

It is this writer's opinion that such delay should no longer be condoned and that a national oil shale policy should be formulated as soon as possible. But the public would be foolish to hope and expect that such a policy will ever be forthcoming from the Executive Branch of the federal government, in general, or from the present Administration, in particular. Rather, oil shale is a problem for the legislature. It is Congress which now holds the key to oil shale development.

This paper will examine the role of the federal government in the formulation of a national oil shale policy. The formulation of any such policy now, however, must take into account past events and past policies. In this regard, Part One of this paper will be a historical review of government control in the petroleum industry as a whole. Then, Part Two of the paper will describe the oil shale situation as it presently exists and will outline the various questions of policy which must be considered by Congress.

Some of these questions concerning the future of oil shale are extremely complex and have proved difficult even to define in the past.¹² But this problem is aggravated by the fact that many who have successfully opposed¹³ oil shale development in the past have never been required to make public the real reasons for their opposition. To date, those who favor oil shale development have been only able to guess at the possible rationale of their opponents. This paper attempts to force any such rationale into the open.

Perhaps those who have inhibited oil shale development thus far—while preaching the "new economics"—have actually feared that to move ahead with this resource development would be to dangerously "rock the boat." Perhaps they fear upsetting the uneasy balance between "Big Business," particularly as represented by the petroleum industry, and "Big Government" as it is being practiced by the present Administration. Perhaps the opponents fear that the creation of a private oil shale industry might weaken the government's present attempts to assume more and more control in such areas as the oil import program, anti-trust and interstate commerce regulation, and federal land control.

But in each of these areas, the exercise of federal power cannot be justified simply for its own sake. Policy can only be formed after an examination of the merits. Those advocating the development of oil shale should be given the opportunity to show that such resource utilization, under proper government regulation, would be in the best interests of the nation. Those who propose such development by private enterprise have a right to demand good reasons from their opposition, on a point-for-point basis, why such development should not proceed. The burden now should be shifted to those who would obstruct oil shale development.

There are those who have been critical in the past of the petroleum industry as a whole.¹⁴ But such antagonism should not be allowed to prevent the birth of a new industry. Therefore, it should be kept in mind that an oil shale industry, if and when it is allowed to come into being, will be a "new business." And while problems will be cited in Part One which have traditionally plagued the federal government in its efforts to regulate the petroleum industry in the past, the government now has an opportunity to create original answers with regard to a new oil shale industry. If there is cooperation between the representatives of private industry and the Department of Interior in seeking these answers, then Congress will be greatly aided in its future policy formulations.

PART 1—A HISTORICAL REVIEW OF GOVERNMENT CONTROL IN THE PETROLEUM INDUSTRY

The petroleum industry (the natural gas industry will not be discussed in this paper) is unique among the major businesses of this country in that it has enjoyed comparative freedom from direct federal regulation. In the first place, federal anti-trust legislation has had little restrictive effect upon the exploration, production and refining phases of the petroleum industry (although retailing of oil products has come under some anti-trust litigation in recent years). Secondly, the domestic production of crude oil has been regulated by so-called "conservation statutes" of state, rather than federal, government. And finally, special note should be taken of the fact that less than 5 per cent of the petroleum produced in this country has been subject to the federal mineral and land laws.

¹² Mock, *The Oil Shale Advisory Board*, 43 DENVER L.J. 47, 70 (1966).

¹³ See Duschka, *supra* note 4. See also the *Individual Views* of J. K. Galbraith in the INTERIM REPORT OF THE OIL SHALE ADVISORY BOARD TO THE SECRETARY OF THE INTERIOR 20 (Feb. 1965) (transmitted by letter of chairman, Joseph L. Fisher, Feb. 15, 1965). Reproduced in this issue of the REVIEW *supra* p. 50.

¹⁴ Galbraith, *Individual Views*, INTERIM REPORT OF THE OIL SHALE ADVISORY BOARD, *supra* note 13, at 21, 22.