



The Deputy Secretary of Energy
Washington, DC 20585

June 22, 2010

MEMORANDUM FOR TERRY GARCIA

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. Since 1999, you have served as the Executive Vice President of the National Geographic Society. Prior to joining the Society, you were the Assistant Secretary of Commerce for Oceans and Atmosphere at the U.S. Department of Commerce, and Deputy Administrator of the National Oceanic and Atmospheric Administration (NOAA). In this role, you directed and coordinated U.S. coastal, ocean, and atmospheric programs, including the National Ocean Service, the National Marine Fisheries Service, the Office of Oceanic and Atmospheric Research, the National Weather Service, and the National Environmental Satellite, Data and Information Service. Between 1994 and 1996, you served as the General Counsel for NOAA. As the General Counsel, you led the implementation of the Exxon Valdez Oil Spill Restoration Plan for the Prince William Sound and the Gulf of Alaska. As a result of your involvement in the Exxon Valdez disaster, you will have first-hand knowledge and an invaluable personal perspective of the issues surrounding a disaster of this magnitude. It is these experiences that uniquely qualify 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 Exxon Mobil, Macquarie Infrastructure, Waste Management, and Cisco Systems. In accordance with 5 C.F.R. § 2640.202, your interest in each asset and the aggregate value of these assets is considered de minimis. However, this waiver is being issued as a cautionary matter to allow you to participate in any particular matter that has a direct and predictable affect upon the financial interests of these companies.

In addition to your employment with the National Geographic Society, you serve on the Board of Directors of the Institute for Exploration at the Mystic Aquarium, and the Amazon Center for Education and Research at West Chester University. 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 the National Geographic Society, Institute for Exploration at the Mystic Aquarium, and the Amazon Center for Education and Research at West Chester University.

You have further advised Department officials that you serve on the Board of Advisors and as a Committee Member of the Harte Research Institute of Gulf of Mexico Studies at Texas A&M University, and the U.S. National Committee for the Census of Marine Life respectively. 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 Harte Research Institute of Gulf of Mexico Studies at Texas A&M University or the U.S. National Committee for the Census of Marine Life is a party or represents a party. It is highly unlikely that such matter will arise; however, in the event it does, your service on the Commission outweighs the appearance of a conflict, pursuant to 5 C.F.R. § 2635.502(d).

Moreover, you have informed Department officials that you have engaged in fundraising activities for your employer or any other organization on which you serve as a Board member or advisor. As Executive Vice President of the National Geographic Society, you have been involved in securing sponsors or advertising funds because of your senior position. In the past, oil companies have paid the National Geographic Society to advertise in the magazine. During your service on the Commission, you have agreed to disqualify yourself from matters involving any sponsors or advertising related to the oil and gas industry. These actions will mitigate any real or apparent conflicts of interest.

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 the 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