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Separate Views of John Kenneth Galbraith - Interim Report of the Oil Shale Advisory Board

Oil Shale Advisory Board

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The impending possibility of commercial development of the vast concentrations of oil shale has added a new dimension to the expanding field of natural resources. To provide the legal profession with a source of scholarly materials on the law of the development and conservation of these natural resources, the LAND AND WATER LAW REVIEW presents two articles reflecting different viewpoints relating to the development of public domain oil shale land. The first article is a presentation of the separate views of John Kenneth Galbraith as a member of the Oil Shale Advisory Board to the Secretary of the Interior. In discussing the development of oil shale in view of alternative existing energy supplies, the public interest and wise conservation practice, Professor Galbraith refutes the charge that government is delaying development of the resource and suggests a businesslike approach to the oil shale problem.

SEPARATE VIEWS OF JOHN KENNETH GALBRAITH--
INTERIM REPORT OF THE OIL SHALE ADVISORY BOARD*

THE CONTROLLING FACTS

THIS report is right in stressing that the oil shale deposits, underlying some 5,118,000 acres in Colorado, Utah and Wyoming, are a publicly owned resource of great magnitude. Several hundred years' supply of petroleum at present consumption rates exist in these beds on lands owned by the people of the United States. Foresighted efforts in the past have kept these lands from those who, under the sanction of private enterprise, view public property only as an opportunity for personal profit. Having withstood thoughtfully designed raids in the past, it is important that the government show equal wisdom and restraint in the present on behalf of our resources for the future.

(2) The American people are not presently aware of the wealth they own in these deposits. It is important both for the conservation and wise and equitable development of

* This article is a reprint from the Interim Report of the Oil Shale Advisory Board to the Secretary of the Interior of the separate views of John Kenneth Galbraith as a member of the Board.

these resources that there be the widest public knowledge of this endowment and the issues concerning their exploitation. An informed public will be a major source of strength to officials seeking sound conservation policies. We urge that all conservation-minded members of the Congress and the public inform themselves fully on this vast resource and policies concerning its use.

(3) The amount of oil underlying any given area varies greatly. But the enormous concentration under the richer areas, as noted in the report, must be stressed. In the richest parts of the Piceance Basin some sections of 640 acres are estimated to contain 2½ billion barrels of oil. Current *total* consumption of oil in the United States is about three billion barrels annually.

(4) While some eighty-five per cent of the shale measured in barrels is in public ownership, the remainder is in private hands. Much of this is owned or controlled by the larger oil companies. Present known private oil company holdings of 168,000 acres contain an estimated 31 billion barrels, the equivalent of ten years' current *total* consumption for the United States.

(5) As noted in the report, while high quality oil has been produced in small quantity from oil shale, an economical process of recovery has yet to be perfected. While it seems likely that such a method can be developed, the costs of such development are unknown. Hence the eventual costs of production of shale oil are unknown.

(6) There is no showing of urgent economic or strategic need for oil from the shale in the present or near future. The domestic petroleum industry is operating under severe government restriction. Imports are subject to quota. These sources are almost certainly cheaper than oil from shale by prospective processes. Hence there is no pressing peacetime need for oil from shale. Given the most rapid development, the share of oil from shale in total production will be negligible for many years. Hence it will not, in the foreseeable future, be an important wartime resource replacing any important present source of petroleum. We cite this because

strategic arguments are regularly advanced for oil shale development. They appear to reflect only the common effort to find a national security justification for action that individuals or groups would find in their economic interest.

(7) There is strong pressure to develop an oil shale industry in the states involved for the beneficial effect on local incomes, employment and property values.

(8) The major oil companies are naturally concerned with protecting their position in the event of the development of an oil shale industry by buying or controlling oil shale acreage. However with one or two exceptions they seem not now inclined to incur substantial development costs to produce shale oil. Certainly for companies with alternative sources of petroleum, the economic attraction of oil shale is not high. The incentive to control oil-bearing acreage is thus, for the time being, much greater than the incentive to produce from it. This incentive, however, is very strong and strongly indicated by present efforts to obtain acreage in the area. The Shell Oil Company has proposed that it be granted leases of 50,000 acres of the oil shale lands in the central area of the Piceance Basin. These are estimated to contain 150 billion barrels of oil. This would suffice to cover *all* of the Shell's oil requirements at the present rate of refining for an estimated 660 years. It is the equivalent of roughly five times the total of *all* proved petroleum resources in the United States. Sinclair has made requests that would suffice that company on the same basis for an estimated 226 years. Modest requests from Humble and Continental for approximately 5,000 acres would cover the total present production of each company for 54 and 27 years respectively. We believe that much of the current interest in leasing is related not to a desire for development but to a desire to control land. We stress again the richness of seemingly small areas well below what many might characterize as a "commercial scale" lease. The Department of the Interior estimates that some 1,000 acre tracts in the heart of the basin contain as much as 3 billion barrels of oil, the equivalent of a year's consumption at current rates for the United States as a whole. As noted, 5,120 acre tracts in this area contain as much as 18

billion barrels of oil, the equivalent of 55 per cent of the nation's total proved reserves of petroleum.

(9) Part of the oil shale lands belong to a Naval oil reserve. This and the very large quantities of oil in small acreages, and subject to requests such as the above, would seem certain to stimulate recollections of past experience with Teapot Dome and Elk Hills. This suggests that public policy toward these lands should be even more than normally circumspect.

CONCLUSIONS

(1) We agree that it is not sound policy to lock up important resources. We gain in wealth by using our natural wealth and doubtless will continue to do so. There is good reason, accordingly, to seek the development of effective and economical processes for recovering oil from shale.

(2) Alternative fuel supplies are, however, wholly sufficient to permit orderly and equitable development of shale oil resources. Extravagant, windfall or unknown rewards need not be paid for hurried development. There need be no irrational or helter skelter alienation of this public resource. All who believe in conservation must resist such course.

(3) The interest of the people of the immediate area in development is understandable. But the resource in question belongs to all the people of the United States. Their interest is paramount.

(4) In the early deliberations of the Board it was urged that development was being held up by the unavailability of public lands. On examination this contention fails to stand up and little was heard of it in our later deliberations. Development is *not,* in fact, now being restricted or curtailed by the fact that the larger part of the reserves are in public hands. Oil companies that are as competent as any in the country for development now own in fee simple shale resources far beyond any conceivable requirement for long term development. They are being deterred not by government ownership of other land, not by fear of what the government may do with these lands, but because of the costs

of development and because the further economics of production, as compared with alternative costs of crude oil, are either unclear or unattractive. We conclude that the charge that government ownership is holding up development is based on either ignorance of the size and richness of present private oil company holdings or an effort to turn local pressure for development into pressure on the Secretary of the Interior to lease the lands.

(5) A case has been made, by some members of the Board, for leasing public lands "in commercial size leases" of otherwise unspecified size to oil companies, including those that now are holding extensive private lands, on terms that would encourage them to do research and development on shale oil production. The leases would be conditional on spending specified sums for such research and development in the field of shale oil production. Any such course of action must be rejected. It would be inconsistent with wise conservation practice and gravely damaging to the public interest. Specifically:

—The cost of development is unknown.

—The cost of production is unknown.

—The recoverable value of oil in the land offered for lease is imperfectly known.

—Given these unknowns the government would be offering a subsidy of unknown value for a development of unknown cost promising a return of unknown amount. This amounts to dispersing public property while wearing multiple blindfolds. It would be justified, if at all, only by the absence of orderly procedures or the need for greatest haste. Neither justification exists.

—Genuine research effort is impossible to measure. The company that put on a show of research cost and effort and waited for a research breakthrough that it could imitate might well profit equally with a firm that did serious work.

—While competition has virtue in many spheres, it is not the normal recourse for research on major new technologies. In the case of nuclear development, space development, military development or water desalinization, the established practice is to contract with one or a small number of firms for a defined task.

—The foregoing view is supported, at least partially, by the oil industry. One company, in its presentation to the Oil Shale Advisory Board, noted that intelligent leasing would first require further research and development work and that to issue leases contingent on development would be impractical.

—Those supporting this proposal speak of Research and Development leases—R & D leases—as though they were a commonplace practice. In fact, the Department of the Interior assures us that it has no precedent for the grant of a lease to encourage "research and development on underdeveloped industrial processes" and that it has never issued such a lease.

—Leases seriously contingent on development would be possible only for large firms with significant research establishments. Smaller independents would be excluded.

—As noted, no one has defined a commercial size lease. In the absence of such definition, and having in mind the large quantities of oil underlying very small acreages, extremely large quantities of oil could be alienated in the course of leasing seemingly very modest areas of land. We do not assert that this is the purpose of the "commercial-sized" lease, but plainly it could be the result.

—The main body of the report rightly speaks of the need for protecting landscape, preventing pollution and conserving water. But what is required here will depend on the recovery process employed. This will vary greatly with the process employed. It will be totally different for retort and *in situ* recovery. The

proper conservation practices cannot be specified if it is not known what practices will be required.

—The leasing of very small tracts for Research and Devlopment is merely the use of a smaller amount of public property as a subsidy to development. And again what is "small" remains unspecified. (One one-hundredth of the request of Shell or Sinclair would still be a great deal of oil.) In informal conversation it has been suggested that small lease might be not more than forty acres. This would not involve serious alienation of public resource. But it is difficult to say that it would be any incentive especially to companies which now own, in fee simple, many times this area. We reluctantly conclude that the small R & D lease came into the conversation only when the "commercial-size" lease could no longer be defended and on the theory that to alienate a little public property for an unknown result is better than to alienate a lot for an unknown result.

—We conclude, accordingly, that the R & D leasing would result only in transfer of lease rights to private owners and there is no certainty or strong likelihood that it would lead to development. It would thus be disappointing to local communities and the region. Their interest, we believe, is in far more secure and certain development procedures that are unclouded by the danger that land will be alienated, in accordance with the primary present interest of producers, and not developed.

(6) There is a businesslike, certain and straight-forward course of action. It is for the Department of Interior, under appropriate authorization, to enter into contracts with interested firms, tested by competence, to develop methods of mining and processing or *in situ* recovery of shale oil. This is the established procedure for work of this kind. It is safe, orderly, economical and consistent with the public interest. The resulting process or processes would then be available on general license. This procedure will require public funds.

But it is obviously unsupportable economic procedure to try to save dollars by dissipating public property of unknown but much greater value. This procedure will be no more inimical to private enterprise than similar government research and development contracts held by hundreds of private companies including oil companies. Suggestions to the contrary are merely a smoke screen designed to exclude a prudent government policy for the development of this resource. We note that the most ardent advocate of R & D leases is favorable to all forms of government research and government control except that which might be paid for with oil shale lands. This is opposed.

(7) Once a process (or processes) is developed and proven out rates of recovery and costs will be known. With modest additional expenditure on drilling the government can establish the value of acreages which it chooses to lease. It can also specify the conservation practices that are required. It can also specify the rate of development, since there is known process, which is necessary to keep the lease in good standing. It can also relate the amount of leasing to need. And, since process, costs of production and the value of the deposits are known, it can negotiate or otherwise issue leases which allow a fair return to the companies and insure an equitable return to the people of the United States for their property.

(8) Under the foregoing procedures development will go forward and without risk that leasing will be a cover not for development but merely for the control of the land.

Under this system *necessary* public land would of course be made available to the contracting firm. And it is consistent with this proposal that necessary land be made available to firms wishing to do research on their own account and for this special purpose. This is especially justified if the firm does not have land in the area. This is further discussed in the associated concurring statement.

(9) Assuming that the R & D leases are serious undertakings, and not devices to gain control of the land, they still exclude companies incapable of undertaking research on a serious scale. The above procedure would allow of the par-

ticipation of any company able to finance the known recovery process.

(10) Leasing may well be preferred by at least some of the oil companies. This is natural. Even with grants of land far smaller than those presently being requested, it promises to provide a large and potentially valuable resource for a modest cost. That leasing may convey large capital values for a modest development outlay is not an argument in its favor.

(11) The fact that competitive leasing may work well for petroleum exploration is no argument whatever for its use to encourage research and development. The two situations have nothing in common except the end product.

(12) We have been told that the Congress will not authorize appropriations for contracts for the development of oil shale processes. Rather it will succumb to pressure from some oil companies and aspiring lease holders to resist such a course of action. This is an admission that the real interest of those resisting such appropriation is the alienation of the land not the development of the resource. Such obstruction is obviously not a mandate for Executive action that plays into the hands of those who obstruct.