

Such a commercial commitment leaves little room for argument. It is made more important by the fact that the Colony Development venture plans to produce commercial quantities of shale oil from relatively poor shale deposits lying wholly within privately owned or patented lands. Thus it is crystal clear that representatives of private enterprise believe that oil can, and will, be competitively produced from oil shale. Industry demonstrates itself ready to proceed without further delay.

3. The Courts

In *Alabama v. Texas*⁷⁸ the Supreme Court dismissed suits challenging the rights of states to take lands under the Submerged Lands Act of 1953⁷⁹ on the ground that Congress had unlimited plenary power under the Constitution to dispose of the public domain in any way it saw fit. Thus the courts may be dismissed as presenting any obstacle to the establishment of a federal leasing policy.

4. The States

In 1957 the Assembly of the Interstate Oil Compact Commission, representing thirty oil-producing states, unanimously adopted a resolution calling for the opening of federal oil shale lands.⁸⁰

Further, the states of Colorado, Wyoming and Utah, through their state executives and their congressional delegations, have consistently sought development of their oil shale resources. Colorado has been particularly active in seeking early development, and in 1964 Governor Love stated: "We look to oil shale as another great industry in our State which can and will be developed in such a manner as to be compatible with the preservation of our scenic splendor and wildlife."⁸¹

Thus it seems that no state seeks to obstruct the development of oil shale.

5. The Federal executive

It was seen earlier that authority to administer regulations covering the leasing of federal oil shale lands has been delegated to the Secretary of Interior. Thus, while the Secretary could institute and administer a program for the leasing of federal lands, no secretary has ever attempted to do so.⁸² Secretary of Interior Udall has been the most elusive of all public figures on the subject of oil shale and has only said he wishes to prevent another oil scandal in this country.⁸³

Mr. James H. Smith, calls such references to old scandals "pure demagoguery" and says, "If the government is unable today to arrange contracts between itself and private enterprise dealing with public property without the risk of repeating Teapot Dome, then we do not have a competent government."⁸⁴

In 1963, apparently in partial response to such criticisms, Secretary Udall published an order cancelling the existing leasing regulations and calling for public comment as to what should go into new ones.⁸⁵ Later, the Secretary created a "blue-ribbon panel" called the Oil Shale Advisory Board and appointed Joseph L. Fisher, chairman, Orlo E. Childs, Benjamin V. Cohen, John Kenneth Galbraith, H. Byron Mock and Milo Perkins.

At the invitation of the Secretary of Interior and the Oil Shale Advisory Board, Governor Love of Colorado recommended competitive leasing of oil shale lands under the old provisions of the Mineral Leasing Act.⁸⁶ It was recommended that such leasing be done in three phases with a 5 per cent royalty at the outset. Very similar recommendations were made to the Oil Shale Advisory Board by The Oil Shale Corporation in 1964.⁸⁷ The Oil Shale Advisory Board

⁷⁸ 347 U.S. 272 (1954).

⁷⁹ 67 Stat. 29 (1953), 43 U.S.C. § 1301 (1964).

⁸⁰ Resolution No. 8, Meeting of June 12, 1957, Yellowstone National Park.

⁸¹ Statement of Governor John A. Love to the National Oil Shale Advisory Board, Dec. 1, 1964.

⁸² President John F. Kennedy viewed administration of the public domains thus:

"My predecessors have been acutely aware of the dilemmas facing the Secretaries of Agriculture and Interior as principal administrators of the original public domain. Whenever they have been faced with a reasonable alternative of continued public ownership and management, or disposition, they have generally elected the former.

⁸³ HANNA, *op. cit. supra* note 68, at 10.

⁸⁴ The Denver Post, *supra* note 11.

⁸⁵ 28 Fed. Reg. 11796 (1963), revoking 43 C.F.R. pt. 197 (1963) (Oil Shale Leases).

⁸⁶ Letter from John A. Love, Governor of Colorado, to Stewart L. Udall, Secretary of Interior, March 27, 1964.

⁸⁷ TOSCO, *op. cit. supra* note 68, at 17.