



The Deputy Secretary of Energy
Washington, DC 20585

June 22, 2010

MEMORANDUM FOR FRANCES ANN ULMER

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 serve as Chancellor of the University of Alaska Anchorage, Alaska's largest public university. In addition to serving as UAA's Chancellor, you recently were a member of the Aspen Institute's Commission on Arctic Climate Change and held Board positions with the Alaska Nature Conservancy, the National Parks Conservation Association, the Cook Inlet Foundation, Commonwealth North, and the Union of Concerned Scientists. Prior to your appointment as Chancellor in 2007, you were a Distinguished Visiting Professor of Public Policy and Director of the Institute of Social and Economic Research at UAA. During your more than 30 years in public service, you helped to shape both public and environmental policy. As a state legislator, you served on the Special Committee on the Exxon Valdez Oil Spill Claims Settlement. 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. Further, you chaired the Alaska Coastal Policy Council and served for more than 10 years on the North Pacific Anadromous Fish Commission. You also served as an elected official for 18 years as the Mayor of Juneau, as a state representative and as Lieutenant Governor of Alaska. As Director of Policy Development for the State of Alaska, you managed diverse programs, including coastal management, intergovernmental coordination, and public participation initiatives. It is these experiences that uniquely qualify you to serve as a member of this Commission.

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 an employee, unless you first obtain a written waiver or qualify for a regulatory exemption. There is a special exception in 5 C.F.R. § 2640.203(g), allowing an SGE serving on a Federal advisory committee to participate in any particular matter of general applicability where the disqualifying financial interest arises from her non-Federal employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as a part of a class. This regulatory exemption does not apply if an SGE's non-Federal interest also includes ownership of stock in her employer.

This exemption applies to matters of general applicability in which the University of Alaska is part of a class. This waiver, however, shall apply to any particular matters in which the University is involved as a specific party.

You have further advised Department officials that upon announcement of the President's intent to appoint you to the Commission, you resigned from your Board positions on the Alaska Nature Conservancy, the National Parks Conservation Association, the Cook Inlet Foundation, Commonwealth North, and the Union of Concerned Scientists. You also serve as a member of the Aspen Institute's Commission on Arctic Climate Change. 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 for a period of one year from the date of resignation, pursuant to 5 C.F.R. §2635.502. As a result, you are required to disqualify yourself from a particular matter involving specific parties in which the Alaska Nature Conservancy, the National Parks Conservation Association, the Cook Inlet Foundation, Commonwealth North, the Union of Concerned Scientists, or the Aspen Institute's Commission on Arctic Climate Change 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).

Moreover, you informed Department officials that the University of Alaska, receives funding from oil companies, including British Petroleum (BP). Your salary, however, is determined by the State of Alaska and is not dependent upon donations. You advised that you have engaged in fundraising activities on behalf of the University of Alaska Anchorage; however, you have not requested any contributions from BP within the last year. During your service on the Commission, you agreed to not participate in any fundraising activities with any oil company. 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