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ID 795353

THE WHITE HOUSE

WASHINGTON

*DF  
per Eizenstat*

DATE: 30 NOV 79

FOR ACTION: ED TORRES

LLOYD CUTLER

STU EIZENSTAT

FRANK MOORE

JACK WATSON

ZBIG BRZEZINSKI

*SARAH*

*attached*

INFO ONLY: THE VICE PRESIDENT

SARAH WEDDINGTON

SUBJECT: MCINTYRE MEMO RE PUERTO RICO SUBMERGED LANDS

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+ RESPONSE DUE TO RICK HUTCHESON STAFF SECRETARY (456-7052) +

+ BY: 1200 PM MONDAY 03 DEC 79 +

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ACTION REQUESTED: YOUR COMMENTS

STAFF RESPONSE: ( ) I CONCUR. ( ) NO COMMENT. ( ) HOLD.

PLEASE NOTE OTHER COMMENTS BELOW:

*12/6  
- Per Fallon  
may be pulled w/2  
of Sarah's action.*

*Sta is meeting w/ Gu on Wed.  
Hold hl after that meeting*

Brezinski  
THE WHITE HOUSE  
WASHINGTON

or  
McIntyre memo  
re submerged  
lands

Recommends OMB  
recommendations.

Puerto Rico should  
not be treated  
differently than  
other states. Timing  
of decision should  
be made by political  
people.  
(Bob Pastor)

FOR STAFFING
FOR INFORMATION
FROM PRESIDENT'S OUTBOX
LOG IN/TO PRESIDENT TODAY
IMMEDIATE TURNAROUND
NO DEADLINE
FOR APPROPRIATE HANDLING
LAST DAY FOR ACTION

Also  
staff to  
Sarah

ADMIN CONFID
CONFIDENTIAL
SECRET
EYES ONLY

ACTION  
FYI

VICE PRESIDENT
JORDAN
CUTLER
DONOVAN
EIZENSTAT
MCDONALD
MOORE
POWELL
WATSON
WEDDINGTON
WEXLER
BRZEZINSKI
MCINTYRE
SCHULTZE
ANDRUS
ASKEW
BERGLAND
BROWN
CIVILETTI
DUNCAN
GOLDSCHMIDT
HARRIS
KREPS
LANDRIEU
MARSHALL

MILLER
VANCE
BUTLER
CAMPBELL
H. CARTER
CLOUGH
CRUIKSHANK
FIRST LADY
FRANCIS
HARDEN
HERTZBERG
HUTCHESON
KAHN
LINDER
MARTIN
MILLER
MOE
PETERSON
PRESS
SANDERS
SPETH
STRAUSS
TORRES
VOORDE
WISE



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

NOV 28 1979

RL  
059564

MEMORANDUM FOR: THE PRESIDENT  
FROM: JAMES T. McINTYRE, JR. *Jim*  
DIRECTOR  
SUBJECT: Puerto Rico Submerged Lands

Issue:

What should be the Administration's response to the Governor of Puerto Rico concerning U.S. recognition of the Commonwealth's right to exploit its offshore mineral resources out to three marine leagues (10.2 miles)?

Background:

A 1917 law gave Puerto Rico "control" of the waters in and around the Commonwealth--and the submerged lands underlying these waters. The basic question is whether this control includes exploitation rights to unproved, but potential, petroleum and mineral resources and, if so, out to what distance.

In 1978, the Administration supported legislation granting Puerto Rico property rights in submerged resources comparable to those granted to the Gulf States by the Submerged Lands Act of 1953. No action was taken on the proposed legislation.

In response to the Governor's March 1979 letter in which he cited a 1978 Federal appellate court decision that purportedly established Puerto Rico's right to develop its mineral resources, OMB asked for the views of Interior, Justice, and State:

- INTERIOR: stated that the 1978 decision does not affect the questions of title and exploitation of submerged lands and concluded that the President lacks express statutory authority to transfer ownership to Puerto Rico administratively. Recommended Administration stick to its previous position.
- JUSTICE: affirmed the long-held position of the USG that, although Puerto Rico was given control over its submerged lands in 1917, it was never granted title to these lands and there was nothing in the 1978 decision to change this position.

- STATE: held that, if the Administration does not recognize Puerto Rico's position to exploit submerged resources out to three leagues, the resulting "friction" between the Commonwealth and the USG would affect deliberations before the U.N. and the Law-of-the-Sea Conference.

U.S. Geological Survey staff believe there is only a slight chance that commercially viable oil and gas deposits will be found off Puerto Rico, and then only in deep, small basins about ten miles northwest of San Juan. Such oil and gas deposits would not significantly affect the U.S. energy situation but might improve the prospects of the Puerto Rican economy.

As a result of this interagency review, OMB concluded that no change should be made to the Administration's position in 1978 that Puerto Rico should be treated no better or worse than a Gulf State in matters of boundaries and submerged resources, i.e., title to submerged lands and resources out to three miles, and the right to establish three-league boundaries through court action. This is the same arrangement as that set up for the Gulf States by the 1953 Submerged Lands Act. Since then, Texas and Florida have established three-league boundaries under the Act's provisions.

Because of the sensitivity of this issue, I am seeking your concurrence before the Administration formally responds to the Governor.

#### Alternatives:

- #1 Presidential transfer of submerged resources to Puerto Rico ownership out to three miles or three leagues (the Puerto Rico request is out to three leagues).
- #2 Legislative proposal giving Puerto Rico (1) the same rights as the Gulf States concerning submerged resources (Interior, Justice, and OMB recommendation) or (2) ownership out to three marine leagues. (State recommendation)

#### Advantages and Disadvantages:

Alternative #1--Presidential transfers: This alternative may bring about a short-term resolution of the issue. However, OMB agrees with Justice and Interior that Presidential transfer out to either three miles or three leagues would likely be challenged in court and could likewise be reversed by a successor Administration. Consequently, legislative action seems the best way to assure that there is no doubt as to the legality of transferring submerged resources. Without a clearly legal transfer, oil companies and other investors would be reluctant to risk the large amounts of capital needed to develop the Commonwealth's off-shore resources.

In addition, neither Justice, Interior, or OMB thinks that you have authority to transfer ownership out to three leagues. Justice thinks it could construct a credible defense for a three-mile transfer, but would not be surprised to lose in court.

Alternative #2--legislation out to three miles or three leagues: As indicated, we support legislation out to three miles. However State maintains that the Administration should place Puerto Rico in a position superior to that of the States--namely, legislation creating a three-league jurisdiction. This position seems politically impractical, particularly with Bennett Johnston on the Energy Committee. Also, Congressman Phillip Burton has informally indicated that he could support a bill granting Puerto Rico the same status as the Gulf States regarding territorial jurisdiction and submerged lands.

One principal reason for supporting three-league legislation is the argument that Puerto Rico is likely to be granted three-league ownership if a Federal court decided the issue. Legislation would thus avoid the time and costs associated with such litigation. However, Justice staff informally told OMB that, based on preliminary research, it believed Puerto Rico probably would not win in court.

As a possible "sweetener" to legislation out to three miles, Interior has suggested a joint Federal/ Commonwealth oil and gas lease sale. Because of our doubt that such a sale ever would be held and the current uncertainty over costs (the total costs for preparing to hold such a joint sale are estimated to be a minimum of \$12 to \$16 million spent over three or four years), OMB believes the lease sale should be decoupled from the issue of Puerto Rico jurisdiction over its submerged resources.

Recommendation:

Direct the Secretary of the Interior to respond for the Administration, indicating the Administration's willingness to introduce legislation giving Puerto Rico the same rights as the Gulf States concerning submerged lands, but not mentioning the possibility of a joint lease sale. OMB has cleared the basic points in such a draft letter with Interior, Justice, and State.

CONCUR

DO NOT CONCUR

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PLEASE NOTE OTHER COMMENTS BELOW:

*Issue is very complex and highly political. I think the President should take the State Department position.*