

Land & Water Law Review

Volume 6
Issue 1 *Symposium: An Analysis of the Public
Land Law Review Commission Report*

Article 22

1970

Discussion: Oil and Gas

Symposium

Follow this and additional works at: https://scholarship.law.uwyo.edu/land_water

Recommended Citation

Symposium (1970) "Discussion: Oil and Gas," *Land & Water Law Review*. Vol. 6 : Iss. 1 , pp. 235 - 240.
Available at: https://scholarship.law.uwyo.edu/land_water/vol6/iss1/22

This Symposium is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

LAND AND WATER LAW REVIEW

VOLUME VI

1970

NUMBER 1

DISCUSSION: MINERAL RESOURCES (OIL AND GAS)

**Utilization of the public land licensing authority
as a means of insuring environmental protection.**

**The need need for the public lands to be devoted
to exploration and development through leasing
of the lands to private development.**

**Possibility of state and local action as a further
method of environmental control.**

MR. LAUGHLIN: I'd like to call to your attention one item contained in the Public Land Law Review Commission's *Report* found on page 327, Appendix F of the Commission's *Report*. You will note that a table shows a comparison of federally owned lands in state areas. The table gives the total state land area and the totally federally owned land of all agencies combined and then the percentage of the state. For example, I would like to point out Wyoming. Wyoming has land area of 62,343,040 acres and of this over 30,000,000 acres is federally owned land. The percentage is about 48 per cent. I would like to emphasize that this table is talking about surface area only. In the state of Wyoming, there are some 10,000,000 acres which have been patented to private ownership, with a reservation to the United States of oil and gas. So in order to get the total oil and gas ownership in Wyoming of the federal government, we must add about 10,000,000 acres to the 30,000,000 acres which makes approximately 40,000,000 acres which belongs to the federal government in the state of Wyoming. Percentage wise that is approximately 63 to 64 per cent. I point this out to give you some idea of the impact or magnitude of federal ownership in a state like Wyoming.

MR. HOLLEMAN: While the table is open, I would like to call attention to the percentages of three different states. For future reference please contrast the percentage of Texas, Oklahoma and Louisiana with Wyoming. These states are primarily the market demand states. This will relate to a point which we will discuss later. (*supra* p. 225).

MR. PEARL: The federal government has 60 billion acres for which the surface has been patented. The government has the reserved mineral interest in this land. This is not reflected in Appendix F.

MR. LAUGHLIN: Throughout the many meetings of the Commission with the public, the advisory council, and government representatives, the mineral industry took the position that the 1920 Mineral Leasing Act and all of its amendments are devoted to exploration and development of public lands of the United States through the leasing of these lands to private enterprise. That purpose and objective can best be attained under the present system without extensive changes as Burns Errebo pointed out. This is just about the position that the Commission took.

MR. PEARL: In reference to the Commission's recommendations on oil shale claim acquisition, it has been presumed this would be the acquisition or condemnation of only valid claims. This is a misconception of the recommendation. The idea is to find expeditious means of clearing the claims, whether they are valid or invalid. Maybe in some cases condemnation is the answer. From my own experience claims would be condemned and the matter of just compensation would be determined by the court. In that court procedure, the entire question of validity would be presented, and if the claim were not valid, there would be no payment. If the claim would be valid, there would be some payment or compensation made, but in the use of condemnation procedure, the United States can obtain title free and clear. One advantage we had in condemnation proceedings in Arizona, for example, was that the attorney general could compromise or settle these matters once they were in condemnation proceedings. You were able to wipe out these claims without going through the lengthy

process in each case, but even if you did go through the complete process, in the meantime the United States would have the right to use the land for the purposes which the Commission envisioned.

Burns Errebo suggested that the consensus of the Commission was basically the function of pointing out the problem without finding solutions. This is not actually right because the consensus was also present on the solutions to the problems although it did not mean that each of the members subscribed to each of the specific means of the 400 recommendations. Now remember there are 400-odd recommendations and maybe more if you break them down. The underlying broad principles were concurred with by all. The consensus goes forward to correcting these problem areas in the means set forth in the *Report*.

Burns Errebo also raised the question of whether present laws are inadequate to compel compliance with anti-pollution standards. In other words, why should an extra means be utilized through the public land licensing authority? Well, in the first place, if we are going to protect the environment, we should use every tool in our grasp. This licensing authority happens to be a tool which the government has. The Commission's viewpoint was that this additional tool should be utilized to insure additional protection of the environment.

MR. BALDWIN: I had a discussion before I left Washington with a young lawyer who is doing a survey of the pollution laws for a large industry from the standpoint of what the company can and cannot do. His conclusion was that the company could get away with a great deal. The pollution laws were not very effective. Being a "white hat", he was very disturbed when he asked me if indeed his conclusion was valid. Although I had not looked at these laws with that kind of aim in mind, I had to agree with him that there were so many loopholes, especially in regard to air and water controls in intrastate pollution, that the laws were not very effective.

Recommendation 23, which would possibly result in the cancellation of a lease conferring the right to use the public

lands if the environmental control measures governing operations off public lands were not observed, is a fairly strong and sensible recommendation. The contention that this should not be applicable to industry is very disappointing to me. Whenever you have effective regulations or effective procurement regulations for the use of public lands, you can expect some real opposition because industry realizes that the regulations will be effective and they do not want it. This proposed measure could be effective although the Commission does not agree as to what is a violation of law under the recommendation.

Our previous discussion of mineral policy on public lands led us to a kind of a contrived consensus or state of lethargy. The reason for this is that you cannot discuss mineral policies on public lands without regard for the remarkable waste of our resources through both manufacturing and consumption. In the first place, we do not recycle our waste. A good example of this is the aluminum industry which uses much of our electricity. Aluminum itself is very seldom recycled. Another point is that since World War II, we have used a great deal of new materials in our manufacturing. Mercury is just one example. The more we do this, the more demands we have on our mineral resources and the more pollution problems we have. We really have to look at our manufacturing process with regard to these demands we have on our minerals. We cannot just look at the public lands and say we need more because we are using more. The other thing is that we have got to look at consumption. For example, you cannot continue to develop vehicles that waste our oil and gas resources, as we now do; nor can we look to the use of our energy without regard to the development of new energy sources. We know that the oil and gas is finite. We have to develop more economical uses of these limited fuels.

We know that the import quota and the depletion allowance has an effect on what kind of production of oil and gas we get from our own public lands. Yet the point I would make is that the environmental cost of shipping is pollution of the ocean. This is having increasingly disastrous results on the

ocean and its resources. The danger is such that the environmentalists should view the development of our domestic supply of oil and gas in a more favorable light. This is a point which the oil industry has not made which it might make, and it may be that on the balance that utilization of the domestic source would be less of an environmental cost than shipping.

MR. PEARL: In some areas where there are inadequate measures for the protection of the environment, the fault lies with federal statutes which failed to define what should be done. The federal government defers to the states, and often the states have an absence of law. The only underlying principle which the Commission adopted was that the federal control of lands should never be used as a shield to permit lower standards than those required by the laws of the state in which the lands are located. So if the laws of the states are higher, they will be used. However, the Commission specifically recommends that there be special environmental standards placed on the particular development. It never suggests that failure to meet some pollution law should be the basis for cancellation of a lease. However, in the contract that is entered into by the contractee or the permittee or lessee, depending upon the system being used, the rules of the road will be laid out in advance, and you will know what you have to live up to. You get, at that time, the determination of what environmental protections are important. The only thing that the Commission says specifically is not to give a new lease to someone who is in violation of environmental standards.

MR. CLARK: One of the other areas that has been discussed glosses over a very important area that is very complex and difficult. Obviously we do not have the time to discuss this in detail, but I should mention it here for the record. The whole idea of encouraging competitive bidding was certainly foremost in the minds of the Commissioners. We did not want to discourage economic activity, but you must remember that one of the functions of government is to discourage monopoly. The whole idea of having a flexible system for bonus, royalty and rental bidding was not necessarily aimed at oil and gas. This was aimed also at all other minerals if they came under

a leasing system or a hybrid system where there would be flexibility, where there would be advantage to those persons who wanted to have the scale of royalties lowered, etc. The idea was to promote greater flexibility and to encourage development. We wanted to increase competition; not to discourage competition.

In respect to the state conservation practices, I hope all of us here are realistic enough to know that the states of Louisiana and Texas virtually control the prices of certain types of oil. Let's not kid ourselves. The Interstate Oil Compact Commission is a very nice document and in paragraph five it states it is not price-fixing and so on. The outer continental shelf is involved in that kind of a problem; so when we talk about oil and gas on the outer continental shelf, we talk about the upland areas. The Commission is not out of sympathy with the independent producers who have to operate against these large organizations, but the United States is never going to bend its knee to local conservation practices which are really local production practices. That is what the Commission said and meant, and that is what is in the *Report*. I just want to make this by way of observation that that is the way it is.

MR. MOCK: My reaction is very simple. We wrote the *Report* and it is too late to rewrite it. I am interested in what is read rather than what we thought we said.