

The Burger Court Opinion Writing Database

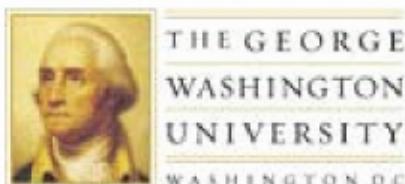
Hickel v. Oil Shale Corp.

400 U.S. 48 (December 8, 1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

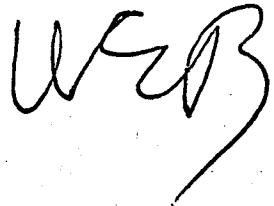
December 3, 1970

Re: No. 25 - Hickel v. Oil Shale Corp.

Dear Potter:

Please join me in your dissent in the above.

Regards,



Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

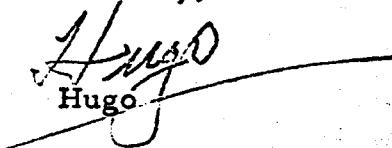
November 10, 1970.

Dear Bill,

Re: No. 25 - Hickel v. Oil Shale

Although I thought we could affirm this case and simply explain the dicta, it seems to me that you have come out in a satisfactory manner. Unless someone can present some persuasive argument to the contrary, I agree.

Sincerely,



Hugo
Hugo

Mr. Justice Douglas

cc: Members of the Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

November 25, 1970

Dear Bill,

Re: No. 25 - Hickel v. Oil Shale Corp.

I agree.

Sincerely,


Hugo

Mr. Justice Douglas

WD

to: The Chief Justice
Mr. Justice Biden
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White

November ninth 1970

MEMORANDUM TO THE CONFERENCE:

In re: No. 25 -- Michel v. Oil shale

I have concluded from my study of this case that while Krushnic and Virginia-Colorado were correctly decided, their dicta that failure to do assessment work was the sole concern of relocators, not of the United States, was wrong. Since the Court of Appeals rested its opinion on those dicta the judgment should be reversed and the case remanded.

115 AM I have put these views in the 28.
form of a memorandum which I attach herewith.

The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

At the time of filing this application, or at any time thereafter, the inventor may file with the Commissioner a certificate of the United States Chief Geological Engineer that every form of paper has been extended or improvements made upon the claim by himself or trustees, or

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

No. 25.—OCTOBER TERM, 1970 Circulated: 11-10

Recirculated:

Walter J. Hickel, Secretary of
the Interior, Petitioner,

v.
The Oil Shale Corpora-
tion et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Tenth Circuit.

[November —, 1970]

Memorandum from MR. JUSTICE DOUGLAS.

This case involves six groups of claims to oil shale located in Colorado and asserted under the General Mining Act of 1872, 17 Stat. 91, 30 U. S. C. §§ 22, 26, 28, and 29. Section 28 of that Act provided that until a patent issued "not less than \$100 worth of labor shall be performed or improvements made during each year."¹ And § 29 provided that a patent to the claim could issue on showing that the claimant had expended \$500 worth of labor or improvements on the claim. These claims are not patented and apparently the amount of labor or

¹ Section 28 reads:

"... On each claim located after the 10th day of May 1872, and until a patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year. . . . [U]pon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. . . ."

Section 29 reads in part:

"... The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the manager a certificate of the United States Chief Cadastral Engineer that \$500 worth of labor has been expended or improvements made upon the claim by himself or grantors. . . ."

Charg throughout

To: Thee Officiff Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Bremen
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES¹

No. 25.—OCTOBER TERM, 1970

circulated:

unreconciled:

11 | 16 | 70

Walter J. Hickel, Secretary of
the Interior, Petitioner,
v.
The Oil Shale Corpora-
tion et al. } On Writ of Certiorari to
the United States Court
of Appeals for the
Tenth Circuit.

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¹ Section 28 reads:

" . . . On each claim located after the 10th day of May 1872, and until a patent has been issued therefor, not less than \$100 worth of labor shall be performed or improvements made during each year. . . . [U]pon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. . . ."

Section 29 reads in part:

“ . . . The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States Supervisor of Surveys that \$500 worth of labor has been expended or improvements made upon the claim by himself or grantors. . . . ”

check throughout

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 25.—OCTOBER TERM, 1970

Circulated:

Walter J. Hickel, Secretary of
the Interior, Petitioner,

v.

The Oil Shale Corpora-
tion et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Tenth Circuit.

circulated: 11/18/70

[November —, 1970]

Memorandum from MR. JUSTICE DOUGLAS.

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Section 29 reads in part:

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To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun

SUPREME COURT OF THE UNITED STATES

No. 25.—OCTOBER TERM, 1970

Circulated:

Recirculated: 11-24

Walter J. Hickel, Secretary of
 the Interior, Petitioner,
 v.
 The Oil Shale Corpora-
 tion et al.

On Writ of Certiorari to
 the United States Court
 of Appeals for the
 Tenth Circuit.

[November —, 1970]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This case involves six groups of claims to oil shale located in Colorado and asserted under the General Mining Act of 1872, 17 Stat. 91, 30 U. S. C. §§ 22, 26, 28, and 29. Section 28 of that Act provided that until a patent issued "not less than \$100 worth of labor shall be performed or improvements made during each year."¹ And § 29 provided that a patent to the claim could issue on showing that the claimant had expended \$500 worth of labor or improvements on the claim. These claims are not patented and were cancelled in the early 1930's

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 10, 1970

RE: No. 25 - Hickel v. Oil Shale

Dear Bill:

This is only to confirm my statement to you this morning that I think this is an entirely satisfactory disposition and I'll be happy to join it.

Sincerely,



W.J.B. Jr.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 17, 1970

No. 25 - Hickel v. Oil Shale Corp.

Dear Bill,

If your memorandum becomes the opinion of the Court in this case, I should appreciate your adding the following at the foot thereof:

MR. JUSTICE STEWART dissents. He believes the Court of Appeals in this litigation correctly construed and applied this Court's decisions in Wilbur v. Krushnic, 280 U.S. 306, and Ickes v. Virginia-Colorado Development Corp., 295 U.S. 639. Accordingly, unless those decisions are to be overruled, he would affirm the judgment before us.

Sincerely yours,

P. S.
~~~~~

Mr. Justice Douglas

Copies to the Conference

November 23, 1970

Re: No. 25 - Hickel v. Oil Shale Corp.

Dear Bill:

As I indicated at Conference, my initial reaction here was to reverse. I feel you have appropriately and justifiably analyzed Krushnic and Virginia-Colorado, and that the Government's usual rights of condemnation do not justify the opposite result. I therefore join your opinion. I am not sure, however, that the Courts which decided Krushnic and Virginia-Colorado would agree.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Chief Justice  
Mr. Justice Black  
Mr. Justice Brennan  
Mr. Justice Stewart