



U.S. Department of Justice

Office of Legislative Affairs

Assistant Attorney General

Washington, D.C. 20530

March 12, 2007

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your correspondence, dated December 14, 2006, transmitting a letter on the Outer Continental Shelf Deep Water Royalty Relief Act of 1995 prepared by Stephen Lowey, Esq., of White Plains, New York, as well as your subsequent letter dated February 27, 2007. Mr. Lowey presents an argument for recovering additional royalties under offshore oil and gas leases issued in 1998 and 1999 without "price threshold" provisions.

We appreciate your providing Mr. Lowey's letter for our consideration. As you know, the Department of the Interior's (DOI) authority to impose these provisions in leases offered during the first five years after passage of the Act (1996-2000) is currently in litigation. Therefore, the Department's ability to offer written views on the provisions is limited.

We note, however, that leases issued before the adoption of the Royalty Relief Act are subject to somewhat different legal provisions than those issued after that date. Mr. Lowey's argument that the Royalty Relief Act requires price thresholds relies on price threshold requirements applicable to "leases in existence on November 28, 1995," the date of passage of the Royalty Relief Act. 43 U.S.C. § 1337(a)(1)(C)(i). The argument is therefore inapplicable to leases issued after that date.

The facts surrounding issuance of those leases are also under review within the government. For example, the DOI Inspector General has recently released a report on the 1998-1999 leases. These factual circumstances may also bear on some elements of Mr. Lowey's analysis, such as his discussion of mistake.

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We are sending a similar response to each of the signatories to the December 14, 2006, and February 27, 2007, letters. If we can be of assistance on any other matter, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Hertling". The signature is fluid and cursive, with a prominent flourish at the end.

Richard A. Hertling
Acting Assistant Attorney General