

# REPORT OF THE COMMITTEE ON PUBLIC LANDS

## I. MMS ROYALTY PROGRAM DEVELOPMENTS

### A. Legislation

As 1996 began, the fate of major amendments to the Federal Oil and Gas Royalty Management Act of 1982<sup>1</sup> was still undetermined. Originally introduced as stand-alone bills H. R. 1975 and S. 1014,<sup>2</sup> the amendments were incorporated into the Balanced Budget Act of 1995,<sup>3</sup> which was vetoed by President Clinton in early December. The royalty provisions, included, *inter alia*,

- (1) establish a statute of limitations (subject to tolling in limited circumstances) that would apply to claims that royalties on oil and gas produced from federal leases had been either underpaid or overpaid, thereby reversing recent decisions in *Phillips Petroleum Co. v. Johnson*,<sup>4</sup> *Samedan Oil Corp. v. Deer*,<sup>5</sup> and *Atlantic Richfield Co. v. United States Department of the Interior*<sup>6</sup> (which are discussed, *infra*),
- (2) limit the time for the Secretary of the Interior to decide administrative appeals of royalty decisions issued by subordinate officials,
- (3) require that, in most instances, the Secretary pay interest on royalty overpayments made by federal lessees,
- (4) facilitate and clarify the authority of the Secretary to delegate to the states royalty collection and other federal lease management responsibilities, and
- (5) authorize royalty relief for marginal production upon the agreement of all interested parties.

Royalty provisions were included and recently passed in the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.<sup>7</sup>

### B. Litigation

#### 1. Gas Contract Settlements

As reported in previous years,<sup>8</sup> the Department of the Interior (DOI) launched an initiative in 1993 to collect royalties on amounts received by federal lessees to settle gas contract disputes. These disputes arose as pipeline purchasers in the late 1980's and early 1990's struggled to sell gas purchased from producers under long-term, high-priced contracts.

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1. 30 U.S.C. §§ 1701-1757 (1994).

2. H.R. 1975, 104th Cong., 1st Sess. (1995) and S. 1014, 104th Cong., 1st Sess. (1995).

3. H.R. 2491, 104th Cong., 1st Sess. (1995).

4. No. 93-1377, 1994 WL 484506 (5th Cir. Sept. 7, 1994), *cert. denied*, 115 U.S. 1816 (1995).

5. No. 94-2123, 1995 WL 431307 (D.D.C. June 14, 1995), *rev'd sub nom*, Independent Petroleum Ass'n of American v. Babbitt, 92 F.3d 1248 (D.C. Cir. 1996)(court reversed on merits declining to address the statute of limitations issue).

6. No. CV 94-62-BLG-JDS (D. Mont. Nov. 14, 1995).

7. 104 Pub. L. No. 185; 110 Stat. 1700 (1996).

8. *Report of the Committee on Public Lands*, 16 ENERGY L.J. 225 (1995); *Report of the Committee on Public Lands*, 15 ENERGY L.J. 219, 229 (1994).

Encouraged by the Federal Energy Regulatory Commission, the producer-sellers and pipeline-purchasers settled accumulated take-or-pay deficiencies, terminated contracts, and/or agreed to lower contract prices in return for which producers received lump sum payments and, sometimes, other consideration. DOI asserted that it was entitled to receive a royalty on these lump sum payments; federal and Indian lessees generally argued otherwise.

During 1995, the Department's initiative met with mixed success in the courts. In *Independent Petroleum Association of America v. Babbitt*,<sup>9</sup> the court agreed with the Department that lessees are required to share with federal and Indian lessors proceeds which they receive as gas contract buy-out, buy-down and take-or-pay settlement sums. In contrast, the court in *United States v. Century Offshore Management Corp.*<sup>10</sup> rejected DOI's position by concluding that contract buy-out sums are not subject to royalty because they are paid to terminate gas purchase obligations and are, therefore, not attributable to the sale of gas. Faced with conflicting district court decisions, as well as the Fifth Circuit's earlier decision that most non-recoupable take-or-pay settlement sums are not subject to royalty,<sup>11</sup> the Sixth Circuit and the District of Columbia Circuit will now weigh in with their own opinions, perhaps by the end of 1996.<sup>12</sup>

## 2. Statute of Limitations

In *Samedan Oil Corp. v. Deer*,<sup>13</sup> a case decided with the *Independent Petroleum Producers* case, the court held that the general federal six year statute of limitations<sup>14</sup> is not an impediment to DOI's efforts to collect royalties more than six years after the monies allegedly become due. In *Samedan*, the court agreed with the Fifth Circuit's 1994 decision in *Phillips Petroleum Co. v. Johnson*<sup>15</sup> that a claim for royalties involves monies due under contract rather than money damages. Therefore, according to the court, royalty claims are not subject to 28 U.S.C. § 2415(a) and "there is no time bar to DOI's recovery."<sup>16</sup> *Samedon* was reversed by the D.C. Circuit without considering the statute of limitation issue. Late in the year, another district court, adopting an analysis similar to the district court's

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9. No. 93-2544, 1995 WL 431305 (D.D.C. June 14, 1995), *rev'd*, (92 F.3d 1248 D.C. Cir. 1995). This decision is also notable for its discussions of (1) which DOI officials have the authority to bind the Department, (2) when notice-and-comment rulemaking is required pursuant to the Administrative Procedure Act, 5 U.S.C. § 553 (1994), and (3) the characteristics which distinguish legislative from interpretative rules.

10. 185 B.R. 734 (E.D. Ky. 1995), *remanded*, 83 F.3d 140 (6th Cir. 1995).

11. *Diamond Shamrock Exploration Co. v. Hodel*, 853 F.2d 1159 (5th Cir. 1988).

12. *Independent Petroleum Association of America v. Babbitt*, No. 93-2544, 1995 WL 431305 (D.D.C. June 14, 1995), *appeal docketed*, No. 95-5210 D.C. Cir. (D.C. Cir. July 7, 1995); *United States v. Century Offshore Management Corp.*, 185 B.R. 734 (E.D. Ky. 1995), *appeal docketed*, No. 95-6320 (6th Cir. Oct. 2, 1995).

13. *See supra* note 4.

14. 28 U.S.C. § 2415(a) (1994).

15. No. 93-1377, 1994 WL 484506 (5th Cir. 1994), *cert. denied*, 115 U.S. 1816 (1995)(later proceeding *aff'd* 36 F.3d 89 (5th Cir. 1994)).

16. *See supra* note 5, at \*6.

ruling in *Samedan*, reached the same conclusion in *Atlantic Richfield Co. v. United States Dep't of the Interior*.<sup>17</sup> The *Samedan* and *Atlantic Richfield* cases, along with the Fifth Circuit's decision in *Phillips Petroleum Co. v. Johnson*, thus conflict with the 1993 Tenth Circuit decision in *Phillips Petroleum Co. v. Lujan*.<sup>18</sup> The Tenth Circuit held that the statute of limitations applies to DOI's claims for royalties but that the limitation period ordinarily commences to run when the Department could reasonably have known of an underpayment, rather than on the date that royalties should have been paid.

### 3. Administrative Offset

In *Amoco Production Co. v. Fry*,<sup>19</sup> the court upheld DOI's right to suspend processing of royalty refund requests when the requester has raised the statute of limitations as a defense to the Secretary's claims that other royalties have been underpaid.

Pursuant to § 10 of the Outer Continental Shelf Lands Act,<sup>20</sup> a lessee who has overpaid royalties may not obtain a refund until the Secretary is satisfied that a refund is owed and the matter has been reported to Congress. In the early 1990's, in response to federal lessee assertions that the general statute of limitations<sup>21</sup> bars the Secretary's claims for additional royalties more than six years after the sums were allegedly due, the Department stopped processing claims for refunds of royalty overpayments attributable to Outer Continental Shelf (OCS) leases so that DOI could offset royalty refunds against any time-barred claims if the statute of limitations defense proved successful. Several lessees challenged DOI's refusal to process refund requests and its asserted authority to offset refunds against unresolved claims for additional royalties.

In *Amoco Production Co. v. Fry*,<sup>22</sup> the court held that DOI was not required to process the refund requests and that the Department could assert a common law right to offset royalty overpayments against time-barred underpayments. The court also determined that DOI had not yet actually exercised its offset rights but ruled that it could retain the royalty overpayments until the Secretary's claims for additional royalties had been resolved.

## C. Rulemaking and Other Administrative Actions

### 1. Royalty in Kind Program

On January 1, 1995, DOI launched a one-year pilot program to take in kind a share of its royalty gas produced from the Outer Continental Shelf.

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17. No. CV 94-62-BLG-JDS (D. Mont. Nov. 14, 1995).

18. 4 F.3d 858 (10th Cir. 1993).

19. 904 F. Supp 3, (D.D.C. 1995), *motion to alter or amend judgment denied*, 908 F. Supp. 991 (D.D.C. 1995).

20. 43 U.S.C. § 1339 (1994).

21. 28 U.S.C. § 2415(a) (1994).

22. *See supra* note 19.

The stated objectives of the program were “[f]irst, . . . to streamline royalty collections, and second, to test a process which promises increased efficiency and greater certainty in valuation.”<sup>23</sup> As part of the program MMS solicited bidders to buy the federal royalty share of natural gas production from Gulf of Mexico leases. Initially MMS received twenty-four bids for about 170,800 MMBtu/day of royalty gas from seventy-five leases.<sup>24</sup> In the latter half of the year, DOI held workshops to evaluate the pilot program and to explore ideas for expanding it. The Department published a summary of comments it received from the public and promised a final report on the pilot program would be issued by the middle of 1996.<sup>25</sup>

## 2. Devolution

In March, the Department announced a proposal to delegate many of the responsibilities of the Minerals Management Service and the Bureau of Land Management to the states and Indian tribes with federal oil and gas leases, eliminate MMS, and transfer remaining MMS responsibilities (primarily, the offshore oil and gas leasing program) to other agencies within the Department.<sup>26</sup> That announcement met with considerable opposition, especially from federal lessees fearful of having to comply with potentially inconsistent federal royalty obligations that might be adopted by the various states which succeeded to MMS’ royalty collection responsibilities. In the face of strong opposition, the Department announced, in a news release issued on August 2, 1995, that it was withdrawing its proposal.<sup>27</sup>

## 3. Royalty Payor Liability

During the summer, DOI published a proposed rule addressing which parties are liable for properly reporting and paying royalties, compensatory royalties and other amounts required by the terms of federal and Indian leases.<sup>28</sup> According to the proposal, any or all of the following parties could, depending on the circumstances, be held liable if royalties were not properly paid and reported; the lessee of record, an assignee of working interest rights in the lease, the lease operator, and certain third parties (e.g., a person assigned or who has assumed the obligation to pay royalty or other payments, any person who has filed a payor information form with MMS, the purchaser of production, or any other person liable under the regulations of the agency which issued the lease (e.g., the Bureau of Land

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23. Summary of Minerals Management Service Workshops on Expanded Use of Royalty-In-Kind (RIK) Procedures, 60 Fed. Reg. 55,592, 55,593 (1995).

24. *MMS to Sell Royalty Gas from Gulf*, *Oil & Gas Journal*, Jan. 2, 1995, at 26.

25. *Id.*

26. Letter from Bob Armstrong, Dep’t of the Interior Assistant Secretary for Land and Minerals Management, to OCS Policy Committee Members (Mar. 29, 1995).

27. MINERALS MANAGEMENT SERVICE, U.S. DEP’T OF THE INTERIOR, DOI LISTENS TO CONSTITUENTS AND WITHDRAWS DEVOLUTION PROPOSAL TO FOCUS INSTEAD ON OTHER STREAMLINING ACTIVITIES (August 2, 1995) (news release).

28. Amendments of Regulations to Establish Liability for Royalty Due on Federal and Indian Leases, and To Establish Responsibility to Pay and Report Royalty and Other Payment, 60 Fed. Reg. 30,492 (1995) (to be codified at 30 C.F.R. pt. 211) (proposed June 9, 1995).

Management)).<sup>29</sup> Liability for compensatory royalties would be shared jointly and severally by each lessee of record and each assignee of working interest rights (and potentially by any other person deemed liable under the regulations of the leasing agency).<sup>30</sup>

However, the proposed rule does not purport to modify liability among co-lessees and other non-lessor parties. Thus, if the rule is adopted, a party liable to DOI would still be able to seek contribution from other liable parties. Nor does the rule address the issue of against whom DOI would take enforcement action if royalties were underpaid; the Department could, under the proposal, have several potential targets from which to choose.

#### 4. Royalty Gas Valuation Rulemaking

On November 6, 1995, DOI issued a notice of proposed rulemaking<sup>31</sup> which, if adopted, would radically alter the methodology pursuant to which much natural gas produced from federal leases is valued for royalty purposes.

The proposal arises from the Department's efforts to address the changes in natural gas marketing since the last major revisions to the royalty valuation regulations in 1988.<sup>32</sup> At that time, most gas was still sold at the wellhead. Since then, natural gas marketing has changed considerably in light of FERC Order No. 636,<sup>33</sup> with the result that many lessees now sell gas at locations remote from their leases. Thus, it has become increasingly difficult to apply the requirement that lessees pay royalties on their "gross proceeds," the touchstone of the 1988 regulations, since gas produced from many leases is often sold from pools to several purchasers at different prices.

As a result of the changes in the market place, DOI formed an advisory committee in 1994 to address gas valuation issues.<sup>34</sup> In March, 1995, the committee issued its report,<sup>35</sup> and most of the recommendations contained in the report were incorporated into the notice of proposed rulemaking.

Pursuant to the proposed rule, lessees whose gas is not sold at the wellhead would be allowed to, and in some cases would be required to, value royalty gas by referencing published natural gas spot market index

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29. *Id.* at 30,501.

30. *Id.*

31. Amendments to Gas Valuation Regulations for Federal Leases, 60 Fed. Reg. 56,007 (1995) (to be codified at 30 C.F.R. pts. 202, 206, 211) (proposed Nov. 6, 1995).

32. Revision of Gas Royalty Valuation Regulations and Related Topics, 53 Fed. Reg. 1230 (1988) (codified at 30 C.F.R. pts. 202, 206).

33. Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13,267 (1992) (codified at 18 C.F.R. pt. 284).

34. Establishment of the Federal Gas Valuation Negotiated Rulemaking Committee, 59 Fed. Reg. 32,943 (1994) (to be codified at 30 C.F.R. pt. 206).

35. MINERALS MANAGEMENT SERVICE, U.S. DEP'T OF THE INTERIOR, FINAL REPORT OF THE FEDERAL GAS VALUATION NEGOTIATED RULEMAKING COMMITTEE (1995).

prices. In addition, lessees utilizing the index price provisions would be required to compare those values with DOI-calculated "safety net" median values derived from the gross proceeds received by lessees who continued to sell gas at the lease under arm's-length contracts. If a lessee's index values were less than the safety net value, the lessee would be required to pay additional royalty, and, in some cases, late payment interest.

In addition, the proposed rule would require that a federal lessee producing gas from a unitized or communitized field which also contains non-federal leases report and pay royalties each month on its entitled share of production. However, a small lessee could report and pay monthly royalties based on the actual volumes it produced and adjust its reports and payments six months after the end of a calendar year if its entitled share of production for the year exceeded the production actually taken.

If adopted, the proposed rule would apply only to federal leases. A separate negotiated rulemaking committee is considering changes to the royalty gas valuation regulations applicable to Indian leases.<sup>36</sup>

### 5. Crude oil royalty valuation

At the end of 1995, DOI issued an advance notice of proposed rulemaking "to solicit comments on new methodologies to establish the royalty value of oil produced from Federal and Indian leases."<sup>37</sup>

The notice was issued in the midst of an MMS investigation of the use of posted prices to value oil produced from federal leases in California.<sup>38</sup> In its notice, DOI suggested that posted prices, which are utilized to value the royalty share of most non-arm's-length dispositions of oil from federal and Indian leases, may no longer reflect the market value of crude oil. Therefore, it requested comments on whether it is appropriate to allow the continued use of posted prices to value royalty oil and what alternative valuation methodologies might be substituted. The Department also suggested that it may promulgate different oil valuation regulations for federal and Indian leases due to the Secretary's trust obligation in the administration of Indian leases.

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36. Notice of Establishment of the Indian Gas Valuation Negotiated Rulemaking Committee, 60 Fed. Reg. 7152 (1995).

37. 60 Fed. Reg. 65,610 (1995) (to be codified at 30 C.F.R. pt. 206) (proposed Dec. 20, 1995).

38. *Study Puts Underpaid Royalties in California as High as \$850 Million*, INSIDE ENERGY/WITH FEDERAL LANDS (McGraw-Hill Cos., New York, NY), Dec. 18, 1995, at 15. In addition, several suits challenging the use of posted prices to value oil produced from state and private leases were filed during the second half of 1995. See, e.g., *Lee County, Texas v. Amerada Hess Corp.*, No. 10,652 (21st Jud. Dist. Of Texas filed Aug. 31, 1995); *Texas General Land Office v. Amoco Production Co.*, No. 95-08680 (345th Jud. Dist. of Texas filed July 14, 1995); *Engwall v. Amerada Hess Corp.*, No. CV-95-322 (5th Jud. Dist. of New Mexico filed Sept. 1, 1995); *Kershaw v. Amoco Production Co.*, No. CJ-95-84 (Dist. Ct. for Seminole County, OK. filed Sept. 13, 1995).

## II. ENVIRONMENTAL ISSUES

A. *Developments in the Courts*

As a result of its June 1995 decision in *Babbitt v. Sweet Home Chapter*,<sup>39</sup> the United States Supreme Court has now resolved the split in authority concerning the question whether the term "harm," which appears in the Endangered Species Act (ESA) section regarding illegal takings of endangered species by private parties,<sup>40</sup> encompasses significant habitat modifications that result in injury to an endangered species. The issue arose due to the promulgation of a Fish and Wildlife Service (FWS) regulation that defined "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering."<sup>41</sup> Whereas the Ninth Circuit Court of Appeals had upheld the validity of the FWS regulation in a 1988 decision,<sup>42</sup> the Court of Appeals for the D. C. Circuit, in a more recent 1994 decision on rehearing, had ruled that the regulation was invalid since it exceeded the ESA's legislative intent that "harm" only narrowly includes the direct application of force against the species.<sup>43</sup>

In an Opinion authored by Justice Stevens, the Court upheld the validity of the FWS regulation for a variety of reasons. The Court found that the text of the ESA provided three separate basis for concluding that the FWS' construction of the ESA was reasonable: (1) the FWS definition of harm comports with the common usage of that term;<sup>44</sup> (2) the broad purpose of the ESA indicates that the ESA's intent was "to halt and reverse the trend toward species extinction, whatever the cost";<sup>45</sup> and (3) the 1982 amendment to the ESA, which for the first time permitted "incidental takings" of endangered species under limited circumstances, "strongly" suggested that Congress understood the ESA to prohibit indirect takings as well as deliberate takings.<sup>46</sup> The Court further found that the legislative history supports the FWS' interpretation of the ESA, particularly because both the Senate and House Committee Reports stress that the ESA term "take," which is interrelated to the term "harm," was defined in the "broadest possible" manner to include every manner in which wildlife could be taken.<sup>47</sup>

Justice O'Connor joined in the 6-3 decision in a separate concurring opinion in which she narrowly agreed with the majority opinion based on the understanding the Court was ruling that "the regulation is limited by its terms to actions that actually kill or injure individual animals," and that

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39. 115 S. Ct. 2407 (1995).

40. 16 U.S.C. §§ 1531, 1538(a)(1)(B) (1988).

41. 50 C.F.R. § 17.3 (1994).

42. *Palila v. Hawaii Dep't of Land and Natural Resources*, 852 F.2d 1106 (9th Cir. 1988).

43. *Sweet Home Chapter v. Babbitt*, 17 F.3d 1463 (D.C. Cir. 1994).

44. 115 S. Ct. 2407 at 2422.

45. *Id.* at 2413.

46. *Id.* at 2413.

47. *Id.* at 2416-2418.

private parties would be held liable for takings arising from habitat modification "only if their habitat-modifying actions proximately cause death or injury to protected animals."<sup>48</sup> In a lengthy dissenting opinion, joined by Chief Justice Rehnquist and Justice Thomas, Justice Scalia argued that in failing to require (1) causation before imposing liability for habitat modification, (2) affirmative acts before liability is imposed, and (3) injury to individual animals rather than a "population," the FWS had exceeded its authority.<sup>49</sup> The dissenting opinion, additionally and specifically, disagreed with every basis upon which the majority opinion was founded, and noted that even the Solicitor of the FWS had at one time delivered a formal legal opinion to the effect that the ESA term "harm" should only be interpreted to include actions that are directed against individual animals.<sup>50</sup>

### *B. Regulatory developments*

MMS published its proposed requirements for offshore oil-spill response plans in 1995.<sup>51</sup> The proposed rule would impact facilities located seaward of the coast line, including those facilities in States water located seaward of the coast line, and would require each owner or operator of such facility to have a spill-response plan for each facility. The MMS addresses only these areas because it "believes that adequate spill prevention regulations meeting the requirements of OPA currently exist for the facilities in the Outer Continental Shelf (OCS) at 30 CFR part 250." The proposed rule would implement the Oil Pollution Act of 1990 and establish specific guidelines for spill-response plans.

"Facility" is defined as "any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil" and excludes deepwater ports and their associated pipelines.<sup>52</sup> The plan must contain sections addressing (1) introduction and plan contents; (2) emergency response action plan; (3) spill scenarios; (4) training and drills; (5) plan review and update procedures; and (6) appendices, including (i) equipment inventories; (ii) contractual agreements; (iii) dispersant use plan (iv) in situ burning plan. The comment period for the proposed rule was extended until May 15, 1995.<sup>53</sup>

Another MMS proposed rule would establish guidelines to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the Clean Air Act.<sup>54</sup> Under the Act, requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area.

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48. *Id.* at 2418-2420 (O'Connor, J., concurring).

49. *Id.* at 2421-2422 (Scalia, J., dissenting).

50. *Id.* at 625.

51. 60 Fed. Reg. 3177, Jan. 13, 1995.

52. *Id.* at 3179.

53. 60 Fed. Reg. 13,652 (1995).

54. 60 Fed. Reg. 47,140 (1995).

In a move more administrative than substantive, the Department of the Interior (DOI) and the Department of Transportation (DOT) propose to revise their May 6, 1976 Memorandum of Understanding ("MOU") addressing areas of responsibility with respect to offshore pipelines. Under the proposed changes, to the extent practicable, all flowlines and gathering lines would be under DOI responsibility, while transmission lines would remain under DOT responsibility.<sup>55</sup> "DOI anticipates that existing offshore pipelines that shift from DOT to DOI responsibility will not be immediately subject to MMS design and construction requirements unless: (1) those requirements were a condition of MMS approval for the right-of-way on which the pipelines are located, [sic] or (2) the pipeline undergoes major repair or modification."<sup>56</sup>

### III. OFFSHORE DEVELOPMENTS

In August, 1995, the MMS proposed an amendment to change the bidding systems for newly issued leases under the Outer Continental Shelf Lands Act (OCSLA) that could lower the minimum prescribed royalty rate "from 12 1/2 per centum to a rate greater than zero per centum; allow operating allowances in determining receipts subject to royalty rate; suspend or defer royalty for periods, volumes, or values of production; and extend the functional forms for calculating royalty rates under variable rate systems to include product prices as well as value and amount of production with the ability to apply different functional forms across time periods."<sup>57</sup>

In addition, the Bureau of Land Management (BLM) proposed a rule allowing operators of properties that produce heavy oil (crude oil with a gravity of less than 20 degrees) to obtain a reduction in the royalty rate in order to encourage the operators of Federal heavy oil leases to place marginal or uneconomical shut-in oil wells back in production. The proposed rule would provide an economic incentive to implement enhanced oil recovery projects, and delay the plugging of these wells until the maximum amount of economically recoverable oil can be obtained from the reservoir or field.<sup>58</sup>

MMS released its Draft proposed 5-Year Outer Continental Shelf Oil and Gas leasing Program for 1997-2002<sup>59</sup> in which MMS proposes consideration of up to 16 lease sales in eight offshore planning areas. The program, claimed by Cynthia Quarterman, Director of MMS, to be consensus-based,

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55. 60 Fed. Reg. 27,546 (1995).

56. *Id.* At 27547.

57. 60 Fed. Reg. 43735 (Aug. 23, 1995).

58. 60 Fed. Reg. 16,424 (1995).

59. 60 Fed. Reg. 41,100 (1995).

gained endorsement by President Clinton and Interior Secretary Bruce Babbitt.<sup>60</sup>

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60. *Id.*