

Statement of

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Minerals Management Service

Before the

**HOUSE GOVERNMENT REFORM SUBCOMMITTEE ON
ENERGY & RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES**

OVERSIGHT HEARING ON

“Absence of Price Thresholds in Deepwater Leases”

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My name is Chris C. Oynes. My current position is the Regional Director for the Minerals Management Service (or MMS) in the Gulf of Mexico Region in New Orleans. I have been the Regional Director (or Acting) since my appointment in 1993. This position is part of the Senior Executive Service. Prior to 1993 I served as the Deputy Regional Director for the Gulf of Mexico Region since October 1986. I have been an employee of MMS and its predecessor agencies for over 30 years. In my position as Regional Director I manage a staff of approximately 550 employees. The scope of operations that I manage involves not only leasing but also approvals of plans, inspections for safety and environmental compliance, violation notices and penalties, operations, evaluation of the geologic or resource potential, acceptance of bids from lease sales, and environmental reviews and environmental studies.

Mr. Chairman that leases in 1998-1999 were issued without price thresholds was a serious mistake. It is a mistake I believe that happened because of poor processes and not because of any intentional or calculated act.

Let me describe the processes by which the MMS reviews, approves and enters into leases. My perspective is limited to that of the Regional or field office and a general understanding of the MMS headquarters processes. The committee has been previously furnished a list of individuals and positions that were involved in the sales in 1998 and 1999. A description of lease sale process and the process for issuing leases has also been furnished to the Committee.

The process for a lease sale involves numerous steps that take place over a two year period ; these steps are in addition to the development of 5 year leasing plan which sets in motion the steps for an individual lease sale. . Towards the end of the process a draft is prepared in MMS Washington office of a (1) decision memorandum on the proposed notice of sale and (2) a proposed notice of sale. These are sent to various MMS offices for supplementing, approval and issuing. Once a decision is made it is announced in the publication of Federal Register notice. As part of this process the Gulf of Mexico Regional Office of MMS prepares a series of materials (“sale packet”) which contains all of the specific instruments, terms and conditions of the lease sale for each individual block of land that

is available to be bid on. This packet is publicly available. This process initiates a potential series of comments from the relevant states, public, industry and perhaps even other Federal agencies. All of these comments are summarized and a draft is prepared in MMS Headquarters of (1) a decision memorandum on the Final notice sale and (2) a final notice of sale. These are then sent through an approval process in MMS Headquarters. This Final notice of sale is published in the Federal Register at least 30 days before the actual holding of a lease sale. A similar "sale packet" is prepared for the Final notice of sale.

For the actual lease sale the bidders deliver their sealed bids in envelopes to the MMS regional office starting several days before the sale with no more bids after 10:00 a.m. the day before the sale. When the sale day arrives, all the bids are publicly opened (usually at a rental ballroom at a hotel) on that day and publicly read. The bidders then have a day or so to submit one-fifth of the bonus money that they bid. The MMS Gulf of Mexico regional office then conducts a detailed review of the bid to evaluate whether it constitutes fair market value for the block and awards the lease to the high bidder over the next 90 days; or rejects the bid. After a significant staff effort involving many hours and days of geologic, geophysical and economic review, the Regional Director approves the acceptance of all bids and approves the rejection of any bid recommended for rejection. After approval of the bid, the lease form is prepared for each accepted block and sent to the lessee (company) for signature and payment of the 4/5th's bonus and then in turn signed by the Regional Director.

So how did the price thresholds not be placed in the leases for 1998 and 1999? I do not know why they were removed and by who.

I think a contributing factor was that MMS did not have in place an overarching system to place the price thresholds as an issue to make sure they were included in the lease forms. The normal MMS process is that any major economic term and condition is discussed in the decision memorandum for both the proposed and final notice of sale. So it is common to see (1) rental rates and (2) minimum bids and (3) bidding systems discussed in these decision memorandums for all sales. In none of the decision memorandum for all ten sales from 1996 through 2000 was the term or concept of price thresholds mentioned. Thus, even though this was an important and major term of the lease it was not raised to the attention of policy officials in these documents. This is important because the result if is

that the staff has no formal guidance on how to deal with or implement price thresholds. That all levels in MMS allowed the decision documents to proceed without this discussion is indicative that the system totally broke down.

Parallel in time to this was the rulemaking on Pre –Act leases which was carrying language on price thresholds for the so-called pre-Act leases (those authorized under another Section of the DWRRA). Also parallel in time to this was a rulemaking on mandatory royalty relief for new deepwater leases which, even though it did NOT contain price threshold language, it was widely thought in MMS (in my opinion) that it did contain price threshold language. This contributed to the entire confusion of price thresholds.

You had asked how I regularly interface with industry. My personal involvement in interfacing with industry covers a wide range of forums and meetings that occur numerous times over any given year. As i mentioned earlier my responsibilities include many area other than leasing. To focus on the specific matter of interest to the subcommittee, I have regular meetings, at their request, with representatives of the OCS Committee of the American Association of Professional Landmen (AAPL). These meetings may occur as often as quarterly during a year. These meetings are usually held with 4 to 7 representatives of the AAPL's OCS Committee. The full OCS Committee has about 20 members from individual oil and gas companies.

The purpose of the somewhat regular meetings with the OCS Committee is to explain and clarify what MMS is doing (new rules, new forms, and new procedures). This allows for MMS to see if there are misunderstandings or ambiguities in its rules, forms, or procedures that need to be clarified. It also allows industry to more fully understand what MMS is doing. The 20 OCS committee members represent the lease holders for the vast majority of the 8000+ leases that exist in the Gulf of Mexico. The AAPL Committee members are also are the primarily persons in industry who are involved in preparing industry's bids at lease sale and executing the leases.

I have found notations on calendars that indicate I and my staff had meetings with representatives of AAPL on November 13, 1998, April 9, 1999, and December 2, 1999. There could have been – and probably were – additional meetings held in 1998 and 1999 but I have no

records or recollection of them. The 1998 meetings were held approximately eight years ago so it is difficult to remember all the precise details. These meetings would usually involve 4 to 7 representatives of AAPL.

These meetings were conducted in compliance with all statutes and mandates such as the Administrative Procedures Act. The AAPL knew we could not comment on a rulemaking once a comment period closed; this requirement was strictly adhered to. For other discussions, such as if an item involved policy matters from Washington/ Headquarters, we would point them to meet with others in Washington D.C. I should note in 1998 and 1999 MMS was involved in a number of issues other than deepwater royalty relief that were of concern and issue to members of the AAPL and these were discussed at these meetings. In many of those issues were of considerable concern and caused substantial discussion.

The committee has been told that the AAPL group informed me in the fall of 1998 that the price thresholds were missing from the leases. I have no recollection that they told us this. I do remember that the AAPL discussed with us (presumably in 1998) the royalty relief for pre-Act leases (before DWRRA). This regulation had been published as a final rule on January 16, 1998. It contained price thresholds.

The Committee has been told that the AAPL group informed me in a late 1999 meeting that neither the Act nor the regulations contained price threshold provisions. I do not recall that the AAPL made this comment. MMS did discover in late 1999 that the 1998 and 1999 lease did not contain price thresholds. How exactly this discovery was made I do not recall.

This concludes my testimony.