March 1942

The Law of Oil and Gas

Wm. E. Colby

Follow this and additional works at: https://scholarship.law.berkeley.edu/californialawreview

Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z38QN44

This Article is brought to you for free and open access by the California Law Review at Berkeley Law Scholarship Repository. It has been accepted for inclusion in California Law Review by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
Future historians will call this "The Age of Petroleum". Within the century petroleum has become the principal motive power of the world. It drives our millions of automobiles; it powers our farms and factories; it has entered our homes in the form of natural gas; in many instances it has displaced generation of power by water; it has forced our sail-driven clippers off the high seas and supplanted coal in power-driven ships; it alone can fuel the airplane destined to carry a large part of the commerce of the future. But this friendly giant of peacetime has become a veritable ogre in wartime. Mechanized fighting equipment has made possible the blitzkrieg on land and sea and in the air, and it depends for its terrible destructive efficiency on the internal combustion engine, fueled with petroleum. Without petroleum modern warfare would be impotent and hence we have the life and death struggles which are now going on in the world to reach and control the sources of supply.

Historical Aspect. The eastern states, created out of the original colonies, owned all public lands within their respective borders. Texas has this same status because it joined the union as a sovereign state. Public lands in the states of the middle west were sold outright on...
the same basis as agricultural lands. There was no general federal mining law applicable to public lands in these states at any time. The outstanding exception occurred in the case of public lands valuable for lead. In 1807 Congress departed from its general policy of granting fee simple patents to lands of the public domain and enacted a law providing for the leasing of lands, in a restricted portion of the middle west, containing “lead mines”. Royalties on lead mined from these leased lands were payable to the United States. The great expense and difficulty of collecting these royalties in the then wilderness of the middle west resulted in abandonment of this leasing policy and a reversion to the policy of outright sale of all public domain lands. As a consequence, most of the publicly owned lands within the original states and those later erected out of public domain in the middle west had passed into private ownership before petroleum was discovered there and had assumed any considerable commercial importance.2

On the other hand when oil and gas were discovered in the western states and territories there were still great areas of federally owned land, commonly referred to as the “public domain”.3

1 2 STAT. 445, 446.
2 Discoveries of oil and gas in the eastern states occurred in the early part of the last century. THORNTON, LAW OF OIL AND GAS (4th ed. 1925) §§ 2-4, gives a most interesting and detailed account of the early discovery and exploitation of oil and gas seepages and drilling of shallow wells in these states. The production of oil for illuminating and lubricating purposes commenced commercially with the drilling of the so-called “Drake well” in Pennsylvania in 1859. See ibid. § 5, for a detailed account of this episode. The author quotes CREW, PETROLEUM as stating, “This memorable strike . . . ushered in the Petroleum Era.” Ibid. at p. 12.
3 The presence of oil and gas in California was known to the padres. In 1854 petroleum springs were discovered fifteen miles west of Tulare Lake by United States government officers. In the 1860’s, oil and gas seepages were noted and test wells sunk in many parts of California. Stalder, Contribution to California Oil and Gas History (Nov. 12, 1941) 2 CALIF. OIL WORLD & PET. INDUSTRY, Supp. According to Mr. Stalder, oil was discovered in wells and seepages in the late 1850’s and early 1860’s in various parts of California and by 1865 oil from some of these sources was being refined in San Francisco. Browne, Mineral Resources, U. S. Gov’t Rep. (1868) 261-263, gives an account of the oil industry in California, but adds, “At present it is an unprofitable resource.” Ibid. at 263. These California discoveries, following immediately upon the heels of the eastern oil excitement which had started with Drake’s production of oil in Pennsylvania in 1859, attracted widespread interest and some of the eastern oil producers invested heavily in potential oil lands in California. However, the competition of eastern produced oil resulted in the complete deflation of this incipient California oil boom. For many years, though there continued to be production and refining of California oil, it was small in quantity and the bulk of the California demand for petroleum and its products was satisfied by importation from the east.
Early Titles to Oil Lands in California. Title to the lands on which these early oil and gas discoveries were made was varied as might be expected. Spanish and Mexican grants were the oldest titles, especially in the southern counties. Various types of government scrip and land warrants were also used to file on potential oil lands of the public domain. Preemption filings were also common. While the policy of the federal government of reserving mineral lands for separate disposition had already, in the 1860's, become well established, it must be kept in mind, as will be noted more fully hereinafter, that there was considerable uncertainty as to whether oil and gas were "mineral" within the legal acceptation of the term. The first act of Congress to provide for the acquisition of patent title to mineral lands was limited to the patenting of veins or lodes "of quartz, or other rock in place, bearing gold, silver, cinnabar or copper . . .". The patenting of oil or gas lands was not contemplated by this act. However, the act expressly confirmed what had theretofore been tacitly accepted as the fact, that all mineral lands of the public domain should be free and open to exploration and occupation subject to statutory regulation and "also to the local customs or rules of miners in the several mining districts . . .". Therefore, oil and gas lands of the public domain, if mineral, were logically subject to location by the miners. As a matter of fact there is evidence that mining locations of oil and gas bearing lands were being made in the 1860's. While locations of placer deposits were not expressly provided for by the Lode Act of 1866, Congress four years later enacted what is known as the Placer Act of 1870. This act expressly provided for the locating and patenting of placer mining claims and, consequently, patents to oil and gas bearing lands of the public domain could thereafter be acquired, provided always that oil and gas were mineral within the contemplation of the mining law.

Oil and Gas are Mineral. The mineral character of oil and gas is no longer open to question. At one time there was serious doubt on this

---

4 These preceded homesteads, which were first authorized in 1862. 12 STAT. 392.
5 14 STAT. (1866) 251. (Lode Act.)
6 Congress had, without objecting, on several occasions previously recognized the fact that mining was taking place on the public domain. 10 STAT. (1851) 926, 932; 13 STAT. (1863) 673, 674, 681, 682; 13 STAT. (1865) 271-2, 440, 441, 473, 529; 14 STAT. (1866) 43.
7 Stalder, op. cit. supra note 3, at 45, notes a mining location of oil lands made November 7, 1864, in Book A, District Mining Records in Humboldt County, California.
8 16 STAT. 217.
point. In 1865 the register and receiver of the local land office in Humboldt County, California, wrote to the Commissioner of the General Land Office requesting instructions applicable to cases where "petroleum or coal oil deposits" were involved. The Commissioner replied that,

"It is not the policy of the Government to deal with Petroleum tracts as ordinary public lands, any more than with auriferous or other mineral or saline lands. Hence, you will... withhold the same from disposal by the Government, unless otherwise specially instructed." 9

The Land Department for many years treated public lands containing proven petroleum deposits as mineral lands within the meaning of the placer mining laws, and patentable as such.10 The question was squarely raised in 1896 in the case of Union Oil Company,11 in an application for a placer mining patent for lands in southern California containing petroleum. This application conflicted with a railroad grant selection. The then Secretary of the Interior, Hoke Smith, reviewed the earlier decisions of the Department, disclosing his very evident bias by minimizing the previous rulings which were favorable to such patenting and emphasizing those where any doubt was expressed. He held that

"Congress did not have in contemplation at the time of the passage of the [railroad grant] act the reservation of lands containing petroleum under the designation of mineral lands."12

9 Stalder, op. cit. supra note 3, at 47, 48.
10 Jan. 30, 1875, the Commissioner of the General Land Office held that a mining claim yielding petroleum and located in 1866 could be patented under the Mining Act of 1872. (1875) 1 Copp's LAND-OWNER 179. March 31, 1882, the Commissioner again held that, "Lands containing deposits of petroleum have been entered as placers and patented as such." (1882) 9 Copp's LAND-OWNER 51. In Roberts v. Jepson (1885) 4 Land Dec. 60, 61, the Secretary of the Interior stated by way of dictum that oil land was "subject to location under the mineral laws..." In Piru Oil Co. (1893) 16 Land Dec. 117, another Secretary definitely recognized the validity of locations of petroleum bearing lands and the issuance of placer patents therefor. It is true, however, that there was doubt expressed in some of the Land Decisions. Downey v. Rogers (1885) 2 Land Dec. 707; Samuel E. Rogers (1885) 4 Land Dec. 284.
11 (1896) 23 Land Dec. 222.
12 Ibid. at 227. He relied largely upon the decision of Dunham and Shortt v. Kirkpatrick (1882) 101 Pa. 36, which had held that a reservation of "all minerals" in a conveyance of a tract of land did not operate to reserve petroleum or mineral oil. There are a number of cases of similar tenor but they are either opposed to the great weight of authority or are distinguishable because of the facts involved. See LINDLEY ON MINES (3d ed. 1914) §§ 93, 151; THORNTON, op. cit. supra note 2, § 18.
He admitted that, scientifically speaking, petroleum was a mineral, but he argued that so were all inorganic substances and that many common mineral substances which constitute the bulk of the earth's surface did not come within the operation of the mineral statutes. He concluded that petroleum bearing lands could not be located and entered under the placer mining laws.

This decision, so contrary to the earlier rulings of the Land Department, created great consternation among the many owners of oil land locations on the public domain and threatened a large investment. Its effect threatened to be so serious, nullifying as it would, if upheld, the many locations which had been made on the faith of previous rulings, that Congress immediately passed a law declaring lands valuable for petroleum or other mineral oils to be patentable as placer mineral claims and made the law retroactive so as to validate claims theretofore initiated.13

The Union Oil Company case was again brought before the Land Department on review and a decision was rendered14 reversing the original decision on principle and independently of the curative act of Congress. It was pointed out that for over twenty years and until the decision complained of, the practice of patenting such lands under the placer mining laws "has been continuous and uniform."15

It would seem that after this very definite determination of the issue that the mineral character of petroleum lands could hardly again have been questioned. However, many years later the issue was again raised, and presumably finally determined in 1914 in Burke v. Southern Pacific R. R.16 Burke and others made "paper locations"17 in 1909, under the placer mining laws, of lands patented to the railroad in 1894, claiming that they were illegally patented because then known to be valuable for petroleum. One of the questions presented to the Court for decision was the following:

"Is petroleum or mineral oil within the meaning of the term 'mineral' as it was used in said acts of Congress reserving mineral land from the railroad land grants?"

The Supreme Court answered in the affirmative stating that "Petro-

---

14 (1897) 25 Land Dec. 351.
16 (1894) 526.
17 Ibid. at 354. Gird v. California Oil Co. (C. C. S. D. Cal. 1894) 60 Fed. 531, 532, was cited to the effect that oil bearing lands "can alone be acquired pursuant to the provisions of the mining laws relating to placer claims."
16 (1914) 234 U. S. 669.
17 These are locations without discovery.
leum has long been popularly regarded as a mineral oil. As its derivation indicates, the word means 'rock oil' . . . .' The Court cited many cases and various acts of Congress, and the practically uniform rulings of the Land Department in support of this conclusion. It noted the point urged by the railroad company that the generally accepted scientific theory of the origin of petroleum is that it "is a resultant of the decomposition of organic matter under certain conditions of temperature and pressure and therefore is not a mineral." However, it pointed out the fact that the scientists are not all agreed on this, some believing its origin to be inorganic. The Court took the extreme view and said that, assuming that,

"when subjected to a strictly scientific test petroleum is not a mineral, we think that is not the test contemplated by the statute. It was dealing with a practical subject in a practical way, and we think it used the words 'mineral lands,' and intended that they should be applied, in their ordinary and popular sense. In that sense, as before indicated, they embrace lands chiefly valuable for petroleum."

Mineral Character of Natural Gas. Natural gas is intimately related to oil, so that the difference is only one of degree. It is found in its natural state in underground strata which act as reservoirs usually in close association with and overlying the oil from which it is derived. These hydrocarbons have been referred to by the Supreme Court of the United States as follows:

"These substances may be gaseous, as natural gas or marsh gas [methane]; fluid, as petroleum or naphtha; viscous, as the semi-fluid asphaltum; elastic, as elastomer, found in Utah and else-

19 The inorganic origin theory is that the hydrocarbons, oil and gas have been formed as the result of chemical reactions underground associated with special physical conditions of pressure and temperature. The generally accepted theory is, however, one of organic origin and receives powerful support from associated indications, such as the presence in the accompanying sedimentary strata of shells and other fossils, indicating the former existence of marine life. There is general agreement by those advocating this theory that the hydrocarbons are the result of decomposition and distillation of these organic remains or perhaps the action of bacteria, operating through geologic periods of time. There is diversity of opinion as to whether the organic source is animal or plant life and there are still others who claim it to be both. Some of the plant origin advocates even go so far as to contend that the plant growth took place on land instead of being marine. As the United States Supreme Court pointed out, these theories of genesis do not affect the determination of the legal status of oil and gas as mineral. See also United States v. Northern Pac. Ry. (1940) 311 U. S. 317, 361,
20 Supra note 16, at 679.
21 High grade oil is produced from "wet" gas. Lindley, op. cit. supra note 12, § 423.
where; solid, as some forms of asphaltum, bituminous or anthracite coal . . . ."

The Court concluded that "natural gas would fairly come under the head of a crude mineral" and also that it could be classified as "crude bitumen."

The Law Board of the Department of the Interior in 1907 decided that a placer mining location based solely on a discovery of natural gas was patentable. This ruling was approved by the Commissioner of the General Land Office and subsequently by the Secretary of the Interior.

The Second Oil Excitement in California. In the 1890's the steady development of the oil industry in California brought about another oil land boom. The industry was on a much firmer foundation than in the 1860's when the first excitement occurred and the knowledge of the oil potentialities of this state had in the meantime been materially added to, so that the second excitement was far more widespread and in some of its aspects resembled the pioneer days of the "gold rush". The major activity of this period was in the southern portion of the San Joaquin Valley, though there were other areas in the southern part of the state that were not neglected. Great areas of the semi-arid portions of the San Joaquin Valley were still public domain. Oil discoveries of considerable importance had recently been made there and it had become pretty generally recognized that underlying the floor of this valley and the bordering low-lying hills there were important oil potentialities. The excitement spread like wildfire. Here were buried fortunes in "black-gold". The lands were subject to placer mining location and patentable as such. Almost overnight, the entire public domain, wherever there was the slightest prospect of discovering oil, was plastered with "paper locations". The placer laws permitted maximum locations of 160 acres by eight locators who would each then own an undivided one-eighth of the location. This afforded the opportunity for quickly embracing large areas of prospective oil bearing land in these so-called "association

24 Boom towns sprang up having every appearance of the mining camps of earlier days when saloons, gambling houses and redlight districts ran full blast.
25 The government only exacted $2.50 per acre as the purchase price of such land. Under the mining laws the locators could hold their locations without patenting and in the meantime lawfully extract all of the mineral without paying even this small price per acre to the government.
Several factors operated, however, to put a damper on many of these visions of wealth, "just around the corner".

Discovery. The first difficulty encountered by these locators was that of making a valid discovery. The most vital essential of all mining locations is a discovery of mineral. Until that has taken place the location title is inchoate and subject to possible "jumping" by rivals. During the 1890's the drilling of an oil well was a difficult operation compared with the drilling of today. The widespread demand for drilling rigs also increased the difficulty and cost, so that many locations went without any serious attempt at making discoveries. Subterfuge was resorted to. Seepages, oil stains, the presence of marine shells, were claimed as sufficient for discovery purposes. Gypsum, diatomaceous earth, and so forth, were found on some of the lands and it was contended that these non-metallic minerals constituted a sufficient discovery. This discovery question was largely set at rest by the case of Chrisman v. Miller which involved an alleged discovery based on "indications" of oil which seeped out in conjunction with springs of water. The Supreme Court held that this "merely suggested a possibility that the ground contained oil" and "was not enough... to have justified a prudent person in the expenditure of money and labor in exploitation for petroleum," which is the true test of a valid discovery.

As a result of this decision it became generally accepted that the only way to make a valid discovery of oil was to drill a well and actually penetrate oilbearing sands. Commercially producing wells were not necessary, but more than mere surface indications were required. The great majority of the locations were made by persons who did not possess the means to drill wells and who were speculating on the

---

28 At one time when the excitement was at its height, parties of surveyors and assistants were sent out into the field with wagons laden with location posts and notices. As quickly as they could identify a quarter section they would put up a stake and notice and drive on to the next quarter section. This was done on such a large scale that in some instances the promoters ran out of names and in several instances used fictitious names.


28 An interesting legal problem which has not been finally decided by the Supreme Court is how far the lawful possession of a mining location extends pending attempts of the locator to make a discovery, whether to the entire location or only to the miner's pedis possessio. See Union Oil Co. v. Smith (1919) 249 U. S. 337, 346-348, where the question is mooted but not decided, and cases there cited.

29 Supra note 27, at 323.
possibility that their inchoate rights would be purchased or leased by those who were in a position to make the necessary expenditures. Many locators, without any expenditures on their part, received large sums of money if their locations happened to be favorably situated with respect to proven territory, but great areas went without any serious attempt to make discoveries and became the source of bitter disputes as to ownership. The idea was prevalent, though erroneous, that doing the annual assessment work of $100.00 per claim required by law to keep unpatented mining locations in good standing, would in some way protect the rights of locators even in the absence of discoveries. Others did not even take the trouble to do the annual labor, but would go out on the ground just before midnight of December 31st, when the assessment year expired, and make new locations as of January 1st. Many pitched battles between rival camps, some resulting in bloodshed, took place at midnight. These adverse locations were a source of much litigation.

**Scrip and Homestead Filings.** These and other agricultural filings on lands also covered by mining locations without any discovery were another source of serious trouble for the locators of oil lands. Having no discoveries of mineral to exempt the lands from such agricultural filings automatically, their mineral character was challenged and the United States land offices in Bakersfield and Los Angeles were clogged with contests of this kind. Most of these agricultural filings lacked good faith, having been made for the deliberate purpose of obtaining title to oil lands by subterfuge, or in the hope of being "bought off" by the mining claimants. As new discoveries continued to establish the great extent and value of these oil deposits the Land Department and the courts took the position that, even though no actual oil discoveries had been made, if the land in question showed reasonable promise of being valuable for oil deposits, this fact alone justified the refusal to issue agricultural patents for such land. Because of this attitude on the part of the Land Department and the

---

50 The Supreme Court held that "assessment work" or "annual labor" requirements "had nothing to do with locating or holding a claim before discovery." Union Oil Co. v. Smith, supra note 28, at 350.

51 The year for performing annual labor on mining claims has been changed so that it now extends from noon of July 1st until noon of July 1st of the year following. 42 STAT. (1921) 186, 30 U.S.C. (1940) § 28.

The menace of such agricultural filings to the mining locators became in time much less serious.

The Conservation Movement and Executive Withdrawals. By far the most potent factor which arose to blight the hopes and prospects of the mining locator seeking to capitalize on the potential wealth hidden in the vast, but yet undiscovered oil deposits, was the important national movement for the conservation of natural resources which attained such strength during the early part of this century. This movement started in the 1890's and congressional action was first taken for the conservation of the forests of the public domain. It received great impetus from President Theodore Roosevelt's administration. Lands valuable for coal, potash, phosphates, water power development, etc., were sooner or later included in this conservation program. The underlying thought was to conserve for present and future generations some of these more important strategic resources of the remaining national public domain which were vital to human welfare. It was natural that oil and gas should be included in this category. The Director of the United States Geological Survey made a report on September 17, 1909, to the Secretary of the Interior calling attention to the fact that, because of the liberality of the mining laws, many persons were availing themselves of the opportunity to acquire by location and to obtain patents at nominal cost for large areas of oil lands in California. He said that oil was being so rapidly extracted from these public lands that they would all pass into private ownership within comparatively short time and,

"'After that the government will be obliged to repurchase the very oil that it has practically given away. . . . In view of the increasing use of fuel by the American Navy there would appear to be an immediate necessity for assuring the conservation of a proper supply of petroleum for the Government's own use. . . .'"

He recommended that, "'pending the enactment of adequate legislation on this subject, the filing of claims to oil lands in the State of California should be suspended.'" This recommendation was approved by the Secretary of the Interior and urged upon President

33 For a more detailed account of this movement, see Colby, The New Public Land Policy with Special References to Oil Lands (1915) 3 CALIF. L. REV. 269-291; Haglund, The Current Federal Oil Policy: A Change in the Public Land Policy (1931) 3 So. CALIF. L. REV. 195. See also Lindley, op. cit. supra note 12, §§ 200-200c.

34 Ibid. § 197.

35 See United States v. Midwest Oil Co. (1915) 236 U. S. 459, 466, 467,
Taft, who, on September 27, 1909, issued a proclamation withdrawing from location and disposal a vast area (over 3,000,000 acres) of the public domain in California and Wyoming which had been classified by the Geological Survey as potential oil bearing land.

The issuance of this proclamation, which came with little advance warning, created great consternation among the locators of oil lands and those who were prosecuting drilling operations under lease from these locators. It is true that the proclamation expressly provided that "all locations or claims existing and valid on this date may proceed to entry in the usual manner after field investigation and examination." It was uncertain, however, whether this exception was intended to include the multitude of locations upon which no discovery had yet been made. These claims were of two classes, one, where there had been from the initiation of the location diligent prosecution of operations having for their object the discovery of oil, and the other, where there had been little serious attempt to make such a discovery. Between these two classes of locations there were all gradations so that the title situation with respect to such claims became chaotic. Location rights in many instances had been purchased in good faith and large sums invested in development, and yet there was no way of knowing just what effect this drastic action of withdrawal might have on such titles.

This executive withdrawal was challenged as beyond the power of the President, since the United States Constitution had vested in Congress the exclusive right to dispose of the public lands. The opinion of the western attorneys familiar with similar land problems was almost unanimous that the proclamation was an unconstitutional act. President Taft, himself a constitutional lawyer, in a public speech expressed serious doubt as to his power thus to withdraw such large areas of public domain when the placer laws of Congress were still in force and unrepealed, but justified his action because of the doubt and the importance of the object to be attained. Western federal judges held the executive order unconstitutional. A test case was carried to the Supreme Court of the United States. That Court

38 Art. IV, § 3.
37 Wisconsin R. R. v. Price County (1890) 133 U. S. 496, 504.
38 Lindley, op. cit. supra note 12, § 200b.
40 United States v. Midwest Oil Co., supra note 35.
held that since the early days of the republic the President had on many occasions withdrawn lands for the general public good and because this usurpation of the otherwise exclusive prerogative of the Congress had been tacitly assented to by that body, it had become an established and lawful custom for the President to exercise this power of withdrawal, especially where, as in this case, it was clearly in the public interest and in anticipation of future action by Congress.\textsuperscript{41} Five justices joined in the prevailing opinion, one did not participate and three dissented, including the two justices from the West, who usually wrote the Court's opinions on problems involving the public domain.

This decision was a severe blow to those who had been proceeding on the theory that the executive withdrawal was unconstitutional and that the federal government would be as liberal in its attitude toward these oil locations as it had been in the past toward placer claims in general. On the contrary, the government sent into the field numbers of special investigators who made searching inquiry into the status of these unpatented oil land locations. Wherever there was a technical defect in the title the government either contested the claim's validity, if application for patent was pending before the Land Department, or brought suit in a federal court to have the location title declared void. A vast amount of bitterly contested litigation resulted.\textsuperscript{42} Many operating companies which had purchased

\textsuperscript{41} For a full discussion of this case, see Colby, \textit{op. cit. supra} note 33.

these location titles in good faith and spent large sums in drilling and extracting oil, found themselves confronted with considerable money judgments for the value of oil already extracted, and their title to the property declared void, because a purchase made in good faith and for valuable consideration was not a bar to the government’s right to recover. As a result, the federal government recovered from claimants oil lands whose value has since proven to be untold millions of dollars.

Remedial Legislation. The uncertainty as to its constitutionality which surrounded President Taft’s sweeping withdrawal of oil lands from private entry brought about the passage by Congress of the act of June 25, 1910. This act, called the “Pickett Act” because of its author, gave the President express authority to withdraw public lands from private entry. The validity of the previous withdrawals was left an open question to be decided by the courts, and, as we have seen, the President’s action in this respect was eventually upheld. The statute also provided that bona fide occupants of oil locations who had not made a discovery of oil or gas at the date of any order of withdrawal, but who were on such date “in diligent prosecution of work leading to discovery,” were to be protected in their inchoate rights so long as such diligent prosecution of work continued.

March 2, 1911, Congress passed another remedial statute. This made lawful the conveyance to one person of all or a part of an association oil placer claim prior to discovery, and resulted in permitting the grantee to own more than twenty acres in a single location, which is the maximum area a locator may own under the placer mining laws. It had been the custom for several persons to locate association placer locations and then, prior to discovery, to convey all of their inchoate undivided interests to one of their number or to a corporation. The right to do this prior to discovery had been denied by the Land Department and it was to overcome this adverse ruling that the statute was passed.


An amendment to this portion of the act limited mining locations in withdrawn areas to metalliferous minerals. 37 Stat. (1912) 497, 43 U. S. C. (1940) § 142.


This same question was involved in a placer location containing deposits of borax, and the court decided that, in the absence of a curative statute, such as that of March 2,
On August 25, 1914, Congress passed another remedial statute providing that where patent applications for oil lands within withdrawn areas were pending before the Land Department, the Secretary of the Interior was empowered to enter into agreements with the applicants for the disposition of the oil and gas produced, or proceeds thereof, until final determination of the title.

**Railroad Lands.** The fact that the Southern Pacific Railroad, constructed under the provisions of congressional railroad land grants, extended through the San Joaquin Valley in close proximity to potential oil-bearing areas resulted in claims by the railroad to the odd numbered sections which fell within the limits of these grants. Many of these sections proved to be immensely valuable for their oil deposits. Groups of locators challenged the right of the railroad by filing placer mining locations on many of them, on the theory that "mineral lands" having been expressly excepted from the railroad grants, the railroad could not lawfully obtain title to such potential oil lands. A test case was carried to the Supreme Court of the United States. This case involved placer locations filed on lands patented to the railroad company some fourteen years prior. The Court held that the issuance of the railroad patent was a conclusive determination that the lands were at the date of the patent not known mineral lands and that the patent could not be successfully attacked by those who had no interest in the land at the time the railroad patent was issued. Where patents had not issued for such odd numbered sections within the railroad grant limits, placer locations followed by discovery of oil would naturally result in their exception from the grant, and mineral contests were brought in the local land offices. The United States Geological Survey classified great areas embracing unpatented railroad sections as potential oil bearing lands, which materially aided mineral claimants.

1911, the mining law did not sanction such a prediscovery transfer whereby one person would acquire more than a 20 acre interest in a placer location. United States v. Ickes (App. D. C. 1938) 98 F. (2d) 271, cert. den., (1938) 305 U. S. 619.

48 38 STAT. 708, 30 U.S.C. (1940) § 104. This was an amendment to the act of March 2, 1911. 36 STAT. 1015.

49 Burke v. Southern Pacific R. R., supra note 16. This case also involved the question as to whether oil was a mineral, discussed elsewhere in this article.

The most serious attack on these railroad lands was made by the federal government itself. The outstanding case of this character challenged the validity of patents in the Elk Hills oil district of California, issued to the railroad company several years before suit was brought. The Supreme Court held that the oil-bearing character of the lands in question was well enough established by indications in adjoining lands "as reasonably to engender the belief that the lands contained oil of such quality and in such quantity as would render its extraction profitable and justify expenditures to that end,"\(^5\) and that these facts were well known to the officials of the railroad company at the time patent issued and, therefore, the railroad patents were cancelled. These valuable oil lands reverted to the public domain and became subject to the withdrawal orders.

State School Lands. It was inevitable that many school land sections\(^2\) in the oil bearing areas would be found valuable for oil and gas. Mineral lands were excepted from such grants.\(^5\) If at the date of approval of the respective public surveys of these state school sections they were known to be mineral, the state acquired no title but had the right to select in lieu thereof other non-mineral lands of the public domain. This state school "scrip", as this right was called, was extensively used in the attempt to acquire potential oil lands. Placer locators who were working diligently to make a discovery of oil found their rights seriously jeopardized by these "scrippers".\(^4\) The fact that such state lieu selections had to be "clear-listed" by the Secretary of the Interior before the scrip title attached saved the day for the mineral locators, for the Secretary refused to list the selected lands if there was any reason to believe that they were valuable for oil.

Many of the 16th and 36th sections had already been patented by the state. They later proved to be immensely valuable for oil. Some of these patented sections were sold for large sums and developed by their purchasers at great expense. After the executive order of withdrawal, the federal government took the position, how-


\(^{52}\) Under grants of Congress various states became entitled to certain designated areas of the public domain for educational purposes, etc. The right of the State of California to sections 16 and 36 of each township arose under the act of March 3, 1853, 10 Stat. 244, 247.

\(^{53}\) Mining Co. v. Consolidated Mining Co. (1880) 102 U. S. 167.

\(^{54}\) Buena Vista etc. Co. v. Honolulu Oil Co. (1913) 166 Cal. 71, 134 Pac. 1154, is a typical case of this sort.
ever, that the issuance of patents by the state did not necessarily conclude the question as to whether the lands were known to be non-mineral at the time of the public land surveys. The outstanding case of this character is *West v. Standard Oil Co.* The land involved was section 36 in the Elk Hills, Kern County oil district, valued at many millions. The public survey of the section had been approved in 1903. It had been patented by the State of California in January, 1910. A hearing was ordered by the United States Land Department to determine whether the land was known to be mineral at the date of approval of the public land survey. Secretary of the Interior Albert B. Fall, in 1921, after argument by counsel for the Standard Oil Company, dismissed the order for a hearing. Congress passed a special resolution directing the Secretary of the Interior to reopen the case and assert and establish the title of the United States to sections 16 and 36, which had theretofore been included by executive order in a Naval Petroleum Reserve. Secretary of the Interior Work, who had succeeded Fall, thereupon ordered another hearing. The Standard Oil Company secured an injunction from the Supreme Court of the District of Columbia, preventing the Land Department from proceeding with the hearing. This action was affirmed by the court of appeals. These decisions were reversed by the Supreme Court of the United States, that Court holding that since Secretary Fall had dismissed the order for a hearing to determine the mineral character of the land on January 26, 1903, on legal grounds, without having decided the factual issue of mineral character, it was incumbent on the Land Department to proceed to determine that fact. A hearing took place and the Land Department held that the land was known to be mineral in character on the date of the approval of the survey of the section and hence that title did not pass to the state but remained in the federal government.

---

56 This section adjoined lands patented to the Southern Pacific Company by the United States, which patents were set aside. See discussion of United States v. Southern Pac. Co., supra note 51, and text thereto.
57 43 STAT. (1924) 15.
58 Acting under authorization of Congress, the President had set aside from time to time as "Naval Petroleum Reserves" certain areas of withdrawn oil lands, the oil to be conserved and used for fuel for the Navy. See detailed discussion hereinafter.
59 State of California, Standard Oil Co. of Calif., transferees (1925) 51 Land Dec. 141.
**Dummy Locators.** Another ground of invalidity urged by the federal government in the case of association placer claims was that many of those whose names appeared as locators were not *bona fide*. In the wild stampede to locate these lands it was customary to make 160 acre locations, usually as quarter sections, which were the maximum sized placer locations allowed.\(^6\) This required eight locators, each locator being entitled to an undivided one-eighth interest in the association claim. The names of relatives and friends were used and there were instances where some of the names were fictitious. It was also quite customary for the co-locators immediately following the making of the location to quitclaim their rights to one of their number or to a company. This course of procedure had long been customary among mining men in making placer locations, whether of gold bearing gravels or non-metallic placer deposits. Where valid discoveries had been made and the co-locators each received valuable consideration for the transfer of their interests, such transactions were lawful. But in the case of oil placers, because of the cost and difficulty of drilling wells and making discovery, discoveries were often lacking, and in a great many instances no consideration was paid for the transfer of the undivided interests of friends and relatives whose names were used as locators. In the then recently decided case of *Cook v. Klonos*,\(^6\) it had been held that "the use [by a locator] of the names of . . . friends, relatives, or employees as dummies" so as to "locate for his own benefit a greater area of mining ground than that allowed by law" rendered the location invalid as to the undivided interests of such dummies. After the withdrawal of these oil lands by the government, its agents made investigation of the *bona fides* of locators of lands in the withdrawn areas and the result was a number of suits by the government to have locations of this character declared void in whole or in part.\(^6\) The fact that claims of this character had been purchased in entire good faith, without knowledge of any such fraud and that large expenditures had been made in developing oil, was held to be no bar to the government's right to recover the lands thus unlawfully located in the first instance. The courts did, however, hold the title to the association location to be valid, for at

\(^6\) 16 STAT. (1870) 217.


\(^6\) United States v. M'Cutchen; United States v. Chanslor-Canfield Midway Oil Co.; United States v. California Midway Oil Co., all *supra* note 42; see also Coalinga Hub Oil Co. (1911) 40 Land Dec. 401; Mckittrick Oil Co. (1915) 44 Land Dec. 340.
least 20 acres of its area if a single owner had succeeded to the title, or for as many 20 acre undivided interests as there were *bona fide* locators or owners, depending upon the circumstances.

The Leasing Act of February 25, 1920. For some ten years following the executive withdrawal of the oil lands of the public domain Congress took no action looking to the disposal of their oil content. Bills to provide for the leasing of these lands were introduced at each session, but, other than to hold hearings in the public lands committees of both houses, nothing was done.\(^6\) There was too great diversity of opinion as to how these withdrawn lands should be administered by the federal government, and the bitter opposition of those who had claims in the withdrawn areas, which the government was seeking to have declared invalid, added to the deadlock. The World War gave additional impetus to the government's policy of conservation of strategic minerals. Coal, phosphate, oil, oil shale, gas and sodium were grouped in this category.\(^6\) Finally Congress enacted what is commonly referred to as the "Leasing Act of 1920."\(^6\) By its terms, with certain exceptions, lands owned by the United States containing deposits of any of the above named minerals might be leased to citizens of the United States. This method of disposing of these specified minerals was a decided departure from the general policy of the government with respect to the disposal of its mineral lands prior to the withdrawal orders. Free mining, without the payment of any royalties to the government, was the outstanding feature of those mining laws. Deposits of metalliferous minerals are still subject to those earlier mining laws.\(^6\) The Leasing Act of 1920 was a reversion to the principles of the earliest federal mining law passed by Congress in 1807, already noted, which provided for the leasing on a royalty basis of public lands in the middle west containing lead\(^7\) — a policy later abandoned.\(^7\)

\(^6\)The printed reports of these hearings assumed voluminous proportions and amid this mass of material is to be found a fairly complete history of what was taking place in the oil fields, both prior and subsequent to the withdrawal orders.\(^6\)

\(^6\)Potash had been included in this group but the urgent need for making potash deposits immediately available for war purposes resulted in a special act of Congress providing for the leasing of lands containing potash. 40 Stat. (1917) 297.\(^6\)


\(^6\) 17 Stat. (1872) 91.\(^6\)

\(^7\) 2 Stat. 445, 488.\(^7\)

\(^7\) The 1920 Leasing Act provided for the issuance of a prospecting permit for not exceeding a two year period and not to exceed 2560 acres of land not within any known geological structure of a producing gas or oil field. A specified amount of drilling had
Although this leasing act set forth at considerable length the manner in which prospecting permits and leases could be acquired under its terms, and also prescribed the general provisions to be incorporated therein, obviously it could not contain the detailed procedure essential for its practical operation. Accordingly, the Secretary of the Interior was expressly "authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this act . . . ."\(^{72}\)

Amendments of the 1920 Leasing Act. The Leasing Act of February 25, 1920, has been amended many times.\(^{73}\) Most of these amendments are minor in importance.

to be done and the term of the permit could be extended at the discretion of the Secretary of the Interior. Upon the discovery of oil or gas the permittee was entitled to a lease of one-fourth of the land embraced in the prospecting permit, and to 160 acres, in any event, if that acreage was embraced in the permit. The lease was to be for a term of 20 years upon a royalty of 5% in amount or value of the production and an advance annual rental payment of $1.00 per acre, such rental to be credited against the royalties for that year. The permittee was also entitled to a preference right to a lease on the balance of the area included in his prospecting permit by paying a royalty of not less than 12\(\frac{3}{4}\) of the production, such royalty to be determined by competitive bidding.

Where the lands were already situated within the known geologic structure of a producing oil or gas field, not to exceed 640 acres might be leased to an applicant for not less than 12\(\frac{3}{4}\) of the production and an annual rental payment in advance of $1.00 per acre, such rental to be credited on royalties for that year.

The Act also provided for the relinquishment to the United States of all interests in lands held by claimants whose claims had been initiated prior to the executive withdrawal order of September 27, 1909, and upon payment to the United States as royalty of one-eighth in value at the time of production of all oil and gas already produced, the claimant would become entitled to a lease on such land for 20 years at a royalty of not less than 12\(\frac{3}{4}\)%.

\(^{72}\) 41 Stat. (1920) 450; 30 U.S.C. (1940) §§ 188, 189, 190, 191. These regulations, prescribing in great detail the various essential steps to be followed, were issued without delay on March 11, 1920. 47 Land Dec. 437. They have been amended and clarified so often that it would be confusing to attempt to give them in detail. They are to be found in the Land Decisions.

The amending act of March 4, 1931,74 made provision for co-operative or unit development of a single oil or gas field for the purpose of conserving its natural resources and authorized the Secretary of the Interior, whenever the public interest justified, to approve operating, drilling or development contracts regardless of acreage limitations and also the suspension or modification of development requirements of existing leases. All of the parties interested in a single pool or field must join in the agreement in order to give effective control of its production.76 Later legislation provided that oil lands controlled by states could be included in this cooperative or unit plan of development.78

The amending act of August 21, 1935,77 however, made a radical change in the provisions of the basic act of 1920 in so far as oil and gas lands were concerned. The policy of granting prospecting permits was discontinued, save for certain pending applications. Leasing the lands to the highest responsible bidder at competitive bidding in leasing units of not exceeding 640 acres, in compact form, became the exclusive method of securing the right to extract oil and gas from the public domain even on unproven oil and gas lands.78 The Secretary of the Interior has wide discretion in accepting or rejecting applications and bids for leases.79 This branch of the law is now largely administrative, though questions concerning such leases sometimes reach the courts.80

**Helium.** The rare gas, helium, which is lighter than air is a mineral resource related to the national defense because it is used as the lift-

---

76 Instructions (1931) 53 Land Dec. 386.
78 The royalty was fixed by the statute at 12½% in cases where production does not exceed 50 barrels of oil per well per day and not less than 12½% when the production exceeds 50 barrels of oil per well per day. The Land Department Regulations issued as a result of this amendment provide a sliding scale of royalties where the production exceeds 50 barrels per well per day. (1935) 55 Land Dec. 339; (1936) 55 Land Dec. 502.
ing agency in lighter-than-air craft. It is superior to hydrogen because it is not inflammable. Thus far the main supply of the world comes from certain oil and gas fields of the United States. For this reason the Leasing Act of 1920 reserved to the government the right to extract helium from petroleum gas produced from the lands leased by it and empowered the Secretary of the Interior to prescribe rules and regulations for such purpose. 81 This portion of the Act was amended September 1, 1937, 82 and the Secretary received additional power to control and sell the output.

**Naval Petroleum Reserves.** The wholesale private acquisition of the oil lands of the public domain under the placer mining laws, which created a potential threat to a future adequate supply of fuel oil for the use of the United States Navy, was one of the principal reasons originally given Congress by the executive branch of the government for the withdrawal of the remaining publicly owned oil lands from further private filings. On September 2, 1912, the President, acting under express authorization of Congress, 83 issued an executive order setting aside some of the withdrawn oil lands in California as “Naval Petroleum Reserve No. 1” to be held for the exclusive use and benefit of the United States Navy. “Naval Petroleum Reserve No. 2” was created by a similar order December 13, 1912. A third reserve was set aside in Wyoming in 1915 and also two shale oil reserves. While the plan was to set aside these lands in large blocks, with as few private claims included as possible, it was inevitable that there would be some. At first the Secretary of the Interior was authorized to enter into agreements with applicants for patent to lands embraced in these reserves and arrange for the disposition of the oil that might be mined for the benefit of the Navy. 84 The Leasing Act of 1920 85 had expressly excluded from its operation oil or gas lands withdrawn or reserved for military or naval purposes. An Act of June 4, 1920, 86 gave the Secretary of the Navy authority to take possession of all lands within naval petroleum reserves and to operate or lease the same for the benefit of the United States and exchange

82 50 STAT. 385.
86 41 STAT. 812.
the royalty oil for fuel oil, etc. An Act of February 25, 1928, gave
the Secretary of the Navy jurisdiction over all oil and gas leases in
Naval Reserves, theretofore administered by the Secretary of the
Interior under the provisions of the earlier acts. Later amendments
have been made for the purpose of meeting practical conditions af-
fecting the conservation of this reserved oil.

**Petroleum Conservation Legislation.** While conservation of oil and
gas is much broader in its scope than the conservation problems re-

---

U. S. C. (1940) § 236a; 52 STAT. (1938) 1252.

This consideration of the Naval Petroleum Reserves would not be complete without
some mention of a great national scandal which arose in connection with the leasing to
private corporations of certain extremely valuable and productive sections in these
Naval Reserves in California and Wyoming.

In the California case, E. L. Doheny, representing the Pan American Petroleum
and Transport Co., in 1922 negotiated leases with Secretary of the Interior Fall whereby
extremely productive oil lands in Naval Petroleum Reserve No. 1 were turned over to
the company which was to extract the oil on a royalty basis. As consideration, millions
of barrels of oil were to be delivered for the use of the Navy at eastern ports and at
Pearl Harbor, Hawaii. The company, at a cost of several million dollars, was also to
furnish storage facilities at Pearl Harbor for this oil. These facts are set forth in the
Court's opinion in Pan American Co. v. United States, supra note 80. The company
expended several million dollars in carrying out its part of the agreements, but was not
able to recover or offset these expenditures because of the fraud involved.

In the Wyoming case, generally known as the "Teapot Dome" case, Harry F. Sin-
clar, also in 1922, acting for the Mammoth Oil Co., secured a lease of oil lands in
Naval Reserve No. 3 on terms somewhat similar to those secured by Doheny. The facts
are detailed in Mammoth Oil Co. v. United States, supra note 80.

The granting of these leases in these Naval Reserves created such a public furore
that Congress, on Feb. 8, 1924, passed a resolution authorizing the President to have
suit instituted to cancel the Pan American leases. 43 STAT. 5. A Senate committee had
held hearings at which graft and corruption in obtaining the leases were exposed. Do-
heny had testified that he expected his companies to make a profit of $100,000,000.00
from them. Sinclair was convicted for refusing to answer questions put to him at these
hearings. Sinclair v. United States, supra note 80. Secretary of the Interior Albert B.
Fall was also convicted and sentenced for corruption on his part in granting these leases.
Cert. den., United States v. Fall (1930) 281 U. S. 757. Doheny was tried but acquitted
on practically the same evidence which convicted Fall. As part of the conspiracy to
lease these lands, Secretary Fall had induced President Harding to issue an executive
order placing the matter of leasing of lands within the Naval Reserves in charge of the
Secretary of the Interior instead of leaving it with the Secretary of the Navy, as pro-
vided by statute. This order was held invalid and the leases were all cancelled even
though, out of precaution, Edward Denby, then Secretary of the Navy, had been in-
duced to sign them in reliance upon the representations made to him. See the lower
court opinions in Pan American Co. v. United States (S. D. Cal. 1925) 6 F. (2d) 43;
(C. C. A. 9th, 1926) 9 F. (2d) 761; and the later opinions (S. D. Cal. 1930) 45 F. (2d)
821; (C. C. A. 9th, 1932) 55 F. (2d) 753, for the detailed facts in the case. President
Harding's untimely death in 1923 was, according to some, hastened by these and other
disclosures of graft and corruption by high officials of his administration.
lated to the public lands, some of which have already been discussed, yet, it is inevitably so interwoven with those problems that a brief outline of this legislation will not be out of place here. Those who heard the dire predictions of eminent experts in the early years of this century that the oil and gas resources of this nation would be completely exhausted in twenty or thirty years' time89 found it paradoxical and difficult to realize in the 1930's, that oil was being extracted from the ground in such quantities that it was glutting the market and resulting in a cut-throat price war.

Far sighted individuals, realizing that the wastage which was occurring could not continue without seriously jeopardizing our future welfare, sought some lawful way of controlling this excessive output. They were hampered in finding a remedy because oil mining was primarily intrastate in character and it was only when the oil and gas were transported from one state to another that federal authority to regulate commerce could be lawfully exercised. However, public sentiment was aroused and the larger producing companies agreed among themselves to curtail output. They were also able indirectly, through control of the major pipe-lines, to restrict the production of "independent" concerns using those lines. Nevertheless, unrestricted quantities of oil continued to be produced and marketed by some of these "independents" who seriously undercut prices, in violation of state restrictive action. Oil of this character came to be known as "bootleg", "hot", "illegal" or "contraband" oil.

This was primarily a problem for the states to solve and yet no

---

89 Van Hise, The Conservation of Natural Resources in the United States (1910). In his chapter on oil resources (ibid. at 47) Dr. Van Hise went so far as to urge that, because of the predicted impending exhaustion of our oil resources, the widespread and increasing use of petroleum for fuel and combustion purposes should be discontinued and the bulk of the remaining natural oil conserved for lubricating purposes only, which he deemed its highest and most important use. Dr. Van Hise, though an eminent geologist, did not anticipate the discovery of the immensely productive Oklahoma and Texas oil fields. These, added to new fields in California and to the prolific deep sands of then existing shallower fields rendered available through deeper drilling, have brought about this temporary superabundance. When he wrote, wells were considered deep which had reached 3000 feet. Recently a depth of 15,000 feet has been attained in oil drilling operations and there are wells now producing at over 13,000 feet in depth. There have also been developed methods of extracting more of the oil from the underground pools than was formerly possible. The immense reservoirs of potential oil contained in the oil-bearing shales have not yet been touched because of the increased cost of extraction, but the day will arrive when they will become one of the principal sources of petroleum. In spite of the plethora of oil which human enterprise and ingenuity have recently created, it is inevitable that the day is not far distant when we will be compelled to conserve in every possible way this life blood of modern mechanized industry.
satisfactory solution could be reached without cooperation of adjoining states and the federal government, for to permit unlimited production in one state while the state next to it was trying to curb excessive production would have been unfair in the extreme. Consequently, pursuant to the provisions of the Federal Constitution, an interstate compact was entered into by several of the oil producing states on February 16, 1935, which was ratified by Congress. This compact was also ratified by the states of New Mexico, Kansas, Oklahoma, Illinois (Illinois later dropped out), Colorado and Texas. Its term has since been extended by Congress from time to time. Its object was to provide for efficiency of operation, to prevent physical waste of oil and gas, and to limit production, not for the purpose of stabilizing price or creating monopoly, but in order to conserve this vital natural resource. Each ratifying state agreed to enact laws to accomplish this result.

All of the oil production states, even those which have no pro-
ration laws, have for some time had a more or less complete code of conservation laws and most of them have administrative bodies which supervise and regulate the mining of oil and gas. This is to prevent waste and impairment of physical conditions in the oil fields and is based on the police power inherent in the states.

California was one of the first of the public domain states to adopt legislation of this sort. The provisions are administered by the State Oil and Gas Supervisor acting under the Director of Natural Resources.

While California has twice, on referendum vote, defeated statutes enacted by the legislature providing for prorating of oil and gas production, it has in certain instances curtailed production under authority of one of the sections of the Oil and Gas Conservation Act, the primary purpose of which section is to prevent unreasonable waste of natural gas. In certain fields oil and gas are so intimately related that the gas assists in the raising of the oil to the surface by what is termed "reservoir energy" and also "the lifting power of the gas". If the gas is allowed to escape too rapidly it will mean that eventually less oil will be recovered from the oil sands because this lifting power of the gas has been wasted. There is a certain "oil-gas ratio" which, if put into effect, will produce in the long run the greatest quantity of oil from that particular area. The Supervisor has in many cases ordered that this ratio be maintained. These orders have been upheld as a proper exercise of the police power.


In addition to the cases upholding proration cited in note 94, supra, see Patterson v. Stanolind Co. (1939) 305 U. S. 376, which, while dismissing the appeal, nevertheless upheld a statute of Oklahoma authorizing well-spacing units. In this case the owner of a lot containing less than ten acres, which was the well-spacing unit fixed by the state commission, was denied the right to sink a well on his own lot. However, he was permitted to share in the oil and gas produced from a well located on adjoining property owned by another.


Voluntary curtailment of production has for many years been resorted to in California. For the most part it has not been satisfactory because there is no way of binding operators who refuse to agree.  

The federal government purposely delayed legislation designed to conserve oil, pending the formation of the state compact above described, but, as soon as that was assured, it immediately passed a statute known as the Hot Oil Act and also as the Connally Act, after its author, "to protect interstate and foreign commerce from the diversion of, and obstruction of, and the burden and harmful effect upon, such commerce caused by contraband oil..." "Contraband oil" was defined to mean petroleum, or any constituent part thereof, produced, transported, or withdrawn from storage in excess of the amounts permitted under the laws or regulations of a state. Penalties were provided for violations. The federal government later provided for the regulation of the transportation and sale of natural gas in interstate and foreign commerce. By this joint action on the part of the federal government and of the states which entered into the compact, the program for the conservation of oil and gas has been rendered much more effective.

The Department of the Interior now has a Petroleum Conservation Division, created December 1, 1937, by executive order, to assist the Secretary of the Interior in the administration of the provisions of the Connally Act; to cooperate with the Interstate Oil Com-

---

100 The situation has been aggravated by the discovery of important oil and gas deposits existing beneath town lot subdivisions. Unit drilling under such conditions is a practical imposibility, for each lot owner insists on maximum returns within the shortest possible time. There is one outstanding case of voluntary curtailment in California. A Kettleman North Dome Association was formed in the Kettleman Hills area which took charge of the entire production of the dome, with the exception of one company, which nevertheless, cooperated fully in the unit plan. Wells were drilled at economic points, irrespective of ownership, and the production equitably divided. In this case the holdings were large and the parties interested fully recognized the value of cooperation.

101 49 Stat. (1935) 30 (8 days after the state compact was entered into), which has been amended from time to time so as to extend its operation to June 30, 1942. 50 Stat. (1937) 257; 53 Stat. (1939) 927.

102 United States v. Gilliland (1941) 312 U. S. 86, has upheld these penalties. This act of Feb. 22, 1935 embodied and reenacted the principles of section 9(c) of the National Industrial Recovery Act regulating commerce in petroleum, which section had been invalidated on January 7, 1935 by the Supreme Court. Panama Refining Co. v. Ryan (1934) 293 U. S. 388. Schechter Corp. v. United States (1935) 295 U. S. 495, later held the entire N.I.R.A. invalid.

pact Commission created by the state compact above described, and
with the oil and gas producing states; to prevent waste in oil and gas
production; and to keep in touch with the supply of, and consump-
tive demand for, petroleum.

In the light of the many erroneous predictions as to the early
exhaustion of the natural sources of petroleum, which were so freely
made some thirty years ago, one would hesitate at this time, to ven-
ture to put himself on record and give even an approximate date
when that day will arrive. This is especially so since our recent prob-
lem has been to devise some lawful means of curtailing and prorating
the over-supply that human ingenuity and exploration have brought
about. Nevertheless, we know that this natural supply is not inex-
haustible. At the rate this resource is now being depleted, the day is
certain to arrive, sooner, perhaps, than many of us anticipate, when
its conservation will become increasingly vital to the general wel-
fare.104 We may expect, therefore, to see the existing laws designed
to prevent waste and bring about equitable production and distribu-
tion increasingly strengthened and broadened.

---

104 That day will be materially postponed by the utilization of our vast oil-shale
deposits and by the distillation of coal, which exists in equally vast amounts.