

Lee E. Helfrich

From: Lee E. Helfrich [helfrich@lnllaw.com]
Sent: Thursday, October 23, 2003 10:02 AM
To: Sharron Gebhardt (E-mail)
Cc: Deborah Gibbs-Tschudy (E-mail); Hank Banta (E-mail); Ken Vogel (E-mail); Lucy (E-mail); M L (E-mail); Marty Lobel (E-mail)
Subject: Technical amendments to oil valuation rule

Dear Ms. Gebhardt:

I am writing on behalf of the California State Controller's Office. As you know, since the Minerals Management Service announced its intention to make "technical" corrections to the federal oil valuation rules (February 2003), I have been trying to access from the Service any information that might help explain or detail the assertions that MMS's "experience" suggested a need for amendments. Unfortunately, the material provided to me so far does not suggest that any changes are needed. The material provided also has not provided any foundation for assuming agency expertise in the implementation or evaluation of the effectiveness of the oil rules, which became operational in June 2000.

I recently learned that during the month of July 2003, the MMS proposal was under review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). This is recounted in the 7/29/03 affidavit of MRM's Cathy J. Hamilton, which was filed in connection with a status report to the court in IPAA v. Baca, No. 00-761 (RCL). That affidavit states that MMS, pursuant to Executive Order 12866, forwarded a draft to OMB for approval, that OMB returned the proposal with comments, which led to a revised draft to OMB. Ms. Hamilton's affidavit was apparently prepared before OMB cleared the rule.

As you know, federal agencies submit other types of explanatory documentation to OIRA with draft proposed rules. The documentation surrounding OMB approvals and inter-agency communications are spelled out in considerable detail in Section 6 of the Executive Order. We would appreciate receiving access to all of that material, and particularly the material relating to the OMB comments that led MMS to make revisions.

Finally, as I'm sure you know, under Executive Order 12866, OMB reviews only those agency proposals that have been designated as "significant regulatory actions". That phrase is defined in Section 6(f) of the Order to include rules that may:

- "1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order."

It is somewhat obvious the definition above is out of sync with MMS's repeated reference to its proposal as involving "technical" changes. Accordingly, would you please provide: (a) any and all information and communications that would identify whether MMS or OIRA made the determination that the oil valuation proposal was a "significant regulatory action," (b) any and all information that would explain which of the Executive Order's definitional categories applied to the oil valuation proposal, and (c) any other relevant information that would explain the basis and purpose of the Hamilton affidavit and the need for OMB/OIRA review.

Thank you.

Lee Helfrich
Lobel, Novins & Lamont
1275 K Street, N.W. Suite 770
Washington, D.C. 20005
202-371-6626

Gibbs Tschudy, Deborah

From: Gibbs Tschudy, Deborah
Sent: Friday, September 05, 2003 3:19 PM
To: 'helfrich@lnllaw.com'
Cc: Querques Denett, Lucy; Vogel, Kenneth; Gebhardt, Sharron
Subject: RE: 68 Fed. Reg. 50087

Lee,

In response to your August 23, 2003, email we are putting into tonight's FedEx documents that we can provide to you informally that are not privileged, confidential, or proprietary and that are not already in the administrative record of the proposed rulemaking.

We also will include in the rulemaking administrative record all of the documents that we are providing to you in response to your request.

-----Original Message-----

From: Lee E. Helfrich [mailto:helfrich@lnllaw.com]
Sent: Saturday, August 23, 2003 9:17 AM
To: Gibbs Tschudy, Deborah
Cc: Querques Denett, Lucy; Vogel, Kenneth; Gebhardt, Sharron
Subject: 68 Fed. Reg. 50087

Please see the attached request for data.

August 28, 2003

The Honorable Gale A. Norton
Secretary
U.S. Department of Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Secretary Norton:

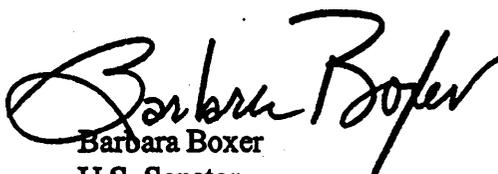
We write to express our grave concerns about a proposed rule the Minerals Management Service (MMS) published on August 20, 2003, which would amend existing regulations for the valuation of crude oil produced from federal leases.

We will be submitting comments on the proposed rule in the near future. However, it is clear from the complexity of the proposed rule – and the inadequacy of the explanatory material accompanying the proposed rule – that a 30-day public comment period is insufficient for proper evaluation and submission of meaningful comments. We demand that the public comment period be extended, at a minimum, to 120 days.

In addition, in order to complete a comprehensive analysis of the proposed rule, certain documents and information are necessary and should be made available. This is just one example of why more time is needed for the public comment period. Attached is a list of materials that we request be sent to us immediately. As you can see from the extensive list of requested documents and information, additional time is needed for fair and adequate review and evaluation.

This is very important to the taxpayers of this country who deserve to be considered when their resources are being used. Thank you in advance for your consideration and cooperation. We look forward to your immediate response to these important requests.

Sincerely,


Barbara Boxer
U.S. Senator


Carolyn Maloney
U.S. Representative


Lois Capps
U.S. Representative

cc: Sharron Gebhardt, Regulatory Specialist, Minerals Management Service

Attachment

1. All documents that relate to potential changes to the 2000 oil valuation rules dated between January 2001 and February 2003.
2. All audits conducted by the Interior Department involving transportation allowances.
3. All audits conducted by the Interior Department involving royalties owed under the 2000 oil valuation rules.
4. All documents and data supporting MMS's representation on page 50088 that its "[e]xperience thus far with the 2000 rules ... indicate a potential for improving those rules in some respect"
5. All documents and data supporting MMS's representation on page 50088 that its "years of experience in taking and selling royalty-in-kind oil ... indicate a potential for improving those rules in some respect."
6. All documents and data supporting MMS's representation on page 50085 that "information learned during litigation challenging the 2000 rules indicate a potential for improving those rules in some respects." In fulfilling this request, please exclude any information or data that was provided by or on behalf of any industry commenter during the comment period(s) on the 2000 rules, and also provide the legal basis for Interior's position, if any, that material outside of the administrative record underlying the 2000 rules is properly before the court in that litigation.
7. All documents relied upon by MMS in its statement on page 50085 that there is "an issue" arising from "recent publicity and questions about information provided to spot price reporting services and the effect such potentially inaccurate information has on spot prices in general" justifies a change in the 2000 rules. Include within this request all information that relates to the spot prices that are used for valuing production under the 2000 rules.
8. Identify and supply supporting documentation that will explain and demonstrate how MMS determined arm's length transactions for purposes of studying the "correlation" between those transactions and "public indicia of crude oil prices" discussed on p. 50089. In fulfilling this request, separate the arm's length transaction data on an onshore and offshore basis. For onshore, provide a state breakdown.
9. All documents relating to the "requests... for valuation guidance and future valuation agreements" referenced on p. 50091. In fulfilling this request, provide all such requests and agreements, not solely those for the Rocky Mountain region.
10. All documents "examined" by MMS or provided to MMS (see p. 50094) relating to the proposal

to increase the rate of return for calculating transportation allowances.

11. All documents reflecting how MMS made the determination that some costs are associated with transportation of oil and some costs are associated with marketing. Include relevant schematics.

12. Documents describing and recording the "review" of transportation allowances referenced on p. 50099

13. All documents supporting the MMS's recognition that oil transferred by parties to a joint operating agreement could be considered arm's length.

14. All documents and data relied upon by MMS in calculating revenue impact.

15. A breakdown of the cost of each cost specified in proposed 206.110 and 206.111 on a per barrel basis, separating offshore and onshore.

16. A breakdown of net revenue impact on a state by state basis.

17. All documents reflecting communications between Interior and industry or its representatives during and after the workshops and prior to publication of the proposed rule.

18. All documents and records reflecting positions, analyses, data, communications or other information provided to Interior from other executive branch entities.

Congress of the United States**Washington, DC 20515**

September 9, 2003

The Honorable Gale Norton
Secretary
U.S. Department of Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Secretary Norton,

As you know from our previous correspondence, we are concerned about the proposed rule that the Minerals Management Service (MMS) published on August 20, 2003, which would amend existing regulations for the valuation of crude oil produced from federal leases. We believe that the 30-day comment period provided to the public to evaluate the proposed changes to this rule is inadequate. Additionally, we have a number of important questions we would like you to address.

1. MMS refers to the litigation pending in the United States District Court for the District of Columbia at several points in its preamble explanation. That litigation was filed in April 2000, prior to the effective date of the 2000 rules in June 2000, and is based upon the administrative record leading up to those rules. On p. 50093, MMS refers to the litigation in the context of its reconsideration of "whether the BBB is a sufficient rate of return." The API study it then refers to (50094) is dated December 2002 -- a date, which is prior to its workshop notice, but after a compilation of the administrative record in the referenced litigation. Please explain the extent to which litigation is motivating MMS's proposed rule. In this regard, please provide us with the following all orders of the court, status reports filed with the court, affidavits and/or declarations of Interior officials and employees, stipulations of fact, and record designations in Civ Action Nos 00-761(RCL) and 00-867(RCL) (consolidated, pending before the U.S. District Court for the District of Columbia). Please also provide all material generated by or given to Interior in reference to that litigation dated after April 2000 and before February 12, 2003 (the date of the workshop notice).
2. MMS lists a broad range of financial impacts to the federal government and to the states. For several issues, this impact ranges from the negative to the positive, a sign of uncertainty in the estimated impacts. While we understand the ambiguous nature of royalty oil that may be diverted to the SPR, other factors that add to this uncertainty are troubling. For example, MMS makes broad assumptions on the amount of oil that is not sold at arm's-length, yet MMS's newly revised 2014 form asks lessees to report whether sales are or are not at arm's-length. Why did MMS fail to consider these data when determining how much oil is not sold at arm's-length?
3. Along the same line, MMS assumes that, since there are four benchmarks for non arm's-length transactions in the Rocky Mountains, companies use each of these benchmarks to

the same degree, i.e., 25 percent for each benchmark. On what basis does MMS make this assumption?

4. MMS reports that it has studied the correlation between several public indexes of crude oil and found that NYMEX with the roll has the highest correlation with arm's-length sales. However, throughout the proposed regulations, MMS makes assumptions on the percentages of oil that are not sold at arm's-length. How did MMS identify the arm's-length sales used in the correlations? What type of correlations did MMS obtain between the NYMEX plus roll and the other indexes? Why has MMS failed to release this information to the public?
5. MMS states that for the period June 2000 through December 2002, NYMEX plus roll exceeded the monthly average spot prices in "the rest of the country" by about 31 cents. Why has MMS failed to release this information to the public? Were there months when NYMEX plus roll were less than the average monthly spot prices, and if so, what percentage of those months was NYMEX plus roll less than the monthly average spot price? Is there a risk involved with NYMEX plus roll valuation where the federal government and affected states may realize less revenue?
6. Has MMS compared NYMEX plus roll to monthly average spot prices in the Rocky Mountains and California?
7. MMS proposes using differentials to adjust the difference between various grades of oil in the Rockies and California with NYMEX. These differentials depend upon spot prices when companies do not exchange oil at arm's-length between points in the Rockies and California to Cushing. Are these the same spot prices that MMS is trying to move away from in adopting a NYMEX-based valuation? Do the same concerns of inaccuracy of information provided to spot price reporting services apply to the spot prices used for determining differentials? By what process will MMS approve publications for determining West Texas Intermediate (WTI) differentials? How will MMS ensure that WTI differentials in MMS approved publications are not subject to the same inaccurate information that has raised concerns about spot price reporting services?
8. At the Houston, Denver, and Albuquerque workshops earlier this year, industry proposed a list of items they consider deductible transportation costs. MMS now proposes that many of these same costs be considered deductible transportation costs. What justification does MMS have for defining each of these costs as deductible transportation expenses, as opposed to those expenses related to placing oil in a marketable condition?
9. Information supplied by IPAA and Samuel Van Vactor, in response to the oil valuation regulations in 1999, says that Alaska North Slope spot prices were, on average, 68 cents higher than line 63 oil for much of the 1990s. If we use line 63 oil as the basis for establishing the differential to NYMEX at Cushing, would this result in substantially less royalty revenue for both the federal government and the State of California?

10. MMS has only recently received the results of its first audits under the revised oil valuation regulations as implemented in June 2000. Hence, there is little basis upon which to determine whether these revised regulations are working. Why propose revisions to the regulations before substantial audit experience is realized?
11. MMS states that it has had some years of experience in taking and selling royalties in-kind. However, the GAO stated in its January 2003 report that a more systematic evaluation of the RIK pilots is needed. Specifically, they state that MMS has not obtained the necessary information to monitor and evaluate the RIK program. GAO further states that, of the 15.8 million barrels of oil that MMS sold in-kind from October 1998 through July 2002, MMS has quantified the revenue impacts of 9 percent. We understand that this 9 percent was oil sold in Wyoming, where the oil was awarded on an average of posted prices plus a premium, not NYMEX. However, MMS sold substantial amounts of oil in the Gulf of Mexico based on the NYMEX plus roll, but has not evaluated these sales. What did MMS learn from these sales? Did MMS make more or less money than it would have collected in cash royalty payments?
12. Why does MMS propose a change in the rate of return (from 1.0 to 1.5 times Standard and Poor's BBB corporate rate for oil pipelines) on undepreciated capital investment when 1) one debate in a current lawsuit challenging the 2000 rule is whether the Standard and Poor's BBB corporate rate is sufficient as an average rate of return on transportation capital investments 2) MMS analysis of this issue found that the relationship between the rates of return MMS examined and the BBB rate has not been constant (range from 1.1 to 1.5) and 3) MMS admits it does not collect detailed allowance information, thus leading MMS to make several broad assumptions in order to estimate the impact of the proposed rule? Do any of the companies that would be impacted by this provision have bond ratings that exceed the BBB rating?
13. In 1997 and 1998, MMS twice allowed 30-day comment periods for modifications to its oil valuation regulations. In both cases, it found these periods of time to be inadequate, and extended the comment periods. In addition, Executive Order 12866 generally requires a comment period of 60 days. Why is MMS currently allowing only 30 days for comments to a 22-page proposed regulation that significantly alters both oil valuation and transportation allowances?
14. Finally, were any of the documents involved with the rulemaking process were deemed privileged, confidential, or proprietary? If so, please explain the justification for labeling documents as such since they were integral to a public rulemaking process.

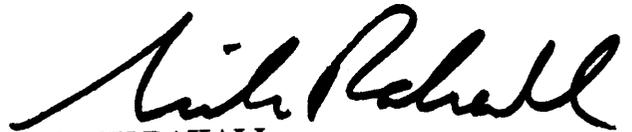
We respectfully request that you provide answers within five days, unless you have decided to extend the comment period. We find it difficult to ascertain precisely what data MMS used to justify these changes, therefore, we request that you provide additional information as well as the answers to these questions. Please treat the text of this letter as official comments.

Thank you for your attention in this matter. Please contact Ben Winburn with the House

Committee on Resources at 202-226-2311 with any questions.

Sincerely,


CAROLYN B. MALONEY
Member of Congress


NICK RAHALL
Member of Congress

cc:
The Honorable R.M. "Johnnie" Burton



United States Department of the Interior

MINERALS MANAGEMENT SERVICE
Washington, DC 20240
OCT 31 2003

The Honorable Carolyn B. Maloney
House of Representatives
Washington, D.C. 20515

Dear Ms. Maloney:

Thank you for your letters to Secretary Gale A. Norton dated August 28, 2003, cosigned by Senator Barbara Boxer and Representative Lois Capps, and September 9, 2003, also cosigned by Representative Nick J. Rahall, II. The letters concerned the proposed Federal rule published August 20, 2003 (68 Federal Register 50087). The proposed rule would amend in certain respects the current Minerals Management Service (MMS) regulations governing the valuation for royalty purposes of crude oil produced from Federal leases. The Secretary has asked me to respond and a similar letter is being sent to Senator Boxer and Representatives Capps and Rahall.

Your letters requested an extension of the comment period for the proposed rule. On September 26, the Department published a notice extending the comment period to November 10, 2003.

Your letters also included a number of questions and asked the Department to produce documents covering a wide range of matters and issues that you believe relate to the proposed rule. Because we are now in the period that is open to the receipt of comments from the public and have not promulgated a final rule, many of your questions are not ones we can appropriately respond to at this time. Additionally some of the data you request is proprietary. The public comments we receive on the proposed rule may explain the commentors's views on any legal issues they identify. We welcome comments from all interested parties, including Members of Congress; and we expect the comments will reflect diverse views.

We have briefed members of your staff and have provided public documents which we understood were of particular interest to you. In addition, the administrative record of the rulemaking that exists so far is accessible on the MMS website and is available to everyone. You can access this website at <http://www.mrm.mms.gov/LawsRD/PubComm/50087pc.htm>. If and when the MMS promulgates a final rule, I will be available to brief you on that rule.

Again, I appreciate your close interest in the rulemaking and look forward to receiving comments from you and other interested parties.

Sincerely,

R. M. "Johnnie" Burton
Director

**TAKE PRIDE
IN AMERICA**

Financial Management Status Report

STRAC

Flagstaff, AZ

September 17, 2003

Phil Sykora

Chief, Financial Management

Peregrine "Lost Documents"

Peregrine "Lost Documents": Series of Events

- On court order, MRM systems shut down from 12/6/01 thru 3/22/02
- Companies told to pay but not report
- MRM's contractor, Peregrine (now Inovis) was not permitted to receive or process royalty reports
- Upon restart, backlogs far exceeded Peregrine's system capacity
- While processing backlogs, Peregrine inadvertently deleted some documents

Peregrine "Lost Documents":
Discovering the problem

- Problem undetected at first
- Peregrine controls were flawed
 - Companies reported to Peregrine and received confirmation report
 - Peregrine did not retain confirmations
 - No reconciliation process to compare reports received to reports transmitted

Peregrine "Lost Documents":
Missing reports discovered by MMS and States

- Royalty reporting process
- Payments matching process
- Compliance analyses
 - MMS and State auditors' analysis disclosed missing reports



Peregrine "Lost Documents":
Correcting the Source of the problem

- Peregrine implemented control process to reconcile reports received to reports transmitted
- New web-based reporting system
- No new incidents since July 2002



Peregrine "Lost Documents":
Status

- Problem was widespread.
"Probable" lost documents identified to date:
 - 148 royalty reports
 - 85 companies
 - \$38 million (predominantly offshore)
 - (File available to STRAC)
- Cannot positively establish which missing reports are or are not associated with this event
- A few missing reports still being discovered - No easy method to identify residual missing reports
- Missing production reports likely
- States' analyses are appreciated

This Site Visit Report discusses my findings.³

I arrived at the Dallas MMS Office at 7:15 AM and was admitted by Administrative Assistant Terry Ross. After introducing myself and announcing that the purpose of my visit was to inspect the facility and examine records containing individual Indian trust information to ensure they were being preserved and retained in accordance with Court orders, Ms. Ross introduced me to Supervisory Auditors Youssef Amer and Allen McDaniel.

Both Mr. Amer and Mr. McDaniel cooperated fully with my request to examine the file room in which closed audit files are stored. Only two individuals have keypad access to this room: Supervisory Minerals Management Specialist Lonnie Campbell and Terry Ross. As Mr. Campbell was not present during the site visit, Ms. Ross provided us access to the room. The file room houses six rows of cabinets; each row contains approximately 16-18 file cabinets; each cabinet has five file drawers. Affixed to the first two file cabinets were blue stickers indicating they contained Cobell-related documents. My examination revealed that closed audit files are not maintained in chronological order, i.e., by fiscal year. This observation was subsequently confirmed.

Messrs. Amer and McDaniel provided, at my request, a master list of closed audit cases. This list provides, among other details, a description indicating whether an audit pertains to mineral production on allotted, tribal or federal lands. Audit files related to production on allotted lands are designated, for example, by the prefix "BIA." After reviewing the master list, I asked Messrs. Amer and McDaniel to retrieve from the file room a random sampling of audit files

³ These findings are necessarily preliminary. As discussed below, at the instruction of the Department of Justice, MMS directed me to leave the premises two hours after I began my site visit and forbid me from removing photocopies of the documents provided for my review.

performed on allotted lands. Neither official could locate any of these files in the file room where, by all accounts, they should have been stored. For example, several sets of closed audit files reflecting MMS' review of Meridian Oil and Gas Company production on allotted lands could not be located in the file room. And although three of these files were later retrieved from an undisclosed location, there was no "out card" in the file cabinets where MMS officials acknowledged they should have been stored.

MMS officials also admitted that individual Indian trust information was not only found in allottee audit files but in tribal audit files as well. According to these officials, if an audit of tribal lands revealed an underpayment on the part of the oil and gas company, that problem might impact individual allotted lands. The individual Indian trust information associated with that underpayment on allotted lands may or may not be stored in a separate allottee audit file (e.g., labeled with the designation "BIA"). According to Mr. Amer, compliance files are not maintained uniformly because "each supervisor does it differently." Unfortunately, I was not allowed to complete my investigation, document the extent to which allottee production data is contained in files designated as tribal, and explore whether filing allottee information in tribal files adversely impacts the preservation and retention of trust information.

I was also informed that files containing Indian information (whether tribal or individual) should be affixed with a red label indicating that the information contained therein was to be retained indefinitely. None of the Meridian files produced at my request (containing allotted and tribal information) were so labeled.

During the site visit, I requested a list of all MMS closed audit files for the Dugan Production Company and the Meridian Oil and Gas Company. Administrative Assistant Donna Miles provided me with a spreadsheet containing this information. Ms. Miles indicated that data

related to closed case files was located on one case tracking system (CTS) database while active case information was retrievable from a separate database. The spreadsheet provided by Ms. Myles for the Dugan and Meridian closed audit files contained information that described, among other things, the office that conducted the audit (i.e., the Dallas Office was designated as "04") and the status of the audit. Some of the audits were designated as "closed" while others were designated as "cancelled." This caught my attention only because several of the "cancelled" audits related directly to MMS audits of Dugan production on allotted lands. As I was asked to leave during my review of these documents, I could not examine them more thoroughly and inquire into the significance of these designations, if any.

Finally, I noticed that the MMS Dallas Office houses what appears to be an industrial shredder. Again, had I not been directed to leave the premises, I would have inquired into the need for such a shredder and requested a copy of all written protocols that ensure that MMS employees do not shred work papers, notes or other records pertaining to mineral production on allotted lands.

At approximately 9:30 AM, Mr. Amer received a telephone call from Royalty Management Program, Assistant Director Deborah Gibbs-Tschudy. Mr. Amer informed me that Ms. Gibbs-Tschudy directed Mr. Amer to instruct me to leave the premises immediately without any documents including my personal notes. According to Mr. Amer, my removal was initiated at the direction of the Department of Justice. After an unsuccessful attempt to contact the Court in the hopes of initiating a conference call between the parties, I left the premises without any of the MMS documents. This was verified, at my insistence, by Mr. McDaniel. I retained my own notes.

Shortly after leaving the MMS facility, I received the following telephone message from

the Department of Justice:

Mr. Balaran, this is Sandra Spooner with the Department of Justice, I understand from Interior Department employees that you are in an MMS office reviewing files or attempting to review files and otherwise interviewing other employees. Please know that we believe as we have said before that this is improper and that you are required to proceed inter partes and may not proceed ex parte in these matters. We respectfully request that you cease any ex parte proceedings in this case and that you let us know where you want to go and what documents you want to review so that we can have someone accompany you as we have in the past when you make any visits to Interior facilities. Thank you very much.⁴

This message is problematic for several reasons. First, the Special Master, in keeping with February 22 and 24 Orders of Reference and the August 12, 1999 Consent Order, conducted the vast majority of his site visits without being accompanied by Justice counsel. With the exception of the recently filed *Site Visit Report of the Special Master to the Office of Appraisal Services in Gallup, New Mexico and the Bureau of Indian Affairs in Window Rock (OAS Site Visit Report)*, Arizona, Interior has filed no objections to the Special Master's numerous reports chronicling these site visits on the grounds the Special Master proceeded without a chaperone – or on any other grounds. And with respect to the OAS Site Visit Report, Interior did, in fact, object on the grounds the Special Master's conclusions were premised on ex parte communications notwithstanding the fact that representatives of the Department of Justice and the Office of the Solicitor were present at all times.

⁴ To my knowledge, Interior did not file an emergency motion to stay my site visit pending a revision of the August 12, 1999 Consent Order or seek judicial intervention before ordering me off the premises. Similarly, the agency did not rescind the letters issued by the former Assistant Secretary - Indian Affairs or the former BIA Deputy Commissioner (or those from the Commissioners of the Bureau of Public Debt and the Financial Management System) allowing me unescorted access to all facilities containing individual Indian trust information.

Second, it is clear that Interior will not produce documents concerning its oil and gas activities. As set out in the August 2003 Monthly Report of the Special Master:

On July 31, 2003, I requested the production of records pertaining to the activities of the Dugan Production Company – a company doing business on allotted lands – to determine whether trust information was missing. Interior, as indicated in the attached correspondence, has refused to turn over these files on the grounds it exceeds my authority to conduct such a review and my explanation for requesting production of these files was inadequate.

August 2003 Monthly Report of the Special Master at 2.⁵

A review of the Dugan files, had they been produced, might have uncovered missing or destroyed pages or “recreated” information in lieu of missing originals (as did the Office of the Inspector General when it examined the audit files related to production of J.K. Edwards and Associates on allotted lands). See March 2003 Report of the Inspector General. Yet the Department of Justice refused the request for production on the grounds that it was “without any nexus to document retention.” Letter dated September 5, 2003 from Sandra Spooner to Alan Balaran at 2.⁶ Based on this response, there is no basis to believe that Interior will provide me with access to any MMS documents.

The Special Master has grave concerns that individual Indian trust information stored in the MMS Dallas Office is not being preserved and retained in accordance with Court orders. The Special Master’s brief visit uncovered chaotic document management, an inability to locate audit files, an admission that each supervisor maintains audit files “differently,” status designations

⁵ In addition to the July 31, 2003 request for documents, the Special Master drafted letters dated August 12, 2003, August 13, 2003, August 29, 2003 and September 10, 2003. These letters are appended to the August 2003 Monthly Report as Exhibit 2.

⁶ Justice, apparently under the impression that its filings are self executing, reminds me (once again) of their outstanding Motion to Disqualify.

suggesting that audits on allotted lands were “cancelled,” and the unexplained presence of an industrial shredder. Each of these preliminary findings compels the need for a thorough investigation.

Respectfully submitted,

Alan L. Balaran
SPECIAL MASTER