230739

EF
970624
HBA
O
TERRY GOOD
DIRECTOR - ORM
THE WHITE HOUSE
WASHINGTON DC 20500
MEMO FOR THE RECORD RE FILES FROM THE OFFICE
OF THE STAFF SECRETARY, DATED MAR 97 - JUN 98
WH004
FG006-01 FG001
RM RSZ 970811 C 970811
CAROL CLEVELAND OF THE STAFF SECRETARY 'S
OFFICE HAS BEGUN TO RETAIN AND SEND TO ORM
"INSURANCE COPIES" OF DOCUMENTS THAT HAD BEEN
SENT TO THE OVAL OFFICE
ONE (1) BOX OVERSIZE ATTACHMENT #9360 - DATED
MAR 97 - SEP 97 (HELD IN ROOM 75)
ONE (1) BOX OVERSIZE ATTACHMENT #10322 -
DATED OCT 97 - JUN 98 ~~(HELD IN ROOM 75)~~

268702

Changed

OK for o.g. per Phil

Sub. Ahrob dispatch originals

'98 JUN 23 PM3:11

THE WHITE HOUSE

WASHINGTON

June 23, 1998

aD

MEMORANDUM FOR THE PRESIDENT

FROM: Thurgood Marshall, Jr.
Assistant to the President and Cabinet Secretary

Kris M. Balderston KMB
Deputy Assistant to the President and Deputy Cabinet Secretary

SUBJECT: FEMA RECOMMENDS THAT YOU **GRANT** THE REQUEST OF THE GOVERNOR OF MASSACHUSETTS FOR A MAJOR DISASTER DECLARATION

Beginning on June 13, 1998, and continuing, record rains fell impacting the eastern portion of the Commonwealth of Massachusetts causing extensive flooding. Eight deaths have been reported, however, it has not been confirmed that these deaths can be attributed to this event. A total of 7,468 homes received minor damage. A total of 25,500 power outages were reported.

On June 13, Governor Argeo Paul Cellucci directed the execution of the State Emergency Plan. The Governor subsequently declared a State of Emergency for the counties of Bristol, Essex, Middlesex, Norfolk, and Suffolk on June 16. Representatives from the Federal Emergency Management Agency (FEMA), State and local governments and the Small Business Administration (SBA) conducted a joint Preliminary Damage Assessment (PDA) on June 16 to assess damage to individuals. On June 18, Governor Cellucci requested a major disaster declaration for the counties of Bristol, Essex, Middlesex, Norfolk, and Suffolk for the Individual Assistance program, including Disaster Unemployment Assistance (DUA), and the disaster loan programs available from the SBA. The Governor amended his request on June 19 to include Hazard Mitigation and indicated his intent to implement the State's Individual and Family Grant program.

FEMA has concluded that the situation is of such severity and magnitude that effective response is beyond the capabilities of the Commonwealth and local governments, and supplemental Federal assistance is necessary. The situation warrants a major disaster declaration. In the event of a declaration, FEMA intends to provide Individual Assistance to the counties of Bristol, Essex, Middlesex, Norfolk and Suffolk. Additional areas and types of assistance may be designated at a later date, if requested and warranted. In the event of a declaration, FEMA intends to designate all counties in the Commonwealth of Massachusetts eligible to apply for assistance under the Hazard Mitigation Grant Program.

2680l7

THE WHITE HOUSE

WASHINGTON

June 20, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN Phil

SUBJECT: Bankruptcy Reform Legislation

6-22-98

Gene Sperling and Sally Katzen have sent you a lengthy memo seeking your approval of an Administration proposal on bankruptcy reform. Last week, the House passed, by a veto-proof majority, a bankruptcy bill that the Administration strongly opposed. NEC proposes to advance our proposal quickly, in hopes of influencing the Senate bill, which is better than the House bill, but still flawed. There is significant legislative momentum here because of the rising number of bankruptcies, the potential for abuse in the system, and a well-financed credit card industry campaign. ***All of your advisors, both in the WH and the Cabinet, agree on the proposal, which is the product of an NEC interagency process, and think you should move forward with it.***

Elements of proposal:

- Limitations on access to Chapter 7 - current law places little limit on a debtor's access to Chapter 7, though some circuit courts find it is "substantial abuse" of Chapter 7 if a debtor can pay 20% of their unsecured debts over five years. The Senate bill reflects this circuit court approach as does our proposal, which gives bankruptcy courts discretion to determine whether or not a debtor's use of Chapter 7 is abuse and lays out criteria for a "presumption of abuse" (ability to repay 30% of debts or specified amount over five years).

- New categories of nondischargeable debts - both House and Senate bills broaden the categories of nondischargeable debt, which, as you know, would have a large impact on child support and alimony payments. In short, our proposal calls for keeping current law as is and permitting a new category of nondischargeable debt in only one area: credit card debt for luxuries incurred within 90 days of declaring bankruptcy -- many debtors run up their credit cards just prior to declaring -- but without a cap on necessary expenses (*e.g.*, groceries, school clothes). Although both bills attempt to mitigate the impact of broadening the categories in other areas, women's groups maintain, and your advisors concur, that new nondischargeable debt will compete with other existing nondischargeable debt and therefore argue to maintain the status quo.

- Additional consumer protections against predatory creditor practices - your advisors propose additional protections so the bill won't further tip the balance to creditors. Elements include: (i) requiring courts to make debtors prove there is a compelling reason for debtors to reaffirm a debt; such debts survive bankruptcy and creditors often coerce debtors to reaffirm them; (ii) requiring the payment of unsecured, nonpriority debt where the terms/time period were not disclosed clearly to the debtor (e.g., credit card interest) only after other unsecured, nonpriority debt is repaid.

____ Proceed with proposal ____ Discuss

268017

THE WHITE HOUSE

WASHINGTON

'98 JUN 18 PM3:33

June 18, 1998

MEMORANDUM TO THE PRESIDENT

FROM: **GENE SPERLING**
SALLY KATZEN

RE: **BANKRUPTCY REFORM LEGISLATION**

Last week, the House passed, by a veto-proof majority, a bankruptcy bill despite an Administration statement of strong opposition. A better, but still flawed, bill (voted out of committee 16-2) may be taken up by the Senate before the July 4th recess or soon thereafter. Both bills were changed recently to address concerns that you, the First Lady, and others have raised about their impact on debtors' capacity to pay child support and alimony, although some problems still remain.

After an NEC interagency review, your advisors have reached a consensus that some bankruptcy reform is important. These bills contain many provisions that are beneficial, including a cap on state homestead exemptions, debtor education pilots, penalties for unjustified creditor activities, measures to discourage bad-faith repeat filings, and provisions to improve data collection and audit procedures. However, certain controversial provisions of the current bills need significant changes to satisfy our objectives and concerns. **We propose to advance quickly an Administration proposal in hopes of influencing the Senate bill on the floor and giving the Administration greater leverage in conference.** The proposal would address three issues: (1) limitations on access to Chapter 7; (2) new nondischargeable debts and their impact on child support and alimony payments; and (3) new provisions to protect against coercive creditor behavior and to require more responsibility from creditors in extending credit. The group also has identified alternatives to parts of this proposal on which we could compromise, if necessary.

I. BACKGROUND

Rising Consumer Bankruptcies: Despite what Goldman Sachs recently called "the best economy ever," personal bankruptcies have continued to rise sharply, from roughly 800,000 in 1994 to nearly 1.4 million in 1997. Recent figures for the first quarter of 1998 showed another

20 percent increase over 1997's pace.

Disputed Causes: There is much dispute about the cause of this increase, but little definitive evidence. Creditors assert that lawyer advertising, reduced social stigma, and increased information about the financial advantages of bankruptcy have encouraged an increasing number of consumers to walk away from debts they could repay. Consumer advocates argue that lenders have irresponsibly extended too much credit to families who are ill-prepared to handle it, and that most bankruptcies happen when unexpected events push such a family over the financial edge; indeed, rising bankruptcy rates track closely rising levels of unsecured debt, although debt burdens have actually dropped due to lower interest rates.

Potential for Abuse: Under current rules, some debtors with high incomes walk away from their debts entirely, even when they have the capacity to repay at least a portion of those debts; other debtors file repeatedly without any intention of completing bankruptcy, for the purpose of delaying bona fide collection activities; and generous state exemptions (including unlimited homestead exemptions in eight states and exemptions for items like race horses and silver spoons in Virginia) prompt some to shift assets to exempt categories prior to a bankruptcy filing to avoid making payment to any unsecured creditors. Consumer advocates argue that these cases are not the norm and should not prompt limits on those who genuinely need bankruptcy's fresh start.

Consumer Impact: Regardless of who is to blame, **higher levels of debt charge-offs appear to raise the cost of credit for everyone.** One industry study suggests that bankruptcies cost every American household between $300-400 per year. Higher credit costs disproportionately fall on lower-income families, since they are more likely to carry a balance on their cards. While in the past credit card interest rates did not always rise and fall with market rates, the industry is now more competitive, so that many believe that, over the long run, reduced bankruptcies are likely to translate to lower interest rates and increased access to credit for those who pay their bills.

Legislative Momentum: The popularity of these bills can be explained by the system's vulnerability to abuse and the apparent consumer costs, as well as an extremely effective and well-financed industry campaign and legislators' fears of being labeled protectors of deadbeats.

II. LIMITATIONS ON ACCESS TO CHAPTER 7 BANKRUPTCY

Current Law: Today, there is little limit on debtors' access to Chapter 7's full and immediate discharge of debt (with virtually no payments to unsecured creditors); however, in some circuits, courts find, on their own motion, that it is "substantial abuse" for a debtor with the ability to repay 20% of their unsecured debts over three years, after taking account of all necessary expenses, to go through Chapter 7 rather than a Chapter 13 repayment plan,

House and Senate Bills: Both bills would require those with the capacity to repay a portion of their debt to do so under a Chapter 13 plan. We opposed the House bill because it determines

access to Chapter 7 under a rigid "means test" that does not take into account the unique circumstances of individual debtors. The Senate approach is more flexible, building on the abuse test in use in some circuits. The Senate bill would authorize a bankruptcy judge to apply this test to any debtor with income above the median and, for the first time, allow creditors to file the motion seeking a determination of abuse. Creditors would have to pay debtors' attorneys fees, if their filings were not 'substantially justified' or were brought to coerce a debtor to waive a right.

Administration proposal: We propose a variation on the Senate bill whereby **the bankruptcy court would have discretion to determine whether or not a debtor's use of Chapter 7 is abuse; however, there would be a presumption of abuse if a debtor has an income above the median and the capacity to repay either at least 30% of her unsecured, nonpriority debts or some specified amount (such as $5000) over three years.** (No debtor would be denied access to Chapter 7 unless she had the ability to repay at least $50 a month in unsecured, nonpriority debt. Any lesser amount is too small to merit the Chapter 13 administrative costs or to risk the chance that the creditor was pursuing the motion to coerce the debtor to forgo another bankruptcy right.) We also would provide that, if a debtor moved more than $50,000 from nonexempt to exempt assets within one year of the filing, she would be subject to a presumption of abuse, regardless of income. In determining a debtor's capacity to repay, we propose to explicitly exclude luxuries (e.g., expensive cars or boats) from necessary expenses.

These presumptive guidelines could be overcome if the court determined, e.g., that the debtor faced unusual but necessary expenses or could not be expected to maintain reliably her current level of income. Such presumptive guidelines have proven to be highly effective in promoting uniformity and fairness in establishing child support award amounts. Since the average debtor under Chapter 13 repays 20% of her debts and has income below the national median, those who meet this higher threshold are the most likely to succeed under a repayment plan.

III. NONDISCHARGEABLE DEBT AND ITS IMPACT ON CHILD SUPPORT AND ALIMONY

The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with child support, alimony, educational loans, tax obligations, or debts incurred by fraud. To address growing concerns about gaming of the system, both bills broaden the categories of nondischargeable credit card debt, although the largest new category was dropped and the remaining two narrowed. Moreover, as consumers use credit cards for new purposes (e.g., groceries or paying student loans), additional credit card debts become dischargeable. This Administration envisions -- in fact, encourages -- greater use of electronic commerce, so we do not want bankruptcy discharge rules that discourage credit card companies from providing new opportunities for consumers to have the convenience of credit card payment. However, the provisions in these bills creating new nondischargeable debts raise two questions: (1) Do the additional debts made nondischargeable rise to the same level of public priority as other

nondischargeable debts? and (2) What impact does the protection of new categories of debt have on the ability of the debtor, post-bankruptcy, to repay existing nondischargeable debts?

Debts incurred to pay other nondischargeable debts.

Current law: A credit card debt incurred to pay federal taxes is nondischargeable, to prevent "gaming" by paying off nondischargeable debts with a credit card which will be discharged.

House and Senate bills: Both make a debt incurred to pay any nondischargeable debt nondischargeable, although the Senate effectively eliminates the provision if the debtor is a single parent or owes child support and/or alimony.

Administration Proposal: We propose that the **current law remain unchanged**; however, if a debtor paid a nondischargeable debt with a credit card, it would be a factor in determining whether the debtor's use of Chapter 7 was abuse.

Debts incurred in the period immediately before bankruptcy.

Current Law: Debts for luxuries over $1000 owed to a single creditor within 60 days of bankruptcy are nondischargeable. There is evidence that this and other anti-fraud provisions do not prevent some debtors from taking the opportunity to run up debt before filing bankruptcy.

House and Senate Bills: Both would make all debts incurred within 90 days of bankruptcy for luxuries presumptively nondischargeable. In addition, they would make presumptively nondischargeable debt above ($250 in the House; $400 in the Senate) per credit card for necessaries during the same period.

Administration Proposal: We propose to agree to make **debt for luxuries within 90 days of bankruptcy presumptively nondischargeable; however, a cap of $250 or $400 on necessary expenses incurred prior to bankruptcy is inappropriate.** One can easily imagine a family, in the months prior to bankruptcy, paying for rent, school clothes, and even groceries on their credit card. Courts can easily compare current spending patterns to prior spending and determine whether charges are truly for necessary expenses.

Child Support and Alimony Considerations

The bills have seven new provisions designed to either mitigate the impact of the new nondischargeable debt on child support and alimony or to give child support and alimony additional protections in and after bankruptcy. Some experts argue that the benefits provided by these additional provisions outweigh any modest harm to child support and alimony payments that remains from the nondischargeability provisions. Moreover, if needs-based reform is done right and shifts only those with the capacity to repay, as we propose, it will likely enhance the collection of these payments, as debts in Chapter 13 are repaid under the supervision of the

bankruptcy court. On the other hand, the women's groups still oppose these bills, arguing that there is no way to mitigate fully the consequences of the expanded categories of nondischargeable debt, which enhance competition for the debtor's limited funds. Moreover, these provisions, which focus only on child support and alimony, do not address our policy concern that new nondischargeable debt will compete with other existing nondischargeable debts, such as education loans. For these reasons, our proposals would allow only one category of new nondischargeable debt (luxuries purchased 90 days before bankruptcy); for the remaining categories, we propose to leave current law or address the problem a different way.

IV. ADDITIONAL CONSUMER PROTECTIONS AGAINST PREDATORY CREDITOR PRACTICES

Your advisors are particularly concerned about the unequal bargaining power of the creditor and debtor and how the changes in bankruptcy rules could further shift the balance and create opportunities for coercion and harm. To address this concern, and to ensure that legislation requires responsibility of both debtor and creditor, we propose new consumer protections.

Reaffirmations of Unsecured Debt

Although debtors in Chapter 7 have a right to have their unsecured debts discharged, some debtors reaffirm debts. While there may be some circumstances in which reaffirmation is in the debtor's best interest (e.g., as a condition of obtaining credit to keep open a small business), those cases are few. The risk is real, however, that debtors are pressured into reaffirming their debts by aggressive creditors. After Sears recently paid large penalties for such practices, another Bankruptcy Judge (Fenning) said she scrutinized her court records and found evidence of widespread coercive reaffirmations. Since reaffirmed debts survive bankruptcy, they compete with child support and alimony after bankruptcy. Eliminating coercive reaffirmations also would help to reduce the current level of competition child support and alimony payments face.

Current Law: For a reaffirmation to be valid, the creditor must provide required disclosures and the court must determine that the reaffirmation does not impose an undue hardship on the debtor or a dependant and is in the debtor's best interest; however, an affidavit of the debtor's attorney to that effect suffices.

House and Senate Bills: No related provisions.

Administration Proposal: We propose to require that the court itself find that there is a compelling reason for the debtor to reaffirm an unsecured debt, without reliance on counsel affidavits. We also propose to bar reaffirmation of debts that add attorneys' fees and costs to the debt, to increase penalties on attempts to enforce invalid reaffirmations, and to clarify that

creditors may not threaten to file motions alleging abuse of Chapter 7 or solicit a reaffirmation after the automatic stay is imposed.

Credit Card Minimum Payment Disclosure

We also believe that some signal should be sent to creditors about lending practices that entice debtors to get further and further into debt.

Current Law: Most debtors believe that by making the minimum payment on their credit card they are slowly working off their debt. However, depending upon the interest rate, they may be falling further and further behind. Creditors are increasingly offering minimum payment plans that amortize debt over decades, if at all.

House and Senate bills: No related provisions.

Administration Proposal: We propose a process for subordinating unsecured, nonpriority debt if the creditor did not disclose clearly to the debtor the time period over which the debt would amortize at the minimum payment level. The subordinated debt would be paid, in Chapter 7 or 13, only after all other unsecured, nonpriority debt. It most cases, this means it will not be repaid.

Other Non-Bankruptcy Steps to Improve Consumer Credit Practices

We also are exploring whether there are other non-bankruptcy steps that we can take to clamp down on predatory lender practices and better help consumers to understand their own borrowing. We have consensus on a proposal that requires all lenders to disclose the time period over which debt is amortized by minimum payments. This proposal, and others under review, fall under the jurisdiction of other committees, so it is not feasible to insist that Congress include these proposals in the bankruptcy bill at this time. However, we might unveil these proposals in connection with a campaign to educate consumers about the use of credit, using the bully pulpit as we have done to encourage retirement savings.

V. ADVISORS' RECOMMENDATIONS

All your advisors recommend we proceed as described, including CoS, NEC, Counsel, OPL, OLA, OMB, CEA, DPC, First Lady, DoJ, Treasury, HHS, Commerce, and Education.

- The NEC believes that requiring greater responsibility of both creditors and debtors is the best way to address the "unclean hands" of some of the legislation's proponents.
- Treasury emphasizes that needs-based reform will decrease the cost of, and increase access to, credit for those debtors who do pay their bills, by limiting opportunistic bankruptcy among those higher income debtors who do not.
- CEA believes nondischargeability provisions should not prevent agreement on a bill which strengthens child support and alimony in other ways, particularly if the nondischargeability provisions are targeted to address 'gaming' of the bankruptcy system.
- DoJ supports the plan and stresses that other provisions of these bills, like the cap on state homestead exemptions, measures to discourage bad faith repeat filings, and provisions to improve data collection and audit procedures, are important reforms.
- OPL believes that, while consumer advocates oppose any bill, reforms limiting access to Chapter 7 and stemming coercive reaffirmations appear valid. OPL wants to see us fight for aspects of our proposal that protect against any impact on child support (before or after bankruptcy) of new nondischargeable credit card debt.
- DPC and the First Lady's Office strongly support advancing proposals that achieve more balanced reform by calling for responsibility on the part of the creditor as well as the debtor, and recommends that we continue to focus on the child support issue to ensure that protections in this area are as strong as possible.
- OLA stresses the popularity of bankruptcy reform and advises that we advance proposals that have a realistic prospect of inclusion, or we may find ourselves faced with overwhelmingly popular legislation that fails to satisfy our announced concerns.

VI. DECISION

____ **PROCEED AS DESCRIBED**

____ **LET'S DISCUSS**

Document No. ____________

WHITE HOUSE STAFFING MEMORANDUM

Date: 6/~~19~~18 ACTION / CONCURRENCE / COMMENT DUE BY: 6/~~20~~19

Subject: Bankruptcy Reform Legislation

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	McCURRY	☐	☑
BOWLES	☑	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☑	☐	REED	☐	☐
MATHEWS	☑	☐	RUFF	☑	☐
LEW	☑	☐	SMITH	☐	☐
BEGALA	☑	☐	SOSNIK	☑	☐
BERGER	☐	☐	SPERLING	☐	☐
BLUMENTHAL	☐	☐	STEIN	☑	☐
ECHAVESTE	☑	☐	STERN	☐	☐
EMANUEL	☑	☐	STREETT	☐	☐
GIBBONS	☐	☐	VERVEER	☐	☐
IBARRA	☑	☐	WALDMAN	☐	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	☐	☐	____________	☐	☐
LINDSEY	☐	☐	____________	☐	☐
MARSHALL	☐	☐	____________	☐	☐
			____________	☐	☐

REMARKS: Please advise

RESPONSE:

3/98

Staff Secretary's Office
Ext. 62702

Document No ______________

WHITE HOUSE STAFFING MEMORANDUM

Date: 6/18 ACTION / CONCURRENCE / COMMENT DUE BY: 6/19

Subject: Bankruptcy Reform Legislation

	ACTION	FYI		ACTION	FYI
✓ VICE PRESIDENT	☑	☐	✓ McCURRY	☐	☑
✓ BOWLES	☑	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
✓ PODESTA	☑	☐	REED	☐	☐
✓ MATHEWS	☑	☐	✓ RUFF	☑	☐
✓ LEW	☑	☐	SMITH	☐	☐
✓ BEGALA	☑	☐	✓ SOSNIK	☑	☐
BERGER	☐	☐	SPERLING	☐	☐
BLUMENTHAL	☐	☐	✓ STEIN	☑	☐
✓ ECHAVESTE	☑	☐	STERN	☐	☐
✓ EMANUEL	☑	☐	STREETT	☐	☐
GIBBONS	☐	☐	VERVEER	☐	☐
✓ IBARRA	☑	☐	WALDMAN	☐	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	☐	☐	______	☐	☐
LINDSEY	☐	☐	______	☐	☐
MARSHALL	☐	☐	______	☐	☐
			______	☐	☐

REMARKS: Please advise

RESPONSE:

3/98

Staff Secretary's Office
Ext. 62702

THE WHITE HOUSE

WASHINGTON

June 18, 1998

MEMORANDUM TO THE PRESIDENT

FROM: **GENE SPERLING**
SALLY KATZEN

RE: **BANKRUPTCY REFORM LEGISLATION**

Last week, the House passed, by a veto-proof majority, a bankruptcy bill despite an Administration statement of strong opposition. A better, but still flawed, bill (voted out of committee 16-2) may be taken up by the Senate before the July 4th recess or soon thereafter. Both bills were changed recently to address concerns that you, the First Lady, and others have raised about their impact on debtors' capacity to pay child support and alimony, although some problems still remain.

After an NEC interagency review, your advisors have reached a consensus that some bankruptcy reform is important. These bills contain many provisions that are beneficial, including a cap on state homestead exemptions, debtor education pilots, penalties for unjustified creditor activities, measures to discourage bad-faith repeat filings, and provisions to improve data collection and audit procedures. However, certain controversial provisions of the current bills need significant changes to satisfy our objectives and concerns. **We propose to advance quickly an Administration proposal in hopes of influencing the Senate bill on the floor and giving the Administration greater leverage in conference.** The proposal would address three issues: (1) limitations on access to Chapter 7; (2) new nondischargeable debts and their impact on child support and alimony payments; and (3) new provisions to protect against coercive creditor behavior and to require more responsibility from creditors in extending credit. The group also has identified alternatives to parts of this proposal on which we could compromise, if necessary.

I. BACKGROUND

Rising Consumer Bankruptcies: Despite what Goldman Sachs recently called "the best economy ever," personal bankruptcies have continued to rise sharply, from roughly 800,000 in 1994 to nearly 1.4 million in 1997. Recent figures for the first quarter of 1998 showed another

20 percent increase over 1997's pace.

Disputed Causes: There is much dispute about the cause of this increase, but little definitive evidence. Creditors assert that lawyer advertising, reduced social stigma, and increased information about the financial advantages of bankruptcy have encouraged an increasing number of consumers to walk away from debts they could repay. Consumer advocates argue that lenders have irresponsibly extended too much credit to families who are ill-prepared to handle it, and that most bankruptcies happen when unexpected events push such a family over the financial edge; indeed, rising bankruptcy rates track closely rising levels of unsecured debt, although debt burdens have actually dropped due to lower interest rates.

Potential for Abuse: Under current rules, some debtors with high incomes walk away from their debts entirely, even when they have the capacity to repay at least a portion of those debts; other debtors file repeatedly without any intention of completing bankruptcy, for the purpose of delaying bona fide collection activities; and generous state exemptions (including unlimited homestead exemptions in eight states and exemptions for items like race horses and silver spoons in Virginia) prompt some to shift assets to exempt categories prior to a bankruptcy filing to avoid making payment to any unsecured creditors. Consumer advocates argue that these cases are not the norm and should not prompt limits on those who genuinely need bankruptcy's fresh start.

Consumer Impact: Regardless of who is to blame, **higher levels of debt charge-offs appear to raise the cost of credit for everyone.** One industry study suggests that bankruptcies cost every American household between $300-400 per year. Higher credit costs disproportionately fall on lower-income families, since they are more likely to carry a balance on their cards. While in the past credit card interest rates did not always rise and fall with market rates, the industry is now more competitive, so that many believe that, over the long run, reduced bankruptcies are likely to translate to lower interest rates and increased access to credit for those who pay their bills.

Legislative Momentum: The popularity of these bills can be explained by the system's vulnerability to abuse and the apparent consumer costs, as well as an extremely effective and well-financed industry campaign and legislators' fears of being labeled protectors of deadbeats.

II. LIMITATIONS ON ACCESS TO CHAPTER 7 BANKRUPTCY

Current Law: Today, there is little limit on debtors' access to Chapter 7's full and immediate discharge of debt (with virtually no payments to unsecured creditors); however, in some circuits, courts find, on their own motion, that it is "substantial abuse" for a debtor with the ability to repay 20% of their unsecured debts over three years, after taking account of all necessary expenses, to go through Chapter 7 rather than a Chapter 13 repayment plan,

House and Senate Bills: Both bills would require those with the capacity to repay a portion of their debt to do so under a Chapter 13 plan. We opposed the House bill because it determines

access to Chapter 7 under a rigid "means test" that does not take into account the unique circumstances of individual debtors. The Senate approach is more flexible, building on the abuse test in use in some circuits. The Senate bill would authorize a bankruptcy judge to apply this test to any debtor with income above the median and, for the first time, allow creditors to file the motion seeking a determination of abuse. Creditors would have to pay debtors' attorneys fees, if their filings were not 'substantially justified' or were brought to coerce a debtor to waive a right.

Administration proposal: We propose a variation on the Senate bill whereby **the bankruptcy court would have discretion to determine whether or not a debtor's use of Chapter 7 is abuse; however, there would be a presumption of abuse if a debtor has an income above the median and the capacity to repay either at least 30% of her unsecured, nonpriority debts or some specified amount (such as $5000) over three years.** (No debtor would be denied access to Chapter 7 unless she had the ability to repay at least $50 a month in unsecured, nonpriority debt. Any lesser amount is too small to merit the Chapter 13 administrative costs or to risk the chance that the creditor was pursuing the motion to coerce the debtor to forgo another bankruptcy right.) We also would provide that, if a debtor moved more than $50,000 from nonexempt to exempt assets within one year of the filing, she would be subject to a presumption of abuse, regardless of income. In determining a debtor's capacity to repay, we propose to explicitly exclude luxuries (e.g., expensive cars or boats) from necessary expenses.

These presumptive guidelines could be overcome if the court determined, e.g., that the debtor faced unusual but necessary expenses or could not be expected to maintain reliably her current level of income. Such presumptive guidelines have proven to be highly effective in promoting uniformity and fairness in establishing child support award amounts. Since the average debtor under Chapter 13 repays 20% of her debts and has income below the national median, those who meet this higher threshold are the most likely to succeed under a repayment plan.

III. NONDISCHARGEABLE DEBT AND ITS IMPACT ON CHILD SUPPORT AND ALIMONY

The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with child support, alimony, educational loans, tax obligations, or debts incurred by fraud. To address growing concerns about gaming of the system, both bills broaden the categories of nondischargeable credit card debt, although the largest new category was dropped and the remaining two narrowed. Moreover, as consumers use credit cards for new purposes (e.g., groceries or paying student loans), additional credit card debts become dischargeable. This Administration envisions -- in fact, encourages -- greater use of electronic commerce, so we do not want bankruptcy discharge rules that discourage credit card companies from providing new opportunities for consumers to have the convenience of credit card payment. However, the provisions in these bills creating new nondischargeable debts raise two questions: (1) Do the additional debts made nondischargeable rise to the same level of public priority as other

nondischargeable debts? and (2) What impact does the protection of new categories of debt have on the ability of the debtor, post-bankruptcy, to repay existing nondischargeable debts?

Debts incurred to pay other nondischargeable debts.

Current law: A credit card debt incurred to pay federal taxes is nondischargeable, to prevent "gaming" by paying off nondischargeable debts with a credit card which will be discharged.

House and Senate bills: Both make a debt incurred to pay any nondischargeable debt nondischargeable, although the Senate effectively eliminates the provision if the debtor is a single parent or owes child support and/or alimony.

Administration Proposal: We propose that the **current law remain unchanged**; however, if a debtor paid a nondischargeable debt with a credit card, it would be a factor in determining whether the debtor's use of Chapter 7 was abuse.

Debts incurred in the period immediately before bankruptcy.

Current Law: Debts for luxuries over $1000 owed to a single creditor within 60 days of bankruptcy are nondischargeable. There is evidence that this and other anti-fraud provisions do not prevent some debtors from taking the opportunity to run up debt before filing bankruptcy.

House and Senate Bills: Both would make all debts incurred within 90 days of bankruptcy for luxuries presumptively nondischargeable. In addition, they would make presumptively nondischargeable debt above ($250 in the House; $400 in the Senate) per credit card for necessaries during the same period.

Administration Proposal: We propose to agree to make **debt for luxuries within 90 days of bankruptcy presumptively nondischargeable; however, a cap of $250 or $400 on necessary expenses incurred prior to bankruptcy is inappropriate.** One can easily imagine a family, in the months prior to bankruptcy, paying for rent, school clothes, and even groceries on their credit card. Courts can easily compare current spending patterns to prior spending and determine whether charges are truly for necessary expenses.

Child Support and Alimony Considerations

The bills have seven new provisions designed to either mitigate the impact of the new nondischargeable debt on child support and alimony or to give child support and alimony additional protections in and after bankruptcy. Some experts argue that the benefits provided by these additional provisions outweigh any modest harm to child support and alimony payments that remains from the nondischargeability provisions. Moreover, if needs-based reform is done right and shifts only those with the capacity to repay, as we propose, it will likely enhance the collection of these payments, as debts in Chapter 13 are repaid under the supervision of the

bankruptcy court. On the other hand, the women's groups still oppose these bills, arguing that there is no way to mitigate fully the consequences of the expanded categories of nondischargeable debt, which enhance competition for the debtor's limited funds. Moreover, these provisions, which focus only on child support and alimony, do not address our policy concern that new nondischargeable debt will compete with other existing nondischargeable debts, such as education loans. For these reasons, our proposals would allow only one category of new nondischargeable debt (luxuries purchased 90 days before bankruptcy); for the remaining categories, we propose to leave current law or address the problem a different way.

IV. ADDITIONAL CONSUMER PROTECTIONS AGAINST PREDATORY CREDITOR PRACTICES

Your advisors are particularly concerned about the unequal bargaining power of the creditor and debtor and how the changes in bankruptcy rules could further shift the balance and create opportunities for coercion and harm. To address this concern, and to ensure that legislation requires responsibility of both debtor and creditor, we propose new consumer protections.

Reaffirmations of Unsecured Debt

Although debtors in Chapter 7 have a right to have their unsecured debts discharged, some debtors reaffirm debts. While there may be some circumstances in which reaffirmation is in the debtor's best interest (e.g., as a condition of obtaining credit to keep open a small business), those cases are few. The risk is real, however, that debtors are pressured into reaffirming their debts by aggressive creditors. After Sears recently paid large penalties for such practices, another Bankruptcy Judge (Fenning) said she scrutinized her court records and found evidence of widespread coercive reaffirmations. Since reaffirmed debts survive bankruptcy, they compete with child support and alimony after bankruptcy. Eliminating coercive reaffirmations also would help to reduce the current level of competition child support and alimony payments face.

Current Law: For a reaffirmation to be valid, the creditor must provide required disclosures and the court must determine that the reaffirmation does not impose an undue hardship on the debtor or a dependant and is in the debtor's best interest; however, an affidavit of the debtor's attorney to that effect suffices.

House and Senate Bills: No related provisions.

Administration Proposal: We propose to require that the court itself find that there is a compelling reason for the debtor to reaffirm an unsecured debt, without reliance on counsel affidavits. We also propose to bar reaffirmation of debts that add attorneys' fees and costs to the debt, to increase penalties on attempts to enforce invalid reaffirmations, and to clarify that

creditors may not threaten to file motions alleging abuse of Chapter 7 or solicit a reaffirmation after the automatic stay is imposed.

Credit Card Minimum Payment Disclosure

We also believe that some signal should be sent to creditors about lending practices that entice debtors to get further and further into debt.

Current Law: Most debtors believe that by making the minimum payment on their credit card they are slowly working off their debt. However, depending upon the interest rate, they may be falling further and further behind. Creditors are increasingly offering minimum payment plans that amortize debt over decades, if at all.

House and Senate bills: No related provisions.

Administration Proposal: We propose a process for subordinating unsecured, nonpriority debt if the creditor did not disclose clearly to the debtor the time period over which the debt would amortize at the minimum payment level. The subordinated debt would be paid, in Chapter 7 or 13, only after all other unsecured, nonpriority debt. It most cases, this means it will not be repaid.

Other Non-Bankruptcy Steps to Improve Consumer Credit Practices

We also are exploring whether there are other non-bankruptcy steps that we can take to clamp down on predatory lender practices and better help consumers to understand their own borrowing. We have consensus on a proposal that requires all lenders to disclose the time period over which debt is amortized by minimum payments. This proposal, and others under review, fall under the jurisdiction of other committees, so it is not feasible to insist that Congress include these proposals in the bankruptcy bill at this time. However, we might unveil these proposals in connection with a campaign to educate consumers about the use of credit, using the bully pulpit as we have done to encourage retirement savings.

V. ADVISORS' RECOMMENDATIONS

All your advisors recommend we proceed as described, including CoS, NEC, Counsel, OPL, OLA, OMB, CEA, DPC, First Lady, DoJ, Treasury, HHS, Commerce, and Education.

- The NEC believes that requiring greater responsibility of both creditors and debtors is the best way to address the "unclean hands" of some of the legislation's proponents.
- Treasury emphasizes that needs-based reform will decrease the cost of, and increase access to, credit for those debtors who do pay their bills, by limiting opportunistic bankruptcy among those higher income debtors who do not.
- CEA believes nondischargeability provisions should not prevent agreement on a bill which strengthens child support and alimony in other ways, particularly if the nondischargeability provisions are targeted to address 'gaming' of the bankruptcy system.
- DoJ supports the plan and stresses that other provisions of these bills, like the cap on state homestead exemptions, measures to discourage bad faith repeat filings, and provisions to improve data collection and audit procedures, are important reforms.
- OPL believes that, while consumer advocates oppose any bill, reforms limiting access to Chapter 7 and stemming coercive reaffirmations appear valid. OPL wants to see us fight for aspects of our proposal that protect against any impact on child support (before or after bankruptcy) of new nondischargeable credit card debt.
- DPC and the First Lady's Office strongly support advancing proposals that achieve more balanced reform by calling for responsibility on the part of the creditor as well as the debtor, and recommends that we continue to focus on the child support issue to ensure that protections in this area are as strong as possible.
- OLA stresses the popularity of bankruptcy reform and advises that we advance proposals that have a realistic prospect of inclusion, or we may find ourselves faced with overwhelmingly popular legislation that fails to satisfy our announced concerns.

VI. DECISION

____ **PROCEED AS DESCRIBED**

____ **LET'S DISCUSS**

20

June ~~19~~, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN

SUBJECT: Bankruptcy Reform Legislation

Gene Sperling and Sally Katzen have sent you a lengthy memo seeking your approval of an Administration proposal on bankruptcy reform. Last week, the House passed, by a veto-proof majority, a bankruptcy bill that the Administration strongly opposed. NEC proposes to advance our proposal quickly, in hopes of influencing the Senate bill, which is better than the House bill, but still flawed. There is significant legislative momentum here because of the rising number of bankruptcies, the potential for abuse in the system, and a well-financed credit card industry campaign. ***All of your advisors, both in the WH and the Cabinet, agree on the proposal, which is the product of an NEC interagency process, and think you should move forward with it.***

Elements of proposal:

- Limitations on access to Chapter 7 - current law places little limit on a debtor's access to Chapter 7, though some circuit courts find it is "substantial abuse" of Chapter 7 if a debtor can pay 20% of their unsecured debts over five years. The Senate bill reflects this circuit court approach as does our proposal, which gives bankruptcy courts discretion to determine whether or not a debtor's use of Chapter 7 is abuse and lays out criteria for a "presumption of abuse" (ability to repay 30% of debts or specified amount over five years).

would

- New categories of nondischargeable debts - both House and Senate bills broaden the categories of nondischargeable ~~credit card~~ debt, which, as you know have a large impact on child support and alimony payments. In short, our proposal calls for keeping current law as is and permitting a new category of nondischargeable debt in only one area: credit card debt for luxuries incurred within 90 days of declaring bankruptcy -- many debtors run up their credit cards just prior to declaring -- but without a cap on necessary expenses (*e.g.*, groceries, school clothes). Although both bills attempt to mitigate the impact of broadening the categories in other areas, women's groups maintain, and your advisors concur, that new nondischargeable debt will compete with other existing nondischargeable debt and therefore argue to maintain the status quo.

new bill debt

- Additional consumer protections against predatory creditor practices - your advisors propose addl ~~such~~ protections so c~~hanges in bankruptcy~~ law don't further tip the balance to creditors. Elements include: (i) requiring courts to make debtors prove there is a compelling reason for them to reaffirm a debt; such debts survive bankruptcy and creditors often coerce debtors to reaffirm them; (ii) requiring the payment of unsecured, nonpriority debt where the terms/time period were not disclosed clearly to the debtor (e.g., credit card interest) only after all other unsecured, nonpriority debt is repaid.

____ Proceed with proposal ____ Discuss

June 19, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN

SUBJECT: Bankruptcy Reform Legislation

Gene Sperling and Sally Katzen have sent you a lengthy memo seeking your approval of an Administration proposal on bankruptcy reform. Last week, the House passed, by a veto-proof majority, a bankruptcy bill that the Administration strongly opposed. NEC proposes to advance our proposal quickly, in hopes of influencing the Senate bill, which is better than the House bill, but still flawed. There is significant legislative momentum here because of the rising number of bankruptcies, the potential for abuse in the system, and a well-financed credit card industry campaign. *All of your advisors, both in the WH and the Cabinet, agree on the proposal, which is the product of an NEC interagency process, and think you should move forward with it.*

Elements of proposal:

- Limitations on access to Chapter 7 - current law places little limit on a debtor's access to Chapter 7, though some circuit courts find it is "substantial abuse" of Chapter 7 if a debtor can pay 20% of their unsecured debts over five years. The Senate bill reflects this circuit court approach as does our proposal, which gives bankruptcy courts discretion to determine whether or not a debtor's use of Chapter 7 is abuse and lays out criteria for a "presumption of abuse" (repay 30% of debts or specified amount over five years).

- New categories of nondischargeable debts - both House and Senate bills broaden the categories of nondischargeable credit card debt, which, as you know has a large impact on child support and alimony payments. In short, our proposal calls for keeping current law as is and permitting a new category of nondischargeable debt in only one area: credit card debt for luxuries incurred within 90 days of declaring bankruptcy -- many debtors run up their credit cards just prior to declaring -- but without a cap on necessary expenses (*e.g.*, groceries, school clothes). Although both bills attempt to mitigate the impact of broadening the categories in other areas, women's groups maintain, and your advisors concur, that new nondischargeable debt will compete with other existing nondischargeable debt and therefore argue to maintain the status quo.

- Additional consumer protections against predatory creditor practices - your advisors propose such protections so changes in bankruptcy law don't further tip the balance to creditors. Elements include: (i) requiring courts to make debtors prove there is a compelling reason for them to reaffirm a debt; such debts survive bankruptcy and creditors often coerce debtors to reaffirm them; (ii) requiring the payment of unsecured, nonpriority debt where the terms/time period were not disclosed clearly to the debtor (e.g., credit card interest) only after all other unsecured, nonpriority debt is repaid.

____ Proceed with proposal ____ Discuss

Document No ____________

WHITE HOUSE STAFFING MEMORANDUM

Date: 6/19 ACTION / CONCURRENCE / COMMENT DUE BY: 6/20

Subject: Bankruptcy Reform Legislation

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	McCURRY	☐	☑
BOWLES	☑	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☑	☐	REED	☐	☐
MATHEWS	☑	☐	RUFF	☑	☐
LEW	☑	☐	SMITH	☐	☐
BEGALA	☑	☐	SOSNIK	☑	☐
BERGER	☐	☐	SPERLING	☐	☐
BLUMENTHAL	☐	☐	STEIN	☑	☐
ECHAVESTE	☑	☐	STERN	☐	☐
EMANUEL	☑	☐	STREETT	☐	☐
GIBBONS	☐	☐	VERVEER	☐	☐
IBARRA	☑	☐	WALDMAN	☐	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	☐	☐	____________	☐	☐
LINDSEY	☐	☐	____________	☐	☐
MARSHALL	☐	☐	____________	☐	☐
			____________	☐	☐

REMARKS: Please advise

RESPONSE:

3/98

Staff Secretary's Office
Ext. 62702

THE WHITE HOUSE

WASHINGTON

June 18, 1998

MEMORANDUM TO THE PRESIDENT

FROM: **GENE SPERLING**
SALLY KATZEN

RE: **BANKRUPTCY REFORM LEGISLATION**

Last week, the House passed, by a veto-proof majority, a bankruptcy bill despite an Administration statement of strong opposition. A better, but still flawed, bill (voted out of committee 16-2) may be taken up by the Senate before the July 4th recess or soon thereafter. Both bills were changed recently to address concerns that you, the First Lady, and others have raised about their impact on debtors' capacity to pay child support and alimony, although some problems still remain.

After an NEC interagency review, your advisors have reached a consensus that some bankruptcy reform is important. These bills contain many provisions that are beneficial, including a cap on state homestead exemptions, debtor education pilots, penalties for unjustified creditor activities, measures to discourage bad-faith repeat filings, and provisions to improve data collection and audit procedures. However, certain controversial provisions of the current bills need significant changes to satisfy our objectives and concerns. **We propose to advance quickly an Administration proposal in hopes of influencing the Senate bill on the floor and giving the Administration greater leverage in conference.** The proposal would address three issues: (1) limitations on access to Chapter 7; (2) new nondischargeable debts and their impact on child support and alimony payments; and (3) new provisions to protect against coercive creditor behavior and to require more responsibility from creditors in extending credit. The group also has identified alternatives to parts of this proposal on which we could compromise, if necessary.

I. BACKGROUND

Rising Consumer Bankruptcies: Despite what Goldman Sachs recently called "the best economy ever," personal bankruptcies have continued to rise sharply, from roughly 800,000 in 1994 to nearly 1.4 million in 1997. Recent figures for the first quarter of 1998 showed another

20 percent increase over 1997's pace.

Disputed Causes: There is much dispute about the cause of this increase, but little definitive evidence. Creditors assert that lawyer advertising, reduced social stigma, and increased information about the financial advantages of bankruptcy have encouraged an increasing number of consumers to walk away from debts they could repay. Consumer advocates argue that lenders have irresponsibly extended too much credit to families who are ill-prepared to handle it, and that most bankruptcies happen when unexpected events push such a family over the financial edge; indeed, rising bankruptcy rates track closely rising levels of unsecured debt, although debt burdens have actually dropped due to lower interest rates.

Potential for Abuse: Under current rules, some debtors with high incomes walk away from their debts entirely, even when they have the capacity to repay at least a portion of those debts; other debtors file repeatedly without any intention of completing bankruptcy, for the purpose of delaying bona fide collection activities; and generous state exemptions (including unlimited homestead exemptions in eight states and exemptions for items like race horses and silver spoons in Virginia) prompt some to shift assets to exempt categories prior to a bankruptcy filing to avoid making payment to any unsecured creditors. Consumer advocates argue that these cases are not the norm and should not prompt limits on those who genuinely need bankruptcy's fresh start.

Consumer Impact: Regardless of who is to blame, **higher levels of debt charge-offs appear to raise the cost of credit for everyone.** One industry study suggests that bankruptcies cost every American household between $300-400 per year. Higher credit costs disproportionately fall on lower-income families, since they are more likely to carry a balance on their cards. While in the past credit card interest rates did not always rise and fall with market rates, the industry is now more competitive, so that many believe that, over the long run, reduced bankruptcies are likely to translate to lower interest rates and increased access to credit for those who pay their bills.

Legislative Momentum: The popularity of these bills can be explained by the system's vulnerability to abuse and the apparent consumer costs, as well as an extremely effective and well-financed industry campaign and legislators' fears of being labeled protectors of deadbeats.

what industry

II. LIMITATIONS ON ACCESS TO CHAPTER 7 BANKRUPTCY

Current Law: Today, there is little limit on debtors' access to Chapter 7's full and immediate discharge of debt (with virtually no payments to unsecured creditors); however, in some circuits, courts find, on their own motion, that it is "substantial abuse" for a debtor with the ability to repay 20% of their unsecured debts over three years, after taking account of all necessary expenses, to go through Chapter 7 rather than a Chapter 13 repayment plan,

House and Senate Bills: Both bills would require those with the capacity to repay a portion of their debt to do so under a Chapter 13 plan. We opposed the House bill because it determines

access to Chapter 7 under a rigid "means test" that does not take into account the unique circumstances of individual debtors. The Senate approach is more flexible, building on the abuse test in use in some circuits. The Senate bill would authorize a bankruptcy judge to apply this test to any debtor with income above the median and, for the first time, allow creditors to file the motion seeking a determination of abuse. Creditors would have to pay debtors' attorneys fees, if their filings were not 'substantially justified' or were brought to coerce a debtor to waive a right.

Administration proposal: We propose a variation on the Senate bill whereby **the bankruptcy court would have discretion to determine whether or not a debtor's use of Chapter 7 is abuse; however, there would be a presumption of abuse if a debtor has an income above the median and the capacity to repay either at least 30% of her unsecured, nonpriority debts or some specified amount (such as $5000) over three years.** (No debtor would be denied access to Chapter 7 unless she had the ability to repay at least $50 a month in unsecured, nonpriority debt. Any lesser amount is too small to merit the Chapter 13 administrative costs or to risk the chance that the creditor was pursuing the motion to coerce the debtor to forgo another bankruptcy right.) We also would provide that, if a debtor moved more than $50,000 from nonexempt to exempt assets within one year of the filing, she would be subject to a presumption of abuse, regardless of income. In determining a debtor's capacity to repay, we propose to explicitly exclude luxuries (e.g., expensive cars or boats) from necessary expenses.

These presumptive guidelines could be overcome if the court determined, e.g., that the debtor faced unusual but necessary expenses or could not be expected to maintain reliably her current level of income. Such presumptive guidelines have proven to be highly effective in promoting uniformity and fairness in establishing child support award amounts. Since the average debtor under Chapter 13 repays 20% of her debts and has income below the national median, those who meet this higher threshold are the most likely to succeed under a repayment plan.

III. NONDISCHARGEABLE DEBT AND ITS IMPACT ON CHILD SUPPORT AND ALIMONY

The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with child support, alimony, educational loans, tax obligations, or debts incurred by fraud. To address growing concerns about gaming of the system, both bills broaden the categories of nondischargeable credit card debt, although the largest new category was dropped and the remaining two narrowed. Moreover, as consumers use credit cards for new purposes (e.g., groceries or paying student loans), additional credit card debts become dischargeable. This Administration envisions -- in fact, encourages -- greater use of electronic commerce, so we do not want bankruptcy discharge rules that discourage credit card companies from providing new opportunities for consumers to have the convenience of credit card payment. However, the provisions in these bills creating new nondischargeable debts raise two questions: (1) Do the additional debts made nondischargeable rise to the same level of public priority as other

nondischargeable debts? and (2) What impact does the protection of new categories of debt have on the ability of the debtor, post-bankruptcy, to repay existing nondischargeable debts?

Debts incurred to pay other nondischargeable debts.

Current law: A credit card debt incurred to pay federal taxes is nondischargeable, to prevent "gaming" by paying off nondischargeable debts with a credit card which will be discharged.

House and Senate bills: Both make a debt incurred to pay any nondischargeable debt nondischargeable, although the Senate effectively eliminates the provision if the debtor is a single parent or owes child support and/or alimony.

Administration Proposal: We propose that the **current law remain unchanged**; however, if a debtor paid a nondischargeable debt with a credit card, it would be a factor in determining whether the debtor's use of Chapter 7 was abuse.

Debts incurred in the period immediately before bankruptcy.

Current Law: Debts for luxuries over $1000 owed to a single creditor within 60 days of bankruptcy are nondischargeable. There is evidence that this and other anti-fraud provisions do not prevent some debtors from taking the opportunity to run up debt before filing bankruptcy.

House and Senate Bills: Both would make all debts incurred within 90 days of bankruptcy for luxuries presumptively nondischargeable. In addition, they would make presumptively nondischargeable debt above ($250 in the House; $400 in the Senate) per credit card for necessaries during the same period.

Administration Proposal: We propose to agree to make **debt for luxuries within 90 days of bankruptcy presumptively nondischargeable; however, a cap of $250 or $400 on necessary expenses incurred prior to bankruptcy is inappropriate.** One can easily imagine a family, in the months prior to bankruptcy, paying for rent, school clothes, and even groceries on their credit card. Courts can easily compare current spending patterns to prior spending and determine whether charges are truly for necessary expenses.

Child Support and Alimony Considerations

The bills have seven new provisions designed to either mitigate the impact of the new nondischargeable debt on child support and alimony or to give child support and alimony additional protections in and after bankruptcy. Some experts argue that the benefits provided by these additional provisions outweigh any modest harm to child support and alimony payments that remains from the nondischargeability provisions. Moreover, if needs-based reform is done right and shifts only those with the capacity to repay, as we propose, it will likely enhance the collection of these payments, as debts in Chapter 13 are repaid under the supervision of the

bankruptcy court. On the other hand, the women's groups still oppose these bills, arguing that there is no way to mitigate fully the consequences of the expanded categories of nondischargeable debt, which enhance competition for the debtor's limited funds. Moreover, these provisions, which focus only on child support and alimony, do not address our policy concern that new nondischargeable debt will compete with other existing nondischargeable debts, such as education loans. For these reasons, our proposals would allow only one category of new nondischargeable debt (luxuries purchased 90 days before bankruptcy); for the remaining categories, we propose to leave current law or address the problem a different way.

IV. ADDITIONAL CONSUMER PROTECTIONS AGAINST PREDATORY CREDITOR PRACTICES

Your advisors are particularly concerned about the unequal bargaining power of the creditor and debtor and how the changes in bankruptcy rules could further shift the balance and create opportunities for coercion and harm. To address this concern, and to ensure that legislation requires responsibility of both debtor and creditor, we propose new consumer protections.

Reaffirmations of Unsecured Debt

Although debtors in Chapter 7 have a right to have their unsecured debts discharged, some debtors reaffirm debts. While there may be some circumstances in which reaffirmation is in the debtor's best interest (e.g., as a condition of obtaining credit to keep open a small business), those cases are few. The risk is real, however, that debtors are pressured into reaffirming their debts by aggressive creditors. After Sears recently paid large penalties for such practices, another Bankruptcy Judge (Fenning) said she scrutinized her court records and found evidence of widespread coercive reaffirmations. Since reaffirmed debts survive bankruptcy, they compete with child support and alimony after bankruptcy. Eliminating coercive reaffirmations also would help to reduce the current level of competition child support and alimony payments face.

Current Law: For a reaffirmation to be valid, the creditor must provide required disclosures and the court must determine that the reaffirmation does not impose an undue hardship on the debtor or a dependant and is in the debtor's best interest; however, an affidavit of the debtor's attorney to that effect suffices.

House and Senate Bills: No related provisions.

Administration Proposal: We propose to require that the court itself find that there is a compelling reason for the debtor to reaffirm an unsecured debt, without reliance on counsel affidavits. We also propose to bar reaffirmation of debts that add attorneys' fees and costs to the debt, to increase penalties on attempts to enforce invalid reaffirmations, and to clarify that

creditors may not threaten to file motions alleging abuse of Chapter 7 or solicit a reaffirmation after the automatic stay is imposed.

Credit Card Minimum Payment Disclosure

We also believe that some signal should be sent to creditors about lending practices that entice debtors to get further and further into debt.

Current Law: Most debtors believe that by making the minimum payment on their credit card they are slowly working off their debt. However, depending upon the interest rate, they may be falling further and further behind. Creditors are increasingly offering minimum payment plans that amortize debt over decades, if at all.

House and Senate bills: No related provisions.

Administration Proposal: We propose a process for subordinating unsecured, nonpriority debt if the creditor did not disclose clearly to the debtor the time period over which the debt would amortize at the minimum payment level. The subordinated debt would be paid, in Chapter 7 or 13, only after all other unsecured, nonpriority debt. It most cases, this means it will not be repaid.

Other Non-Bankruptcy Steps to Improve Consumer Credit Practices

We also are exploring whether there are other non-bankruptcy steps that we can take to clamp down on predatory lender practices and better help consumers to understand their own borrowing. We have consensus on a proposal that requires all lenders to disclose the time period over which debt is amortized by minimum payments. This proposal, and others under review, fall under the jurisdiction of other committees, so it is not feasible to insist that Congress include these proposals in the bankruptcy bill at this time. However, we might unveil these proposals in connection with a campaign to educate consumers about the use of credit, using the bully pulpit as we have done to encourage retirement savings.

V. ADVISORS' RECOMMENDATIONS

All your advisors recommend we proceed as described, including CoS, NEC, Counsel, OPL, OLA, OMB, CEA, DPC, First Lady, DoJ, Treasury, HHS, Commerce, and Education.

- The NEC believes that requiring greater responsibility of both creditors and debtors is the best way to address the "unclean hands" of some of the legislation's proponents.
- Treasury emphasizes that needs-based reform will decrease the cost of, and increase access to, credit for those debtors who do pay their bills, by limiting opportunistic bankruptcy among those higher income debtors who do not.
- CEA believes nondischargeability provisions should not prevent agreement on a bill which strengthens child support and alimony in other ways, particularly if the nondischargeability provisions are targeted to address 'gaming' of the bankruptcy system.
- DoJ supports the plan and stresses that other provisions of these bills, like the cap on state homestead exemptions, measures to discourage bad faith repeat filings, and provisions to improve data collection and audit procedures, are important reforms.
- OPL believes that, while consumer advocates oppose any bill, reforms limiting access to Chapter 7 and stemming coercive reaffirmations appear valid. OPL wants to see us fight for aspects of our proposal that protect against any impact on child support (before or after bankruptcy) of new nondischargeable credit card debt.
- DPC and the First Lady's Office strongly support advancing proposals that achieve more balanced reform by calling for responsibility on the part of the creditor as well as the debtor, and recommends that we continue to focus on the child support issue to ensure that protections in this area are as strong as possible.
- OLA stresses the popularity of bankruptcy reform and advises that we advance proposals that have a realistic prospect of inclusion, or we may find ourselves faced with overwhelmingly popular legislation that fails to satisfy our announced concerns.

VI. DECISION

____ **PROCEED AS DESCRIBED**

____ **LET'S DISCUSS**

EF

'98 MAY 7 PM8:09
26331455
SP400

Draft 05/07/98 7:30pm

PRESIDENT WILLIAM J. CLINTON

RADIO ADDRESS ON MOTHER'S DAY AND CHILD CARE

WASHINGTON, DC

May 9, 1998

Tomorrow is Mother's Day, a special moment to express the gratitude, respect, and love we feel all year round. Our mothers give us life; they offer us unconditional love; they endow us with self-esteem and a generosity of spirit. From our first moments, mothers are our best teachers and most selfless friends. And, like my own mother, whom I miss very much, they rarely ask for thanks. A mother's main wish is to see her children grow up healthy and happy.

Today, I want to talk about a few ways we can give all mothers that peace of mind--whether they work at an office, a factory, a hospital, or at home.

To make that tribute to motherhood, we must all take responsibility for the care of our children. For many mothers, peace of mind requires affordable, high-quality child care. Millions of American women, by necessity or by choice, pursue full-time careers outside the home. Three out of five mothers with children under six are attempting this delicate balancing act--between work and home, between one's colleagues and one's kids. It is a difficult decision. And for many low-income families, it is not a decision at all--because quality child care is either hard to find or too expensive to afford.

That's why I have included in my balanced budget a significant new investment in child care.

I urge Congress to join me in making child care better, safer and more affordable for those who need it.

To help parents find the best care for their children, I am today releasing a report by the Department of Health and Human Services. It's a consumer's guide to child care quality that recommends four steps for parents: one, interview the potential care givers; two, check references; three, evaluate how the care giver meets your child's needs; and four, stay involved. Because, as Mother's Day reminds us, governments don't raise children; parents do. There can be no substitute for a mother's love or a parent's responsibility.

We, too, in the national and state governments, have a responsibility--to protect America's children from abuse and neglect. Nothing gives mothers peace of mind like the knowledge that their children are in safe hands. Today I am also releasing new Justice Department guidelines for screening child care workers and other care givers; and again I urge Congress to act on a proposal I put forth to facilitate background checks. There is strong bipartisan support for this proposal, and I am hopeful that members of both parties will move quickly to give America's children the care they deserve.

But there is one other thing we must do to protect America's children: fathers must take responsibility.

Children deserve to be raised by both parents; and, when that's not possible, fathers must provide the child support that's needed. If fathers simply walk away, mothers and children wind up on the welfare rolls and taxpayers end up paying the bill. That's why my administration has cracked down on deadbeat dads. Since 1992, we've raised child support collections by 68 percent.

We have worked too hard for too long toughening enforcement of child support laws to let our progress be accidentally undone. But that could happen if Congress goes ahead with one part of bankruptcy reform legislation now under consideration. Under that proposal, when a father declares personal bankruptcy, a mother may have to compete with powerful banks and credit card companies for the money they're owed.

EF

REVISED

THE PRESIDENT HAS SEEN
5/9/98
26331455
'98 MAY 8 AM8:51
SP400

Final 05/08/98 8:30am

PRESIDENT WILLIAM J. CLINTON

RADIO ADDRESS ON MOTHER'S DAY AND CHILD CARE

WASHINGTON, DC

May 9, 1998

THE PRESIDENT HAS SEEN
5/9/98

Tomorrow is Mother's Day, a special moment to express the gratitude, respect, and love we feel all year round. Our mothers give us life; they offer us unconditional love; strong guidance; and the belief that we can grow up to do anything we can dream of ~~they endow us with self-esteem and a generosity of spirit~~. From our first moments, mothers are our best teachers and most selfless friends. And, like my own mother, whom I miss very much, they rarely ask for thanks. A mother's main wish is to see her children grow up healthy and happy.

Today, I want to talk about a few ways we can give all mothers that peace of mind--whether they work at an office, a factory, a hospital, or at home.

THE PRESIDENT HAS SEEN
5/9/98

To make that tribute to motherhood, we must all take responsibility for the care of our children. For many
who work away from home
mothers, peace of mind requires affordable, ~~high-~~quality child care. Millions of American women have full-time jobs outside the home. Three out of five mothers with children under six are working to meet their obligations to their children and their employers. Juggling those responsibilities is even more difficult when quality child care is either hard to find or too expensive to afford.

That's why I have included in my balanced budget a significant new investment in child care. I urge Congress to join me in making child care better, safer and more affordable for those who need it.

To help parents find the best care for their children, I am today releasing a report by the Department of Health and Human Services. It's a consumer's guide to child care quality that recommends four steps for parents: one, interview the potential care givers; two, check references; three, evaluate how the care giver meets your child's needs; and four, stay involved. Because, as Mother's Day reminds us, governments don't raise children; parents do. There can be no substitute for a mother's love or a parent's responsibility.

We, too, in the national and state governments, have a responsibility--to protect America's children from abuse and neglect.

Nothing gives mothers peace of mind like the knowledge that their children are in safe hands. Today I am also releasing new Justice Department guidelines for screening child care workers and other care givers; and again I urge Congress to act on a proposal I put forth to facilitate background checks. There is strong bipartisan support for this proposal, and I am hopeful that members of both parties will move quickly to give America's children the care they deserve.

But there is one other thing we must do to protect America's children: fathers must take their share of responsibility. Children deserve to be raised by both parents; and, when that's not possible, children still must receive the support they need.

The unfortunate division of families cannot mean the end of child support. That's why my administration has worked so hard to toughen enforcement of our child support laws; and, since 1992, we've raised collections by 68 percent.

We have worked too hard for too long toughening enforcement of child support laws to let our progress be accidentally undone. But that could happen if Congress goes ahead with one part of bankruptcy reform legislation now under consideration. I am willing to work with Congress to pass responsible and fair bankruptcy reform legislation. However, under one leading proposal, when a father declares personal bankruptcy, a mother may have to compete with powerful banks and credit card companies for the money they're owed.

We all know who will lose that contest: America's children. Parents have to step up to their responsibilities and so does Congress. Some changes to the consumer bankruptcy laws are in order, but mothers and children shouldn't have to stand in line for the support they need.

America's mothers hold a special place in our hearts. In return, let us give them the love and respect they have given us. On Mother's Day, we do so with cards and bouquets. But today and every other day, we should also do everything in our power to give America's mothers the peace of mind they so deeply deserve.

'98 MAY 7 PM 7:40

THE WHITE HOUSE

WASHINGTON

May 7, 1998

TAPED WEEKLY RADIO ADDRESS

DATE: May 8, 1998
LOCATION: Oval Office
TIME: 9:30 AM
FROM: Bruce Reed
Megan Moloney

I. **PURPOSE**

In honor of Mother's Day this Sunday, you will discuss how all Americans must take responsibility for the care of our children -- through protecting child support collection and taking action on child care.

II. **BACKGROUND**

Your Mother's Day radio address provides an opportunity to focus on child care, urge congressional action, and make two announcements aimed at giving parents greater peace of mind on child care:

(1) *Background Checks for Child Care Workers*: You will release Department of Justice guidelines for screening child care workers and other caregivers, designed to reduce the incidence of abuse by care providers. This report demonstrates the need for the National Crime Prevention and Privacy Compact, which you transmitted to Congress last fall and which now awaits congressional action. The Compact is designed to facilitate effective background checks on child care providers by eliminating state law barriers to the sharing of criminal history information for non-criminal purposes.

(2) *Parent Education on Child Care*: You will release two HHS documents: a new guide for parents on what to look for in choosing quality child care, and a report for states on improving child care consumer education.

You will also make a statement on pending bankruptcy reform legislation and the Administration's opposition to one aspect of a bill in the House of Representatives. Under this provision, certain credit card debts would be nondischargeable under Chapter 7 and thus elevated to the same priority as taxes, educational loans, and child support and alimony. Former spouses could find themselves in competition with large credit card companies to receive their family support. Your advisers recommend strong opposition to this provision; however, such opposition should not be seen as inconsistent with our support for responsible bankruptcy reform.

III. PARTICIPANTS

Briefing (9:15-9:30 am)
The President
Rahm Emanuel
Ann Lewis
Bruce Reed
Jen Klein
Jeff Shesol
Nicole Rabner

Radio Address (9:30 am)
The President
Megan Moloney
Rebecca Cameron
White House Communications Agency (WHCA) Staff
White House Television (WHTV)
White House photographer
Approx. 30 guests (see attached for list)

IV. PRESS PLAN

The ABC, AP, C-CPAN, CBS, NBC/Mutual/Westwood One, NPR, UPI, USA, American Urban Radio and Standard News networks will carry the address in its entirety to their thousands of stations across the country this Saturday at 10:06 AM ET.

V. SEQUENCE OF EVENTS

Briefing
Deliver Radio Address
Greet Guests

VI. REMARKS

To be forwarded by the Office of Speechwriting

'98 MAY 7 PM6:27

RADIO ADDRESS
May 8, 1998

1. **Kim Wardlaw**
2. **Bill Wardlaw**

3. **Buddy Darden**
4. **Lillian Darden** - daughter

5. **Maurice Mitchell**
6. **John Bailey**

7. **Jean Boyce** - from Newport, AR
8. **Sam Boyce**

9. **Mayor Poindexter Fiser** - Elaine, AR
10. **Mary Louise Fiser**
11. **Kristin Flynn**

12. **Gerald Christiano**- immediate past President of Kiwanis
13. **Anita Christiano**
14. **David Blackmer**
15. **Ann Blackmer**

16. **Diana Helweg** - NSC
17. **Joe Helweg** - brother
18. **Bonnie Helweg Campbell** - mother
19. **George Campbell** - father

20. **Frank Daily** - Milwaukee, WI - friend of Woody Bassett
21. **Julianna Ebert** - wife
22. **Dan Ebert** - nephew

Draft 05/07/98 7:30pm

PRESIDENT WILLIAM J. CLINTON

RADIO ADDRESS ON MOTHER'S DAY AND CHILD CARE

WASHINGTON, DC

May 9, 1998

Tomorrow is Mother's Day, a special moment to express the gratitude, respect, and love we feel all year round. Our mothers give us life; they offer us unconditional love; they endow us with self-esteem and a generosity of spirit. From our first moments, mothers are our best teachers and most selfless friends. And, like my own mother, whom I miss very much, they rarely ask for thanks. A mother's main wish is to see her children grow up healthy and happy.

Today, I want to talk about a few ways we can give all mothers that peace of mind--whether they work at an office, a factory, a hospital, or at home.

To make that tribute to motherhood, we must all take responsibility for the care of our children. For many mothers, peace of mind requires affordable, high-quality child care. Millions of American women, by necessity or by choice, pursue full-time careers outside the home. Three out of five mothers with children under six are attempting this delicate balancing act--between work and home, between one's colleagues and one's kids. It is a difficult decision. And for many low-income families, it is not a decision at all--because quality child care is either hard to find or too expensive to afford.

That's why I have included in my balanced budget a significant new investment in child care.

I urge Congress to join me in making child care better, safer and more affordable for those who need it.

To help parents find the best care for their children, I am today releasing a report by the Department of Health and Human Services. It's a consumer's guide to child care quality that recommends four steps for parents: one, interview the potential care givers; two, check references; three, evaluate how the care giver meets your child's needs; and four, stay involved. Because, as Mother's Day reminds us, governments don't raise children; parents do. There can be no substitute for a mother's love or a parent's responsibility.

We, too, in the national and state governments, have a responsibility--to protect America's children from abuse and neglect. Nothing gives mothers peace of mind like the knowledge that their children are in safe hands. Today I am also releasing new Justice Department guidelines for screening child care workers and other care givers; and again I urge Congress to act on a proposal I put forth to facilitate background checks. There is strong bipartisan support for this proposal, and I am hopeful that members of both parties will move quickly to give America's children the care they deserve.

But there is one other thing we must do to protect America's children: fathers must take responsibility.

Children deserve to be raised by both parents; and, when that's not possible, fathers must provide the child support that's needed. If fathers simply walk away, mothers and children wind up on the welfare rolls and taxpayers end up paying the bill. That's why my administration has cracked down on deadbeat dads. Since 1992, we've raised child support collections by 68 percent.

We have worked too hard for too long toughening enforcement of child support laws to let our progress be accidentally undone. But that could happen if Congress goes ahead with one part of bankruptcy reform legislation now under consideration. Under that proposal, when a father declares personal bankruptcy, a mother may have to compete with powerful banks and credit card companies for the money they're owed.

We all know who will lose that contest: America's children. Fathers have to step up to their responsibilities and so does Congress. Some changes to the consumer bankruptcy laws are in order, but mothers and children shouldn't have to stand in line for the support they need.

America's mothers hold a special place in our hearts. In return, let us give them the love and respect they have given us. On Mother's Day, we do so with cards and bouquets. But today and every other day, we should also do everything in our power to give America's mothers the peace of mind they so deeply deserve.

THE WHITE HOUSE

WASHINGTON

June 18, 1998

Mr. President:

As you know, the Message Office sends out thousands of messages on your behalf. I thought you might like to personally sign this one.

Phil Caplan

6-18-98

To Oval with buck slip.

MR. PRESIDENT:

As you know, the Messages office sends out thousands of messages on your behalf. I thought you might like to personally sign this one.

Phil Caplan

THE WHITE HOUSE

WASHINGTON

June 19, 1998

Hillary and I extend warmest greetings to all those gathered in Little Rock to celebrate the establishment of the Vincent Foster Professorship of Legal Ethics and Professional Responsibility at the University of Arkansas School of Law. We are pleased to join you in congratulating Dr. Howard Brill on his appointment as the first Vincent Foster Professor.

The creation of this professorship is a unique and fitting tribute to Vince Foster, who throughout his life and career had a true reverence for the law and its proper practice. His character, his achievements in Arkansas, and his distinguished public service as Deputy White House Counsel in my Administration reflected the quality of the education he received at the University of Arkansas School of Law, and I am confident that Professor Brill will continue to make his own outstanding contributions to the school's reputation for excellence.

Hillary and I send our best wishes to Lisa and Jim Moody, to Laura, Brugh, and Vincent Foster III, to Danielle and Leonard Strickman, and to all our other friends who are gathered to honor the memory of Vince Foster. Our thoughts are with you.

THE WHITE HOUSE

WASHINGTON

June 18, 1998

Mr. President:

As you know, the Message Office sends out thousands of messages on your behalf. I thought you might like to personally sign this one.

Phil Caplan

THE WHITE HOUSE

WASHINGTON

June 19, 1998

Hillary and I extend warmest greetings to all those gathered in Little Rock to celebrate the establishment of the Vincent Foster Professorship of Legal Ethics and Professional Responsibility at the University of Arkansas School of Law. We are pleased to join you in congratulating Dr. Howard Brill on his appointment as the first Vincent Foster Professor.

The creation of this professorship is a unique and fitting tribute to Vince Foster, who throughout his life and career had a true reverence for the law and its proper practice. His character, his achievements in Arkansas, and his distinguished public service as Deputy White House Counsel in my Administration reflected the quality of the education he received at the University of Arkansas School of Law, and I am confident that Professor Brill will continue to make his own outstanding contributions to the school's reputation for excellence.

Hillary and I send our best wishes to Lisa and Jim Moody, to Laura, Brugh, and Vincent Foster III, to Danielle and Leonard Strickman, and to all our other friends who are gathered to honor the memory of Vince Foster. Our thoughts are with you.

THE WHITE HOUSE

WASHINGTON

June 18, 1998

Mr. President:

As you know, the Message Office sends out thousands of messages on your behalf. I thought you might like to personally sign this one.

Phil Caplan

THE WHITE HOUSE

WASHINGTON

June 19, 1998

Hillary and I extend warmest greetings to all those gathered in Little Rock to celebrate the establishment of the Vincent Foster Professorship of Legal Ethics and Professional Responsibility at the University of Arkansas School of Law. We are pleased to join you in congratulating Dr. Howard Brill on his appointment as the first Vincent Foster Professor.

The creation of this professorship is a unique and fitting tribute to Vince Foster, who throughout his life and career had a true reverence for the law and its proper practice. His character, his achievements in Arkansas, and his distinguished public service as Deputy White House Counsel in my Administration reflected the quality of the education he received at the University of Arkansas School of Law, and I am confident that Professor Brill will continue to make his own outstanding contributions to the school's reputation for excellence.

Hillary and I send our best wishes to Lisa and Jim Moody, to Laura, Brugh, and Vincent Foster III, to Danielle and Leonard Strickman, and to all our other friends who are gathered to honor the memory of Vince Foster. Our thoughts are with you.

Nancy V. Hernreich

06/15/98 03:09:33 PM

Record Type: Record

To: Maureen A. Hudson/WHO/EOP

cc:

Subject: Re: Howard Brill message

It should be a general message. As far as I know the Clintons do not know Brill.

Carol - we are sending this over early because event is 6/19 - Thanks - Jan

'98 JUN 18 AM10:46

EVENT IS 6/19

Cleared by Counsel - Pam Ciccetti

THE WHITE HOUSE

WASHINGTON

MEMORANDUM

TO: PLM

DATE: 5/1/98

FROM: Chip Payson
Scheduling
184 OEOB
456-5306

 # ATTACHED:

___ Please advise on how to respond

___ For your information

_X_ For your action

___ As you requested

___ Please call me regarding the attached

___ Please prepare response per instructions below

___ For your approval

___ For Surrogate Consideration

___ Please prepare Scheduling Proposal

COMMENTS: Please send a message per Nancy Hemreich. VIP!!

CC:

THE WHITE HOUSE

WASHINGTON

MEMORANDUM

TO: Nancy

DATE: 5/29/98

FROM: Chip Payson
Scheduling
184 OEOB
456-5306

 # ATTACHED:

X Please advise on how to respond

__ For your information

X For your action

__ As you requested

__ Please call me regarding the attached

__ Please prepare response per instructions below

__ For your approval

__ For Surrogate Consideration

__ Please prepare Scheduling Proposal

COMMENTS: A POTUS/FLOTUS regret will be sent – Stephanie will let POTUS know that. Would you like to have Personal POTUS letter sent or should I send to PLM?

POTUS

SSO

CC:

THE WHITE HOUSE

WASHINGTON

MEMORANDUM

TO: Nancy

DATE: 5/19/98

FROM: Chip Payson
Scheduling
184 OEOB
456-5306

\# ATTACHED:

X Please advise on how to respond

__ For your information

__ For your action

__ As you requested

__ Please call me regarding the attached

__ Please prepare response per instructions below

__ For your approval

__ For Surrogate Consideration

__ Please prepare Scheduling Proposal

COMMENTS:

Need to do some research to see if special letter should be sent -

Be sure the scheduler knows & also make sure Stephanie in scheduling memo notes it to Pres. - I don't think they need to go but probably need a nice letter - Thanks

CC:

Chip

Date Rec'd

*Ltr Asn'd

Dean Leonard Strickman and Danielle Strickman
Judge James Moody and Lisa Foster Moody
Vincent Foster III, Laura Foster & Brugh Foster
cordially invite you
to a celebration of the establishment
at the University of Arkansas School of Law
of the Vincent Foster Professorship of Legal Ethics and Professional Responsibility
and the designation of Howard W. Brill
as the first Vincent Foster Professor

Signing For

Misc.

Friday evening, June 19, 1998
Josephine's River Ballroom
Arkansas Excelsior Hotel
Little Rock, Arkansas

Cocktails 6:30 p.m.
Dinner 7:30 p.m.
Black tie optional
R.S.V.P. by June 10, 1998

PB METER 023962 U.S. POSTAGE

President and Mrs. Bill Clinton
The White House
1600 Pennsylvania Avenue
Washington, DC 20500-0001

20500/0001

D. Malcolm McNair, Jr.
131 Leflar Law Center
University of Arkansas School of Law
Fayetteville, Arkansas 72701-1201

Howard W. Brill, A.B., J.D., LL.M.

Professor

A.B. (Duke University), J.D. (University of Florida), LL.M. (University of Illinois). Admitted to practice in Florida, 1970, Illinois, 1973, Arkansas 1977. Law Clerk, Judge Robert T. Mann, 2nd Distrct Court of Apeals, Florida, 1970-71; Instructor, University of Florida, 1971-1972; Teaching Assistant, Illinois, 1972-73; associate, Spector, Taber, & Tappa, Rock Island Illinois, 1973-75; Assistant Professor, U of A, 1975-77; Visiting Associate Professor Illinois, 1978-79; Visiting Associate Professor, University of North Carolina 1980; Associate Professor 1977-82; Visiting Professor, University of South Carolina, 1983; Visiting Professor, University of Tennessee, 1988; Professor since 1982.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release July 21, 1993

PRESS BRIEFING
BY
CHIEF OF STAFF MACK MCLARTY
AND COMMUNICATIONS DIRECTOR MARK GEARAN

The Briefing Room

3:30 P.M. EDT

MR. MCLARTY: Good afternoon. As I'm sure you can appreciate, this is one of the hardest things I've ever had to do. Like the President and myself, Vince Foster was from Hope, Arkansas, and for more than 40 years he was my friend. And because of that friendship and because of Vince's considerable accomplishments, I took understandable pride when the President asked him to join us here in Washington as Deputy White House Counsel.

For six months, he served his country with distinction in that capacity and, to be sure, the White House has lost a talented and dedicated attorney.

Many of you may not know that Vince graduated first in his law school class and scored the highest grade on the Arkansas bar exam the year he took it, and was made partner in a major law firm in just two years. He chaired the Arkansas Advisory Council to the Legal Services Corporation, and he just recently received the Arkansas Bar Foundation Award and the Arkansas Bar Association's 1993 Outstanding Lawyer Award.

But I'm here today really to talk more as Vince's friend than his White House Chief of Staff. When we received the tragic news last night the President and I joined his family and his friends at the Foster home. And as the President related to the White House staff earlier today, we all shared some warm and some wonderful memories, as well as shed some very real tears.

All of us who have the privilege and honor of calling the White House our place of employment, on either side of this podium, are used to, in large measure, dealing with issues and problems that are tangible, that are knowable, at least in large part, and most times subject to reason. And that is one aspect that makes this tragedy so difficult to deal with. For try as we might, all of our reason, all of our rationality, all of our logic can never answer the questions raised by such a death.

We really can never fully know a person's private pain and what might lead them in their thought process, even a person we have known all of our lives. But what we can do is offer our prayers and comfort to Lisa, Vince's wife of 25 years; their wonderful children; his mother Alice Mae, whom I spoke with this morning in Hope; and to his sisters, Sheila Anthony here in Washington and Sharon Bowman of Little Rock.

As a measure of our affection for them, there has been established a Vincent W. Foster Scholarship Fund with the Arkansas

Bar Foundation. Funeral services will be held in Little Rock this Friday. The President and First Lady, as well as Donna and I will, of course, attend. Donna is at the Foster residence this afternoon, and I plan to join her and the Foster family later today.

It is one of life's ironies that just yesterday, when speaking of what John F. Kennedy had meant to him, the President said -- and I quote -- "The only way to ever honor any memory of someone gone is to do something today which reinforces the validity of that memory in our hearts." And so we will reinforce the validity of our friend's life, even as we mourn the circumstances of his death.

The work which he was devoted here at the White House will go on, and Vince Foster's spirit will live on in the hearts of those of us who loved him.

Thank you very much. I would now like to ask Mark Gearan to respond to any questions that you may have. Thank you.

Q Mack, did you know of any personal reason why he might have done this?

MR. GEARAN: Thank you. Let me provide you some background information, if I might, and walk through some things and then we'd be happy to take some questions.

In terms of the chronology for the White House notification, the Park Service police made the initial contact to the White House security and administrative officers about the report of a body being found. The Secret Service and the Park Service respectively notified the administrative and security officers of the White House. That set into motion calls to the Chief of Staff. We were here for the Larry King Live show in the Residence.

Soon after the show began, we were pulled from the staff room where the Chief of Staff Mack McLarty was informed of this -- that it was an unconfirmed report. In the intervening 50 or so minutes, efforts were made to both confirm the report and to make preliminary calls to individuals that needed to be contacted. Mack McLarty was with us in the Residence and coordinated the activity.

Just about five minutes before 10:00 p.m., before the Larry King Show concluded, we had the confirmation that indeed Vince had been confirmed as deceased. And the President concluded the show, went up to the Residence with Mack; at which point Mack informed the President of Vince's death. Following the indication -- following that report, then the President visited the Foster family with Mack and with several of their friends from here in Washington, senior staff members and folks from Little Rock that went to be near the Foster family at that time.

Secondly, let me tell you a bit about Vince's day-to-day responsibilities here at the White House. He's the Deputy Counsel to Bernie Nussbaum, and as such, assisted Bernie in managing all of the day-to-day activities in the White House Counsel's Office. In a staff meeting that the President had at noon today in the Old Executive Building, Bernie spoke very movingly of what they tried to do in the White House Counsel's Office, and that is to establish a law firm. They view their work as partners, senior partners in the firm in putting together the law firm there. He advised the President in the selection of judicial nominees, was a key advisor to the Health Care Task Force, and provided day-to-day management assistance to Bernie overall in the Counsel's Office.

Yesterday, Vince attended Judge Freeh's announcement

The White House

Office of the Press Secretary

For Immediate Release July 20, 1993

This evening, the White House was contacted by the United States Park Service and informed that the body of Deputy White House Counsel Vincent Foster, Jr. had been discovered at Fort Marcy, near the George Washington Parkway in Virginia. The positive identification of Mr. Foster's body was provided to the White House at approximately 9:55 p.m., and the death was reported by Park Service investigators as an apparent suicide.

Upon learning of Mr. Foster's death, the President issued the following statement.

"It was with deep sadness that I learned of the death of Vincent Foster, who served ably and with distinction as Deputy White House Counsel, and was my friend for over forty years.

"Hillary and I love his wife Lisa and their three children, and we want to draw them close to our hearts and keep them in our prayers in this painful moment of grief.

"His family has lost a loving husband and father, America has lost a gifted and loyal public servant, and Hillary and I have lost a true and trusted friend.

"My deepest hope is that whatever drew Vince away from us this evening, his soul will receive the grace and salvation that his good life and good works earned."

The President has joined the family of Vincent Foster this evening. The White House will have no further comment on his passing until tomorrow.

###

ROSE LAW FIRM

A PROFESSIONAL ASSOCIATION

120 EAST FOURTH STREET

LITTLE ROCK, ARKANSAS 72201

Telephone: 501-375-9131

REVISERS OF THE ARKANSAS LAW DIGEST FOR THIS DIRECTORY

General Practice. Trials. Antitrust, Banking, Bankruptcy, Corporation, Employment Discrimination, Environmental, Insurance, Labor, Municipal Bond, Public Utility, Securities and Taxation Law.

PHILLIP CARROLL, born Fort Smith, Arkansas, August 1, 1925; admitted to bar, 1950, Arkansas. *Education:* public schools, Fort Smith; University of Arkansas (LL.B., 1950). Delta Theta Phi. National Conference of Commissioners on Uniform State Laws (Arkansas Commissioner, 1970—; Chairman, Executive Committee, 1983-1985; President, 1985-1987). *Member:* Pulaski County (President, 1967-1968; Recipient, Outstanding Lawyer Award, 1981), Arkansas (Secretary, 1959-1961; President, 1980-1981; Recipient, Outstanding Lawyer Award, 1989) and American Bar Associations; Overton Inn of Court (President, 1989-1990). Fellow: American College of Trial Lawyers (State Chairman, 1990—); American Bar Foundation (Member, Arkansas Supreme Court Committee on Jury Instructions - Civil, 1964—). [Captain, U.S. Army, 1943-1945; 1950-1952]

W. DANE CLAY, born Fort Smith, Arkansas, February 1, 1928; admitted to bar, 1951, Arkansas. *Education:* Fort Smith Junior College; University of Arkansas (LL.B., 1951). Phi Alpha Delta; Omicron Delta Kappa. Editor-in-Chief, Arkansas Law Review, 1951. *Member:* Pulaski County, Arkansas and American Bar Associations. [Captain, U.S.A.F., 1952-1953]

GEORGE E. CAMPBELL, born Piggott, Arkansas, September 23, 1932; admitted to bar, 1955, Arkansas. *Education:* University of Arkansas (J.D., 1955). Phi Alpha Delta; Omicron Delta Kappa. Associate Editor, Arkansas Law Review, 1954-1955. Delegate, Arkansas Constitutional Convention, 1969-1970. Member, 1976— and Chairman, 1980-1982, 1988—, Arkansas Educational Television Commission. Chairman, Pulaski County Law Library Board, 1980—. *Member:* Pulaski County, Arkansas and American Bar Associations; National Association of Bond Lawyers; American Law Institute. [Cdr., U.S.N.R., active duty, 1955-1959]

HERBERT C. RULE, III, born Little Rock, Arkansas, November 21, 1937; admitted to bar, 1964, Arkansas. *Education:* Yale University (B.A., 1959); University of Arkansas (LL.B., 1964). Member, Arkansas House of Representatives, 1967-1970. Editor, Arkansas Law Review, 1964. Member, Little Rock School Board, 1978-1983. *Member:* Pulaski County, Arkansas and American Bar Associations. [Lt., U.S.M.C., 1959-1961]

VINCENT FOSTER, JR., born Hope, Arkansas, January 15, 1945; admitted to bar, 1971, Arkansas. *Education:* Davidson College (A.B., 1967); Vanderbilt University and University of Arkansas (J.D., with high honors, 1971). Omicron Delta Kappa. Managing Editor, Arkansas Law Review, 1970. *Member:* Pulaski County (President, 1981-1982), Arkansas (Member, House of Delegates, 1973-1976; Chairman, Executive Council, 1987-1988) and American Bar Associations; American Board of Trial Advocates (Associate). Fellow, American College of Trial Lawyers.

W. WILSON JONES, born Little Rock, Arkansas, November 19, 1945; admitted to bar, 1971, Arkansas. *Education:* Tulane University and University of Arkansas (B.S.B.A., with honors, 1967); Southern Methodist University (J.D. cum laude, 1970). Order of the Coif; Phi Delta Phi. Member, Barristers. Associate Editor, Southwestern Law Journal, 1969-1970. *Member:* Pulaski County, Arkansas and American Bar Associations. (Board Certified Tax Specialist, Arkansas Board of Legal Specialization)

WEBSTER L. HUBBELL, born Little Rock, Arkansas, January 18, 1948; admitted to bar, 1973, Arkansas. *Education:* University of Arkansas (B.S.E.E., 1970; J.D., with Honors, 1973). Managing Editor, Arkansas Law Review, 1973. Chief Justice, Arkansas Supreme Court, 1984. Member, Board of Directors, 1978-1984 and Mayor, 1979-1981, City of Little Rock. *Member:* Pulaski County, Arkansas (Member: Executive Council, 1978-1981; House of Delegates, 1976-1978) and American Bar Associations.

ALLEN W. BIRD, II, born Crossett, Arkansas, March 21, 1943; admitted to bar, 1968, Arkansas; 1970, U.S. Supreme Court; 1972, U.S. Court of Military Appeals. *Education:* Florida State University (B.A., 1965); University of Arkansas (J.D., 1968); New York University (LL.M., 1975). *Member:* Pulaski County, Arkansas (Chairman, Creditor's Rights Committee, 1978-1980; Member, House of Delegates, 1979-1982) and American Bar Associations. [LCDR, USNR, active duty, 1968-1974]

(This Card Continued)

WILLIAM E. BISHOP, born Cincinnati, Ohio, September 18, 19 mitted to bar, 1973, Tennessee; 1976, Arkansas. *Education:* Univ Arkansas (B.S.P.A., 1970); Vanderbilt University (J.D., 1973); New University (LL.M., in Taxation, 1974). *Member:* Pulaski County, Ark Tennessee and American Bar Associations. (Board Certified Tax Sp Arkansas Board of Legal Specialization)

HILLARY RODHAM CLINTON, born Chicago, Illinois, Octob 1947; admitted to bar, 1973, Arkansas. *Education:* Wellesley College 1969); Yale University (J.D., 1973). Assistant Professor of Law; Un of Arkansas School of Law, Fayetteville, Arkansas, 1974-1976; Univer Arkansas School of Law, Little Rock, Arkansas, 1979-1980. Counsel, peachment Inquiry Staff, House Judiciary Committee, 1974. M Board of Directors and Chair, 1978-1981, Legal Services Corpora Chair, Childrens Defense Fund, 1986—. *Member:* Pulaski County, Ark sas and American (Chair, Commission on Women in the Profe 1987—) Bar Associations; Arkansas Trial Lawyers Association; The A ciation of Trial Lawyers of America.

C. BRANTLY BUCK, born Little Rock, Arkansas, July 7, 1950; admitted to bar, 1976, Arkansas. *Education:* Davidson College (A.B., 1972); Univ sity of Arkansas (J.D., with high honors, 1976). Managing Editor, Ark sas Law Review, 1976. *Member:* Pulaski County, Arkansas and Americ Bar Associations. (Board Certified Tax Specialist, Arkansas Board of L Specialization)

TIM BOE, born New Orleans, Louisiana, October 30, 1948; admitted bar, 1974, Arkansas; 1977, Tennessee. *Education:* University of Ark (B.A., 1970; J.D., 1973); Southern Methodist University (LL.M., L Law, 1976). Omicron Delta Kappa. Author: "Handling the Title VII C Practical Tips for the Employer," Copyright 1979, published by M ment Labor Relations, Inc., 1980. Contributer, "Employment Discri tion Law," 2 ed., Supp., 1983—. City Attorney, Pine Bluff, Arkansas, 1975. Secretary, 1982-1985 and Chairman, 1985-1989, Arkansas Su Court Board of Legal Specialization. *Member:* Pulaski County, Ark (Secretary, 1978-1979 and Chairman, 1980-1981, Labor Law Section; M ber, House of Delegates, 1979-1982; Recipient, Golden Gavel Award, 1 Chairman, Specialization and Advertising Committee, 1980-1988), Ten see (Member, Labor Law Section) and American (Member, Committee Equal Employment Law, Labor Law Section, 1974—) Bar Associ Arkansas Trial Lawyers Association; Arkansas Association of D Counsel; Defense Research and Trial Lawyers Association (Member, C mittee on Employment Law, 1982—); The Association of Trial Lawyers America. [Lt. U. S. Army, 1972-1973]

M. JANE DICKEY, born Pine Bluff, Arkansas, June 26, 1948; ad to bar, 1977, Arkansas and Oklahoma. *Education:* Centenary Colle Louisiana and University of Arkansas (B.S.E., 1971); University of O homa (J.D., 1977). Order of the Coif; Phi Delta Phi. Article and Book view Editor, Oklahoma Law Review, 1976. Chairman, Bond A Workshop, 1990. *Member:* Pulaski County, Arkansas, Oklahoma American Bar Associations; National Association of Bond Lawyers (ber, Board of Directors, 1989-1990).

WILLIAM H. KENNEDY, III, born Pine Bluff, Arkansas, Marc 1951; admitted to bar, 1976, Arkansas. *Education:* University of Ar (B.S.B.A., with honors, 1973); University of Virginia (J.D., 1976). C U.S. Senate Committee on Appropriations, 1977. Chief Legislative A tant, U.S. Senator Kaneaster Hodges, Jr., 1978. *Member:* Pulaski C Arkansas and American Bar Associations.

KENNETH ROBERT SHEMIN, born Little Rock, Arkansas, July admitted to bar, 1978, Arkansas. *Education:* Tulane University of ana and Memphis State University (B.S., magna cum laude, 1974 phis State University (J.D., 1978). Omicron Delta Kappa; Phi Alpha *Member:* Pulaski County, Arkansas and American Bar Associatio kansas Trial Lawyers Association; The Association of Trial La America.

RONALD M. CLARK, born Little Rock, Arkansas, October 2 admitted to bar, 1980, Arkansas. *Education:* University of A (B.S.B.A., with high honors, 1977; J.D., with honors, 1980). Phi D Associate Editor, Arkansas Law Review, 1979-1980. Certified Pu countant, Arkansas, 1980. *Member:* Pulaski County, Arkansas and can Bar Associations; Arkansas State Society of Certified Public tants; American Institute of Certified Public Accountants. (Board C Tax Specialist, Arkansas Board of Legal Specialization)

GARLAND J. GARRETT, born Greenville, Mississippi, May 1 admitted to bar, 1980, Arkansas. *Education:* Millsaps College (B. laude, 1977); Southern Methodist University (J.D., 1980). Editor,

(This Card Continued)

For significance of Fields of Law in biographical sketches, see Explanatory Notes on inside cover.

266429

THE WHITE HOUSE

WASHINGTON

June 10, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN Phil

SUBJECT: Oil and Natural Gas Leasing on the Outer Continental Shelf (OCS)

At the Oceans Conference on Friday, your WH advisors recommend that you announce, as the major deliverable of the Conference, an extension of existing moratoria on oil and gas drilling on the OCS, including the permanent withdrawal of sensitive marine sanctuaries from drilling. There is disagreement over the length of the moratoria extension.

Background. Beginning in 1982, various statutory moratoria placed areas like New England and southern Alaska off limits. In 1990, President Bush issued a 10-year directive that withdrew all unleased lands off the North Atlantic, California, Washington, Oregon and southwestern Florida coasts. Interior's management plan, which runs in 5-year increments, extends the Bush directive and statutory moratoria until 2002. You have broad discretion under the Outer Continental Shelf Lands Act to withdraw any of the unleased lands of the OCS.

6-11-98

Options. Four are presented. Only Secretaries Babbitt and Pena support *Option 1*, which would continue Interior's management plan through 2002; development of the 2002-2007 plan would commence next year. There is no support for *Option 2*, which calls for appointing a Presidential Commission to review the science and advise you on future actions. There is also no support for *Option 3*, which would have you issue a 5- or 10-year directive without withdrawing the sensitive areas. All of your WH advisors (*CEQ, OMB, Rahm, Sylvia and John*) support **Option 4**, which calls for a 5- or 10-year moratorium and withdrawing the sensitive areas permanently. There is disagreement, however, over the length of the moratorium.

Views. *CEQ* advocates a 10-year ban as being the most aggressive policy supportable by the science. *Secy Babbitt*, while preferring Option 1, would settle for Option 4 with a 5-year ban as more consistent with the management plan. OMB also prefers 5 years as do *John, Sylvia and Rahm,* as this will carry us through 2007, which they believe is a sufficient time frame and is most respectful of Interior's management plan. Furthermore, a 5-year ban will result in less criticism from Members from oil producing states. Gov. Wilson wrote you a letter today, which he released publicly, calling for a permanent moratorium -- a position he has supported for years. Sen. Boxer also supports a permanent ban, but if not permanent, advocates for the longest ban possible given our policy review; she will appreciate the marine sanctuaries ban. CEQ notes that a permanent moratorium is not supported by the science and locality-based reviews that have been Administration policy to date. Environmentalists will argue 5 years does not go far enough and is less than what Bush did, but oil drilling is not at the top of their agenda as these waters are fairly well protected.

__ Option 1 __ Option 2 __ Option 3 __ Option 4 with sanctuaries ban (recommended)

__ 5-year ban __ 10-year ban

266429

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 10, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OUTER CONTINENTAL SHELF OIL & NATURAL GAS LEASING MORATORIUM

Purpose

In preparation for the Oceans Conference that you and the Vice President will attend this week, we have reviewed the status of oil and natural gas leasing on the outer continental shelf (OCS) to consider whether any additional action is necessary. This memorandum sets out the current status of the issue as well as four possible options for the future.

Background

A significant portion of the federal waters are currently off limits to offshore oil and natural gas activity through the combination of a directive by President Bush, annual congressional enactments, and the Department of the Interior's five year plan. This combination of actions protects all of the affected areas through 2002. President Bush's directive, which expires in 2000, withdrew all lands not under lease in 1990 off the North Atlantic, California, Washington, Oregon, and southwest Florida coasts. Various annual congressional moratoria beginning in 1982 have placed off limits the areas listed above, as well as additional areas including New England, the Mid-Atlantic states, and southern Alaska (North Aleutian Basin). The Department of the Interior's five-year leasing program, effective from 1997-2002, in effect prohibits leasing in all areas covered by the Bush Directive and congressional moratoria as well as a few additional areas.

Today, the majority of new offshore leasing activity and production occurs in the Central and Western Gulf of Mexico. There also are existing leases off Alaska, and in the Atlantic and the eastern Gulf of Mexico, but no production at the current time. Bonuses, royalties and rent payments to the Treasury from these leases totaled $5 billion in FY 97, some of which was directed to the Land and Water Conservation and Historic Preservation Funds. All of the Administration's budget submissions have assumed continuation of the existing statutory moratoria, as have budget receipt estimates through 2008. Extension of the moratoria beyond 2002 will not impact existing Administration budget planning.

Federal offshore production currently accounts for 20% of domestic oil production and 27% of domestic natural gas production. The Department of the Interior's Minerals Management Service estimates mean undiscovered resources in the OCS to be 45.6 billion barrels of oil and 268 trillion cubic feet of gas, although not all of this is believed to be economically recoverable at current prices. The relevant goals of the Comprehensive National Energy Strategy recently issued by the Department of Energy call for reversing the decline in domestic oil production by 2005, and for an increase of six trillion cubic feet of domestic natural gas production by 2010.

Options

Options for action, set out in more detail below, range from continuing to address this issue through the Department of Interior's five year planning processes to extending the existing moratoria for an additional period of time and withdrawing particularly sensitive areas permanently. You have broad discretion under section 12 of the Outer Continental Shelf Lands Act to " . . . from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf." Such a withdrawal is a standing directive until reversed by the President or overturned by Congress. You do not have the authority to withdraw areas currently under lease. None of the agencies or policy advisors would recommend extending the existing moratoria to new areas.

(1) Continue Department of the Interior Planning and Efforts to Build Consensus

Under this option, consensus building efforts would continue, and existing moratoria would continue to apply. The Department of the Interior's management plan would protect areas currently withdrawn through 2002. Administration policy in this area has included a commitment to resolving conflicts, building consensus as to where new leasing and development should proceed, and making decisions based on sound science and environmental protection. The current 5-Year OCS Oil and Gas Leasing Program for years 1997 through 2002 is a reflection of that approach. Under this option, that planning process would continue and the development of the 2002-2007 plan would begin next year in accordance with those principles.

Pros:

- Continues a consensus-based approach to oil and gas development that does not preclude providing access to offshore areas when justified by good science and environmental protection.
- Lays the foundation for protecting state and environmental concerns without precluding potentially substantial additional energy and economic benefits from the OCS.
- Will be viewed by the oil industry as pursuing a non-partisan, science-based, balanced approach to OCS development rather than a return to what they viewed as an ad hoc moratorium process in the 1980s and early 1990s.
- Supports the goals of the Comprehensive National Energy Strategy.

Cons:

- Many environmental and state and local interests believe that offshore drilling is inappropriate in many areas, and will criticize the status quo as inadequately protective of the environment.

- Concerns will be raised that future Administrations will not continue the consensus based approach we have taken, and could open areas for leasing regardless of stakeholder views.

(2) Appoint a Presidential Commission to Investigate Need for Modifications to the Status Quo

Under this option, a Presidential Commission would be appointed to review existing scientific information and advise the President on future actions with respect to OCS leasing, including the need for permanent withdrawal of particular areas and any need for additional research. The status quo would continue in accordance with the Department's five year plan through 2002, and could be reinforced by a Presidential directive under Section 12.

OCS oil and gas activity in Federal waters has been underway for over 50 years. A great deal of scientific information has been gathered, but there never has been a comprehensive review on the issue of whether certain areas should be permanently off limits to oil and gas drilling from an environmental standpoint. A commission report could provide significant additional scientific support for future action.

Pros:

- Reinforces a process based on sound science for making these decisions, and establishes a process for resolving future issues quickly.
- Provides a clear recognition that there may be some OCS areas that may require permanent protection from offshore oil and gas activity.

Cons:

- Some environmental and state and local interests believe that additional information is unnecessary, and that more immediate and permanent action is warranted. They will criticize this as unnecessary delay.
- Issues to be addressed are not easy. Any advisory group may have trouble reaching consensus or providing unequivocal recommendations, or may provide advice ultimately inconsistent with the expertise and policy judgement of the Administration.

(3) Extend Existing Moratoria for Either Five or Ten Years

Under this option, the President would issue a Directive under Section 12 of the OCS Lands Act extending the moratoria in all areas currently withdrawn by statute for either an additional five or ten years beyond the protection provided by DOI's five year leasing plan, through either 2007 or 2012. Any such directive should include an exception for national security purposes, as the Bush Directive did.

Pros:

- Extends the current patchwork of protections in a unified way for an additional period for all protected areas.

- Maintains the current levels of protection while allowing for continued research and informed dialogue on how best to resolve issues in the future.

- Provides a greater degree of protection to those areas where there is apprehension about offshore oil and gas activity without permanently foreclosing promising oil and gas resources.

- A five year extension is more consistent with the current Administration practice and planning process; a ten year extension is a bolder step still consistent with the planning approach while responsive to claims that significant and possibly permanent protection is warranted.

- Pegging the extension to the Department's planning period as opposed to the expiration of the Bush moratorium in 2000 is most consistent with the Administration's planning process, and emphasizes that the current most comprehensive protection is provided by this Administration's action, and not by the Bush directive.

Cons:

- Industry and certain members of Congress will criticize the Administration for putting areas off limits for additional periods of time without any new scientific basis, arguing that it is arbitrary and inconsistent with the Administration's five year planning process.

- Risks press criticism as a political, as opposed to substantive, act similar to the Bush Directive on the eve of the 1990 election.

- Those who believe permanent protection is warranted will argue that this does not go far enough. Those same stakeholders will argue that a five year extension is not bold enough, and that President Bush imposed a ten year moratorium and we should do no less.

(4) Extend All Existing Moratoria for Either Five or Ten Years and Withdraw Certain Sensitive Areas Permanently

Under this option, the President would issue a directive under Section 12 extending the time period of all current moratoria as discussed above; and would also withdraw particularly sensitive areas permanently. Alternatively, the directive could simply issue the permanent withdrawal for selected areas and retain the status quo on the remainder of the moratoria, providing protection as a practical matter through 2002.

While some have suggested that all existing moratoria should be made permanent, it is hard to square this with the science and locality based reviews that have been Administration policy to date, or with the Administration's Comprehensive National Energy Strategy. However, it is possible to distinguish particular areas in which it is clear based on existing scientific information that oil and gas activity is incompatible with environmental values.

Absent any specific scientific review dedicated to this issue, the choice of such areas could be controversial, with areas not selected arguing that they should have been included. This is avoided by limiting the permanent withdrawal to the federal waters not currently under lease within the existing marine sanctuaries. (Some sanctuaries include state-owned waters not subject to your withdrawal authority). These areas were specifically created to protect distinctive natural and cultural resources in the marine environment. They include the Florida Keys, Monterey Bay and Channel Islands in California, and the Olympic Coast in Washington State. A complete list of the sanctuaries is attached.

With some very minor exceptions, oil and gas drilling is currently precluded in these areas through either statutory prohibition or agency regulations, but permanent withdrawal would guarantee an additional measure of protection. In a very few areas leasing that predated the creation of the sanctuary permits some limited oil drilling to occur. Since you do not have the authority to unilaterally withdraw areas currently under lease, that leasing would continue.

Pros:

- In addition to those stated above for Option 3, this option addresses concerns about the need for some permanence with respect to moratoria, and minimizes claims that selection of the areas of permanent withdrawal is arbitrary or without scientific basis.

- Reduces the risk that a future Administration or Congress would revise existing protections for those areas.

Cons:

- In addition to those stated above for Option 3, this option may be perceived as unnecessary because oil and gas leasing is already prohibited in all areas through 2002 and by agency action in all marine sanctuaries.

- Some states without marine sanctuaries may react negatively to being excluded from permanent moratorium protection.

Recommendations

The Department of Energy and the Department of the Interior recommend Option 1. CEQ recommends Option 4 with a 10 year extension.

Decision

___ Option 1-- Retain status quo: current moratorium in place through 2002.

___ Option 2 -- Appoint Presidential Commission to provide scientific advice on future, including possible permanent, moratoria.

___ Include with Option 2 a Presidential Directive reinforcing existing moratoria through 2002.

___ Option 3 -- Issue Presidential Directive to extend existing moratoria for an additional time period.

___ Five year extension

___ Ten year extension

___ Option 4 -- Issue Presidential Directive permanently withdrawing marine sanctuaries from oil and gas leasing and extending existing moratoria.

___ Include five year extension of existing moratoria

___ Include ten year extension of existing moratoria

___ Permanent withdrawal of marine sanctuaries only. No other extension of existing moratoria.

NATIONAL MARINE SANCTUARY PROGRAM

Designated Marine Sanctuaries and Date of Creation

California
Channel Islands (9/80)
*Cordell Bank (5/89)
Gulf of Farallones (1/81) (100% state-owned waters, so not subject to Presidential withdrawal)
*Monterey Bay (9/92)

Florida
*Florida Keys (11/90)

Georgia
Gray's Reef (1/81)

Hawaii
Hawaiian Islands Humpback Whale (11/92)

Massachusetts
Stellwagen Bank (11/92)

North Carolina
Monitor (1/75)

Texas
Flower Garden (1/92)

Washington
*Olympic Coast (7/94)

American Samoa
Fagatele Bay (4/86)

Authority
Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the designation of discrete areas of the marine environment as National marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management.

* These sanctuaries currently have oil and gas leasing prohibited by statute as well as agency regulation. All other sanctuaries have prohibitions by regulation only.

GOVERNOR PETE WILSON

June 9, 1998

The Honorable Bill Clinton
President of the United states
The White House
Washington, DC 20500

Dear Mr. President:

On the eve of the National Ocean Conference in Monterey, I urge you to act decisively in adopting measures which advance the protection and management of the Nation's ocean and coastal Resources.

You know that Californians treasure our 1,100 mile coast, and that we have consistently exercised the State's authority to protect our coastal and ocean resources. Because there are limits to that authority, however, we must also rely upon the Federal government to do its share. At our own "California and the World Ocean" conference, co-sponsored last year with the Coastal Zone Foundation, Representative Sam Farr of Monterey observed that fragmentation of Federal programs is the biggest single obstacle to effective management of coastal and ocean resources.

This need for a stronger, better coordinated Federal program was also sounded by the Heinz Center in its International Year of the Ocean Steering Committee Report, and most recently, by a broad coalition of California and national coastal and ocean advocacy organizations.

Following our oceans conference last year, I signed a California Executive Order which - among other things - directed my secretaries for resources and environmental protection to conduct an analysis of Federal responsibilities related to ocean resource management. Their report, just completed, is attached for ready reference. Its principal conclusion, Mr. President, is a finding of need for the Federal government to (1) "address issues of conflicting or duplicative mandates" and (2) "develop a system that is more responsive to ocean resource management needs at the regional and local level."

STATE CAPITOL · SACRAMENTO, CALIFORNIA 95814 · (916) 445-2841

The Honorable Bill Clinton
June 9, 1998
Page Two

Accordingly, Mr. President, I strongly recommend these specific actions by which to strengthen the coastal states' partnership with the Federal government, in a newly vigorous effort to make real the promise of this, the International Year of the Ocean:

- Immediately implement a permanent ban on offshore oil development in waters of the Outer Continental Shelf which are subject to Federal jurisdiction.

It is time for the Federal government to place a permanent ban on future oil and gas leasing in the Outer Continental Shelf (OCS) off the California coast. As a United States Senator, I supported the annual moratoria beginning in 1983 and then heartily endorsed President Bush's decision to extend these protections through the year 2000, basing my support on years of analysis of the environmental and economic impacts of new leasing offshore California. Now with the millennium just around the corner, the time has come to settle the debate once and for all, and to establish a permanent leasing ban.

It is my strong conviction that additional leasing is not warranted now, nor any time in foreseeable future off the California coast. Consistent with this position, I signed the California Coastal Sanctuary Act which permanently bans oil and gas leasing in all State tidelands, and I fully supported establishment of the largest alternative for the Monterey Bay National Marine Sanctuary (5,000 square miles of protected ocean) which permanently prohibits OCS leasing.

- Reform and improve management of Federal ocean programs.

As already noted, the Federal government must re-evaluate the way the nation protects and manages its ocean and coastal resources. Ocean management in the United States is complicated by multiple agencies of jurisdiction, each with mandates and responsibilities that are often conflicting or uncoordinated, and at other times duplicative. We need to find ways to simplify and bring more cohesiveness to ocean resource management.

- Provide adequate funding in support of maritime commerce.

Federal funding continues to be needed for projects to maintain the environmental and economic health of California's port facilities and associated bays, estuaries, and wetland resources. Federal assistance is necessary for port maintenance, improvement, and mitigation projects in the major ports, as well as smaller ports and harbors located throughout the coast. Our ports continue to be a key driver of California's economy and the foundation of our ocean dependent industries.

For example, San Francisco Bay is a world-famous natural harbor and leading export center which must be dredged to accommodate the new generation of container ships now used for Pacific Rim trade. To break a regulatory impasse on new dredging and set needed dredge disposal options, federal and state agencies that manage dredging in San Francisco Bay created a unique partnership called the Long Term Management Strategy (LTMS). Working with a broad coalition of stakeholders, the LTMS has forged a plan that will address the Bay region's dredging and disposal needs for the next 50 years. Part of this plan is "beneficial reuse" of dredging materials for everything from maintaining levees to restoring the ecological values of tidal wetlands around the Bay.

The implementation of innovative projects using dredged material for levee maintenance and wetland restoration could accomplish the LTMS goals; however, these projects will require Federal funding in partnership with local and state agencies, the port industry, and private entrepreneurs. According to the Army Corps of Engineers and the Port of Oakland, a Federal investment of about $70 million is needed in the next few years to bring these projects to fruition and meet the Bay dredging needs for the next half century.

- <u>Provide adequate funding in support of Coastal Ecosystems and Water Pollution Control.</u>

The Federal government must provide additional financial assistance to comply with the requirements of the Federal Endangered Species Act (FESA) for anadromous species. Although the FESA provides a mechanism to support State efforts regarding federally listed species, no funding has been provided to the State by the National Marine Fisheries Service to address issues regarding listed species of salmon or steelhead.

California is doing its part by investing substantial resources in protection of these species. Last year Senate Bill 271 initiated a $43 million program to restore salmon and steelhead habitat. In addition, my proposed budget for FY 98-99 would launch a significant monitoring program for steelhead in coastal northern California.

Local governments are also initiating efforts to restore and protect vital habitat. However, I believe the Federal government must provide sufficient assistance to California and local communities to help implement the requirements of the FESA to restore and enhance our stocks of anadromous fish species.

The Honorable Bill Clinton
June 9, 1998
Page Four

It is also essential that the U.S. provide support, technical assistance, and financing through the Federal border environmental programs to alleviate severe water quality impacts generated from sources in Mexico to the coastal waters of Southern California. The federal government, and Mexico have a major success in the border sewage treatment plant now being completed in San Diego, but a major unaddressed problem relates to the direct discharges on the coast south of the border that affect coastal water quality and beach closures in California.

The Tijuana Treatment Plant discharges across the beach into the surf zone. Northerly currents carry the contaminated water north and cause beach closures in San Diego County. At Rosarita Beach in Mexico, a discharge to the creek similarly results in sewage flowing directly into the surf, with no outfall to provide dilution in deeper waters. The State and the City of San Diego jointly fund a workshop on June 3-5 to initiate discussions regarding an outfall for the Tijuana discharge. Federal funding is a necessary component to bring solutions to this problem and meet the environmental commitments of NAFTA.

Mr. President, I applaud you for calling attention to our ocean management challenges. But these challenges are not new. Substantial federal resources and a significant number of federal agencies have long been involved in this effort, but their efficiency has been hindered by duplication and a profound lack of focus and coordination. Coastal states are seizing the opportunities, made possible through a reexamination. of our ocean programs to better use the ocean resources that are so critical to our state and local economies and to protect their environmental values. I urge you to do the same, and to make this week's celebration the starting point of a program of federal action that supports the states in our ocean management efforts.

Sincerely,

Pete Wilson

-EXECUTIVE OFFICE OF THE PRESIDENT-

COUNCIL ON ENVIRONMENTAL QUALITY

ROOM 360
OLD EXECUTIVE OFFICE BUILDING
WASHINGTON, D.C. 20502

PHONE: (202) 456-6224
FAX: (202) 456-2710

TO: Phil Caplan x6-2215

FROM: ~~ROBERT KAPLA~~ Elliot Diringer

DATE: JUN 10 1998 **PAGES:** 6
(INCLUDING COVER SHEET)

COMMENTS:

PR98:199

GOVERNOR'S OFFICE

WILSON CALLS ON PRESIDENT TO TAKE IMMEDIATE ACTION TO PROTECT CALIFORNIA'S COASTLINE AND COASTAL RESOURCES

FOR IMMEDIATE RELEASE
Wednesday, June 10, 1998

CONTACT: Sean Walsh
Ron Low
(916) 445-4571

SACRAMENTO – In a letter to President Bill Clinton, Governor Pete Wilson urged the federal government to take immediate actions to protect California's 1,110 mile coastline and her coastal resources.

"You know that Californians treasure our 1,100 mile coast, and that we have consistently exercised the State's authority to protect our coastal and ocean resources," Wilson wrote. "Because there are limits to that authority, however, we must also rely upon the Federal government to do its share."

Wilson called on the President to take the following four actions to strengthen California's coastline:

1. Immediately implement a permanent ban on offshore oil development in waters of the Outer Continental Shelf which are subject to Federal jurisdiction.
2. Reform and improve management of Federal ocean programs.
3. Provide adequate funding in support of maritime commerce.
4. Provide adequate funding in support of Coastal Ecosystems and Water Pollution Control.

Today in Monterey, Resources Agency Secretary Douglas P. Wheeler and Environmental Protection Agency Secretary Peter M. Rooney will deliver a message from the Governor regarding his thoughts on the Oceans Conference, as well as the State's commitment to enhancing and protecting California's ocean and coastal resources.

-30-

- **ATTACHED IS THE GOVERNOR'S LETTER TO THE PRESIDENT**

NOTE: Secretaries Wheeler and Rooney will make the announcements in coordination with Department of Fish and Game's dedication of two new enforcement vessels on Wednesday, June 10 at 12:30 PM at the Breakwater Cove Marina (35 Canary Row – adjacent to the U.S. Coast Grand Pier) in Monterey.

CLOSE HOLD

Document No. ______

WHITE HOUSE STAFFING MEMORANDUM

Date: 6/5 ACTION / CONCURRENCE / COMMENT DUE BY: 6/8

Subject: Offshore oil drilling

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	McCURRY	☐	☐
BOWLES	☑	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☑	☐	REED	☑	☐
MATHEWS	☑	☐	RUFF	☑	☐
LEW	☑	☐	SMITH	☐	☐
BEGALA	☑	☐	SOSNIK	☑	☐
BERGER	☐	☐	SPERLING	☑	☐
BLUMENTHAL	☐	☐	STEIN	☑	☐
ECHAVESTE	☐	☐	STERN	☐	☐
EMANUEL	☑	☐	STREETT	☐	☐
GIBBONS	☐	☐	VERVEER	☐	☐
IBARRA	☐	☐	WALDMAN	☐	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	☐	☐	Skelton	☑	☐
LINDSEY	☐	☐	______	☐	☐
MARSHALL	☐	☐	______	☐	☐
			______	☐	☐

REMARKS: Please advise

RESPONSE:

3/98

CLOSE HOLD

Staff Secretary's Office
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 5, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OUTER CONTINENTAL SHELF OIL & NATURAL GAS LEASING MORATORIUM

Purpose

In preparation for the Oceans Conference that you and the Vice President will attend late next week, we have reviewed the status of oil and natural gas leasing on the outer continental shelf (OCS) to consider whether any additional action is necessary. This memorandum sets out the current status of the issue as well as four possible options for the future.

Background

A significant portion of the federal waters are currently off limits to offshore oil and natural gas activity through the combination of a directive by President Bush, annual congressional enactments, and the Department of the Interior's five year plan. This combination of actions protects all of the affected areas through 2002. President Bush's directive, which expires in 2000, withdrew all lands not under lease in 1990 off the North Atlantic, California, Washington, Oregon, and southwest Florida coasts. Various annual congressional moratoria beginning in 1982 have placed off limits additional areas, including New England, the Mid-Atlantic states, and southern Alaska (North Aleutian Basin). The Department of the Interior's five-year leasing program, effective from 1997-2002, prohibits leasing in all areas covered by the Bush Directive and congressional moratoria.

Today, the majority of new offshore leasing activity and production occurs in the Central and Western Gulf of Mexico. There also are existing leases off Alaska, and in the Atlantic and the eastern Gulf of Mexico, but no production at the current time. Bonuses, royalties and rent payments to the Treasury from these leases totaled $5 billion in FY 97, some of which was directed to the Land and Water Conservation and Historic Preservation Funds. All of the Administration's budget submissions have assumed continuation of the moratoria, as have budget receipt estimates through 2008. Extension of the moratoria beyond 2002 will not impact existing Administration budget planning.

Federal offshore production currently accounts for 20% of domestic oil production and 27% of domestic natural gas production. The Department of the Interior's Minerals Management Service estimates mean undiscovered resources in the OCS to be 45.6 billion barrels of oil and 268 trillion cubic feet of gas, although not all of this is believed to be economically recoverable at current prices. The relevant goals of the Comprehensive National Energy Strategy recently issued by the Department

Planning process

resulted in 97-2002

plan

that continues

moratorium

of Energy call for reversing the decline in domestic oil production by 2005, and for an increase of six trillion cubic feet of domestic natural gas production by 2010.

Options

Options for action, set out in more detail below, range from continuing to address this issue through the Department of Interior's five year planning processes to extending the moratorium for an additional period of time and withdrawing particularly sensitive areas permanently. You have broad discretion under section 12 of the Outer Continental Shelf Lands Act to " . . . from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf." Such a withdrawal is a standing directive until reversed by the President or overturned by Congress. You do not have the authority to withdraw areas currently under lease. None of the agencies or policy advisors would recommend extending the moratorium to areas not currently under moratorium.

(1) Continue Department of the Interior Planning and Efforts to Build Consensus

Under this option, consensus building efforts would continue, and existing moratoria would continue to apply. The Department of the Interior's management plan would protect areas currently withdrawn through 2002. Administration policy in this area has included a commitment to resolving conflicts, building consensus as to where new leasing and development should proceed, and making decisions based on sound science and environmental protection. The current 5-Year OCS Oil and Gas Leasing Program for years 1997 through 2002 is a reflection of that approach. Under this option, that planning process would continue and the development of the 2002-2007 plan would begin next year in accordance with those principles.

Pros:

- Continues a consensus-based approach to oil and gas development that does not preclude providing access to offshore areas when justified by good science and environmental protection.

- Lays the foundation for protecting state and environmental concerns without precluding potentially substantial additional energy and economic benefits from the OCS.

- Will be viewed by the oil industry as pursuing a non-partisan, science-based, balanced approach to OCS development rather than a return to what they viewed as an ad hoc moratorium process in the 1980s and early 1990s.

- Supports the goals of the Comprehensive National Energy Strategy.

Cons:

- Many environmental and state and local interests believe that offshore drilling is inappropriate in many areas, and will criticize the status quo as inadequately protective of the environment.

- Concerns will be raised that future Administrations will not continue the consensus based approach we've taken, and could open areas for leasing regardless of stakeholder views.

(2) Appoint a Presidential Commission to Investigate Need for Modifications to the Status Quo

Under this option, a Presidential Commission would be appointed to review existing scientific information and advise the President on future actions with respect to OCS leasing, including the need for permanent withdrawal of particular areas and any need for additional research. The status quo would continue in accordance with the Department's five year plan through 2002, and could be reinforced by a Presidential directive under Section 12.

OCS oil and gas activity in Federal waters has been underway for over 50 years. A great deal of scientific information has been gathered, but there never has been a comprehensive review on the issue of whether certain areas should be permanently off limits to oil and gas drilling from an environmental standpoint. A commission report could provide significant additional scientific support for future action.

Pros:

- Reinforces a process based on sound science for making these decisions, and establishes a process for resolving future issues quickly.

- Provides a clear recognition that there may be some OCS areas that may require permanent protection from offshore oil and gas activity.

Cons:

- Some environmental and state and local interests believe that additional information is unnecessary, and that more immediate and permanent action is warranted. They will criticize this as unnecessary delay.

- Issues to be addressed are not easy. Any advisory group may have trouble reaching consensus or providing unequivocal recommendations, or may provide advice ultimately inconsistent with the expertise and policy judgement of the Administration.

(3) Extend Existing Moratoria for Either Five or Ten Years

Under this option, the President would issue a Directive under Section 12 of the OCS Lands Act extending the moratoria in all areas currently withdrawn for either an additional five or ten years beyond the protection provided by DOI's five year leasing plan, through either 2007 or 2012. Any such directive should include an exception for national security purposes, as the Bush Directive did.

Pros:

- Extends the current patchwork of protections in a unified way for an additional period for all protected areas.
- Maintains the current levels of protection while allowing for continued research and informed dialogue on how best to resolve issues in the future.
- Provides a greater degree of protection to those areas where there is apprehension about offshore oil and gas activity without permanently foreclosing promising oil and gas resources.
- A five year extension is more consistent with the current Administration practice and planning process; a ten year extension is a bolder step still consistent with the planning approach while responsive to claims that significant and possibly permanent protection is warranted.
- Pegging the extension to the Department's planning period as opposed to the expiration of the Bush moratorium in 2000 is most consistent with the Administration's planning process, and emphasizes that the current most comprehensive protection is provided by this Administration's action, and not by the Bush directive.

Cons:

- Industry and certain members of Congress will criticize the Administration for putting areas off limits for additional periods of time without any new scientific basis, arguing that it is arbitrary and inconsistent with the Administration's five year planning process.
- Risks press criticism as a political, as opposed to substantive, act similar to the Bush Directive on the eve of the 1990 election.
- Those who believe permanent protection is warranted will argue that this does not go far enough. Those same stakeholders will argue that a five year

extension is not bold enough, and that President Bush imposed a ten year moratorium and we should do no less.

(4) Extend All Existing Moratoria for Either Five or Ten Years and Withdraw Certain Sensitive Areas Permanently

Under this option, the President would issue a directive under Section 12 extending the time period of all current moratoria as discussed above; and would also withdraw particularly sensitive areas permanently. Alternatively, the directive could simply issue the permanent withdrawal for selected areas and retain the status quo on the remainder of the moratoria, leaving them in place through 2002.

While some have suggested that all existing moratoria should be made permanent, it is hard to square this with the science and locality based reviews that have been Administration policy to date, or with the Administration's Comprehensive National Energy Strategy. However, it is possible to distinguish particular areas in which it is clear based on existing scientific information that oil and gas activity is incompatible with environmental values.

Absent any specific scientific review dedicated to this issue, the choice of such areas could be controversial, with areas not selected arguing that they should have been included. This is avoided by limiting the permanent withdrawal to the federal waters not currently under lease within the existing marine sanctuaries. (Some sanctuaries include state-owned waters not subject to your withdrawal authority). These areas were specifically created to protect distinctive natural and cultural resources in the marine environment. They include the Florida Keys, Monterey Bay and Channel Islands in California, and the Olympic Coast in Washington State. A complete list of the sanctuaries is attached.

With some very minor exceptions, oil and gas drilling is currently precluded in these areas through either statutory prohibition or agency regulations, but permanent withdrawal would guarantee an additional measure of protection. In a very few areas leasing that predated the creation of the sanctuary permits some limited oil drilling to occur. Since you do not have the authority to unilaterally withdraw areas currently under lease, that leasing would continue.

Pros:

- In addition to those stated above for Option 3, addresses concerns about the need for some permanence with respect to moratoria, and minimizes claims that selection of the areas of permanent withdrawal is arbitrary or without scientific basis.

- Reduces the risk that a future Administration or Congress would revise existing

protections for those areas.

Cons:

- In addition to those stated above for Option 3, may be perceived as unnecessary because oil and gas leasing is already prohibited in all areas through 2002 and by agency action in all marine sanctuaries.

- Some states without marine sanctuaries may react negatively to being excluded from permanent moratorium protection.

Recommendations

The Department of Energy and the Department of the Interior recommend Option 1. CEQ recommends Option 4 with a 10 year extension.

Decision

___ Option 1 (Retain status quo: current moratorium in place through 2002)

___ Option 2 (Appoint Presidential Commission to provide scientific advice on future, including possible permanent, moratoria)

  ___ Include with Option 2 a Presidential Directive reinforcing existing moratoria through 2002.

___ Option 3 (Issue Presidential Directive to extend existing moratoria for an additional time period)

  ___ Five year extension

  ___ Ten year extension

___ Option 4 (Issue Presidential Directive permanently withdrawing marine sanctuaries from oil and gas leasing and extending existing moratoria)

  ___ Include five year extension of existing moratoria

  ___ Include ten year extension of existing moratoria

  ___ Permanent withdrawal of marine sanctuaries only. No other extension of existing moratoria.

___ Discuss

NATIONAL MARINE SANCTUARY PROGRAM

Designated Marine Sanctuaries and Date of Creation

California
Channel Islands (9/80)
*Cordell Bank (5/89)
Gulf of Farallones (1/81) (100% state-owned waters, so not subject to Presidential withdrawal)
*Monterey Bay (9/92)

Florida
*Florida Keys (11/90)

Georgia
Gray's Reef (1/81)

Hawaii
Hawaiian Islands Humpback Whale (11/92)

Massachusetts
Stellwagen Bank (11/92)

North Carolina
Monitor (1/75)

Texas
Flower Garden (1/92)

Washington
*Olympic Coast (7/94)

American Samoa
Fagatele Bay (4/86)

Authority
Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the designation of discrete areas of the marine environment as National marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management.

* These sanctuaries currently have oil and gas leasing prohibited by statute as well as agency regulation. All other sanctuaries have prohibitions by regulation only.

CLOSE HOLD

Document No. ____________

WHITE HOUSE STAFFING MEMORANDUM

Date: 6/5 ACTION / CONCURRENCE / COMMENT DUE BY: 6/8

Subject: Offshore oil drilling

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	McCURRY	☐	☐
BOWLES	☑	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☑	☐	REED	☑	☐
MATHEWS comments attached	☑	☐	RUFF	☑	☐
LEW	☑	☐	SMITH	☐	☐
BEGALA	☑	☐	SOSNIK	☑	☐
BERGER	☐	☐	SPERLING	☑	☐
BLUMENTHAL	☐	☐	STEIN	☑	☐
ECHAVESTE	☐	☐	STERN	☐	☐
EMANUEL comments attached	☑	☐	STREETT	☐	☐
GIBBONS	☐	☐	VERVEER	☐	☐
IBARRA	☐	☐	WALDMAN	☐	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	☐	☐	Skelton	☑	☐
LINDSEY	☐	☐	Robyn	☑	☐
MARSHALL	☐	☐	____________	☐	☐
			____________	☐	☐

REMARKS: Please advise

RESPONSE:

3/98

CLOSE HOLD

Staff Secretary's Office
Ext. 62702

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

'98 JUN 5 PM 1:55

June 5, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OUTER CONTINENTAL SHELF OIL & NATURAL GAS LEASING MORATORIUM

Purpose

In preparation for the Oceans Conference that you and the Vice President will attend late next week, we have reviewed the status of oil and natural gas leasing on the outer continental shelf (OCS) to consider whether any additional action is necessary. This memorandum sets out the current status of the issue as well as four possible options for the future.

Background

A significant portion of the federal waters are currently off limits to offshore oil and natural gas activity through the combination of a directive by President Bush, annual congressional enactments, and the Department of the Interior's five year plan. This combination of actions protects all of the affected areas through 2002. President Bush's directive, which expires in 2000, withdrew all lands not under lease in 1990 off the North Atlantic, California, Washington, Oregon, and southwest Florida coasts. Various annual congressional moratoria beginning in 1982 have placed off limits additional areas, including New England, the Mid-Atlantic states, and southern Alaska (North Aleutian Basin). The Department of the Interior's five-year leasing program, effective from 1997-2002, prohibits leasing in all areas covered by the Bush Directive and congressional moratoria.

Today, the majority of new offshore leasing activity and production occurs in the Central and Western Gulf of Mexico. There also are existing leases off Alaska, and in the Atlantic and the eastern Gulf of Mexico, but no production at the current time. Bonuses, royalties and rent payments to the Treasury from these leases totaled $5 billion in FY 97, some of which was directed to the Land and Water Conservation and Historic Preservation Funds. All of the Administration's budget submissions have assumed continuation of the moratoria, as have budget receipt estimates through 2008. Extension of the moratoria beyond 2002 will not impact existing Administration budget planning.

Federal offshore production currently accounts for 20% of domestic oil production and 27% of domestic natural gas production. The Department of the Interior's Minerals Management Service estimates mean undiscovered resources in the OCS to be 45.6 billion barrels of oil and 268 trillion cubic feet of gas, although not all of this is believed to be economically recoverable at current prices. The relevant goals of the Comprehensive National Energy Strategy recently issued by the Department

of Energy call for reversing the decline in domestic oil production by 2005, and for an increase of six trillion cubic feet of domestic natural gas production by 2010.

<u>Options</u>

Options for action, set out in more detail below, range from continuing to address this issue through the Department of Interior's five year planning processes to extending the moratorium for an additional period of time and withdrawing particularly sensitive areas permanently. You have broad discretion under section 12 of the Outer Continental Shelf Lands Act to " . . . from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf." Such a withdrawal is a standing directive until reversed by the President or overturned by Congress. You do not have the authority to withdraw areas currently under lease. None of the agencies or policy advisors would recommend extending the moratorium to areas not currently under moratorium.

(1) <u>Continue Department of the Interior Planning and Efforts to Build Consensus</u>

Under this option, consensus building efforts would continue, and existing moratoria would continue to apply. The Department of the Interior's management plan would protect areas currently withdrawn through 2002. Administration policy in this area has included a commitment to resolving conflicts, building consensus as to where new leasing and development should proceed, and making decisions based on sound science and environmental protection. The current 5-Year OCS Oil and Gas Leasing Program for years 1997 through 2002 is a reflection of that approach. Under this option, that planning process would continue and the development of the 2002-2007 plan would begin next year in accordance with those principles.

<u>Pros</u>:

- Continues a consensus-based approach to oil and gas development that does not preclude providing access to offshore areas when justified by good science and environmental protection.

- Lays the foundation for protecting state and environmental concerns without precluding potentially substantial additional energy and economic benefits from the OCS.

- Will be viewed by the oil industry as pursuing a non-partisan, science-based, balanced approach to OCS development rather than a return to what they viewed as an ad hoc moratorium process in the 1980s and early 1990s.

- Supports the goals of the Comprehensive National Energy Strategy.

Cons:

- Many environmental and state and local interests believe that offshore drilling is inappropriate in many areas, and will criticize the status quo as inadequately protective of the environment.

- Concerns will be raised that future Administrations will not continue the consensus based approach we've taken, and could open areas for leasing regardless of stakeholder views.

(2) Appoint a Presidential Commission to Investigate Need for Modifications to the Status Quo

Under this option, a Presidential Commission would be appointed to review existing scientific information and advise the President on future actions with respect to OCS leasing, including the need for permanent withdrawal of particular areas and any need for additional research. The status quo would continue in accordance with the Department's five year plan through 2002, and could be reinforced by a Presidential directive under Section 12.

OCS oil and gas activity in Federal waters has been underway for over 50 years. A great deal of scientific information has been gathered, but there never has been a comprehensive review on the issue of whether certain areas should be permanently off limits to oil and gas drilling from an environmental standpoint. A commission report could provide significant additional scientific support for future action.

Pros:

- Reinforces a process based on sound science for making these decisions, and establishes a process for resolving future issues quickly.

- Provides a clear recognition that there may be some OCS areas that may require permanent protection from offshore oil and gas activity.

Cons:

- Some environmental and state and local interests believe that additional information is unnecessary, and that more immediate and permanent action is warranted. They will criticize this as unnecessary delay.

- Issues to be addressed are not easy. Any advisory group may have trouble reaching consensus or providing unequivocal recommendations, or may provide advice ultimately inconsistent with the expertise and policy judgement of the Administration.

(3) Extend Existing Moratoria for Either Five or Ten Years

Under this option, the President would issue a Directive under Section 12 of the OCS Lands Act extending the moratoria in all areas currently withdrawn for either an additional five or ten years beyond the protection provided by DOI's five year leasing plan, through either 2007 or 2012. Any such directive should include an exception for national security purposes, as the Bush Directive did.

Pros:

- Extends the current patchwork of protections in a unified way for an additional period for all protected areas.
- Maintains the current levels of protection while allowing for continued research and informed dialogue on how best to resolve issues in the future.
- Provides a greater degree of protection to those areas where there is apprehension about offshore oil and gas activity without permanently foreclosing promising oil and gas resources.
- A five year extension is more consistent with the current Administration practice and planning process; a ten year extension is a bolder step still consistent with the planning approach while responsive to claims that significant and possibly permanent protection is warranted.
- Pegging the extension to the Department's planning period as opposed to the expiration of the Bush moratorium in 2000 is most consistent with the Administration's planning process, and emphasizes that the current most comprehensive protection is provided by this Administration's action, and not by the Bush directive.

Cons:

- Industry and certain members of Congress will criticize the Administration for putting areas off limits for additional periods of time without any new scientific basis, arguing that it is arbitrary and inconsistent with the Administration's five year planning process.
- Risks press criticism as a political, as opposed to substantive, act similar to the Bush Directive on the eve of the 1990 election.
- Those who believe permanent protection is warranted will argue that this does not go far enough. Those same stakeholders will argue that a five year

extension is not bold enough, and that President Bush imposed a ten year moratorium and we should do no less.

(4) <u>Extend All Existing Moratoria for Either Five or Ten Years and Withdraw Certain Sensitive Areas Permanently</u>

Under this option, the President would issue a directive under Section 12 extending the time period of all current moratoria as discussed above; and would also withdraw particularly sensitive areas permanently. Alternatively, the directive could simply issue the permanent withdrawal for selected areas and retain the status quo on the remainder of the moratoria, leaving them in place through 2002.

While some have suggested that all existing moratoria should be made permanent, it is hard to square this with the science and locality based reviews that have been Administration policy to date, or with the Administration's Comprehensive National Energy Strategy. However, it is possible to distinguish particular areas in which it is clear based on existing scientific information that oil and gas activity is incompatible with environmental values.

Absent any specific scientific review dedicated to this issue, the choice of such areas could be controversial, with areas not selected arguing that they should have been included. This is avoided by limiting the permanent withdrawal to the federal waters not currently under lease within the existing marine sanctuaries. (Some sanctuaries include state-owned waters not subject to your withdrawal authority). These areas were specifically created to protect distinctive natural and cultural resources in the marine environment. They include the Florida Keys, Monterey Bay and Channel Islands in California, and the Olympic Coast in Washington State. A complete list of the sanctuaries is attached.

With some very minor exceptions, oil and gas drilling is currently precluded in these areas through either statutory prohibition or agency regulations, but permanent withdrawal would guarantee an additional measure of protection. In a very few areas leasing that predated the creation of the sanctuary permits some limited oil drilling to occur. Since you do not have the authority to unilaterally withdraw areas currently under lease, that leasing would continue.

<u>Pros</u>:

- In addition to those stated above for Option 3, addresses concerns about the need for some permanence with respect to moratoria, and minimizes claims that selection of the areas of permanent withdrawal is arbitrary or without scientific basis.

- Reduces the risk that a future Administration or Congress would revise existing

protections for those areas.

Cons:

- In addition to those stated above for Option 3, may be perceived as unnecessary because oil and gas leasing is already prohibited in all areas through 2002 and by agency action in all marine sanctuaries.

- Some states without marine sanctuaries may react negatively to being excluded from permanent moratorium protection.

Recommendations

The Department of Energy and the Department of the Interior recommend Option 1. CEQ recommends Option 4 with a 10 year extension.

Decision

___ Option 1 (Retain status quo: current moratorium in place through 2002)

___ Option 2 (Appoint Presidential Commission to provide scientific advice on future, including possible permanent, moratoria)

___ Include with Option 2 a Presidential Directive reinforcing existing moratoria through 2002.

___ Option 3 (Issue Presidential Directive to extend existing moratoria for an additional time period)

___ Five year extension

___ Ten year extension

___ Option 4 (Issue Presidential Directive permanently withdrawing marine sanctuaries from oil and gas leasing and extending existing moratoria)

___ Include five year extension of existing moratoria

___ Include ten year extension of existing moratoria

___ Permanent withdrawal of marine sanctuaries only. No other extension of existing moratoria.

___ Discuss

NATIONAL MARINE SANCTUARY PROGRAM

Designated Marine Sanctuaries and Date of Creation

California
Channel Islands (9/80)
*Cordell Bank (5/89)
Gulf of Farallones (1/81) (100% state-owned waters, so not subject to Presidential withdrawal)
*Monterey Bay (9/92)

Florida
*Florida Keys (11/90)

Georgia
Gray's Reef (1/81)

Hawaii
Hawaiian Islands Humpback Whale (11/92)

Massachusetts
Stellwagen Bank (11/92)

North Carolina
Monitor (1/75)

Texas
Flower Garden (1/92)

Washington
*Olympic Coast (7/94)

American Samoa
Fagatele Bay (4/86)

Authority
Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the designation of discrete areas of the marine environment as National marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management.

* These sanctuaries currently have oil and gas leasing prohibited by statute as well as agency regulation. All other sanctuaries have prohibitions by regulation only.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY

June 5, 1998

NOTE TO PHIL CAPLAN

FROM: ROBERT S. KAPLAN RSK

SUBJECT: REVISED OCS MEMORANDUM

Attached is the revised OCS memo to the President. This version reflects the changes you and Linda Lance discussed. Please disregard the earlier version you received.

Attachment

COS

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

'98 JUN 5 PM 1:55

June 5, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OUTER CONTINENTAL SHELF OIL & NATURAL GAS LEASING MORATORIUM

Purpose

In preparation for the Oceans Conference that you and the Vice President will attend late next week, we have reviewed the status of oil and natural gas leasing on the outer continental shelf (OCS) to consider whether any additional action is necessary. This memorandum sets out the current status of the issue as well as four possible options for the future.

Background

A significant portion of the federal waters are currently off limits to offshore oil and natural gas activity through the combination of a directive by President Bush, annual congressional enactments, and the Department of the Interior's five year plan. This combination of actions protects all of the affected areas through 2002. President Bush's directive, which expires in 2000, withdrew all lands not under lease in 1990 off the North Atlantic, California, Washington, Oregon, and southwest Florida coasts. Various annual congressional moratoria beginning in 1982 have placed off limits additional areas, including New England, the Mid-Atlantic states, and southern Alaska (North Aleutian Basin). The Department of the Interior's five-year leasing program, effective from 1997-2002, prohibits leasing in all areas covered by the Bush Directive and congressional moratoria.

Today, the majority of new offshore leasing activity and production occurs in the Central and Western Gulf of Mexico. There also are existing leases off Alaska, and in the Atlantic and the eastern Gulf of Mexico, but no production at the current time. Bonuses, royalties and rent payments to the Treasury from these leases totaled $5 billion in FY 97, some of which was directed to the Land and Water Conservation and Historic Preservation Funds. All of the Administration's budget submissions have assumed continuation of the moratoria, as have budget receipt estimates through 2008. Extension of the moratoria beyond 2002 will not impact existing Administration budget planning.

Federal offshore production currently accounts for 20% of domestic oil production and 27% of domestic natural gas production. The Department of the Interior's Minerals Management Service estimates mean undiscovered resources in the OCS to be 45.6 billion barrels of oil and 268 trillion cubic feet of gas, although not all of this is believed to be economically recoverable at current prices. The relevant goals of the Comprehensive National Energy Strategy recently issued by the Department

of Energy call for reversing the decline in domestic oil production by 2005, and for an increase of six trillion cubic feet of domestic natural gas production by 2010.

Options

Options for action, set out in more detail below, range from continuing to address this issue through the Department of Interior's five year planning processes to extending the moratorium for an additional period of time and withdrawing particularly sensitive areas permanently. You have broad discretion under section 12 of the Outer Continental Shelf Lands Act to " . . . from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf." Such a withdrawal is a standing directive until reversed by the President or overturned by Congress. You do not have the authority to withdraw areas currently under lease. None of the agencies or policy advisors would recommend extending the moratorium to areas not currently under moratorium.

(1) Continue Department of the Interior Planning and Efforts to Build Consensus

Under this option, consensus building efforts would continue, and existing moratoria would continue to apply. The Department of the Interior's management plan would protect areas currently withdrawn through 2002. Administration policy in this area has included a commitment to resolving conflicts, building consensus as to where new leasing and development should proceed, and making decisions based on sound science and environmental protection. The current 5-Year OCS Oil and Gas Leasing Program for years 1997 through 2002 is a reflection of that approach. Under this option, that planning process would continue and the development of the 2002-2007 plan would begin next year in accordance with those principles.

Pros:

- Continues a consensus-based approach to oil and gas development that does not preclude providing access to offshore areas when justified by good science and environmental protection.
- Lays the foundation for protecting state and environmental concerns without precluding potentially substantial additional energy and economic benefits from the OCS.
- Will be viewed by the oil industry as pursuing a non-partisan, science-based, balanced approach to OCS development rather than a return to what they viewed as an ad hoc moratorium process in the 1980s and early 1990s.
- Supports the goals of the Comprehensive National Energy Strategy.

Cons:

- Many environmental and state and local interests believe that offshore drilling is inappropriate in many areas, and will criticize the status quo as inadequately protective of the environment.

- Concerns will be raised that future Administrations will not continue the consensus based approach we've taken, and could open areas for leasing regardless of stakeholder views.

(2) Appoint a Presidential Commission to Investigate Need for Modifications to the Status Quo

Under this option, a Presidential Commission would be appointed to review existing scientific information and advise the President on future actions with respect to OCS leasing, including the need for permanent withdrawal of particular areas and any need for additional research. The status quo would continue in accordance with the Department's five year plan through 2002, and could be reinforced by a Presidential directive under Section 12.

OCS oil and gas activity in Federal waters has been underway for over 50 years. A great deal of scientific information has been gathered, but there never has been a comprehensive review on the issue of whether certain areas should be permanently off limits to oil and gas drilling from an environmental standpoint. A commission report could provide significant additional scientific support for future action.

Pros:

- Reinforces a process based on sound science for making these decisions, and establishes a process for resolving future issues quickly.

- Provides a clear recognition that there may be some OCS areas that may require permanent protection from offshore oil and gas activity.

Cons:

- Some environmental and state and local interests believe that additional information is unnecessary, and that more immediate and permanent action is warranted. They will criticize this as unnecessary delay.

- Issues to be addressed are not easy. Any advisory group may have trouble reaching consensus or providing unequivocal recommendations, or may provide advice ultimately inconsistent with the expertise and policy judgement of the Administration.

(3) Extend Existing Moratoria for Either Five or Ten Years

Under this option, the President would issue a Directive under Section 12 of the OCS Lands Act extending the moratoria in all areas currently withdrawn for either an additional five or ten years beyond the protection provided by DOI's five year leasing plan, through either 2007 or 2012. Any such directive should include an exception for national security purposes, as the Bush Directive did.

Pros:

- Extends the current patchwork of protections in a unified way for an additional period for all protected areas.

- Maintains the current levels of protection while allowing for continued research and informed dialogue on how best to resolve issues in the future.

- Provides a greater degree of protection to those areas where there is apprehension about offshore oil and gas activity without permanently foreclosing promising oil and gas resources.

- A five year extension is more consistent with the current Administration practice and planning process; a ten year extension is a bolder step still consistent with the planning approach while responsive to claims that significant and possibly permanent protection is warranted.

- Pegging the extension to the Department's planning period as opposed to the expiration of the Bush moratorium in 2000 is most consistent with the Administration's planning process, and emphasizes that the current most comprehensive protection is provided by this Administration's action, and not by the Bush directive.

Cons:

- Industry and certain members of Congress will criticize the Administration for putting areas off limits for additional periods of time without any new scientific basis, arguing that it is arbitrary and inconsistent with the Administration's five year planning process.

- Risks press criticism as a political, as opposed to substantive, act similar to the Bush Directive on the eve of the 1990 election.

- Those who believe permanent protection is warranted will argue that this does not go far enough. Those same stakeholders will argue that a five year

extension is not bold enough, and that President Bush imposed a ten year moratorium and we should do no less.

(4) Extend All Existing Moratoria for Either Five or Ten Years and Withdraw Certain Sensitive Areas Permanently

Under this option, the President would issue a directive under Section 12 extending the time period of all current moratoria as discussed above; and would also withdraw particularly sensitive areas permanently. Alternatively, the directive could simply issue the permanent withdrawal for selected areas and retain the status quo on the remainder of the moratoria, leaving them in place through 2002.

While some have suggested that all existing moratoria should be made permanent, it is hard to square this with the science and locality based reviews that have been Administration policy to date, or with the Administration's Comprehensive National Energy Strategy. However, it is possible to distinguish particular areas in which it is clear based on existing scientific information that oil and gas activity is incompatible with environmental values.

Absent any specific scientific review dedicated to this issue, the choice of such areas could be controversial, with areas not selected arguing that they should have been included. This is avoided by limiting the permanent withdrawal to the federal waters not currently under lease within the existing marine sanctuaries. (Some sanctuaries include state-owned waters not subject to your withdrawal authority). These areas were specifically created to protect distinctive natural and cultural resources in the marine environment. They include the Florida Keys, Monterey Bay and Channel Islands in California, and the Olympic Coast in Washington State. A complete list of the sanctuaries is attached.

With some very minor exceptions, oil and gas drilling is currently precluded in these areas through either statutory prohibition or agency regulations, but permanent withdrawal would guarantee an additional measure of protection. In a very few areas leasing that predated the creation of the sanctuary permits some limited oil drilling to occur. Since you do not have the authority to unilaterally withdraw areas currently under lease, that leasing would continue.

Pros:

- In addition to those stated above for Option 3, addresses concerns about the need for some permanence with respect to moratoria, and minimizes claims that selection of the areas of permanent withdrawal is arbitrary or without scientific basis.

- Reduces the risk that a future Administration or Congress would revise existing

protections for those areas.

Cons:

- In addition to those stated above for Option 3, may be perceived as unnecessary because oil and gas leasing is already prohibited in all areas through 2002 and by agency action in all marine sanctuaries.
- Some states without marine sanctuaries may react negatively to being excluded from permanent moratorium protection.

Recommendations

The Department of Energy and the Department of the Interior recommend Option 1. CEQ recommends Option 4 with a 10 year extension.

Decision

___ Option 1 (Retain status quo: current moratorium in place through 2002)

___ Option 2 (Appoint Presidential Commission to provide scientific advice on future, including possible permanent, moratoria)

___ Include with Option 2 a Presidential Directive reinforcing existing moratoria through 2002.

___ Option 3 (Issue Presidential Directive to extend existing moratoria for an additional time period)

___ Five year extension

___ Ten year extension

___ Option 4 (Issue Presidential Directive permanently withdrawing marine sanctuaries from oil and gas leasing and extending existing moratoria)

___ Include five year extension of existing moratoria

___ Include ten year extension of existing moratoria

___ Permanent withdrawal of marine sanctuaries only. No other extension of existing moratoria.

___ Discuss

NATIONAL MARINE SANCTUARY PROGRAM

Designated Marine Sanctuaries and Date of Creation

California
Channel Islands (9/80)
*Cordell Bank (5/89)
Gulf of Farallones (1/81) (100% state-owned waters, so not subject to Presidential withdrawal)
*Monterey Bay (9/92)

Florida
*Florida Keys (11/90)

Georgia
Gray's Reef (1/81)

Hawaii
Hawaiian Islands Humpback Whale (11/92)

Massachusetts
Stellwagen Bank (11/92)

North Carolina
Monitor (1/75)

Texas
Flower Garden (1/92)

Washington
*Olympic Coast (7/94)

American Samoa
Fagatele Bay (4/86)

Authority
Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the designation of discrete areas of the marine environment as National marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management.

* These sanctuaries currently have oil and gas leasing prohibited by statute as well as agency regulation. All other sanctuaries have prohibitions by regulation only.

266429

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 5, 1998

'98 JUN 5 PM 1:55

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OUTER CONTINENTAL SHELF OIL & NATURAL GAS LEASING MORATORIUM

Purpose

In preparation for the Oceans Conference that you and the Vice President will attend late next week, we have reviewed the status of oil and natural gas leasing on the outer continental shelf (OCS) to consider whether any additional action is necessary. This memorandum sets out the current status of the issue as well as four possible options for the future.

Background

A significant portion of the federal waters are currently off limits to offshore oil and natural gas activity through the combination of a directive by President Bush, annual congressional enactments, and the Department of the Interior's five year plan. This combination of actions protects all of the affected areas through 2002. President Bush's directive, which expires in 2000, withdrew all lands not under lease in 1990 off the North Atlantic, California, Washington, Oregon, and southwest Florida coasts. Various annual congressional moratoria beginning in 1982 have placed off limits additional areas, including New England, the Mid-Atlantic states, and southern Alaska (North Aleutian Basin). The Department of the Interior's five-year leasing program, effective from 1997-2002, prohibits leasing in all areas covered by the Bush Directive and congressional moratoria.

Today, the majority of new offshore leasing activity and production occurs in the Central and Western Gulf of Mexico. There also are existing leases off Alaska, and in the Atlantic and the eastern Gulf of Mexico, but no production at the current time. Bonuses, royalties and rent payments to the Treasury from these leases totaled $5 billion in FY 97, some of which was directed to the Land and Water Conservation and Historic Preservation Funds. All of the Administration's budget submissions have assumed continuation of the moratoria, as have budget receipt estimates through 2008. Extension of the moratoria beyond 2002 will not impact existing Administration budget planning.

Federal offshore production currently accounts for 20% of domestic oil production and 27% of domestic natural gas production. The Department of the Interior's Minerals Management Service estimates mean undiscovered resources in the OCS to be 45.6 billion barrels of oil and 268 trillion cubic feet of gas, although not all of this is believed to be economically recoverable at current prices. The relevant goals of the Comprehensive National Energy Strategy recently issued by the Department

of Energy call for reversing the decline in domestic oil production by 2005, and for an increase of six trillion cubic feet of domestic natural gas production by 2010.

Options

Options for action, set out in more detail below, range from continuing to address this issue through the Department of Interior's five year planning processes to extending the moratorium for an additional period of time and withdrawing particularly sensitive areas permanently. You have broad discretion under section 12 of the Outer Continental Shelf Lands Act to " . . . from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf." Such a withdrawal is a standing directive until reversed by the President or overturned by Congress. You do not have the authority to withdraw areas currently under lease. None of the agencies or policy advisors would recommend extending the moratorium to areas not currently under moratorium.

(1) Continue Department of the Interior Planning and Efforts to Build Consensus

Under this option, consensus building efforts would continue, and existing moratoria would continue to apply. The Department of the Interior's management plan would protect areas currently withdrawn through 2002. Administration policy in this area has included a commitment to resolving conflicts, building consensus as to where new leasing and development should proceed, and making decisions based on sound science and environmental protection. The current 5-Year OCS Oil and Gas Leasing Program for years 1997 through 2002 is a reflection of that approach. Under this option, that planning process would continue and the development of the 2002-2007 plan would begin next year in accordance with those principles.

Pros:

- Continues a consensus-based approach to oil and gas development that does not preclude providing access to offshore areas when justified by good science and environmental protection.
- Lays the foundation for protecting state and environmental concerns without precluding potentially substantial additional energy and economic benefits from the OCS.
- Will be viewed by the oil industry as pursuing a non-partisan, science-based, balanced approach to OCS development rather than a return to what they viewed as an ad hoc moratorium process in the 1980s and early 1990s.
- Supports the goals of the Comprehensive National Energy Strategy.

Cons:

- Many environmental and state and local interests believe that offshore drilling is inappropriate in many areas, and will criticize the status quo as inadequately protective of the environment.

- Concerns will be raised that future Administrations will not continue the consensus based approach we've taken, and could open areas for leasing regardless of stakeholder views.

(2) Appoint a Presidential Commission to Investigate Need for Modifications to the Status Quo

Under this option, a Presidential Commission would be appointed to review existing scientific information and advise the President on future actions with respect to OCS leasing, including the need for permanent withdrawal of particular areas and any need for additional research. The status quo would continue in accordance with the Department's five year plan through 2002, and could be reinforced by a Presidential directive under Section 12.

OCS oil and gas activity in Federal waters has been underway for over 50 years. A great deal of scientific information has been gathered, but there never has been a comprehensive review on the issue of whether certain areas should be permanently off limits to oil and gas drilling from an environmental standpoint. A commission report could provide significant additional scientific support for future action.

Pros:

- Reinforces a process based on sound science for making these decisions, and establishes a process for resolving future issues quickly.

- Provides a clear recognition that there may be some OCS areas that may require permanent protection from offshore oil and gas activity.

Cons:

- Some environmental and state and local interests believe that additional information is unnecessary, and that more immediate and permanent action is warranted. They will criticize this as unnecessary delay.

- Issues to be addressed are not easy. Any advisory group may have trouble reaching consensus or providing unequivocal recommendations, or may provide advice ultimately inconsistent with the expertise and policy judgement of the Administration.

(3) Extend Existing Moratoria for Either Five or Ten Years

Under this option, the President would issue a Directive under Section 12 of the OCS Lands Act extending the moratoria in all areas currently withdrawn for either an additional five or ten years beyond the protection provided by DOI's five year leasing plan, through either 2007 or 2012. Any such directive should include an exception for national security purposes, as the Bush Directive did.

Pros:

- Extends the current patchwork of protections in a unified way for an additional period for all protected areas.
- Maintains the current levels of protection while allowing for continued research and informed dialogue on how best to resolve issues in the future.
- Provides a greater degree of protection to those areas where there is apprehension about offshore oil and gas activity without permanently foreclosing promising oil and gas resources.
- A five year extension is more consistent with the current Administration practice and planning process; a ten year extension is a bolder step still consistent with the planning approach while responsive to claims that significant and possibly permanent protection is warranted.
- Pegging the extension to the Department's planning period as opposed to the expiration of the Bush moratorium in 2000 is most consistent with the Administration's planning process, and emphasizes that the current most comprehensive protection is provided by this Administration's action, and not by the Bush directive.

Cons:

- Industry and certain members of Congress will criticize the Administration for putting areas off limits for additional periods of time without any new scientific basis, arguing that it is arbitrary and inconsistent with the Administration's five year planning process.
- Risks press criticism as a political, as opposed to substantive, act similar to the Bush Directive on the eve of the 1990 election.
- Those who believe permanent protection is warranted will argue that this does not go far enough. Those same stakeholders will argue that a five year

extension is not bold enough, and that President Bush imposed a ten year moratorium and we should do no less.

(4) Extend All Existing Moratoria for Either Five or Ten Years and Withdraw Certain Sensitive Areas Permanently

Under this option, the President would issue a directive under Section 12 extending the time period of all current moratoria as discussed above; and would also withdraw particularly sensitive areas permanently. Alternatively, the directive could simply issue the permanent withdrawal for selected areas and retain the status quo on the remainder of the moratoria, leaving them in place through 2002.

While some have suggested that all existing moratoria should be made permanent, it is hard to square this with the science and locality based reviews that have been Administration policy to date, or with the Administration's Comprehensive National Energy Strategy. However, it is possible to distinguish particular areas in which it is clear based on existing scientific information that oil and gas activity is incompatible with environmental values.

Absent any specific scientific review dedicated to this issue, the choice of such areas could be controversial, with areas not selected arguing that they should have been included. This is avoided by limiting the permanent withdrawal to the federal waters not currently under lease within the existing marine sanctuaries. (Some sanctuaries include state-owned waters not subject to your withdrawal authority). These areas were specifically created to protect distinctive natural and cultural resources in the marine environment. They include the Florida Keys, Monterey Bay and Channel Islands in California, and the Olympic Coast in Washington State. A complete list of the sanctuaries is attached.

With some very minor exceptions, oil and gas drilling is currently precluded in these areas through either statutory prohibition or agency regulations, but permanent withdrawal would guarantee an additional measure of protection. In a very few areas leasing that predated the creation of the sanctuary permits some limited oil drilling to occur. Since you do not have the authority to unilaterally withdraw areas currently under lease, that leasing would continue.

Pros:

- In addition to those stated above for Option 3, addresses concerns about the need for some permanence with respect to moratoria, and minimizes claims that selection of the areas of permanent withdrawal is arbitrary or without scientific basis.

- Reduces the risk that a future Administration or Congress would revise existing

protections for those areas.

Cons:

- In addition to those stated above for Option 3, may be perceived as unnecessary because oil and gas leasing is already prohibited in all areas through 2002 and by agency action in all marine sanctuaries.
- Some states without marine sanctuaries may react negatively to being excluded from permanent moratorium protection.

Recommendations

The Department of Energy and the Department of the Interior recommend Option 1. CEQ recommends Option 4 with a 10 year extension.

Decision

___ Option 1 (Retain status quo: current moratorium in place through 2002)

___ Option 2 (Appoint Presidential Commission to provide scientific advice on future, including possible permanent, moratoria)

  ___ Include with Option 2 a Presidential Directive reinforcing existing moratoria through 2002.

___ Option 3 (Issue Presidential Directive to extend existing moratoria for an additional time period)

  ___ Five year extension

  ___ Ten year extension

___ Option 4 (Issue Presidential Directive permanently withdrawing marine sanctuaries from oil and gas leasing and extending existing moratoria)

  ___ Include five year extension of existing moratoria

  ___ Include ten year extension of existing moratoria

  ___ Permanent withdrawal of marine sanctuaries only. No other extension of existing moratoria.

___ Discuss

NATIONAL MARINE SANCTUARY PROGRAM

Designated Marine Sanctuaries and Date of Creation

California
Channel Islands (9/80)
*Cordell Bank (5/89)
Gulf of Farallones (1/81) (100% state-owned waters, so not subject to Presidential withdrawal)
*Monterey Bay (9/92)

Florida
*Florida Keys (11/90)

Georgia
Gray's Reef (1/81)

Hawaii
Hawaiian Islands Humpback Whale (11/92)

Massachusetts
Stellwagen Bank (11/92)

North Carolina
Monitor (1/75)

Texas
Flower Garden (1/92)

Washington
*Olympic Coast (7/94)

American Samoa
Fagatele Bay (4/86)

Authority
Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the designation of discrete areas of the marine environment as National marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management.

* These sanctuaries currently have oil and gas leasing prohibited by statute as well as agency regulation. All other sanctuaries have prohibitions by regulation only.

2664 29

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 5, 1998

'98 JUN 5 AM 11:23

OD

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OUTER CONTINENTAL SHELF OIL & NATURAL GAS LEASING MORATORIUM

Purpose

In preparation for the Oceans Conference that you and the Vice President will attend late next week, we have reviewed the status of oil and natural gas leasing on the outer continental shelf (OCS) to consider whether any additional action is necessary. This memorandum sets out the current status of the issue as well as four possible options for the future.

Background

A significant portion of the federal waters are currently off limits to offshore oil and natural gas activity through the combination of a directive by President Bush, annual congressional enactments, and the Department of the Interior's five year plan. This combination of actions protects all of the affected areas through 2002. President Bush's directive, which expires in 2000, withdrew all lands not under lease in 1990 off the North Atlantic, California, Washington, Oregon, and southwest Florida coasts. Various annual congressional moratoria beginning in 1982 have placed off limits additional areas, including New England, the Mid-Atlantic states, and southern Alaska (North Aleutian Basin). The Department of the Interior's five-year leasing program, effective from 1997-2002, prohibits leasing in all areas covered by the Bush Directive and congressional moratoria.

Today, the majority of new offshore leasing activity and production occurs in the Central and Western Gulf of Mexico. There also are existing leases off Alaska, and in the Atlantic and the eastern Gulf of Mexico, but no production at the current time. Bonuses, royalties and rent payments to the Treasury from these leases totaled $5 billion in FY 97, some of which was directed to the Land and Water Conservation and Historic Preservation Funds. All of the Administration's budget submissions have assumed continuation of the moratoria, as have budget receipt estimates through 2008. Extension of the moratoria beyond 2002 will not impact existing Administration budget planning.

Federal offshore production currently accounts for 20% of domestic oil production and 27% of domestic natural gas production. The Department of the Interior's Minerals Management Service estimates mean undiscovered resources in the OCS to be 45.6 billion barrels of oil and 268 trillion cubic feet of gas, although not all of this is believed to be economically recoverable at current prices. The relevant goals of the Comprehensive National Energy Strategy recently issued by the Department of Energy call for reversing the decline in domestic oil production by 2005, and for an increase of six trillion cubic feet of domestic natural gas production by 2010.

Options

Options for action, set out in more detail below, range from continuing to address this issue through the Department of Interior's five year planning processes to extending the moratorium for an additional period of time and withdrawing particularly sensitive areas permanently. You have broad discretion under section 12 of the Outer Continental Shelf Lands Act to " . . . from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf." Such a withdrawal is a standing directive until reversed by the President or overturned by Congress. You do not have the authority to withdraw areas currently under lease. None of the agencies or policy advisors would recommend extending the moratorium to areas not currently under moratorium.

(1) Continue Department of the Interior Planning and Efforts to Build Consensus

Under this option, consensus building efforts would continue, and existing moratoria would continue to apply. The Department of the Interior's management plan would protect areas currently withdrawn through 2002. Administration policy in this area has included a commitment to resolving conflicts, building consensus as to where new leasing and development should proceed, and making decisions based on sound science and environmental protection. The current 5-Year OCS Oil and Gas Leasing Program for years 1997 through 2002 is a reflection of that approach. Under this option, that planning process would continue and the development of the 2002-2007 plan would begin next year in accordance with those principles.

Pros:

- Continues a consensus-based approach to oil and gas development that does not preclude providing access to offshore areas when justified by good science and environmental protection.

- Lays the foundation for protecting state and environmental concerns without precluding potentially substantial additional energy and economic benefits from the OCS.

- Will be viewed by the oil industry as pursuing a non-partisan, science-based, balanced approach to OCS development rather than a return to what they viewed as an ad hoc moratorium process in the 1980s and early 1990s.

- Supports the goals of the Comprehensive National Energy Strategy

Cons:

- Many environmental and state and local interests believe that offshore drilling is inappropriate in many areas, and will criticize the status quo as inadequately protective of the environment.

- Concerns will be raised that future Administrations will not continue the consensus based approach we've taken, and could open areas for leasing regardless of stakeholder views.

(2) Appoint a Presidential Commission to Investigate Need for Modifications to the Status Quo

Under this option, a Presidential Commission would be appointed to review existing scientific information and advise the President on future actions with respect to OCS leasing, including the need for permanent withdrawal of particular areas and any need for additional research. The status quo would continue in accordance with the Department's five year plan through 2002, and could be reinforced by a Presidential directive under Section 12.

OCS oil and gas activity in Federal waters has been underway for over 50 years. A great deal of scientific information has been gathered, but there never has been a comprehensive review on the issue of whether certain areas should be permanently off limits to oil and gas drilling from an environmental standpoint. A commission report could provide significant additional scientific support for future action.

Pros:

- Reinforces a process based on sound science for making these decisions, and establishes a process for resolving future issues quickly.

- Provides a clear recognition that there may be some OCS areas that may require permanent protection from offshore oil and gas activity.

Cons:

- Some environmental and state and local interests believe that additional information is unnecessary, and that more immediate and permanent action is warranted. They will criticize this as unnecessary delay.

- Issues to be addressed are not easy. Any advisory group may have trouble reaching consensus or providing unequivocal recommendations, or may provide advice ultimately inconsistent with the expertise and policy judgement of the Administration.

(3) Extend Existing Moratoria for Either Five or Ten Years

Under this option, the President would issue a Directive under Section 12 of the OCS Lands Act extending the moratoria in all areas currently withdrawn for either an additional five or ten years beyond the protection provided by DOI's five year leasing plan, through either 2007 or 2012. Any such directive should include an exception for national security purposes, as the Bush Directive did.

Pros:

- Extends the current patchwork of protections in a unified way for an additional period for all protected areas.

- Maintains the current levels of protection while allowing for continued research and informed dialogue on how best to resolve issues in the future.

- Provides a greater degree of protection to those areas where there is apprehension about offshore oil and gas activity without permanently foreclosing promising oil and gas resources.

- A five year extension is more consistent with the current Administration practice and planning process; a ten year extension is a bolder step still consistent with the planning approach while responsive to claims that significant and possibly permanent protection is warranted.

- Pegging the extension to the Department's planning period as opposed to the expiration of the Bush moratorium in 2000 is most consistent with the Administration's planning process, and emphasizes that the current most comprehensive protection is provided by this Administration's action, and not by the Bush directive.

Cons:

- Industry and certain members of Congress will criticize the Administration for putting areas off limits for additional periods of time without any new scientific basis, arguing that it is arbitrary and inconsistent with the Administration's five year planning process.

- Risks press criticism as a political, as opposed to substantive, act similar to the Bush Directive on the eve of the 1990 election.

- Those who believe permanent protection is warranted will argue that this does not go far enough. Those same stakeholders will argue that a five year extension is not bold enough, and that President Bush imposed a ten year moratorium and we should do no less.

(4) Extend All Existing Moratoria for Either Five or Ten Years and Withdraw Certain Sensitive Areas Permanently

Under this option, the President would issue a directive under Section 12 extending the time period of all current moratoria as discussed above; and would also withdraw particularly sensitive areas permanently. Alternatively, the directive could simply issue the permanent withdrawal for selected areas and retain the status quo on the remainder of the moratoria, leaving them in place through 2002.

While some have suggested that all existing moratoria should be made permanent, it is hard to square this with the science and locality based reviews that have been Administration policy to date, or with the Administration's Comprehensive National Energy Strategy. However, it is possible to distinguish particular areas in which it is clear based on existing scientific information that oil and gas activity is incompatible with environmental values.

Absent any specific scientific review dedicated to this issue, the choice of such areas could be controversial, with areas not selected arguing that they should have been included. However, this is avoided by limiting the permanent withdrawal to the federal waters not currently under lease within the twelve existing marine sanctuaries. These areas were specifically created to protect distinctive natural and cultural resources in the marine environment. They include the Florida Keys, Monterey Bay and Channel Islands in California, and the Olympic Coast in Washington State. A complete list of the sanctuaries is attached.

With some very minor exceptions, oil and gas drilling is currently precluded in these areas through agency management plans, but permanent withdrawal would guarantee an additional measure of protection. In a very few areas leasing that predated the creation of the sanctuary permits some limited oil drilling to occur. Since you do not have the authority to unilaterally withdraw areas currently under lease, that leasing would continue.

Pros:

- In addition to those stated above for Option 3, addresses concerns about the need for some permanence with respect to moratoria, and minimizes claims that selection of the areas of permanent withdrawal is arbitrary or without scientific basis.

- Reduces the risk that a future Administration or Congress would revise existing protections for those areas.

Cons:

- In addition to those stated above for Option 3, may be perceived as unnecessary because oil and gas leasing is already prohibited in all areas through 2002 and by agency action in all marine sanctuaries.
- Some states without marine sanctuaries may react negatively to being excluded from permanent moratorium protection.

Recommendation

That you choose one of the following:

___ Option 1

___Option 2

    ___ Include Presidential Directive reinforcing existing moratoria through 2002

___ Option 3

    ___ Five year extension

    ___ Ten year extension

___ Option 4

    ___ Include five or ten year extension of existing moratoria

    ___ Permanent withdrawal of marine sanctuaries only

NATIONAL MARINE SANCTUARY PROGRAM

Designated Marine Sanctuaries and Date of Creation

California
Channel Islands (9/80)
Cordell Bank (5/89)
Gulf of Farallones (1/81)
Monterey Bay (9/92)

Florida
Florida Keys (11/90)

Georgia
Gray's Reef (1/81)

Hawaii
Hawaiian Islands Humpback Whale (11/92)

Massachusetts
Stellwagen Bank (11/92)

North Carolina
Monitor (1/75)

Texas
Flower Garden (1/92)

Washington
Olympic Coast (7/94)

American Samoa
Fagatele Bay (4/86)

Authority
Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the designation of discrete areas of the marine environment as National marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management.

CLOSE HOLD

Document No. ______

WHITE HOUSE STAFFING MEMORANDUM

Date: 6/5 ACTION / CONCURRENCE / COMMENT DUE BY: 6/8

Subject: Offshore oil drilling '98 JUN 8 AM8:06

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	McCURRY	☐	☐
BOWLES	☑	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☑	☐	REED	☑	☐
MATHEWS	☑	☐	RUFF	☑	☐
LEW	☑	☐	SMITH	☐	☐
BEGALA	☑	☐	SOSNIK	☑	☐
BERGER	☐	☐	SPERLING	☑	☐
BLUMENTHAL	☐	☐	STEIN	☑	☐
ECHAVESTE	☐	☐	STERN	☐	☐
EMANUEL	☑	☐	STREETT	☐	☐
GIBBONS	☐	☐	VERVEER	☐	☐
IBARRA	☐	☐	WALDMAN	☐	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	☐	☐	Skelton	☑	☐
LINDSEY	☐	☐	______	☐	☐
MARSHALL	☐	☐	______	☐	☐
			______	☐	☐

REMARKS: Please advise.

RESPONSE:

6/6/98

Phil, looks good, but will you please include some political (member/electeds) analysis for POTUS,

Sean

3/98

Staff Secretary's Office
Ext. 62702

CLOSE HOLD

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 5, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OUTER CONTINENTAL SHELF OIL & NATURAL GAS LEASING MORATORIUM

Purpose

In preparation for the Oceans Conference that you and the Vice President will attend late next week, we have reviewed the status of oil and natural gas leasing on the outer continental shelf (OCS) to consider whether any additional action is necessary. This memorandum sets out the current status of the issue as well as four possible options for the future.

Background

A significant portion of the federal waters are currently off limits to offshore oil and natural gas activity through the combination of a directive by President Bush, annual congressional enactments, and the Department of the Interior's five year plan. This combination of actions protects all of the affected areas through 2002. President Bush's directive, which expires in 2000, withdrew all lands not under lease in 1990 off the North Atlantic, California, Washington, Oregon, and southwest Florida coasts. Various annual congressional moratoria beginning in 1982 have placed off limits additional areas, including New England, the Mid-Atlantic states, and southern Alaska (North Aleutian Basin). The Department of the Interior's five-year leasing program, effective from 1997-2002, prohibits leasing in all areas covered by the Bush Directive and congressional moratoria.

Today, the majority of new offshore leasing activity and production occurs in the Central and Western Gulf of Mexico. There also are existing leases off Alaska, and in the Atlantic and the eastern Gulf of Mexico, but no production at the current time. Bonuses, royalties and rent payments to the Treasury from these leases totaled $5 billion in FY 97, some of which was directed to the Land and Water Conservation and Historic Preservation Funds. All of the Administration's budget submissions have assumed continuation of the moratoria, as have budget receipt estimates through 2008. Extension of the moratoria beyond 2002 will not impact existing Administration budget planning.

Federal offshore production currently accounts for 20% of domestic oil production and 27% of domestic natural gas production. The Department of the Interior's Minerals Management Service estimates mean undiscovered resources in the OCS to be 45.6 billion barrels of oil and 268 trillion cubic feet of gas, although not all of this is believed to be economically recoverable at current prices. The relevant goals of the Comprehensive National Energy Strategy recently issued by the Department

of Energy call for reversing the decline in domestic oil production by 2005, and for an increase of six trillion cubic feet of domestic natural gas production by 2010.

Options

Options for action, set out in more detail below, range from continuing to address this issue through the Department of Interior's five year planning processes to extending the moratorium for an additional period of time and withdrawing particularly sensitive areas permanently. You have broad discretion under section 12 of the Outer Continental Shelf Lands Act to " . . . from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf." Such a withdrawal is a standing directive until reversed by the President or overturned by Congress. You do not have the authority to withdraw areas currently under lease. None of the agencies or policy advisors would recommend extending the moratorium to areas not currently under moratorium.

(1) Continue Department of the Interior Planning and Efforts to Build Consensus

Under this option, consensus building efforts would continue, and existing moratoria would continue to apply. The Department of the Interior's management plan would protect areas currently withdrawn through 2002. Administration policy in this area has included a commitment to resolving conflicts, building consensus as to where new leasing and development should proceed, and making decisions based on sound science and environmental protection. The current 5-Year OCS Oil and Gas Leasing Program for years 1997 through 2002 is a reflection of that approach. Under this option, that planning process would continue and the development of the 2002-2007 plan would begin next year in accordance with those principles.

Pros:

- Continues a consensus-based approach to oil and gas development that does not preclude providing access to offshore areas when justified by good science and environmental protection.
- Lays the foundation for protecting state and environmental concerns without precluding potentially substantial additional energy and economic benefits from the OCS.
- Will be viewed by the oil industry as pursuing a non-partisan, science-based, balanced approach to OCS development rather than a return to what they viewed as an ad hoc moratorium process in the 1980s and early 1990s.
- Supports the goals of the Comprehensive National Energy Strategy.

Cons:

- Many environmental and state and local interests believe that offshore drilling is inappropriate in many areas, and will criticize the status quo as inadequately protective of the environment.

- Concerns will be raised that future Administrations will not continue the consensus based approach we've taken, and could open areas for leasing regardless of stakeholder views.

(2) Appoint a Presidential Commission to Investigate Need for Modifications to the Status Quo

Under this option, a Presidential Commission would be appointed to review existing scientific information and advise the President on future actions with respect to OCS leasing, including the need for permanent withdrawal of particular areas and any need for additional research. The status quo would continue in accordance with the Department's five year plan through 2002, and could be reinforced by a Presidential directive under Section 12.

OCS oil and gas activity in Federal waters has been underway for over 50 years. A great deal of scientific information has been gathered, but there never has been a comprehensive review on the issue of whether certain areas should be permanently off limits to oil and gas drilling from an environmental standpoint. A commission report could provide significant additional scientific support for future action.

Pros:

- Reinforces a process based on sound science for making these decisions, and establishes a process for resolving future issues quickly.

- Provides a clear recognition that there may be some OCS areas that may require permanent protection from offshore oil and gas activity.

Cons:

- Some environmental and state and local interests believe that additional information is unnecessary, and that more immediate and permanent action is warranted. They will criticize this as unnecessary delay.

- Issues to be addressed are not easy. Any advisory group may have trouble reaching consensus or providing unequivocal recommendations, or may provide advice ultimately inconsistent with the expertise and policy judgement of the Administration.

(3) Extend Existing Moratoria for Either Five or Ten Years

Under this option, the President would issue a Directive under Section 12 of the OCS Lands Act extending the moratoria in all areas currently withdrawn for either an additional five or ten years beyond the protection provided by DOI's five year leasing plan, through either 2007 or 2012. Any such directive should include an exception for national security purposes, as the Bush Directive did.

Pros:

- Extends the current patchwork of protections in a unified way for an additional period for all protected areas.
- Maintains the current levels of protection while allowing for continued research and informed dialogue on how best to resolve issues in the future.
- Provides a greater degree of protection to those areas where there is apprehension about offshore oil and gas activity without permanently foreclosing promising oil and gas resources.
- A five year extension is more consistent with the current Administration practice and planning process; a ten year extension is a bolder step still consistent with the planning approach while responsive to claims that significant and possibly permanent protection is warranted.
- Pegging the extension to the Department's planning period as opposed to the expiration of the Bush moratorium in 2000 is most consistent with the Administration's planning process, and emphasizes that the current most comprehensive protection is provided by this Administration's action, and not by the Bush directive.

Cons:

- Industry and certain members of Congress will criticize the Administration for putting areas off limits for additional periods of time without any new scientific basis, arguing that it is arbitrary and inconsistent with the Administration's five year planning process.
- Risks press criticism as a political, as opposed to substantive, act similar to the Bush Directive on the eve of the 1990 election.
- Those who believe permanent protection is warranted will argue that this does not go far enough. Those same stakeholders will argue that a five year

extension is not bold enough, and that President Bush imposed a ten year moratorium and we should do no less.

(4) Extend All Existing Moratoria for Either Five or Ten Years and Withdraw Certain Sensitive Areas Permanently

Under this option, the President would issue a directive under Section 12 extending the time period of all current moratoria as discussed above; and would also withdraw particularly sensitive areas permanently. Alternatively, the directive could simply issue the permanent withdrawal for selected areas and retain the status quo on the remainder of the moratoria, leaving them in place through 2002.

While some have suggested that all existing moratoria should be made permanent, it is hard to square this with the science and locality based reviews that have been Administration policy to date, or with the Administration's Comprehensive National Energy Strategy. However, it is possible to distinguish particular areas in which it is clear based on existing scientific information that oil and gas activity is incompatible with environmental values.

Absent any specific scientific review dedicated to this issue, the choice of such areas could be controversial, with areas not selected arguing that they should have been included. This is avoided by limiting the permanent withdrawal to the federal waters not currently under lease within the existing marine sanctuaries. (Some sanctuaries include state-owned waters not subject to your withdrawal authority). These areas were specifically created to protect distinctive natural and cultural resources in the marine environment. They include the Florida Keys, Monterey Bay and Channel Islands in California, and the Olympic Coast in Washington State. A complete list of the sanctuaries is attached.

With some very minor exceptions, oil and gas drilling is currently precluded in these areas through either statutory prohibition or agency regulations, but permanent withdrawal would guarantee an additional measure of protection. In a very few areas leasing that predated the creation of the sanctuary permits some limited oil drilling to occur. Since you do not have the authority to unilaterally withdraw areas currently under lease, that leasing would continue.

Pros:

- In addition to those stated above for Option 3, addresses concerns about the need for some permanence with respect to moratoria, and minimizes claims that selection of the areas of permanent withdrawal is arbitrary or without scientific basis.

- Reduces the risk that a future Administration or Congress would revise existing

protections for those areas.

Cons:

- In addition to those stated above for Option 3, may be perceived as unnecessary because oil and gas leasing is already prohibited in all areas through 2002 and by agency action in all marine sanctuaries.

- Some states without marine sanctuaries may react negatively to being excluded from permanent moratorium protection.

Recommendations

The Department of Energy and the Department of the Interior recommend Option 1. CEQ recommends Option 4 with a 10 year extension.

Decision

___ Option 1 (Retain status quo: current moratorium in place through 2002)

___ Option 2 (Appoint Presidential Commission to provide scientific advice on future, including possible permanent, moratoria)

___ Include with Option 2 a Presidential Directive reinforcing existing moratoria through 2002.

___ Option 3 (Issue Presidential Directive to extend existing moratoria for an additional time period)

___ Five year extension

___ Ten year extension

___ Option 4 (Issue Presidential Directive permanently withdrawing marine sanctuaries from oil and gas leasing and extending existing moratoria)

___ Include five year extension of existing moratoria

___ Include ten year extension of existing moratoria

___ Permanent withdrawal of marine sanctuaries only. No other extension of existing moratoria.

___ Discuss

NATIONAL MARINE SANCTUARY PROGRAM

Designated Marine Sanctuaries and Date of Creation

California
Channel Islands (9/80)
*Cordell Bank (5/89)
Gulf of Farallones (1/81) (100% state-owned waters, so not subject to Presidential withdrawal)
*Monterey Bay (9/92)

Florida
*Florida Keys (11/90)

Georgia
Gray's Reef (1/81)

Hawaii
Hawaiian Islands Humpback Whale (11/92)

Massachusetts
Stellwagen Bank (11/92)

North Carolina
Monitor (1/75)

Texas
Flower Garden (1/92)

Washington
*Olympic Coast (7/94)

American Samoa
Fagatele Bay (4/86)

Authority
Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the designation of discrete areas of the marine environment as National marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management.

* These sanctuaries currently have oil and gas leasing prohibited by statute as well as agency regulation. All other sanctuaries have prohibitions by regulation only.

"I support #4

& POTUS to announce at Conference"

– Rahm

CLOSE HOLD

Document No. ______

WHITE HOUSE STAFFING MEMORANDUM

Date: 6/5 ACTION / CONCURRENCE / COMMENT DUE BY: 6/8

Subject: Offshore oil drilling '98 JUN 8 AM11:35

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	McCURRY	☐	☐
BOWLES	☑	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
PODESTA	☑	☐	REED	☑	☐
MATHEWS	☑	☐	RUFF	☑	☐
LEW	☑	☐	SMITH	☐	☐
BEGALA	☑	☐	SOSNIK	☑	☐
BERGER	☐	☐	SPERLING	☑	☐
BLUMENTHAL	☐	☐	STEIN	☑	☐
ECHAVESTE	☐	☐	STERN	☐	☐
EMANUEL	☑	☐	STREETT	☐	☐
GIBBONS	☐	☐	VERVEER	☐	☐
IBARRA	☐	☐	WALDMAN	☐	☐
KLAIN	☐	☐	YELLEN	☐	☐
LEWIS	☐	☐	Skelton	☑	☐
LINDSEY	☐	☐	______	☐	☐
MARSHALL	☐	☐	______	☐	☐
			______	☐	☐

REMARKS: Please advise

RESPONSE: I support [illegible] + Potus announce it at Conf

Staff Secretary's Office
Ext. 62702

3/98

CLOSE HOLD

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

June 5, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OUTER CONTINENTAL SHELF OIL & NATURAL GAS LEASING MORATORIUM

Purpose

In preparation for the Oceans Conference that you and the Vice President will attend late next week, we have reviewed the status of oil and natural gas leasing on the outer continental shelf (OCS) to consider whether any additional action is necessary. This memorandum sets out the current status of the issue as well as four possible options for the future.

Background

A significant portion of the federal waters are currently off limits to offshore oil and natural gas activity through the combination of a directive by President Bush, annual congressional enactments, and the Department of the Interior's five year plan. This combination of actions protects all of the affected areas through 2002. President Bush's directive, which expires in 2000, withdrew all lands not under lease in 1990 off the North Atlantic, California, Washington, Oregon, and southwest Florida coasts. Various annual congressional moratoria beginning in 1982 have placed off limits additional areas, including New England, the Mid-Atlantic states, and southern Alaska (North Aleutian Basin). The Department of the Interior's five-year leasing program, effective from 1997-2002, prohibits leasing in all areas covered by the Bush Directive and congressional moratoria.

Today, the majority of new offshore leasing activity and production occurs in the Central and Western Gulf of Mexico. There also are existing leases off Alaska, and in the Atlantic and the eastern Gulf of Mexico, but no production at the current time. Bonuses, royalties and rent payments to the Treasury from these leases totaled $5 billion in FY 97, some of which was directed to the Land and Water Conservation and Historic Preservation Funds. All of the Administration's budget submissions have assumed continuation of the moratoria, as have budget receipt estimates through 2008. Extension of the moratoria beyond 2002 will not impact existing Administration budget planning.

Federal offshore production currently accounts for 20% of domestic oil production and 27% of domestic natural gas production. The Department of the Interior's Minerals Management Service estimates mean undiscovered resources in the OCS to be 45.6 billion barrels of oil and 268 trillion cubic feet of gas, although not all of this is believed to be economically recoverable at current prices. The relevant goals of the Comprehensive National Energy Strategy recently issued by the Department

of Energy call for reversing the decline in domestic oil production by 2005, and for an increase of six trillion cubic feet of domestic natural gas production by 2010.

Options

Options for action, set out in more detail below, range from continuing to address this issue through the Department of Interior's five year planning processes to extending the moratorium for an additional period of time and withdrawing particularly sensitive areas permanently. You have broad discretion under section 12 of the Outer Continental Shelf Lands Act to " . . . from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf." Such a withdrawal is a standing directive until reversed by the President or overturned by Congress. You do not have the authority to withdraw areas currently under lease. None of the agencies or policy advisors would recommend extending the moratorium to areas not currently under moratorium.

(1) Continue Department of the Interior Planning and Efforts to Build Consensus

Under this option, consensus building efforts would continue, and existing moratoria would continue to apply. The Department of the Interior's management plan would protect areas currently withdrawn through 2002. Administration policy in this area has included a commitment to resolving conflicts, building consensus as to where new leasing and development should proceed, and making decisions based on sound science and environmental protection. The current 5-Year OCS Oil and Gas Leasing Program for years 1997 through 2002 is a reflection of that approach. Under this option, that planning process would continue and the development of the 2002-2007 plan would begin next year in accordance with those principles.

Pros:

- Continues a consensus-based approach to oil and gas development that does not preclude providing access to offshore areas when justified by good science and environmental protection.
- Lays the foundation for protecting state and environmental concerns without precluding potentially substantial additional energy and economic benefits from the OCS.
- Will be viewed by the oil industry as pursuing a non-partisan, science-based, balanced approach to OCS development rather than a return to what they viewed as an ad hoc moratorium process in the 1980s and early 1990s.
- Supports the goals of the Comprehensive National Energy Strategy.

Cons:

- Many environmental and state and local interests believe that offshore drilling is inappropriate in many areas, and will criticize the status quo as inadequately protective of the environment.

- Concerns will be raised that future Administrations will not continue the consensus based approach we've taken, and could open areas for leasing regardless of stakeholder views.

(2) Appoint a Presidential Commission to Investigate Need for Modifications to the Status Quo

Under this option, a Presidential Commission would be appointed to review existing scientific information and advise the President on future actions with respect to OCS leasing, including the need for permanent withdrawal of particular areas and any need for additional research. The status quo would continue in accordance with the Department's five year plan through 2002, and could be reinforced by a Presidential directive under Section 12.

OCS oil and gas activity in Federal waters has been underway for over 50 years. A great deal of scientific information has been gathered, but there never has been a comprehensive review on the issue of whether certain areas should be permanently off limits to oil and gas drilling from an environmental standpoint. A commission report could provide significant additional scientific support for future action.

Pros:

- Reinforces a process based on sound science for making these decisions, and establishes a process for resolving future issues quickly.

- Provides a clear recognition that there may be some OCS areas that may require permanent protection from offshore oil and gas activity.

Cons:

- Some environmental and state and local interests believe that additional information is unnecessary, and that more immediate and permanent action is warranted. They will criticize this as unnecessary delay.

- Issues to be addressed are not easy. Any advisory group may have trouble reaching consensus or providing unequivocal recommendations, or may provide advice ultimately inconsistent with the expertise and policy judgement of the Administration.

(3) Extend Existing Moratoria for Either Five or Ten Years

Under this option, the President would issue a Directive under Section 12 of the OCS Lands Act extending the moratoria in all areas currently withdrawn for either an additional five or ten years beyond the protection provided by DOI's five year leasing plan, through either 2007 or 2012. Any such directive should include an exception for national security purposes, as the Bush Directive did.

Pros:

- Extends the current patchwork of protections in a unified way for an additional period for all protected areas.
- Maintains the current levels of protection while allowing for continued research and informed dialogue on how best to resolve issues in the future.
- Provides a greater degree of protection to those areas where there is apprehension about offshore oil and gas activity without permanently foreclosing promising oil and gas resources.
- A five year extension is more consistent with the current Administration practice and planning process; a ten year extension is a bolder step still consistent with the planning approach while responsive to claims that significant and possibly permanent protection is warranted.
- Pegging the extension to the Department's planning period as opposed to the expiration of the Bush moratorium in 2000 is most consistent with the Administration's planning process, and emphasizes that the current most comprehensive protection is provided by this Administration's action, and not by the Bush directive.

Cons:

- Industry and certain members of Congress will criticize the Administration for putting areas off limits for additional periods of time without any new scientific basis, arguing that it is arbitrary and inconsistent with the Administration's five year planning process.
- Risks press criticism as a political, as opposed to substantive, act similar to the Bush Directive on the eve of the 1990 election.
- Those who believe permanent protection is warranted will argue that this does not go far enough. Those same stakeholders will argue that a five year

extension is not bold enough, and that President Bush imposed a ten year moratorium and we should do no less.

(4) <u>Extend All Existing Moratoria for Either Five or Ten Years and Withdraw Certain Sensitive Areas Permanently</u>

Under this option, the President would issue a directive under Section 12 extending the time period of all current moratoria as discussed above; and would also withdraw particularly sensitive areas permanently. Alternatively, the directive could simply issue the permanent withdrawal for selected areas and retain the status quo on the remainder of the moratoria, leaving them in place through 2002.

While some have suggested that all existing moratoria should be made permanent, it is hard to square this with the science and locality based reviews that have been Administration policy to date, or with the Administration's Comprehensive National Energy Strategy. However, it is possible to distinguish particular areas in which it is clear based on existing scientific information that oil and gas activity is incompatible with environmental values.

Absent any specific scientific review dedicated to this issue, the choice of such areas could be controversial, with areas not selected arguing that they should have been included. This is avoided by limiting the permanent withdrawal to the federal waters not currently under lease within the existing marine sanctuaries. (Some sanctuaries include state-owned waters not subject to your withdrawal authority). These areas were specifically created to protect distinctive natural and cultural resources in the marine environment. They include the Florida Keys, Monterey Bay and Channel Islands in California, and the Olympic Coast in Washington State. A complete list of the sanctuaries is attached.

With some very minor exceptions, oil and gas drilling is currently precluded in these areas through either statutory prohibition or agency regulations, but permanent withdrawal would guarantee an additional measure of protection. In a very few areas leasing that predated the creation of the sanctuary permits some limited oil drilling to occur. Since you do not have the authority to unilaterally withdraw areas currently under lease, that leasing would continue.

<u>Pros</u>:

- In addition to those stated above for Option 3, addresses concerns about the need for some permanence with respect to moratoria, and minimizes claims that selection of the areas of permanent withdrawal is arbitrary or without scientific basis.

- Reduces the risk that a future Administration or Congress would revise existing

protections for those areas.

Cons:

- In addition to those stated above for Option 3, may be perceived as unnecessary because oil and gas leasing is already prohibited in all areas through 2002 and by agency action in all marine sanctuaries.
- Some states without marine sanctuaries may react negatively to being excluded from permanent moratorium protection.

Recommendations

The Department of Energy and the Department of the Interior recommend Option 1. CEQ recommends Option 4 with a 10 year extension.

Decision

___ Option 1 (Retain status quo: current moratorium in place through 2002)

___ Option 2 (Appoint Presidential Commission to provide scientific advice on future, including possible permanent, moratoria)

  ___ Include with Option 2 a Presidential Directive reinforcing existing moratoria through 2002.

___ Option 3 (Issue Presidential Directive to extend existing moratoria for an additional time period)

  ___ Five year extension

  ___ Ten year extension

___ Option 4 (Issue Presidential Directive permanently withdrawing marine sanctuaries from oil and gas leasing and extending existing moratoria)

  ___ Include five year extension of existing moratoria

  ___ Include ten year extension of existing moratoria

  ___ Permanent withdrawal of marine sanctuaries only. No other extension of existing moratoria.

___ Discuss

NATIONAL MARINE SANCTUARY PROGRAM

Designated Marine Sanctuaries and Date of Creation

California
Channel Islands (9/80)
*Cordell Bank (5/89)
Gulf of Farallones (1/81) (100% state-owned waters, so not subject to Presidential withdrawal)
*Monterey Bay (9/92)

Florida
*Florida Keys (11/90)

Georgia
Gray's Reef (1/81)

Hawaii
Hawaiian Islands Humpback Whale (11/92)

Massachusetts
Stellwagen Bank (11/92)

North Carolina
Monitor (1/75)

Texas
Flower Garden (1/92)

Washington
*Olympic Coast (7/94)

American Samoa
Fagatele Bay (4/86)

Authority
Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the designation of discrete areas of the marine environment as National marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management.

* These sanctuaries currently have oil and gas leasing prohibited by statute as well as agency regulation. All other sanctuaries have prohibitions by regulation only.

June 10, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN

SUBJECT: Oil and Natural Gas Leasing on the Outer Continental Shelf (OCS)

At the Oceans Conference on Friday, your WH advisors recommend that you announce, as the major deliverable of the Conference, an extension of existing moratoria on oil and gas drilling on the OCS, including the permanent withdrawal of sensitive marine sanctuaries from drilling. There is disagreement over the length of the moratoria extension. which is ~~[illegible]~~ runs in five year increments ~~years~~ (1997-2002, 2002-2007)

Background. Beginning in 1982, various statutory moratoria placed areas like New England and southern Alaska off limits. In 1990, President Bush issued a 10-year directive that withdrew all unleased lands off the North Atlantic, California, Washington, Oregon and southwestern Florida coasts. Interior's management plan extends the Bush directive and statutory moratoria until 2002. You have broad discretion under §12 of the Outer Continental Shelf Lands Act to "withdraw from disposition" any of the unleased lands of the OCS.

Options. Four are presented. Only Secretaries Babbitt and Pena support *Option 1*, which would continue Interior's management plan and apply existing moratoria through 2002; development of the 2002-2007 plan would commence next year. There is no support for *Option 2*, which calls for appointing a Presidential Commission to review the science and advise you on future actions. There is also no support for *Option 3*, which would have you issue a 5- or 10-year directive without withdrawing the sensitive areas. All of your WH advisors (*CEQ, OMB, Rahm, Sylvia and John*) support **Option 4**, which calls for a 5- or 10-year moratorium and withdrawing the sensitive areas permanently. There is disagreement, however, over the length of the moratorium.

Views. *CEQ* advocates a 10-year ban as being the most aggressive policy supportable by the science. *Secy Babbitt*, while preferring Option 1, would settle for Option 4 with a 5-year ban as more consistent with the management plan. OMB also prefers 5 years as do *John, Sylvia and Rahm,* as this will carry us through 2007, which they believe is a sufficient time frame and is most respectful of Interior's management plan. Furthermore, a 5-year ban will result in less criticism from Members from oil producing states. Gov. Wilson wrote you a letter today, which he released publicly, calling for a permanent moratorium -- a position he has supported for years. Sen. Boxer also supports a permanent ban, but if not permanent, advocates for the longest ban possible given our policy review; she will appreciate the marine sanctuaries ban. CEQ notes that a permanent moratorium is not supported by the science and locality-based reviews that have been Administration policy to date. Environmentalists will argue 5 years does not go far enough and is less than what Bush did, but oil drilling is not at the top of their agenda as these waters are fairly well protected.

__ Option 1 __ Option 2 __ Option 3 __ Option 4 with sanctuaries ban (recommended)

__ 5-year ban __ 10-year ban

THE WHITE HOUSE

WASHINGTON

June 10, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN

SUBJECT: Oil and Natural Gas Leasing on the Outer Continental Shelf (OCS)

At the Oceans Conference on Friday, your WH advisors recommend that you announce, as the major deliverable of the Conference, an extension of existing moratoria on oil and gas drilling, on the OCS including ~~withdrawing~~ sensitive marine sanctuary areas permanently. There is disagreement over the length of the moratoria extension.

Background. Beginning in 1982, various statutory moratoria placed areas like New England and southern Alaska off limits. In 1990, President Bush issued a 10-year directive that withdrew all unleased lands off the North Atlantic, California, Washington, Oregon and southwestern Florida coasts. Interior's management plan extends the Bush directive and statutory moratoria until 2002. You have broad discretion under §12 of the Outer Continental Shelf Lands Act to "withdraw from disposition" any of the unleased lands of the OCS.

Options. Four are presented. Only Secretaries Babbitt and Pena support *Option 1*, which would continue Interior's planning process and apply existing moratoria through 2002; development of the 2002-2007 plan would commence next year. There is no support for *Option 2*, which calls for appointing a Presidential Commission to review the science and advise you on future actions. There is also no support for *Option 3*, which would have you issue a 5- or 10-year directive without withdrawing the sensitive areas. All of your WH advisors (*CEQ, OMB, Rahm, Sylvia and John*) support **Option 4**, which calls for a 5- or 10-year moratorium and withdrawing the sensitive areas permanently. There is disagreement, however, over the length of the ban.

CEQ advocates a 10-year ban as being the most aggressive policy supportable by the science. *Secy Babbitt*, while preferring Option 1, would settle for Option 4 with a 5-year ban as more consistent with the planning process underway. OMB also prefers 5 years as do *John, Sylvia and Rahm,* as this will carry us through 2007, which they believe is a sufficient time frame and is most respectful of Interior's process. Furthermore, a 5-year ban will result in less criticism from Members from oil producing states. Gov. Wilson wrote you a letter today, which he released publicly, calling for a permanent ban -- a position he has supported for years. Sen. Boxer also supports a permanent ban, but if not permanent, advocates for the longest ban possible given our policy review; she will appreciate the marine sanctuaries ban. CEQ notes that a full permanent ban is not supported by the science and locality-based reviews that have been Administration policy to date. Environmentalists will argue 5 years does not go far enough and is less than what Bush did, but oil drilling is not at the top of their agenda as these waters are fairly well protected.

__ Option 1   __ Option 2   __ Option 3   __ Option 4 with sanctuaries ban (recommended)

__ 5-year ban __ 10-year ban

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY

'98 JUN 10 PM 12:48

6/10

Phil -

Here is the revised OCS memo. The second version highlights Linda's changes.

- Robert Kopla

June 10, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN

marine sanctuary

SUBJECT: Oil and Natural Gas Leasing on the ~~Outer~~ Continental Shelf (OCS)

At the Oceans Conference on Friday, your WH advisors recommend that you announce, as the major deliverable of the Conference, an extension of existing moratoria on oil and gas drilling, including withdrawing ~~certain~~ sensitive areas permanently. There is disagreement over the length of the moratoria extension.

Background. Beginning in 1982, various statutory moratoria placed areas like New England and southern Alaska off limits. In 1990, President Bush issued a 10-year directive that withdrew all unleased lands off the North Atlantic, California, Washington, Oregon and southwestern Florida coasts. Interior's management plan extends the Bush directive and statutory moratoria until 2002. You have broad discretion under §12 of the Outer Continental Shelf Lands Act to "withdraw from disposition" any of the unleased lands of the OCS.

urgent plan

Options. Four are presented. Only Secretaries Babbitt and Pena support *Option 1*, which would continue Interior's planning process and apply existing moratoria through 2002; development of the 2002-2007 plan ~~would commence~~ next year. There is no support for *Option 2*, which calls for appointing a Presidential Commission to review the science and advise you on future actions. There is also no support for *Option 3*, which would have you issue a 5- or 10-year directive without withdrawing the sensitive areas. All of your WH advisors (*CEQ, OMB, Rahm, Sylvia and John*) support **Option 4**, which calls for a 5- or 10-year moratorium and withdrawing the sensitive areas permanently. There is disagreement, however, over the length of the ban. sanctuary

urgent plan — they believe is

CEQ advocates a 10-year ban as being the most aggressive policy supportable by the science. *Secy Babbitt*, while preferring Option 1, would settle for Option 4 with a 5-year ban as more consistent with the planning process underway. OMB also prefers 5 years as do *John, Sylvia and Rahm,* as this will carry us through 2007, which is a sufficient time frame, and will result in less criticism from Members from oil producing states. Gov. Wilson wrote you today calling for a permanent ban, which he has supported for years. His letter was released publicly. Sen. Boxer also supports a permanent ban, but if not permanent, advocates for the longest ban possible given our policy review. She will appreciate the marine sanctuaries ban. CEQ notes that a full permanent ban is not supported by the science and locality-based reviews that have been Administration policy to date. Environmentalists will argue 5 years does not go far enough and is less than what Bush did, but oil drilling is not at the top of their agenda as these waters are fairly well protected.

__ Option 1 __ Option 2 __ Option 3 __ Option 4 with sanctuaries ban (recommended)

__ 5-year ban __ 10-year ban

June 10, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN

SUBJECT: Oil and Natural Gas Leasing on the Outer Continental Shelf (OCS)

At the Oceans Conference on Friday, your WH advisors recommend that you announce, as the major deliverable of the Conference, an extension of existing moratoria on oil and gas drilling, including withdrawing ~~certain~~ sensitive marine sanctuary areas permanently. There is disagreement over the length of the moratoria extension.

Background. Beginning in 1982, various statutory moratoria placed areas like New England and southern Alaska off limits. In 1990, President Bush issued a 10-year directive that withdrew all unleased lands off the North Atlantic, California, Washington, Oregon and southwestern Florida coasts. Interior's management plan extends the Bush directive and statutory moratoria until 2002. You have broad discretion under §12 of the Outer Continental Shelf Lands Act to "withdraw from disposition" any of the unleased lands of the OCS.

Options. Four are presented. Only Secretaries Babbitt and Pena support *Option 1*, which would continue Interior's planning process and apply existing moratoria through 2002; development of the 2002-2007 plan would commence next year. There is no support for *Option 2*, which calls for appointing a Presidential Commission to review the science and advise you on future actions. There is also no support for *Option 3*, which would have you issue a 5- or 10-year directive without withdrawing the sensitive areas. All of your WH advisors (*CEQ, OMB, Rahm, Sylvia and John*) support **Option 4**, which calls for a 5- or 10-year moratorium and withdrawing the sensitive areas permanently. There is disagreement, however, over the length of the ban.

CEQ advocates a 10-year ban as being the most aggressive policy supportable by the science. *Secy Babbitt*, while preferring Option 1, would settle for Option 4 with a 5-year ban as more consistent with the planning process underway. OMB also prefers 5 years as do *John, Sylvia and Rahm,* as this will carry us through 2007, which is a sufficient time frame, and will result in less criticism from Members from oil producing states. Gov. Wilson wrote you today calling for a permanent ban, which he has supported for years. His letter was released publicly. Sen. Boxer also supports a permanent ban, but if not permanent, advocates for the longest ban possible given our policy review. She will appreciate the marine sanctuaries ban. CEQ notes that a full permanent ban is not supported by the science and locality-based reviews that have been Administration policy to date. Environmentalists will argue 5 years does not go far enough and is less than what Bush did, but oil drilling is not at the top of their agenda as these waters are fairly well protected.

__ Option 1 __ Option 2 __ Option 3 __ Option 4 with sanctuaries ban (recommended)
__ 5-year ban __ 10-year ban

'98 JUN 10 PM12:49

June 10, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: KATHLEEN A. MCGINTY

SUBJECT: OUTER CONTINENTAL SHELF OIL & NATURAL GAS LEASING MORATORIUM

Purpose

In preparation for the Oceans Conference that you and the Vice President will attend this week, we have reviewed the status of oil and natural gas leasing on the outer continental shelf (OCS) to consider whether any additional action is necessary. This memorandum sets out the current status of the issue as well as four possible options for the future.

Background

A significant portion of the federal waters are currently off limits to offshore oil and natural gas activity through the combination of a directive by President Bush, annual congressional enactments, and the Department of the Interior's five year plan. This combination of actions protects all of the affected areas through 2002. President Bush's directive, which expires in 2000, withdrew all lands not under lease in 1990 off the North Atlantic, California, Washington, Oregon, and southwest Florida coasts. Various annual congressional moratoria beginning in 1982 have placed off limits the areas listed above, as well as additional areas including New England, the Mid-Atlantic states, and southern Alaska (North Aleutian Basin). The Department of the Interior's five-year leasing program, effective from 1997-2002, in effect prohibits leasing in all areas covered by the Bush Directive and congressional moratoria as well as a few additional areas.

Today, the majority of new offshore leasing activity and production occurs in the Central and Western Gulf of Mexico. There also are existing leases off Alaska, and in the Atlantic and the eastern Gulf of Mexico, but no production at the current time. Bonuses, royalties and rent payments to the Treasury from these leases totaled $5 billion in FY 97, some of which was directed to the Land and Water Conservation and Historic Preservation Funds. All of the Administration's budget submissions have assumed continuation of the existing statutory moratoria, as have budget receipt estimates through 2008. Extension of the moratoria beyond 2002 will not impact existing Administration budget planning.

Federal offshore production currently accounts for 20% of domestic oil production and 27% of domestic natural gas production. The Department of the Interior's Minerals Management Service estimates mean undiscovered resources in the OCS to be 45.6 billion barrels of oil and 268 trillion cubic feet of gas, although not all of this is believed to be economically recoverable at current prices. The relevant goals of the Comprehensive National Energy Strategy recently issued by the Department of Energy call for reversing the decline in domestic oil production by 2005, and for an increase of six trillion cubic feet of domestic natural gas production by 2010.

Options

Options for action, set out in more detail below, range from continuing to address this issue through the Department of Interior's five year planning processes to extending the existing moratoria for an additional period of time and withdrawing particularly sensitive areas permanently. You have broad discretion under section 12 of the Outer Continental Shelf Lands Act to " . . . from time to time, withdraw from disposition any of the unleased lands of the Outer Continental Shelf." Such a withdrawal is a standing directive until reversed by the President or overturned by Congress. You do not have the authority to withdraw areas currently under lease. None of the agencies or policy advisors would recommend extending the existing moratoria to new areas.

(1) Continue Department of the Interior Planning and Efforts to Build Consensus

Under this option, consensus building efforts would continue, and existing moratoria would continue to apply. The Department of the Interior's management plan would protect areas currently withdrawn through 2002. Administration policy in this area has included a commitment to resolving conflicts, building consensus as to where new leasing and development should proceed, and making decisions based on sound science and environmental protection. The current 5-Year OCS Oil and Gas Leasing Program for years 1997 through 2002 is a reflection of that approach. Under this option, that planning process would continue and the development of the 2002-2007 plan would begin next year in accordance with those principles.

Pros:

- Continues a consensus-based approach to oil and gas development that does not preclude providing access to offshore areas when justified by good science and environmental protection.
- Lays the foundation for protecting state and environmental concerns without precluding potentially substantial additional energy and economic benefits from the OCS.
- Will be viewed by the oil industry as pursuing a non-partisan, science-based, balanced approach to OCS development rather than a return to what they viewed as an ad hoc moratorium process in the 1980s and early 1990s.
- Supports the goals of the Comprehensive National Energy Strategy.

Cons:

- Many environmental and state and local interests believe that offshore drilling is inappropriate in many areas, and will criticize the status quo as inadequately protective of the environment.

- Concerns will be raised that future Administrations will not continue the consensus based approach we have taken, and could open areas for leasing regardless of stakeholder views.

(2) <u>Appoint a Presidential Commission to Investigate Need for Modifications to the Status Quo</u>

Under this option, a Presidential Commission would be appointed to review existing scientific information and advise the President on future actions with respect to OCS leasing, including the need for permanent withdrawal of particular areas and any need for additional research. The status quo would continue in accordance with the Department's five year plan through 2002, and could be reinforced by a Presidential directive under Section 12.

OCS oil and gas activity in Federal waters has been underway for over 50 years. A great deal of scientific information has been gathered, but there never has been a comprehensive review on the issue of whether certain areas should be permanently off limits to oil and gas drilling from an environmental standpoint. A commission report could provide significant additional scientific support for future action.

<u>Pros</u>:

- Reinforces a process based on sound science for making these decisions, and establishes a process for resolving future issues quickly.
- Provides a clear recognition that there may be some OCS areas that may require permanent protection from offshore oil and gas activity.

<u>Cons</u>:

- Some environmental and state and local interests believe that additional information is unnecessary, and that more immediate and permanent action is warranted. They will criticize this as unnecessary delay.
- Issues to be addressed are not easy. Any advisory group may have trouble reaching consensus or providing unequivocal recommendations, or may provide advice ultimately inconsistent with the expertise and policy judgement of the Administration.

(3) <u>Extend Existing Moratoria for Either Five or Ten Years</u>

Under this option, the President would issue a Directive under Section 12 of the OCS Lands Act extending the moratoria in all areas currently withdrawn by statute for either an additional five or ten years beyond the protection provided by DOI's five year leasing plan, through either 2007 or 2012. Any such directive should include an exception for national security purposes, as the Bush Directive did.

Pros:

- Extends the current patchwork of protections in a unified way for an additional period for all protected areas.

- Maintains the current levels of protection while allowing for continued research and informed dialogue on how best to resolve issues in the future.

- Provides a greater degree of protection to those areas where there is apprehension about offshore oil and gas activity without permanently foreclosing promising oil and gas resources.

- A five year extension is more consistent with the current Administration practice and planning process; a ten year extension is a bolder step still consistent with the planning approach while responsive to claims that significant and possibly permanent protection is warranted.

- Pegging the extension to the Department's planning period as opposed to the expiration of the Bush moratorium in 2000 is most consistent with the Administration's planning process, and emphasizes that the current most comprehensive protection is provided by this Administration's action, and not by the Bush directive.

Cons:

- Industry and certain members of Congress will criticize the Administration for putting areas off limits for additional periods of time without any new scientific basis, arguing that it is arbitrary and inconsistent with the Administration's five year planning process.

- Risks press criticism as a political, as opposed to substantive, act similar to the Bush Directive on the eve of the 1990 election.

- Those who believe permanent protection is warranted will argue that this does not go far enough. Those same stakeholders will argue that a five year extension is not bold enough, and that President Bush imposed a ten year moratorium and we should do no less.

(4) Extend All Existing Moratoria for Either Five or Ten Years and Withdraw Certain Sensitive Areas Permanently

Under this option, the President would issue a directive under Section 12 extending the time period of all current moratoria as discussed above; and would also withdraw particularly sensitive areas permanently. Alternatively, the directive could simply issue the permanent withdrawal for selected areas and retain the status quo on the remainder of the moratoria, providing protection as a practical matter through 2002.

While some have suggested that all existing moratoria should be made permanent, it is hard to square this with the science and locality based reviews that have been Administration policy to date, or with the Administration's Comprehensive National Energy Strategy. However, it is possible to distinguish particular areas in which it is clear based on existing scientific information that oil and gas activity is incompatible with environmental values.

Absent any specific scientific review dedicated to this issue, the choice of such areas could be controversial, with areas not selected arguing that they should have been included. This is avoided by limiting the permanent withdrawal to the federal waters not currently under lease within the existing marine sanctuaries. (Some sanctuaries include state-owned waters not subject to your withdrawal authority). These areas were specifically created to protect distinctive natural and cultural resources in the marine environment. They include the Florida Keys, Monterey Bay and Channel Islands in California, and the Olympic Coast in Washington State. A complete list of the sanctuaries is attached.

With some very minor exceptions, oil and gas drilling is currently precluded in these areas through either statutory prohibition or agency regulations, but permanent withdrawal would guarantee an additional measure of protection. In a very few areas leasing that predated the creation of the sanctuary permits some limited oil drilling to occur. Since you do not have the authority to unilaterally withdraw areas currently under lease, that leasing would continue.

<u>Pros</u>:

- In addition to those stated above for Option 3, this option addresses concerns about the need for some permanence with respect to moratoria, and minimizes claims that selection of the areas of permanent withdrawal is arbitrary or without scientific basis.
- Reduces the risk that a future Administration or Congress would revise existing protections for those areas.

<u>Cons:</u>

- In addition to those stated above for Option 3, this option may be perceived as unnecessary because oil and gas leasing is already prohibited in all areas through 2002 and by agency action in all marine sanctuaries.

- Some states without marine sanctuaries may react negatively to being excluded from permanent moratorium protection.

Recommendations

The Department of Energy and the Department of the Interior recommend Option 1. CEQ recommends Option 4 with a 10 year extension.

Decision

___ Option 1-- Retain status quo: current moratorium in place through 2002.

___ Option 2 -- Appoint Presidential Commission to provide scientific advice on future, including possible permanent, moratoria.

  ___ Include with Option 2 a Presidential Directive reinforcing existing moratoria through 2002.

___ Option 3 -- Issue Presidential Directive to extend existing moratoria for an additional time period.

  ___ Five year extension

  ___ Ten year extension

___ Option 4 -- Issue Presidential Directive permanently withdrawing marine sanctuaries from oil and gas leasing and extending existing moratoria.

  ___ Include five year extension of existing moratoria

  ___ Include ten year extension of existing moratoria

  ___ Permanent withdrawal of marine sanctuaries only. No other extension of existing moratoria.

NATIONAL MARINE SANCTUARY PROGRAM

Designated Marine Sanctuaries and Date of Creation

California
Channel Islands (9/80)
*Cordell Bank (5/89)
Gulf of Farallones (1/81) (100% state-owned waters, so not subject to Presidential withdrawal)
*Monterey Bay (9/92)

Florida
*Florida Keys (11/90)

Georgia
Gray's Reef (1/81)

Hawaii
Hawaiian Islands Humpback Whale (11/92)

Massachusetts
Stellwagen Bank (11/92)

North Carolina
Monitor (1/75)

Texas
Flower Garden (1/92)

Washington
*Olympic Coast (7/94)

American Samoa
Fagatele Bay (4/86)

Authority
Title III of the Marine Protection, Research, and Sanctuaries Act of 1972, authorizes the designation of discrete areas of the marine environment as National marine Sanctuaries to protect distinctive natural and cultural resources whose protection and beneficial use requires comprehensive planning and management.

* These sanctuaries currently have oil and gas leasing prohibited by statute as well as agency regulation. All other sanctuaries have prohibitions by regulation only.