



The Deputy Secretary of Energy
Washington, DC 20585

June 22, 2010

MEMORANDUM FOR DONALD F. BOESCH

MEMBER

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

FROM:

DANIEL B. PONEMAN

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).¹ 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.²

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

¹ 18 U.S.C. § 202(a).

² 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 a Professor of Marine Science and President of the University of Maryland Center for Environmental Science (UMCES). The Center is part of the University System of Maryland that conducts comprehensive research, trains graduate students, contributes to public education, and advises public agencies and others on environmental and natural resource management. As a biological oceanographer, you have conducted research in coastal and continental shelf environments along the Atlantic Coast and in the Gulf of Mexico, eastern Australia and the East China Sea. You have published two books and more than 90 papers on marine benthos, estuaries, wetlands, continental shelves, oil pollution, nutrient over-enrichment, environmental assessment and monitoring and science policy. Presently, your research is focused on the use of science in ecosystem management. 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 an interest in the Fidelity Select Energy Services Fund which is de minimis. You also have a stock interest in General Electric, Cisco Systems, Dell Computer, EMC Corporation, Intel Corporation, AOL, Hewlett Packard, IBM, Qualcomm, Tyco, and Verigy which represent only a portion of your overall diverse investment portfolio. These stocks are being included in the unlikely event that a matter comes before the Commission that could have a direct and predictable effect upon the financial interests of these companies. Pursuant to 18 U.S.C. § 208, you are not permitted to participate in particular matters affecting the financial interests of these entities, unless a waiver is issued in accordance with 18 U.S.C. § 208(b)(3), or you qualify for a regulatory exemption in 5 C.F.R. § 2640.202.

In addition to your employment with UMCES, you serve on the Board of Directors of the Chesapeake Bay Foundation and the Town Creek Foundation. You also serve on the Board of Trustees of the Chesapeake Research Consortium and the Consortium for Ocean Leadership. Pursuant to 18 U.S.C. 208, you cannot participate in particular matters that

have 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. Therefore, this waiver shall apply to any particular matters that have a direct and predictable effect upon the financial interests of UMCES, Chesapeake Research Consortium, and the Consortium for Ocean Leadership.

Moreover, you have informed Department officials that you voluntarily sold your stock interest in Transocean Limited in order to remedy an actual conflict of interest. I also understand that you have taken a leave of absence from your position on the Board of Trustees of the Consortium for Ocean Leadership. The Consortium for Ocean Leadership is currently conducting research and exploration in the Gulf of Mexico under contract with Transocean. You advised, however, that you had no involvement in this contract. Although you maintain a financial interest in the Consortium for Ocean Leadership while on the leave of absence pursuant to 18 U.S.C. § 208, removing yourself from the company's activities during your service as a Member is an additional mitigation of the conflict of interest. Lastly, you advised that you fundraise on behalf UMCES; however, you have never approached British Petroleum for any funding. During your service on the Commission, you have agreed to not participate in any UMCES fundraising activities in which you seek contributions from any oil company. Again, this action will mitigate any real or apparent conflict of interests.

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. 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 assist in 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