IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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| CENTER FOR BIOLOGICAL DIVERSITY, et al.<br>Petitioners,<br>v.<br><br>UNITED STATES DEPARTMENT OF THE INTERIOR,<br>Respondent,<br><br>AMERICAN PETROLEUM INSTITUTE,<br>Intervenor | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Nos. 07-1247<br>07-1433 |

DECLARATION OF CHRIS C. OYNES

My name is Chris Oynes. I have first-hand experience with, and personal knowledge of, the facts and matters discussed in this declaration.

**Qualifications**

1. I am the Minerals Management Service (MMS) Associate Director for Offshore Energy and Minerals Management. I have held this position since February 5, 2007. MMS is the agency in the Department of the Interior ("Interior") that develops and administers the Outer Continental Shelf (OCS) oil and gas leasing program. As Associate Director, I manage the development and implementation of the Five-Year Program for 2007-2012 and supervise the MMS regional offices that administer leases and permits in the Gulf of Mexico (GOM) and Alaska. I am the most senior manager at MMS on matters of OCS leasing, operations, programmatic planning and policy.

2. Prior to my current assignment, I served as the Regional Director of the GOM Region for 13 years, beginning in 1995. In that assignment, I managed oil and gas leasing on OCS lands off five Gulf Coast States, and supervised the regulation of operations and protection of the environment on those leases, which involved more than 4,000 platforms. I managed a staff of 550, comprised of geologists, geophysicists, petroleum engineers, biologists and environmental scientists.

3. Prior to being named Regional Director of the GOM Region, I served for seven years as the Deputy Regional Director for that Region. In all, I have worked on energy matters for the Federal Government for over 30 years, including 11 years in Washington DC with MMS or predecessor agencies.

## Current Status of Leasing and Activity on Leases

4. As of April 17, 2009, MMS had conducted six lease sales under the 2007-2012 Five-Year Program, five in the Central and Western GOM Region Planning Areas (#204, #205, #206, #207, #208) and one in Alaska's Chukchi Sea Planning Area (#193). MMS had issued leases resulting from five of these lease sales. As of April 17, 2009, MMS had not yet issued leases resulting from the March 2009 Sale #208 in the Central GOM Region.

5. As of April 17, 2009, MMS had issued 2,341 leases pursuant to lease sales conducted under the 2007-2012 Five-Year Program; 1,854 in the GOM and 487 in the Chukchi Sea, offshore Alaska.

6. Under the OCS Lands Act, lessees must submit Exploration Plans (EPs) for approval before exploring for oil and gas on their leases. Lessees must then submit Development and Production Plans (DPP) or Development Operations Coordination Document (DOCD) in Central and Western GOM) for approval before beginning oil and gas development and production. As of April 17, 2009, MMS had approved 92 EPs and 20 DOCDs on GOM leases sold pursuant to the 2007-2012 Five-Year Program. Fifteen more EPs and three DOCDs for GOM leases were pending approval. To date, MMS has not approved any EPs or DPPs for leases issued from Sale #193 in the Chukchi Sea.

7. Under MMS regulations, lessees must also obtain additional approvals before drilling on their leases and before building platforms or pipelines. As of April 17, 2009, MMS had issued permits to drill 112 wells on GOM leases issued pursuant to the 2007-2012 Five-Year Program with 10 more permits pending. MMS had approved 54 permits for platforms or other facilities, with 12 more pending. MMS has issued 31 pipeline permits, with 11 more pending.

8. Pursuant to approved EPs, DOCDs and permits, lessees had by April 17, 2009, completed the following activities with the following estimated expenditures. The majority of these activities have taken place (or will take place) in the shallow waters of the GOM on leases issued pursuant to the 2007-2012 Five-Year Program:

    a. 47 wells drilled at a total cost of $554 million;
    b. 10 instances of work in preparation to drill wells totaling $199 million;
    c. 589,623 feet of pipeline constructed for $144 million;
    d. 265,020 feet of pipeline planned for final construction for $136 million;
    e. 18 platforms constructed for a total of $66 million; and
    f. 6 platforms pending construction for $10.4 million total cost.

9. Of the 1,854 active GOM leases issued pursuant to the 2007-2012 Five-Year Program, 1,313 (71%) are in deep water (i.e. greater than 400 meters, or 1312 feet of water). Deep water projects are much more expensive and time consuming than

shallow water projects. Wells in deep water can cost up to $200 million each. Deep water floating production facilities can cost hundreds of millions of dollars. Total project costs could be as much as three billion dollars. Deep water drilling rigs can cost over $500,000 per day and generally are contracted by the company well in advance of drilling and for a defined time period. Paragraph 17, below, describes ongoing activity on two deep water leases.

10. As of April 17, 2009, MMS had not approved any EPs or DPPs on leases in the Chukchi Sea issued pursuant to Sale #193. However, companies have indicated that hundreds of millions of dollars have been spent on preparing for lease acquisition and preparing for filing exploration plans. These activities include planning and coordination, marine seismic, permitting, equipment acquisition, and environmental studies. Delaying such activities could delay exploratory drilling programs by at least one year.

**Current Status of Revenues Received**

11. MMS receives bonus, rental, and, in the event of production, royalty payments, for each OCS lease it issues. A bonus payment is a one-time payment from a lessee; the lessee pays Interior the amount that it bid to secure the relevant lease. Rental payments are annual payments by lessees for leases that are not yet producing in paying quantities. Once a lease is producing in paying quantities the lessee makes production royalty payments. As of April 17, 2009, MMS had received bonus payments of $9.94 billion for leases issued pursuant to the 2007-2012 Program: $7.28 billion from GOM leases and $ 2.66 billion from Chukchi Sea leases. As of April 17, 2009, MMS had also received rental payments of $138.3 million for these leases: $135 million from GOM leases and $ 3.3 million from Chukchi Sea leases.

12. Under Section 8(g) of the OCS Lands Act, 27% of revenues from OCS leasing activities within three nautical miles seaward of the Federal/State boundary are distributed to the appropriate coastal State(s). As a result of leases issued under the 2007-2012 Program, $9,261,771.26 has been distributed to States from 56 Section 8(g) leases. Alabama received $500,795.93 from 5 leases; Louisiana received $6,584,042.69 from 35 leases; and Texas received $2,176,932.64 from 16 leases. There are no Federal leases in the 8(g) zone in the Chukchi Sea Planning Area.

**Potential Oil and Gas Resources and Employment Estimates**

13. The estimated oil and gas resources for GOM leases with approved exploration and/or development plans total over 153 million barrels of oil equivalent (BOE), for a market value of about $7.65 billion at $50 per barrel. Resource estimates for GOM leases with pending plans total almost 71 million BOE, for a market value of $3.5 billion at $50 per barrel. Chukchi Sea resources potentially recoverable from Sale 193 leases are estimated to be approximately 8.36 billion BOE for a market value of $418 billion at $50 per barrel. Four GOM leases sold pursuant to the 2007-2012 Program are already producing oil and gas in marketable quantities, and the lessees

have paid over $6.6 million in production royalties as of April 17, 2009. These four leases alone are estimated to have recoverable reserves of about 28.81 million barrels of oil equivalent (BOE), for a market value of $1.440 billion dollars at today's price of $50 per barrel of oil. Under the OCSLA, leases continue as long as oil or gas is produced in paying quantities.

14. The 2007 GOM Multi-sale EIS estimated that the 2007-2012 GOM sales may contribute to as many as 62,350 jobs (through direct, indirect, induced employment effects) in a single year. The 2007 Chukchi Sea Sale 193 EIS estimated that the sale would create as many as 30,300 jobs during the oil and gas development phase and 15,750 annual jobs during the production phase (through direct, indirect, induced employment effects). MMS based these EIS estimates on actual information from past sales and related economic activities in the GOM. For the Arctic planning area, the estimates were developed by MMS socio-economists using data from other analogous areas of the world.

**The Need for Clarity**

15. As GOM Regional Director and Associate Director of MMS, I have observed that predictability is an important factor for our lessees. Lessees budget their capital annually and multiple projects compete for scarce resources. If lessees cannot be certain that they will be able to use capital resources on a given project, they will reallocate those resources elsewhere. Uncertainty about any given project is therefore likely to delay it by at least one year. If uncertainty continues, the project may not be allocated any capital for the following year and the project may be further delayed or even cancelled. The uncertainty associated with this Court's April 17, 2009, Opinion and Order will affect the orderly development of GOM energy resources.

16. Uncertainty is particularly problematic for the deep water projects that could result from the over 1,300 deep water leases issued pursuant to the 2007-2012 Five-Year Program. Lessees must order the specialized equipment necessary for such projects up to two years in advance and the costs of such equipment are very high. If a project becomes uncertain, that equipment will be reallocated to other projects. For example, as of April 2009, GOM lessees had contracted for 44 deepwater Mobile Offshore Drilling Units on GOM leases. Some of these rigs will be used on leases issued pursuant to the 2007-2012 Five-Year Program. These drill rig contracts have an estimated value of $22.4 billion. If the company has a deep water rig under contract and the proposed project is delayed, the company will either move the rig to another project or release the rig early. The rig may leave the GOM, potentially for overseas destinations, and may not return for several years. The following two examples demonstrate other problems caused by uncertainty on deep water GOM leases:

    a. MMS leased Green Canyon Block 432 (GC432) for a high bid bonus of $105.6 million during Sale #206. Prospects in the area near GC432 range from 100 to 600 million barrels of oil equivalent (MMBOE) and produce 100 to 200 thousand barrels of oil per day and 50 to 100 million cubic

feet of gas per day. The GC432 lessee is currently drilling below 10,000 feet in about 3,400 feet of water and is expected to reach total depth within the next 60 days at a cost of $80-100 million. A discovery in the range of 100 to 600 MMBOE would require an investment of approximately $2-3 billion and would require the lessee to rent a specialized deepwater rig for 4 to 6 years. Delaying development on this lease could mean that the necessary drill rig, which is currently available, would be committed to other prospects, potentially overseas. If the company is not able to obtain a drilling rig in a timely manner the total project may not be economically viable.

b. MMS leased Lloyd Ridge Block 370 (LL370) during Sale #205 for a high bid bonus of $50.5 million. The lessee filed an EP and discovered natural gas in 9,975 feet of water in 2008. This discovery, known as the "Diamond" discovery, is one of several prospects the operator plans to drill, with plans to build a new natural gas hub similar to Independence Hub. Independence Hub is another natural gas hub in the GOM which currently produces about 16 % of the total GOM OCS natural gas production. The Diamond operator has filed six additional exploration plans for prospects that could be included in the new hub along with the Diamond discovery. The approval and continued exploration and development of these leases could lead to new natural gas production of approximately 750 billion cubic feet of gas per day within the next 3 to 4 years. If the company is unable to begin production and begin to get a return on their investment in a timeframe consistent with their original project plan, the overall project may no longer be profitable.

**The Effects of Vacatur for the Federal Government**

17. Based on my experience as a former GOM Regional Director and current Associate Director of MMS, I am aware that the uncertainty demonstrated in the foregoing paragraphs could affect the willingness of potential lessees to invest in OCS resources or limit the size of bids offered for leases to adjust for risk. See Paragraph 22.

18. In addition, the Court's vacatur may have significant financial consequences for the federal government. Termination of leases pursuant to a Five-Year Program challenge is unprecedented. Any financial obligations that the Government incurs due to lease termination must be paid from the Federal Treasury.

## The Effects of Vacatur for Coastal States

19. Reductions in OCS revenues would also impact coastal states. As described above, Interior has already paid over $9.3 million to coastal states under Section 8(g) of the OCSLA and annual payments would continue as long as the leases are in effect.

## The Effects of Vacatur for Domestic Energy Security

20. Currently the OCS contributes approximately 15 percent of domestic natural gas and 27 percent of domestic oil production. As of April 17, 2009, only 4 of the 2,341 leases issued under the 2007-2012 Five-Year Program are in production. Stopping production from these four leases would have a negligible impact on current OCS oil and gas production. However, based upon my experience and the location of these prospects, I expect many more of the 2,341 leases to produce oil and gas in the future, and that future production will represent a substantial part of total OCS production.

21. In addition, reductions in domestic OCS leasing will likely lead to reallocation of capital elsewhere, so delays may have long term effects we cannot anticipate. The U.S. competes with approximately 80 countries that have offshore or ocean oil and gas leasing/licensing regimes and which routinely offer ocean acreage for development.

## Proceedings on Remand

22. The Nation needs an orderly, predictable, and transparent system for offshore energy development. As Associate Director at MMS, I believe that this means that Interior needs to be able to complete remand proceedings as soon as possible. Industry needs a minimum of two years between the scheduling of a sale in the 5-Year Program and the conduct of the sale to acquire seismic data and other information to evaluate the potential of specific lease blocks (MMS offers a lease typically on a 9 square mile block basis). Industry lease sale preparation involves a multi-year planning effort. For the federal government to attract healthy bids from these planning efforts, and to insure that companies not transfer their exploration budgets to other parts of the world it is important for MMS to determine if any schedule changes should result from the additional analysis required by the court and reissue a 2007-2012 5-Year schedule in as short a time frame as practical.

23. The Secretary believes that Interior can revise the 2007-2012 Five-Year Program in accordance with the Court's instructions in a timely manner. Interior proposes to adhere to the following target dates for program completion:

    a. MMS will target completion of a new environmental sensitivity analysis by the summer of 2009. MMS can proceed on this expedited schedule because much of the necessary information already exists in MMS studies and national databases from resource agencies. MMS intends to expand the environmental sensitivity analysis. This analysis will address offshore

resources such as marine mammals, birds and fish. MMS is continuing its review to determine the full extent of the new environmental sensitivity analysis.

b. Once a new environmental sensitivity analysis is completed, MMS will prepare a new Section 18(a)(3) analysis and proposed leasing schedule for Secretarial approval.

c. Upon the Secretary's approval, MMS will transmit the Secretary's leasing schedule and analysis to the Governors of affected states, the President and Congress for review and comment. At the same time the MMS will announce in the Federal Register a 30 day comment period for public comment. Because the environmental sensitivity analysis is one of multiple factors required to be considered by the Secretary and the analysis of the other factors will not change, 30 days provides a reasonable opportunity for public comment.

d. After receipt and review of comments, the Secretary would proceed to a final decision.

e. During the Secretary's review and reconsideration of the program MMS will continue to review and act upon exploration plans for Chukchi Sea leases but will suspend activities under any approved plan pending the Secretary's reconsideration decision on the remanded program, thereby halting all but data gathering ancillary activities on those leases.

24. If Interior were required to follow all of the Section 18 procedural steps under the OCS Lands Act for this revised Program decision, the soonest the Secretary could approve a new Five Year Program is early 2011, as it takes at least 24 months to complete development of a new Five-Year Program. Using the process intended for a new OCS Program to implement the reconsideration would present tremendous delays, cost huge sums, and jeopardize the OCS program and domestic energy security.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 11, 2009

Chris C. Oynes

Chris C. Oynes,
Associate Director for Offshore Energy and Minerals Management