



The Deputy Secretary of Energy  
Washington, DC 20585

July 1, 2010

MEMORANDUM FOR FRANCES BEINECKE

MEMBER  
NATIONAL COMMISSION ON THE BP DEEPWATER  
HORIZON OIL SPILL AND OFFSHORE DRILLING

FROM: DANIEL B. PONEMAN

A handwritten signature in black ink, appearing to read "Daniel B. Poneman", written over the printed name.

SUBJECT: Conflict of Interest Waiver Pursuant to 18 U.S.C. § 208(b)(3)

This memorandum grants you a waiver pursuant to 18 U.S.C. § 208(b)(3), to allow your participation as a member of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (“Commission”), an advisory committee established by Executive Order 13543 on May 22, 2010.

Section 208(a), Title 18, United States Code, prohibits you from participating personally and substantially, as a Government employee, in any particular matter in which, to your knowledge, you or your spouse, minor child, general partner, or any person or organization in which you are serving as officer, director, trustee, general partner, or employee, or any person or organization with whom you are negotiating or have any arrangement concerning prospective employment, has a financial interest. This prohibition applies equally to special Government employees (SGEs).<sup>1</sup> Section 208(b)(3) provides that subsection (a) shall not apply if, in the case of a SGE serving on an advisory committee within the meaning of the Federal Advisory Committee Act (FACA), the official responsible for the SGE’s appointment, or his designee, certifies in writing that the need for the employee’s service outweighs the potential for a conflict of interest created by the financial interest involved.<sup>2</sup>

The objective of the Commission is to examine the relevant facts and circumstances concerning the root causes of the Deepwater Horizon explosion, fire, and oil spill, and to develop options to guard against and mitigate the impact of any oil spills associated with offshore drilling in the future. In developing such options, the Commission must consider the environmental, public health, and economic effects of such options, including those options that involve: improvements to Federal laws, regulations, and industry practices applicable to offshore drilling that would ensure effective oversight, monitoring, and response capabilities; protecting public health and safety, occupational

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<sup>1</sup> 18 U.S.C. § 202(a).

<sup>2</sup> Pursuant to Executive Order 12674 and a delegation from the Secretary of Energy, I have the authority to issue conflict-of-interest waivers for SGEs serving on advisory committees.



health and safety, and the environment and natural resources; addressing affected communities; and organizational or other reforms of Federal agencies or processes necessary to ensure such improvements are implemented and maintained.

As part of your duties, you will be responsible for providing your expertise to the President in addressing how to prevent – and mitigate the impact of – any future spills that result from offshore drilling. Specifically, the Commission will work to determine the causes of this catastrophe and the safety and environmental protections we need to prevent a similar disaster from happening again. In order to fulfill this mission in such a short timeframe, individuals with a deep understanding of the technology and operation of offshore drilling platforms, environmental standards, health standards, industry practices, and the economic impacts of such disasters on the Nation are needed.

The President is looking to the Commission to assist in the United States' efforts in determining the root causes of this national disaster and prevent a repeat of such catastrophe. Currently, you are the president of the Natural Resources Defense Council (NRDC). Under your leadership, the NRDC has launched a new campaign focused on the NRDC's efforts to curb global warming, move America beyond oil, revive the world's oceans, save endangered wild places, stem the tide of toxic chemicals and accelerate the greening of China. You have worked with NRDC for more than 30 years. Prior to becoming the president in 2006, you served as the organization's executive director for eight years. You also worked as a member of NRDC's water and coastal program, fighting to protect marine ecosystems from offshore oil and gas development and advocating for sound coastal land use. It is this experience and expertise that uniquely qualifies you to serve as a Member of this Commission.

You have disclosed several investment interests that could potentially be affected by the advice of the Commission. Specifically, you have a stock interest in XTO Energy, General Electric, and Erickson Air Crane. You also have an interest in the following private equity funds which are focused on investing in the energy industry: Venture Investment Associates Energy, MissionPoint Capital Partners Fund, MissionPoint GGH Parallel Fund, MissionPoint HA Parallel Fund, and MissionPoint SE Parallel Fund. Your interest in these companies and entities, however, represents only a small portion of your widely-diversified investment portfolio. Unless you first receive a waiver pursuant to 18 U.S.C. § 208(b)(3), you are not permitted to participate in particular matters affecting the financial interests of these companies or entities because these assets do not qualify for an exemption under 5 C.F.R. § 2640.202.

You have also reported an interest in the following private equity funds: Lexington Capital Partners LP, Park International Partners LP, Park US Small Cap LLC, BRAC Associates, Lexington Capital II LLC, Park US Capital LLC, Gulfstream Capital Partners, Gulfstream Real Assets, Gulfstream Capital Partners II, NEA IV LP, Venture Investment Associates LP, Venture Investment Associates II LP, Venture Investment Associates III LP, Venture Investment Associates IV LP, Presidential Associates, Contra V.C., Interim Advantage LLC, Amberbrook IV LLC, Amberbrook V LLC, David Kempner Partners, York Credit Opportunities Fund LP, Valiant Capital Partners LP,

Cerberus Asia Partners LP, Rossrock 2005 Fund LLC, Rossrock Fund II LP, Venture Investment Associates – Ant Exploration, Clearview Partners Fund II, and Fortress Credit Opportunities Fund LP. As stated above, you are precluded from participating in particular matters affecting the financial interests of these funds absent a waiver of 18 U.S.C. § 208. I have been advised that the focus of these funds is not in the energy and/or oil industry. It is possible, however, that some interests within these funds could be affected by the recommendations of the Commission. Given the fact that the overall focus of each fund is not in a sector that is relevant to the focus of the Commission and the fact that there are multiple underlying holdings in each fund, it is appropriate to waive any potential conflict of interest that may arise as you carry out your official duties as a Member of the Commission.

In addition, you serve on the Board of Directors of Antaeus Enterprises, the World Resources Institute, the Meridian Institute, and the Alliance to Save Energy, and you serve on the Board of Trustees of the American Conservation Association. Pursuant to 18 U.S.C. 208, you cannot participate in particular matters that has a direct and predictable effect upon the financial interests of organizations in which you serve as a Board Member or employee, unless you first obtain a written waiver or qualify for a regulatory exemption. This waiver shall apply to any particular matters that have a direct and predictable effect upon the financial interests of NRDC, Antaeus Enterprises, the World Resources Institute, the Meridian Institute, the Alliance to Save Energy, and the American Conservation Association.

Moreover, you have informed Department officials of the steps that you are taking as President of the NRDC to mitigate actual or apparent conflicts of interest. First, you advised that you will not be involved in any litigation efforts during your service on the Commission. This entails you stepping down from the NRDC Board/Staff Litigation Committee and being removed from the Committee listserv. The Litigation Committee is the body that considers NRDC's involvement in potential lawsuits and must approve proposed litigation efforts before going forward. Second, you will step down from your position as Director of NRDC's 501(c)(4) affiliate organization, the NRDC Action Fund, during your service on the Commission. Third, NRDC will construct an information wall in order to avoid any improper sharing of proprietary information that may present a conflict of interest with your work on the Commission. These actions will mitigate potential conflicts of interest.

You have further advised Department officials that you serve on advisory boards or committees of the following organizations: Conservation International's Center for Environmental Leadership in Business, the US Climate Action Partnership, Aspen Institute's Arctic Commission, MIT Energy Initiative, Yale University's Schools of Forestry and Management, and Duke University's Nicholas Institute. You are also an honorary member of the New York League of Conservation Voters Board of Directors. Although these positions do not create a conflict of interest within the meaning of 18 U.S.C. §208, it is appropriate to mention these positions because they create a covered relationship pursuant to 5 C.F.R. §2635.502. As a result, you are required to be recused from a particular matter involving specific parties in which the Conservation

International's Center for Environmental Leadership in Business, the US Climate Action Partnership, Aspen Institute, MIT Energy Initiative, Yale University, Duke University, and the New York League of Conservation Voters is a party or represents a party, unless authorized. It is highly unlikely that such matter will arise; however, in the event it does, I authorize your participation because your service on the Commission outweighs the appearance of a conflict, pursuant to 5 C.F.R. § 2635.502(d).

Balancing the potential for conflict based on the assets represented in your total portfolio and positions, against your unique qualifications, extensive knowledge of the oil and gas industry gained through your experiences in the Federal government, non-profit organizations, and private industry, and your availability to serve on this committee, it is appropriate to issue this waiver. Significant to this analysis is the fact that the companies and organizations in which you have a financial interest have different interests with respect to the various issues surrounding the work of the Commission. All of these companies and organizations may not have simultaneous interests in each stage of the Commission's study; rather, their interests may be limited to various specific inquiries, meaning that the conflict is likely to be more limited than all of assets listed above.

Federal advisory committees, like the Commission, are also unavoidably composed of persons who have been employed by or have other interests in the subject matter related to Commission. The fact that a member may have a financial interest that may be affected is simply unavoidable in view of the work and membership of the Commission. Furthermore, the purpose of a Federal advisory committee is to provide advice and recommendations to the Federal government. Your position is advisory in nature, and you do not, nor does any other Commissioner, have the authority to issue a final decision binding the Federal government. Federal advisory committees are also subject to FACA which requires that the membership of the Commission be balanced in its viewpoints. This balance dilutes the impact any one member has over the Commission. Lastly, FACA requires that Commission recommendations be deliberated in public. The requirement that this be a transparent process gives the public the opportunity to participate and comment on positions taken by Commissioners and the Commission as a whole.

The President chose you to lead this unprecedented effort because of the expertise you have gained through your past and current positions, which will be an invaluable asset to the Commission as it addresses this national emergency. As such, I find that the need for your services outweighs the potential for a conflict of interest created by your financial interests. This waiver shall apply to particular matters of general applicability and specific party matters affecting the companies, organizations, and other financial interests listed above insofar as it creates a conflict of interest with your official duties on the Commission.

Pursuant to 5 C.F.R. § 2640.303, the Office of Government Ethics has been consulted on this waiver, has no objection to its issuance, and will be provided with a copy.

cc: Susan Beard, Designated Agency Ethics Official