1970

# Utah Resources International, Inc., a Utah Corporation, John H. Morgan, Jr., Justheim Petroleum Co., a Nevada Corporation, Clarence I. Justheim And J. H. Morgan, Sr v. Utah Board of State Lands, Charles R. Hansen, Cecil Thomson, Donald Showalter, M. V. Hatch, Harold Reese, Whitney J. Floyd, Phillip Christensen, T. H. Bell and W. L. Tueller.: Brief of Amicus Curiae

# In the Supreme Court of the State of Utah

UTAH RESOURCES INTERNATIONAL, INC., at Utah corporation, JOHN H. MORGAN, JR., JUSTHEIM PETROLEUM CO., a Nevada corporation, CLARENCE I. JUSTHEIM and J. H. MORGAN, SR.

*Plaintiffs and Respondents,*

- vs. -

UTAH BOARD OF STATE LANDS, CHARLES R. HANSEN, CECIL THOMSON, DONALD SHOWALTER, M. V. HATCH, HAROLD REESE, WHITNEY J. FLOYD, PHILLIP PCHRISTENSEN, T. H. BELL and W. L. TUELLER,

*Defendants and Appellants.*

Case No. 12131

## BRIEF OF AMICUS CURIAE

An Appeal from the District Court of Salt Lake County, State of Utah, Honorable D. Frank Wilkins, District Judge.


Attorney General, State of Utah
SHERIDAN L. McGANNY
Attorney for Defendants, Appellants
236 State Capitol Building
Salt Lake City, Utah 84114

ADAM M. DUNCAN
Attorney for Plaintiffs & Respondents
Kennecott Building
Salt Lake City, Utah 84111





NESLEN AND MOCK
JAMES R. BROWN
ROBERT G. PRUITT, JR.
Attorneys for Amicus Curiae
Gas Producing Enterprises, Inc.
1000 Continental Bank Building
Salt Lake City, Utah 84101

# TABLE OF CONTENTS



## CASES CITED



## STATUTES CITED



## OTHER AUTHORITIES CITED

# In the Supreme Court of the State of Utah

UTAH RESOURCES INTERNATIONAL, INC., at Utah corporation, JOHN H. MORGAN, JR., JUSTHEIM PETROLEUM CO., a Nevada corporation, CLARENCE I. JUSTHEIM and J. H. MORGAN, SR.

*Plaintiffs and Respondents,*

- vs. -

UTAH BOARD OF STATE LANDS, CHARLES R. HANSEN, CECIL THOMSON, DONALD SHOWALTER, M. V. HATCH, HAROLD REESE, WHITNEY J. FLOYD, PHILLIP PCHRISTENSEN, T. H. BELL and W. L. TUELLER,

*Defendants and Appellants.*

Case No. 12131

## BRIEF OF AMICUS CURIAE

## STATEMENT OF NATURE OF CASE

Plaintiffs sought to enjoin the Defendant from issuing a lease to a third party covering oil shale on lands currently under an oil, gas and hydrocarbon lease to Plaintiffs.

## DISPOSITION IN THE LOWER COURT

Plaintiffs obtained a permanent injunction declaring that Defendant cannot issue an Oil Shale Lease on lands which are covered by existing Oil, Gas and Hydrocarbon Leases.

## STATEMENT OF FACTS

The Statement of Facts in the briefs of Plaintiffs and Defendant are correct and adequate, however by way of introduction, Gas Producing Enterprises, Inc., hereinafter designated Amicus, makes the following statement:

Amicus is an operating oil and gas company in two separate oil and gas fields in the State of Utah, portions of which are under oil, gas and hydrocarbon leases from the Utah State Land Board. As an operating and producing oil and gas company, Amicus will be directly affected by the Court's determination. Without question, all parties, including Amicus, have a vital financial stake in the development and production of the natural resources of the State of Utah. The importance and ramifications of the questions raised in this matter, however, exceed the scope of the party litigants and will be felt by the public as a whole, through the oil and gas industry. The sole purpose of Amicus is to assist the Court, in any way possible, to recognize the effects of this case upon the industry.

## I

## THE PROPER SCOPE OF A STATE MINERAL LEASE

A mineral lease granted by the State Land Board is a license to prospect on state owned lands for deposits of a specified mineral or minerals for a given period of time, in consideration for an annual rental fee. If the lessee is a successful prospector and finds a valuable deposit of the specified mineral, the lease further grants to the lessee an exclusive right to mine or extract said mineral so long as

lessee pays a royalty and complies with the others terms of the lease agreement.

A mineral lease, while it purports to relate to specified lands, is not a land lease, nor does the lessee possess rights in land unless a mineral deposit is discovered and a mining operation commenced. The term "lease," certainly during the pre-discovery stage, is somewhat of a mis-nomer; the agreement is more of an exploration permit or license, and has been referred to by one Land Board member as a "hunting license." Certainly the State of Utah does not represent nor warrant to the lessee that a deposit of mineral will be found in the leased lands, or that the lands are even prospecitvely valuable for minerals of any type.

Statutory command commits and demands that the State adhere, through the State Land Board, to the principle of *multiple* use of state lands. Terms and provisions are incorporated into the Land Board's regulations and the mineral leases to effectuate this principle. The legislative command is cognizant of the necessity of the Land Board in administering the mineral leasing program to achieve multiple use. Section 65-1-18, Utah Code Annotated, states in part:

> "In furtherance of the principle of multiple use of state lands, the land board may grant a lease for the prospecting, exploration, development and production of any mineral notwithstanding the issuance of other lease or leases on the same land for other minerals, and shall include in such lease suitable stipulations for *simultaneous operation*. The board shall not issue more than one outstanding lease for the same purpose on the same land. All

> mineral leases issued by the board shall contain such terms and provisions as the board deems to be in the best interest of the state . . . " (emphasis added)

It must not be presumed that a mineral lease, for whatever mineral, ripens into a full "lease," with all of the concommitant provisions of the agreement coming into full force, until a deposit of the specified mineral is in fact discovered and extraction operations are capable of being commenced. As a matter of fact, the vast majority of issued state mineral leases never ripen past the exploration stage, since no mineral deposit is found.

## II

## WHAT DOES A MINERAL LEASE PROPERLY COVER?

Having analyzed the nature of a mineral lease, and pointed out the exploration or "hunting license" aspect of a mineral lease prior to discovery and extraction, it is proper to inquire into what precisely does a mineral lease authorize the holder to explore for and produce.

In the past little confusion has resulted from the nomenclature used to specify the mineral or minerals covered by a State of Utah mineral lease. Modern alchemy, however, seems capable of changing many natural mineral deposits into a different form, so as to yield synthetic substances and products by a variety of processes not previously thought possible. This is especially so in the case of the natural hydrocarbons, petroleum, coal, gilsonite, asphalt, bitumen and kerogen, which can be converted

to yield synthetic gasoline, lubricating oils and a variety of fuels. This fact seems to be the source of the problem which gave rise to the case at bar.

If technological progress has tended to cloud historic concepts, it is up to the courts to reestablish workable standards and definitions. This court is now confronted with such an opportunity. The contending parties to this litigation are at odds over the meaning of the terms "oil, gas and hydrocarbons." The meaning of these terms can be readily ascertained by reference to the legislative history of the 1967 statute, to customary usage and other reliable sources.

Appellant's brief adequately relates the many conversions and synthetic processes capable of producing petroleum products from a variety of quite dissimilar natural hydrocarbon deposits separately leased by the State of Utah. The gasoline commercially synthesized from Utah gilsonite, a solid pitch-like hydrocarbon, and sold in Chevron Oil Co. service stations throughout western Colorado and eastern Utah, is indistinguishable from gasoline produced and sold elsewhere.

The point which we, as Amicus, want to make clear is that such terms as are used by the State of Utah to define leased minerals, if they are to have useful and workable meanings, *must* relate to the original, natural form of the deposit as it occurs in the ground; and *not* to possible or even probable end products which may be converted or synthesized from the natural substances. If leases were issued on the ultimate or end-product from a given mineral, chaos accompanied by bizarre problems would

result. In so urging the Court, we recognize that Respondent argues a contrary point as one facet of its brief.

We are confident that the issue before the Court can and will be resolved on the basis of other, more pertinent arguments. We are apprehensive that the Court, unaware of the consequences to our industry, may adopt Respondent's arguments on this point and thereby create confusion and the basis for more conflict in the future.

## III

## THE EFFECTS OF EXTENDING THE 1968 MORGAN CASE

Appellees argue at great length that the Utah Supreme Court decision in *Morgan v. Utah Board of State Lands,* 21 Utah 2d 364, 445 P2d 776 (1968) is applicable to, and indeed controls, the case at bar. Amicus believes that the 1968 *Morgan* decision has no application to this case, and that the case should be decided on the basis of the legislative intent behind Section 65-1-18, Utah Code Annotated.

In deciding the 1968 *Morgan* case this Court was undoubtedly influenced by the enactment by the legislature a few months earlier of a statute resolving the very conflict then before the Court. The legislature and the Land Board were fully aware of the historic distinction between oil and gas deposits and oil shale deposits. Mr. Max Gardner, Director of the State Land Board, addressed the Utah Senate on February 17, 1967 on the purposes of the proposed statute and stated the following:

> "The purposes of drafting the bill are very simple. First of all, there would be extensive revision of

> the Land Board general leasing policies. It would permit the Board to adopt a form of lease, the so-called single form of hydrocarbon lease which would grant to the lessee the right to produce all hydrocarbons except oil shale and coal. Oil shale and coal would be excepted. The Land Board in the past year and a half has conducted many and extensive public hearings on this subject and is convinced that it would be in the best interest of the state to issue this so-called single form of hydrocarbon lease. (See Senate Journal 1967, p. 559 and record number XI of the 40th day.)

The language of Morgan, supra, is indicative of an examination of *two* leases only. At page 777 of the Pacific Reporter:

> "*Two types* of leases were approved by the Board and were known as oil and gas leases and bituminous sands leases."
>
> * * * *
>
> "In order to forestall disputes between the lessees as to whether a given quantity of oil came from a bituminous or from a natural reservoir of oil . . ."
>
> * * * *
>
> "Other provisions of the amended act permitted the lessee named in one of the *two types* of oil leases . . . " (emphasis added)

At page 90 of the transcript Mr. Charles R. Hansen testified that Exhibit D-15, a current form of an oil shale lease, was in effect at the time of *Morgan,* supra.

> Q. "And was that oil shale lease in use, force and effect at the time of the Morgan case in 1967?"
>
> A. "Yes, sir."

In subsequent statutes the Utah legislature has continued to recognize a distinction bewteen oil shale and other forms of mineral deposits leased by the State Land Board. In 1969 Sections 65-1-111 through 65-1-114, Utah Code Annotated were enacted making rental credit provisions on state mineral leases expressly applicable to oil shale leases, but *not* to the oil, gas and hydrocarbon leases.

The 1968 *Morgan* case involved entirely different circumstances and evidence, and was decided against a different factual background from the case now before this Court. It was intended to forestall a specific type of conflict and a few isolated statements in that decision, taken out of context, should not be used to expand the conflict into new areas. The statements by the Court in *Morgan,* at page 776:

> " . . . That the *mineral* recovered from either source was the same . . ." (emphasis added)

and at page 777:

> "It became impossible to distinguish the *oil* developed and extracted by the two processes." (emphasis added)

and:

> ". . . The policy [by the legislature] of allowing but one lease for the extraction of *oil* from any particular tract of public land." (emphasis added)

can be, and are being, asserted as support of the proposition that the *mineral* referred to in a state mineral lease is really the "end product" and not the natural deposit as found in the earth. And that *oil* means the conventional petroleum substance sold in commerce, without regard to

origin or any distinction between natural petroleum on the one hand, and converted or synthetic oil, on the other hand.

If, indeed, *Morgan* has any bearing upon this case, then this Court is confronted with a unique opportunity to interpret its own cited statements and put such assertions to rest forever.

## CONCLUSION

Mineral leases are merely "hunting" permits which ripen into full "leases" upon discovery of a mineral deposit, and when extraction operations are capable of being commenced. Manufactured synthetic products which at the present time are the possible or even probable end products from the natural substances should not be used to denote, define and classify which natural mineral deposits a mineral lease covers. The mineral terms used by the State in mineral leases must relate to the original natural form of the deposit as it occurs in the ground to be meaningful.

*Morgan,* supra, has no application to the case at bar. *Morgan* dealt with the recognized conflict of bituminous sands leases and oil and gas leases. The legislative history of Section 65-1-18, U.C.A., (1953), together with subsequent legislation found in Sections 65-1-111 through and inclusive of 65-1-114, indicates that oil shale was not to be covered by the oil, gas and hydrocarbon lease. If the Court feels that *Morgan,* supra, has any bearing on the instant case, care should be taken to clarify and explain *Morgan* in light of the legislative history and the impact of the adoption by this Court of a unique definition of

minerals based upon "end product." Heretofore the industry has enjoyed a uniformity, both in Federal and State mineral leases, in the application of the definition of minerals in the original, natural form of deposit.

Respectfully submitted,

James R. Brown and
Robert G. Pruitt, Jr.
Attorneys for Amicus Curiae
1000 Continental Bank Building
Salt Lake City, Utah 84101