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Exhibit No. _____

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**United States
v.
BP Exploration & Production, Inc., et al
Civil Action No. 10-4536**

Penalty Phase

EXPERT REBUTTAL REPORT

of

FREDRIC L. QUIVIK, PhD.



26 September 2014

HIGHLY CONFIDENTIAL

Quivik Expert Rebuttal Report—BPXP

Table of Contents

I.	SUMMARY OF OPINIONS	2
II.	GENERAL REMARKS	
	A. Personal Background/Qualifications	2
	B. Materials Considered and Methods Used	2
	C. Compensation	2
III.	COMPLETE STATEMENT OF OPINIONS AND THE REASONS AND BASES THEREFOR	
	A. Professor Daines' Expert Report Attempts to Create the Misimpression That My Opinion is That BPXP Was Not an Operator of the Macondo Well	3
	B. My Expert Opinions Concern What Happened Historically Leading to and in Response to the Macondo Disaster, and Not What Ought to Have Happened	5
	C. Professor Daines Has Not Disputed My Empirical Findings That the BP Group Also Managed and Directed Operations in the Gulf of Mexico, Including Those Related to the Macondo Well	7
	Appendix A: Additional Materials Considered in Preparing This Report	9

Quivik Expert Rebuttal Report—BPXP

I. SUMMARY OF OPINIONS

Robert Daines has prepared a Round 2 Responsive Expert Report for BP, dated September 12, 2014, addressing my August 2014 Round 1 Expert Report in this matter. While in his Round 2 Expert Report Professor Daines presents arguments against opinions I have not offered in my Round 1 and Round 2 Expert Reports, he has not disputed the opinions I actually presented in my Expert Reports.

II. GENERAL REMARKS

A. Personal Background/Qualifications

I am Fredric L. Quivik, professor of history at Michigan Technological University and a consulting industrial historian. I prepared an Expert Report for the U.S. Department of Justice in August 2014 for this case, and I prepared an Expert Response Report, dated September 12, 2014, addressing the Expert Report of BP's expert, Robert Daines. Prof. Daines also submitted a Responsive Expert Report, addressing my August 2014 report. This Expert Rebuttal Report is written to address certain of Prof Daines assertions in his Responsive Expert Report. Since I submitted my Expert Report in August, there have been no changes or additions to my resume, which I attached to that report.

B. Materials Considered and Methods Used

The materials I have considered in preparing this Expert Rebuttal Report include documents I previously studied relative to the BP group, including BP p.l.c., BPXP, and associated corporations and individuals. Additional materials considered in preparing this Rebuttal Report are listed on Appendix A.

C. Compensation

I am still being compensated by the U.S. Department of Justice as an expert witness in the case *U.S., et al. v. BP Exploration & Production Inc., et al.*, at the rate of \$190.00/hr. for pre-trial consulting and at the rate of \$380.00/hr. for depositions and trial testimony.

III. COMPLETE STATEMENT OF OPINIONS AND THE REASONS AND BASES THEREFOR

This Expert Rebuttal Report focuses on certain statements made and opinions expressed by Robert Daines in his Responsive Expert Report, dated September 12, 2014. Prof. Daines does not dispute the central opinions of my Expert Report; rather, he disputes arguments I did not make in my Expert Report, and in the process he may create the impression that those arguments he disputes are my opinions. This Expert Rebuttal Report addresses those faulty impressions of my Expert Report that Prof. Daines' Responsive Expert Report may create.

A. Professor Daines' Expert Report Attempts to Create the Misimpression That My Opinion is That BPXP Was Not an Operator of the Macondo Well

On p 12 of his Responsive Expert Report, Prof. Daines constructs a sentence that could be construed to suggest it is my opinion that BPXP is not a distinct corporate entity. The opinion I present in my August 2014 Expert Report is that BPXP, as a distinct corporate entity within BP's group of subsidiaries, is not the sole BP entity that has managed BP's operations on BPXP's assets in the Gulf of Mexico, including operations at the Macondo well; nor is it the sole BP entity that has responded to the Macondo blowout. Rather, the BP group, through its upstream (Exploration & Production) segment, also has managed operations on BPXP assets in the Gulf, and the BP group, through the Gulf Coast Restoration Organization, has managed the response to the Macondo disaster.¹

Prof. Daines confuses my use of the word "active." I have seen ample documentation in the filings with the Delaware Secretary of State's office to be satisfied, as an historian (and without rendering a legal opinion) that BPXP is an "active" corporation in a legal sense. Moreover, I agree with Prof. Daines that BPXP is active enough, for example, to have been designated by the United States as "a responsible party" under the Oil Pollution Act and to have been named by the United States as the defendant in this case.²

¹ BP p.l.c. refers to its entire global enterprise as BP, BP group, or the group, which is defined as BP p.l.c. and its subsidiaries, including its U.S. subsidiaries; see BP, Annual Report and Form 20-F for 2010, p. 3 (TREX-06033).

² Responsive Expert Report of Robert Daines dated 12 September 2014, p 5. Prof. Daines, in his footnote 11, cites the letter from the US Coast Guard to BPXP, dated 28 April 2010 (HCG374-019497); the letter also notifies "your guarantor, BP Corporation North America, Inc. of this designation and its responsibility for advertising." BP Corporation North America was also indemnifying BP America Production Company (BPAPC); see also Self-Insurance or Indemnity Information, BP Corporation North America on behalf of BPXP and BPAPC, Form MMS-1018 signed 22 April 2009 (Exhibit 12757, BP-HZN-2179MDL08942054-2055); Self-Insurance or Indemnity Information, BP Corporation North America on behalf of BPXP and

Quivik Expert Rebuttal Report—BPXP

In contrast, BPXP is not an active corporation, for instance, in the sense that, and as Prof. Daines admits:

- The BPXP board of directors is not involved in “creating annual work plans and budgets, business plans, and strategy, and setting performance objectives”;³
- BPXP has no employees;⁴ and
- BPXP does not manage its own financial affairs or have a bank account.⁵

In fact, Prof. Daines does not dispute my opinion that “BP Group employees conducted BPXP’s operations in the Gulf of Mexico.”⁶ Instead, he incorrectly implies that only BPXP officers managed BP’s operations in the Gulf of Mexico. As I indicated in both my initial and response expert reports, however, key BPXP officials, including its current and former presidents, have functioned and viewed themselves as BP group officials, not as BPXP officers. Most importantly, the BP officials responsible for the management and direction of operations specifically related to the pollution of the waters of the Gulf of Mexico and actions that could have prevented it, Kevin Lacey, Patrick O’Bryan, and those who worked for them, were officials of the BP group, but not BPXP.⁷ The spreadsheet cited by Prof. Daines in his footnote 17, which shows the “organizational unit” of each employee whose time was purportedly billed to BPXP, supports this point, that organizations and units within the BP group other than BPXP directed and managed operations in the Gulf.⁸ The organizational units listed in the spreadsheet are all names of functions or business units in the BP group’s upstream segment organizational structure, not the BPXP organizational structure. I have seen no organization charts for BPXP,

BPAPC, Form MMS-1018 signed 19 April 2010 (Exhibit 12758, BP-HZN-2179MDL 08942056-2057); Third Party Indemnity Agreement between BP Corporation North America and Mineral Management Service dated 10 May 2010 (Exhibit 12759, BP-HZN-2179MDL07817660-662).

³ Daines Response Report, p 6, 9, 20. As Prof Daines stated in his Round 1 Expert Report. “BPXP’s Board . . . does not guide business plans and strategy, set performance objectives for the Gulf of Mexico business unit, oversee capital expenditures, or oversee acquisitions and divestitures.” Daines Expert Report, August 15, 2014, p 32.

⁴ Daines Response Report, 5-7, 9, 10.

⁵ Daines Response Report, 16-17.

⁶ Daines Response Report, 5.

⁷ Response Expert Report of Fred Quivik dated 12 September 2014, pp 8-15.

⁸ BP Spreadsheet Showing Job, Organizational Unit, and Other Data of Each BP Employee Whose Time was Charged to BPXP (BP-HZN-2179MDL09099964).

Quivik Expert Rebuttal Report—BPXP

only for the Gulf of Mexico Strategic Performance Unit (SPU) or Regional Business Unit (RBU), which is a subset of the upstream segment of the BP group, not BPXP.

The spreadsheet produced by BP comports with the procedures for financial accounting that Michael Robertson described in his deposition: “So the way our financial systems are structured, legal entity is the primary basis. So we have BPX&P. There's -- the organization has other legal entities. And then we have code structures that identify operating activities, be it GoM [Gulf of Mexico] or be it Gulf Coast Restoration Organization that may operate on BPX&P.”⁹ The Robertson testimony that Daines quotes in footnote 17 of his Responsive Expert Report makes this same point: “If a functional person was supporting the Gulf of Mexico assets, those charges would go into BPX&P.”¹⁰

B. My Expert Opinions Concern What Happened Historically Leading to and in Response to the Macondo Disaster, and Not What Ought to Have Happened

Prof. Daines' Responsive Expert Report repeatedly offers a mistaken view of the purpose of my August 2014 Expert Report. He suggests that my report is criticizing BPXP actions, contracts, or performance. That is not my role as an expert industrial historian. I have used an empirical historical method to draw conclusions about the facts leading to and in response to the Macondo blowout. In particular, I draw conclusions about what BPXP did and did not do in managing operations in the Gulf of Mexico and what other BP entities did in managing operations in the Gulf. If the management of BP operations in the Gulf is to be judged, that is not my role; my role is to show who (what entity or entities) did the managing.

The Daines Responsive Expert Report makes numerous incorrect assertions that I criticize BP or BPXP management or corporate-governance practices. In the following list, I highlight several of them, showing that such criticism is not my purpose.

- On pp 9-10, Daines asserts that my description of the fact that BPXP does not have any employees is a criticism. It is not, it is a fact, which BP admits.
- Later on p 10, Daines points out that I do not say why it is inappropriate for employees of other BP entities to perform operational work for BPXP. It is not my role to judge whether that is appropriate or not. Moreover, my larger point, in addressing BPXP's lack of employees, is to demonstrate that there is no management chain by which those employees from other BP entities report, or are otherwise accountable, to BPXP for work they are doing on BPXP's behalf. In other words, BPXP (a corporation that is “active” in a legal sense) is not “active” (in a practical sense) in managing the work that employees from other BP entities are doing in the Gulf. Again, it is not my role to judge whether

⁹ Michael T. Robertson, deposition in re the Deepwater Horizon dated 10 July 2014, p 176.

¹⁰ Robertson deposition, 181.

Quivik Expert Rebuttal Report—BXP

this practice is appropriate.

- On p 14, Daines points out that my August 2014 Expert Report “does not offer a yardstick for judging how detailed a contract is or should be, does not even claim that the level of specificity is unusual or improper.” It is not my role to judge whether a contract has sufficient specificity. I show in my Expert Report, that the Transocean contracts provide mechanisms by which BP can direct the work that Transocean’s drill rigs do on BP’s behalf. In contrast, the General Services Agreements between BXP and BPAPC do not provide a mechanism by which BXP can direct the work that BPAPC employees do on BXP’s behalf.
- In the first sentence of the last paragraph on p 18, Prof. Daines asserts that I criticize BXP’s governance, and again, on p 19, he writes, “The Quivik Report criticizes BXP’s governance by suggesting that its board of directors is insufficiently involved.” It is not my role to criticize, nor is it my role to judge whether the BXP directors are sufficiently involved. I cite the empirical evidence showing that they were not involved in the oversight of operations in the Gulf, or at the Macondo well in particular, and then I describe who in the BP group *did* provide oversight and management of operations in the Gulf and at the Macondo well.
- On p 20, Daines writes, “Similarly, the Quivik Report objects that ‘I have seen no evidence that either the BXP board of directors or an officer of BXP, acting in that capacity, was ever informed of the problems arising at the Macondo well in the weeks preceding the blowout, nor was BXP informed of other operational matters, until 2011.’” The Daines report on that page goes on to assert that my “criticism incorrectly assumes that the board of directors of a wholly-owned subsidiary should be responsible for management activities.” It is not my role to object to the evidence I see in the BP record, nor is it my role to criticize the BXP directors, serving on the board of a wholly-owned subsidiary for not being responsible for management activities, or for assuming that they should be. My reports show, based on empirical evidence, that they are not engaged in overseeing operations in the Gulf or in management of operations in the Gulf. Having ascertained that that the board is not engaged in managing BP operations in the Gulf, I then conducted research to determine what BP entity or entities *were* managing BP operations in the Gulf, and I found, based on empirical evidence, that BP p.l.c. and its upstream segment were managing operations in the Gulf, including at the Macondo well, and were managing the response.
- At the bottom of p 20, the Daines Response Report states that my Expert Report “provides no reason to think that BXP Board action [in monitoring the Macondo blowout and directing the response] was necessary, preferable, or even helpful.” It is not my role to offer such reasons; it is my role to document that the BXP board, in fact, did not monitor or respond to the blowout, and to document that the BP p.l.c. board, in fact, did monitor and respond to the blowout.
- On p 21, Prof. Daines states that I provide “no reason to think it would be inappropriate

Quivik Expert Rebuttal Report—BPXP

for a multinational corporation to on the one hand create legal ‘subsidiaries’ and at the same time create ‘segments’ or ‘functions’ that are not legal subsidiaries.” It is not my role to opine whether it is appropriate or not for a multinational corporation to create an organizational structure for managing its operations, with little reference to its system of legal subsidiaries. My report shows, based on empirical evidence, that BP p.l.c. does have such an organizational structure for managing its operations, without reference to its subsidiaries, and Prof. Daines has not refuted my conclusion.

- On p 23, the Daines Response Report states that my report “implies that a subsidiary must contain certain key functions or align with the hierarchy of legal entities.” I mean to imply no such thing. Rather, I explore a number of functions that the operator of a facility performs, including various facets of the management of operations at the facility. When I found that BPXP was not performing those functions, I looked further in the documentary record and the testimony produced in this matter to find who or what entity was performing those functions, and I reported my empirical findings in my Expert Report.

C. Professor Daines Has Not Disputed My Empirical Findings That the BP Group Also Managed and Directed Operations in the Gulf of Mexico, Including Those Related to the Macondo Well

Prof. Daines uses a rhetorical device in his Responsive Expert Report that may serve to divert attention from a conclusion I have drawn in my Expert Report. He writes, “Even assuming this is true,” and then engages in an argument that is beside the point. The first instance is on p 12, where he addresses the comparison I draw in my Expert Report between BPXP’s General Services Agreements with BPAPC and BPAPC’s contracts with Transocean. Daines expresses uncertainty about the conclusions I draw from the fact that the Transocean contracts provide detail for how BPAPC can exercise oversight and direction of Transocean’s work under the contract, and from the fact that the General Services Agreements provide no such detail for how BPXP may provide oversight or direction for the services BPAPC is to provide BPXP. Daines asserts that the level of detail has no bearing on whether either contract is valid or invalid. My reason for drawing the comparison is not to suggest that either contract is more valid than the other, or to suggest that BPXP is not a real corporation or a distinct corporate entity, or to suggest what either contract should say. Rather, I draw the comparison to show that the Transocean contracts make it clear how BP is to exercise its oversight and direction of Transocean as the latter conducts its services for the former, while the General Services Agreements do not provide a means through which BPXP, the client, is to exercise oversight and direction of the contractor, BPAPC, for the services it and its employees are to provide BPXP. Because BPXP was not directing the activities that BPAPC performed on BPXP assets, I looked elsewhere to find who or what entity was managing BPAPC’s employees in the Gulf of Mexico and, as I described in my Expert Report, I found that BP p.l.c.’s upstream segment was managing those employees, who were performing work on BPXP’s behalf.

The other place Prof. Daines employs that rhetorical device is at the top of p 18 of his

Quivik Expert Rebuttal Report—BPXP

Responsive Expert Report, where he addresses BP p.l.c.'s development of its global Organizational Management System (OMS) system in the Gulf of Mexico. He writes, "Even assuming this is true," and he goes on to note that I "have not provided any reason to think that this [BP p.l.c.'s development of OMS in the Gulf of Mexico] is in any way inappropriate or undesirable." It is not my role to judge whether that was inappropriate or undesirable. I point to BP p.l.c.'s development of OMS in the Gulf as an empirical means by which we can understand BP p.l.c.'s role in managing operations in the Gulf. Meanwhile, he does not dispute the fact that BP p.l.c. developed OMS in the Gulf.

Sources Considered

(In addition to documents cited in my Rounds 1, 2, and 3 Reports and my considered materials lists for Rounds 1 and 2)

Bates, Exhibit, TREX, or Other Description
BP-HZN-2179MDL09099964-BP-HZN-2179MDL09099964
Deposition Exhibit 12757
Deposition Exhibit 12758
Deposition Exhibit 12759
Deposition of Michael T. Robertson (July 10, 2014)
Expert Report of Robert Daines (August 15, 2014)
HCG374-019497-HCG374-019500
Response Expert Report of Fred Quivik (September 12, 2014)
Responsive Expert Report of Robert Daines (September 12, 2014)
TREX-006033

