INTERIOR DEPARTMENT: A CULTURE OF MANAGERIAL IRRESPONSIBILITY AND LACK OF ACCOUNTABILITY?

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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INTERIOR DEPARTMENT: A CULTURE OF MANAGERIAL IRRESPONSIBILITY AND LACK OF ACCOUNTABILITY?

WEDNESDAY, SEPTEMBER 13, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m., in room 2154, Rayburn House Office Building, Hon. Darrell E. Issa (chairman of the subcommittee) presiding.

Present: Representatives Issa, Dent and Bilbray.

Staff present: Larry Brady, staff director; Lori Gavaghan, legislative clerk; Tom Alexander, lead counsel; Dave Solan, Ph.D. and Ray Robbins, professional staff members; Joe Thompson, GAO detailee; Alexandra Teitz, minority counsel; Shaun Garrison, minority professional staff member; and Cecelia Morton, minority office manager.

Mr. ISSA. Good afternoon. A quorum being present, this hearing of the Government Reform Subcommittee on Energy and Resources will come to order. This is the fourth investigative hearing by the subcommittee regarding the absence of price thresholds in deep water leases between the Interior Department's Mineral Management Service and various oil and natural gas producing companies during the 1998, 1999 calendar years. The GAO estimates that the lack of price thresholds will or could, if not corrected, cost the U.S. Government nearly $10 billion in lost royalty revenue; $2 billion has already been lost.

This estimate does not include the major new discovery announced in the past week. Part of this discovery is located in fields leased in 1998 and 1999, and these leases do not have price thresholds, meaning they are free of all revenue to the government. This means even more revenue will be lost.

The subcommittee has concluded its investigation. It has found that the Interior Department has breached its fiduciary duty to the American people. The Interior Department holds our natural resources in trust for the American people. It has squandered billions of dollars.

In sworn testimony and formal interviews with subcommittee investigators, Interior Department and MMS personnel have claimed the inclusion of price thresholds was always Department policy, but their omission in 1998 and 1999 was a case of the right hand did not know what the left hand was doing. That's an excuse. This is

very much incorrect. There were certainly officials who participated in the review of the actions of the different offices and divisions and departments, but they failed to ensure that the price thresholds were implemented. When allegedly presented in 1999—and I say allegedly even though this has come to us, and I personally believe it—with prima facie evidence, Interior's own regulations, Interior's own regulations that the price thresholds were in fact missing from the leases and the regulations, MMS officials did nothing to correct it.

This particularly troubles me because Chevron, who testified under oath in detail about notifying MMS, stood to lose possibly hundreds of millions of dollars by telling the truth. I congratulate them on their integrity in coming forward with this information. MMS officials on the other hand do not dispute Chevron's testimony but instead claim to have no recollection of the multiple inquiries into this matter.

Who are we to believe, those who testify under oath to their own detriment or those who have no memory? Unfortunately, I am left to conclude that there is a new bureaucratic principle that has been identified through this investigation and distinctly applies to Interior Department and its managers; it is to define a job so narrowly and limited in scope over time—no matter how senior the position—that the person claims neither responsibility nor accountability for fulfilling their basic duties. The only good thing claimed is a paycheck.

I want to make it clear that individuals do make up institutions, and these individuals must be responsible for their actions. However, the Interior Department and the MMS are not just comprised of limestone buildings with thousands of individuals going about their business. There is also an institutional culture, an organizational intransigence that exists. This is surely the issue that will be taken up in a hearing tomorrow by the full Committee on Government Reform.

Testifying though here today before the subcommittee regarding its office investigation is the Interior Department's Inspector General, Earl E. Devaney. He will describe in much greater detail when and why price thresholds disappeared from leases and what personnel did once it was discovered. While the subcommittee has brought in many individuals to testify in public hearings, which the IG cannot do, the Office of the Inspector General has more access to the Department and was able to review emails and materials that are not provided to the committee despite repeated requests.

Mr. Devaney, I welcome you. This is one of the most important jobs that any Inspector General can do. You are a very respected Inspector General. I commend you for the work. I commend you for coming before this committee. I recognize that, in fact, your investigation is not complete. And I want to make it clear for the record that this is an unusual accommodation for you to come forward with a hearing that, although partially completed, clearly is not prepared for its final ruling. Additionally, I would like to ask unanimous consent the briefing memo prepared by the subcommittee staff be inserted into the record as well as all relevant materials. Without objection, so ordered.

[The information referred to follows:]

COMMITTEE ON GOVERNMENT REFORM
Subcommittee on Energy and Resources
DARRELL ISSA, CHAIRMAN

Oversight Hearing:

Interior Department: A Culture of Managerial Irresponsibility and Lack of Accountability?

September 13, 2006, 2:00pm
Rayburn House Office Building
Room 2154

BRIEFING MEMORANDUM

SUMMARY

This Subcommittee is investigating the absence of price thresholds in deepwater leases between the Interior Department's Minerals Management Service and various oil and natural gas producing companies during 1998 and 1999. The Government Accountability Office estimates that the lack of price thresholds will cost the U.S. Government upwards of $10 billion in lost revenue over the life of the leases. According to GAO, this loss is estimated at nearly $2 billion to date.

Over the past seven months, the Subcommittee staff has reviewed documents surrounding nearly every aspect of the lease creation process. This includes an examination of the regulations, leases, lease sale documentation, decision memoranda, and bureaucratic processes. Moreover, the Subcommittee staff has interviewed multiple witnesses, and Chairman Issa has conducted three oversight hearings at which individuals intimately familiar with the leasing process have supplied critical information.

There is every indication that carelessness and irresponsibility contributed to this unprecedented loss to the American people. Professional negligence, however, is not peculiar to the Minerals Management Service.

In addition to its investigation which mirrors ours, the Interior Department's Office of the Inspector General has investigated numerous alleged infractions involving Department employees. The OIG reluctantly posits that the Department suffers from an institutionalized culture of managerial irresponsibility and a general lack of accountability.

Interior Inspector General Earl E. Devaney will testify about the results of his investigation into the missing price thresholds, as well as the culture that, at times, undermines the integrity of the Interior Department.

This is a matter of paramount concern in light of Chevron's recently announced new discovery in the OCS Gulf of Mexico region that may include leases signed in 1998 and 1999.

BACKGROUND

The Deep Water Royalty Relief Act

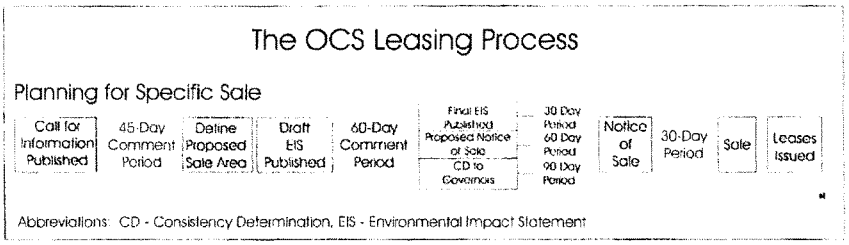
To appreciate the magnitude of this blunder, it is useful to understand the policy behind the Deep Water Royalty Relief Act and what Congress sought to accomplish. In 1995, Congress enacted the Deep Water Royalty Relief Act[1] (the "Act") to provide financial incentives to oil and gas companies to explore and extract oil and natural gas from our deep coastal waters. This came at a time when oil and natural gas prices were low and the interest in deepwater drilling was lacking. The Act – tirelessly lobbied for by Democratic Senator J. Bennett Johnston of Louisiana and enacted by a Republican Congress – provided a mechanism by which the Secretary of the Interior and oil and gas companies were to enter into leases of federal waters. Furthermore, the Act provided the critical royalty relief terms these leases were to include.

Effective November 28, 1995, companies with eligible leases would be allowed to operate royalty-free until either a certain volume of production was achieved, or the market price for oil or gas reached a specified ceiling. Upon the occurrence of either event, companies would begin paying royalties to the U.S. government at an agreed-upon percentage rate. These lease terms, also known as volume suspensions and price thresholds[2], became critical components of thousands of leases entered into between 1995 and 2000. To begin leasing property under the Act, however, it was first necessary for the Department to promulgate a rule delineating the process by which it would award leases and grant royalty relief.

Given the immediacy of the Act's effective period, the Department published an interim rule on March 25, 1996. This interim rule contained, among other things, a bidding system and a royalty relief scheme for eligible leases. Throughout 1996 and 1997, hundreds of leases were entered into pursuant to the guidelines set forth by this interim rule. It was not until January 16, 1998 that the Department issued a final rule. For the remainder of the effective period (1998 through 2000), leases were then entered into pursuant to the final rule.

[1] 43 U.S.C. 1337 (1995)
[2] The implementation of volume suspensions was mandatory, whereas price thresholds were discretionary.

The OCS Leasing Process



The leasing process is quite involved and occurs over a period of approximately one year. After a lengthy planning stage that includes multiple studies and numerous reviews, the Department advertises in the Federal Register a particular area that it intends to lease. This advertisement, otherwise known as a "final notice of sale," includes the terms and conditions of the lease sale. (These terms include, among other things, a description of the land and royalty relief provisions applicable to qualifying leases.) The Department then enters a bidding phase, wherein multiple companies compete for the right to lease and drill on the land described in the notice. Successful bids are awarded leases. These leases include the terms and conditions described in the final notice of sale and are governed by statute and Departmental regulations. This process, which appears remarkably simple on its face, requires a tremendous amount of legal and bureaucratic oversight within the Department.

At nearly every turn, there are decision memoranda passed among multiple levels of management for their review and approval. This is true not only for the leasing process, but also for the drafting and promulgation of the regulations. All told, there are nearly thirty surnames required for every lease sale, including those of every supervising and reviewing attorney in the Solicitor's Office[3]. Incidentally, some of the attorneys and Department officials who reviewed and signed off on the interim and final regulations, the final notices of sale, numerous decision memoranda, and who signed the problematic leases, are employed by the Department to this day and remain intimately involved with the leasing process.

THE PROBLEM

The United States Government faces an enormous problem at the hands of the Interior Department. Neither the regulations promulgated by the Department, nor the leases entered into during 1998 and 1999, contained the critical price threshold provisions contained in leases signed in 1996, 1997, and 2000. (In 1996, 1997, and 2000, price thresholds and volume suspensions were included in addenda to the lease documents because the interim regulation failed to impose price thresholds. In 1998 and 1999, the Department discontinued the practice of detailing royalty provisions in addenda.)

[3] A "surname" is a signature that indicates an approval of the contents of the document on which it appears. See Attachment 2, a spreadsheet furnished by the Interior Department which contains a list of every name and title of those individuals involved in the lease sale review and approval.

Consequently, companies that signed leases eligible for royalty relief in 1998 and 1999 are able to sell oil and gas at fair market value until they produce the amount permissible under the volume suspension scheme. In 1998 and 1999, fair market value of a barrel of oil was well under $20. Today, it is nearly $66. For natural gas, in 1998 and 1999, the price per thousand cubic feet was about $2. Last year it averaged $7.51. This means that in a field greater than 800 meters depth, lessees are producing and selling millions of barrels of oil and trillions of cubic feet of natural gas at today's market price royalty-free until volume suspensions expire. As a result, these companies are not surrendering billions in royalties owed to the American people.

Accordingly, the purpose of this investigation is to determine why price thresholds do not appear in leases entered into during 1998 and 1999, and identify those individuals who either caused the error or who were in the best position to rectify the problem and failed to do so. Moreover, an ancillary objective is to identify and pursue whatever measures are necessary to remedy this error. This is especially important in light of Chevron's recently announced new discovery in the OCS Gulf of Mexico region that may include leases signed in 1998 and 1999.

HISTORY OF THE INVESTIGATION

The Subcommittee became aware of this problem by way of a *New York Times* article published in late January of 2006. The Subcommittee subsequently engaged in an aggressive oversight investigation into the allegations in that article. The investigation includes three oversight hearings at which oil company executives and Interior Department officials have testified, witness interviews, and an intense document review.

RECENT FINDINGS

The Subcommittee staff has identified the Department employees who were responsible for the missing price thresholds. The June 21st hearing unveiled the Interior Department attorney responsible for the promulgation of regulations without price thresholds. The Department, therefore, implemented the Deep Water Royalty Relief Act with rules that failed to impose price thresholds. As a result, over a thousand deepwater leases did not contain price thresholds. The lack of price thresholds in these leases allows companies to sell oil and natural gas at record-high market prices without paying billions in royalties.

But even more explosive than the Interior Department attorney's testimony was that of a Chevron Corporation official. Government Reform Committee Chairman Tom Davis signed five subpoenas to compel the testimony of oil executives after they declined invitations to testify. (Though four of the companies begrudgingly agreed to testify under threat of subpoena, Shell Corporation continually refused and its president, John Hoffmeister, was served.) The purpose of eliciting industry testimony was to determine the extent of its interaction with the Department regarding the faulty leases.

According to a Chevron official's testimony, Chevron employees met with Department officials in 1998 concerning the missing price thresholds in deepwater leases. At

Chairman Issa's request, Chevron detailed in follow-up correspondence how two of its employees had three meetings with Chris Oynes, Director of the Gulf of Mexico Region, to discuss the problematic leases. These discussions occurred over the course of three quarterly meetings between members of the American Association of Professional Landmen's Outer Continental Shelf Committee[4] and Mr. Oynes and his staff during 1998 and 1999.

The general purpose of these quarterly meetings was to discuss various issues related to the Minerals Management Service's administration of offshore oil and gas leasing. According to Chevron officials, two Chevron employees allegedly informed Mr. Oynes and his staff on three separate occasions that price thresholds were imposed neither through the regulations nor in addenda to 1998 and 1999 leases. Mr. Oynes first replied that the price thresholds were contained in the 1998 regulation, but when subsequently informed by the Chevron employees that they were not, he apparently indicated that he would have his staff review the issue. It is now clear that Mr. Oynes and his staff failed to take corrective measures despite allegedly being notified on three separate occasions that the leases did not contain price thresholds.

The Subcommittee examined Mr. Oynes and Deputy Director of MMS Charles Shoennagel at its July 27, 2006 oversight hearing. They purported to have no recollection of the conversations recounted in detail by the Chevron employees. When asked specifically about when they *did* become aware of the missing price thresholds, they professed not to know until 2000. Mr. Oynes maintained that though he was aware that the addenda no longer appeared as part of the leases, he was assured that the price thresholds were contained in the governing regulations. Apparently, neither he nor his staff of 550 employees noticed the error during the entire 1998-1999 period. Mr. Oynes ultimately offered that "wires were crossed" and that "the right hand did not know what the left hand was doing."

The clearest example of unaccountability and professional negligence is the surname process required for official departmental action. At nearly every turn, there are decision memoranda passed among multiple levels of management for their review and approval. This is true not only for the leasing process, but also for the drafting and promulgation of departmental regulations. All told, there are nearly thirty surnames required for every lease sale, including those of every supervising and reviewing attorney in the Solicitor's Office. So many people are involved that nobody is ultimately accountable for the final product. Furthermore, many surnames on these lengthy documents appear on the same day.

INSPECTOR GENERAL EARL E. DEVANEY'S FINDINGS

Inspector General Devaney has conducted numerous investigations over the past seven years. What he has discovered is a culture of unaccountability and managerial

[4] The AAPL OCS Committee, during 1998 and 1999, was comprised of representatives from most of the major oil and gas producing companies that held deepwater leases including Exxon, Mobil, Texaco, Phillips, et al.

irresponsibility that pervades many areas of the Department. Mr. Devaney's testimony at the September 13, 2006 hearing will not only address the findings of the OIG investigation into the missing price thresholds, but also the culture of the Interior Department and its consistent failure to take corrective actions.

CONCLUSION

The American people have been shortchanged by Interior Department personnel. Some of these Department officials, who today remain employed in their same capacities, are responsible for a nearly $10 billion loss of revenue generated from our outer continental shelf.

WITNESSES

- Interior Department Inspector General Earl E. Devaney

Mr. ISSA. And I now yield to the full committee chairman for his opening statement.

[The prepared statement of Hon. Darrell E. Issa follows:]

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON ENERGY AND RESOURCES

OPENING STATEMENT OF
CHAIRMAN DARRELL ISSA

"Interior Department: A Culture of Managerial Irresponsibility and Lack of Accountability?"

WEDNESDAY, SEPTEMBER 13, 2006

Good afternoon. This is the 4th investigative hearing by this Subcommittee regarding the absence of price thresholds in deepwater leases between the Interior Department's Minerals Management Service and various oil and natural gas producing companies during 1998 and 1999.

The GAO estimates that the lack of price thresholds will cost the US Government nearly $10 billion in lost royalty revenue. $2 billion has already been lost. This estimate does not include the major new discovery announced this past week. Part of this discovery is located in fields leased in 1998 and 1999, and these leases do not have price thresholds. This means that more revenue will be lost.

The Subcommittee has concluded its investigation. It has found that the Interior Department has breached its fiduciary duty to the American people. The Interior Department holds our natural resources in trust for the American people. It squandered billions instead.

In sworn testimony and formal interviews with Subcommittee investigators, Interior Department and MMS personnel have claimed the inclusion of price thresholds was always departmental policy, but their omission in 1998 and 1999 was a case of the "right hand did not know what the left hand was doing."

This is incorrect. There were certainly officials who participated in or reviewed the actions of the different offices and divisions of the department, but they failed to ensure that the price threshold policy was implemented.

When allegedly presented in 1999 with prima facie evidence – Interior's own regulations – that the price thresholds were, in fact, missing from the leases and the regulations, MMS officials did nothing to correct it.

This particularly troubles me because Chevron, who testified in detail about their notifying MMS, stood to lose possibly hundreds of millions of dollars by telling the truth. I congratulate them on their integrity in coming forward with this information. MMS officials on the other hand, do not dispute Chevron's testimony, but instead claim to have no recollection of multiple inquiries into the matter.

Unfortunately, I am left to conclude that there is a new bureaucratic principle that has been identified through this investigation and distinctly applies to the Interior Department and its managers.

It is to define a job so narrowly and limited in scope over time – no matter how senior the position – that the person claims neither responsibility nor accountability for fulfilling their basic duties. The only thing claimed is a paycheck.

I want to make it clear that individuals DO make up institutions and these individuals must be responsible for their actions. However, the Interior Department and MMS are not just comprised of limestone buildings with thousands of individuals going about their own business. There is also an institutional culture and organizational intransigence that exists. This is surely an issue that will be taken up in the hearing tomorrow by the full Government Reform Committee.

Testifying today before the Subcommittee regarding his office's investigation is Interior Department Inspector General Earl E. Devaney.

He will describe in much greater detail when and why price thresholds disappeared from leases, and what personnel did once the omission was discovered.

While the Subcommittee has brought in many individuals to testify in public hearings, which the IG cannot do, the Office of the Inspector General has more access to the Department and was able to review emails and materials that were not provided to the Committee despite repeated requests.

Mr. Devaney, I welcome you as one of the most respected Inspector Generals in the capital, and I thank you for the hard work of you and your staff on this critical matter. We look forward to hearing the results of your investigation.

Chairman TOM DAVIS. Thank you very much, Mr. Issa.

Good afternoon. I would like to take this opportunity to commend Chairman Issa and his staff for their thorough look at the issue of natural gas royalties from Federal offshore leases. This is the fourth subcommittee hearing on this issue. Tomorrow we are holding a full subcommittee hearing as a followup to today. You know, they talk about not doing oversight; this is the kind of oversight that is very, very important to American taxpayers and to American energy users. And I've just got to say, I'm a little surprised that they're not even here to help us oversee it.

I am disheartened by the facts uncovered by the subcommittee during its 6-month investigation and by the Department of the Interior's Inspector General's Office. Uncovering waste, fraud and abuse is what this committee does best. When failings within the government are identified we need to remedy them as quickly as possible. Unfortunately, as it pertains to the deep water drilling leases signed under the Deep Water Royalty Relief Act. This was not the case in the Interior Department.

Today we'll hear the findings of the Inspector General's investigation. We'll hear of conflicting accounts from within the Department of Interior why price thresholds were omitted from deep water leases in 1998 and 1999. We'll hear of conflicting accounts as to when the omissions were discovered. We'll also hear of an internal Department decision made in 2000 against disclosing the omissions to the director of the Minerals Management Service. It's unacceptable that the omissions of price thresholds which would cost the country billions of dollars can be concealed for 5 years, hidden for 5 years.

Unfortunately, as the Inspector General has found, the deep water lease issue is not an exception in the Department. The Inspector General's Office has issued countless reports citing cases of ethics failures and a history of ineffective management and policy throughout the Department. These failings permeate employee morale, as the Inspector General's Office found in 2004 that 46 percent of employees within the Department believed discipline was administered fairly only sometimes, if ever.

Tomorrow in a full committee hearing, we'll receive testimony from Lynn Scarlett, the Deputy Secretary of Interior, and Johnny Burton, director of the Minerals Management Service. The hearing will give these witnesses a chance to respond to the Inspector General's report and provide members with an opportunity to delve further into issues that appear to plague the Department of the Interior. Now is the time for Secretary Kempthorne, really the new man on the block, to rectify the longstanding culture of disregarding and dismissing examples of waste, fraud and abuse within the Department.

While we can't change the decisions in 2000 that kept the omissions and the contract hidden for 5 additional years, we can learn from the past and commit ourselves to working to reform the Department of the Interior in remedying these longstanding inadequacies. American taxpayers demand and deserve nothing less.

Let me just add, the Department of Interior is the reason why I am in Congress, if you want know, from Virginia. My grandfather came here from Nebraska as Solicitor of the Department in 1953,

rose to Undersecretary under Doug McKay and was acting Secretary in the mid 1950's before Fred Seaton came in. And when he moved, the rest of the family moved to Virginia, and I stayed here and now represent the area in Congress.

So it's disappointing to me that these problems persist, but I want to commend the Inspector General. He's known as not only fair and thorough but one of the best IGs in government, and we appreciate you being here today.

[The prepared statement of Chairman Tom Davis follows:]

Statement for Chairman Tom Davis
Subcommittee on Energy and Resources
Committee on Government Reform
September 12, 2006

Good morning. I would like to take this opportunity to commend Chairman Issa and his staff on their thorough look at the issue of natural gas royalties from federal offshore leases. This is the fourth Subcommittee hearing on this issue. Tomorrow, I will be holding a full Committee hearing as a follow up to today.

I am disheartened by the facts uncovered by the Subcommittee during its six month investigation and by the Department of the Interior's Inspector General's Office. Uncovering waste, fraud, and abuse is what this Committee does best. When failings within the government are identified, we need to remedy them as quickly as possible. Unfortunately, as it pertains to the deep water drilling leases signed under the Deep Water Royalty Relief Act, this was not the case at the Department of Interior.

Today we will hear the findings of the Inspector General's investigation. We will hear of conflicting accounts from within the Department of Interior as to why price thresholds were omitted from deep water leases in 1998 and 1999. We will hear of conflicting accounts as to when the omission was discovered. We will also hear of an internal Department decision, made in 2000, against disclosing the omissions to the Director of the Minerals Management Service. It is unacceptable that the omission of price thresholds, which could cost the country billions of dollars, could be concealed for five years.

Unfortunately, as the Inspector General has found, the deep water lease issue is not an exception at the Department of the Interior. The Inspector General's Office has issued countless reports citing cases of ethics failures and a history of ineffective management and policies within the Department. These failings permeate employee morale, as the Inspector General's Office found in 2004 that forty-six percent of employees within the Department believed that "discipline was administered fairly only 'sometimes,' if ever."

Tomorrow, at a full Committee hearing, we will receive testimony from Lynn Scarlett, Deputy Secretary of Interior and Johnnie Burton, Director of the Minerals Management Service. The hearing will give these witnesses a chance to respond to the Inspector General's report and provide Members with an opportunity to delve further into the issues that appear to plague the Department of Interior.

Now is the time for Secretary Kempthorne to rectify the long standing culture of disregarding and dismissing examples of waste, fraud, and abuse within the Department of Interior. While we can't change the decisions in 2000 that kept the omissions in the contract hidden for five additional years, we can learn from the past and commit ourselves to working to reform the Department of Interior and remedy these long standing inadequacies. American taxpayers demand and deserve nothing less.

Mr. ISSA. Thank you.

And the gentleman from Pennsylvania, Mr. Dent.

Mr. DENT. Thank you, Mr. Chairman. And I appreciate your leadership on this very important issue and also for allowing me to participate on this crucial hearing on the absence of price thresholds in deep water leases between the Department of the Interior and various oil and natural gas companies between 1998 and 1999. As the fourth oversight hearing in this 7-month long investigation gets underway this afternoon, i believe it is critical that we address the means by which the Department will efficiently and expeditiously remedy the sources of internal inadequacy that contributed to this costly error.

Because of the gross mistake in deep water leases during these years, the U.S. Government Accountability Office estimates a loss of upwards of $10 billion revenue over the life of the leases. In a letter I recently sent to Secretary Kempthorne, I expressed my concern that this costly error ultimately falls to the American people. As Americans continue to realize high prices at the pump, oil and natural gas companies have experienced the luxury to preclude themselves from royalty payments from 1,100 deep water leases. With Chevron's most recent oil discovery in the gulf, it has been reported that at least two of their leases used in this oil field may relieve the company of royalty payments in millions of barrels of oil. I do believe it is imperative that this committee is informed by the proactive measures of the Department that it's pursuing to remedy any internal inefficiencies that have contributed to this blunder. I look forward to the testimony of the very distinguished Inspector General, Mr. Devaney.

Thank you again, Chairman Issa, for holding this hearing, and I look forward to your testimony.

[The prepared statement of Hon. Charles W. Dent follows:]

Thank you, Chairman Issa, for allowing me to participate in this crucial hearing on the absence of price thresholds in deepwater leases between the Department of the Interior and various oil and natural gas companies during 1998 and 1999. As the fourth oversight hearing in this seven month long investigation gets underway this afternoon, I believe it is critical that we address the means by which the Department will sufficiently and expeditiously remedy the sources of internal inadequacy that contributed to this costly error.

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As Americans continue to realize high prices at the pump, oil and natural gas companies have experienced the luxury to preclude themselves from royalty payments for 1,100 deepwater leases. With Chevron's most recent oil discovery in the Gulf of Mexico, it has been reported that at least two of their leases used in this oil field may relieve the company of royalty payments on millions of barrels of oil.

I believe it is imperative that this committee is informed of the pro-active measures the Department is pursuing to remedy any internal insufficiencies that contributed to this blunder.

I look forward to the testimony by Interior Department Inspector General Devaney. Thank you again, Mr. Issa, for holding this hearing today.

Mr. ISSA. Thank you. And I would also ask the committee for unanimous consent for the gentleman from Pennsylvania, who is not actually on the committee, to be able to remain—not on the subcommittee—to remain and ask questions. Without objection, so ordered.

I apologize. I see you so often, I forgot you were not on the committee.

And with that, Mr. Devaney, I would ask that you rise, as is the requirement of the committee, to take the oath.

[Witness sworn.]

Mr. ISSA. Let the record show the answer was in the affirmative.

Once again, we appreciate your being here. We understand that your testimony and our questions will be limited to that which is available, recognizing that your Department has not completed your investigation. However, I've looked over your testimony, and it is more than sufficient to give us the appropriate backup of what this committee had already found, and with that, I look forward to your testimony and take what time you need.

STATEMENT OF EARL E. DEVANEY, INSPECTOR GENERAL, DEPARTMENT OF THE INTERIOR

Mr. DEVANEY. Thank you very much, Mr. Chairman. I appreciate your remarks and other remarks from other members of the committee this morning.

I want to thank you for the opportunity to address the subcommittee this afternoon concerning the status of our investigation into the circumstances surrounding the failure of the Minerals Management Service to include price thresholds in deep water leases entered into during 1998 and 1999. You've also requested that I address, "the institutional culture of managerial irresponsibility and lack of accountability that lies beneath some of the most significant failures at the Interior."

Mr. Chairman, with your permission, I would like to submit my full testimony for the record and make some oral remarks and then answer any questions the committee might have.

Mr. ISSA. Without objection, so ordered.

Mr. DEVANEY. Mr. Chairman, I know you and other members of the subcommittee have a general understanding of how we conduct our investigations. Suffice it to say, we are always as thorough and as accurate as we possibly can be regardless of the fervent emotions, strong opinions and competing interests that usually swirl around high-profile investigations like this one.

As the content of our previous reports demonstrates, we will condemn the Department for wrongdoing, and we will exonerate the Department when allegations prove unfounded. Whether an investigation results in a prosecution and a conviction of a criminal defendant or only disciplinary action against an employee engaged in misconduct, I am most pleased when the results of an investigation also give the Department the insight and incentive to improve the way it conducts itself and help prevent the problem from recurring again.

I'd like to give this subcommittee my assurance that our investigators are working diligently to finalize our report of the investigation concerning the terms of the deep water leases issued in

1998 and 1999. In summary, we have conducted our investigation with two primary questions in mind: How and why were price thresholds omitted from the deep water leases of 1998 and 1999; and what happened once that omission was discovered?

What we know is that MMS told us that they intended to include price thresholds in leases issued pursuant to the Deep Water Royalty Relief Act, like the first leases issued in 1996 and 1997. As MMS was developing new regulations relating to the Deep Water Royalty Relief Act, confusion apparently arose among MMS components as to whether or not the regulations would address price thresholds. In the end, those regulations did not. The person responsible for directing the preparation of the leases said he was told by those in the MMS Economics and Leasing Divisions to take the price threshold language out of the leases. This individual submitted to a polygraph examination and passed.

Those in the Economics and Leasing Divisions deny telling him to take the threshold language out. One of those individuals provided a sworn statement, submitted to a polygraph and passed. Another individual refused to provide a sworn statement. So he was not even asked to take a polygraph. The third individual provided a sworn statement but refused to take a polygraph.

We have learned that the attorney from the Solicitor's office who was involved in both processes had earlier conceded to an MMS official that he should have spotted the omission but did not. The official who signed the leases on behalf of MMS told us that he had relied on that attorney and his own staff for input before signing. He also passed a polygraph.

We also have learned that when the omission was discovered by MMS staff in 2000, it was not conveyed up the chain of command to the MMS Director's Office. In fact, we interviewed three former MMS directors who each told us that they only became aware of the omission when The New York Times article came out earlier this year.

So far, we've interviewed 29 witnesses, including present and former DOI employees. We have also obtained approximately 11,000 MMS emails, and using software developed by our forensic specialists, we searched these emails to extract those emails potentially relevant to this issue. Ultimately, we determined that less than 20 emails were relevant to our investigation. Specifically, we found a brief flurry of email discussion in 2000 about the discovery of the omission of price thresholds, and those emails also document the decision not to advise the Director of MMS. Unfortunately, the MMS official who made this particular decision is deceased. We did not find any email prior to 2000 that touched on this issue.

Mr. Chairman, in the end, unless we come across something entirely unexpected, this appears to be a classic example of bureaucratic bungling, of the stovepiping of various responsibilities involved in a complex undertaking, of reliance on a surname process which only served to dilute responsibility and accountability and of having no one person responsible for the final product.

Although we have found massive finger-pointing and blame enough to go around, we do not have the proverbial smoking gun. However, we do have a very costly mistake which might never have been aired publicly absent The New York Times, the interest of

this committee, the Senate Committee on Energy and Natural Resources and that of several other individual Members of Congress.

This brings me to the second matter of concern to the committee, the culture at the Department of the Interior that sustains managerial irresponsibility and lack of accountability. I'd like to speak about this culture in very general terms, if I may. In fairness, I cannot speak about it in terms of the deep water royalty relief issue yet since the Secretary has not had the benefit of our report on the matter. And in fact, while Secretary Kempthorne has essentially inherited the culture at the Interior, he has already signaled, both in terms of his early messages to Interior employees and is in his personal discussions with me, his intentions to create and sustain a culture of ethics and accountability during his tenure as the Secretary of Interior. Therefore, I am hopeful at this juncture that the culture that I describe in my testimony today will soon become a thing of the past.

Mr. Chairman, I recently marked my seventh anniversary as Inspector General for the Department of the Interior. Over the course of this 7-year tenure, I have observed one instance after another when the good work of my office has been disregarded by the Department. Simply stated, short of a crime, anything goes at the highest levels of the Department of the Interior. Ethics failures on the part of senior Department officials taking the form of appearances of impropriety, favoritism and bias have been routinely dismissed with a promise of not to do it again. Numerous IG reports which have chronicled such things as efforts to hide the true nature of agreements, deviations from statutory, regulatory and policy requirements procurement irregularities, massive program failures with bonuses awarded to the very people whose programs fail and indefensible failures to correct deplorable conditions in Indian country have been met with vehement challenges to the quality of our audits, investigations and evaluations.

I've taken to calling this behavior the dance of the three Ds: That is, first deny it happened; then defend the indefensible; and then, when all else fails, attempt to delay public exposure of the problem. In one particularly contentious investigation of a high level official that we conducted over the course of several years which cost my office well over $1 million, I commented in my transmittal letter to the Secretary that, "The American public is not equipped to conduct the kind of tortured analysis necessary to come to a sound legal conclusion in matters like this. Whether a violation occurred or not may ultimately be irrelevant. Mere appearances, however, will erode the public trust. Once eroded, that trust is difficult if not impossible to win back."

After she received my report, former Secretary Norton met with me at length and indicated that she had accepted this official's admission that he had exercised bad judgment, but given his promise not to do it again, she was unwilling to take any action against him.

I have unfortunately watched a number of high level political and career Interior officials leave the Department under the cloud of one of our investigations into bad judgment and misconduct. Absent criminal charges however, they are sent off in the usual fashion with a party paying tribute to their good service and the Sec-

retary wishing them well to spend more time with their family or to seek new opportunities in the private sector. This charade does not go unnoticed by career public servants. What are these civil servants to think if those at the top are not held accountable? Why should those at lower levels not feel empowered to challenge the call for accountability?

In June 2004, my office issued an evaluation report on the conduct and discipline at the Department which chronicled widespread skepticism regarding the fairness of the department's discipline policies. For instance, over one-third of the respondents believe that discipline for misconduct depended on who committed the offense rather than the offensive itself. A startling 46 percent of respondents stated that discipline was administered fairly only sometimes if ever.

This failure to hold the leadership of the Department accountable sets the stage for the remainder of the work force. If one subscribes to the concept of leading by example, it's no wonder that a culture of managerial irresponsibility and lack of accountability thrives at the Interior.

Mr. Chairman, I don't have a simple solution. I am only hopeful that somehow the Congress, Secretary Kempthorne and I can work together constructively to disassemble this troubling culture at the Interior and replace it with a strong sustainable culture of ethics, responsibility, and accountability. This concludes my formal testimony. Thank you for the opportunity to appear here today. I'll be happy to answer any questions you might have.

[The prepared statement of Mr. Devaney follows:]

TESTIMONY OF THE HONORABLE EARL E. DEVANEY
INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
BEFORE SUBCOMMITTEE ON ENERGY AND RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 13, 2006

Mr. Chairman and members of the Subcommittee, I want to thank you for the opportunity to address the Subcommittee this morning concerning the status of the investigation being conducted by Office of Inspector General (OIG) for the Department of the Interior (DOI) into the circumstances surrounding the failure of Minerals Management Service to include price thresholds in deepwater leases entered into during 1998 and 1999. You have also requested that I address "the institutional culture of managerial irresponsibility and lack of accountability" that lies beneath some of the most significant failures within the Department.

Let me begin with a brief description of the process we undertake when conducting an investigation. OIG investigations spring from numerous sources: requests from Congress; requests from the Secretary or other senior DOI officials and credible allegations by DOI employees, public citizens, or anonymous sources. Regardless of the source, our investigations are conducted prudently, thoroughly and completely. We always proceed at a deliberate pace, but speed never supersedes accuracy. Although often pressured to do so, we will not rush an investigation to meet the specific needs of any source.

The subject matter underlying most of our high-profile investigations is often fraught with fervent emotions, strong opinions and competing interests. The issues pertaining to the deepwater leases are no exception. Armed with the protections afforded by the IG Act, however, we undertake investigations with no preconceived notions and

no preordained outcomes. With the very integrity of the OIG at stake each time we conduct an investigation, we must demonstrate professionalism, independence and objectivity at all times. As the content of our previous reports demonstrates, we will condemn the Department for wrongdoing and we will exonerate the Department when allegations prove unfounded.

We generally conduct our investigations from the lowest level to the highest; from the least culpable to the most. Our investigators travel throughout the country, as necessary, to interview witnesses and secure documentary and physical evidence. When highly technical or specialized issues arise, we may secure the assistance of independent subject-matter experts, or partner with other law enforcement entities that possess a required expertise.

We report the results of our investigations in a variety of formats, choosing the most appropriate format for the purpose at hand. If we are referring a case for criminal prosecution, we do so by way of a formal Report of Investigation, a document which contains all witness interviews, evidentiary documents and investigative activity reports. If we are referring a matter for administrative action by the Department, we may tailor Reports of Investigation to address the conduct of individual employees, when such information can be reasonably segregated. If we are preparing a report for release to the public, it will typically be written in narrative form, but with confidential, personal privacy, and other privileged information redacted.

Whether an investigation results in the prosecution and conviction of a criminal defendant or disciplinary action against an employee engaged in misconduct, I am most pleased when the results of an investigation also give the Department insight and

incentive to improve the way in which it conducts itself, and in doing so, prevents the problem from recurring.

I would like to give this Subcommittee my assurance that OIG investigators are working diligently to finalize our report of investigation concerning the terms of the deepwater leases issued in 1998 and 1999. In summary, we conducted our investigation with two primary questions in mind: How and why were price thresholds omitted from the deepwater leases of 1998 and 1999; and what happened once the omission was discovered. What we know is that MMS told us that they intended to include price thresholds in leases issued pursuant to the Deepwater Royalty Relief Act, as evidenced in the first leases issued in 1996 and 1997. As MMS was developing new regulations relating to the Deepwater Royalty Relief Act, confusion arose among MMS components as to whether or not the regulations would address price thresholds. In the end, the regulations did not.

The person responsible for directing the preparation of the leases said he was told by those in MMS' Economics and Leasing Divisions to take the price threshold language out of the leases. This individual submitted to a polygraph, and passed.

Those in the Economics and Leasing Divisions denied doing so. One of these individuals provided a sworn statement, submitted to a polygraph, and passed. Another individual refused to provide a sworn statement, so was not asked to take a polygraph. The third individual provided a sworn statement, but refused to take a polygraph.

The attorney involved in both processes conceded to an MMS official that he should have spotted the omission, but did not. The official who signed the leases on behalf of MMS told us he relied on counsel and his staff.

When the omission was discovered by MMS staff in 2000, it was not conveyed to the MMS Directorate. We interviewed the former MMS Directors who were in place at the time of the omission and the time of its discovery. Each told us that they only became aware of the omission when the *New York Times* article came out this year.

So far we have interviewed 29 witnesses, including present and former DOI employees. We have obtained approximately 11,000 MMS e-mails through a storage system unique to the Department, necessitated by the Indian Trust litigation, and, using software developed by OIG forensics specialists, we searched this universe to extract e-mails potentially relevant to this issue. We then conducted further investigative analysis, and determined that less than twenty e-mails were specifically on-point.

We found a brief flurry of e-mail discussion in 2000 about the discovery of the omission of price thresholds, and the e-mails document the decision not to advise the Director. Unfortunately, the official who made this particular decision is deceased. We did not find any e-mail prior to 2000 that touched on this issue.

Mr. Chairman, in the end, unless we come across something entirely unexpected, this appears to be an example of bureaucratic bungling, of the stove-piping of various responsibilities involved in a complex undertaking, reliance on a surname-process which dilutes responsibility and accountability by including virtually every official involved, having no one person ultimately responsible for the quality assurance of the final product. Although we have found massive finger-pointing and blame enough to go around, we do not have a "smoking gun;" we do, however, have a very costly mistake which might never have been aired publicly absent the *New York Times*, the interest of this Committee,

the Senate Committee on Energy and Natural Resources and that of several other interested members of Congress.

This brings me to the second matter of concern to the Committee – the culture at the Department of the Interior that sustains managerial irresponsibility and a lack of accountability. I would like to speak about this culture in very general terms, if I may. In fairness, I cannot speak about it in terms of the 1998-1999 deepwater royalty relief issue, since the Secretary has not yet had the benefit of our report on the matter. In fact, while Secretary Kempthorne has essentially inherited the culture at Interior, he has already signaled, both in terms of his early messages to Interior employees and in discussions with me, his intentions to create and sustain a culture of ethics and accountability during his tenure as Secretary of the Interior. Therefore, I am hopeful at this juncture that the culture that I describe in my testimony today will soon become a thing of the past.

I recently marked my seventh anniversary as Inspector General for the Department of the Interior. Over the course of this seven year tenure, I have observed one instance after another when the good work of my office has been dynamically disregarded by the Department. Simply stated, short of a crime, anything goes at the highest levels of the Department of the Interior. Ethics failures on the part of senior Department officials – taking the form of appearances of impropriety, favoritism, and bias – have been routinely dismissed with a promise "not to do it again." Numerous OIG reports, which have chronicled such things as complex efforts to hide the true nature of agreements with outside parties; intricate deviations from statutory, regulatory and policy requirements to reach a predetermined end; palpable procurement irregularities; massive project collapses; bonuses awarded to the very people whose programs fail; and

indefensible failures to correct deplorable conditions in Indian Country, have been met with vehement challenges to the quality of our audits, evaluations and investigations. Typically, the Department has disputed a number of negligible details contained in our reports, losing sight of – or, perhaps intentionally eclipsing – the greater issues, tainting the whole of any given report with trifling details.

In one particularly contentious investigation of a high-level official that we conducted over the course of several years, and which cost my office well over $1 million, we were met with just such an assault from two different fronts – both the Department and the Office of Government Ethics (OGE). At the conclusion of our investigation, we sought the opinion of OGE on myriad issues. We were astonished to learn that, following a lengthy and time-consuming analysis, OGE would only opine when they believed that no ethics violation had occurred; they would not opine that an ethics violation had occurred, deferring to the Secretary and her ethics office for such a determination. In this particular case, we had also sharply criticized the Department's ethics office, which is why we referred the matter to OGE. The Catch-22 we found ourselves in was disheartening.

When I transmitted this particular Report of Investigation to former Secretary Norton, I commented that:

> ....the American public is not equipped to conduct the kind of tortured analysis necessary to come to a sound legal conclusion in matters like this. Whether a violation occurred or not may ultimately be irrelevant. Mere appearances, however, will erode the public trust. Once eroded, that trust is difficult – if not impossible – to win back. This is only one in a series of cases in which we have observed an institutional failure to consider the appearance of a particular course of conduct on the part of Departmental employees and officials. It is my hope, however, that this may be the case that changes the ethical culture in the Department.

Clearly, Mr. Chairman, my hope was not realized. In fact, former Secretary Norton met with me at length and indicated that she accepted this official's admission that he exercised bad judgment, but given his promise not to do so again, she was unwilling to take any action against him.

I have watched a number of high-level Interior officials leave the Department under the cloud of OIG investigations into bad judgment and misconduct. Absent criminal charges, however, they are sent off in usual fashion, with a party paying tribute to their good service; wishing them well, to spend more time with their family or seek new opportunities in the private sector. This charade does not go unnoticed by the career public servants, many of whom have been witnesses in our investigations. What are these civil servants to think? If those at the top are not held accountable, why should those at lower levels not feel empowered to challenge the call for accountability?

In June 2004, my office issued an evaluation report on *Conduct and Discipline* at the Department which chronicled an unfortunate culture of inequity and ineffectiveness. This report included an employee survey which revealed widespread skepticism regarding the fairness of the Department's discipline policies. For instance, over one-third of the respondents believed that discipline for misconduct depended on who committed the offense, rather than the offense itself. A startling forty-six percent of respondents stated that discipline was administered fairly only "sometimes," if ever. During this evaluation, we also conducted a number of "town meetings." At over half of these meetings, employees reported that supervisors were either not disciplined at all or disciplined more leniently. This failure to hold the leadership of the Department accountable sets the stage for the remainder of the workforce. If one subscribes to the

concept of "leading by example," it is no wonder that a "culture of managerial irresponsibility and lack of accountability" thrives at Interior.

This culture also drives much of the work that my office does. Shortly after I arrived at the Office of Inspector General, I created the Program Integrity Unit. Initially, it was a small, dedicated unit to promptly investigate allegations against senior-level officials. Over the years, however, I have reluctantly dedicated more and more resources to this "specialized" entity, which now constitutes the largest investigative unit in the OIG, and which is unparalleled in federal OIG counterparts. This unit operates under extraordinary pressure, both internal and external. The Program Integrity Unit "enjoys" a boundless source of complaints, allegations and requests for investigation. Before one priority case can be completed, two or three or more are in the queue. This is simply not the mark of good government.

Mr. Chairman, I do not have a simple solution. I am hopeful that somehow the Congress, Secretary Kempthorne and I can work together constructively to disassemble this troubling culture at Interior and replace it with a strong, sustainable culture of ethics, responsibility and accountability. I am in the process of collecting my thoughts about this issue, and memorializing them in a white paper, which may serve as a roadmap as we undertake this daunting task.

This concludes my formal testimony. Thank you for the opportunity to appear here before the Subcommittee today. I will be happy to answer any questions you may have.

Mr. ISSA. Thank you. And I am going to recognize the full committee chairman first for his questions. I would only put in place into the record a request that the minority staff attempt to—in light of your very startling testimony, attempt to get as many members of the minority here so they can ask questions. I recognize that this is a unique opportunity, and with a full committee mark-up or hearing tomorrow, I believe this is the opportunity for people to get the facts straight. And with that, I'd recognize Chairman Davis for his questions.

Chairman TOM DAVIS. Thank you.

Thank you very much for your testimony and your ongoing oversight and investigations at the Department. I know, on page three of your testimony, you talk about the person responsible for directing the preparation of the leases said he was told by those in MMS's Economics and Leasing Divisions to take the price threshold language out of the leases; that they then took a polygraph and passed. You then went on to interview three people, two of whom would not take polygraphs.

Mr. DEVANEY. Right.

Chairman TOM DAVIS. Testified under oath. I mean, that's—you can't force them I guess. Any reason why they would refuse to take a polygraph?

Mr. DEVANEY. Well, I think, you know, there are some—there are several philosophical differences of opinion about the validity of polygraphs, and it is not unusual for us to run into somebody who has a philosophical problem with taking one.

Chairman TOM DAVIS. And one refused to even make a statement. Did he just take the fifth—plead the fifth equivalent?

Mr. DEVANEY. I don't know that he actually said those words, but he didn't provide a statement and didn't take a polygraph.

Chairman TOM DAVIS. And he was named by this other person as someone.

Mr. DEVANEY. Yes, the first person, the one who was told to take it out over the period of time that's involved was pretty unsure, but he knew it was one of these three people. But he was unsure of which one it was, so naturally we went to all three.

Chairman TOM DAVIS. And one came out clean, and the other two, you would have to say there's still a cloud.

Mr. DEVANEY. I think there is arguably less of a cloud on the person who was willing to give us a signed sworn statement.

Chairman TOM DAVIS. Absolutely. Absolutely.

Mr. DEVANEY. As you point out, Mr. Chairman, one of those folks didn't say much at all.

Chairman TOM DAVIS. I think the committee will take a further look at those individuals as we move through. I guess the outstanding thing is mistakes get made. They get made up here every day. I make them. The chairman makes them, but a 5-year cover-up of something of this nature is something that no organization should tolerate. And at a minimum, we know who covered this up, don't we?

Mr. DEVANEY. Well, there's——

Chairman TOM DAVIS. Besides from who made the mistake or who directed this or that, wouldn't we know who covered it up and who didn't bring it forth to their superiors?

Mr. DEVANEY. I think I'd say there's a lot of blame to go around here both in the Solicitor's Office and in MMS.

Chairman TOM DAVIS. Where do you put the blame for not reporting this further up to the Secretary so things could be at least—if the director knew, at least they would have an opportunity to perhaps change it, make some, you know, whatever. If they don't know about it, it's going to continue.

Mr. DEVANEY. As I mentioned in my testimony, there was an associate Director of MMS that had actually made the decision not to report it to the director, wanting to keep it sort of in house in her——

Chairman TOM DAVIS. Are they still with the Department?

Mr. DEVANEY. Actually, she's deceased, so that's part of the problem. We didn't have the opportunity to talk to her.

Chairman TOM DAVIS. OK. Was anybody fired over this?

Mr. DEVANEY. No.

Chairman TOM DAVIS. Was anybody suspended over this?

Mr. DEVANEY. No.

Chairman TOM DAVIS. Was anybody reprimanded over this?

Mr. DEVANEY. Not yet.

Chairman TOM DAVIS. I also note your frustration in terms of how this is collected. And I guess when you're through your report, maybe you'll have some recommendations on how you changed the culture, and I think at that point, you noted, at the end, I don't have a simple solution, and you're hopeful that the Congress and Secretary Kempthorne and yourself can work together to constructively disassemble the troubling culture at the Interior and replace it with a strong sustainable culture of ethics sustainability and accountability. You think you may get more specific from that as you approach this report with some finality?

Mr. DEVANEY. Yes. As I've mentioned, I've had several conversations with Secretary Kempthorne. As a matter of fact, I had one about this very subject the 1st day he was in office. So I have told him that I intend to write a white paper that we can work from and try to work together to address this systemic problem across the Department in a way that has never been tried before. So I'm working on that. He's waiting for me to finish with that. And I would hope it would provide a roadmap of how we get out of this mess.

Chairman TOM DAVIS. Yes, I just make it this committee's intention when that's done to have the Secretary up here to look for his roapmap. Remember, as the government oversight committee, we don't have close working relationships with any agency, which allows our ability to come in at any point without having to worry about making friends over long-term relations getting cozy, and so it would be our intention at that point to have the Secretary up. I've known Secretary Kempthorne when he was a Senator. So I'm—on occasion when he was Governor. And now that he's here, he is a very honorable man. I work with him on unfunded mandates, the legislation in 1995, and you know, this is an opportunity for him to turn that around. I hope he will not let this become his problem.

Mr. DEVANEY. I'm very hopeful, Mr. Chairman. He is—as one of the first things he did, he sent a message to all—he sent actually two messages. One was about ethics. I think it was within the first

week of his tenure. And the second message he sent was specifically to all employees that they have to cooperate with the Inspector General's Office. So I appreciated both of those very visible moves on his part early on. I really do think I have a chance of working with somebody who takes this seriously.

Chairman TOM DAVIS. Yes, let me just note, I'm sure you're not the most popular guy as you walk down the corridors of the Interior Department.

Mr. DEVANEY. I am not.

Chairman TOM DAVIS. But I would just say that this committee, the Congress, American taxpayers rely on you to do your job. I think you're doing it well, and it's a serious and tough responsibility. We appreciate it. I've got one last question: Do you resolve or have you resolved so far in your report whether Chevron officials indeed notified MMS officials of the missing price thresholds in 1998 and 1999 in quarterly meetings?

Mr. DEVANEY. I think that question still remains a little unclear. There was a regional MMS official that came before the subcommittee I believe in July and testified that—I believe he testified, I wasn't personally here—but I was told that he remembers the meetings, but he doesn't remember the conversation where Chevron informed him. We actually took him from this hearing room directly back to our office and questioned him and asked him to take a polygraph about what he had said up here about his memory, and he passed that polygraph. So it may be a case that he truly does not remember something that may have been said.

Chairman TOM DAVIS. Thank you very much. Those are my basic questions. I know that Chairman Issa and Representative Dent are going to have other questions in here. As you know, we have a full committee meeting tomorrow. So this is, I think lays a very strong predicate for that. And, again, we appreciate your work to date. We look forward to your completion of this report and continuing to work with you. Thank you.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. Devaney, maybe I'll followup just quickly on the chairman. In the earlier statement that I made, basically what we said was we thank Chevron for coming forward for making us aware of the meeting. And your investigation and our investigation seemed to have one thing in common, which is, even if someone really doesn't remember, what we have are people saying something didn't happen when in fact a for-profit company comes forward, is negotiating to pay royalties that technically they don't owe under the letter of the contract and says, but we brought this up repeatedly. Other oil companies were aware of it, didn't maybe take as much action, but it appears just normal judgment. It appears as though there's no logical reason to disbelieve the oil companies even if we agree that some of the employees no longer remember it.

Mr. DEVANEY. I think that's very fair. I think it's—we certainly hold no opinion on—I think it is fair to say that we will just accept Chevron's testimony at face value, and we've polygraphed the employee, and it's probably equally fair to say he just doesn't remember.

Mr. ISSA. And I appreciate your ability to do that and your use of polygraph and other techniques that are not available to this

committee. I also want to enter into the record just a calculation and a form of a thank you for the work that you've done because ultimately you've uncovered a great deal that we otherwise would not have.

Recently, there's been the discovery of the so-called jack discovery that has two—just two leases that fall under this are included in this fairly vast new discovery, perhaps one of the largest discoveries in North America. This is two out of 1,100 leases that don't have—that fail to have the thresholds in them. We did the calculation of the estimate, the 15 billion barrel estimate divided it of course for the actual two out of eight that were recovered, looked at the absence of thresholds multiplied it by the 175 million barrel otherwise volume threshold; today's dollars, roughly 66. We took a lower dollar than we've been experiencing, comes out to $11.5 billion of gross revenues. The cost as I see it, and I think—you know, this is classic back of the envelope, but the cost to the U.S. Government in lost royalties, $144 million from just two out of 1,100 leases. So if you ever go up after spending $1 million investigating something at the Department of the Interior again and you ever feel bashful or shy or apologetic for spending the money, come to this committee and we'll find you a way to get a lot more money. Your investigation in just two out of 1,100 is paying for the rest of your long career to come. And I don't get to say thank you very much like that, but I really appreciate your work.

Going into just a few quick questions, and then I want to let Mr. Dent have his, and then we can do additional if he'd like. You testified that once the missing price thresholds were discovered, that there was an active decision not to notify the management, understandably despite somebody who is now deceased. This, this cover-up, from your experience from other investigations, because this committee is really looking at the reform part, what do we do going forward? Was this surprising to you? Or would you say this is part of a culture that this was something that nobody thought was a bad idea to cover up and that it could happen today again if we don't change the culture?

Mr. DEVANEY. Well, I've been in this town a long time, and it never ceases to amaze me about how people somehow get involved in a cover-up, and it ends up being worse than the actual offense in the beginning, and there are countless examples of that.

No, it didn't surprise me. I think this is a Department that has eight separate bureaus. It's very bureau-centric. They're very protective of themselves, not particularly interested in the other bureaus. And it presents an enormous challenge to any Secretary to sort of get a handle on all of that. And it's almost impossible to know what's going on in one of those bureaus on a day-to-day basis. So the idea that somebody at an associate director level at MMS would say, "you know what, we're not going—we're not going to report this to the director; we're just going to contain this and see if we can get through this without"—because at the time I think arguably the price of oil was much lower and maybe they didn't have as high an expectation that there would be this kind of—5 years later, there would be this kind of a problem.

Mr. ISSA. Yes. And I am only going to ask one more question and then yield to the other two members, but I want to stay on this

point. If on that date, and this is more not just for the IG but for anybody looking at this, if, on that date when they were covering up or not reporting, they had gone to the industry and said, "we haven't hit these price thresholds, but this is a technical error, we are way below, there's no impact to your companies, but we'd like to make this correction." We would today have a record that they at least tried to tell companies, "it doesn't cost you anything but here's the law, would you please sign this amendment or correction to make it the case," and we might very well not have this to deal with at all because it would have been a mistake that was then renegotiated at no cast to either party. That I'm guessing is not part of the culture today at the Department of the Interior where they'd ever consider going back and doing the right thing because it isn't just the cover-up; it's the fact they didn't do the right thing. They didn't try to do the right thing when they could have gone back to Chevron and said, "you know, you're right in that meeting and here's the addendum we need you to sign covering these leases."

Mr. DEVANEY. I think you're right. I think the opportunity to renegotiate in that environment as opposed to the environment we have today is, there's a huge gulf there. And they should have done it. But it doesn't surprise me they didn't.

Mr. ISSA. Thank you. And I'm now going to yield to Mr. Dent and then Mr. Bilbray in that order for 5 minutes, and then there will be a second round.

Mr. Dent.

Mr. DENT. Thank you, Mr. Devaney, for being here today. Would you describe the extent of the accountability Interior employees involved in the leasing process must adhere to as contracts are finalized through the duration of a year between the Department and oil and gas companies. And how do today's measures of accountability compare to those in 1998 and 1999?

Mr. DEVANEY. I think we still have a process that's dysfunctional. We still have in place a surname process where so many people are signing off on it; no one person takes ownership. Most of the people in the surname process are relying on staff to tell them whether or not to sign a document. Each of them, each of the components of MMS are looking at their own individual pieces and not necessarily at the pieces of the other half or the other third of the equation. And then we have the role of the Solicitor's Office, which, quite frankly, this is another area where I wasn't particularly surprised, where the Solicitor, he or she feels that they're only looking at these documents for legal sufficiency, and the client, MMS or National Park Service actually thinks they're doing a lot more than that. So we have this sort of dysfunctional relationship between the client and the Solicitor as they don't understand what their roles are. And so you have no one person responsible, and the client and the Solicitor not understanding what each other's roles are. It was like that then. It's like that today.

Mr. DENT. Thank you. Thanks for that explanation. What the Interior Department official, as has been discussed here, expressed, the reason for the mistake in these leases is that the right hand simply didn't know what the left hand was doing. Can you describe their visions that have been made in the internal communication and managerial systems to prevent a similar mistake or incident?

Mr. DEVANEY. My honest belief is none.

Mr. DENT. Wow. None.

Mr. DEVANEY. I'm sorry to be—I'm sorry to be facetious.

Mr. DENT. I understand. That's disconcerting to say the least. With respect to Chevron's recent discovery in the gulf, is there a possibility that they're going to be dismissed from any royalty payments? And if so, how much revenue will the government lose in such payments?

Mr. DEVANEY. Congressman, I really—we really did not look at—it's so recent the discovery and such a revelation, we really didn't look at it with respect to this investigation. So the only thing I know is what I've heard thirdhand. I think the people that are appearing before the committee, the full committee, tomorrow would have a better handle on what that might mean.

I will tell you that I think certainly there are pieces of this new find that appear to be without the price thresholds on them, and whatever the production ends up being probably will determine how much money is actually lost, and we're not at the point where that can be assessed at the moment, but there's going to be an impact.

Mr. DENT. Thank you and I'll yield back to the chairman.

Mr. ISSA. Thank you, and the record will show my $144 million estimate, but you're welcome to put your own into the lottery on this.

With that, I recognize our newest member but not a new member to the energy business, Mr. Bilbray.

Mr. BILBRAY. Yes. Thank you, Mr. Chairman. Mr. Devaney, my question really is sort of reflective of where the public's perception is right now, is really skeptical on all of us here, and this one is just an open sore that's just asking—can I sincerely tell my constituency that this was not a—there was not criminal intent or any criminal involvement or activities as you know it besides people being felony dumb?

Mr. DEVANEY. I have I think a well deserved reputation of trying to answer that question first, and I am always—because my background is criminal enforcement for 30-odd years. I am satisfied right now that there isn't anything that would allow us to take this case to a U.S. attorney.

Mr. BILBRAY. So you're telling me that you just cannot or have not found anything that indicates personal benefit or any ties with the beneficiaries between the decisionmakers and the administration and those who were able to have a huge windfall based on this.

Mr. DEVANEY. While our investigation is not done, absent a very unexpected event, I think I can make that assurance to you.

Mr. BILBRAY. I also have 20 years in local government on the administration side of this thing, and all I can imagine, if I was—while I was mayor or chairman of the county, if this had come up, they would have just hung and dried me out long before the election would have ever come around. I think this is one where, Mr. Chairman, I would hope that we not only find who's to blame and how the system broke down but what possible way we could have a restructuring to avoid those problems in the future.

I yield back at this time. We're going to do another round.

Mr. ISSA. Thank you. Boy, you know, it is so—it is such a pleasure to have somebody who has been working sort of different sides of the same coin, but seeing that there's a lot of tarnish on it, let me—let me try to get a bright side to this if I can. Are there any heroes in this process? Is there anybody that stood out, that stood up and said, boy, this sucked, and I need to tell you about it? Were there people who came forward that were not part of that culture of the Ds, the denials, and the delay and so on?

Mr. DEVANEY. Yes. As a matter of fact, there is a hero here, at least I view him so far as a hero. And there was an economist by the name of Sam Fraser that was working on these leases in February 2000. Actually, on February 17, he discovered this problem, and to his credit, he immediately spread the news throughout the MMS at his level, and there was—there were some new leases that had sales that were going to take place in the near term, and addendums were sent out immediately based on his discovery. I'm not sure that decision was made at any higher level than in that particular region, but I would consider that—the action of those sort of lower-level folks at MMS when they—when they discovered it, they took immediate action.

Mr. ISSA. Thank you. I'd like to go to one area that I am particularly concerned about. To what extent was the Solicitor's Office involved in the absence of price thresholds in the governing regulations?

Mr. DEVANEY. Well, the same Solicitor attorney was involved in both the drafting of the regulations and the review, the final notice of sale, in 1996, 1997.

Mr. ISSA. And that's Mr. Milo Mason?

Mr. DEVANEY. It is.

Mr. ISSA. We've had him before the committee.

Mr. DEVANEY. Yes, he also acknowledged to us that he knew of MMS's policy decision to include price thresholds. An MMS official told us independently that he had earlier admitted to him that he should have caught the omission in the final notice of sale because Mr. Mason told us that his surname on the final notice of sale was to ensure its legal sufficiency and ability to withstand a lawsuit, not to ensure that MMS policy decisions were adequately covered, and this goes to my earlier statement about a failure of the client and the attorney to understand what each—each role is.

Mr. ISSA. Well, I am not that old, but I am getting older all the time. And one of the life experiences I had in my dealings in Asia was that people sometimes said, well, you know, you can't count on the Asians; they tell you things are going to happen, and they don't happen. This was true in Taiwan, in China and even in Korea. I said, "Why?" They said they always said, "Yes," and it doesn't happen. I learned fairly quickly that, yes, they say "Yes" because they are saying, "Yes, I hear you, and I understand you." And if you make a fair followup question, they are incredibly truthful, honest. Don't ask me, "Will you deliver on this date?" Ask them one more, "Will you deliver on that date, and is that date good?" And next thing you know they're telling you about the problems and the likelihood of not meeting a deadline. Is this really the way that the Solicitor's Office works, that, from what you can see, Mr. Mason, basically says, my job is to say, "This contract is in front of me, there-

fore, I put my signature on it;" not that "This contract is effective and proper and all those who sign it, all those signatures that follow should rest confident that it's correct?" Is it really that kind of a culture?

Mr. DEVANEY. Yes. And we have heard this time and time again. Every time we get into something that has gone wrong at Interior where the Solicitor's Office has been involved, when we inevitably end up talking to the Solicitor involved, that is always what they say. So it, once again, it wasn't a surprise. Oftentimes, Solicitor to legal opinions at Interior turns out to be a checkbox along with a signature or set of initials. The focus is always on legal sufficiency, withstand a lawsuit, not necessarily what's best for the American public.

I must say that I've had some fairly encouraging discussions with the new acting Solicitor about who the client is. I take the view that among the clients is the American people, and quite frankly, I think there has been a culture at the Interior that has suggested to the folks working at the Solicitor's Office that the client is the particular bureau that they're working with and whatever the client wants done, their job is to find a way to do it, regardless of whether or not that is in the keeping with the spirit of the law or regulations or policies that the Department has. And I also take the view that the more transparency of the process, the better. And we've had occasions where the Solicitor's Office has crafted documents which would literally take Houdini to figure out what was going on. So, yes, we've heard this before. Mr. Mason's comments are not an aberration. He's part of a culture. Once again, I am encouraged by the conversations I've had with the new acting Solicitor and hopefully that will turn out to be a productive exchange.

Mr. ISSA. This is probably a tough question that takes both your experience and your interviews with the Solicitor; do you believe the absence of price thresholds could have been or were the direct result of legal advice rendered by attorneys in the Solicitor's Office? And I ask this question because we were told by the Solicitor that everything was done orally. You today have pretty well told us that there's not much of an email trail, that in fact they wandered back and forth down the hallways to make decisions and never codified them with any kind of a memo.

Mr. DEVANEY. That is a—once again, not an unexpected find on our part. When we hear about a legal opinion, the first question we've learned to ask now is, "Show it to us" because we've learned in the past through past investigations that legal opinion is often an oral opinion. In this particular case, I don't think there is any written record of having rendered any sort of an opinion in this matter. And that's a problem. That's a real problem.

Mr. ISSA. I'll ask two more questions, and I'll yield back to the gentleman from California.

Did you find an attorney within the Solicitor's Office that would take some level of ownership of these oral opinions, or was it pretty much it all went back to Milo Mason?

Mr. DEVANEY. Well, Milo Mason had supervisors. My understanding is, their testimony and their conversations with our investigators is, while we only—we assumed that he had done his review, and we just signed off on them. So it's just one of those deals

where it kind of flows down the hill, and Milo is sitting at the end of that chain, but he didn't—I really—I really am troubled by his role in this matter.

Mr. ISSA. Followup on the same thing, and I'm going to finish on Mr. Mason and then yield. When he was before this committee, he said something which I found somewhere between interesting and disturbing. And in light of what you said about the culture and the question of, who do I work for, am I in fact a fiduciary to the American people or to some particular boss, he made a statement in that—in how these things, the thresholds, got omitted that this was policy, and at the time, he was sort of saying, "Well, it's policy that it was going to be here, not here, and it was policy here, not here, because it wasn't really for sure because if it was for sure, it absolutely would have been here and nobody would have cared if it was in both places." Do you think that policy would trace back to this idea that maybe some people just weren't that keen on the thresholds or there was a less important—and his client, as he viewed it, may not have been that interested in it being in there?

Mr. DEVANEY. I think actually the client assumes that more is happening when the Solicitor looks at it than actually is. It has been an argument within the Solicitor's Office and I've had that argument with previous Solicitors about—and previous Solicitors have told me our position is, we don't make policy. And I concede to them that they shouldn't be making policy. However, I think there is a certain amount, as you suggested earlier, of due diligence that any attorney needs to have to ask that next question and not simply to accept at face value that, here it is, just please sign off on it. As sort of a road exercise, I would like to see a process where certainly Solicitors are not setting or making policy for the Department of Interior but that they understand that the policy of the Department of Interior or MMS was to have price thresholds in there, and if they're not in there, call it to somebody's attention.

Mr. ISSA. Now I come from 20-plus years in the private sector, so I've employed a lot of attorneys. I've never had occasion to sue my own attorney, but I have known people who have had occasion to sue their attorney for malpractice. If, in fact, I ever relied on an attorney to prepare a legally binding document, such as a lease, and it was simply insufficient, it would not be anything other than a normal malpractice case where you'd go to your attorney and say: "My losses are the result of your malpractice; therefore, they are your losses." Realizing these government attorneys are not covered by malpractice insurance, but would you characterize this failure in a government equivalent as malpractice?

Mr. DEVANEY. Well, I don't do that ever, but what I do do is, oftentimes, in the wake of one of our investigations, the bar, the association which holds that in which the person we're talking about has a license, comes to us and we often cooperate fully with their inquiries, and in this particular case, it's the D.C. bar, and we've worked with them a lot in the past, but I don't—I don't actually ever say that malpractice has occurred. I use other words.

Mr. ISSA. So this is a decision for the D.C. bar, but this is not inconsistent with past investigations that might have led to a reprimand or other actions against an attorney.

Mr. DEVANEY. Exactly.

Mr. ISSA. Thank you, and I'd again recognize the gentleman from California, Mr. Bilbray, for his second round.

Mr. BILBRAY. Thank you, Mr. Chairman.

Just very quickly, I think we all agree that of all the government agencies that are frontloaded to maintain the public trust and rely on the trust, holding the public's resources in trust, the Interior should be the experts in it. Wouldn't you agree? I don't think any other department there has been historically so much oversight. And even if it's—I mean everything from our public lands to Native American resources and everything else, the concept of being the trust holders is not new to this Department.

Mr. DEVANEY. No. You're exactly right, Congressman. Literally, with the exception of money, everything, anything anybody else would ever want is at Interior. Oil, gas and coal, water in the west, grazing rights, Indian gaming, huge contract in grant programs and very lucrative inceptions at our national parks and fish and wildlife refuge. So, literally, this Department has had for 150-odd years the fiduciary responsibility that's attendant to all those things, and they should be able to do this right.

Mr. BILBRAY. And so you know the fact is because the people in the United States have put so much trust in this Department, that it would administer the trust in an appropriate way. This kind of report is very, very disconcerting. I just ask, when we get into it, would you recommend, with this kind of policy of this type of attitude, would you recommend that your grandchildren's trust be managed by these people?

Mr. DEVANEY. Personally, no. Absolutely not.

Mr. BILBRAY. You don't make—you don't decide; you don't cite malpractice, but let me just say, with this policy and the way it was managed, you not only would not want your grandchildren to have their trust managed by these guys, I would ask, you don't disbar and you don't do malpractice, but do you see enough justification here that this is something that you would think in fairness should be referred to the D.C. bar for review?

Mr. DEVANEY. You know, they are not bashful at coming to us. They pay an awful lot of attention to my reports, and it is their practice, I believe, to check my Web site on a regular basis, and they're in—they're in regular contact with us. It would not surprise me if we issue a report which has—which criticizes the role of any Solicitor in this matter, that they come to us, and we will cooperate with them.

Mr. BILBRAY. Mr. Chairman, in closing, I would just like to say I appreciate the testimony. I just think we have to understand what's at stake here. It is not the money. It is the total destruction of the trust by of the American people. If this is happening here, how do we know it's not happening everywhere else in every other—because this is the department that the American people have put their heritage in so many ways on the line and trusted these people to administer it. And with this, this breach that we saw in 1998, 1999, it just really plays into those people—the hands of the people who always say that there is no credibility in the ability of the Federal Government to manage the public assets. And I'll tell you, as a mayor, there would have been—there would be people hanging from trees in cities and counties if you had this happen

in the local government. And I will use that term and some people may be appalled by it, but frankly, some of us may think that attorneys would look good hanging from the trees when they've committed this kind of violation of a trust. So with that more-than-subtle approach, I will yield back my time.

Mr. ISSA. Thank you. You've been very generous with your time. I'm just going to ask, very quick, one more question and comment and then close. Thank you.

First of all, with one exception; will you agree to come back after your report is finalized.

Mr. DEVANEY. Sure.

Mr. ISSA. I look forward to that.

I've got to ask, your office has reviewed the testimony and you, I believe, personally reviewed the testimony of the Department employees that have previously spoken before under oath before this committee; is that true?

Mr. DEVANEY. Yes.

Mr. ISSA. Do you find—and you don't have to name names in the first round—but do you find any of the testimony to be in doubt or untruthful that was given before this subcommittee?

Mr. DEVANEY. No. But basically, I mean, I wasn't there personally, but we've had people literally in all of your hearings—we will have somebody at tomorrow's hearing—and we look for that and we haven't found that yet.

Mr. ISSA. And if you find it in the future, I trust that we would know about it sooner.

Mr. DEVANEY. You will.

Mr. ISSA. I appreciate that. Now, again, this is sounding a little folksy, but I was a young Army lieutenant one time, and another young Army lieutenant in the mid-1970's went out on a unit maneuver, and one of those soldiers lost a weapon, left it in the wrong place, and it didn't get reported for several hours. And when it was reported, they went back to the field and searched and searched and didn't find it. It was found a couple of days later. That lieutenant was relieved for that. The lieutenant didn't lose his weapon, the sergeant didn't lose his weapon, a young enlisted man lost his weapon and then it was found. That's the level of accountability that I was brought up with as a lowly second lieutenant in the U.S. Army.

What disciplinary action would you recommend for a mistake like this one, including the delay and the cover-up that costs the American people billions of dollars?

Mr. DEVANEY. Well, I would be unlikely not to recommend disciplinary action when the loss to the American taxpayer is so high. But that decision is usually made after the report is complete, and I would normally include that in my transmittal letter to the Secretary. But this is an egregious loss of revenue to the American taxpayer, and in situations like this in the past I have made strong recommendations for disciplinary action, where appropriate.

Mr. ISSA. Thank you. And I want to, once again, thank you for being here and for your testimony. Clearly the Department's culture must be changed, and the organizational structure is something that the full committee should address in the hearing tomorrow.

The failure to carry out our departmental policy and include price thresholds in all leases need never have happened. Leadership in the Department must step up and fix this problem. The American people now know that there are more than 10 billion good reasons why we must have these changes.

Mr. Devaney, we'll hold the record open for any additional items you choose to put in the record for 2 weeks, which will give you the benefit of seeing what happens tomorrow and still putting it in today's record. It's one of the miracles of Congress.

I once again thank you for your good work, and I look forward to working with you later and in the next Congress to reform the Department of Interior. And with that, the hearing is adjourned.

[Whereupon, at 3:33 p.m., the subcommittee was adjourned.]

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