



The Deputy Secretary of Energy
Washington, DC 20585

July 2, 2010

MEMORANDUM FOR CHERRY A. MURRAY
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 determine the root causes of this national disaster and prevent a repeat of such catastrophe. You were recently appointed Dean of Harvard University's School of Engineering and Applied Sciences (SEAS). Prior to this appointment, you served as the Principal Associate Director for Science and Technology at Lawrence Livermore National Laboratory, where you led 3,500 employees in providing core science and technology support for LLNL's major programs. Before joining LLNL, you enjoyed a long career at Bell Laboratories. You started your career at Bell Laboratories in 1978, as a staff scientist and worked your way up to the Vice President for Physical Sciences and Wireless Research. Over the course of your career, you have conducted various experiments using light scattering, you have led the study of soft condensed matter and complex fluids, and studied other diverse topics in condensed matter physics. As a result of your scientific accomplishments, you were elected to the National Academy of Science in 1999, the American Academy of Arts and Sciences in 2001, and the National Academy of Engineering in 2002. You have also been awarded many distinguished awards, most notably in 1989, you won the American Physical Society's Maria Goeppert-Mayer Award for outstanding achievement by a woman physicist in the early years of her career, and in 2005, you were awarded the American Physical Society's George E. Pake Prize in recognition of outstanding work combining original research accomplishments with leadership and development in industry. In 2002, Discover Magazine also named you one of the "50 Most Important Women in Science." It is this 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 AT&T, Comcast, LSI Corporation, NCR Corporation, and Teradata Corporation. 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 Harvard University, you serve on the Board of Directors of the American Association for the Advancement of Science. 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. This waiver shall apply to any particular matters that have a direct and predictable effect upon the financial interests of Harvard University or the American Association for the Advancement of Science.

Moreover, you have informed Department officials that Harvard University's School of Engineering and Applied Sciences, is a recipient of several subcontracts from the University of Texas at Austin. The University of Texas's funding for this subcontract comes from a grant awarded by the Advanced Energy Consortium, a collaboration of energy and oil companies, the University of Texas, and Rice University. Notably, Halliburton and British Petroleum are members of this consortium. The subcontracts are set to expire in December 2011. You advised that you have no direct involvement in underlying research; however, several members of your faculty are involved in completing such research. You advise that during your service on the Commission, you will not engage in any matters related to this research, nor will you will engage in any fundraising activities on behalf of Harvard University with any oil company. These actions will mitigate any real or apparent conflicts of interest.

You have further advised Department officials you serve as Chair of the Division of Engineering and Physical Sciences of the National Research Council which functions under the auspices of the National Academies, and that within the last year, you served as the past President of the American Physical Society. 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 National Academies or American Physical Society 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. 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 of it.

cc: Susan Beard, Designated Agency Ethics Official