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

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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 royaltics 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

Gonzales-Evans, Anita

From: Lanzone, Deborah
Sent: Tuesday, September 09, 2003 4:14 PM
To: Gonzales-Evans, Anita
Subject: FW: Pdf of letter

Deborah

-----Original Message-----
From: Chevat, Benjamin
Sent: Tuesday, September 09, 2003 4:12 PM
To: Winburn, Ben
Cc: Keaton, Jennifer; Lanzone, Deborah; Lee E. Helfrich (E-mail); Laura Cimo (E-mail)
Subject: Pdf of letter

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Ben here is a pdf of the letter.

We will get it in to Norton by snail mail and fax and by emailing to leg affairs and Jen will also email letter to MMS to be put in the comments and for their edification.

thanks