

industry by Sherman Act prosecutions aimed at dissolving oil "monopolies" on both horizontal and vertical planes.²⁸

Writing in 1959, economists Melvin de Chazeau and Alfred Kahn are generally of the same view.²⁹ They note that the Texas Railroad Commission in arriving at its production quotas anticipates imports and oil produced in states without production controls. "By thus allowing for estimated supplies beyond its jurisdiction, Texas, in effect, brings the total available supply, including imports within the principle of prorationing to market demand."³⁰

On the other hand, Ralph Cassady concludes from his lengthy study of price making and price behavior in the petroleum industry that price competition, while not "perfect," is sufficiently keen at all levels of the industry.³¹ In this he follows Professor Bain, who wrote between 1944 and 1947.³² Zimmerman³³ takes a middle position and advocates much less drastic reforms in the area of conservation regulation than is proposed by de Chazeau and Kahn³⁴ or by Rostow.

Before it can formulate any policy for the development of oil shale, Congress should examine the conflicting points of view of these various writers and make its own finding of how best to regulate oil production in this country. Future supply and demand estimates for oil will be one set of crucial questions facing Congress. Further, it must receive some estimates of the quantities of shale oil which could be phased harmoniously into the future domestic supply stream. With these figures before it, Congress must ask: "What effect, if any, should the present system of production control have upon the production of shale oil?" The question might be asked more explicitly: "Should the Texas Railroad Commission be permitted to retain its position of power with respect to production control once oil shale is introduced into the domestic market?" Perhaps Congress will determine that the present system of production control should remain in effect and that the Texas Railroad Commission should be permitted to count shale oil simply as another source of supply—like imports—in arriving at its demand estimates. Perhaps Congress will decide that the development of oil shale, and other factors, now necessitate some of the reforms advocated by the critics of the present system and that the time has come for federal, rather than state, control of domestic oil production.

All these are questions which only Congress can properly answer.

B. The Federal Government as landowner

1. Land laws in chronology

In discussing the exercise of the government's powers in its capacity as landowner, it will be most convenient to present those land laws relevant to oil shale in a chronological order.

1780. The Continental Congress of 1780 created the "public domain" by a resolution which read that:

"The unappropriated lands that may be ceded or relinquished to the United States, by any particular states . . . shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican states, which shall become members of the federal union, and shall have the same rights of sovereignty, freedom, and independence as the other states. . . ."³⁵

One of the many compromises made by the confederating states was their agreement to relinquish their western territorial claims to the new United States. Thus they created the public domain and provided the federal regime with a source of revenue to pay for the Revolutionary War. Later, the territorial boundaries of the United States were to be completed by additions to the public domain through purchase, treaty and conquest.

1788. Article IV, Section 3, Clause 2 of the Constitution vests Congress with the power "to dispose of and make all needful Rules and Regulations relating to the Territory or other Property of the United States."

²⁸ ROSTOW, *op. cit. supra* note 20, at 123.

²⁹ DE CHAZEAU & KAHN, *INTEGRATION AND COMPETITION IN THE PETROLEUM INDUSTRY* (1959).

³⁰ *Id.* at 123.

³¹ CASSADY, *PRICE MAKING AND PRICE BEHAVIOR IN THE PETROLEUM INDUSTRY* 334 (1954).

³² BAIN, *THE ECONOMICS OF THE PACIFIC COAST PETROLEUM INDUSTRY* (1944-47).

³³ ZIMMERMAN, *CONSERVATION IN THE PRODUCTION OF PETROLEUM* (1957).

³⁴ They advocate federal legislation requiring mandatory utilization. DE CHAZEAU & KAHN, *op. cit. supra* note 29.

³⁵ 18 JOURNALS OF THE CONTINENTAL CONGRESS 915 (Ford & Hunt ed. 1904-37).