this prolonged rulemaking process is policy-making at its worst, where political power can buy more time to influence regulations. I would suggest that by the time a rule is crafted that industry likes, MMS would have let down the interests it does represent — not the 40 companies affected by the rule — but the taxpayers, Native Americans, and public education, environmental and historic preservation funds.

We will not reiterate the testimony POGO has already submitted numerous times regarding the need to move the payment of royalties by integrated oil companies to a market-based index. The issues being discussed have already been debated ad nauseam over the past few years.

POGO continues to believe that MMS should explicitly distinguish integrated companies from all others for the purposes of the rule. Not only would it simplify the rule as it applies to the non-integrated companies, but it would allow MMS to better capture the total consideration received by the integrated companies.

It became clear in the Washington DC workshop that the interests of the independents are continuing to be held hostage by the integrated companies. MMS should act upon the Administration's goals of helping the smaller non-integrated producers without being force-fed the API's agenda.

As a result, we would not object if MMS considers adopting the two proposals which would impact the non-integrated producers.

The first is their request for language in the preamble that MMS will not "second-guess" whether a bona fide arms length contract has obtained the best price. It should be noted that this language is does not change the terms of the proposed rule, but is merely a response to a non-issue created by the major oil companies designed to instill unjustified fears in the independents that they too would be affected by the rule.

If this language is inserted, however, then MMS must add the explicit caveat that the burden falls on the companies to disclose overall balancing arrangements or any other related arrangements between those unaffiliated companies, with stiff penalties if they do not. Even better, MMS should exempt majors and other large volume semi-integrated producers from use of the arm's length method. All of their federal production should be valued at index prices for reasons already well known to MMS.

Secondly, industry's request for "binding" rather than "non-binding" determinations does not appear unreasonable, assuming the following conditions: 1) these determinations would not hamper an MMS auditor's ability to ensure that all information provided to MMS was accurate and complete; 2) if new information does surface, the MMS will have the right, not only to change its position, but also to penalize the company for withholding relevant information; and 3) that any decision would not have precedential effect beyond valuation of the production by the lessee requesting advice and for the leases involved in the request.

Having reviewed the notes from the previous field workshops I realized that — not only are we still fighting over making it simpler for the government to collect the royalties that have always been owed, but we're still in the position of fighting off the additional "gimmies" that the majors and the large independents have been demanding for the past four years — even further robbing the Treasury.

The remaining issues are, by definition, of concern only to the integrated companies:

- Industry wants to make money on transporting royalty oil on their own pipelines costing us an additional \$6-18.5 million.
- Industry wants to claim marketing costs that have never been allowed before — but have evidently been deducted anyway — which will cost us an additional \$17 - 45.5 million.
- Industry wants to switch to using FERC tariffs for pipeline transportation further costing us an additional 12 million.
- Industry wants to avoid using the real market prices reflected in the St. James and Empire spot prices by creating a false market at the lease through their comparative sales model — sound familiar? It's no better than posted prices by a different name — still an effort not to pay what they owe.

It would appear that industry's plan to thwart the government's efforts to collect unpaid royalties is now shifting to an attempt to pay even less than they already are. POGO encourages MMS to proceed with the implementation of their Final Rule as soon as the Congressional moratorium expires in June.