

**Minerals Management Advisory Board**  
**Royalty Policy Committee**  
**Summary of Meeting**  
**June 16, 1999**

The Royalty Policy Committee (RPC) of the Minerals Management Advisory Board convened its ninth meeting at 8:35 A.M. on June 16, 1999, at the Sheraton Denver West , 360 Union Boulevard, Lakewood, Colorado 80228. In accordance with the provisions of Public Law 92-463, the meeting was open to the public.

**Members/Alternates Present:**

David Blackmon, Sandy Blackstone, Randy Bolles, George Butler, Ron Cattany, Ervin Chavez, John Clark, David Darouse, Lucy Querques Denett,<sup>1</sup> David Harrison, William Hartzler, Eddie Jacobs, Erick Kaarlela,<sup>2</sup> Tom Kitsos,<sup>3</sup> Dave Loomis, Charles Mankin, Brian McGee, Stephen Reynolds, John Sharp, Perry Shirley, Pary Shofner, Brad Simpson, Hugh Schaefer, Charles Turpen, and Dick Wilson<sup>4</sup> and Carla Wilson.

**Minerals Management Service Employees Present:**

Mike Baugher, Kevin Gambrell, Walter Cruickshank, Barbara Desiderio, Jim Detlefs, Milt Dial, Anita Gonzales-Evans, Dale Fazio, Gary Fields, Martin Grieshaber, Nicolette Humphries, Paul Knueven, Todd McCutcheon, Bob Middleton, Mike Miller, Ken Mireles, Marvynette Ponder, Don Sant, Lois Smith, Jan Therkildsen, George Triebisch, Debbie Gibbs Tschudy, Ken Vogel, Herb Wincentzen

**Others Present:**

Ray Dalmann, Jim Jacquet, Don Lynch, Ellen Meyer, Melanie Sorenson, and Akhtar Zaman.

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

**UPDATES FROM TOM KITSOS (Deputy Director, MMS):**

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<sup>1</sup>Associate Director for Royalty Management; Ex officio member, RPC Executive Secretary and Designated Federal Officer.

<sup>2</sup>Ex officio member representing The Bureau of Land Management.

<sup>3</sup>Ex officio member representing the Minerals Management Service.

<sup>4</sup>Ex officio member representing the Bureau of Indian Affairs.

Mr. Kitsos announced the appointment of the new MMS director, Walt Rosenbusch, who was unable to attend the meeting. He then provided an update of MMS's offshore and Royalty in Kind (RIK) programs.

**UPDATES FROM LUCY QUERQUES DENETT:**

Ms. Querques Denett provided an update of the Royalty Management Program's activities and legislation that could affect the Program pending in Congress.

A question and answer session followed the presentations.

**APPROVAL OF THE JANUARY 20, 1999 MINUTES**

Motion was made that the minutes be accepted as drafted.

Motion seconded.

Vote: 15 votes in favor, none opposed.

Motion carried.

**OTHER LEASABLE SOLID MINERALS SUBCOMMITTEE INTERIM REPORT**

Mr. Reynolds, chairman of the subcommittee, explained that they delayed issuing a final report to the RPC to consider additional information. Since the last meeting, American Soda, a company initiating operations in the State of Colorado to produce sodium bicarbonate, requested the subcommittee consider their arguments that the proposed rules will disadvantage their company. We agreed to listen to them. After four days of hearings we could not reach a consensus for the final report. Accordingly, we are now planning a report for the next RPC meeting that includes majority and minority views. Before then we will reconvene the subcommittee to try one more time to reach consensus.

**COAL SUBCOMMITTEE INTERIM REPORT**

Mr. Cattany, the chairman of the subcommittee, provided an update of the Coal Subcommittee activities. Meeting every other month over the past year, the subcommittee considered numerous issues, including non-arm's length valuation methodologies, audit closure issues, coal option payments, some of the issues related to net receipt sharing, advance royalty determination, issues related to coal finds and how royalties are determined; and receive periodic reengineering updates. We have reached agreement in several areas:

- \$ Earlier this year we decided not to move forward on any recommendations related to non-arm's length valuation issues. While the group reached a consensus,

continuing would have opened several related issues which we were not prepared to discuss.

§ Consistent with the spirit of reengineering, our Subcommittee began considering alternative methodologies to calculate royalties. Specifically, we are analyzing a methodology to base coal royalties on a fixed rate per BTU that meets the requirements of the 12-1/2 percent royalty requirement of Federal law. Our goal is to develop a revenue neutral approach during the next several months that would reduce both the producers' paperwork and the MMS's validation efforts for Federal coal leases only. If the subcommittee develops a consensus approach, the next step will be to discuss it with MMS and the Office of the Solicitor to determine if we can move forward with a recommendation for either an administrative or legislative change.

§ Our Subcommittee was disappointed in the recent solicitor's decision which does not reflect the RPC's recommendations of the Secretary. While we appreciated the Secretary of the Interior moving forward on the recommendations developed by the Appeals, Settlements and Alternative Dispute Resolution Subcommittee (ASADR) two years ago, we support the concerns that Hugh Schaefer's letter addresses (to be delivered later on in the agenda today). Bill Hartzler from our Subcommittee, and also a ASADR member, will comment further on behalf of the Subcommittee in that discussion.

**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.

**PROCESSING OF FREEDOM OF INFORMATION ACT (FOIA) REQUESTS UPDATE**

Mr. Kann, RMP's Freedom of Information Act Officer, explained the capabilities of the electronic FOIA system that was installed in January 1999 and provided a demonstration to show how the public can access the documents published at the MMS Web site. The presentation was followed by a question and answer session during which several members expressed concerns that too much information is released in some cases and not enough in others. To address these concerns Mr. Blackmon, as chairman, created a new FOIA subcommittee, and appointed Mr. Harrison as Chairman and Mr. George Butler as Vice-Chairman. There were no objections from other members or the parliamentarian. Mr. Blackmon charged the appointed Chair and Vice-Chair to appropriately constitute the subcommittee.

**DEEPWATER TRANSPORTATION ALLOWANCES UPDATE**

Mr. Marty Grieshaber provided an update on deepwater transportation allowance followed by a question and answer period.

**MMS STRATEGIC PLAN FOR 2001 THROUGH 2005**

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

**NET RECEIPTS SHARING UPDATE**

Mr. Miller provided an update on net receipts sharing, which was followed by a question and answer period.

**STATUS OF THE MMS APPEALS RULES**

Mr. Ken Vogel provided an update on the status of the MMS appeals rule. An extensive question and answer period followed. The discussion began with Mr. Schaffer reading the following letter:

Ms. Sylvia Baca  
Acting Assistant Secretary  
U.S. Department of the Interior  
Washington, D.C. 20240

Dear Ms. Baca,

On May 13, 1999, you co-signed the final rule on MMS appeals which Mr. Vogel presented today. In promulgating the final rule, the Department made the unexpected announcement that it was not going forward at that time with all the recommendations of the Royalty Policy Committee which were approved by the Secretary of the Interior with the changes indicated in his letter to David Blackmon, Chairman of the Royalty Policy Committee which was dated September 22, 1997.

I recently contacted MMS to ascertain when the rest of the proposals will be promulgated as a final rule. I was advised that no deadline has been set, and if anything further will be done, it won't be any earlier than this fall or perhaps next year. I have learned through other sources that there's a very high probability that the recommendations of the Committee may never be adopted.

I'm writing on behalf of most of the members of the Royalty Policy Committee - Appeals

Subcommittee to express our extreme disappointment that the recommendations of the RPC, as accepted conditionally by the Secretary, may not be enacted, at all.

Since you may not have been involved at the inception of this process, the work that led to these recommendations involved nearly four years of the efforts of volunteers from the oil, gas, and coal industries, the royalty sharing states, and Indian Tribes. The recommendation of the appeals subcommittee and its approval by the RPC was a result of a consensus which was reached among these principal constituencies involved in developing the framework for the proposed rule. In particular and if nothing else is adopted, the appeal process should be reduced to one level with this appeal being directly to the Interior Board of Land Appeals since it was the most significant consensus which was reached.

We are aware that public comment has expressed concern about some portions of the rule, but because of the broad-based consensus which was reached, the desire to change the current appeals procedures was recognized as sound, reasonable, and necessary by all of these constituencies.

Rather than discard the recommendations entirely or issue a final rule which departs substantially from the consensus arrived at by the appeals subcommittee and the RPC, the appeals subcommittee is willing to reconvene in an attempt to work out the difficulties which may be confronting the commenters and the Department. By a copy of this letter, I'm advising the Secretary of the Interior of our concern that this difficult, meaningful, and progressive effort will be lost unless we all make another attempt to resolve those issues about which the Department has concerns, but, it is imperative that we be privy to the Department's concerns. We welcome and expect the participation of the Department by its representatives including the Solicitor's Office who will have later involvement in the review and evaluation of any new recommendation from the RPC.

We strongly urge you and the Secretary to await the further deliberations and recommendations of the appeals subcommittee and the Royalty Policy Committee before dropping any further consideration to promulgate the remainder of the proposed rule.

(Signed by Hugh Schaefer)

**Motion to Endorse Mr. Schaefer's Letter**

Mr. Butler motioned that the RPC write a letter to the Secretary of the Interior attaching as a copy Mr. Schaefer's letter and endorsing it. The motion was seconded and amended to authorize the Chairman to write a cover letter to state that the Royalty Policy Committee at its June 16, 1999, meeting discussed this letter and the May 13, 1999, final rule on appeals and endorsed Mr.

Schaefer's letter. The RPC cover letter will include a discussion of reconvening the subcommittee on appeals and ask strongly for participation by a representative of the Solicitor's Office.

Mr. Blackmon explained that since the RPC did not receive the letter at least 30 days before the meeting as required by the RPC's Procedures, the committee would first have to waive that rule on a two-thirds vote.

Motion was made to waive the 30 day requirement for consideration of this motion.

Motion seconded.

Vote: 17 in favor, one opposed.

Motion carried.

Vote on the Motion to Endorse Mr. Schaeffer's Letter and send a cover letter:

Vote: 18 in favor. None opposed. The motion passed unanimously.

**REENGINEERING AND OPERATIONAL MODELS**

Milt Dial, Deborah Gibbs Tschudy, James Detlefs, Roman Geissel, and Ken Vogel provided handouts on the operational models and discussed them in detail. The presentation was followed by a question and answer session.

**NEXT RPC MEETING**

Mr. Blackmon tentatively scheduled the next meeting for September 1999. The meeting adjourned at 4:30pm.

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

Lucy Querques Denett  
Executive Secretary

David Blackmon

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.