

U.S. District Court Web PACER(v2.3) Docket Report

Attachment 17

Docket as of August 25, 2003 7:42 pm

Web PACER (v2.3)

U.S. District Court
USDC District of Columbia (Washington)
CIVIL DOCKET FOR CASE #: 00-CV-761
IND.PET.ASSOC./AM. v. BACA, et al

Filed: 04/10/00
Assigned to: Judge Royce C. Lamberth
Jury demand: Plaintiff
Demand: \$0,000
Nature of Suit: 890
Lead Docket: None
Jurisdiction: US Defendant
Dkt# in other court: None
Cause: 28:2201 Declaratory Judgement

Case type: 1. civil 2. null
INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA
plaintiff

L Poe Leggette
FTS 662-4646
202-662-4643 FAX
[*COR LD NTC ret*]
FULBRIGHT & JAWORSKI, L.L.P
801 Pennsylvania Avenue, NW
Washington, DC 20004-2623
AREA CODE (202)

v.
SYLVIA V. BACA, Assistant
Secretary, Land and Minerals
Management, Department of the
Interior
federal defendant

Ann D. Navaro
FTS 305-0462
202-305-0267 FAX
[*COR LD NTC gvt*]
UNITED STATES DEPARTMENT OF
JUSTICE
Environment and Natural
Resources
P.O. Box 663
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Edward S. Geldermann
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U.S. DEPARTMENT OF JUSTICE
Environmental & Natural
Resources Div.

U.S. District Court Web PACER(v2.3) Docket Report

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DEPARTMENT OF INTERIOR
federal defendant

601 D Street, NW
Washington, DC 20004
AREA CODE (202)
Ann D. Navaro
(See above)
[COR LD NTC gvt]
Edward S. Geldermann
(See above)
[COR LD NTC gvt]

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
4/10/00	1	COMPLAINT filed by plaintiff IND.PET.ASSOC./AM.; jury demand (bm) [Entry date 04/12/00] [1:00cv761]
4/10/00	--	SUMMONS (4) issued to federal party(s) federal defendants SYLVIA V. BACA, DOI , and non-parties: U.S. Attorney and U.S. Attorney General. (bm) [Entry date 04/12/00] [1:00cv761]
4/10/00	2	LCvR 26.1 Certificate of disclosure of corporate affiliations and financial interests by plaintiff IND.PET.ASSOC./AM. (bm) [Entry date 04/12/00] [1:00cv761]
5/5/00	3	ATTORNEY APPEARANCE for federal defendant SYLVIA V. BACA, federal defendant DOI by Ann D. Navaro (tth) [Entry date 05/09/00] [1:00cv761]
6/13/00	4	ANSWER TO COMPLAINT [1-1] by federal defendant SYLVIA V. BACA, federal defendant DOI. (tth) [Entry date 06/14/00] [1:00cv761]
7/17/00	5	MEET AND CONFER STATEMENT/REPORT PURSUANT TO L.R. 16 filed by plaintiff, federal defendant. (jf) [Entry date 07/19/00] [1:00cv761]
7/17/00	6	MEET AND CONFER STATEMENT/REPORT PURSUANT TO L.R. 16 filed by plaintiff, federal defendant. (jf) [Entry date 07/19/00] [1:00cv761]
7/17/00	7	JOINT MOTION by plaintiff, federal defendant to consolidate cases with 00-761 and 00-887 (jf) [Entry date 07/19/00] [1:00cv761]
9/6/00	8	ORDER by Judge Royce C. Lamberth : granting joint motion to consolidate cases with 00-761 and 00-887 [7-1] by DOI,

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SYLVIA V. BACA, IND.PET.ASSOC./AM. (N) (lin)
[Entry date 09/07/00] [1:00cv761]

9/6/00 -- ALL PLEADINGS IN 00-887 ARE BEING DOCKETED AND FILED IN CA
00-761 AS OF 9/6/00. (tth) [Entry date 09/08/00]
[1:00cv761 1:00cv887]

9/7/00 9 MOTION (UNOPPOSED) filed by federal defendant SYLVIA V.
BACA in 1:00-cv-00761, federal defendant DOI in
1:00-cv-00761 to extend time to 9/15/00 to file the
Administrative Record (tth) [Entry date 09/08/00]
[1:00cv761]

9/15/00 10 ORDER by Judge Royce C. Lamberth : granting motion to
extend time to 9/15/00 to file the Administrative Record
[9-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761; status
report due by 9/25/00. (N) (mon) [Entry date 09/16/00]
[1:00cv761 1:00cv887]

9/15/00 11 MOTION (UNOPPOSED) filed by federal defendant SYLVIA V.
BACA in 1:00-cv-00761, federal defendant DOI in
1:00-cv-00761 to extend time to 9/21/00 to file the
Administrative Record (tth) [Entry date 09/19/00]
[1:00cv761]

9/18/00 12 ORDER by Judge Royce C. Lamberth : granting motion to
extend time to 9/21/00 to file the Administrative Record
[11-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761; parties
status report to be due 10/02/00 (N) (jeb)
[Entry date 09/19/00] [1:00cv761 1:00cv887]

9/21/00 13 ADMINISTRATIVE RECORD (PARTIAL) by federal defendant SYLVIA
V. BACA in 1:00-cv-00761, federal defendant DOI in
1:00-cv-00761; BOXES (4) (tth) [Entry date 09/22/00]
[1:00cv761]

9/21/00 14 MOTION (UNOPPOSED) filed by federal defendant SYLVIA V.
BACA, federal defendant DOI in 1:00-cv-00761 for extension
of time to file complete Administrative Record (tth)
[Entry date 09/25/00] [1:00cv761]

9/29/00 15 MOTION filed by plaintiff IND.PET.ASSOC./AM. in
1:00-cv-00761, plaintiff AMERICAN PETROLEUM in
1:00-cv-00887 to extend time to file Meet and Confer
Statement to 10/12/00. (tth) [Entry date 10/02/00]
[1:00cv761 1:00cv887]

10/12/00 16 ADMINISTRATIVE RECORD by federal defendant SYLVIA V. BACA
in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761
(tth) [Entry date 10/13/00] [1:00cv761]

10/24/00 17 ORDER nunc pro tunc by Judge Royce C. Lamberth : granting
motion for extension of time to file complete
Administrative Record [14-1] by DOI, SYLVIA V. BACA in
1:00-cv-00761 (N) (mon) [1:00cv761 1:00cv887]

10/24/00 18 ORDER by Judge Royce C. Lamberth : granting motion to
extend time to file Meet and Confer Statement to 10/26/00.
[15-1] by AMERICAN PETROLEUM, IND.PET.ASSOC./AM. Meet
Confer Statement due date extended to 10/26/00 in

U.S. District Court Web PACER(v2.3) Docket Report

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1:00-cv-00761, in 1:00-cv-00887 in 1:00-cv-00761,
1:00-cv-00887 (N) (mon) [1:00cv761 1:00cv887]

10/26/00 19

STATUS REPORT by plaintiff IND.PET.ASSOC./AM. in
1:00-cv-00761, federal defendant SYLVIA V. BACA in
1:00-cv-00761, federal defendant DOI in 1:00-cv-00761,
plaintiff AMERICAN PETROLEUM in 1:00-cv-00887, federal
defendant SYLVIA V. BACA in 1:00-cv-00887, federal
defendant BRUCE BABBITT in 1:00-cv-00887, federal defendant
DOI in 1:00-cv-00887 (jf) [Entry date 11/01/00]
[1:00cv761 1:00cv887]

11/7/00 20

ORDER by Judge Royce C. Lamberth : defendants' cross
motions for summary judgment due 2/16/01 in 1:00-cv-00761,
in 1:00-cv-00887 ; response to cross motions due 3/16/01 in
1:00-cv-00761, in ; reply to cross motions due 4/27/01 in
1:00-cv-00761, in 1:00-cv-00887 ; plaintiffs' motion for
summary judgment due 12/20/00 in 1:00-cv-00761, in
1:00-cv-00887 ; response to motion for summary judgment due
2/16/01 in 1:00-cv-00761, in 1:00-cv-00887 reply motion for
summary judgment due 4/6/01 in 1:00-cv-00761, in
1:00-cv-00887 ; (N) (mon) [1:00cv761 1:00cv887]

12/14/00 21

ADMINISTRATIVE RECORD (ERRATA) by federal defendant SYLVIA
V. BACA in 1:00-cv-00761, federal defendant DOI in
1:00-cv-00761 ; exhibits (12) (bjsp) [Entry date 12/15/00]
[1:00cv761]

12/15/00 22

MOTION (UNOPPOSED) filed by plaintiff IND.PET.ASSOC./AM. in
1:00-cv-00761, plaintiff AMERICAN PETROLEUM in
1:00-cv-00887 to extend time to 1/24/01 to file their
motion for summary judgment (tth) [Entry date 12/18/00]
[1:00cv761 1:00cv887]

1/3/01 23

ORDER by Judge Royce C. Lamberth : granting motion to
extend time to 1/24/01 to file their motion for summary
judgment [22-1] by AMERICAN PETROLEUM, IND.PET.ASSOC./AM.
cross motions due by 3/23/01 in 1:00-cv-00761, in
1:00-cv-00887 ; response to cross motions due by 4/20/01 in
1:00-cv-00761, in 1:00-cv-00887 ; reply to cross motions
due by 5/11/01 in 1:00-cv-00761, in 1:00-cv-00887 ; motion
for summary judgment due by 1/24/01 in 1:00-cv-00761, in
1:00-cv-00887 ; response to motion for summary judgment due
3/23/01 in 1:00-cv-00761, in 1:00-cv-00887 ; reply to
motion for summary judgment due by 4/20/01 in
1:00-cv-00761, in 1:00-cv-00887 ; in 1:00-cv-00761,
1:00-cv-00887; status report on Administrative Record
issues due by 01/12/01; plaintiff's surreply due by
06/01/01; oral argument to be set (N) (tb)
[Entry date 01/04/01] [1:00cv761 1:00cv887]

1/12/01 24

STATUS REPORT (JOINT) by plaintiff IND.PET.ASSOC./AM.,
federal defendant SYLVIA V. BACA, and federal defendant DOI
in 1:00-cv-00761 advising the Court regarding unresolved
administrative record issues. (tth) [Entry date 01/17/01]
[1:00cv761]

✓ 1/24/01 25

MOTION filed by plaintiff IND.PET.ASSOC./AM. in
1:00-cv-00761 for summary judgment; exhibits (6) (bjsp)
[Entry date 01/26/01] [1:00cv761]

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- ✓ 1/24/01 -- MOTION filed by plaintiff AMERICAN PETROLEUM in 1:00-cv-00887 for summary judgment; Exhibits (8) (tth) [Entry date 01/26/01] [1:00cv887]
- 3/13/01 26 MOTION (UNOPPOSED) filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 to extend time for 21 days to file cross motion for summary judgment and response in opposition to plaintiffs' motions (bjsp) [Entry date 03/14/01] [1:00cv761]
- 3/20/01 27 ORDER by Judge Royce C. Lamberth : granting motion to extend time for 21 days to file cross motion for summary judgment and response in opposition to plaintiffs' motions [26-1] by DOI, SYLVIA V. BACA cross motions due by 4/13/01 in 1:00-cv-00761, in 1:00-cv-00887 ; response to cross motions due by 5/11/01 in 1:00-cv-00761, in 1:00-cv-00887 ; response to motion for summary judgment due 4/13/01 in 1:00-cv-00761, in 1:00-cv-00887 ; reply to motion for summary judgment due by 5/11/01 in 1:00-cv-00761, in 1:00-cv-00887 ; reply to cross motions due by 6/1/01 in 1:00-cv-00761, in 1:00-cv-00887 ; surreply to motion(s) due by 6/22/01 in 1:00-cv-00761, in 1:00-cv-00887 ; in 1:00-cv-00761 (N) (lin) [Entry date 03/23/01] [1:00cv761 1:00cv887]
- 3/28/01 28 MOTION filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 for leave to exceed page limits for briefs in support of and/or in opposition to motions for summary judgment (tth) [Entry date 03/29/01] [1:00cv761]
- ✓ 4/13/01 29 MOTION filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 for summary judgment (tth) [Entry date 04/23/01] [1:00cv761]
- ✓ 4/13/01 30 RESPONSE by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 in opposition to motion for summary judgment [25-1] by IND.PET.ASSOC./AM. . (tth) [Entry date 04/23/01] [1:00cv761]
- 4/20/01 31 ORDER by Judge Royce C. Lamberth : granting motion for leave to exceed page limits not in excess of 80 pages for briefs in support of and/or in opposition to motions for summary judgment [28-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761 (N) (rew) [Entry date 04/24/01] [1:00cv761 1:00cv887]
- ✓ 5/11/01 32 RESPONSE by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761 to motion for summary judgment [29-1] by DOI, SYLVIA V. BACA; Exhibit (1) (tth) [Entry date 05/14/01] [1:00cv761]
- ✓ 5/11/01 33 REPLY by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761 in support of motion for summary judgment [25-1] by IND.PET.ASSOC./AM. (tth) [Entry date 05/14/01]

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- ✓ 5/11/01 34 [1:00cv761]
RESPONSE by plaintiff AMERICAN PETROLEUM in 1:00-cv-00887 in opposition to motion for summary judgment [29-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761; Exhibits (3) (tth) [Entry date 05/14/01] [1:00cv761] [1:00cv887] duplicate
- 5/18/01 35 MOTION filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 to file excess pages limitation on their reply in support of motion for summary judgment (jf) [Entry date 05/21/01] [1:00cv761]
- 5/23/01 37 RESPONSE by API to motion to file excess pages limitation on their reply in support of motion for summary judgment [35-1] by DOI, SYLVIA V. BACA (jf) [Entry date 06/10/01] [1:00cv761]
- ✓ 6/1/01 36 REPLY by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761, federal defendant SYLVIA V. BACA in 1:00-cv-00887, federal defendant BRUCE BABBITT in 1:00-cv-00887, federal defendant DOI in 1:00-cv-00887 in support of motion for summary judgment [29-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761, motion for summary judgment [25-1] by IND.PET.ASSOC./AM. in 1:00-cv-00761, motion for summary judgment [21-1] by AMERICAN PETROLEUM in 1:00-cv-00887 (cas) [Entry date 06/06/01] [1:00cv761] [1:00cv887] duplicate
- 8/13/01 38 ORDER by Judge Royce C. Lamberth: granting motion to file excess pages limitation on their reply in support of motion for summary judgment [35-1] by DOI, SYLVIA V. BACA (N) (dam) [Entry date 08/14/01] [1:00cv761]
- 4/19/02 39 NOTICE OF SUPPLEMENTAL AUTHORITY by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761; Attachment (1) (nmr) [Entry date 04/22/02] [1:00cv761]
- 4/24/02 40 NOTICE OF SUPPLEMENTAL AUTHORITY by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761; Attachment (1) (nmr) [Entry date 04/25/02] [1:00cv761]
- 4/26/02 41 ERRATA by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 of amended notice of supplemental authority. (nmr) [Entry date 04/29/02] [1:00cv761]
- ✓ 7/25/02 42 STATUS REPORT by plaintiffs in 1:00-cv-00761 and 00cv887, Re: Notifying the court they petitioned for rehearing and rehearing en banc of the DC Circuit decision. (mpt) [Entry date 07/26/02] [1:00cv761]
- 9/25/02 43 STATUS REPORT by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761; Re: Notifying Court that on 9/19/02 filed in the US Supreme Court a petition for writ of certiorari of the DC Circuit's decision. (mpt) [Entry date 09/26/02] [1:00cv761]
- ✓ 2/26/03 44 STATUS REPORT by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761 of case. (ks) [Entry date 02/27/03]

U.S. District Court Web PACER(v2.3) Docket Report

[1:00cv761]

- ✓ 3/17/03 45 ORDER by Judge Royce C. Lamberth : denying without prejudice motion for summary judgment [29-1] by DOI, SYLVIA V. BACA, denying without prejudice motion for summary judgment [25-1] by IND.PET.ASSOC./AM.; directing parties to file report on or about 5/1/03 on status of cases. (N) (mon) [Entry date 03/25/03] [1:00cv761]
- ✓ 7/30/03 -- STATUS REPORT by federal defendants in 1:00-cv-00887, attachment (1) (mpt) [Entry date 07/31/03] [1:00cv887]
- ✓ 7/30/03 46 STATUS REPORT by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761; attachment (1) (mpt) [Entry date 07/31/03] [1:00cv761]
- 8/22/03 47 STATUS REPORT by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761, plaintiff AMERICAN PETROLEUM in 1:00-cv-00887 (jf) [Entry date 08/25/03] [1:00cv761 1:00cv887]

Case Flags:
CONSOL
TYPE E
JURY

END OF DOCKET: 1:00cv761

PACER Service Center			
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PACER Login:	ln0004	Client Code:	1584
Description:	docket report	Search Criteria:	1:00cv00761
Billable Pages:	8	Cost:	0.56

Docket as of August 25, 2003 7:42 pm

Web PACER (v2.3)

U.S. District Court

USDC District of Columbia (Washington)

CIVIL DOCKET FOR CASE #: 00-CV-887

AMERICAN PETROLEUM v. BACA, et al

Filed: 04/21/00
Assigned to: Judge Royce C. Lamberth
Demand: \$0,000
Nature of Suit: 890
Lead Docket: 00-CV-761
Jurisdiction: US Defendant
Dkt# in other court: None
Cause: 30:181 Environment: Review of Agency Action

Case type: 1. civil 2. null
AMERICAN PETROLEUM INSTITUTE
plaintiff

v.

SYLVIA V. BACA, Assistant
Secretary for Land and
Minerals Management
federal defendant

Ann D. Navaro
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202-305-0267 FAX
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AREA CODE (202)

BRUCE BABBITT, Secretary of
the Interior
federal defendant
DEPARTMENT OF INTERIOR
federal defendant

Ann D. Navaro
(See above)
[COR LD NTC gvt]
Ann D. Navaro
(See above)
[COR LD NTC gvt]

DOCKET PROCEEDINGS

U.S. District Court Web PACER(v2.3) Docket Report

DATE	#	DOCKET ENTRY
4/21/00	1	COMPLAINT filed by plaintiff AMERICAN PETROLEUM (bjsp) [Entry date 04/24/00] [1:00cv887]
4/21/00	2	LCvR 26.1 Certificate of disclosure of corporate affiliations and financial interests by plaintiff AMERICAN PETROLEUM (bjsp) [Entry date 04/24/00] [1:00cv887]
4/21/00	--	SUMMONS (5) issued to federal party(s) federal defendant SYLVIA V. BACA, federal defendant BRUCE BABBITT, federal defendant DOI , and non-parties: U.S. Attorney and U.S. Attorney General. (bjsp) [Entry date 04/24/00] [1:00cv887]
4/28/00	3	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed on 4/24/00 upon federal defendant DOI; Return Receipt Card Attached. (tth) [Entry date 05/01/00] [1:00cv887]
4/28/00	4	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed on 4/24/00 upon federal defendant BRUCE BABBITT; Return Receipt Card attached. (tth) [Entry date 05/01/00] [1:00cv887]
4/28/00	5	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed on 4/26/00 upon federal defendant SYLVIA V. BACA; Return Receipt Card attached. (tth) [Entry date 05/01/00] [1:00cv887]
4/28/00	6	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed upon U.S. Attorney General on 4/24/00; Return Receipt Card attached. (tth) [Entry date 05/01/00] [1:00cv887]
4/28/00	7	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed upon U.S. Attorney on 4/25/00; Return Receipt Card attached. (tth) [Entry date 05/01/00] [1:00cv887]
5/5/00	8	ATTORNEY APPEARANCE for federal defendant SYLVIA V. BACA, federal defendant BRUCE BABBITT, federal defendant DOI by Ann D. Navaro (tth) [Entry date 05/08/00] [1:00cv887]
6/19/00	9	ANSWER TO COMPLAINT [1-1] by federal defendant SYLVIA V. BACA, federal defendant BRUCE BABBITT, federal defendant DOI . (ab) [Entry date 06/20/00] [1:00cv887]
7/17/00	10	JOINT MOTION by plaintiff, federal defendant to consolidate cases with 00-761 and 00-887 (jf) [Entry date 07/19/00] [1:00cv887]
9/6/00	11	ORDER by Judge Royce C. Lamberth : granting joint motion to consolidate cases with 00-761 and 00-887 [10-1] by DOI, BRUCE BABBITT, SYLVIA V. BACA, AMERICAN PETROLEUM (N) (lin) [Entry date 09/07/00] [1:00cv887]

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9/6/00 -- ALL PLEADINGS IN 00-887 ARE BEING DOCKETED AND FILED IN CA 00-761 AS OF 9/6/00. (tth) [Entry date 09/08/00] [1:00cv761 1:00cv887]

9/7/00 -- MOTION (UNOPPOSED) filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 to extend time to 9/15/00 to file the Administrative Record (tth) [Entry date 09/08/00] [1:00cv761]

9/15/00 12 ORDER by Judge Royce C. Lamberth : granting motion to extend time to 9/15/00 to file the Administrative Record [9-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761; status report due by 9/25/00. (N) (mon) [Entry date 09/16/00] [1:00cv761 1:00cv887]

9/15/00 -- MOTION (UNOPPOSED) filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 to extend time to 9/21/00 to file the Administrative Record (tth) [Entry date 09/19/00] [1:00cv761]

9/18/00 13 ORDER by Judge Royce C. Lamberth : granting motion to extend time to 9/21/00 to file the Administrative Record [11-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761; parties status report to be due 10/02/00 (N) (jeb) [Entry date 09/19/00] [1:00cv761 1:00cv887]

9/21/00 -- ADMINISTRATIVE RECORD (PARTIAL) by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761; BOXES (4) (tth) [Entry date 09/22/00] [1:00cv761]

9/21/00 -- MOTION (UNOPPOSED) filed by federal defendant SYLVIA V. BACA, federal defendant DOI in 1:00-cv-00761 for extension of time to file complete Administrative Record (tth) [Entry date 09/25/00] [1:00cv761]

9/29/00 14 MOTION filed by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761, plaintiff AMERICAN PETROLEUM in 1:00-cv-00887 to extend time to file Meet and Confer Statement to 10/12/00. (tth) [Entry date 10/02/00] [1:00cv761 1:00cv887]

10/12/00 -- ADMINISTRATIVE RECORD by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 (tth) [Entry date 10/13/00] [1:00cv761]

10/24/00 15 ORDER nunc pro tunc by Judge Royce C. Lamberth : granting motion for extension of time to file complete Administrative Record [14-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761 (N) (mon) [1:00cv761 1:00cv887]

10/24/00 16 ORDER by Judge Royce C. Lamberth : granting motion to extend time to file Meet and Confer Statement to 10/26/00. [15-1] by AMERICAN PETROLEUM, IND.PET.ASSOC./AM. Meet Confer Statement due date extended to 10/26/00 in 1:00-cv-00761, in 1:00-cv-00887 in 1:00-cv-00761, 1:00-cv-00887 (N) (mon) [1:00cv761 1:00cv887]

U.S. District Court Web PACER(v2.3) Docket Report

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- 10/26/00 17 STATUS REPORT by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761, federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761, plaintiff AMERICAN PETROLEUM in 1:00-cv-00887, federal defendant SYLVIA V. BACA in 1:00-cv-00887, federal defendant BRUCE BABBITT in 1:00-cv-00887, federal defendant DOI in 1:00-cv-00887 (jf) [Entry date 11/01/00] [1:00cv761 1:00cv887]
- 11/7/00 18 ORDER by Judge Royce C. Lamberth : defendants' cross motions for summary judgment due 2/16/01 in 1:00-cv-00761, in 1:00-cv-00887 ; response to cross motions due 3/16/01 in 1:00-cv-00761, in ; reply to cross motions due 4/27/01 in 1:00-cv-00761, in 1:00-cv-00887 ; plaintiffs' motion for summary judgment due 12/20/00 in 1:00-cv-00761, in 1:00-cv-00887 ; response to motion for summary judgment due 2/16/01 in 1:00-cv-00761, in 1:00-cv-00887 reply motion for summary judgment due 4/6/01 in 1:00-cv-00761, in 1:00-cv-00887 ; (N) (mon) [1:00cv761 1:00cv887]
- 12/15/00 19 MOTION (UNOPPOSED) filed by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761, plaintiff AMERICAN PETROLEUM in 1:00-cv-00887 to extend time to 1/24/01 to file their motion for summary judgment (tth) [Entry date 12/18/00] [1:00cv761 1:00cv887]
- 1/3/01 20 ORDER by Judge Royce C. Lamberth : granting motion to extend time to 1/24/01 to file their motion for summary judgment [22-1] by AMERICAN PETROLEUM, IND.PET.ASSOC./AM. cross motions due by 3/23/01 in 1:00-cv-00761, in 1:00-cv-00887 ; response to cross motions due by 4/20/01 in 1:00-cv-00761, in 1:00-cv-00887 ; reply to cross motions due by 5/11/01 in 1:00-cv-00761, in 1:00-cv-00887 ; motion for summary judgment due by 1/24/01 in 1:00-cv-00761, in 1:00-cv-00887 ; response to motion for summary judgment due 3/23/01 in 1:00-cv-00761, in 1:00-cv-00887 ; reply to motion for summary judgment due by 4/20/01 in 1:00-cv-00761, in 1:00-cv-00887 ; in 1:00-cv-00761, 1:00-cv-00887; status report on Administrative Record issues due by 01/12/01; plaintiff's surreply due by 06/01/01; oral argument to be set (N) (tb) [Entry date 01/04/01] [1:00cv761 1:00cv887]
- 1/12/01 -- STATUS REPORT (JOINT) by plaintiff IND.PET.ASSOC./AM., federal defendant SYLVIA V. BACA, and federal defendant DOI in 1:00-cv-00761 advising the Court regarding unresolved administrative record issues. (tth) [Entry date 01/17/01] [1:00cv761]
- ✓ 1/24/01 -- MOTION filed by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761 for summary judgment; exhibits (6) (bjsp) [Entry date 01/26/01] [1:00cv761]
- ✓ 1/24/01 21 MOTION filed by plaintiff AMERICAN PETROLEUM in 1:00-cv-00887 for summary judgment; Exhibits (8) (tth) [Entry date 01/26/01] [1:00cv887]
- 3/13/01 -- MOTION (UNOPPOSED) filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 to extend time for 21 days to file cross

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motion for summary judgment and response in opposition to plaintiffs' motions (bjsp) [Entry date 03/14/01] [1:00cv761]

- 3/20/01 22 ORDER by Judge Royce C. Lamberth : granting motion to extend time for 21 days to file cross motion for summary judgment and response in opposition to plaintiffs' motions [26-1] by DOI, SYLVIA V. BACA cross motions due by 4/13/01 in 1:00-cv-00761, in 1:00-cv-00887 ; response to cross motions due by 5/11/01 in 1:00-cv-00761, in 1:00-cv-00887 ; response to motion for summary judgment due 4/13/01 in 1:00-cv-00761, in 1:00-cv-00887 ; reply to motion for summary judgment due by 5/11/01 in 1:00-cv-00761, in 1:00-cv-00887 ; reply to cross motions due by 6/1/01 in 1:00-cv-00761, in 1:00-cv-00887 ; surreply to motion(s) due by 6/22/01 in 1:00-cv-00761, in 1:00-cv-00887 ; in 1:00-cv-00761 (N) (lin) [Entry date 03/23/01] [1:00cv761 1:00cv887]
- 3/28/01 -- MOTION filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 for leave to exceed page limits for briefs in support of and/or in opposition to motions for summary judgment (tth) [Entry date 03/29/01] [1:00cv761]
- ✓ 4/13/01 -- MOTION filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 for summary judgment (tth) [Entry date 04/23/01] [1:00cv761]
- ✓ 4/13/01 -- RESPONSE by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 in opposition to motion for summary judgment [25-1] by IND.PET.ASSOC./AM. . (tth) [Entry date 04/23/01] [1:00cv761]
- 4/20/01 23 ORDER by Judge Royce C. Lamberth : granting motion for leave to exceed page limits not in excess of 80 pages for briefs in support of and/or in opposition to motions for summary judgment [28-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761 (N) (rew) [Entry date 04/24/01] [1:00cv761 1:00cv887]
- ✓ 5/11/01 -- RESPONSE by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761 to motion for summary judgment [29-1] by DOI, SYLVIA V. BACA; Exhibit (1) (tth) [Entry date 05/14/01] [1:00cv761]
- ✓ 5/11/01 -- REPLY by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761 in support of motion for summary judgment [25-1] by IND.PET.ASSOC./AM. (tth) [Entry date 05/14/01] [1:00cv761]
- ✓ 5/11/01 24 RESPONSE by plaintiff AMERICAN PETROLEUM in 1:00-cv-00887 in opposition to motion for summary judgment [29-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761; Exhibits (3) (tth) [Entry date 05/14/01] [1:00cv761 1:00cv887] *duplicate*
- 5/18/01 -- MOTION filed by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761 to

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file excess pages limitation on their reply in support of motion for summary judgment (jf) [Entry date 05/21/01] [1:00cv761]

5/23/01 -- RESPONSE by API to motion to file excess pages limitation on their reply in support of motion for summary judgment [35-1] by DOI, SYLVIA V. BACA (jf) [Entry date 06/10/01] [1:00cv761]

6/1/01 25 REPLY by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761, federal defendant SYLVIA V. BACA in 1:00-cv-00887, federal defendant BRUCE BABBITT in 1:00-cv-00887, federal defendant DOI in 1:00-cv-00887 in support of motion for summary judgment [29-1] by DOI, SYLVIA V. BACA in 1:00-cv-00761, motion for summary judgment [25-1] by IND.PET.ASSOC./AM. in 1:00-cv-00761, motion for summary judgment [21-1] by AMERICAN PETROLEUM in 1:00-cv-00887 (cas) [Entry date 06/06/01] [1:00cv761] [1:00cv887] duplicate

4/19/02 -- NOTICE OF SUPPLEMENTAL AUTHORITY by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761; Attachment (1) (nmr) [Entry date 04/22/02] [1:00cv761]

4/24/02 -- NOTICE OF SUPPLEMENTAL AUTHORITY by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761; Attachment (1) (nmr) [Entry date 04/25/02] [1:00cv761]

7/25/02 -- STATUS REPORT by plaintiffs in 1:00-cv-00761 and 00cv887, Re: Notifying the court they petitioned for rehearing and rehearing en banc of the DC Circuit decision. (mpt) [Entry date 07/26/02] [1:00cv761]

9/25/02 -- STATUS REPORT by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761; Re: Notifying Court that on 9/19/02 filed in the US Supreme Court a petition for writ of certiorari of the DC Circuit's decision. (mpt) [Entry date 09/26/02] [1:00cv761]

2/26/03 -- STATUS REPORT by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761 of case. (ks) [Entry date 02/27/03] [1:00cv761]

3/17/03 26 ORDER by Judge Royce C. Lamberth : denying without prejudice motion for summary judgment [21-1] by AMERICAN PETROLEUM; denying without prejudice defendant's motion for summary judgment; directing parties to file status report on or about 5/1/03. (N) (mon) [Entry date 03/25/03] [Edit date 07/01/03] [1:00cv887]

7/30/03 27 STATUS REPORT by federal defendants in 1:00-cv-00887; attachment (1) (mpt) [Entry date 07/31/03] [1:00cv887]

7/30/03 -- STATUS REPORT by federal defendant SYLVIA V. BACA in 1:00-cv-00761, federal defendant DOI in 1:00-cv-00761; attachment (1) (mpt) [Entry date 07/31/03] [1:00cv761]

8/22/03 28 STATUS REPORT by plaintiff IND.PET.ASSOC./AM. in 1:00-cv-00761, plaintiff AMERICAN PETROLEUM in 1:00-cv-00887 (jf) [Entry date 08/25/03] [1:00cv761]

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Description:	docket report	Search Criteria:	1:00cv00887
Billable Pages:	7	Cost:	0.49

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN PETROLEUM)	
INSTITUTE)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00-887 (RCL)
)	
SYLVIA V. BACA, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

STATUS REPORT

Defendants Sylvia Baca, *et al.*, hereby submit this status report on matters pending at the U.S. Department of the Interior that are relevant to the above-captioned case. As explained in the attached declaration of Cathy J. Hamilton ("Hamilton Declaration") (copy appended hereto as Attachment A), on July 7, 2003, the Department of the Interior transmitted proposed amendments to the current Federal crude oil royalty valuation rules (which are the subject of plaintiffs' challenges in the above-captioned case) to the Office of Management and Budget (OMB) for OMB clearance and approval as required by Executive Order No. 12866 before the proposed rule amendments may be published in the Federal Register for public comment.

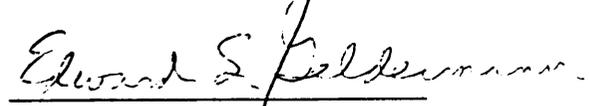
According to the Hamilton Declaration, Interior has received comments from OMB on the proposed rule amendments, and based on those comments, Interior transmitted revised draft proposed amendments to the crude oil royalty valuation rules on July 24, 2003. As of July 29, 2003, the revised proposed rule amendments were still under review by OMB, and the Department of the

Interior had not yet received OMB's clearance and approval for their publication.

Date: July 30, 2003

Geoffrey Heath
Office of the Solicitor
U.S. Department of the Interior
Washington, D.C.

Respectfully submitted



EDWARD S. GELDERMANN
United States Department of Justice
Environment & Natural Resources Division
General Litigation Section
Post Office Box 663
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(202) 305-0242

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2003, I caused to be served a copy of the foregoing STATUS REPORT via postage-paid first class mail on the following counsel of record at the following address:

Thomas J. Easement
Kelly R. Donovan
Lois McKenna Henry
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L. Poe Leggette
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Washington, D.C. 20004-3615



Edward S. Geldermann

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

INDEPENDENT PETROLEUM)
ASSOCIATION OF AMERICA,)

Plaintiff,)

v.)

SYLVIA V. BACA, *et al.*,)

Defendants.)

Civil No. 00-761 (RCL)

(consolidated for briefing with)

AMERICAN PETROLEUM)
INSTITUTE,)

Plaintiff,)

v.)

SYLVIA V. BACA, *et al.*,)

Defendants.)

Civil No. 00-887 (RCL) ✓

DECLARATION OF CATHY J. HAMILTON

CATHY J. HAMILTON declares as follows:

1. I am the Chief of Staff for the Minerals Revenue Management program of the Minerals Management Service of the United States Department of the Interior. I have held this position since October 2000.

2. In my capacity as Chief of Staff, I am directly involved in promulgation and amendment of Departmental regulations governing the value for royalty purposes of crude oil produced from Federal onshore and offshore oil and gas leases.

3. The current Federal crude oil royalty valuation rule which is the subject of plaintiffs' challenge in the above-captioned cases, 30 C.F.R. §§ 206.101 *et seq.*, became effective on June 1, 2000.

4. On July 7, 2003, pursuant to Executive Order 12866, a proposed rule containing proposed amendments to the current Federal crude oil valuation rule was transmitted to the Office of Management and Budget (OMB) for clearance and approval. That clearance and approval is required under Executive Order 12866 before the proposed rule may be published in the *Federal Register* for public comment.

5. Based on comments received back from OMB, a revised draft of the proposed rule was transmitted to OMB on July 24, 2003.

6. To the best of my knowledge, the proposed rule is still under review by OMB. The Department of the Interior has not yet received OMB's clearance and approval for publication.

The foregoing declaration is made under penalty of perjury.

July 29, 2003
Date

Cathy J. Hamilton
CATHY J. HAMILTON

Attachment 19
(Excerpts)

MARTIN LOBEL
JACK A. BLUM
LEE ELLEN HELFRICH
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October 9, 2003

By Hand

Freedom of Information Act Appeals Officer
Office of the Chief Information Officer
MS 5312, MIB
1849 C Street, N.W.
Washington, DC 20240

Re: FREEDOM OF INFORMATION ACT APPEAL; FOIA No. 2003-024-30 et al

Dear sir or madam:

At its September 2003 Quarterly meeting, the State and Tribal Royalty Audit Committee (STRAC) requested the undersigned to file an appeal on its behalf of the Interior Department's responses to its January 15, 2003 Freedom of Information Act request. The above-captioned docket involves the response of the Minerals Management Service (MMS). The appeal also includes the responses to STRAC's identical January 15, 2003 FOIA requests to the Office of the Secretary and the Office of the Solicitor. Neither of the latter Interior installations notified STRAC of its right to appeal; no docket numbers were assigned to their responses. All correspondence is attached.

STRAC's FOIA request to the Office of the Secretary, Office of the Solicitor, MMS and the Office of the Inspector General sought:

... all types of documents and communications (e.g., memoranda, correspondence, email, calendars, telephone records) dated, received or prepared on or before October 22, 2002, which related in any manner to the issue of the Guidelines. We are particularly, but not exclusively, interested in any information regarding the impetus for the Guidelines, the identity of the reviewing officers/offices, studies or analyses of the financial impact on the public, and analyses of the documents and communications which address or otherwise relate to the release, implementation

and/or application of the Guidelines dated, received or prepared prior to January 10, 2002. [Given that the Guidelines were not issued until October 2002, the January 10, 2002 date relating to release and implementation of the Guidelines was an obvious typographical error.]

The Guidelines referred to in STRAC's request were those approved on October 15, 2002 by the MMS Director and entitled "Guidelines Regarding Statute of Limitations for Demand and Orders and Appeals Decisions for Federal Leases."

STRAC received responses from the Office of the Secretary, the Office of the Solicitor, and the Minerals Management Service. Each response, and the basis for STRAC's appeal, is outlined below. STRAC has not yet received a final response from the Inspector General's Office.

1. Office of the Secretary (attachment 2). By letter dated May 27, 2003, the Office of the Secretary responded that a search was conducted of the "Secretary's Immediate Offices, Office of the Assistant Secretary for Land and Minerals Management, and the Office of Policy Analysis." According to the response, only three documents were recovered: (a) a copy of the final Guidelines, (b) a copy of "Appeals of MRM Orders Directly to IBLA," and (c) a copy of "Draft Appeals Process." The latter document was forwarded to MMS as the originating agency. STRAC's request was processed as a commercial request, but no fees were charged. [STRAC reserves the right to contest the commercial request designation. *Compare* Attachment 9]

STRAC raises the following issue on appeal:

A. The search conducted by the Office of the Secretary was inadequate. Cf. Krikorian v. Department of State, 892 F.2d 461 (D.C. Cir. 1993); Founding Church of Scientology v. NSA, 610 F.2d 824 (D.C. Cir. 1979)(agency must make reasonable, good faith search). Documents subsequently disclosed to STRAC indicate that both Deputy Secretary J. Steven Griles and Assistant Secretary Rebecca Watson were involved in making the decision to issue the Guidelines and that their involvement occurred prior to October 2002. See e.g., Attachments 3-4. STRAC's request included documents such as calendars, telephone logs and like records that would indicate the dates, times and persons involved in the decision to proceed with issuance of the Guidelines. STRAC is aware that documents of this nature have been made available to other FOIA requesters by secretarial offices. Also as a result of MMS's response, documentation responsive to STRAC's request may also be referred to in calendars, logs and other communications as references to oil or gas valuation, the royalty appeals process, statute of limitations, or royalty collection issues. The responses of both MMS and the Office of the Solicitor indicate that several decisions relating to royalty management were being processed at the same time as the Guidelines. The earliest date referenced in MMS's disclosures was March 2002. As a result, STRAC will accept copies of all communications emanating from secretarial offices referencing royalty management issues dating from February 2002. Access to this information is a key part of STRAC's original FOIA request, given the representation of MRM's Deborah Gibbs Tschudy at the December 2002 audit managers' meeting that the Guidelines, while signed by the MMS Director, were the product of a decision made at a "higher level" within the Interior Department.

2. **The Office of Solicitor** (attachment 5). By letter dated September 9, 2003, the Office of Solicitor responded to STRAC's January 2003 request stating that it "has in its possession only one document that is responsive to your request." The Solicitor's Office determined that the document (entitled "Minerals Revenue Management Issue Paper – Recommended Litigation and Policy Positions" dated July 19, 2002) was exempt in its entirety under FOIA Exemption 5.

STRAC raises the following issues on appeal:

A. ***The search conducted by the Office of Solicitor was inadequate.*** See Krikorian and Founding Church, supra. Documents subsequently disclosed to STRAC indicate that attorneys within the Office of the Solicitor participated in meetings and other communications regarding the issuance and implementation of the Guidelines. See e.g., Attachments 4, 9. No documentation relating to these communications was disclosed in Solicitor's September 9, 2003 response.

B. ***The Office of Solicitor's response was incomplete and non-responsive.*** The Office of the Solicitor mis-characterized the scope of STRAC's request, and in so doing ignored that the request included disclosure of "communications which address or otherwise relate to the release, implementation and/or application of the Guidelines dated, received or prepared" prior to January 10, 2003. Documents responsive to this request exist. See e.g., Attachments 6-9.

C. ***The Office of Solicitor's reliance on Exemption 5 is overbroad.***

- (i) The caption of the Memorandum identified by the Solicitor indicates that it pertains to several issues. STRAC's letter requested access only to documentation relating to the Guidelines, and specifically requested access to segregable portions of any documents pertaining to the Guidelines, which also might include non-responsive or otherwise exempt material. 5 U.S.C. § 552(b)(Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection). Instead the Solicitor asserts that the entire document is exempt from disclosure based on a conclusory assertion of attorney-client privilege. Cf. Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 242 (1974)(claims of non-segregability must be made with same degree of specificity as claims of exemption); see also Powell v. United States Bureau of Prisons, 927 F.2d 1239 (D.C. Cir. 1991)(bald averments that "meaningful segregation" not possible insufficient).
- (ii) Conclusory assertions of attorney-client privilege are insufficient to meet a federal agency's burden to establish the applicability of Exemption 5. Coastal States Gas Corp. v. DOE, 617 F.2d 854, 862 (D.C. Cir. 1980). Not all

memoranda are protected from mandatory disclosure under FOIA simply because they were prepared by an agency lawyer. *E.g.*, Tax Analysts v. IRS, 117 F. 3d 607, 617 (D.C. Cir. 1997). The scope of the attorney-client privilege is narrow and focuses on maintaining confidential information obtained from a client. Fisher v. United States, 425 U.S. 391, 403 (1976)(privilege “protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege”); Coastal States Gas Corp., 617 F.2d at 862 (privilege is limited to protection of factual information confided by client to attorney). If a legal conclusion is based upon facts obtained from or pertaining to agency “outsiders” or is otherwise based upon publicly available facts, the privilege is inapplicable. Schlefer v. United States, 702 F.2d 233, 235-236 (D.C. Cir. 1983); Coastal States Gas Corp., 617 F.2d at 863 (information obtained from audit targets and information that has since been disclosed is not protected under attorney-client privilege; “the privilege is limited to confidential facts”). Documents setting forth the state of the law or its interpretation by agency lawyers are not protected from disclosure under the attorney-client privilege. This is true even when legal memoranda pre-dates the decision by the client agency. *Tax Analysts*, 117 F.3d at 617. The attorney-client privilege also does not protect policy communications from public disclosure, simply because one of the participants in the discussion is an agency lawyer. In re Lindsey, 148 F.3d 1100, 1108 (D.C. Cir. 1998). In its letter of September 9, 2003, the Solicitor’s Office did not meet its burden to establish that disclosure of appropriately segregable portions of the document entitled “Minerals Revenue Management Issue Paper – Recommended Litigation and Policy Positions” would reveal *protected* client confidences.

- (iii) The Guidelines are based on legal interpretations of MMS’s authority under the Federal Oil and Gas Royalty Management Act, as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act. The “working law” of any agency is not exempt from disclosure under the FOIA, especially where that “law” will impact the activity and rights of non-federal entities. This pertains even where the “working law” interpretations of agency lawyers are non-binding. The public has a right to know how any agency is construing its day-to-day authority. *See generally*, Tax Analysts, Schlefer, Coastal States Gas Corp., *supra*. Even memos that evaluate the strengths and weaknesses of legal positions are not protected under Exemption 5. The public is entitled to “[t]he government’s opinion about what is not the law and why it is not the law,” which is as much “a statement of policy as its opinion about what the law is.” Tax Analysts, 117 F.3d at 617. Thus, to the extent that the Memorandum referred to in the Office of Solicitor’s September 9, 2003 response or any other documents yet to be disclosed set forth that office’s understanding and interpretation of the statutes, rules, and case law governing MMS’s operations, it is not exempt from disclosure under Exemption 5.

- (iv) Under Exemption 5, the government carries the burden of showing that a document is both pre-decisional and deliberative. A pre-decisional document is one that was a necessary part of the process leading up to the adoption of an agency decision or policy. A “deliberative” document or portions thereof is one that exhibits a degree of “give and take” between agency officials and employees on what the decision should be, *i.e.*, a document or portion thereof that reflects the subjective, personal opinions of the author, rather than agency policy and its implementation. Wolfe v. HHS, 839 F.2d 768 (D.C. Cir.)*(en banc)*; Coastal States Gas Corp., 617 F.2d at 866. A directive or legal interpretation emanating from an agency superior or from an office whose determinations are viewed as binding on agency personnel is not a “deliberative” document exempt from disclosure under Exemption 5. Schlefer, 702 F.2d at 238. Moreover, a document of “deliberative” character, which is then adopted in whole or in part by the agency in issuing a policy or decision, loses its protection from disclosure under Exemption 5. Coastal States Gas Corp., 617 F.2d at 866. The Office of Solicitor’s conclusory assertion that the Memorandum cited in its September 9, 2003 response is exempt from disclosure under Exemption 5 is insufficient to meet that agency’s burden to establish that it was a pre-decisional document that was part of a process leading to the decision to issue the Guidelines, that it was a “deliberative” document, or that it did not lose its “deliberative” character upon the issuance of the Guidelines.
- (v) The attorney-client privilege is the personal privilege of the client, not the lawyer. Through this appeal, STRAC requests that the Interior Department waive privilege, if any, to the Memorandum referenced in the Office of Solicitor’s September 9, 2003 letter.

3. The Minerals Management Service (attachment 10). By letter dated September 12, 2003, MMS responded to STRAC’s January 2003 FOIA request. MMS was the only component of the Department of Interior to notify STRAC of its right to appeal. In this regard, MMS notes that STRAC’s appeal “must be delivered to the FOIA Appeals Officer no later than 30 working days from the date of this letter.” MMS’s response was handed to STRAC’s Chairman by MRM’s Deborah Gibbs Tschudy on September 17, 2003 prior to the STRAC/MMS Quarterly meeting in Flagstaff, Arizona. MMS specifically approved STRAC’s request for a fee waiver.

MMS’s response attached 40 pages of documents. In some instances, this documentation referenced the departmental officials and employees involved in communications relating to the Guidelines, and the dates of the communications. The content of most of the documents however had been redacted on the basis of MMS’s assertion of Exemption 5. MMS also noted that it was withholding an additional 42 pages of documentation under that exemption. It described the documents withheld in entirety as including “four iterations of one pre-decisional issue paper, two iterations of another pre-decisional issue paper, three pages of handwritten meeting notes, and two

draft meeting notes.”

STRAC raises the following issues on appeal:

- (A) *The search conducted by the MMS was inadequate and its response was incomplete and nonresponsive.*
- (i) As did the Office of the Solicitor, MMS failed to disclose any documents responsive to STRAC’s request for documents relating to the release, implementation and/or application of Guidelines prior to January 10, 2003. As MMS is aware, the Guidelines were disclosed and discussed at the October 2002 meeting of the Royalty Policy Committee, and were an agenda item for discussion at the December 2002 audit managers meeting. Responsive documentation and communications relating to the “release, implementation and/or application” of the Guidelines thus exist, but were not produced by MMS. *See e.g.*, Attachments 6-9.
 - (ii) STRAC made a specific request for access to segregable portions of all documents responsive to its FOIA request. Obviously, from the segregable portions of the documents that it did disclose, MMS recognizes that the identities of the offices, officials and employees involved and the dates of their communications are not exempt from disclosure. Indeed, this minimal amount of information (and more) would be required to be disclosed by the agency in a *Vaughn* index. *Cf. Coastal States Gas Corp.*, 617 F.2d at 861; *Mead Data Central v. U.S. Department of the Air Force*, 566 F.2d 242 (D.C. Cir. 1977). However, MMS did not disclose this information with regard to, at least, 42 pages of documentation responsive to STRAC’s FOIA request. *See also* discussion above ¶ 2 (C)(i).
 - (iii) MMS did not disclose or claim any exemption from disclosure of material referenced in the 40 pages of documents that accompanied its response to STRAC’s FOIA request. *See e.g.*, Attachment 4 (reference to “Grilesissue.doc”). Because MMS did disclose emails attaching these documents – emails that contained no other content -- it is obvious that these referenced documents contain information responsive to STRAC’s FOIA request. As noted, STRAC is particularly interested in obtaining access to documentation that would explain the statement of MRM’s Deborah Gibbs Tschudy that the decision leading to the preparation and issuance of the Guidelines was made at a “higher level” within the Department and not by MMS. Indeed, Attachment 4 indicates a decision related to the matters covered by Guidelines was underway at the Secretarial level as early as March 27, 2002 – nearly 7 months before the Guidelines were finalized and issued. The documents disclosed by MMS also suggest that it began

preparing “drafts” of the Guidelines only after some type of decision or directive was made at a higher level. As noted above, directives from superiors to employees of an agency, which result in the issuance of policies conforming to the directives, are not exempt from disclosure. ¶ 2 (C)(iv).

- (B) ***The MMS’s reliance on Exemption 5 is Overbroad.*** The analysis set forth in ¶ 2(C)(iv) above is incorporated by reference herein.

Nearly eight months after STRAC submitted its FOIA request, MMS and the Office of Solicitor responded with incomplete, unresponsive and overly redacted information, the content of which was withheld from disclosure on the basis of conclusory assertions of an exemption. As the documentation that was disclosed reveals, none of the Interior installations referenced in this appeal undertook a reasonable search for responsive documents. All of the responses to STRAC’s request fell well short of the government’s obligation to make reasonable, good faith efforts to comply with FOIA.

As MMS is well aware, the issuance of the Guidelines departed from its historical practice of cooperating and consulting with states and tribes in the development of policies that impact the audit and collection of royalties. This consultation process was also directed by Congress (30 U.S.C. §§ 1733, 1735). In other words, STRAC’s FOIA request is directed at accessing information, which should have been shared with its jurisdictions as a matter of course. STRAC knows of no instance when prior deliberation and cooperation with states and tribes on the development of policies impacting the collection of royalties has harmed Interior’s institutional interest in the “open and candid” expression of views by employees and officials of MMS.

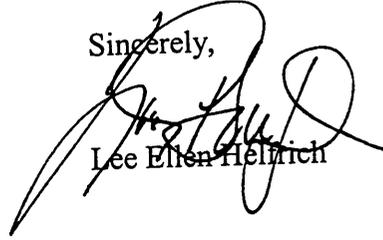
The analysis and scope of the Guidelines also conflicts with previous legal opinions of the Office of the Solicitor (*e.g.*, “Delegation of Royalty Management Functions to States, 62 Fed. Reg. 43076, 43077) and with federal law that grants the government authority to collect debts through offsets – even when those debts may not be collectible in cash by immediate enforcement because of a statute of limitation. *Cf. Oxy USA, Inc. v. Babbitt*, 268 F.3d 1001 (10th Cir. 2001). Instead, STRAC was presented with the Guidelines and directed to apply them, despite the negative impact on revenues owed its jurisdictions. Even uncontested royalty debts were “written off” because of the Guidelines. It is disturbing that the Interior Department feels a need to keep the “who, how and why” of the Guidelines – both in terms of content and process -- confidential from royalty beneficiaries and the public. Indeed, it has been the exclusion of states and tribes from the process, which has caused the greatest criticism of and the most programmatic problems for the royalty management program. *Cf. Cobell v. Norton*, 226 F. Supp. 2d 1, 113-114 (D.D.C. 2002)

As the court of appeals stated in *Tax Analysts*, “the argument ... [that] officials who request and prepare these documents might be subjected to pressure from those who disagree with their reasoning, and to criticism when the advice turns out to be ill-considered ... proves too much. Whenever an agency’s actions are opened to public view, the agency exposes

itself to pressure and criticism.” 117 F.3d at 618. “[T]he public has a right to know what its government is doing and why.” Coastal States Gas Corp., 617 F.2d at 868.

Through this appeal, STRAC requests the Office of the Secretary, the Office of the Solicitor, and MMS perform a new search for responsive documents and fully disclose all of the documentation referenced in its prior responses and that result from an adequate FOIA search. Interior is well aware that it has discretion to release documentation that might be subject to nondisclosure under an exemption – there is no mandatory exemption applicable to the documents requested by STRAC. If any Office continues to assert that any of the documentation responsive to STRAC’s request remains exempt from disclosure in whole or in part, STRAC further requests that the Office provide a *Vaughn* index of those exempt documents and a detailed explanation establishing that the Office has met its burden to show that Exemption 5 applies and/or that reasonable segregation is impossible. See Mead Data Central, *supra*. Finally, STRAC requests that each Office produce its most current draft affidavit regarding its FOIA search procedures and all documentation and communications relating to Interior’s efforts to respond to STRAC’s January 15, 2003 FOIA request and this appeal. Cf. Neugent v. Department of the Interior, 640 F.2d 386 (D.C. Cir. 1981).

Sincerely,



Lee Ellen Heinrich

Attachments

Cc: Office of the Inspector General

Beck, Kimberly

From: Russo, John
Sent: Wednesday, March 27, 2002 10:11 AM
To: Gibbs Tschudy, Deborah; Querques Denett, Lucy; Vogel, Kenneth
Subject: Valuation Issues attached



Issues for Griles.doc

DRAFT: 3/26/02

Valuation Issues
For Briefings with
Associate Deputy Solicitor, AS/LM, and Director, MMS

X-5