

Howard Heintz, Jr. 3.30.07.txt

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1 IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

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 3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs.

6 POGO and ROBERT BERMAN,

7 Defendants.

No. :
 03-00096

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Washington, D. C.
 Friday, March 30, 2007

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Deposition of:

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HOWARD HEINTZ, JR.

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called for oral examination by counsel for
 ROBERT BERMAN, pursuant to notice, at Department of
 Justice, 601 D Street, Northwest,
 Washington, D. C., before Terri L. Hamilton,
 of Capital Reporting Company, a Notary Public in and
 for the District of Columbia, beginning at 9:20
 a.m., when were present on behalf
 of the respective parties:

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C O N T E N T S

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PAGE

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Counsel for PLAINTIFF

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HEINTZ DEPOSITION EXHIBITS *

PAGE

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1 Memorandum dated 9/9/86

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2 Letter, RB 0375

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18 personal reaction to them?

19 A Well, I thought that Berman had a good
20 understanding of these markets, that the analysis
21 seemed to show that at least under some conditions
22 the changes he was proposing would yield greater

0042

1 revenue for the government consistent with the
2 statutory -- and be consistent with the statutory
3 requirements and therefore that his proposal should
4 be considered.

5 Q Is there a way that you can describe his
6 proposal and how it differed from what was going on
7 at the time in terms of valuation?

8 A Well, as I recall it, it applied only to
9 a certain class of oil transactions, namely those
10 between subsidiaries of the same company that's
11 doing the production and the reason those are
12 complicated is because they're all part of the same
13 whole so it's not actually a market, what we call
14 an arms length market transaction in which the
15 buyers and sellers have independent and opposing
16 interest, so establishing the value there is more
17 challenging, let's say.

18 I think Mr. Berman was proposing, in
19 effect, to use a market source of price rather than
20 the price that the corporations said was the price
21 at which their subsidiaries transacted oil.

22 Q Do you recall what you did after

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1 reviewing and making your own assessment of the
2 value of his proposal validity, if you will, do you
3 recall what you did at that time?

4 A I think -- well, there would have been
5 several things. One is when I was comfortable that
6 he had developed the analysis and its presentation,
7 encouraged him to discuss it with MMS staff and I
8 sometimes participated in those discussions to see
9 if they thought it was correct and could be
10 implemented or should be implemented. And then, as
11 I said before, typically we would broaden the
12 discussion to higher levels of MMS staff or if
13 staff in other situations didn't agree to in effect
14 have that proposal on the table when they were
15 making decisions.

16 Q Do you recall what the MMS reaction was
17 in these discussions that you participated in, were
18 they receptive to it?

19 A Not very receptive I think it's fair to
20 say.

21 Q And do you recall the rationale for not
22 being receptive?

0044

1 A I recall hearing it, but I don't recall
2 what it was. Sometimes these things have to do
3 with the practicality more than the outcome.

4 Q What do you recall happening? I guess
5 just generally there were discussions, what's your
6 recollection of what happened to his proposals over
7 the ensuing, I don't know how long the process
8 took, but it was being considered or debated during
9 that period of time?

10 A Well, I think there were a number of
11 discussions at various levels and some refinements

12 in the analysis over time and some broader -- I
13 think I recall some broader attempt to understand
14 the implications of the change that he was
15 proposing. In the end I think the decision was
16 made not to implement it.

17 Q So the proposals that he made were never
18 implemented?

19 A Yes, I think that's correct.

20 Q Was Mr. Yeager involved in those
21 discussions if you recall?

22 A Well, he was certainly kept informed as

0045

1 the analysis emerged, and as we began to make
2 recommendations at various levels, I would brief
3 him. Sometimes Mr. Berman and I would brief him
4 together. I think there were a number of memoranda
5 describing the analysis and I think he was aware of
6 them.

7 Q Do you recall if Mr. Yeager was, I hate
8 to use the word supporter of it because it's not a
9 very technical word, but was he a person that was
10 convinced of the analysis and was arguing for its
11 adoption or something other than that, taking a
12 position other than that?

13 A Yeah, I don't think -- I don't remember
14 him becoming an advocate for the position. I
15 remember him being concerned and understanding the
16 issue being raised.

17 Q How about Mr. Bettenberg, do you recall
18 whether he was an advocate for the position, if he
19 was involved in the discussion?

20 A He was and I think rather than an
21 advocate for the position I think he was an
22 advocate that it be considered in a serious way.

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1 Q To your recollection did MMS consider it
2 in a serious way?

3 A I would say they did.

4 Q What do you recall about that?

5 A Well, I recall that they would -- they
6 would go and after a period of time after we had
7 discussed the analysis with them and the
8 recommendations they would -- we would have the
9 meeting and they would describe what they saw as
10 the difficulties, the weaknesses in the analysis
11 and the difficulty in implementing it and so forth
12 and essentially saying this is why they didn't
13 think it was a good approach.

14 Q There did come a time I take it in the
15 early to mid 1990s when the valuation model or
16 technique or the standards for valuation were
17 changed in the Department; is that correct?

18 A I won't be able to remember any specific
19 date. I know they changed from time to time.

20 Q Do you recall there being a substantial
21 change that required or that involved public input
22 at some point in the process for royalty

0047

1 evaluation?

2 A Public input, no, I don't recall that.
3 There was, of course, public input in all the
4 rulemaking.

5 Q Was there a rulemaking procedure that was

6 undertaken in the 1990s?

7 A Yes, I think there was.

8 Q What's your recollection of that?

9 A My recollection is that we -- that was
10 one of the more formal processes in which we had an
11 opportunity to discuss these sorts of analysis and
12 proposals.

13 Q And did Bob participate in that
14 rulemaking if you recall, Mr. Berman?

15 A Yes, I think he did.

16 Q Was he a designated representative in
17 that Office of Policy Analysis?

18 A Well, we didn't make a separate
19 designation for rulemaking. He was the person who
20 had general responsibility for royalty evaluation
21 issues, so...

22 Q When you would have the meetings as you

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1 described with MMS prior to the formal rulemaking,
2 would you participate in some of those?

3 A In some of them, yes.

4 Q Would there be other representatives from
5 the Office of Policy Analysis who would participate
6 in some of them?

7 A There might be sometimes, yes.

8 Q Would Mr. Berman always be a participant?

9 A Always?

10 Q I'm not holding you to literally every
11 time, Mr. Heintz. Would it be typical or usual
12 that if you were participating Mr. Berman would be
13 there also?

14 A Yes.

15 Q Was there ever a time that you recall
16 that Mr. Berman was excluded from those meetings
17 formally?

18 A Yes, I remember in fact he was asked not
19 to work on this issue anymore. I can't tell you
20 when that time was.

21 Q Do you recall who asked him not to work
22 on the issue?

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1 A Mr. Yeager did.

2 Q Do you recall who Mr. Yeager conveyed
3 that position to, did he deliver it directly to Mr.
4 Berman or did he deliver it through you or
5 Mr. Bettenberg, or what do you recall?

6 A I don't remember. I remember hearing it
7 directly, but I don't know what else Mr. Yeager
8 did.

9 Q What did Mr. Yeager say to you?

10 A He said he didn't want Mr. Berman to work
11 on royalty issues anymore.

12 Q Why didn't he want Mr. Berman to work on
13 royalty issues anymore?

14 A I don't remember his explaining to me.

15 Q Do you recall there being at some point
16 in the 1990s Qui Tam lawsuits being filed in
17 connection with the issue of oil royalties?

18 A Would you ask that again?

19 Q Do you recall that at some point in the
20 1990s there were lawsuits filed known as Qui Tam
21 lawsuits by individuals with respect to the issue
22 of oil royalties and whether the companies were

17 Q That means it's way beyond me.
18 A And so I think I reached the point where
19 I was willing to regard it as a technical dispute
20 in which there was some merit to both sides.

21 Q We talked about Mr. Yeager not being an
22 advocate. At the outset of the discussions with

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1 MMS were you an advocate of the Berman proposal or
2 not?

3 A I was an advocate that it be seriously
4 considered at the outset.

5 Q And do you recall how long did the
6 discussion with MMS, this consideration of this
7 proposal go on, months, years, I mean was this
8 something that went on for an extended period of
9 time?

10 A Yeah, it was pretty extended period, not
11 many years, but years. I mean the issue lurked
12 about for quite awhile and if you look at the
13 rulemaking, that's, of course, a very compact and
14 scheduled process, so the issue was around longer
15 than that.

16 Q At the time that there was consideration
17 being given to the Berman position was it being
18 evaluated as a possibility with other policy
19 recommendations or was it simply being looked at by
20 itself up or down on this one as opposed to gee, we
21 like this one versus that one?

22 A No, I think it was on the table for

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1 awhile with an approach that the MMS was
2 recommending and they had considered several
3 variations on their approach.

4 Q Was their approach a market centered
5 approach also; do you recall?

6 A I'm recalling that in the particular
7 aspect that Berman was focussed on it was not.

8 Q I'm sorry. Go ahead.

9 A This was the aspect that I referred to
10 transactions between subsidiaries.

11 Q And when you left four years ago the
12 Department of the Interior, was a market approach
13 with respect to the intracompany transfers in
14 place, was that the mechanism for valuing oil
15 royalties, if you recall?

16 A No, I don't recall it being a market
17 approach with regard to that aspect, no.

18 Q And has there ever been, during your
19 tenure that you recall, a market centered approach
20 for what I'll call intracompany sales as a
21 mechanism for valuing oil royalties?

22 A I think they're relying on posted prices.

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1 That's my recollection.

2 MR. TABACKMAN: Why don't we take a break
3 for a few minutes.

4 (Brief recess.)

5 (Heintz Exhibit Number 1

6 was marked for identification.)

7 BY MR. TABACKMAN:

8 Q Let me show you what we've marked as
9 Heintz Deposition Exhibit Number 1. The date on
10 that is?

11 A September 9, 1986.
12 Q If you take a look at it, take your time
13 and tell me if you recall seeing that.
14 MS. RABINOWITZ: Do you have copy for
15 counsel?
16 MR. TABACKMAN: That's the problem.
17 That's the folder I did not pick up. These are the
18 only copies right now.
19 MS. RABINOWITZ: It's more important for
20 you to look so go ahead.
21 MR. TABACKMAN: I made five copies of all
22 of those today. I didn't realize I had put them in

0056

1 two separate folders as I was rushing out the door.
2 MS. RABINOWITZ: Are there going to be
3 many like this? Should I go make copies right now?
4 MR. TABACKMAN: I think there's probably
5 going to be about half a dozen or so that I think
6 --
7 MS. RABINOWITZ: Can you isolate them and
8 I'll have my secretary make copies?
9 MR. TABACKMAN: That's what I realized in
10 the middle while you were gone. Let's go off the
11 record.

(Discussion off the record.)

BY MR. TABACKMAN:

14 Q Have you had a chance to review Heintz
15 Exhibit 1?
16 A Yes.
17 Q Do you recall ever seeing it before?
18 A Yes.
19 Q Can you say what is and when you saw it?
20 A It's a memorandum from Bob Berman to me
21 on an analysis of futures prices versus posted
22 prices of oil and it's dated September 1986.

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1 Q Do you recall whether this would have
2 been the first time that Mr. Berman would have put
3 something in writing to you?
4 A No, I don't recall whether this was the
5 first time.
6 Q In looking at the document are you able
7 to make an assessment as to does this look like
8 something that's following onto something else as
9 you read it or his first informing you of the
10 analysis that he's been undertaking, if you can
11 say?
12 A I don't think the memorandum makes clear
13 its position.
14 Q Based on your review and your
15 recollection, what is Mr. Berman saying in this
16 memorandum, what is he reporting to you?
17 A Essentially what he's saying is that
18 sometimes the market prices would be better for
19 royalty valuation -- royalty oil valuation than the
20 posted prices that were being used.

21 Q Posted prices are what?
22 A They're the prices that refiners say they
0058
1 will buy oil at on a given date.
2 Q By posted what does that mean, are they
3 posted somewhere? I guess I'm trying to understand
4 what the term means.

5 A I don't know whether they are actually
6 physically posted. My guess is they are
7 electronically published now so that various
8 suppliers to the refiners know what they'll be paid
9 for the oil.

10 Q And we had talked that Mr. Berman's
11 proposal focused on intracompany transactions. Is
12 this memorandum that limited or that specific or is
13 it more general?

14 A Yes, it refers to non arms length sales.

15 Q So the focus of it then was on his
16 concern that when companies were selling to
17 subsidiaries the government wasn't getting the full
18 royalty that it might otherwise be entitled to, is
19 that a fair capsule summary of this?

20 A In certain circumstances, yes.

21 Q And those circumstances would be
22 intracompany transactions, non-arms lengths

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1 transactions or is it some subset of those even?

2 A It's a subset of those depending on the
3 relationship of posted prices and market prices.

4 Q Would you have passed or do you recall
5 whether you passed this memorandum in particular on
6 to anyone else?

7 A No, I don't recall.

8 Q Do you recall having a conversation with
9 Mr. Berman about it?

10 A No, I don't recall a specific
11 conversation, but it would have been our normal way
12 of working.

13 Q Do you have a recollection of a lawsuit
14 that was going on in California concerning the
15 valuation of royalties or having to do with oil
16 royalties that Mr. Berman was concerned with or
17 focussing on?

18 A Yes, I do recall.

19 Q What's your recollection?

20 A Well, of course the State of California
21 owns some lands and has oil leases on them and
22 therefore has a similar interest in collecting

0060
1 royalties on those leases that the federal
2 government does and the lawsuit was -- in general
3 terms my understanding is the lawsuit was to try to
4 recover additional funds from the oil industry on a
5 similar basis that Mr. Berman is proposing here.

6 Q Do you recall whether Bob was following
7 that or not, Mr. Berman?

8 A I believe he was. I remember him
9 reporting to me from time to time about what he was
10 learning about on the case.

11 Q Do you have a recollection whether
12 Mr. Yeager's directive to you about Mr. Berman not
13 participating in the oil royalties discussions that
14 were going on at MMS that was before or after the
15 California litigation that he was reporting to you
16 on?

17 A No, I don't recall.

18 Q I don't know that I asked you, but when
19 Mr. Yeager said to you that he didn't want
20 Mr. Berman involved in the oil royalties regulation
21 process, what did you do at that time with respect

22 to Mr. Berman and that directive?

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1 A Well, I don't recall specifically, but I
2 would have told him not to do it anymore.

3 Q And by not doing it anymore that would
4 mean what, not to write any more memos, not to go
5 to anymore meetings, all of the above?

6 A Yeah, not to do anymore analysis, all of
7 the above, don't work in this area anymore.

8 Q Do you have a recollection as to whether
9 Mr. Berman stopped working on the issue after he
10 received that instruction from you?

11 A I guess I assumed that he did since I was
12 his supervisor and asked him to stop.

13 Q But you have no recollection as to when
14 that was or can't really estimate when that was?

15 A No.

16 Q Can you at least state in reference to the
17 California litigation that he was reporting to you
18 on if it was before or after you would have given
19 him that directive from Mr. Yeager?

20 A I don't recall specifically.

21 Q Do you have a general sense, a
22 nonspecific recollection?

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1 A No.

2 Q Would Mr. Berman, to your recollection,
3 communicate directly to Mr. Yeager without going
4 through you or Mr. Bettenberg?

5 A Not usually, no.

6 MR. TABACKMAN: Let's mark this document
7 as Heintz Number 2.

8 (Heintz Exhibit Number 2
9 was marked for identification.)

10 BY MR. TABACKMAN:

11 Q I'm going to show you what's been marked
12 as Heintz Exhibit Number 2. If you can take a look
13 at it. Have you had a chance to look at the
14 document?

15 A Yes.

16 Q And what is it if you can identify it?

17 A It's a memo from Bob Berman to me and
18 Brooks Yeager, the subject is status on
19 underpayment on royalties on California crude royal
20 and related enforcement of common carrier
21 provisions of MLA.

22 Q And what is MLA?

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1 A I think it's the Mineral Leasing Act.

2 Q What is it that Mr. Berman is informing
3 you of?

4 A Underpayments in California and
5 settlements with the State of California as a
6 result of their -- I'm trying to see if it's -- it
7 doesn't seem to be a suit. It was just an effort
8 by the state to receive more money from the oil
9 industry and then it discusses the causes and
10 amounts of the undervaluation of oil.

11 Q The document, this particular one is
12 undated. Do you have a recollection as to when you
13 would have seen that or recall when Mr. Berman was
14 raising that with you?

15 A No.

9 were marked for identification.)
10 MR. TABACKMAN: Number 7 it appears I
11 only have one copy for you.
12 MS. RABINOWITZ: That's fine.
13 BY MR. TABACKMAN:
14 Q Have you had a chance to look at that?
15 A I've looked at Number 6.
16 Q What is Number 6?
17 A It's a memorandum through me to Brooks
18 Yeager. The subject is future review of MMS
19 revised analysis of whether to pursue collections
20 of additional California royalties based on gross
21 proceeds from exchange rather than on posted
22 prices. The date is May 6, 1994.

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1 Q Now, Exhibit 6 indicates it was going to
2 Mr. Yeager from Berman through you?
3 A Uh-huh.
4 Q You need to say yes or no.
5 A Yes.
6 Q And if we look at I believe it's 4, maybe
7 even Exhibit 3, yeah both 3 and 4. I'm sorry, 2
8 and 3. In fact, if you have those in front of you,
9 if not I can show them to you. Mr. Berman directs
10 those to Mr. Yeager without going through you?
11 A Yes.
12 Q What, if anything, do you make of the
13 fact that he is now sending his memoranda through
14 you in May of 1994?
15 A Well, it would have been the more
16 standard procedure to send it through me since I
17 was the supervisor and I don't know why in August,
18 and the one without a date, that procedure wasn't
19 followed.
20 Q There was also the one in December and by
21 August you mean August 1993 and in December 1993
22 both of those go directly from Mr. Berman to

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1 Mr. Yeager?
2 A Yes.
3 Q And when Mr. Yeager responds on December
4 4th of 1993 he sends it back through you; is that
5 correct, that would be in Number 5?
6 A Yes.
7 Q But in Number 6, which is five months
8 later or six months later, Mr. Berman is now
9 sending his memoranda through you?
10 A Yes.
11 Q Does that refresh your recollection in
12 any way as to whether in that period of time, that
13 was the period of time in which Mr. Yeager had
14 indicated he didn't want Mr. Berman to continue his
15 involvement?
16 A Well, he's still involved so
17 presumably -- and not hiding it from Mr. Yeager, so
18 I assume he hasn't been told not to be involved
19 yet. That's an inference I would make, I'm not
20 remembering.
21 Q It doesn't refresh your recollection as
22 to when he was told?

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1 A I'm not remembering anything I don't
2 remember before, but I am able to infer.

3 Q And you don't need to infer. All I'm
4 asking you is if looking at this refreshes your
5 recollection as to when Mr. Yeager told you to stop
6 having Mr. Berman involved and it does not. What
7 is Mr. Berman advocating in the May 6, 1994
8 memorandum, Exhibit Number 6?

9 A That the analysis that MMS has done of
10 the materials I think that resulted from the State
11 of California case in settlement be reviewed by the
12 Department and by the Office of Policy Analysis and
13 the Solicitor's Office.

14 Q Do you recall seeing this memorandum
15 before?

16 A You mean at the time?

17 Q At the time.

18 A No.

19 Q Do you have any recollection independent
20 of reading in this memorandum, Exhibit Number 6,
21 that the MMS had requested not to have its report
22 on the California royalty situation reviewed by the

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1 Office of Policy Analysis?

2 A No, I don't recall that.

3 Q Do you have a recollection that differs
4 with the representation that Mr. Berman makes that
5 "MMS has also requested that such report when
6 complete not be reviewed within PPA"?

7 A No, I don't remember that.

8 Q But you have no reason to dispute that
9 statement in there I take it?

10 A No, I don't remember anything contrary to
11 it.

12 Q Do you remember any discussion about a
13 limited interagency review of the MMS work product?

14 A No, I don't.

15 Q The paragraph that's numbered one it says
16 "MMS should be required to submit its analysis to
17 PPA." Do you have any recollection with respect to
18 this part of the royalties issue whether PPA,
19 that's the Office of Policy Analysis, correct, an
20 abbreviation?

21 A Yes.

22 Q Whether the office undertook a review of

0082

1 the MMS reports?

2 A No, I don't remember.

3 Q The position of MMS that is described by
4 Mr. Berman is consistent with your recollection
5 however that MMS wanted to proceed on something
6 other than a market based analysis for royalty
7 determination, correct?

8 A That's a very general statement. This
9 raises -- this is a different question about
10 markets than the question of posted prices versus
11 the futures market, but it's a similar principle.

12 Q What is Exhibit Number 6 focussing on?

13 A It's focussing on the exchange
14 transactions in California and I think those are
15 associated with the -- or there's an associated
16 issue about, let's see if that's in here because
17 it's certainly in the background, the treatment of
18 pipelines as common carriers. I guess that's not a
19 part of it.

20 Q Well, the first paragraph says "At the
21 request of the State of California, MMS has
22 agreed to review additional, factual material,
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1 including documents currently under protective
2 order of the court in determining whether posted
3 prices which were below the gross proceeds from
4 certain exchanges properly represent value for
5 royalty purposes." Isn't that the issue that
6 Mr. Berman was initially raising in the earlier
7 memoranda that we saw to you from going back to
8 1986, the issue that the Department was not
9 collecting the entire value of royalties because of
the use of posted prices?

11 A That part of it is correct, but the
12 market reference suggested as the alternative in
13 this case is different from that case.

14 Q What is the market reference that he's
15 suggesting here?

16 A The proceeds from exchanges, in
17 particular what's called a three cut exchange.

18 Q And do you know what that refers to?

19 A No.

20 Q Do you have a recollection of the
21 Department adopting recommendations that Mr. Berman
22 sets forth here?

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1 A No.

2 Q Do you know if the Department ever
3 decided to involve itself in the California
4 litigation as Mr. Berman was suggesting?

5 A No, I don't recall.

6 Q Is it fair to say that Mr. Berman and
7 under the second heading PPA and SOL review is
8 pressing for a review by the Office of Policy
9 Analysis strongly?

10 A Yes.

11 Q And is it also fair to say that it
12 appears at least that as of May 6, 1994 the
13 determination is that the Office of Policy Analysis
14 will not be undertaking the review because of MMS'
15 request?

16 A Yes.

17 Q And if the Office of Policy Analysis were
18 to have undertaken a review, would it have been
19 Mr. Berman to be the person to do that?

20 A Presumably yes, unless he was instructed
21 not to, correct.

22 Q And you have no recollection of whether

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1 or not he prevailed in his advice to have the
2 Office of Policy Analysis review the MMS proposals?

3 A That's correct. I don't remember.

4 Q You would not differ if Mr. Berman were
5 to say that that analysis did not take place?

6 A I have no recollection that would cause
7 me to differ.

8 Q Take a look at Number 7.

9 A Okay.

10 Q What is Exhibit Number 7?

11 A It's a memorandum from Bob Berman through
12 me to Brooks Yeager. The subject is MMS royalty
13 global settlements problems and secretarial

14 exposure. The date is September 19, 1994.
15 Q Little more than four months after
16 Exhibit Number 6, correct?
17 A Yes.
18 Q And what would you describe is the
19 subject matter of Exhibit Number 7?
20 A Specific issues that were not -- that
21 Mr. Berman concluded were not appropriately
22 addressed in the global settlements that were being

0086

1 made with oil companies over royalty issues.
2 Q These were royalty settlements that MMS
3 was conducting with oil companies to recover
4 historical royalties owed; is that right?
5 A Yes.
6 Q Here Mr. Berman says, it starts off by
7 saying that there are problems with those
8 settlements, correct?
9 A Correct.
10 Q And he says that the MMS has been
11 conducting them and that as far as he's concerned
12 they've reached a level that the secretary may be
13 exposed to significant criticism for relinquishing
14 claims to substantial royalty revenue; is that
15 right?

16 A That's right.
17 Q And I take it that suggests that
18 Mr. Berman is concerned about the way MMS is
19 proceeding?
20 A That's what it says.
21 Q Do you have a recollection of Mr. Berman
22 becoming increasingly concerned and expressing that

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1 concern to you independent of now reading this and
2 seeing it?
3 A Yes.
4 Q You have that recollection?
5 A Yes, I have a general recollection of his
6 becoming increasingly concerned about the global
7 settlements.
8 Q And increasingly, for lack of a better
9 word, noisy about it?

10 A I don't know that I knew what the noise
11 was. I knew what he was saying to me and I
12 certainly would have known what he was writing, but
13 what he was saying to others I was not aware.

14 Q Would it be fair to say that the level of
15 intensity in the memoranda that you've been
16 reviewing is increasing, Mr. Berman's level of
17 intensity and his expression and criticism of
18 others in the Department?

19 A Yes, I think that's fair to say.
20 Q Is it also fair to say that Mr. Berman is
21 expressing the fact that he and the Office of
22 Policy Analysis were not involved in these

0088

1 settlements; isn't that correct?
2 A I don't see that statement.
3 Q If you look at the first paragraph,
4 number four, he says "Lack of appropriate review
5 and oversight prior to committing the Department."
6 Who would that review and the oversight been
7 provided by if it were within the Department of the

8 Interior?

9 A It could have been the office of policy
10 analysis, but it doesn't say that here.

11 Q But that is one possibility?

12 A Could have been the Solicitor's Office,
13 doesn't state that here.

14 Q Those are the two departments or
15 divisions that Mr. Berman was advocating take a
16 close look at this, these settlements in his prior
17 memoranda, right?

18 A Correct.

19 Q Specifically I believe it is the May 6
20 memorandum, Number 6?

21 A Correct.

22 Q Do you know whether Mr. Berman's

0089

1 recommendation that the secretary declare a
2 moratorium on the settlements and convene a panel
3 to review past procedures was adopted?

4 A I think it was not adopted. I don't
5 recall it and that would have been a pretty
6 traumatic event.

7 Q If it were adopted?

8 A If it were adopted.

9 Q Does this refresh your recollection, the
10 subject matter here in Mr. Berman's expression of
11 concern about lack of involvement in these
12 settlements, refresh your recollection in any way
13 as to when you were told that he should no longer
14 involve himself in oil royalty issues as opposed to
15 complaining about his lack of involvement in oil
16 royalty issues?

17 A Well, again, I can infer. I'm not
18 remembering, but I can infer that he was still
19 involved and had not been told not to be because
20 he's sending memos to Brooks Yeager which
21 presumably wouldn't have done afterwards.

22 Q Well, this memorandum complains that MMS

0090

1 is doing all of these settlements on their own
2 without the involvement of anybody else, doesn't
3 it?

4 A Yes, but he is still sending memos to
5 Mr. Yeager.

6 Q He's sending memos to you complaining
7 about his non-involvement?

8 A Through me.

9 Q Through you complaining about his
10 non-involvement in the issues?

11 A Right.

12 Q And you would draw a distinction between
13 having a substantive role in the resolution of the
14 royalty issues. This document here is fairly
15 characterized as a complaint that he's not being
16 involved; isn't that right?

17 A I would say that it's a complaint that
18 he's not being involved by MMS. It's not a
19 complaint that he's been told not to be involved by
20 Mr. Yeager.

21 Q Do you recall Mr. Yeager taking any steps
22 to ask Mr. Berman to involve himself in this

0091

1 process?

2 A No, I don't recall any.
3 Q Do you recall seeing any memoranda from
4 Mr. Berman where he is expressing any input into
5 the valuations that are being arrived at in the
6 settlement process in 1994?

7 A No, I don't recall any.
8 Q Do you recall Mr. Berman talking to you
9 about his substantive involvement in that process,
10 that he was going to a meeting, that he was talking
11 to people about the valuations that MMS was
12 reaching, do you have any recollection of that
13 whatsoever?

14 A I remember not specific events but in
15 general that he expressed to me from time to time
16 his concern about how the settlement negotiations
17 were going and that certain things were not being
18 considered and were being left out of the
19 settlement agreements. I don't know specifically
20 what conversations he had with the people who were
21 participating in them from which he gained that
22 information nor what analysis or concerns he raised

0092

1 with them in those conversations.

2 Q If you look at the last paragraph, the
3 last sentence of the last paragraph on page one of
4 Exhibit Number 7, "It is not known what basis MMS
5 assigned a value to the drainage issue or even if
6 any value was considered at all." Does that
7 suggest to you that Mr. Berman wasn't a participant
8 in the process by which value was determined?

9 A Well, of course, it's an incorrect
10 statement in the first place.

11 Q What is an incorrect statement?

12 A I take it to mean- well, somebody knows
13 what the basis was, so it's an incorrect statement.
14 It's an indirect way -- I take it to be an indirect
15 way for him to say he doesn't know.

16 Q Which would suggest he wasn't a
17 participant?

18 A Right, or nobody would tell him.

19 Q If you would turn to the second page at
20 the top there's a sentence "MMS apparently had not
21 notified BLM of the settlement negotiations, and
22 BLM had not discovered them until late March or

0093

1 early April after the agreement had been signed."
2 Does that further suggest that Mr. Berman was not
3 involved in the process of reaching the
4 settlements?

5 A That's sort of an indirect inference.

6 Q Let me take you down to the next one. If
7 you look down and do see the paragraph beginning
8 whether?

9 A Yes.

10 Q Could you read that to yourself?

11 A Okay.

12 Q It says, "Whether or not 20 years of
13 relinquished claim was considered in the
14 settlement, or how it was valued if considered, can
15 only be learned from a review of the MMS issue
16 valuation working papers associated with the
17 settlement." Does that suggest to you that
18 Mr. Berman was not a participant in the settlement

19 process?

20 A It suggests to me that he hasn't seen
21 those papers and hasn't been told what's in them.

22 Q And wouldn't that suggest to you, sir,
0094

1 that he was not a participant in the process? If
2 he hasn't seen the papers, he can't say if value
3 was considered?

4 A What you're asking me is to infer things
5 for you based on assumptions about those working
6 papers being available to everybody who
7 participated in the process. Why don't you make
8 those inferences yourself?

9 Q Well, I'm asking you, sir, if you --

10 A I don't have a factual basis for
11 answering.

12 Q And I'm asking you then, sir, does it
13 refresh your recollection as to when Mr. Yeager
14 told you Mr. Berman was no longer to participate in
15 the process?

16 A No.

17 Q It does not. But you have no independent
18 recollection either of any office of policy
19 analysis review, is that right, of the MMS
20 settlements?

21 A Correct.

22 Q And no reason to dispute a representation
0095

1 if Mr. Berman were to make one that he wasn't
2 involved?

3 A Correct.
4 (Heintz Exhibit Number 8
5 was marked for identification.)

6 BY MR. TABACKMAN:

7 Q Have you read Exhibit 8?

8 A Yes.

9 Q What is it?

10 A It's a memorandum from Bob Berman through
11 me to Brooks Yeager, the subject is global royalty
12 settlement oversights, the date is December 5,
13 1994?

14 Q Is it a fair depiction of this memorandum
15 that once again Mr. Berman is complaining about the
16 MMS settlements?

17 A Well, complaining is your
18 characterization. It's informing Mr. Yeager of
19 failures in the settlements that he thinks should
20 be addressed.

21 Q Let's go back to Number 7. How would you
22 characterize Number 7 if it's not a complaint, what
0096

1 word would you use?

2 A I would say that this is a staff person
3 who is continuing to try to make people at upper
4 levels aware of what he considers to be a weakness
5 in the process.

6 Q Would it be fair to say it expresses his
7 concern?

8 A Yes.

9 Q Would it be fair to say that he expresses
10 strong concern about the way that MMS is
11 proceeding?

12 A Yes, he raises a number of weaknesses

17 Q Yes.
18 A In my office.
19 Q Was that close in time to the date on
20 which you executed this affidavit?
21 A It was.
22 Q Why were you interviewed by him?
0116
1 A I was interviewed by him because he had
2 been asked to investigate the circumstances under
3 which Mr. Berman received funds from POGO.
4 Q I take it he had certain specific
5 questions for you?
6 A Yes.
7 Q Did you take note of whether he was
8 writing down the answers as you were giving them?
9 A He was.
10 Q And I take it at some point thereafter he
11 came back to you with an affidavit in this form?
12 A Yes.
13 Q And you read it over carefully?
14 A I did.
15 Q Did it conform in every respect to the
16 answers you had given to the questions, you were
17 satisfied that there were no inaccuracies?
18 A I didn't look at the notes he took so I
19 don't know whether it conformed with his notes. I
20 determined that it was accurate and signed it as
21 what it says here that I regarded it was true,
22 accurate, and complete.
0117
1 Q It says in the fifth paragraph of the
2 first page, "One of Mr. Berman's areas of
3 responsibility has been the policies and procedures
4 used for the collection of royalties on oil and gas
5 leases issued by the Department."
6 A Yes.
7 Q When you spoke with Mr. Crook do you know
8 whether you had indicated a time frame when he had
9 that responsibility?
10 A I don't recall.
11 Q Would it be fair to say that that was not
12 a responsibility of his in 1999?
13 A Certainly wasn't after this had occurred
14 and he had been asked not to work in that area
15 prior to '99 by -- we had been told he should not
16 work in this area, so that is correct.
17 Q Going back to Exhibit Number 9, the list
18 of his responsibilities that you had drafted, would
19 the statement that he had been responsible for the
20 policies and procedures used for the collection of
21 royalties on oil and gas leases issued by the
22 Department would that be true for 1998?
0118
1 A No.
2 Q Would it be true for 1997?
3 A No.
4 Q Would it be true for 1996?
5 A Not as to oil -- well, except for the
6 California issue. In '96 there was oil
7 undervaluation issues outside of California.
8 Q He monitored them?
9 A Yes, monitored them and reviewed gas
10 royalty valuations.

11 Q Now, it states in your affidavit that he
12 had "areas of responsibility has been the policies
13 and procedures used for the collection of royalties
14 on oil and gas leases issued by the Department."

15 A Correct.

16 Q Was he responsible for the policies and
17 procedures that were issued by the Department?

18 A Of course not.

19 Q It states, "Over the years there have
20 been a number of policies, regulations, and
21 practices which he has reviewed and analyzed in
22 order to provide economic analysis and advice to

0119

1 those responsible for administering programs
2 involved in the collection of royalties." Did I
3 read that correctly?

4 A Yes.

5 Q So people other than Mr. Berman were the
6 people that were responsible for the policies and
7 procedures?

8 A Correct.

9 Q And in fact the economic analysis and
10 advice that Mr. Berman gave, particularly focussing
11 on the advice, was not advice that was followed
12 with respect to the oil royalties; is that correct?

13 A In general correct, yes.

14 Q Is it incorrect in specific ways?

15 A I'm not remembering any, but I just...

16 Q You're not remembering any way in which
17 his advice was followed?

18 A It was a very, very general statement
19 that you asked me and I'm not going to state that I
20 factually know such a generality.

21 Q Well, the document says that he had an
22 area of responsibility has been the policies and

0120

1 procedures, that's not an accurate statement is it,
2 sir?

3 A In the context of the rest of the
4 affidavit I believe it is.

5 Q In the context of the rest of the
6 affidavit it is correct to say that he had
7 responsibility for the policies and procedures used
8 for the collection of royalties in oil and gas
9 leases issued by the Department?

10 A That's not what it says.

11 Q One of Mr. Berman's areas of
12 responsibility has been the policies and procedures
13 used for the collection of royalties on oil and gas
14 leases issued by the Department?

15 A Yes, sir, now you have said what it says.

16 Q Right. And was he the person who was
17 responsible for the policy and procedures used for
18 the collection of royalties?

19 A No, and that's not what it says.

20 Q What does it say?

21 A It says that's one of his areas of
22 responsibility.

0121

1 Q Oh. And that differs?

2 A Yes, sir.

3 Q In what way?

4 A In the context of this affidavit it's

5 clear that he's an economist on the staff in the
6 Office of Policy Analysis and that he has -- that
7 this is one of the areas for which he is assigned
8 to perform the functions of an economist on the
9 staff of the Office of Policy Analysis.

10 Q So you would modify that sentence in that
11 way?

12 A No, I'm explaining to you that that's
13 what the word area, as in areas of responsibility,
14 means in the context of the affidavit.

15 Q And the last time that he had
16 responsibility within the context of the affidavit
17 for those policies and procedures used for the
18 collection of royalties on oil and gas leases was
19 when, according to Exhibit 9?

20 A Well, he monitored the -- under valuation
21 in '96 that appears to be the last time in Exhibit
22 9 that activities related to that area are

0122
1 included.

2 Q How is the word monitored, which you
3 used, differ from your use of the word reviewed and
4 the following bullet point on Exhibit 9 and the
5 word supported in the one that comes after that?

6 A I think monitored is collecting,
7 observing and collecting information about the
8 topic. The other steps have to do with what is
9 done with the information after it's been
10 assembled.

11 Q So that monitoring would be different
12 than supporting?

13 A Where is the word supporting?

14 Q Under 1996 the last bullet, "Supported
15 Interior Service Center on cost allocation and cost
16 price analysis."

17 A Yes.

18 Q And is it fair to say that supporting
19 would be a more active involvement than monitoring?

20 A Correct, it suggests the delivery of some
21 information produced.

22 Q By Mr. Berman?

0123
1 A By Mr. Berman.

2 Q Whereas the monitoring does not?

3 A I suggests that he is acquiring
4 information.

5 Q In 1995, again referring to Exhibit 9
6 which you drafted, is there any reference that he
7 did any active providing of a service in connection
8 with oil royalties?

9 A I'm sorry, would you repeat that?

10 Q Looking at Exhibit 9 and focussing on
11 1995, is there anything that suggests that he was
12 providing or had active involvement or providing a
13 product, I believe you said, or information to
14 someone regarding oil royalties?

15 A No, it does use the word monitored.

16 Q Again, focussing on 1994, it states again
17 that he monitored the California royalty
18 undervaluation and shipment?

19 A That's correct.

20 Q And the royalty regulations that MMS was
21 considering in the latter part of the 1990s were