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NSC/RMO PROFILE

RECORD ID: 0304990
RECEIVED: 21 MAY 03 13

TO: PRESIDENT

FROM: RICE
HOBBS, D

DOC DATE: 22 MAY 03
SOURCE REF:

KEYWORDS: IRAQ EO

PERSONS:

SUBJECT: EO PROTECTING DEVELOPMENT FUND FOR IRAQ

ACTION: OBE / ORIGINALS RETURNED

DUE DATE: 27 MAY 03 STATUS: C

STAFF OFFICER: WEIGMANN

LOGREF:

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ACTION DATA SUMMARY REPORT

RECORD ID: 0304990

DOC ACTION OFFICER

CAO ASSIGNED ACTION REQUIRED

001 RICE
001 HOBBS, D
002 PRESIDENT
002

Z 03052118 FOR DECISION
Z 03052207 FOR SIGNATURE
Z 03052214 FOR SIGNATURE
X 03052718 OBE / ORIGINALS RETURNED

Date: 5/22/03

NSC Log # 4990

To: David Hobbs

Please sign / initial for concurrence or approve the attached document and return to NSC West Wing Desk (in Situation Room) or call 6-9425 for pick up.

Thank you.

NSC West Wing Desk

4
Do NOT

forward

OBE per
Staff Secretary
5/22

NATIONAL SECURITY COUNCIL

THE WHITE HOUSE

4990

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	SEQUENCE TO	INITIAL/DATE	DISPOSITION
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WEDDERIEN	<u>1</u>	<u>JW 5/2</u>	_____
LOEWER	_____	_____	_____
VENLET	_____	_____	_____
SCHULTE	_____	_____	_____
EDSON	_____	_____	_____
HADLEY	<u>2</u>	<u>EA 5/22</u>	_____
RICE	<u>3</u>	<u>EA 5/22</u>	_____
SITUATION ROOM	_____	_____	_____
WEST WING DESK	<u>4</u>	_____	<u>D</u>
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A = ACTION I = INFORMATION D = DISPATCH R = RETAIN N = NO FURTHER ACTION

CC:

COMMENTS: Needs press points

EXEC SEC OFFICE HAS DISKETTE yes

NATIONAL SECURITY COUNCIL

THE WHITE HOUSE

PROOFED BY: _____

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DOCLOG John A/O _____

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RICE	<u>3</u>	<u>EA 5/22</u>	_____
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5/22

THE WHITE HOUSE

WASHINGTON

May 22, 2003

'03 MAY 22 PM 3:00

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: CONDOLEEZZA RICE *CR*
DAVID HOBBS *EH/DH*SUBJECT: Executive Order Protecting the Development Fund for
IraqPurpose

To sign the attached Executive Order to protect the Development Fund for Iraq, as well as Iraqi oil and proceeds from the sale thereof, from attachment or other judicial process.

Background

On Wednesday, May 21, Ambassador Bremer established the Development Fund for Iraq on the books of the Central Bank of Iraq. This fund, administered by the Coalition Provisional Authority for the benefit of the Iraqi people, will include proceeds from the sale of Iraqi oil, assets of Iraq that may be returned from other nations, and other assets of Iraq such as the cash that was located in Iraq by our forces. The money will be disbursed at the direction of the Coalition Provisional Authority, in consultation with the Iraqi interim administration once it has been formed.

The U.N. Security Council Resolution that was approved by the Council this morning notes the establishment of this fund and provides for an International Advisory and Monitoring Board to oversee it and to appoint independent public accountants to audit it. Significantly, it also provides immunity for the fund, as well as for Iraqi oil and proceeds and obligations arising from the sale thereof. This immunity is important to ensure that the Development Fund for Iraq can be preserved for reconstruction of the country and other purposes benefiting the Iraqi people, and that Iraqi oil can be sold and proceeds deposited into the fund, free from the risk of attachment by Iraq's creditors and other claimants.

The Executive Order at Tab A, issued under the International Emergency Economic Powers Act and the United Nations Participation Act, implements the Security Council's grant of immunity in the United States and as regards U.S. persons. It will protect the fund, including any accounts that may be established for the fund in the United States, as well as Iraqi oil, proceeds from its sale, and letters of credit and other financial instruments related to its sale that may be in the U.S. or in the control of U.S. persons, from attachment or other judicial process. The order is based on the conclusion that the threat of attachment of these items threatens the orderly reconstruction of Iraq and therefore poses an unusual and extraordinary threat to the national security and foreign policy of the United States. The message to Congress at Tab B explains the basis for the order to the Congress.

Concurrence: NSC/Legal

RECOMMENDATION

That you sign the Executive Order at Tab A and message to Congress at Tab B.

Attachments

Tab A Executive Order
Tab B Message to Congress

Executive Order

PROTECTING THE DEVELOPMENT FUND FOR IRAQ
AND CERTAIN OTHER PROPERTY IN WHICH IRAQ HAS AN INTEREST

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, find that the threat of attachment or other judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, obstructs the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq. This constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and I hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. Unless licensed or otherwise authorized pursuant to this order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is prohibited, and shall be deemed null and void, with respect to the following:

- (a) the Development Fund for Iraq, and
- (b) all Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons.

Sec. 2. (a) As of the effective date of this order, Executive Order 12722 of August 2, 1990, Executive Order 12724 of August 9, 1990, and Executive Order 13290 of March 20, 2003, shall not apply to the property and interests in property described in section 1 of this order.

(b) Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under Executive Orders 12722, 12724, or 13290, or under the authority of IEEPA or the UNPA, except as hereafter terminated, modified, or suspended by the issuing Federal agency and except as provided in section 2(a) of this order.

Sec. 3. For the purposes of this order:

(a) The term "person" means an individual or entity;

(b) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) The term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) The term "Iraqi petroleum and petroleum products" means any petroleum, petroleum products, or natural gas originating in Iraq, including any Iraqi-origin oil inventories, wherever located; and

(e) The term "Development Fund for Iraq" means the fund established on May 21, 2003, on the books of the Central Bank of Iraq, by the Administrator of the Coalition Provisional Authority responsible for the temporary governance of Iraq and all accounts held for the Central Bank of Iraq in the name of the Development Fund for Iraq.

Sec. 4. (a) The Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their statutory authority to carry out the provisions of this order.

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations.

Sec. 5. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Sec. 6. (a) This order is effective at 12:01 a.m. eastern daylight time on [May], 2003.

Executive Order

PROTECTING THE DEVELOPMENT FUND FOR IRAQ
AND CERTAIN OTHER PROPERTY IN WHICH IRAQ HAS AN INTEREST

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, find that the threat of attachment or other judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, obstructs the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq. This constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and I hereby declare a national emergency to deal with that threat.

I hereby order:

Section 1. Unless licensed or otherwise authorized pursuant to this order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is prohibited, and shall be deemed null and void, with respect to the following:

- (a) the Development Fund for Iraq, and
- (b) all Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons.

Sec. 2. (a) As of the effective date of this order, Executive Order 12722 of August 2, 1990, Executive Order 12724 of August 9, 1990, and Executive Order 13290 of March 20, 2003, shall not apply to the property and interests in property described in section 1 of this order.

(b) Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under Executive Orders 12722, 12724, or 13290, or under the authority of IEEPA or the UNPA, except as hereafter terminated, modified, or suspended by the issuing Federal agency and except as provided in section 2(a) of this order.

Sec. 3. For the purposes of this order:

(a) The term "person" means an individual or entity;

(b) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) The term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) The term "Iraqi petroleum and petroleum products" means any petroleum, petroleum products, or natural gas originating in Iraq, including any Iraqi-origin oil inventories, wherever located; and

(e) The term "Development Fund for Iraq" means the fund established on May 21, 2003, on the books of the Central Bank of Iraq, by the Administrator of the Coalition Provisional Authority responsible for the temporary governance of Iraq and all accounts held for the Central Bank of Iraq in the name of the Development Fund for Iraq.

Sec. 4. (a) The Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to me by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government. All agencies of the United States Government are hereby directed to take all appropriate measures within their statutory authority to carry out the provisions of this order.

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations.

Sec. 5. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Sec. 6. (a) This order is effective at 12:01 a.m. eastern daylight time on [May], 2003.

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MESSAGE TO THE CONGRESS ON PROTECTING THE DEVELOPMENT FUND
FOR IRAQ AND CERTAIN OTHER PROPERTY IN WHICH IRAQ HAS AN INTEREST

To the Congress of the United States:

Pursuant to section 204(b) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(b) (IEEPA), section 5 of the United Nations Participation Act (22 U.S.C. 287c) (UNPA), and section 301 of the National Emergencies Act, 50 U.S.C. 1631, I hereby report that I have exercised my authority to declare a national emergency to deal with the unusual and extraordinary threat posed to the national security and foreign policy of the United States by the threat of attachment or other judicial process against the Development Fund for Iraq, Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein.

A major national security and foreign policy goal of the United States is to ensure that the newly-established Development Fund for Iraq and other Iraqi resources, including Iraqi petroleum and petroleum products, are dedicated for the well-being of the Iraqi people, for the orderly reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, for the costs of indigenous civilian administration, and for other purposes benefiting the people of Iraq. The Development Fund for Iraq and other property in which Iraq has an interest may be subject to attachment, judgment, decree, lien, execution, garnishment, or other judicial process, thereby jeopardizing the full dedication of such assets to purposes benefiting the people of Iraq. To protect these assets, I have ordered that, unless licensed or otherwise authorized pursuant to

my order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is prohibited, and shall be deemed null and void, with respect to the following:

(a) the Development Fund for Iraq, and

(b) all Iraqi petroleum and petroleum products, and interests therein, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale and marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons.

In addition, by my memorandum to the Secretary of State and Secretary of Commerce of May 7, 2003 (Presidential Determination 2003-23), I made inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961, Public Law 87-195, as amended, and any other provision of law that applies to countries that have supported terrorism. Such provisions of law that apply to countries that have supported terrorism include, but are not limited to, 28 U.S.C. 1605(a)(7), 28 U.S.C. 1610, and section 201 of the Terrorism Risk Insurance Act.

I also have ordered that Executive Order 12722 of August 2, 1990, and Executive Order 12724 of August 9, 1990, which blocked property and interests in property of the Government of Iraq, its agencies, instrumentalities and controlled entities and the Central Bank of Iraq that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, and Executive Order 13290 of March 20, 2003, which confiscated and vested certain Government of Iraq accounts, shall not apply to the Development Fund for Iraq or to Iraqi petroleum or petroleum products, and any interests therein, and proceeds, obligations, or any financial

instruments of any nature whatsoever arising from or related to the sale and marketing thereof, and interests therein.

I have delegated to the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Defense, the authority to take such actions as may be necessary to carry out the purposes of my order, including the promulgation of rules and regulations. I have also authorized the Secretary of the Treasury to employ all powers granted to me by IEEPA and UNPA to carry out the purposes of my order.

I am enclosing a copy of the Executive Order I have issued. The order was effective at 12:01 a.m. eastern daylight time on [May], 2003.

THE WHITE HOUSE,

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

May 22, 2003

ACTION

MEMORANDUM FOR CONDOLEEZZA RICE

FROM: BRAD WIEGMANN *BW*

SUBJECT: Executive Order Protecting the Development Fund
for Iraq

Attached at Tab I is a memorandum to the President forwarding a proposed Executive Order that will protect the Development Fund for Iraq, as well as Iraqi oil and proceeds from the sale thereof, from attachment or other judicial process in the United States and with regard to U.S. persons. The order, as well as an accompanying message to Congress, has been cleared by the Departments of Treasury, State, Defense, and Commerce.

Concurrences by: Faryar Shirzad, Philip Remler, Pam Quanrud, *BW*
Frank Miller *FRM*

RECOMMENDATION

That you sign the attached memorandum transmitting the proposed Executive Order to the President for signature.

Attachments

Tab I Memo to the President
Tab A Executive Order
Tab B Message to Congress

THE WHITE HOUSE
WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

THROUGH: THE EXECUTIVE CLERK

FROM: CONDOLEEZZA RICE
DAVID HOBBS

SUBJECT: Executive Order Protecting the Development Fund for Iraq

Purpose

To sign the attached Executive Order to protect the Development Fund for Iraq, as well as Iraqi oil and proceeds from the sale thereof, from attachment or other judicial process.

Background

On Wednesday, May 21, Ambassador Bremer established the Development Fund for Iraq on the books of the Central Bank of Iraq. This fund, administered by the Coalition Provisional Authority for the benefit of the Iraqi people, will include proceeds from the sale of Iraqi oil, assets of Iraq that may be returned from other nations, and other assets of Iraq such as the cash that was located in Iraq by our forces. The money will be disbursed at the direction of the Coalition Provisional Authority, in consultation with the Iraqi interim administration, once it has been formed.

The UN Security Council Resolution that was approved by the Council this morning notes the establishment of this fund and provides for an International Advisory and Monitoring Board to oversee it and to appoint independent public accountants to audit it. Significantly, it also provides immunity for the fund, as well as for Iraqi oil and proceeds and obligations arising from the sale thereof. This immunity is important to ensure that the Development Fund for Iraq can be preserved for reconstruction of the country and other purposes benefiting the Iraqi people, and that Iraqi oil can be sold and proceeds deposited into the fund, free from the risk of attachment by Iraq's creditors and other claimants.

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