

Section 3172.3. *Acreage Designations and Limitations.*

(a) (d) As suggested by Pan American's letter of January 27, 1964, to the Director of the Bureau of Land Management, the Mineral Leasing Act (and regulations) should be amended to permit up to 5,760 acres to be contained in any one oil shale lease, and an individual or company should be given the right to hold an aggregate of 23,040 net acres, on a national basis. It is submitted that the broadening of limitations to the extent herein proposed would not tend to create monopoly or to hinder competition.

(b) This portion of Section 3172.3 states that "[u]pon the issuance of any lease hereunder, the Secretary shall designate the part of the leased lands upon which the lessee will be permitted to conduct operations during the research term." This grant of authority is unduly restrictive, and it is suggested that the lessee should be permitted to select, at his discretion, the site deemed most suitable for his research operations.

If the lessee desires, he should even be allowed to change the location of his research operations to some other site on the leased premises without getting advance approval of the Secretary.

(c) This part of Section 3172.3 provides in effect that the lease will be extended into the commercial production term only as to an area which contains the quantity of mineral deposits needed for commercial production; the Secretary determines the quantity of mineral deposits needed for commercial production. The apparent aim, here, is to require the lessee to invest for the maximum production rate in order to prevent the loss of some part of his lease, but the regulation as written does not quantify or describe "the mineral deposits needed for commercial production." One way to handle this problem would be to provide that the term of the lease would be extended for an area which contains, say, 50 years' worth of shale deposits geared to lessee's total refining capacity. Another approach, certainly having the virtue of simplicity, would be to permit the lessee to hold all of his original lease in the commercial production term for so long as production continues from the leased premises—there is ample analogy for this treatment in the instance of Federal oil and gas leases.

Section 3172.4. *Rentals.* Pan American suggested in its letter of January 27, 1964, to the Director of the Bureau of Land Management that the annual lease rental should be established at \$2.00 an acre. Such rental, in place of the 50 cent per acre rental set out in this proposed regulation, would tend to eliminate or to reduce speculation in oil shale leases.

Section 3172.5. *Royalties.*

(b) The basic royalty is set out as "3 percent on the gross value, at the point of shipment to market, of the mineral products from the oil shale * * *". The royalty rate should realistically be set at a low figure to encourage the growth of an oil shale industry, and the basic rate of 3 percent, standing alone, is considered satisfactory. However, the term "gross value" apparently does not contemplate that an allowance for plant processing costs will be provided. Nor, in our opinion, should royalty be calculated "at the point of shipment to market"; the royalty should not be computed on completely refined products. Royalty should be payable only on the value of oil recovered from the retort, and suitable allowance for plant processing costs should be provided. In this regard, it should at all times be borne in mind that even the best deposits of oil shale represent a low grade mineral resource which cannot be burdened with high royalties, if research, development and production are to come to full fruition.

(c) (d) If the basic royalty referred to in (b), above, provides a smaller annual payment than a payment computed under (d), then subparagraph (c) of the proposed regulation indicates that an additional payment computed under (d) will be made. Subparagraph (d) provides for a sliding-scale royalty computed on the "net income" of the lessee from the production of mineral products from oil shale. Up to 50% of net income which exceeds 20% of lessee's investment will be the basis for computing the additional payment. Subparagraph (d), in our opinion, removes the incentive for efficiency on the part of the lessee, and eliminates any expectation that profits will markedly increase as the shale oil operation gets underway. The sliding-scale provision would discourage the growth of an oil shale industry and its should, therefore, be eliminated.

(e) This subparagraph provides in part that "[l]ease royalties shall be subject to readjustment at 20-year periods succeeding the issuance of the lease." Again, this provision tends to retard the growth of the industry by injecting the