A SYNOPSIS OF THE RESPONSES RECEIVED BY THE DEPARTMENT OF THE INTERIOR IN ANSWER TO SECRETARY UDALL'S REQUEST FOR SUGGESTIONS ON THE DEVELOPMENT OF OIL SHALE ON THE PUBLIC LANDS

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It is a real pleasure for me to meet with you here in Golden on this auspicious occasion. May I congratulate the Colorado School of Mines and its officials for undertaking the establishment of this forum where all those interested in the development of a new enterprise based on the vast oil-shale lands of the West can gather to discuss their views, share their opinions, and consolidate their convictions.

The Department of the Interior, in response to Secretary Udall's invitation, has received more than 200 suggestions and plans for the formulation of a program leading to the orderly conservation and development of the federally owned oil-shale deposits in Colorado, Utah, and Wyoming. Some of the responses related only to new techniques or processes for mining, retorting, and utilization of oil shale and shale oil and all of these have been carefully considered by the Bureau of Mines and other appropriate groups in the Department. Each response has been or will be acknowledged.

The majority of the expressions dealt with the present major problem — a policy or plan for regulations leading to the leasing of the federal oil-shale lands in such a manner as to yield a sensible, proper development of our oil-shale resources. The recommendations of the majority of these expressions were as follows: (1) Rescind President Herbert Hoover's Executive Order No. 5327 of April 15, 1930, for the withdrawal of oil-shale lands from leasing, (2) begin leasing of oil-shale lands immediately, (3) establish a sliding-scale royalty from 5½ to 7½ percent, (4) limit the size of leases to 5,120 acres, and (5) grant leases on a first-come, first-served basis, or on a competitive-bid basis for simultaneous offers.

The simple rescinding of Executive Order No. 5327 would create more problems than it would solve and would not be in consonance with the many changes and amendments made by the Congress in the Mineral Leasing Act of 1920, and with the regulations promulgated by the Secretaries of the Interior under these laws. The numerous and helpful

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suggestions that have been made, and those that yet will be made, will be invaluable in a considered assessment of the situation and in the solution of our problem. Many of you here now sent us your suggestions. One fact that stands out is that we must proceed carefully in order to establish the very best basis for the development of our coming oil-shale industry.

The responses relative to Executive Order No. 5327 were almost unanimous in recommending that the restrictions be removed immediately or in the very near future. There were expressions of caution in several letters showing that we must have a sound program to carry forward before the opening of these lands. Those advocating partial lifting of the withdrawal were thinking in terms of encouraging development through limited tract leasing for research and development programs. It is believed that the majority interpreted the Executive Order covering public lands as being the main reason an oil-shale industry is not in operation today. I think it is worthwhile to note that this belief does not accord with the facts. A substantial portion of the Nation's oil shale reserve is in private ownership. In the Piceance Basin of Colorado, for example, almost thirty percent of the total oil shale acreage is in private hands. It is apparent that technical and economic factors have delayed the start of the industry.

Comments for the removal of existing regulations were widely varied. To some, this complete removal meant that a more tailored set of regulations could be instituted when new policy has been set by the Department. Complete replacement was proposed by some responses, so that regulations could be issued that would be more compatible with limited research and development type leasing. Others believe that the existing regulations were usable in their present form, or that with modification and amendment they could be made workable. Some people suggested that the present regulations were adequate for limited leasing and, based upon experience gained, could be altered to fit future adjustments felt necessary by the Department.

Surprisingly, only a limited number of responses made concrete suggestions for new legislation to replace provisions of our present mineral leasing laws and regulations, if the ban on oil-shale leasing were lifted.

It was gratifying to see among the response a recognition of the functional problems that must be solved before development of oil shale public lands can occur. Two main areas were recognized as of paramount importance to making these lands available for development. First, problems related to multiple use of these lands must be solved as dual usage is prevalent on almost all parcels which contain valuable oil shale. In much of the area a conflict between mineral deposits exists, coupled with the surface use that will conflict with known oil shale recovery processes. It was suggested that multiple use be clearly defined and where conflicts occur, the lands be made available for only one type of mineral or surface development. In the mineral area, petroleum, natural gas, sodium, and oil shale were mentioned as having overlapping development problems.

The surface must also be considered from the standpoint of existing improvements, water, wildlife and hunting.

Secondly, the problems arising from the unpatented mining claims that cloud the title of large portions of public land were recognized as being in dire need of solution. There were suggestions that the Department adopt a liberal attitude in bringing many of these claims to patent; to allow the courts to resolve their title; possibly to have a specific period for final right of patent on all outstanding claims, or, in a sense, declare an "open season." Where lands were to be leased with unsettled title, a moratorium was suggested for the lease rentals, obligations and terms upon issuance, until title was cleared.

If I may divert from this synopsis for a moment, I would like to interject the action that has been taken by the Secretary in issuing a legal opinion rejecting patent applications for more than 250 oil shale placer claims on the Colorado Plateau. The decision upheld an earlier action by the Bureau of Land Management's Land Office in Denver.

The issue in this appeal was whether the applicants are entitled to take advantage of a 1935 Supreme Court opinion holding that mining claims could not be canceled for failure to perform annual assessment work as required by the mining laws. Each of the claims involved in the ruling had been canceled by Departmental rulings issued in the early 1930's before the Supreme Court's decision.

In making this announcement, Secretary Udall pointed out that the Department intends to move in an "orderly and expeditious way" to develop a program for the utilization of the oil-shale resources. The Bureau of Land Management was directed to identify all remaining unpatented oil shale mining claims in the States of Colorado, Utah, and Wyoming, and to begin proceedings in each case in which it appears that the claim may be invalid. As to such cases which are not now the subject of contest or of patent application, the Bureau will, as soon as possible, initiate proceedings to test the adequacy of the discovery on which the claim is based and to assert any other ground for contest which might be justified by the facts.

In determining the validity of any claim the claimant has the burden of proving (1) that a valid discovery had been made prior to February 25, 1920, the effective date of the Mineral Leasing Act, or (2) that mineral had been exposed or found within the boundaries of the claim which, although insufficient to constitute a valid discovery, was connected with or led to valid discovery after February 25, 1920, as a result of work being diligently prosecuted on said date and diligently continued thereafter to such discovery.

To qualify as valid the discovery must have been such, on the date it was made, as would justify a person of ordinary prudence in the further expenditure of labor and means, with reasonable prospect of success, in developing a valuable mine.

The Bureau was provided with the following guidelines in applying the test of discovery:

a. The fact that any given deposit of oil shale may be a valuable resource for future use does not render the discovery valid under the mining laws unless a person of ordinary prudence would be justified in the further expenditure of labor and means with the reasonable prospect of developing a valuable mine.
b. The finding or exposure of an isolated bit of mineral or quantities of low-grade mineral, not connected with or leading to valuable mineral deposits, will not in itself be considered a sufficient discovery.
c. The mineral deposit actually found or exposed by the locator must itself have been of such character as to meet the test of discovery without regard to other physical evidence or information not obtained from within the boundaries of the claim from which the existence of substantial values beneath the surface may be inferred.

One of the elements in the application of the standard test of discovery will be the question of the economic or physical value of oil shale. The lack of any economically or commercially feasible method of extraction and production of shale oil from oil shale is a relevant, although not necessarily decisive, consideration in determining whether a discovery was made. In this regard, the mere showing of an outcrop of the Mahogany Ledge, in circumstances which heretofore have provided the basis for patent, will no longer be accepted as prima facie evidence of compliance with the requirements of the mining laws. This does not mean that the claimant is required to demonstrate the immediate marketability of oil shale as is true in the case of certain non-metallic minerals of widespread or common occurrence.

Now to return to our summary, we have remaining categories of leasing programs and lease terms that were suggested. The overall leasing programs mentioned just about covered the spectrum of possibilities. Noncompetitive leasing with simultaneous filing similar to the present practice in use of oil and gas leases on public land was proposed with the reasoning that it gave small and large operators an equal chance. Others were against this system because of the large initial costs required before a return is realized on the investment. Those suggesting a competitive bid system put forth several ideas including bonus cash bid, oral bidding, sealed bids, research and development provisions with acceptance of best plan, or other provisions that would foster development and not leave the lands idle. Additional suggestions touched upon the necessity for allowing nomination of areas, provisions for unitization, land exchange to solidly block out development tracts, limitation of number of tracts to be made available for leasing, and limitation of number of tracts each individual or company may hold. The use of a checkerboard system was suggested as a possible means for the Government to obtain full value from the oil

shale after development has started in lieu of leasing, some writers thought that research and development contracts could be entered into by the Government with interested parties willing to put up substantial sums of money.

Expandable holdings were suggested that would include performance and cancellation clauses to protect the Government's interests. In some responses the appointment of committees was proposed. These were to be either governmental or combination of industry and governmental representatives which would study the alternatives and make recommendations on the best approach for fostering development.

A majority of the letters included lease provisions which the writers would like to see adopted. Primary terms mentioned for leases were 5 years, 10 years, 15 years, and 20 years with the usual provisions for lease extension by production. To this was added the idea that diligent pursuit of research and/or development should extend these leases even though production is not being obtained from the oil shale. Apparently, individuals felt that the considerable initial investment should give some protection rights beyond those allowed on conventional oil and gas leases. Suggestion of an indefinite term was also made apparently for recognition of the large investment costs. Proposed royalty rates ranged from less than 5 percent to 25 percent with sliding scales and determinations "based on reasonable profit." Suggested rental was .50, $1, $2, and $10 per acre per year. The possibility of suspension of royalty and rental was offered under special circumstances such as continuing research and development periods or accidental work stoppages from mine cave-ins, and so forth.

Lease acreage limitations suggested also covered a rather wide range, from a minimum of 160 acres to a maximum of 5,760 acres, with suggestions for a variable lease size based on shale-oil content and formation thickness. Proposed maximum holdings for a single individual or company varied from 2,660 acres to 23,040 acres, with some possible state or national limits.

This is a brief summary of the major suggestions that have been received for ways and means for opening now closed oil-shale lands for development by private industry and individuals. A few further observations are in order.

The comments that we have received, while extremely helpful, have not touched sufficiently on two major policy areas of concern to the Department.

First, we cannot view shale oil apart from the other elements of the Nation's total energy complex. We have witnessed during the last generation several major shifts within this country's energy economy. Some of these transitions have occurred smoothly, while others have of necessity included major sociological costs. It is imperative that policy with respect to oil shale recognizes on the one hand the need for change and on the other hand assures that change, when it occurs, is constructive.

Second, I have come to view the North American Continent as a major potential source of the energy that will be required as economies around the world industrialize and expand. If oil shale policy is designed to meet only the domestic situation, it could fall far short of what is required of us in the international sphere.

Definitive answers to these two fundamental policy questions — that is, the future role of oil shale in the U.S. energy economy, and its future position in the economies of the rest of the world — are required before a sound basis for development of this vast domestic resource can be established.

In conclusion, I want to thank all of you personally for your ideas and suggestions as to what the Federal oil shale lands policy should be, so that our Nation may obtain the maximum benefit from this untapped natural resource. We shall do all we can to move with proper speed.