

Dominick, which provides for changing the point of application of the depletion allowance to the end of the retorting process and which does not change the depletion allowance. If you are not aware of that, I call your attention to it because I think it should be made a part of the record.

I beg your pardon. This was in the 89th Congress and I will have a bill in this Congress.

[Committee Note: The bill in the 90th Congress is S. 1068]

Senator Moss. I want to give my colleagues an opportunity to ask questions of the Secretary before he must leave and his time is limited. So I will ask them to direct questions now that they want to have the Secretary answer, if that is possible in the time left and we will try to get the answers before Mr. Udall must leave.

Does the Senator from Wisconsin have any questions at this point?

Senator NELSON. No questions.

Senator Moss. The Senator from Idaho?

Senator JORDAN. Yes, thank you, Mr. Chairman.

Mr. Secretary, my State is not directly involved here and I shall be brief and my questions will be of a more general nature. You are having difficulty, obviously, in tearing away the legal underbrush that is involved here and it is understandable. Apparently you are not getting too much help from the courts. One Supreme Court case found that failure to perform assessment work was not ground for cancellation by the Federal Government. Did that not set you back a good deal in your clearing away the legal underbrush?

Mr. UDALL. Well, I think I would have to say honestly that it did, Senator. However, there are other very vital grounds that can be asserted and I think the most important thing is to get the basic law laid down. I think getting these court tests, getting the basic decisions by the appellate courts, if that is necessary, is urgent. Once we can do this, I think that it will move much more rapidly and our task really, as Senator Allott pointed out, is to carefully select out the right test cases so that we can get the case law made that will govern the whole oil shale region.

Senator JORDAN. What in the opinion of the Department constitutes a valid oil shale claim now?

Mr. BARRY. A valid claim for oil shale would have to have been located prior to February 25, 1920, the date upon which the Mineral Leasing Act became law. Since that date oil shale has been available only under the Mineral Leasing Act. The claim would have to be supported by a discovery of oil shale within the limits of the claim and the evidence of such a discovery would have to be of such character as would induce a prudent man to spend his money and his labor with a reasonable prospect of developing a valuable mine. The boundaries would have to be marked, the location notice recorded in the county recorders office, and the claim otherwise maintained in accordance with law.

You touched a moment ago on the question of assessment work. Prior to 1920 the Department of the Interior, the Government, did not have the power to cancel a mining claim for failure to perform annual assessment work. Section 37 of the Mineral Leasing Act states,