



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 16, 2008

The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter, dated September 23, 2008, which requested information about the Department's actions in connection with a report by the Inspector General at the Department of the Interior (DOI IG) regarding misconduct in that agency's oil and gas marketing program. Your letter also inquired about our decisions in response to a suit filed by a former Interior employee, who alleged that a major oil company had underpaid its royalties.

The DOI IG referred several matters to us for prosecutorial consideration. Department prosecutors agreed with the DOI IG agents that there was insufficient evidence of criminal misconduct to support a prosecution with regard to one matter. After consultation with the DOI IG, thorough investigation, and careful review by experienced career prosecutors in the Criminal Division's Public Integrity Section, we declined further action on some matters. Those declinations were based on a detailed and careful analysis of the facts and the law, and the reasons were discussed with the relevant DOI IG personnel. We also obtained felony convictions of two former Department of Interior officials based upon the DOI IG referral. On July 30, 2008, Jimmy Mayberry, former Special Assistant to the Associate Director of Minerals Revenue Management at the Mineral Management Service, pled guilty to a felony conflict of interest, in violation of 18 U.S.C. § 208. On September 15, 2008, Milton Dial, former Deputy Associate Director of Minerals Revenue Management pled guilty to a felony violation of the post-government employment restrictions set forth in 18 U.S.C. § 207. These matters remain open pending the sentencing of Messrs. Mayberry and Dial.

We appreciate your interest in allegations of misconduct in Interior's oil and gas market program. The Department places a high priority on investigating and prosecuting public corruption and, consequently, we especially regret the DOI IG's decision to withdraw his support for an unrelated public corruption investigation. We share your view that this was an extraordinary step, but it has not impeded our investigation.

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We also appreciate your interest in the Department's decisions in the lawsuit filed under the *qui tam* provisions of the False Claims Act, which alleged that a major oil company had underpaid its royalties. While we do not necessarily respond to misinformation in press articles relating to pending matters, we want to assure you that the Department's decisions in the Maxwell *qui tam* litigation were based on the law and the evidence, not political considerations.

Moreover, while the Department declined to intervene in Mr. Maxwell's case, he pursued it as the statute permitted him to do, and we supported the multi-million dollar jury verdict awarded to him before the district court. In response to the district court's ruling that Mr. Maxwell himself did not satisfy the requirements of the False Claims Act, the Department sought a stay of the entry of judgment and additional time to review the trial record and to consider whether to seek to intervene for good cause and substitute the United States for Mr. Maxwell. The district court denied our request and entered judgment against Mr. Maxwell. When Mr. Maxwell subsequently asked the court to reconsider its ruling that he was not a proper relator, the Department filed a brief in support of Mr. Maxwell on that issue. Thereafter, we supported Mr. Maxwell's appeal in the Court of Appeals for the Tenth Circuit, by filing a brief arguing that he was a proper party and that his case should not have been dismissed. In its recent ruling, the Tenth Circuit agreed with the government's position, reinstated the verdict, and thereby eliminated any need for the Department to intervene.

Finally, as you rightly note, the decision about whether or not to intervene in a whistleblower action involves many considerations. While we cannot intervene in every *qui tam* case, we are dedicated to enforcing the False Claims Act and supporting relators where appropriate based upon our assessments of the law and the evidence. The Department, with the assistance of whistleblowers, has recovered more than half a billion dollars in royalties from oil companies that have defrauded the taxpayers, and we believe that it is important that oil companies, like all who do business with the Government, scrupulously comply with their obligations. These recoveries demonstrate our commitment to ensuring that those who remove valuable assets from public or tribal lands pay a fair price for those assets, and our willingness to pursue False Claims Act claims against those who knowingly seek to evade their royalty payment obligations.

We hope that this information is helpful. Please do not hesitate to contact this office if you would like additional assistance regarding any other matter.

Sincerely,



Keith B. Nelson
Principal Deputy Assistant Attorney General

cc: The Honorable Lamar S. Smith
Ranking Minority Member