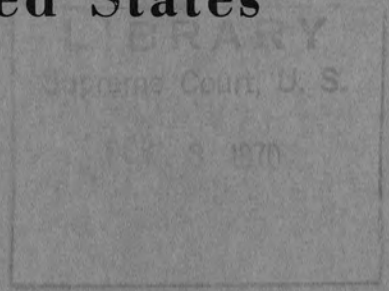


Supreme Court of the United States

OCTOBER TERM, ~~1969~~
1970



In the Matter of:

----- X
WALTER J. HICKEL, SECRETARY OF ;
THE INTERIOR, :
: Petitioner, :
: vs. :
: THE OIL SHALE CORPORATION, ET AL. :
: Respondent, :
: :
----- X

Docket No. ~~221~~
25

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Place Washington, D. C.
Date January 21, 1970

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

WALTER J. HICKEL, SECRETARY OF)	
THE INTERIOR,)	
)	
Petitioner)	
)	
vs)	No. 221
)	
THE OIL SHALE CORPORATION, ET AL,)	
)	
Respondent)	

The above-entitled matter came on for argument at 11:06o'clock a.m. on Wednesday, January 21, 1970.

BEFORE:

- WARREN E. BURGER, Chief Justice
- HUGO L. BLACK, Associate Justice
- WILLIAM O. DOUGLAS, Associate Justice
- JOHN M. HARLAN, Associate Justice
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice

APPEARANCES:

- PETER L. STRAUSS
Office of the Solicitor General
Department of Justice
Washington, D. C.
On behalf of Petitioner

- FOWLER HAMILTON, ESQ.
52 Wall Street
New York, N. Y. 10005
On behalf of Respondents

1

1 mining claims in the public domain and I do that in full con-
2 sciousness of the difficulties which the Solicitor General just
3 spoke of about lawyers' history, but nonetheless, feeling it
4 is necessary to examine that.

5 And then I mean to cast a critical eye at this
6 Court's decision in Ickes versus Virginia Colorado Development
7 Corporation which is the other focus of this case, not
8 necessarily to procure its overruling, although we think and
9 desire that it should be overruled, but as a means of making
10 clear at least the reasons --

11 Q Do you think you can prevail unless we over-
12 rule?

13 A I hope we can; yes.

14 Q I see.

15 A As a means of making clear the reasons, at
16 least while we feel it must be limited to its particular facts
17 and that I hope leads, naturally, to the questions of review
18 which are also present in this case.

19 This case is part of the battle over ownership
20 rights to several hundred thousands of acres of land in
21 Colorado and larger amounts in Utah and Wyoming. All of this
22 land contains a rock called oil shale from which oil can be
23 distilled at a high temperature and no one knows quite how
24 much oil is there or what ever be recovered, but the amounts
25 are huge and I think there will be agreement that it represents

1 at least a century of this nation's present rate of consump-
2 tion.

3 The oil shale which is already in private hands
4 represents about a decade of that century or perhaps more. At
5 present technically the most feasible portion of the oil
6 shale over which the ownership dispute involved in this case
7 is raising, represents a similar period and is also in the
8 technically-accessible portion of the shale.

9 The dispute generally is whether --

10 Q In what?

11 A In the technically accessible portion of the
12 shale. The depth of which the shale is buried under the over-
13 burden varies from place to place and private claims tend to
14 be in the area where it's most accessible.

15 Q And this issue here involves about 10 percent
16 of the whole, you said?

17 A Approximately. There is some dispute. I
18 think it's sufficient to say it involves ten years' worth of
19 oil consumption.

20 Q Out of 100.

21 A Out of 100 or more.

22 Q That makes it 10 percent.

23 A Yes.

24 Q And by "technically available," you mean
25 here is where it is very clear that it does exist; is that it?

1 A It's clear that it exists throughout, but it
2 is more accessible to present methods of mining.

3 Q But the methods of mining are still rather,
4 so inefficient that it is not economically --

5 A No one has yet mined it, although the Oil
6 Shale Corporation certainly has plans in that regard.

7 The dispute generally is whether persons who make
8 claims to oil shale lands before the lands were withdrawn from
9 the possibility of the claim in 1920 had any obligation to
10 develop their claims after that time or could simply hold them
11 in speculation for indefinite periods of time without an
12 obligation of maintenance.

13 If the Federal Government has clear title to the
14 land then it would be able to sell leases to persons who, on
15 condition, really, that they develop it and it would be able
16 to collect substantial royalties once they do. If it must
17 sell or patent the lands to the present claimants, of whom
18 Respondents here are only representative, they must recognize
19 rights and lands which have been left completely undeveloped,
20 for 33 years and for which there would be no guarantee of
21 development in the future, and it would receive only \$2.50 an
22 acre as the total price and there are also obvious differences
23 in the government's ability to control pollution, water use
24 and other environmental factors and to guide a rational develop-
25 ment of the resource.

1 This particular situation here, as a result of the
2 Secretary's refusal in 1964 to issue certain patents to oil
3 shale land, including lands held by three of the Respondents
4 here, or groups of respondents, I should say: those represented
5 by Respondents Napier, Umpleby and Brown. He refused those
6 patents on the ground that the claims had been cancelled in
7 1931 and early 1932. An administrative proceeding would be
8 permitted to become final at that time.

9 It is clear that he probably would have also refused
10 to patent the claims now owned by the Oil Shale Corporation,
11 which represents the fourth group of respondents, if those
12 claims had been before him, since those claims, too, have been
13 cancelled in default proceedings in the early thirties. And
14 these cancellations were part of a concerned effort on the
15 Secretary's part to identify and cancel claims that were not
16 being maintained in the early thirties when evidence was
17 considerably fresher than it is now. And we set that history
18 out in some length in our brief.

19 The first three sets of claimants, Napier, Umpleby
20 and Brown sought review of the Secretary's 1964 decision in the
21 United States District Court for the District of Colorado and
22 there they were joined by the Oil Shale Corporation seeking
23 declaratory judgment.

24 Although Respondents urge a number of reasons below
25 for requiring the Secretary to ignore these old and final

1 administrative decisions from the thirties, the District
2 Court, and subsequently the Court of Appeals for the Tenth
3 Circuit, considered only one ground, which was that the
4 administrative had been beyond the Secretary's subject-matter
5 jurisdiction and therefore, could be given no effect.

6 Q May I ask you a preliminary question?

7 A Surely.

8 Q What are the major oil companies that are
9 interested, directly or indirectly in this case?

10 A I think most of them are, Your Honor, and to
11 varying degrees. Interested, I think, is a question of degree.
12 I should say the Oil Shale Company and the Union Oil Company
13 are the only two which I am aware that have made a very sub-
14 stantial independent step towards actual development.

15 In terms of land holdings, the hearings before the
16 Subcommittee on Anti-Trust and Monopoly of the Committee on the
17 Judiciary, which was cited, at least in Respondent's brief,
18 and I think in ours as well, contained a number of statements
19 in that regard, and I think I have some here.

20 In any event, varying of the top 27 oil companies in
21 the nation -- here we are, at page 192 of those hearings it
22 shows holdings of patented lands, Union Oil Company has 50,000
23 acres. It's page 192 of the anti-trust hearings.

24 Q It's not before us?

25 A No, Your Honor.

1 Q All right, then would you go slow in reading
2 it?

3 A Surely. It shows the Union Oil Company is
4 holding 50,000 acres; Mobile Oil Company, 34,000 acres;
5 Tidewater Oil, 22,000 acres and so forth, and I think Pascho
6 in those hearings, the Oil Shale Company, in those hearings
7 has stated that it owns at present sufficient land to produce
8 200,000 barrels of oil daily for 25 years or more and most of
9 the oil companies are in a similar kind of position.

10 I think the information could be obtained by that
11 place on Page 192 of those hearings. It gives a complete
12 listing, I believe.

13 Q Where does the Union Oil Company stand --

14 A I couldn't say whether they have the rights in
15 any of the disputed lands or not, but I would think, since they
16 are a major holder I would think it unlikely that they did not
17 have a dispute.

18 Q Were they parties to the old administrative
19 proceeding?

20 A They were parties to the old administrative
21 proceeding; that's right.

22 Q My view is that I ought to refuse myself from
23 this case..

24 MR. CHIEF JUSTICE BURGER: Counsel, under the cir-
25 cumstances we will suspend the argument in the case and set it

1 for reargument at a later date. And we regret the inconvenience
2 to counsel, of course.

3 These things do not always appear on the surface
4 and this is one of the difficult problems and the possibility
5 of an interested party does not automatically appear in the
6 case of every record.

7 So, we will have to suspend argument until a date
8 when we can assemble a quorum and when it's convenient to
9 counsel.

10 MR. STRAUSS: Thank you, sir.

11 (Whereupon, the argument in the above-entitled
12 matter was suspended at 11:20 o'clock a.m., to be rescheduled
13 at a later date)