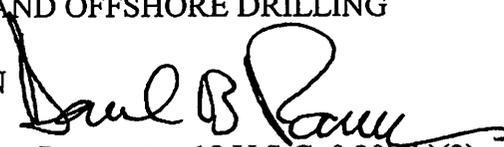




The Deputy Secretary of Energy
Washington, DC 20585

June 22, 2010

MEMORANDUM FOR WILLIAM REILLY
CO-CHAIR
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,

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.



monitoring, and response capabilities; protecting public health and safety, occupational 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 senior advisor to TPG Partners – a private equity firm, the Chairman Emeritus of the Board of the World Wildlife Fund, and serve on the Board of Directors of DuPont, Conoco Phillips, and Royal Caribbean International, and on the Board of Trustees of the National Geographic Society. In addition, your past experiences as the Administrator of the Environmental Protection Agency during the Exxon Valdez disaster and as president of the World Wildlife Fund and The Conservation Foundation will lend first-hand knowledge and invaluable personal perspective to the Commission. As the former Administrator of the Environmental Protection Agency, an agency significantly involved in the clean up during the Exxon Valdez disaster, you understand the various issues surrounding a disaster of this magnitude. It is these experiences that uniquely qualify you to serve as the Co-Chair of this Commission.

You have disclosed numerous investment interests that could potentially be affected by the advice of the Commission. Specifically, you have a stock interest in Occidental Petroleum, DuPont, Royal Caribbean, Conoco Phillips, National Oilwell Varco, Schlumberger, Exxon Mobil Corporation, Spectra Energy Corporation, Total SA, AES Corporation, Arkema ADR, and Duke Energy Corporation. You are not permitted to participate in particular matters affecting the financial interests of these organizations because some of the stocks and your combined interest in all stocks listed exceed the de minimis exemption amounts set forth in 5 C.F.R. § 2640.202, unless you first receive a waiver pursuant to 18 U.S.C. § 208(b)(3).

You have also reported an interest in the following private equity funds: Aqua Advisors II LLC, Aqua Advisors Inc., Aqua GP LP, TPG Aqua LP, TPG GenPar V LP, Aqua Equity Partners LP, Aqua Equity Partners LP, Aqua GP Partners LLC, TPG Associates III LP, TPG Equity Partners II LP, TPG Equity V-B LP, TPG Management V LP, TPG Ventures FOF LP, TPG Gryphon III – Annex LP, TPG Gryphon III LP, TPG Gryphon Partners LP,

TPG Star GenPar LP, Newbridge Asia Equity III LP, TAC 2007 Equity LP, TPG Asia Equity V LP, TPG Distressed HF Equity Ptrs LP, TPG HF Equity Partners LP, and TPG Avalon Partners 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 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 Co-Chair of the Commission.

In addition, you serve on the Board of Directors of Conoco Phillips, DuPont, and Royal Caribbean, and you serve on the Board of Trustees of the National Geographic Society. You advised Department officials that you receive board fees, stock, and deferred compensation from Conoco Phillips and DuPont, and board fees, stock, and an honorarium from Royal Caribbean. You also are a senior advisor to TPG Partners. TPG Partners manages private equity funds that may have interests affected by the Commission's recommendations. As an employee, the financial interests of your employer are imputed to you. 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 receive a waiver. You have further advised that your position as chairman emeritus of the World Wildlife Fund is honorific and not a true Board Member position within the meaning of 18 U.S.C. §208. However, it is appropriate to mention this position because it creates a covered relationship pursuant to 5 C.F.R. §2635.502, requiring that you be recused from an particular matter involving specific parties in which the World Wildlife Fund is a party or represents a party. It is highly unlikely that such matter will arise. In the event such matter does arise, 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 voluntarily sold your stock interest in BP and Anadarko Petroleum Corporation 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 Directors of Conoco Philips. Although you maintain a financial interest in Conoco Phillips while on the leave of absence, pursuant to 18 U.S.C. § 208, removing yourself from the company's activities as you serve as Co-Chair is an additional mitigation of the conflict 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. Significant to this analysis is that 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