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BY E-MAIL

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RE: RIN 1010-AD05, Federal Gas Valuation, 69 Fed. Reg. 43944

Dear Ms. Gebhardt:

The following comments to the Minerals Management Service's (MMS's) proposed amendments to the federal gas valuation rules are submitted on behalf of California State Controller Steve Westly (State Controller). The State Controller opposes MMS's rulemaking. The State Controller incorporates by reference his comments to MMS's recently finalized amendments to the oil valuation rules, which are publicly available on the MMS website.

1. Rate of Return

Amendments to long-standing rules by a federal agency must be accompanied by reasoned explanations. *Motor Vehicle Manufacturers Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29 (1983). This is a burden of justification greater than normally imposed upon an agency that is first dealing with an issue – a federal agency cannot pretend that it is regulating on a clean slate. An agency acts capriciously under the Administrative Procedure Act when it "reverse[s] its position in the face of a precedent it has not persuasively distinguished." *Louisiana Public Service Comm'n v. FERC*, 184 F.3d 892 (D.C. Cir. 1999). Agencies must provide a "reasoned analysis indicating that their prior policies and standards are being deliberately changed, not casually ignored." *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970).

For over a quarter of a century, the oil and gas industry has urged the Interior Department to adopt a weighted average cost of capital (WACC) for the rate of return to determine transportation allowances. For an equally long period of time, the USGS, the IBLA and MMS rejected that approach. *See e.g.*, 2000 Oil Rule, 65 Fed. Reg. 14022, 14051 ("MMS's research indicates that most recent pipelines are financed through debt ...."); 1988 Gas Rule, 53 Fed. Reg. 1230, 1263 ("The MMS is not persuaded that a rate of return should include a profitability factor as part of a transportation allowance"). *Cf. Exxon USA,* 119 IBLA 48 (1991); *Shell Oil Co.*, 52 IBLA 15 (1981). Instead, Interior's long-standing policy has focused on the reality that pipeline construction is a low risk proposition financed by debt.

MMS proposes in this latest rulemaking to adopt a WACC as the rate of return for the calculation of gas transportation allowances. This approach allows for the recognition of a return on equity. As recently as February 2000, one of MMS's chief economic experts concluded:

> A compelling case for incorporating the return to equity in computing transportation allowance has not been made.

Pertinently, this conclusion was made and was followed by MMS in the context of industry's renewed argument for adoption of the WACC during the rulemaking leading up to the 2000 oil rules. Indeed, when the MMS economist was asked again, in 2003, to review the WACC, his ultimate conclusion remained the same. As he was asked, the economist reviewed the industry's latest analysis on the WACC, which he found – as he had in 2000 – was inflated. Based upon data regularly compiled by the Department of Energy (DOE), he found that the BBB rate – first adopted in MMS's 1988 rules – continued to reflect a reasonable return on a pipeline's investment. "Also, most pipelines have a BBB rating for their debt capital."

Based upon extrapolation from data from Ibbottson, however, the economist stated that ***if*** the WACC was used, the appropriate rate of return would be 1.3 times the BBB, not the 1.6 to 1.8 proffered in the industry study. This analysis was based upon data regarding 12 companies, 11 of which were deemed non-comparable because the information combined pipelines and local distribution companies. Thus, the MMS study is based upon estimated data regarding a single gas transmission line.

More importantly, the most recent MMS study did not contain any analysis that remotely supported or even suggested any economic or other factors that support a change to the WACC – at any amount -- for calculation of transportation allowances. There is, for example, no suggestion by the MMS economist that pipeline construction has become a riskier proposition since MMS's last rejection of the WACC in 2000.

MMS in its proposed new gas rule makes no attempt to provide any reasoned explanation supporting a change to the WACC. Instead, it simply adopts it. Then, MMS concludes – based on the Ibbottson data – that the most appropriate WACC is 1.3 times the BBB. Ignoring the more substantial DOE evidence supporting retention of the

BBB, MMS proposes a rate of return based upon extrapolated data regarding a single transmission line.

Apparently, MMS believed that it had no need to provide a reasoned analysis for a departure from a long held rule on the rate of return because of the recent amendments on transportation allowances for oil pipelines. This is bootstrapping at its worst. No reasoned analysis accompanied MMS's change to the WACC in its recent amendment to the oil rules either.

In fact, the only justification provided by MMS in the oil amendments was based upon an affirmative misstatement of its prior rule and policy. Thus, in the oil amendment, MMS states that "The choice of Standard & Poor's BBB rate in 1988 was made, at least in part, in recognition of some equity component because the majority of companies with non-arm's length transportation arrangements have debt costs lower that the Standard & Poor's BBB bond rate." 69 Fed. Reg. at 24964. MMS does not cite to any support for this statement in the preamble to the 1988 rules. The reason it provides no support is simple: there is none. There is no support for MMS's gloss on the 1988 rules, which is confirmed by MMS's subsequent re-rejection of industry's proposal to adopt the WACC during the rulemaking leading up to the 2000 oil valuation rule.

Indeed, the analyses that MMS uses to "support" its proposal to adopt a rate of return of 1.3 times the BBB itself exposes the falsity of MMS's attempted justification of the WACC. The MMS economist, as noted, found that there was no "compelling case" for incorporating a return on equity in the calculation of transportation allowances – this conclusion was made in response to industry's proposal to ***change*** the transportation allowance rule to include return to equity component in the calculation of the rate of return.

As MMS well knows, *post hoc* rationalizations are not, as a matter of law, reasoned analyses. *Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988); *SEC v. Chenery Corp.*, 318 U.S. 80 (1943); *Acadian Gas Pipeline System v. FERC*, 878 F.2d 865 (5th Cir. 1989). Indeed, MMS's very need to recreate history to support its amendments suggests a disturbing degree of bad faith on MMS's part in its proposal to change the rate of return. The fact that MMS's proposals will also assist its institutional interest in demonstrating the revenue neutrality of its royalty in kind (RIK) endeavors is also noteworthy in this regard. *Cf. Ward v. Village of Monroeville*, 409 U.S. 57 (1972); *Tumey v. Ohio*, 273 U.S. 510 (1927); *U.S. v. Allied Signal Corp.*, 736 F. Supp. 1553 (N.D. Ca. 1990).[1]

MMS recently announced it intention to expand its RIK program and predicted that RIK will increase royalty collections by $50 million over a five-year period. On an

[1] At least one of the authors of the MMS proposed gas rules is on the staff of its RIK program. In the recent oil rule amendments, which are relied upon by MMS in this current proposal, MMS justified its proposals in large part based upon its RIK experience. However, it refused to provide either commenters or Congress any of the information it relied upon from its RIK program, claiming confidentiality. *Cf. Allied-Signal Corp., supra.*

annual basis, this is less than MMS's audit collections – at least during the time period when MMS was regularly conducting and adequately funding audits. The RIK program, while largely supported by industry, is not without its critics. Congress has demanded that the RIK program be revenue neutral in comparison with collection of royalties in cash from federal lessees. There has been much debate over the benchmarks that MMS is employing to evaluate the revenue success of its RIK program. Transportation allowances are part of any analysis of revenue neutrality.

Historically, Interior determined the transportation allowance for use in its RIK program through an actual cost formula, which included a limitation on the rate of return. *E.g., Conoco, Inc.*, 109 IBLA 89 (1989). In its recent incantation, however, MMS is paying for transportation by accepting a reduction in the volumes of royalty production. In so doing, MMS is paying the FERC rate or negotiating a discount from that rate. Obviously, by reducing royalties paid by the lessee in money – royalty in value (RIV) receipts -- through increasing transportation deductions, MMS increases the likelihood that its RIK program will be revenue neutral. Under its own estimate – the factual basis for which is unclear -- the loss in RIV receipts from its proposal to adopt the WACC for both oil and gas exceeds $5 million annually. The 2000 analysis of its chief economist, referred to above, estimates a much larger loss of approximately $4.3 million per 1/10 increase in the BBB annually or $12.9 million at a rate of return of 1.3 times the BBB.

For the foregoing reasons, the State Controller opposes the MMS proposal to increase the rate of return.

2. FERC Tariffs

In contrast to its willingness to simply carry forward its most recent amendment to the oil rule with regard to the rate of return to its proposal for a new gas rule, MMS simply ignores that it rejected all use of FERC tariffs for calculation of transportation allowances in its 2000 amendments to the oil valuation rules. MMS's decision in this regard was the direct result of a finding that tariffs overstate actual costs. 2000 Oil Rule, 65 Fed. Reg. at 14045. *See also* 1988 Gas Rule, 53 Fed. Reg. at 1261 ("best interest of the Government, States and Indians [is] to base gas transportation allowances on actual, reasonable costs plus a return on investment").

Moreover, MMS's 2000 finding was made after years of public comment opportunity and independent agency investigation and was made despite the substantial congressional and industry pressure on the agency to adopt FERC tariffs. In contrast, this rulemaking, as the State Controller discussed in his comments to the most recent oil rule amendments, was largely the product of secret settlement negotiations with API and IPAA and claims by MMS of "experience" from its RIK projects, which it refuses to disclose for public or congressional review.

Rather than deleting 30 CFR 206.157(b)(5), MMS proposes to modify it. Under the proposal, non-arm's length shipper/lessees could still apply for the use of a FERC tariff and MMS commits to granting such an exemption if: (1) the tariff and/or exemption claimed by the lessee approximates the transportation charges incurred by arm's length shippers, and (2) FERC or the state regulatory authority has conducted an actual analysis of the rate. MMS proposes to delete the requirement that the tariff or exemption claimed by the lessee approximate actual costs, asserting that this would be burdensome on the lessee.

With regard to MMS's claim of "burden", the agency again ignores its own finding in the 2000 oil rules that the actual cost calculation is not particularly burdensome for a non-arm's length shipper/lessee:

> While companies in the past may have been using FERC tariffs in lieu of this [the actual cost] formula, we believe this cost information is readily available to the companies even in situations where an affiliate is involved. Additionally, we believe this calculation is relatively straightforward. While more lessees will have to calculate actual costs under this rule because it disallows FERC tariffs, the burden of calculating actual costs in each case has not changed substantially.

65 Fed. Reg. at 14977. Unless MMS has some factual, albeit unstated, reason to believe that the actual cost calculation is more burdensome for gas pipelines, its assertion of burden cannot withstand reasoned analysis. *Cf. Ramaprakash v. FAA*, 346 F.3d 1121 (D.C. Cir. 2003)("An agency's failure to come to grips with conflicting precedent constitutes 'an inexplicable departure from the essential requirement of reasoned decision making'"). Instead, its assertion is nothing more than an argument that an exemption from actual costs is not "worth" much to non-arm's length shippers unless it provides them with an avenue to claim a deduction greater than actual costs. If MMS intends its exemption to be such a gift to non-arm's length shipper/lessees, it should simply state as much.

MMS's proposal to base the exemption on the average of transportation rates charged to arm's length shippers is also faulty. IBLA rejected such a methodology years ago in recognition that the economic conditions facing an arm's length shipper are simply not comparable to the conditions facing the non-arm's length shipper. *Shell Oil Co.*, 52 IBLA 15 (1981). This industry proposal was also rejected in the 1988 regulations because it would overstate a non-arm's length shipper's actual cost of transportation. "It is MMS's past and present practice generally to allow only those costs which are directly related to the transportation of lease production. Costs incurred under 'comparable arm's-length contracts' ... may include costs such as Federal and State income taxes, or socioeconomic costs incurred by the lessee ..." 1988 Gas Rule, 53 Fed. Reg. at 1261.

As IBLA correctly noted in *Shell*, the arm's length shipper evaluates tariffs in terms of the costs associated with alternative modes of transportation. Concomitantly, its negotiating position is constrained by the costs of the alternatives. These constraints do not face the non-arm's length shipper, who instead profits in any negotiations because of the very cost constraints facing the arm's length shipper. As IBLA concluded, what could be argued to be a "fair" allowance from the perspective of arm's length shipper/lessees is not relevant to the determination of a "fair" allowance for non-arm's length shippers – their positions are not equal and there is no obligation on Interior's part to pretend that they are. *Cf.* 2000 Oil Rule, 65 Fed. Reg. at 14045 (discussing differences between 'actual costs' of arm's length shipper vs. non-arm's length shipper).

MMS does not contend in its current gas proposal that arm's length rates bear any close relationship to the actual costs of non-arm's length shipper/lessees. It does not, in other words, contend or demonstrate that its proposal is even a close proxy to actual costs. Of course, it is again noteworthy that this alternative will enhance the agency's ability to establish the revenue neutrality of its RIK program. As noted, MMS is paying for transportation in that program at FERC rates or negotiated discounts from tariffs. Its RIK revenue receipts, thus, would not compare favorably to RIV receipts calculated by reference to an actual cost transportation allowance.

MMS also implicitly asserts that deviation from the actual cost methodology is justified when FERC or a state regulatory authority has actually conducted an analysis of a pipeline rate. This presupposes that FERC evaluates transportation rates from a statutory and regulatory perspective that governs calculation of transportation allowances for royalty purposes. FERC's historic determinations relating to rates of return alone dispels the analogy. MMS does not demonstrate otherwise and does not even attempt to explain how FERC evaluation of rates would protect the government's royalty interest. As MMS well knows, its historic position is that it is not bound by FERC established rates. *See e.g., Conoco, supra.*

Finally, MMS asserts that its proposal will result in a royalty increase. However, its comparison is flawed. It calculates this increase by a comparison of its current proposal to allowances based on full FERC tariff rates instead of comparing its proposal against a transportation allowance based upon actual costs. Presumably, MMS chose to calculate the potential increase because of its assumption that most non-arm's length shippers would opt to apply the exemption rather than calculate transportation allowances by reference to actual costs. Given that non-arm's length shippers will be able to take a larger deduction under the exemption than under the actual cost methodology, this is undoubtedly true. However, it is equally true that MMS's calculation does not accurately represent the cost to royalty recipients of providing any exemption at all.

For the foregoing reasons, the State Controller opposes MMS's proposal to amend 30 CFR 206.157(b)(5) and supports deleting all use of tariffs for purposes of non-arm's length transportation allowances.

3. Other Deductions

In this rulemaking, MMS proposes to increase transportation allowances by permitting lessees to deduct: (1) transportation payment guarantees, (2) line losses, and (3) unused firm demand charges. All of these deductions are being proposed, in essence, because the expenses are not classified by MMS as non-deductible "marketing" costs. Apparently, in MMS's view if any expense is not clearly a cost of marketing, it will be viewed as deductible because it is associated with transportation – for no other reason than it is charged by a transporter.

This is a classic example of the exception swallowing the historic rule. As set forth in the State Controller's comments on the recent amendments to oil rules, the actual cost methodology has been the standard methodology for calculating transportation allowances for royalty purposes in non-arm's length situations. Nothing in the 1988 rules altered this norm. 1988 Gas Rule, 53 Fed. Reg. at 1261 ("past and historic practice" is actual costs). Section 206.157(b)(5), as plainly set out in the regulatory language, was intended by MMS to be an exception from the actual cost methodology.

Under the actual cost methodology, the only expenses that federal lessees are entitled to include in calculating transportation allowances were the "direct" costs incurred in "operating and maintaining" the pipeline. 30 CFR 206.157(b)(2). These expenses are to be determined by reference to the internal records of the transporter. *Id.* Under this methodology, all other expenses are nondeductible. Determination of these costs has nothing to do with whether they were "bundled" or "unbundled" in any tariff charges to arm's length shippers. Tariffs or any components thereof are not a factor in determining transportation allowances under the actual cost methodology.

After the 1988 rules – and over the objection of States and Tribes – MMS started granting uncritical approvals to non-arm's length shipper/lessees permitting them to use FERC tariff rates in the calculation of transportation allowances. The cost to royalty recipients of MMS's maladministration was exposed, in part, when FERC required unbundling pursuant to Rule 636. Unbundling *of services* revealed that many of the costs previously rolled into a FERC tariff were for non-deductible marketing services. And, MMS rightfully issued a regulation clarifying which of those unbundled services were non-deductible as marketing costs.

Where MMS erred and continues to err is its assumption that everything else that was unbundled or that remains bundled in any tariff represents an actual cost of transportation, *i.e.*, a "direct" cost of "operating and maintaining" a pipeline. While the costs of marketing services are not deductible, that does not end the inquiry with regard to deductibility. The next issue is whether the non-marketing expenses represent "direct" costs of operating and maintaining the pipeline under 30 CFR 206.157(b)(2). If those costs do not fall within the limitations of 206.157(b)(2), they are not deductible.

Indeed, as MMS must acknowledge, the attempt to categorize expenses as either marketing or transportation provides no assistance to a determination of the deductibility of many tariff components. MMS itself has developed no clear line between the two categories, and, even if such a line could be drawn without the benefit of audit or investigation, there are expenses that would still not fall within either category (*e.g.*, Gas Research Institute Fees). However, once expenses attributable to marketing services are segregated, the 206.157(b)(2) provide a reasoned basis for evaluating deductibility.

The current rulemakings on transportation allowances suggest, however, that MMS is intent on ignoring its own long-standing limitation on cost deductibility. If this is indeed the direction MMS is taking, it must address it directly and provide a reasoned explanation for its departure from the actual cost methodology. MMS's proposals conflict with the plain language of 206.157(b)(2). MMS, indeed, makes no attempt to explain how or why its proposed deductions fit within the limitations on deductibility set out in 206.157(b)(2)(i) to (b)(2)(iii) and provides no reasoned explanation for its departure from these regulations. Side-stepping that larger issue by *ipse dixit* categorizations of expenses is arbitrary and capricious. Moreover, the fact that every departure from the actual cost methodology assists MMS's interest in promoting its RIK project as revenue neutral to congressional appropriators is not a "reasoned basis".

The State Controller opposes all of the deductions proposed in MMS's proposed rule on gas transportation allowances. Moreover, it is the State Controller's position that MMS must reevaluate all of its recent rulemakings, which permit federal lessees to include more than the direct costs of operating and maintaining a pipeline in the calculation of transportation allowances.

The State Controller opposes all deductions for lines losses, whether theoretical or actual. MMS states that these losses "properly may be regarded as a cost of moving production." This is not an explanation or analyses, it is a conclusion that MMS simply refuses to justify. Deductions for lines losses are simply a release of the transporter for any liability to account to the shipper for lost volumes. They transfer the risk of loss from the transporter to the shipper. While this may be a risk that a shipper incurs because of its choice to sell production downstream, it is not a risk that is legitimately imposed upon the "risk free" royalty interest. *Cf. Continental Oil Co. v. U.S.*, 184 F.2d 802, 820 (9th Cir. 1950) (rejecting line loss adjustment). Royalty is owed on 100% of the quantity of production measured prior to transportation. *U.S. v. General Petroleum Corp.*, 73 F. Supp. 225, 257-258 (S.D. Ca. 1946), *aff'd sub nom, Continental Oil Co, supra.* Line losses are not costs that enhance the return to the royalty owner, rather line losses reduce that return by decreasing the quantity subject to royalty. *See e.g., Garman v. Conoco*, 886 P.2d 653 (Co. 1994) (lessee burden to submit evidence proving value enhancement directly attributable to claimed royalty deduction). No plausible argument exists that these losses, which are reimbursed to the transporter, represent a "direct" cost of operating and maintaining any pipeline.

The State Controller opposes the proposed deduction for the shipper's cost of obtaining insurance, letters of credit or other surety. MMS states that these expenses should be deemed deductible because they are costs "that the lessee must incur to obtain the pipelines transportation service." This is not a meaningful distinction – tariffs also require, as FERC 636 demonstrated, shippers to incur costs "to obtain pipeline transportation service" that are not properly deductible from royalty.

More importantly, these guarantees are aimed at reducing the risk to the transporter of nonpayment by a shipper, who is liable to the government for royalties whether it pays for its transportation or not. There is no justification for the federal government to underwrite a transporter's ability to reduce its risk of nonpayment. And, again, no plausible argument exists that these losses represent a "direct" cost of operating and maintaining any pipeline.

The State Controller opposes any deduction of firm demand charges, especially for non-arm's length transporters. The State Controller recognizes that the court in *IPAA v. DeWitt*, 279 F.3d 1036 (D.C. Cir. 2002), *cert. denied*, 123 S.Ct 869 (2003) upheld industry's challenge to MMS's 1997 FERC 636 rule disallowing the deduction of "unused" firm demand charges. The court's holding, however, was based upon MMS's utter failure to provide any reasoned basis for its rule. "While some reason may lurk behind the government's position, it has offered none, and we have no basis for sustaining its conclusion." The fact that MMS was incapable of justifying its position does not mean that no justification exists.

As the court's discussion itself underscores, only the commodity charge represents an expense directly related -- at least for the arm's length shipper -- to "the transport itself." The firm demand charge is a reservation fee; it is paid to negate the risk of interruptible service. The risk of interruptible service, however, is not legitimately charged to the federal royalty owner. Royalty is owed, pursuant to statute, on the date of production, not on the date that production is or is not received by the lessee's customer.

The problem with MMS's 1997 analysis was its focus on unused firm demand charges in the context of a rulemaking segregating nondeductible costs of marketing from a FERC tariff. MMS's focus implicitly conceded, in the Controller's opinion wrongfully[2], that firm demand charges generally are linked to the cost of "transport itself." For non-arm's length shippers in particular, there is no question that firm demand charges do not represent a "direct" cost of "operating and maintaining" a pipeline. Indeed, except as an internal accounting matter, there has been no demonstration by MMS that these costs are actually incurred by non-arm's length shippers, let alone "direct" costs of "operating and maintaining" any pipeline.

As discussed, MMS's focus on any attempt to determine deductible costs based upon some, yet to be fully defined, distinction between marketing and transportation ignores the long-held limitation on the type of costs to be included under the actual cost methodology.

Moreover, it also ignores the basic proposition that a royalty interest is a cost free/risk free interest. While the courts have held that Interior is required to permit some allowance for transportation to the first available market where there is no market at the wellhead, there has never been any suggestion that such an acknowledgement is a license to ignore or erode the very nature of the royalty interest itself. *See e.g., General Petroleum Corp., supra*; *Superior Oil Co.*, 12 IBLA 212 (1973) (denying transportation allowance to point beyond first available market). It is the position of the State Controller that MMS needs to go back to the drawing board with regard to transportation

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[2] As the Controller has noted elsewhere, the 1997 FERC 636 rulemaking bore more of a relationship to a negotiation than it did to any considerate or reasoned application of any regulatory or policy principles.

deductions and to reevaluate each – including those listed under currently final rules – and determine which, if any, constitutes a "direct" cost of operating and maintaining a pipeline. MMS has the authority to conduct a considerate investigation of these issues. 30 CFR 1717.

4. Fina

MMS makes no attempt in its proposed rule to correct the flaws in its current regulations that served to bar consideration, under the gross proceeds rule, of affiliate resales. As MMS knows, the only barrier to recognition of affiliate resales under the current rule was its regulatory creation of so-called "marketing affiliates" in the 1988 rule. The court of appeals decision was rendered only a month or two after MMS held its workshops; there is simply no excuse for MMS to ignore the issue in its current rulemaking. Nothing in any "workshop" discussion binds any agency with regard to the parameters of a proposed rule.

Its failure to reaffirm its commitment to collect proceeds from affiliate resales in its currently proposed gas rule is inexplicable and unconscionable, particularly in light of its amendments in that regard in the 2000 oil rule. In that rulemaking, MMS acknowledged that the term "marketing affiliate" was useless in protecting the government's royalty interest. "Very few, if any, marketers met the strict definition of a marketing affiliate, thus making this provision of the 1988 rules almost inconsequential." 2000 Oil Rule, 65 Fed. Reg. at 14025. Retaining this "inconsequential" definition in the gas rules, after the court decision in *Fina* will only serve to decrease RIV revenues in a manner contrary to MMS's extant policies.

The "marketing affiliate" definition should be deleted from the gas rules, and all references to "marketing affiliates" should be deleted from the valuation provisions for arm's length sales of both processed and unprocessed gas.

Again, it is noteworthy that MMS has touted the alleged success of its RIK program by pointing to its ability to capture the type of premiums that federal lessees have assiduously tried to avoid paying royalties upon by "selling" production, for resale, to affiliated entities. The *Fina* decision itself was a gas case and, thus, demonstrates that affiliate resales are as common to gas transactions, as to oil. Thus, without making the necessary corrections to its gas regulations, RIV receipts will consistently be deflated in comparison to RIK receipts.

Shoring up the potential of the MMS's RIK program is an unstated, but very real, theme of MMS's recent proposals for changing both the oil and gas valuation rules. Taken as a whole, MMS's proposals amount to little more than an effort to stack the deck in order to make its RIK program look revenue neutral. MMS is putting its institutional interest in the RIK program – an interest in which it is aligned with industry

– above the public's interest in full and fair receipt of royalties. MMS's utter failure to provide a word of reasoned analysis for its departures from long-standing rules aimed at protecting the public's royalty interest cannot be explained otherwise. California's school children should not be short-changed because of a federal agency's self-interested need to manufacture evidence of program success for congressional appropriators.

California State Controller Steve Westly opposes MMS's proposed amendments to the gas valuation rules.

Respectfully submitted,

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