

ARE DOJ AND DOI MAKING A COMPETENT LEGAL EFFORT ON GULF MORATORIUM?

If the Obama Administration and Interior Department Secretary Ken Salazar truly believe in the propriety of their six month moratorium, and are dedicated to fighting through appeal for it, why are their lawyers not acting like it? Are they really not trying because they really don't care, or are they just sloppy and incompetent? It is one or the other.

OIL SHILL MARY LANDRIEU CLAIMS IGNORANCE OF CONOCOPHILLIPS

The Senate Energy and Natural Resources Committee has voted to have its own commission investigate the BP disaster. The Committee finds that necessary, according to Mary Landrieu, because Obama hasn't appointed a representative from the oil industry to his own commission.

The Senate Energy and Natural Resources Committee voted Wednesday to create a congressional bipartisan commission to investigate the spill, with Sen. Mary Landrieu, D-La., and others saying a separate panel is needed because the White House commission has four environmental advocates – three members and the executive staff director – but no oil industry representation.

“Maybe the commission that the Congress sets up, in a more balanced fashion, with both very strong environmental views and very strong industry views, could actually come up with something that really might work for the dilemma and the challenge that this nation faces, which briefly is this: We use 20 million barrels of oil a day,” Landrieu said. “That was true the day before the Deepwater Horizon blew up. It is true today. And we need to get that oil from somewhere.”

Aside from the problem of the oil industry investigating the oil industry, there’s another problem with Landrieu’s complaint.

Bill Reilly, the Republican Co-Chair and one of the people Landrieu’s calling an “environmental advocate”? He serves on ConocoPhillips’ board. ConocoPhillips is a much smaller player in deepwater drilling than, say, BP. But it’s still the sixth largest driller.

But I guess that kind of obvious conflict isn’t enough to reassure Landrieu.

JUDICIAL ETHICS IN THE GULF: JUDGE FELDMAN’S CONFLICTS AND DOJ MALPRACTICE

Oiled up BP Judge Martin Feldman was required by both statutory and ethical considerations to recuse himself; at a absolute base minimum to disclose his appearances of conflict on the record; but he did neither. Any competent standard of lawyering would mandate the government to raise the issue if they are going

to fight Feldman's ruling; but they have not. The public ought to be asking what the hell is going on here.

ERIK PRINCE, SANCTIONS, AND MINERAL WEALTH

Let me start by laying out a few details about Erik Prince that have been reported of late.

- Prince recently gave a speech I interpreted as a proposal for private contractors to serve as big oil's enforcer—including in Nigeria and Iran
- Blackwater illegally tried (but allegedly failed) to negotiate a deal to train guards for southern Sudan; as part of the deal, Blackwater would be paid with 50% of Sudan's mineral wealth
- The US is close, again, to not prosecuting Blackwater and instead simply fining it for that illegal contracting attempt and other export control violations
- Anonymous sources say (but his spokesperson will not confirm) that Erik Prince

will move to the United Arab Emirates, which has no extradition treaty with the US, claiming he would be leaving the US market altogether

- He also announced he was selling the company—though you gotta wonder how the reported fine will play into the sale
- For its part, Blackwater just signed new deals with the State Department and CIA for work in Afghanistan, which has been recently touted for its mineral wealth
- When asked about the new CIA Blackwater contract, Leon Panetta explained that CIA has reviewed all of BW's contracts and that for this one, BW simply underbid other bidders
- Facing a veto threat from the Obama Administration, DiFi has all but dealt away Congress' demand that GAO be able to audit intelligence related programs—including things like fraud in black ops contracts (more on that later)

Now, as I pointed out in my post on Prince's reported move to UAE, his move followed that of Halliburton. Given the McClatchy report on the

fairly extensive list of alleged export and Foreign Corrupt Practices Act crimes Blackwater had committed, I could imagine that Prince might move for precisely the same reason Halliburton may have—to avoid being held responsible for bribing foreign officials and violating sanction regimes (Halliburton faced its own FCPA charges when it moved to UAE).

Here's what Blackwater was up to in Sudan:

After negotiating a \$2 million draft contract to train Kiir's personal security detail, Blackwater in early 2007 drafted a detailed second proposal, valued at more than \$100 million, to equip and train southern Sudan's army. Because the south lacked ready cash, Blackwater sought 50percent of its untapped mineral wealth, a former senior U.S. official said.

In addition to its well-known oil and natural gas reserves, southern Sudan has vast untapped reserves of gold, iron and diamonds.

"Most people don't know this stuff exists. These guys did," said a second former senior official who saw the document, which apparently was never signed.

Ultimately, though, Blackwater's venture in Sudan foundered, U.S. officials said.

"Blackwater had some problems in Iraq," said Deng Deng Nhial, the deputy chief of southern Sudan's Washington office. "Nothing really materialized. No services were performed."

Federal investigators, however, found evidence that Blackwater's sales campaign had violated U.S. sanctions, export control laws and the Foreign Corrupt Practices Act, which is designed to prevent U.S. companies from bribing foreign officials in return for

business, according to the officials and documents.

The suspected violations included brokering for defense services without a U.S. government-approved license; transferring satellite phones and encrypted e-mail capabilities to southern Sudanese officials; and attempting to open a joint escrow account with the South's government at a Minnesota bank.

So now you've got Prince, the guy who set up our Black Ops contractor, located in the Persian Gulf, with no way to prevent him from violating the US' own laws about corruption and sanctions. Prince says he's done working with the United States, and maybe he's done working directly with the US. Or maybe not. But we do know he's got aspirations to work with both US allies and enemies.

Prince is also, apparently, interested in being paid in mineral resource exploitation, rather than cash. I guess the Persian Gulf is a good place to try that business model. Though look at how he described his proposal to work in Nigeria:

Prince also proposed using private armed contractors in the oil-rich African nation of Nigeria. Prince said that guerilla groups in the country are dramatically slowing oil production and extraction and stealing oil. "There's more than a half million barrels a day stolen there, which is stolen and organized by very large criminal syndicates. There's even some evidence it's going to fund terrorist organizations," Prince alleged. "These guerilla groups attack the pipeline, attack the pump house to knock it offline, which makes the pressure of the pipeline go soft. they cut that pipeline and they weld in their own patch with

their own valves and they back a barge up into it. Ten thousand barrels at a time, take that oil, drive that 10,000 barrels out to sea and at \$80 a barrel, that's \$800,000. That's not a bad take for organized crime."

I'm guessing that's not the first time he did that math...

Now add in the fact that the Obama Administration refuses to allow GAO to audit intelligence community entities—precisely the kind of independent oversight that might discover abuse of the use of contractors.

I'm not saying this is what's happening. But if I were a big spook, I'd love to have someone with the skill set of Prince, off in a haven protected from American law, setting up an entity that can do what Blackwater does but do so with neither the legal oversight (as if that did us a damn bit of good) nor the requirement to be paid in cash. Think about what you could do with a contractor that could evade Iran sanctions (and perfect timing, too!) or provide special ops capabilities in ways that tied countries—and their mineral wealth—more closely to US policy objectives.

Update: Fixed bullet point on Prince's move to UAE and related references to reflect Mark Corallo's refusal to confirm it.

WE CAN'T EVEN GET JAPAN TO STOP WHALING...



And now we're going to have to try to get them to give up Maguro sushi.

Fearing that the oil spill in the Gulf of Mexico will deal a severe blow to the bluefin tuna, an environmental group is demanding that the government declare the fish an endangered species, setting off extensive new protections under federal law.

[snip]

Both the Bush and Obama administrations tried to win greater international protection for the bluefin, but their efforts were derailed by opposition from countries like Japan, where a single large bluefin can sell in the sashimi market for hundreds of thousands of dollars. (The tuna fish sold in cans comes from more abundant types of tuna, not from bluefin.)

The bluefin uses the Gulf of Mexico as a prime spawning ground, and the gulf is such a critical habitat for the animal that fishing for it there was banned in the 1980s. But after spawning in the spring and summer, many tuna spend the rest of the year roaming the Atlantic, where they are hunted by a global fishing fleet.

The environmental advocacy group, the Center for Biological Diversity, in Tucson, filed the request under the Endangered Species Act in late May. If the petition is granted, a process that could take years, the endangered listing would require that federal agencies conduct exhaustive analysis before taking any action, like granting drilling permits, that would pose additional risk to the fish.

Frankly, I think a campaign to put bluefin tuna on the endangered species list would be beneficial for a number of reasons. If a bunch of elites have to give up their Maguro sushi,

it'll highlight both the problem with overfishing generally and the concrete way in which our oil-addicted lifestyle endangers the little perks of life we love (and don't get me wrong—I love Maguro sushi too).

Which will it be? Give up your SUV, or give up your favorite sushi?

In the meantime, there are two things you can do to help.

The Center for Biological Diversity, which is leading this effort, has been one of the best environmental groups responding to the BP Disaster. You might help them in any way you can.

And check your seafood choices for sustainability before you eat it. The Monterey Bay Aquarium has a great online tool (with pocket tools available) that provides recommendations for seafood choices based both on sustainability and health hazards, like mercury. In addition to bluefin, it also recommends you avoid Hamachi.

(Maguro image by pittaya under Creative Commons 2.0)

OBAMA DRILLING MORATORIUM OVERTURNED IN CURIOUS COURT DECISION

The breaking news this hour is the decision of Judge Martin L. C. Feldman of the Eastern District of Louisiana to grant a preliminary injunction to the moving plaintiff oil and gas interests and against the Obama Administration's

six month moratorium on deepwater drilling for oil in the Gulf of Mexico. It is a bad decision.

NEGOTIATION 101: HOW TO GET CORPORATIONS TO DO WHAT YOU WANT

I just got back from driving across the rust belt – Syracuse, Buffalo, Cleveland, Toledo, MI – and am catching up on all the interesting conversations you’ve been having this week while I was celebrating my mom’s birthday (thanks, once again, to bmaz for watching the liquor cabinet while I was gone). So for the moment I want to make one quick comment.

The WSJ has a story describing how BP heroically pushed back against two of the Administration’s most onerous demands: that it pay for the costs of the moratorium on new drilling, and it pay to restore the Gulf to its natural state, rather than the state it was in when the Deepwater Horizon disaster struck.

BP PLC, despite being put under pressure by the U.S. government to pay for the oil-spill aftermath, has succeeded in pushing back on two White House proposals it considered unreasonable, even as it made big concessions, said officials familiar with the matter. BP last week agreed to hand over \$20 billion – to cover spill victims such as fishermen and hotel workers who lost wages, and to pay for the cleanup costs – a move some politicians dubbed a “shake down” by the White House. Others have portrayed it as a capitulation by an oil giant responsible for one of the worst environmental disasters in history. A more accurate picture falls

somewhere between.

The fund is a big financial hit to BP. But behind the scenes, according to people on both sides of the negotiations, the company achieved victories that appear to have softened the blow.

BP successfully argued it shouldn't be liable for most of the broader economic distress caused by the president's six-month moratorium on deep-water drilling in the Gulf of Mexico. And it fended off demands to pay for restoration of the Gulf coast beyond its prespill conditions.

Now, I know WSJ's job is to make corporations look good, so I'm unsurprised by this spin. And I'm skeptical the \$20 billion will get in the hands of those who need it in a timely fashion.

But it seems to me that the real story is that – for the first time I can think of – the Obama Administration has actually taken a tough approach to negotiation. Normally, of course, Obama starts by ceding on key issues (such as drug reimportation, oil drilling, and real financial reform) and from that incredibly weakened position, further damaging his policy position. Perhaps this time is different because the Administration is under a much greater public opinion threat. Perhaps this time is different because BP is a corporation (though so are the drug companies) not the opposing political party.

But this time is different.

I actually agree with the WSJ that Obama was unlikely to get BP to pay for the moratorium on drilling. But that may have not been the point. It established the window of possibility far beyond what it had been, and made the \$20 billion escrow account look reasonable by comparison. And voila! BP at least said they agreed to cough up \$20 billion.

It's called negotiation!

Whoever came up with this novel idea really ought to get a bigger policy portfolio.

THE WELL OILED MAN HAYWARD GOES YACHTING AS GULF OF MEXICO DIES

Big Shot Tony Hayward goes yacht clubbing with his sleek racing sloop, the "Bob", in the posh and prestigious J.P. Morgan Asset Management Round the Isle of Wight Race while the Gulf of Mexico dies from his gushing Macondo well.

BP'S WELL FAILURE DUE TO EFFORT TO SAVE \$10 MILLION?

Henry Waxman just put up a letter and a whole bunch of backup documents in preparation for a hearing with Tony Hayward Thursday. In it, he lists 5 shortcuts BP used in the days before the well explosion, all of them with real risks. But BP chose them to save money and time.

Well Design. On April 19, one day before the blowout, BP installed the final section of steel tubing in the well. BP had a choice of two primary options: it could lower a full string of "casing" from the top of the wellhead to the bottom of the well, or it could hang a "liner" from the lower end of the casing

already in the well and install a "tieback" on top of the liner. The liner-tieback option would have taken extra time and was more expensive, but it would have been safer because it provided more barriers to the flow of gas up the annular space surrounding these steel tubes. **A BP plan review prepared in mid-April recommended against the full string of casing because it would create "an open annulus to the wellhead" and make the seal assembly at the wellhead the "only barrier" to gas flow if the cement job failed. Despite this and other warnings, BP chose the more risky casing option, apparently because the liner option would have cost \$7 to \$10 million more and taken longer.**

Centralizers. When the final string of casing was installed, one key challenge was making sure the casing ran down the center of the well bore. As the American Petroleum Institute's recommended practices explain, if the casing is not centered, "it is difficult, if not impossible, to displace mud effectively from the narrow side of the annulus," resulting in a failed cement job.

Halliburton, the contractor hired by BP to cement the well, warned BP that the well could have a "SEVERE gas flow problem" if BP lowered the final string of casing with only six centralizers instead of the 21 recommended by Halliburton. BP rejected Halliburton's advice to use additional centralizers. In an e-mail on April 16, a BP official involved in the decision explained: " it will take 10 hours to install them . . . I do not like this." Later that day, another official recognized the risks of proceeding with insufficient centralizers but commented: **"who cares, it's done, end of story, will probably be fine."**

Cement Bond Log. BP's mid-April plan review predicted cement failure, stating "Cement simulations indicate it is unlikely to be a successful cement job due to formation breakdown." Despite this warning and Halliburton's prediction of severe gas flow problems, BP did not run a 9- to 12-hour procedure called a cement bond log to assess the integrity of the cement seal. BP had a crew from Schlumberger on the rig on the morning of April 20 for the purpose of running a cement bond log, but they departed after BP told them their services were not needed. **An independent expert consulted by the Committee called this decision "horribly negligent."**

Mud Circulation. In exploratory operations like the Macondo well, wells are generally filled with weighted mud during the drilling process. The American Petroleum Institute (API) recommends that oil companies fully circulate the drilling mud in the well from the bottom to the top before commencing the cementing process. Circulating the mud in the Macondo well could have taken as long as 12 hours, but it would have allowed workers on the rig to test the mud for gas influxes, to safely remove any pockets of gas, and to eliminate debris and condition the mud so as to prevent contamination of the cement. BP decided to forego this safety step and conduct only a partial circulation of the drilling mud before the cement job.

Lockdown Sleeve. Because BP elected to use just a single string of casing, the Macondo well had just two barriers to gas flow up the annular space around the final string of casing: the cement at the bottom of the well and the seal at the wellhead on the sea floor. **The decision to use insufficient**

centralizers created a significant risk that the cement job would channel and fail, while the decision not to run a cement bond log denied BP the opportunity to assess the status of the cement job. These decisions would appear to make it crucial to ensure the integrity of the seal assembly that was the remaining barrier against an influx of hydrocarbons. Yet, BP did not deploy the casing hanger lockdown sleeve that would have prevented the seal from being blown out from below.

BP willfully ignored numerous warnings in an attempt to save \$10 million here and there, and several days of time. And as a result, precisely what they were warned against happened, causing tens of billions of monetary damage and permanent environmental damage to the Gulf.

BP WELL BORE/CASING INTEGRITY ISSUES AND SENATOR NELSON'S STATEMENTS

A week ago, Florida Senator Bill Nelson stated on MSNBC the BP Macondo well was substantially breached and there may be seepage and leakage from the well reservoir escaping through the surrounding sea floor. It appears Nelson was correct about the breach of well integrity and may well be right about seepage from the sea floor as well.