

# **Minerals Management Advisory Board**

## **Royalty Policy Committee**

### **Summary of Meeting**

#### **February 4, 2000**

The Royalty Policy Committee (RPC) of the Minerals Management Advisory Board convened its tenth meeting at 8:37 A.M. on February 4, 2000, at the Wyndham Hotel, 12400 Greenspoint Drive, Houston, Texas, 77060. In accordance with the provisions of Public Law 92-463, the meeting was open to the public.

#### **Members/Alternates Present:**

Sandra Bailey, David Blackmon, Ron Cattany, John Clark, Wendy Daboral, Lucy Querques Denett,<sup>1</sup> Shawn Frank, William Hartzler, Pete Culp,<sup>2</sup> Walt Rosenbusch,<sup>3</sup> Noma Rosner, Charles Mankin, Brian McGee, Spencer Reid, Tom Shipp, Perry Shirley, Pary Shofner, Brad Simpson, Hugh Schaefer, Steve Williams, and Carla Wilson.

#### **Minerals Management Service Employees Present:**

Connie Bartram, Mike Baugher, Lee Benner, Walter Cruickshank, Barbara Desiderio, Milt Dial, Anita Gonzales-Evans, Dale Fazio, Gary Fields, Tom Kitsos, Paul Knueven, Bonn Macy, Todd McCutcheon, Bob Middleton, Mike Miller, Ken Mireles, John Russo, Donald T. Sant, Jenifer Smith, Jan Therkildsen, and Herb Wincentzen.

#### **Others Present:**

Tom Agnew, Floyd Deloney,<sup>4</sup> Del Fortner, Pat Kent, John Klein, Don Lynch, Lloyd Oatis, and Charles Osina.

#### **Welcoming and Opening Remarks - Presented by Chairperson David Blackmon**

#### **UPDATES FROM WALT ROSENBUSCH (Director, MMS):**

Mr. Rosenbusch provided an overview of his background and updated the RPC on his two top priorities: Royalty Reengineering and the Royalty in Kind (RIK) program.

#### **UPDATES FROM LUCY QUERQUES DENETT:**

Ms. Querques Denett provided an update of the Royalty Management Program's reengineering proposed reorganization and regulatory activities.

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1 Associate Director for Royalty Management, Minerals Management Service, ex officio member, RPC Executive Secretary, and Designated Federal Officer.

2 Ex officio member representing the Bureau of Land Management

3 Ex officio member representing the Minerals Management Service

4 Representing the U.S. Forest Service, USDA

A question and answer session followed the presentations.

**APPROVAL OF THE JUNE 16, 1999, MINUTES**

Mr. Cattany proposed several amendments to the June 16, 1999, minutes:

- In the coal subcommittee interim report, first paragraph, second-to-the-last-line, that's coal fines, F-I-N-E-S, not "coal finds."
- The second bullet that starts with "consistent," about two thirds of the way down, the line that begins with "reduced both the producer's paperwork and the MMS's," that's "valuation efforts."
- The last bullet after "disappointed," strike "in the recent Solicitor's decision" and insert there "with respect to the recently promulgated appeal procedure regulatory revisions." So that's "with respect to the recently promulgated appeal procedure regulatory provisions."
- The fourth line down, after the word "appeals," strike "settlements." The next line down in the parentheses, strike the "S" out of "AADR." And the same in the second-to-the-last line.

Motion was made that the minutes be accepted as amended.

Motion seconded.

Vote: 14 votes in favor, none opposed.

Motion carried.

**ELECTION OF A NEW CHAIR, VICE CHAIR AND PARLIAMENTARIAN**

Mr. Clark motioned to nominate Perry Shirley of the Navajo Nation as Chairperson.

Mr. McGee seconded the motion.

Mr. Shirley motioned to nominate Dr. Charles Mankin as Chairperson.

Mr. Simpson seconded the motion.

Vote: Mr. Shirley - 9 votes; Dr. Mankin – 5 votes.

Mr. Perry Shirley was elected Chairperson for the next 2-year term.

[After further review, the Parliamentarian determined the vote was insufficient to meet the two-thirds requirement. The Agenda for the next meeting will include a vote for the Chairperson.]

Mr. Schaefer motioned to nominate Dr. Mankin to be Vice-Chairperson.

Mr. Shofner seconded the motion.

Vote: Motion passed unanimously.

Dr. Charles Mankin was elected to a 2-year term as Vice-Chairperson.

Mr. Shirley motioned to nominate Hugh Schaefer as Parliamentarian.

Ms. Rosner seconded the motion.

Vote: Motion passed unanimously.

Mr. Hugh Schaefer was elected to a 2-year term as Parliamentarian.

### **CONSIDERATION OF DRAFT OPERATING PROCEDURES AND BYLAWS**

Ms. Daboval requested someone highlight the major revisions from the previous bylaws to these for the committee. Mr. Knueven explained that the only difference from the current operating procedures is that the final agenda would be made available to members 20 days before the meeting rather than 30 days, just to make the time frame more realistic. Everything else just incorporates in one place, as recommended by GSA, the law, the regulations and the charter.

RPC members discussed several changes in the draft Operating Procedures and Bylaws:

1. Changing the requirement of providing members supporting materials for a vote from 30 days before the meeting to 20 days in § IV –A, and § V, page 4.
2. Expanding the membership described in the second bullet, § III, page 1, to include a representative from the U.S. Forest Service, USDA, as an ex officio member.
3. Post the draft and final agenda to RPC's Internet home page within the time frames contained § IV -A.

**Vote on Change No. 1**

After the motion to implement change number 1 was made and seconded, a vote was taken.

Vote: 14 for, 1 against. The motion carried.

**Vote on Change No. 2**

After it was explained that the membership requirements of the RPC originated from the Charter and could only be changed by the Secretary of the Interior, a motion was made to recommend to the Secretary that a representative from the U.S. Forest Service be an ex officio member.

The motion was seconded.

Vote: Motion passed unanimously.

**Vote on Change No. 3**

After the motion to implement change number 3 was made and seconded, a vote was taken.

Vote: Motion passed unanimously.

**Vote on Implementing the Operating Procedures and Bylaws as Amended**

Motion was made to approve the Operating Procedures and Bylaws as amended.

The motion was seconded.

Vote: Motion passed unanimously.

**OTHER LEASABLE SOLID MINERALS SUBCOMMITTEE INTERIM REPORT**

Mr. Steve Reynolds, chairman of the subcommittee, was unable to attend the meeting and requested that Mr. Wincentsen, MMS subcommittee facilitator, to present the report. After presenting a brief history of the Subcommittee's deliberations, Mr. Wincentsen reported they have reached agreement on some basic principles, including:

- Ad valorem royalty rates should be applied against the basis as established through arm's-length sales.
- All production must be placed into marketable condition at no cost to the Federal lessor.
- An approach to non-arm's-length valuation to both foreign and domestic affiliates.
- A method to address internal consumption where production, instead of being

marketed, is consumed to make further manufactured products, often with the combination of purchased outside chemical reagents, and through exchanges, which is somewhat common in the sodium industry, for soda ash. We also addressed how to address the chemical reagents' expenses.

- The conditions and the types of costs that would be permitted for transportation, which is missing in the current regulatory scheme.
- A method to compute a packaging allowance, since many solid minerals products are packaged.
- Clarification of when the royalty payment is due and on what production.
- Addressed access to information, including sales contracts and other records necessary to verify the royalty payment.

Since other issues remain unresolved, the Subcommittee requests guidance from the RPC as to whether it will entertain a majority and minority report. At issue is a disagreement on two narrow points.

After a discussion of the related issues, motion was made that the Phosphate, Trona and Leaseable Solid Minerals report consist of two parts, a consensus report and a report which sets forth the debated issues with both the majority and minority views.

The motion was seconded.

Vote: Motion passed unanimously.

### **COAL SUBCOMMITTEE INTERIM REPORT**

Mr. Cattany, the chairman of the subcommittee, provided an update of the Coal Subcommittee activities. During its last meeting, the subcommittee decided to issue a brief summary report of its activities since January 1997 to be finalized before the next RPC meeting.

Since the last RPC meeting the Subcommittee has focused on developing a revenue neutral simplified method to calculate coal royalties. While still meeting Federal statutory requirements, our methodology would be based on a flat value per million Btu's instead of the current ad valorem basis. Involving only Federal leases in Wyoming, the simplified royalty initiative's objective in the pilot project is to provide a calculation and payment method that would simplify calculations. The current Federal coal valuation regulations are too complex, increase uncertainty, and lead to costly misinterpretations and reinterpretations of regulatory provisions. On a philosophical basis, the Subcommittee has also engaged the Colorado School of Mines' Dr. Gene Woolsey in a broad discussion of Federal coal royalties.

In response to Mr. Cattany's question, Ms. Querques Denett stated she does not have any further information on the Solicitor's opinion addressing ownership of coal waste piles. To provide more information to the Coal Subcommittee, MMS will invite a Solicitor's Office representative to the next Subcommittee meeting to explain the status of the opinion.

Following Mr. Cattany's presentation was a lively discussion of the effect of the pilot on other State and Tribal coal royalty recipients. In response to the concerns expressed, Mr. Hartzler explained that the pilot consist of only collecting information from 1996, 1997, 1998 and probably 1999, trying to look at that information to see if we can go through and develop something that could be brought forward.

As the agency representative [and RPC Designated Federal Officer] Ms. Querques Denett reiterated the procedures for RPC action:

- If the Coal Subcommittee wants to recommend changing the current coal valuation methods, these recommendations should be developed into a formal proposal or report.
- As with other subcommittee proposals, this must be presented to the RPC. If approved, the proposal would be forwarded to the Secretary.
- After the Secretary's approval and/or modification, the MMS would take the necessary implementing action.
- If regulatory changes are required, these would have to be completed or an exemption approved before a pilot is initiated.

Ms. Querques Denett commended the Coal Subcommittee for its broad review of the current royalty determination methods and their ability to look "outside the box" and make these comparisons. Developing a proposal meriting testing in the pilot format to assure revenue neutrality requires a creative approach.

Ms. Daboval recommended that the Coal Subcommittee avoid misunderstanding by referring to its simplified royalty initiative as a study rather a "pilot." Use of "pilot" implies formal action by MMS, while a Coal Subcommittee study describes only action by the subcommittee. Mr. Cattany agreed with the suggestion.

### **MARIGINAL PROPERTIES SUBCOMMITTEE INTERIM REPORT**

Mr. Clark, the subcommittee Chairperson, reported the subcommittee met in Lakewood on December 6<sup>th</sup> and 7<sup>th</sup> [1999]. During this meeting, goals and objectives, voting procedures, the

subcommittee's definition of "consensus," and the scope of work were determined. The later involves two provisions of the Royalty Simplification and Fairness Act: accounting and auditing relief – for which MMS published a proposed rule, and prepayment of royalty. Since the sections are separate and distinct without overlap, the subcommittee decided to plan for two reports to the RPC, each addressing the separate sections.

Initially, the Subcommittee is working on the accounting and auditing relief since it is less contentious. This involved going through MMS's proposed rule and associated comments. As the Associate Director stated during the last meeting, industry said it wasn't enough; the States said it was too much. The contentious issue in the proposed rule is the provision that prevents administrative appeal if a State denies a request, leaving only the Federal Courts for relief. The States are very, very concerned about that particular issue. Accordingly, a letter was sent to the State representatives on this committee on January 3, 2000, asking for their input. The committee also requested MMS to provide data on the number of properties and production volumes involved.

#### **FOIA SUBCOMMITTEE INTERIM REPORT**

As the Subcommittee Chairperson, David Harrison, was not in attendance, Mr. Blackmon stated that he did talk to Mr. Harrison, who said little has happened to date.

#### **STATUS OF THE APPEALS RULE**

In response to Mr. Schaefer's request, Mr. Rosenbusch explained that since the last meeting, MMS continued to discuss the issues surrounding the appeals and evaluate several alternatives, at the highest levels within the Department. There continue to be issues that need to be resolved internally. The Director is pushing to arrive at some decisions so that the process can move forward. When that happens MMS will report that information back to the RPC, hopefully before the next meeting.

The RPC then discussed the possibility of reestablishing the Appeals Subcommittee and add to its responsibilities Alternative Dispute Resolution. While Hugh Schaefer was the last chair, his schedule will not permit continuing in that capacity. Members agreed to canvass the organizations they represent over the next 30 days. The RPC Chairperson would then consult informally with members and reestablish the Subcommittee.

#### **ROYALTY-IN-KIND PILOT REPORT**

Mr. Cruickshank discussed in detail the current status of the three RIK pilots, Wyoming, the Texas 8-G and the larger Gulf of Mexico pilot. The presentation was followed by a question and answer session.

**REENGINEERING AND OPERATIONAL MODELS**

Milt Dial, John Russo, and Herb Wincentzen provided handouts on reengineering and the operational models and discussed them in detail. The presentation was followed by a question and answer session.

**MMS STRATEGIC PLAN FOR 2001-2005**

Ms. Jan Therkildsen provided an update on MMS's Strategic plan, which was followed by a question and answer period.

**APRIL AWARD CEREMONY**

Barbara Desiderio provided an update on the April Award Ceremony, which was followed by a question and answer period

**NEXT RPC MEETING**

Mr. Shirley tentatively scheduled the next meeting for September 2000. The meeting adjourned at 3:24pm.

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.

Lucy Querques Denett, Executive Secretary

Perry Shirley, Chairperson

These minutes will be formally considered by the RPC at its next meeting, and any corrections or notations will be incorporated in the minutes of that meeting.