The meeting was called to order at 2:01 p.m. Senator Neal in the Chair.

MEMBERS PRESENT:
Senator Joe Neal, Chairman
Senator Norman Glaser, Vice-Chairman
Senator Wilbur Faiss
Senator Lawrence Jacobsen
Senator Floyd Lamb
Senator Mike Sloan

MEMBERS EXCUSED:
Senator Floyd Lamb

OTHERS PRESENT:
Mr. Dick Richards, Sierra Pacific Power Company
Mr. Gerald Prindiville, American Association of Retired Persons and Nevada Retired Teachers Association
Mr. George Vargas, representing the major oil companies
Mr. Ray Knisley
Mr. Martin Booth, Geothermal Development Associates
Mr. Bob Warren, Nevada Mining Association
Mr. Carl Soderblom, Nevada Railroad Association
Mr. Joe Manus, Department of Energy
Mr. Fred Welden, Senior Research Analyst, Legislative Counsel Bureau
Assemblyman Joe Dini, District #38

Senator Neal announced that the committee would take testimony on S.B. 523, S.B. 524 and A.B. 513 and take final action on S.B. 460.

S.B. 523 - Declares that geothermal resources belong to public and requires state engineer to adopt regulations governing development of those resources.

Mr. Dick Richards of Sierra Pacific Power Co. stated that their position is that this bill will cause probable delays for the struggling development of geothermal energy in the state and they are opposed to it.

He also felt there would be a question of constitutionality depending on how the bill is implemented since geothermal energy is part of the public domain.

Mr. Gerald Prindiville spoke in support of this bill representing the American Association of Retired Persons and the Nevada Retired Teachers Association. He read from a prepared statement which is attached as Exhibit A. He also submitted a map showing the thermal springs of California and Nevada which is attached as Exhibit B.

Senator Sloan asked Mr. Prindiville if he or the organization he represents have explored the legal ramifications of the bill in that it would be violating constitutional rights to provide that the people of the state take away private property without just compensation. Mr. Prindiville stated that he did not know the answer to that question since he is not a lawyer.

Senator Sloan then asked if California and Montana, which Mr. Prindiville referred to in his statement as having extensive geothermal development, have this kind of law. Mr. Prindiville did not know.

Mr. George Vargas, representing the major oil companies, informed the committee of the deep concern he had with this bill. He pointed out the bill does not define the term "geothermal resource" and there are 3 different definitions of "geothermal resources" in the statutes: NRS 322.005 dealing with the leasing of state lands, NRS 361.027 dealing with property taxes, and NRS 534A.010 dealing with geothermal resources as part of the water law.

Mr. Vargas submitted a copy of the Ninth Circuit Court of appeals case (United States of America vs. Union Oil Company of California) which dealt with whether geothermal resources were minerals and thereby subject to exclusion under the federal homestead act. The court held that geothermal resources are minerals rather than water. A copy of that decision is attached as Exhibit C.

Mr. Vargas stated that the oil companies are expending quite a bit of money to explore geothermal resources. Their leases are either federal leases or private land holding leases and this bill would throw the title to those leases into chaos. The companies would have to stop spending money to explore and drill until the question of who has the right to be lessor is settled.

Senator Jacobsen asked if the lessee would be entitled to the rights to whatever is found or drilled. Mr. Vargas stated that the lessee would, but it would be subject to federal lease payments, federal royalty payments and taxation.

Mr. Ray Knisley, long-time resident of Nevada, spoke in opposition to the bill. He felt the bill is improperly drawn since it does not specify whether it pertains to private property or federal/public property.

Mr. Knisley informed the committee that he is opposed to the bill because he feels that it will cause considerable litigation if the state were to take private property. If it is the desire of the state to acquire private property, the proper way to go about it is to authorize the Department of Energy to acquire the land and put the proper funding in the bill.

Senator Neal asked Mr. Knisley if he believed that the public does not have rights in the area of geothermal resources even though they have the right as far as the water is concerned. Mr. Knisley responded that he felt there were two different issues involved, the resource on public lands and the resource on private lands. In the private land situation, the water has long ago been put to beneficial use. The heat resource is not subject to public appropriation any more than mineral resources from a mine would be.

Senator Neal asked about the beneficial use situation. He stated that since there is a problem nation-wide as far as energy is concerned, if the limited energy resources available are to be controlled and used, it is imperative that the state becomes involved. Mr. Knisley responded that would include legal questions he was incapable of discussing. However, the water produced that has not been appropriated is in all probabilities susceptible to appropriation for beneficial use if it is not reused in the venture.

Mr. Knisley stated that he saw no reason for the other amendments to the bill since they add nothing of value and regulations have been adopted and are now in effect.

Mr. Martin Booth, Geothermal Development Associates, representing Magma Power Company, concurred with Mr. Vargas' testimony. He explained that he is a geologist and has been working in the field of geothermal energy in Nevada since 1971.

Mr. Booth pointed out that not only is there no specific definition of geothermal resources, but the bill sets out no other requirements for determining what is or is not a geothermal resource, such as how hot the water must be. He felt that if the public could own geothermal, they should also be allowed to own gold, oil, coal and so on.

Mr. Booth stated that most of the money being spent in the state on geothermal exploration is invested by the major oil companies, or those companies that are very highly funded. If this bill passes, the investors will not put money into the funding of geothermal resources.

Mr. Bob Warren of the Nevada Mining Association spoke in opposition to this bill. He was asked by John Miller, an attorney in Elko who represents geothermal clients, to underscore the comments made by Mr. Vargas and Mr. Knisley that this bill would be a taking of private property.

Mr. Warren commented that if the committee is seriously considering passing this bill, it should go to the Finance Committee to include a substantial appropriation to cover the costs of litigation from persons deprived of the resource. He stated that he understood that neither the state engineer's office nor the Department of Energy supports this bill.

Mr. Carl Soderblom, registered lobbyist for Southern Pacific Co., which owns private lands in the area of Brady Hot Springs where a geothermal dehydration plant is presently operating, was curious to discover what would happen to the plant if the state took it over.

Mr. Joe Manus, Nevada Department of Energy, stated that the Department was not aware of where the bill originated, but they are not in favor of it.

He stated that currently geothermal resources are viewed by the state engineer as a water resource and come under the auspices of the water engineer. However, they are also viewed as a mineral by the geologist recently hired by the Department of Conservation and Natural Resources. Mr. Manus stated that his department agrees that if geothermal is privately owned, it is a mineral right or a water right and should be treated as such.

He commented that the department also feels the development would go a lot faster if it were maintained in private ownership.

Senator Neal closed the hearing on S.B. 523.

S.B. 524 - Requires department of energy to adopt regulations to govern marketing of devices for reducing consumption of energy and devices for use of solar energy.

Mr. Joe Manus, Nevada Department of Energy, explained that this bill is needed so that the Department of Energy can set standards to compare solar devices so that an advertiser who could not substantiate their claims for energy savings could be turned over to the Consumer Affairs Division.

Senator Sloan pointed out that there is already an extensive framework for deceptive trade practices, and asked if this could be handled under the present statute. He also asked Mr. Manus if he reviewed the bill with the deputy attorney general. Mr. Manus said he believed the bill had been reviewed. He responded to Senator Sloan's remark about the present deceptive trade practices by giving an example of a window manufacturer who states that his window can save the consumer 50% of his energy use. The department has no way of informing the consumer if that is possible because they have no authority to test or set standards.

Mr. George Vargas testified in favor of the intent of the bill but felt that the bill is much too broad and loose in its language. He informed the committee that he is a director in the Johnson Control Company which markets automatic environmental controls to conserve energy. These controls are made up of highly technical, computerized systems. Mr. Vargas felt the department does not intend to test or set standards for these systems because they do not have the equipment or personnel to handle that function. He suggested changing the wording of the bill in line 3 from "shall" to "may." This would allow them to handle those devices they are capable of handling.

Senator Neal closed the hearing on S.B. 524.

A.B. 513 - Provides additional circumstances for extending powers and duties of Nevada Tahoe regional planning agency.

Senator Neal suggested drawing amendments which would make A.B. 513 compatible with S.B. 323 and A.B. 503. He explained that A.B. 513 is a trigger bill in case California and Nevada are unable to reach an agreement on the TRPA compact, or after reaching an agreement, California decides to pull out of the compact.

Senator Sloan moved to amend the bill to make it compatible with S.B. 323 and A.B. 503.

Seconded by Senator Faiss.

Senator Jacobsen stated that he is completely opposed to that. A.B. 513 is a Nevada bill representing 3 counties and has nothing to do with California. If the agency does not work, the three counties should be able to do "their own things." Senator Neal explained that A.B. 513 contains a lot of things which were taken out of the TRPA. The only thing he is concerned about is that if there is going to be a N-TRPA, at least the gaming restrictions of S.B. 323 should be included in it. Senator Jacobsen disagreed and stated that the committee passed S.B. 323 to limit the gaming and should go with A.B. 513 as it is or go with S.B. 489.

Senator Glaser stated that S.B. 323 has been passed by the legislature and signed by the Governor and is already law. He felt it would be redundant to incorporate the space and utilization of casinos into this bill which has more to do with land use planning and conservation/recreation.

Senator Sloan felt that the committee should provide that the composition of the board should be modeled after what was done for the Nevada side in A.B. 503. The committee would be stating that it intends that the Nevada TRPA, composed of the people nominated in A.B. 503, shall attain the same standards they would for a bistate purpose. He did not feel S.B. 323 needed to be included because it is already included in A.B. 503.

Mr. Ray Knisley respectfully disagreed with Senator Jacobsen on the necessity for the bill. He felt the principal purpose which will be served will be to give Washington evidence that the state is interested in reasonable and just controls on the Nevada side of the Lake rather than leave it wide open in the event California withdraws from the TRPA.

Senator Sloan asked Mr. Fred Welden for his personal view of whether A.B. 513 is a good approach if Nevada has to go it alone, or if the language of A.B. 503 should be included. Mr. Welden felt that A.B. 513 is a good approach. The basic purpose is to provide for complete activation of the N-TRPA as a planning body if either state withdraws from the bistate compact, or if the governor finds that the bistate compact becomes ineffective either because of lack of funding, or some other reason. The bill lays out the planning procedure and the elements of the plan pretty much along the same lines as A.B. 503. The governing body/voting structure would be the same as the TRPA as it now exists -- 3 locals, a governor's appointee, and the Director of the Department of Conservation and Natural Resources.

He felt there are two reasons in support of the enactment of this type of law. One is that the Tahoe Basin is an important resource to the state and this measure would retain a governmental body that can deal with regional issues like air quality, water quality and transportation planning. Secondly, the active regional planning body would ensure that the Californians can not claim negligence on Nevada's part if they do try to force a federal take-over at the Basin.

Senator Neal commented to Mr. Welden that the language on Page 6, line 4, providing that if the agency does not take action within 60 days, the project is "deemed approved", was taken out of the compact but is still in this bill. He stated that he could not support this bill knowing the problems this language has caused with the compact. Fred Welden stated that the technical planning aspects of the bill are good, but he does not support the "deemed approved" aspect.

Mr. Ray Knisley commented that the "deemed approved" voting procedure in the bill is not an unusual provision. It is customary with county and regional planning commissions for the purpose of forcing the agency to act, not to give an advantage to the applicant. Senator Neal reminded Mr. Knisley that there were two hotels and other projects which were built under the "deemed approved" aspect. Mr. Knisley felt that would not have happened if there was just one agency involved. Fred Welden suggested changing the wording to "deemed rejected." He felt that would work just as well as "deemed approved." Mr. Knisley agreed.

Mr. Welden stressed that this bill should not have the effect of hurting bistate discussions. Senator Neal stated that one instruction he got from the leadership which he entirely agrees with is that this bill should be made compatible with what is being done in terms of the bistate agreement.

Senator Neal asked what the repealer section on Page 6, Section 20, is actually repealing. Mr. Welden explained that NRS 266.262 and 267.122 are old language relative to city public works projects being subject to the N-TRPA and are covered in another section of the bill; NRS 278.072 through 278.770 is the 1969 N-TRPA statute which is currently inoperative; NRS 278.812 is old language relative to project review which would be replaced by the project review procedure in this bill; NRS 278.824 is language which limits the N-TRPA authority to gaming matters, so that is repealed so they could get into matters of gaming and everything else. Senator Neal interjected that is a good reason for including S.B. 323 in this bill. Fred Welden stated that this bill (A.B. 513) would be a companion bill to S.B. 323; S.B. 323 would cover gaming and this bill would cover the planning aspects. Mr. Welden continued explaining the repealers by stating that the last repealer would repeal the TRPA compact in NRS 277, and that becomes effective upon the governor finding that either state has withdrawn from the compact or finding that the bistate agency has been unable to perform its duties.

Senator Neal asked for an explanation of why the repeal of NRS 278.780 to 278.828 was deleted from Section 21, subsection 2. Fred Welden explained that Section 21 is clean up language to insure that all presently existing provisions relating to the N-TRPA are not repealed if the bistate compact is revived. The brackets are intended to remove 278.780 to 278.828 from the repeal which under existing 278 langauge would be taken away. The intent was that these sections were repealed by S.B. 323 and replaced by some language in S.B. 323. This bill, coming later, would not repeal the provisions in S.B. 323 that replace the old language. Senator Neal felt satisfied as long as S.B. 323 will be included.

Mr. Welden explained that the idea of Section 22 is that if one state withdraws from the compact, this section would become effective and immediately there would be a membership, ordinances and rules, and conditions for approving projects. Then the body could change them if they chose to do so.

Assemblyman Joe Dini, District #38, stated that everyone in the Assembly Government Affairs Committee supported this bill. He restated the concept behind the bill.

He explained that the bill contains criteria regarding the appointment of members which goes back to the Nevada position that local government should control the agency and not the executive branch.

Senator Sloan asked if for some reason California withdraws from the TRPA, why should Nevada's concern lessen to the point that the agency goes back to lesser controls than those being urged in A.B. 503. Mr. Dini answered that under this bill, N-TRPA becomes a viable commission which it has not been in the past. The controls don't need to be as strict because only 30% of the land in the Basin is on the Nevada side and there is little developable potential left in that land. Also, the gaming has been frozen by S.B. 323.

Senator Sloan asked Mr. Dini if a 3-3-1 membership would bother him. Assemblyman Dini responded that the makeup of the board did not bother him. He felt there would not be any new viable subdivisions created on the Nevada side of the Lake anyway.

Senator Neal expressed his concern about the "deemed approved" provision on Page 6. Mr. Dini explained that they took that out of the existing compact.

Fred Welden commented that it appears to him that there are three places in A.B. 513 where the bill is not consistent with A.B. 503 as amended by the Senate. One is the make-up of the board; the second is Section 13 where it allows public works projects to be constructed, and state projects to be constructed, over the review of the agency or without approval; and the third is also in Section 13, the words "deemed approved." There were other things which were not included in A.B. 513. Mr. Dini reminded the committee that the public works situation would be put in the hands of the governor under A.B. 513.

Senator Sloan asked what air and water quality standards would have to be met under this bill. Mr. Welden stated that they would have to meet the state air and water quality standards and everybody has to meet the federal standards.

Senator Sloan withdrew his previous motion with the concurrence of Senator Faiss, who withdrew his second, so that the amendments could be examined further.

Mr. Dini stated that the felt this bill should not be made too strict because it can be changed in two years if necessary, and it still has to go back through the Assembly for concurrence. He stressed that the compact is different from this N-TRPA bill because the compact would lock in provisions which could not be changed without approval of both states and the Congress.

Senator Jacobsen asked Mr. Dini if he had a chance to look at S.B. 489. He explained that he introduced S.B. 489 which deals with this same topic but takes a different approach because it speaks to the metes and bounds. Fred Welden stated that it picks up the metes and bounds for the red line area for gaming rather than the boundary of the Basin. Mr. Dini also mentioned that S.B. 323 fits right into A.B. 513.

Senator Neal restated his position that he is not for creating an instrument which would hamper negotiations when it seems to be so close to getting a bistate agreement.

Senator Neal closed the hearing on A.B. 513.

Senator Neal asked for final action on S.B. 523.

Senator Sloan moved to indefinitely postpone action on S.B 523.

Seconded by Senator Glaser.

Ayes - 4
Nays - Neal (1)
Absent - Lamb (1)

Motion carried.

Senator Neal called for final action on S.B. 524.

Senator Sloan moved that S.B. 524 be passed out of committee with the recommendation: Do pass.

Seconded by Senator Jacobsen.

Senator Glaser asked that the motion be amended to change the wording from "shall" to "may" and amend and do pass.

Motion carried.

S.B. 460 - Provides for seizure, care and disposition of animals being cruelly treated and requires frequent visits to certain traps.

Senator Sloan had received information that there are only 6 humane society officers in the state who are authorized by the district court to make arrests, and those 6 persons are employees of the humane societies. He suggested amending the bill by deleting subsection 5 of Section 1, which would delete the provision for immunity from liability, and deleting all of Section 3 dealing with trap visitations.

Senator Sloan moved that S.B. 460 be passed out of committee with the recommendation: Amend, and do pass as amended.

Seconded by Senator Faiss.

Motion carried.

There being no further business, the meeting was adjourned at 4:13 p.m.

Respectfully submitted,

Eileen Wynkoop
Committee Secretary

APPROVED:

Joe Neal, Chairman

Exhibit A

IN FAVOR OF SENATE BILL NO. 523

COMMITTEE ON NATURAL RESOURCES

Monday, May 7, 1979

My name is Gerald Prindiville. I'm representing the American Assn. of Retired Persons, and the Nevada Retired Teachers Assn. These organizations are respectfully requesting you honorable members of the Nevada State Senate to take a position in favor of Senate Bill No. 523, which declares that geothermal resources belong to the public and requires the State engineer to adopt regulations governing development of those resources.

At present, according to Nation's Business, there is great corporate interest in geothermal development. Major oil and other energy companies, financial institutions, trade associations, and a number of governmental agencies have produced a wide range of studies on the subject. Even the CIA has a study on it! One of the best studies on geothermal energy in Nevada is the two volume: "Thermal Springs of Western United States" by the Lawrence Livermore Laboratory of the University of California under contract with the United States Atomic Energy Commission. On the first page is a map showing the thermal springs of western United States. The second page consists of a map of thermal springs of Nevada and California. Each thermal spring in the State of Nevada is numbered, beginning with #1 in the northwest corner of the State, and ending with #152 near Las Vegas. The following six pages has the name and precise location of the geothermal well that corresponds to the number on the map. The third column gives the temperature of the water of each spring in degrees of fahrenheit. The fourth column gives the flow of water in gallons per minute. The fifth column indicates the the geological formation and associated rocks. The sixth column refers to the chemical quality of the spring. The seventh column contains germane remarks and additional references. In 1973 the Atomic Energy Commission allocated $4.7 million for research into geothermal power; and in Nevada, the Chevron Oil Company signed an agreement to begin geothermal exploration in three counties.

On February 12th of this year, when I testified against A B 144, which

exploratory studies of geothermal wells in this State testified that the geothermal springs in Nevada were hotter than anywhere else in the nation, and, secondly, closer to the surface than anywhere else in the United States. So, apparently, Nevada is sitting on a valuable commodity which needs protection and careful development.

The energy consumed by Americans is almost six times the world per capita average. And the use of energy in the United States is increasing at an average of 3½% per year. At this rate, it means a doubling of present consumption in 20 years, and a quadrupling in 40 years - a fantastic example of exponential growth. (Source: The Living Wilderness, Winter 72-3 issue). So, Nevada not only has a very valuable natural resource in geothermal springs but they are becoming more every year.

The world's largest geothermal plant, located at Geyserville, California, about 90 miles north of San Francisco demonstrates the potential of geothermal energy. According to the Christian Science monitor (Dec. 27, 1973) raw geothermal power - nothing more than smelly steam escaping with tremendous force through the crust of the earth - currently provides 396,000 kilowatts of power to customers of the Pacific Gas and Electric Co. According to a PG&E spokesman that is the equivalent of providing for the electrical needs of 400,000 people, or most of the city of San Francisco. According to the U.S. Atomic Energy Commission study, most of the eastern portion of the city of Klamath Falls, Oregon is heated by hot water from geothermal springs. Present use of the hot water heat includes residences, businesses, almost all of the city schools, the high school swimming pool, and the Oregon Institute of Technology.

In regard to the question of how much geothermal energy is recoverable, according to the Washington Star News (June 30, 1974) the U.S. Dept. of Interior has estimated that the nation might eventually draw about 8% of its current electrical power production capability from geothermal sources. It is anticipated that much of this will be accomplished by the dry rock method; that is, drilling deep into the earth to the vast quantities of dry, very hot rocks, and then forcing water down the holes to become super-heated steam. The dry rock project in Marysville, Montana is expected to yield as much as $2.1 billion of electrical energy. (Geothermal Energy, 1975, U.S. Energy R & D Admin.)

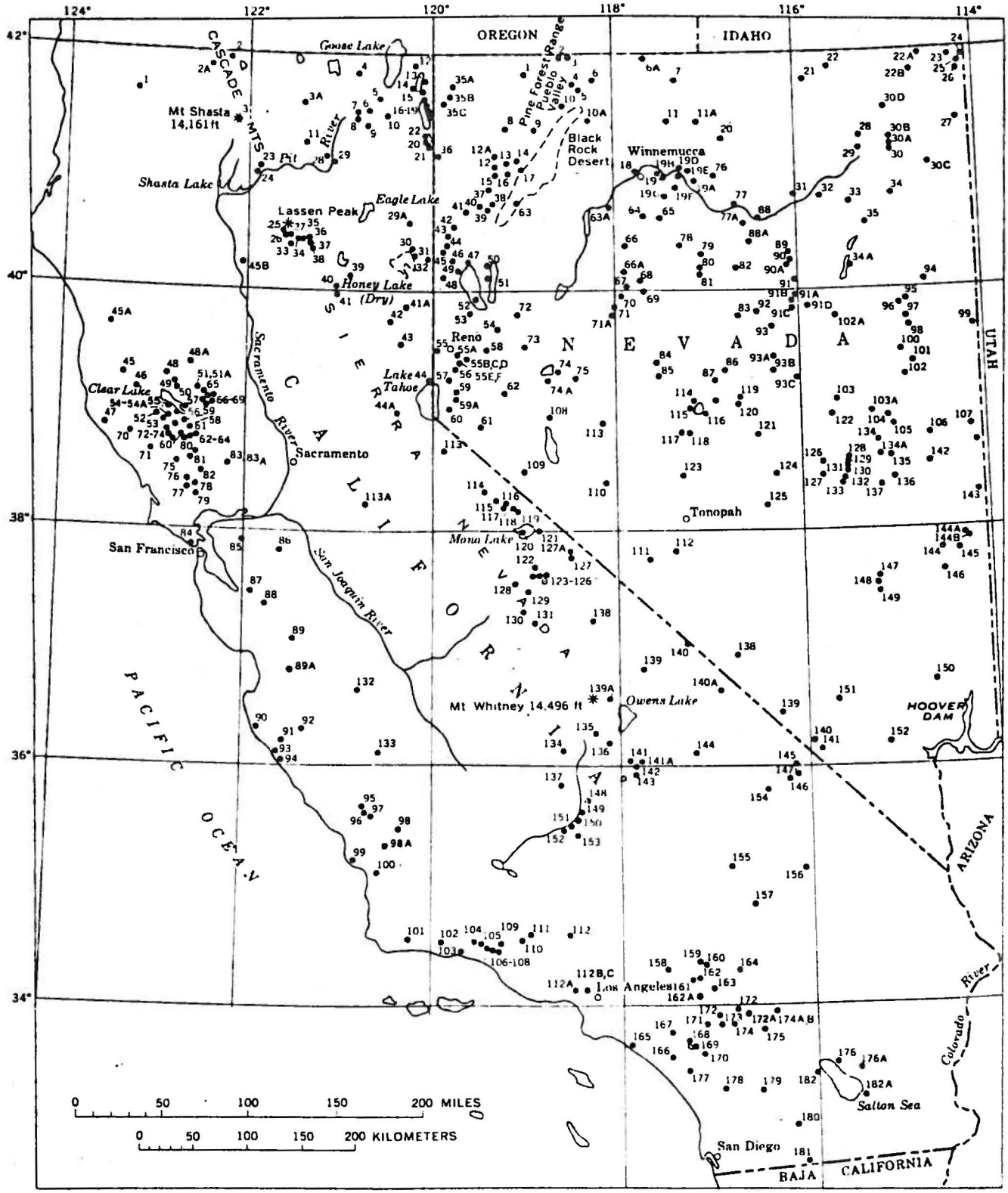
EXHIBIT A

The geothermal vegetable dehydrating plant at Brady, Nevada, 17 miles east of Fallon will save the corporation $287,000 per year in energy costs, according to the Nevada State Dept. of Energy. (Energy Collector, Nevada State Dept. of Energy, Fall 1978).

In regard to the costs of geothermal energy, both the Pacific Gas and Electric Co. and the U.S. Energy Research and Development Commission hold that an electric plant using natural geothermal steam can be build far below the capital costs for a coal or nuclear plant of the same capacity. According to PG&E company officials their geyser powered generating units require only a handful of maintenance workers, and they produce electricity that is cheaper than coal or nuclear fired facilities.

In view of the present, worsening energy crisis, the senior citizens of this State hope that you will please favorable consider S.B. 523 to conserve and carefully develop one of Nevada's last great natural resources.

Gerald Prindiville
612 Mary Street
Carson City, Nevada 89701



THERMAL SPRINGS OF CALIFORNIA AND NEVADA

Exhibit C

driver was required to carry. The search was not carried out for the purpose of discovering criminal evidence. However, in the process, police uncovered blood-stained items in the trunk of the car which led to Dombrowski's conviction for murder. The Court held that the warrantless intrusion was justified by the "concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle." 413 U.S. at 447, 93 S.Ct. at 2531.

Relying on *Cooper, Harris,* and *Dombrowski,* the Court in *South Dakota v. Opperman, supra,* in an opinion rendered after this case was submitted, squarely held that a routine inventory search of a lawfully impounded vehicle does not violate the Fourth Amendment. In that case, the police impounded an automobile illegally parked in a restricted zone in Vermillion, South Dakota. At the impound lot a police officer observed a watch on the dashboard and other items located on the back seat and the back floorboard of the vehicle. The officer then ordered the car door unlocked and proceeded, pursuant to standard police procedures, to inventory the contents of the car, including the contents of the glove compartment which was unlocked. A plastic bag containing marijuana was found in the glove compartment. Later on, when Opperman, the owner of the vehicle, was arrested on charges of possession of marijuana, he moved to suppress the evidence yielded by the inventory search. The motion to suppress was denied, and his subsequent conviction upheld by the Supreme Court of South Dakota. Chief Justice Burger, writing the opinion for the majority of five, pointed out three noninvestigatory justifications which made an intrusion into an automobile reasonable: (1) safeguarding an owner's property, (2) shielding the police against claims over lost or stolen property, and (3) the protection of police from potential danger. At 369, 96 S.Ct. at 3096.

[10] In the case at bar, after the contents of the vehicle had been inventoried the vehicle was driven to the sheriff's department. The owner requested the vehicle be released. A deputy sheriff entered the vehicle to remove the already-inventoried contents when he noticed a piece of newspaper protruding from under a mat behind the driver's seat. Upon removing the mat, he discovered the stolen Canadian license plates and several pieces of identification wrapped in the paper. This search was plainly a routine inventory search made prior to releasing the vehicle to its proper owner and clearly is validated by *Opperman.* The question in *Opperman,* as here, is whether or not the search was reasonable under the Fourth Amendment. In the *Opperman* case, as here, the police were "indisputably engaged in a caretaking search of a lawfully impounded automobile". *South Dakota v. Opperman, supra,* at 375, 96 S.Ct. at 3099. There is no suggestion in *Opperman* or here that "the standard procedure, essentially like that followed throughout the country, was a pretext concealing an investigatory police motive". At 376, 96 S.Ct. at 3100. Thus, we validate the search, and the district court is AFFIRMED.

UNITED STATES of America, Plaintiff-Appellant,

v.

UNION OIL COMPANY OF CALIFORNIA et al., Defendants-Appellees.

No. 74-1574.

United States Court of Appeals, Ninth Circuit.

Jan. 31, 1977.

Rehearing and Rehearing En Banc Denied March 23, 1977.

United States brought quiet title action under the Geothermal Steam Act of 1970 to

EXHIBIT C

determine whether the mineral reservation in patents issued under the Stock-Raising Homestead Act of 1916 reserved to the United States geothermal resources underlying the patented lands. The United States District Court for the Northern District of California, George B. Harris, J., 369 F.Supp. 1289, granted the patentees' motion to dismiss and the United States appealed. The Court of Appeals, Browning, Circuit Judge, held that the mineral reservation in the patents reserved to the United States geothermal resources underlying the patented lands.

Reversed and remanded.

1. Public Lands ⇐35(5)

Mineral reservation in patents issued under Stock-Raising Homestead Act of 1916 reserved to United States geothermal resources underlying the patented lands. Geothermal Steam Act of 1970, § 21(b), 30 U.S.C.A. § 1020(b); Stock-Raising Homestead Act, § 9, 43 U.S.C.A. § 299.

2. Public Lands ⇐35(5)

In imposing mineral reservation upon land grants under Stock-Raising Homestead Act of 1916, Congress meant to retain governmental control of subsurface fuel resources, appropriate for purposes other than stock raising or forage farming. Stock-Raising Homestead Act, § 9, 43 U.S.C.A. § 299.

3. Public Lands ⇐35(5)

Patentee under Stock-Raising Homestead Act of 1916 receives title to all rights in land not reserved. Stock-Raising Homestead Act, § 9, 43 U.S.C.A. § 299.

4. Public Lands ⇐35(5)

Mineral reservation in Stock-Raising Homestead Act of 1916 is to be read broadly in light of agricultural purpose of grant itself, and in light of Congress' equally clear purpose to retain subsurface resources, particularly sources in energy, for separate disposition and development in public interest. Stock-Raising Homestead Act, § 9, 43 U.S.C.A. § 299.

5. Statutes ⇐219(1)

Contemporaneous construction by administrators who participated in drafting statute is entitled to great weight in interpreting statute.

John E. Lindskold, Atty., Dept. of Justice (argued), Washington, D. C., for plaintiff-appellant.

Dennis B. Goldstein, Deputy Atty. Gen., State of Cal. (argued), San Francisco, Cal., as amicus curiae for plaintiff-appellant.

David J. Wynne, Brobeck. Phleger and Harrison, George B. White (argued), San Francisco, Cal., for defendants-appellees.

Before BROWNING and WALLACE, Circuit Judges, and TURRENTINE,* District Judge.

BROWNING, Circuit Judge.

This is a quiet title action brought by the Attorney General of the United States pursuant to section 21(b) of the Geothermal Steam Act of 1970, 30 U.S.C. § 1020(b), to determine whether the mineral reservation in patents issued under the Stock-Raising Homestead Act of 1916, 43 U.S.C. § 291 *et seq.*, reserved to the United States geothermal resources underlying the patented lands. The district court held that it did not. 369 F.Supp. 1289 (N.D.Cal.1973). We reverse.

Various elements cooperate to produce geothermal power accessible for use on the surface of the earth. Magma or molten rock from the core of the earth intrudes into the earth's crust. The magma heats porous rock containing water. The water in turn is heated to temperatures as high as 500 degrees Fahrenheit. As the heated water rises to the surface through a natural vent, or well, it flashes into steam.[1]

Geothermal steam is used to produce electricity by turning generators. In recom-

* Honorable Howard B. Turrentine, United States District Judge, Southern District of California, sitting by designation.

1. *Reich v. Commissioner, of Internal Revenue*, 52 T.C. 700, 704–05 (1969), *aff'd*, 454 F.2d 1157 (9th Cir. 1972); H.R.Rep. No. 91-1544, 91st

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mending passage of the Geothermal Steam Act of 1970, the Interior and Insular Affairs Committee of the House reported: "[G]eothermal power stands out as a potentially invaluable untapped natural resource. It becomes particularly attractive in this age of growing consciousness of environmental hazards and increasing awareness of the necessity to develop new resources to help meet the Nation's future energy requirements. The Nation's geothermal resources promise to be a relatively pollution-free source of energy, and their development should be encouraged." H.R.Rep. No. 91-1544, 91st Cong., 2d Sess., *reprinted at* 3 U.S.Code Cong. & Admin.News 5113, 5115 (1970).

Appellees are owners, or lessees of owners, of lands in an area known as "The Geysers" in Sonoma County, California. Beneath the lands are sources of geothermal steam. Appellees have developed or seek to develop wells to produce the steam for use in generating electricity. The lands were public lands, patented under the Stock-Raising Homestead Act. All patents issued under that Act are "subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same." Section 9 of the Act, 43 U.S.C. § 299. The patents involved in this case contain a reservation utilizing the words of the statute.[2] The question is whether the right to produce the geothermal steam passed to the patentees or was retained by the United States under this reservation.

[1] There is no specific reference to geothermal steam and associated resources in the language of the Act or in its legislative history. The reason is evident. Although steam from underground sources was used to generate electricity at the Larderello Field in Italy as early as 1904,[3] the commercial potential of this resource was not generally appreciated in this country for another half century. No geothermal power plants went into production in the United States until 1960.[4] Congress was not aware of geothermal power when it enacted the Stock-Raising Homestead Act in 1916; it had no specific intention either to reserve geothermal resources or to pass title to them.

It does not necessarily follow that title to geothermal resources passes to homesteader-patentees under the Act. The Act reserves to the United States "all the coal and other minerals." All of the elements of a geothermal system—magma, porous rock strata, even water itself[5]—may be classi-

Cong., 2d Sess., *reprinted at* 3 U.S.Code Cong. & Admin.News 5113, 5114 (1970); Brooks, *Legal Problems of the Geothermal Industry*, 6 Nat.Resources J. 511, 514–15 (1966); Barnea, *Geothermal Power*, Scientific American, Jan. 1972, at 70, 74.

2. The reservation reads:

> Excepting and reserving, however, to the United States all coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same pursuant to the provisions and limitations of the Stock-Raising Homestead Act.

See 43 C.F.R. § 3814.2(a) (1976).

3. Brooks, *supra* note 1, at 512; Barnea, *supra* note 1, at 71.

4. Barnea, *supra* note 1, at 70. *See* H.R.Rep. No. 91-1544, *supra* note 1, at 5115.

5. *Hathorn v. Natural Carbonic Gas Co.*, 194 N.Y. 326, 87 N.E. 504, 508 (1909); H.R.Rep. No. 91-1544, *supra* note 1, at 5126–27 (letters from Dep't of Interior); A. Ricketts, *American Mining Law* 64, 70 (4th ed. 1943); *Webster's Third Int'l Dictionary* 1437 (1961); 13 *The New Int'l Encyclopedia* 537 (Gilman, Peck, & Colby ed. 1913); 10 *The Americana* (1907–08) (unpaginated article on mineralogy includes water as mineral). *See* Kuntz, *The Law Relating to Oil & Gas in Wyoming*, 3 Wyo.L.J. 107, 109 (1949).

Moreover, geothermal steam has been held to be a "gas." *Reich v. Commissioner of Internal Revenue*, 52 T.C. 700, 710–11 (1969), *aff'd*, 454 F.2d 1157 (9th Cir. 1972). *See Geothermal Exploration in the First Quarter Century* 185, 187 (Geothermal Resources Council 1973) (letter from George R. Wickham, Ass't Comm'r, Dep't of Interior, July 8, 1924—natural gas is a mineral within purview of mining laws).

No one contends that water cannot be classified as mineral. Appellees argue only that the water should not be included in the term "minerals" in this statutory setting. This is basically a question of legislative intent, dealt with in detail later in the text. To the extent that the argument rests on the meaning of the word

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fied as "minerals." When Congress decided in 1970 to remove the issue from controversy as to future grants of public lands, it found it unnecessary to alter the language of existing statutory "mineral" reservations. It simply provided that such reservations "shall hereafter be deemed to embrace geothermal steam and associated geothermal resources." Geothermal Steam Act of 1970, 30 U.S.C. § 1024.[6] Thus, the words of the mineral reservation in the Stock-Raising Homestead Act clearly are capable of bearing a meaning that encompasses geothermal resources.

The substantial question is whether it would further Congress's purposes to interpret the words as carrying this meaning. The Act's background, language, and legislative history offer convincing evidence that Congress's general purpose was to transfer to private ownership tracts of semi-arid public land capable of being developed by homesteaders into self-sufficient agricultural units engaged in stock raising and forage farming, but to retain subsurface resources, particularly mineral fuels, in public ownership for conservation and subsequent orderly disposition in the public interest. The agricultural purpose indicates the nature of the grant Congress intended to provide homesteaders via the Act; the purpose of retaining government control over mineral fuel resources indicates the nature of reservations to the United States Congress intended to include in such grants. The dual purposes of the Act would best be served by interpreting the statutory reservation to include geothermal resources.[7]

Events preceding the enactment of the Stock-Raising Homestead Act contribute to an understanding of the intended scope of the Act's mineral reservation. Prior to 1909, public lands were disposed of as either wholly mineral or wholly nonmineral in character. *United States v. Sweet*, 245 U.S. 563, 567–68, 571, 38 S.Ct. 193, 62 L.Ed. 473 (1918). This practice led to inefficiencies and abuses. In 1906 and again in 1907, President Theodore Roosevelt pointed out that some public lands were useful for both

itself, however, the government is entitled to have the ambiguity resolved in its favor under "the established rule that land grants are construed favorably to the Government, that nothing passes except what is conveyed in clear language, and that if there are doubts they are resolved for the Government, not against it." *United States v. Union Pac. R.R.*, 353 U.S. 112, 116, 77 S.Ct. 685, 687, 1 L.Ed.2d 693 (1957). *See Caldwell v. United States*, 250 U.S. 14, 20, 39 S.Ct. 397, 63 L.Ed. 816 (1919); *Southern Idaho Conf. Ass'n of Seventh Day Adventists v. United States*, 418 F.2d 411, 415 n.8 (9th Cir. 1969).

Appellees argue that the term "minerals" is to be given the meaning it had in the mining industry at the time the Act was adopted, and that this understanding excluded water. This is a minority rule, *United States v. Isbell Constr. Co.*, 78 Interior Dec. 385, 390–91 (1971), even as applied to permit conveyances. 1 American Law of Mining § 3.26, at 551–53 (1976).

6. Members of the Subcommittee on Mines and Mining of the House Committee on Interior and Insular Affairs went to some lengths to make it clear that whether the term "minerals" as used in prior legislation included geothermal resources was a question for the courts, on which the official position of the 89th Congress was one of neutrality. *See* Hearings on H.R. 7334 *et al.* on Disposition of Geothermal Steam, 89th Cong., 2d Sess., ser. 89–35, pt. II, at 295–96 (1966). The point made here, however, is that in fact Congress thought the term sufficiently broad to encompass such resources.

7. The Stock-Raising Homestead Act "define[s] the estates to be granted in terms of the intended use . . . The reservation of minerals to the United States should therefore be construed by considering the purposes both of the grant and of the reservation in terms of the use intended." 1 *American Law of Mining* § 3.26, at 552 (1976). *Accord, United States v. Isbell Constr. Co.*, 78 Interior Dec. 385, 390 (1971). *See also United States v. Union Pac. R.R.*, 353 U.S. 112, 77 S.Ct. 685, 1 L.Ed.2d 693 (1957); *Caldwell v. United States*, 250 U.S. 14, 21, 39 S.Ct. 397, 63 L.Ed. 816 (1919).

A similar approach has been taken in construing grants and reservations in deeds between private parties involving minerals. *See, e. g., Northern Natural Gas Co. v. Grounds*, 441 F.2d 704, 714 (10th Cir. 1971); *Acker v. Guinn*, 464 S.W.2d 348, 352 (Tex.1971). The "general intent [of the parties] should be arrived at, not by defining and re-defining the terms used, but by considering the *purposes* of the grant or reservation in terms of manner of enjoyment intended in the ensuing interests." Kuntz, *The Law Relating to Oil & Gas in Wyoming*, 3 Wyo.L.J. 107, 112 (1949) (emphasis in original).

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agriculture and production of subsurface fuels, and that these two uses could best be served by separate disposition of the right to utilize the same land for each purpose. The President called the attention of Congress "to the importance of conserving the supplies of mineral fuels still belonging to the Government." 41 Cong.Rec. 2806 (1907). To that end, the President recommended "enactment of such legislation as would provide for title to and development of the surface land as separate and distinct from the right to the underlying mineral fuels in regions where these may occur, and the disposal of these mineral fuels under a leasing system on conditions which would inure to the benefit of the public as a whole." *Id.*[8]

In 1909 the Secretary of the Interior returned to the same theme, arguing that "inducements for much of the crime and fraud, both constructive and actual, committed under the present system can be prevented by separating the right to mine from the title to the soil. The surface would thereby be open to entry under other laws according to its character and subject to the right to extract the coal. The object to be attained in any such legislation is to conserve the coal deposits as a public utility and to prevent monopoly or extortion in their disposition." 1909 Dep't Interior Ann. Rep. pt. I, at 7 (emphasis omitted).[9] The Secretary made the same suggestion with respect to "oil and gas fields in the public domain." *Id.*

In the same year "Congress deviated from its established policy of disposing of public lands under the nonmineral land laws only if they were classified as nonmineral in character and enacted the first of several statutes providing for the sale of lands with the reservation to the United States of certain specified minerals. These statutes were soon followed by statutes providing for the sale of lands with the reservation to the United States of all minerals. . . ." 1 American Law of Mining § 3.23, at 532 (1976).

The first of these statutes "separating the surface right from the right to the underlying minerals" was the Act of March 3, 1909 (35 Stat. 844), 30 U.S.C. § 81, followed shortly by the Acts of June 22, 1910 (36 Stat. 583), 30 U.S.C. §§ 83 *et seq.*, April 30, 1912 (37 Stat. 105), 30 U.S.C. § 90, and August 24, 1912 (37 Stat. 496). *See The Classification of the Public Lands,* 537 U.S. Geological Survey Bull. 45, Department of Interior (1913). In the latter report, the Geological Survey pointed out that where lands were valuable for two uses, both uses

8. The President said:

> If this Government sells its remaining fuel lands they pass out of its future control. If it now leases them we retain control, and a future Congress will be at liberty to decide whether it will continue or change this policy. Meanwhile, the Government can inaugurate a system which will encourage the separate and independent development of the surface lands for agricultural purposes and the extraction of the mineral fuels in such manner as will best meet the needs of the people and best facilitate the development of manufacturing industries.

41 Cong.Rec. 2806 (1907).

Appellees argue that the executive department statement preceding the enactment of the Stock-Raising Homestead Act dealt primarily with coal deposits. But the concern of the statements was with the conservation of underground energy sources, as the President's references to "fuel lands" and "mineral fuels" illustrate.

9. *See also id.* at 57–58, and the following at 178:

> No principle is more fundamental to real conservation and at the same time more beneficial to the mining and other industries than this of giving preference to the highest possible use for the public lands. The earliest land laws, those of a century ago, provided for the reservation of mineral lands from disposal for other purposes, and the present coal-land law expresses this principle of relative worth by giving gold, silver, and copper deposits priority over the coal, and coal in turn preference over agricultural values. With classification data at hand the principle of relative worth can be further developed. Wherever the different values conflict the higher use should prevail. On the other hand, wherever the different values can be separated that separation by appropriate legislation is at once the easiest and best solution of the problem; for instance, the surface rights may be separated from the right to mine underlying beds of coal.

could be served by "a separation of estates." The report urged adoption of legislation embodying "the extension of the principle of the separation of estates," plus the leasing of natural resources, as means of protecting such resources without delaying agricultural development.[10]

In 1914, within a year of this appeal, Congress began consideration of a forerunner of the Stock-Raising Homestead Act. The bill was referred to the Department of Interior for comment, revised by the Department, and reintroduced. H.R.Rep. No. 626, 63d Cong., 2d Sess., *reprinted at* 52 Cong.Rec. 3986–90 (1915). It was enacted into law the following year.

[2] This background supports the conclusion, confirmed by the language of the Stock-Raising Homestead Act, the Committee reports, and the floor debate, that when Congress imposed a mineral reservation upon the Act's land grants, it meant to implement the principle urged by the Department of Interior and retain governmental control of subsurface fuel sources, appropriate for purposes other than stock raising or forage farming.[11]

We turn to the statutory language. The title of the Act—"The Stock-Raising Homestead Act"—reflects the nature of the intended grant. The Act applies only to areas designated by the Secretary of Interior

10. The report states (45–47):

> The carrying out of the withdrawal policy for protecting the mineral and water resources of the public domain is in many cases rendered difficult and embarrassing by the agricultural value of the land withdrawn. . . . [S]ome of the best farming lands in the West are underlain by coal or phosphate, and some are so situated as to be of strategic importance in power development. Any hindrance to bona fide home building or other agricultural development of the public domain is indeed unfortunate, but in order to protect the public's natural resources withdrawals resulting in such hindrance have been necessary. For certain lands the situation has been relieved by the passage of acts separating the surface right from the right to the underlying minerals. . . .
>
> In carrying out its function of classifying the public lands and in making its fund of information available in the administration of the existing land laws the Geological Survey has become acutely cognizant of the need for certain new legislation. The laws desired are primarily of two types and embody two fundamental necessities—first, the extension of the principle of the separation of estates, and second, the application of the leasing principle to the disposition of natural resources.
>
> As has already been pointed out, the public lands can not be divided into classes each of which is valuable for one purpose only. Instead, the same tract of land may be valuable for two or more resources. In one tract—for example, agricultural land that is underlain by coal—both resources may be utilized at the same time without interfering with each other. In another tract—for example, agricultural land within a reservoir site—the land may be valuable for one resource only until it is utilized for another. In the first case the problem is so to frame the laws that no resource will be forced to await the development of the other. In the second case the problem is to permit the use of the land for one purpose pending its use for another without losing public control of the development of the second. In both cases the answer is found in a separation of estates. The extension of this principle, now applied to coal, to withdrawn and classified minerals and to the uses of water resources would permit the retention of the mineral deposits and power and reservoir sites in public ownership pending appropriate legislation by Congress without in any way retarding agricultural development. Bills have already been introduced applying this principle to oil in other States than Utah and to phosphate in the State of Idaho. It is to be hoped that such bills will be passed and approved, or, better still, that a comprehensive act providing for the separation of the various estates will be introduced and enacted.

11. The court in *Skeen v. Lynch*, 48 F.2d 1044, 1046 (10th Cir. 1931) stated:

> The legislative history of the Stock-Raising Homestead Act when it was reported for passage including the discussion that followed relevant to this subject leave us no room to doubt that it was the purpose of Congress in the use of the phrase "all coal and other minerals" to segregate the two estates, the surface for stockraising and agricultural purposes from the mineral estate, and to grant the former to entrymen and to reserve all of the latter to the United States.

Although the Supreme Court of New Mexico specifically rejected the *Skeen* analysis in *State ex rel. State Highway Comm'n v. Trujillo*, 82 N.M. 694, 487 P.2d 122, 125 (1971), it did so in reliance upon the absence of an express provision in the Act, especially rejecting an invitation to examine the legislative history.

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as "stock-raising lands"; that is, "lands the surface of which is, in his opinion, chiefly valuable for grazing and raising forage crops, do not contain merchantable timber, are not susceptible of irrigation from any known source of water supply, and are of such character that six hundred and forty acres are reasonably required for the support of a family. . . ." 43 U.S.C. § 292. The entryman is required to make improvements to increase the value of the entry "for stock-raising purposes." *Id.* § 293. On the other hand, "all entries made and patents issued" under the Act must "contain a reservation to the United States of all the coal and other minerals in the lands," and such deposits "shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws." *Id.* § 299. The subsurface estate is dominant; the interest of the homesteader is subject to the right of the owner of reserved mineral deposits to "reenter and occupy so much of the surface" as reasonably necessary to remove the minerals, on payment of damages to crops or improvements. *Id.*

The same themes are explicit in the reports of the House and Senate committees. The purpose of the Act is to restore the grazing capacity and hence the meat-producing capacity of semi-arid lands of the west and to furnish homes for the people, while preserving to the United States underlying mineral deposits for conservation and disposition under laws appropriate to that purpose. The report of the House Committee reproduces a letter from the Department of Interior endorsing the bill. The Department notes that "all mineral[s] within the lands are reserved to the United States." H.R.Rep. No. 35, 64th Cong., 1st Sess. 5 (1916). The Department continues, "To issue unconditional patents for these comparatively large entries under the homestead laws might withdraw immense areas from prospecting and mineral development, and without such a reservation the disposition of these lands in the mineral country under agricultural laws would be of doubtful advisability." *Id.* Moreover, "[t]he farmer-stockman is not seeking and does not desire the minerals, his experience and efforts being in the line of stock raising and farming, which operations can be carried on without being materially interfered with by the reservation of minerals and the prospecting for and removal of same from the land." *Id.* This language is quoted with approval in S.Rep. No. 348, 64th Cong., 1st Sess. 2 (1916).

Commenting upon the mineral reservation, the House report states:

> It appeared to your committee that many hundreds of thousands of acres of the lands of the character designated under this bill contain coal and other minerals, the surface of which is valuable for stock-raising purposes. The purpose of [the provision reserving minerals] is to limit the operation of this bill strictly to the surface of the lands described and to reserve to the United States the ownership and right to dispose of all minerals underlying the surface thereof. . . .

H.R.Rep. No. 35, *supra*, at 18.

The floor debate is revealing. The bill drew opposition because of the large acreage to be given each patentee. *See, e. g.*, 52 Cong.Rec. 1808–09 (1915) (remarks of Rep. Stafford). In response, supporters emphasized the limited purpose and character of the grant. They pointed out that because the public lands involved were semi-arid, an area of 640 acres was required to support the homesteader and his family by raising livestock. *E. g., id.* at 1807, 1811–12 (remarks of Reps. Fergusson, Martin and Lenroot). They also pointed out that the grant was limited to the surface estate,[12] and they emphasized in the strongest terms that all minerals were retained by the United States.

For example, asked whether the reservation would include oil, Congressman Ferris,

12. Representative Burke, explaining the earlier and, for our purposes, identical version of the Act (*see* 53 Cong.Rec. 1170 (1916)), stated that "Section 2 of the bill . . . limits the entry to the surface and provides that the land must be chiefly valuable for grazing and raising forage crops . . . ." 52 Cong.Rec. 1809 (1915).

manager of the bill, responded, "It would. We believe it would cover every kind of mineral. All kinds of minerals are reserved . . . [The bill] merely gives the settler who is possessed of any pluck an opportunity to go out and take 640 acres and make a home there." 53 Cong.Rec. 1171 (1916). It was pointed out that oil was not, technically, a "mineral." Congressman Ferris replied, "if the gentleman thinks there is any conceivable doubt about it we will put it in, because not a single gentleman from the West who has been urging this legislation wants anybody to be allowed to homestead mineral land." *Id.* During the closing debate on the Conference report, reference was twice made to the Department of Interior communication quoted above—including the assertion that without a broad mineral reservation the grant would be unjustifiable, and the representation that "the farmer-stockman is not seeking and does not desire the minerals, his experience and efforts being in the line of stock raising and farming, which operations can be carried on without being materially interfered with by the reservation of minerals and the prospecting for and removal of same from the land." 54 Cong.Rec. 682, 684 (1916).

There is little in the debates to comfort appellees. Appellees cite a discussion between Congressmen Mondell and Ferris, in which Mondell objected to Ferris's describing certain laws as "surface-entry laws, for they are not." Congressman Mondell continued, "They convey fee titles. They give the owner much more than the surface, they give him all except the body of the reserved mineral." 53 Cong.Rec. 1233–34 (1916).[13] Representative Mondell was not referring to the Stock-Raising Homestead Act at all, but to three earlier statutes that reserved only particularly named substances, and not minerals generally.[14] Representative Mondell opposed the Stock-Raising Homestead Act's general mineral reservation for the very reason that it restricted the patentee's estate more than the earlier statutes, and to an extent Representative Mondell thought undesirable. Congressman Mondell remarked that the general reservation contained in the Act as adopted rested on "the monarchical theory" which, he asserted, "is to reserve all minerals to the crown, upon the theory that the mere subject is not entitled to anything except the soil that he stirs." 51 Cong.Rec. 10494 (1914).[15] Although Representative Mondell eventually voted for the Act, he continued to protest the scope of the mineral reservation. His closing comment is worthy of notice. It confirms the view that the mineral reservation in the Stock-Raising Homestead Act was novel in its breadth. It also reveals that this broad reservation of subsurface resources was included at the insistence of the Department of Interior because of the large surface acreage granted under the Act:

> . . . the fact should be emphasized that the bill establishes a new method and theory with regard to minerals in the land legislation in our country. It reverts back to the ancient doctrine of the ownership of the mineral by the king or the crown and reserves specifically everything that is mineral in all the land entered. It was, it was claimed, necessary to accept a provision of that kind in order

13. Appellees also observe that the proviso to the mineral reservation in the Act originally stated that "patents issued for the coal or other mineral deposits herein reserved shall contain appropriate notations declaring them to be subject to the provisions of this act with reference to the disposition, occupancy, and use *of the surface* of the land," (italics added) and that the italicized phrase was stricken in the House. 53 Cong.Rec. 1233 (1916). The change was made by committee amendment, adopted without explanation or discussion. Even considered alone, its effect is unclear. It may have been thought, for example, that the stricken phrase might be construed to render the broad mineral reservation of the Act inapplicable to patents for a particular mineral, thus inadvertently broadening the mineral grant.

14. Act of Mar. 3, 1909, 35 Stat. 844, 30 U.S.C. § 81 (coal); Act of June 22, 1910, 36 Stat. 583, 30 U.S.C. §§ 83 *et seq.* (coal); Act of July 17, 1914, 38 Stat. 509, 30 U.S.C. §§ 121 *et seq.* (phosphate, nitrate, potash, oil, gas, or asphaltic minerals).

15. *See also* 52 Cong.Rec. 1809 (1915).

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to secure the larger acreage. The Interior Department insisted upon it, and many supported that view. My own opinion is that that policy is not wise and that in the long run it will be found to be infinitely more harmful than beneficial or useful or helpful to anyone, either the individual or the public generally. When one takes into consideration the wide range of substances classed as mineral, the actual ownership under a complete mineral reservation becomes a doubtful question.

54 Cong.Rec. 687 (1916).[16]

Appellees argue that references in the Congressional Record to homesteaders' drilling wells and developing springs [17] indicate that Congress intended title to underground water to pass to patentees under the Act. These references are not to the development of geothermal resources. As we have seen, commercial development of such resources was not contemplated in this country when the Stock-Raising Homestead Act was passed. Moreover, in context, the references are to the development of a source of fresh water for the use of livestock, not to the tapping of underground sources of energy for use in generating electricity.[18]

[3, 4] This review of the legislative history demonstrates that the purposes of the Act were to provide homesteaders with a portion of the public domain sufficient to enable them to support their families by raising livestock, and to reserve unrelated subsurface resources, particularly energy sources, for separate disposition. This is not to say that patentees under the Act were granted no more than a permit to graze livestock, as under the Taylor-Grazing Act, 43 U.S.C. §§ 315 *et seq.* To the contrary, a patentee under the Stock-Raising Homestead Act receives title to all rights in the land not reserved. It does mean, however, that the mineral reservation is to be read broadly in light of the agricultural purpose of the grant itself, and in light of Congress's equally clear purpose to retain subsurface resources, particularly sources of energy, for separate disposition and development in the public interest. Geothermal resources contribute nothing to the capacity of the surface estate to sustain livestock. They are depletable subsurface reservoirs of energy, akin to deposits of coal and oil, which it was the particular objective of the reservation clause to retain in public ownership. The purposes of the Act will be served by including geothermal resources in the statute's reservation of "all the coal and other minerals." Since the words employed are broad enough to encompass this result, the Act should be so interpreted.

[5] Appellees assert that the Department of Interior has expressed the opinion that the mineral reservation in the Act does not include geothermal resources, and that this administrative interpretation is entitled to deference under *Udall v. Tallman*, 380 U.S. 1, 16, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965), and similar authority. The documents upon which appellees rely do not reflect a contemporaneous construction by administrators who participated in drafting the Act to which courts give great weight

16. Congressman Raker also linked the size of the surface grant with the breadth of the reservation of sub-surface resources. 52 Cong.Rec. (App.) 521 (1915).

17. 52 Cong.Rec. 1810 (1915); 52 Cong.Rec. (App.) 521 (1915); 53 Cong.Rec. 1127, 1170 (1916).

18. "A fair and reasonable [ruling] would hold the surface owner to be entitled only to fresh waters that reasonably serve and give value to his surface ownership. Salt water and geothermal steam and brines should be held the property of the mineral owner who owns such substances as oil, gas and coal, since the functions and values are more closely related. Geothermal steam is a source of energy just as fossil fuels such as oil, gas and coal are sources of energy." Olpin, *The Law of Geothermal Resources*, 14 Rocky Mountain Mineral Law Institute 123, 140–41 (1968). *See Reich v. Commissioner of Internal Revenue*, 52 T.C. 700 (1969), *aff'd*, 454 F.2d 1157 (9th Cir. 1972); Allen, *Legal and Policy Aspects of Geothermal Resources Development*, 8 Water Resources Bull. 250, 253–54 (1972).

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in interpreting statutes.[19] Nor is this a case in which Congress has approved an administrative interpretation, explicitly or implicitly.[20] On the contrary, Congress noted the Department of Interior's interpretation, observed that a contrary view had been expressed, concluded that "the opinion of the Department is not a conclusive determination of the legal question . . .," and provided for "an early judicial determination of this question (upon which the committee takes no position)." H.R.Rep. No. 91–1544, 91st Cong., 2d Sess., *reprinted at* 3 U.S.Code Cong. & Admin.News 5113, 5119 (1970).

Appellees contend that enactment of the Underground Water Reclamation Act of 1919, 43 U.S.C. §§ 351 *et seq.*, three years after passage of the Stock-Raising Homestead Act, indicates that Congress did not consider subsurface water to be a "mineral." We disagree; indeed the more reasonable implication seems to us to be to the contrary.[21]

19. *Zuber v. Allen*, 396 U.S. 168, 193, 90 S.Ct. 314, 24 L.Ed.2d 345 (1969); *Power Reactor Dev. Co. v. International Union of Electrical, Radio & Machine Workers*, 367 U.S. 396, 408, 81 S.Ct. 1529, 6 L.Ed.2d 924 (1961); *United States v. American Trucking Ass'ns*, 310 U.S. 534, 549, 60 S.Ct. 1059, 84 L.Ed. 1345 (1940).

Appellees rely upon three letters by officials of the Department of Interior stating that "geothermal steam" is not a "mineral" within the meaning of the mining laws or the mineral reservation. Two of the letters, both dated Dec. 16, 1965, are responses by Edward Weinberg, Deputy Solicitor, to letters of inquiry from interested citizens. They are reproduced in an appendix to the district court's opinion, 369 F.Supp. at 1300–02, and as part of H.R. Rep. No. 91–1544, *supra* note 1, at 5126–28. The third letter was written by the Associate Solicitor for Public Lands to counsel for appellee Magma Power Company on Feb. 16, 1966, and apparently has not been published.

The letters do not reflect an agency view contemporaneous with the passage of the Act—they were written a half century after the statute was adopted. Appellees also rely upon a Department of Interior memorandum from Edward Fischer, Acting Solicitor, to the Director of Bureau of Land Management, stating that geothermal steam is not a "mineral material" for the purposes of the Mineral Act of 1947, 30 U.S.C. § 601. Dep't Interior Mem. M–36625, Aug. 18, 1961. But this view is contrary to that expressed by Solicitor Stevens only seven months earlier in a letter to appellee Magma Power Company dated Jan. 19, 1961. Brooks, *supra* note 1, at 524 & n.56; Note, *Acquisition of Geothermal Rights*, 1 Idaho L.Rev. 49, 56 & n.44 (1964). This inconsistency, *see* Hearings on H.R. 7334 *et al.* before the Subcomm. on Mines & Mining of the House Comm. on Interior and Insular Affairs, 89th Cong., 2d Sess., ser. 89–35, pt. II, at 194–95 (1966) (statement of Emmet Wolter) is another factor indicating that we should not accord deference to the administrative construction. *See Udall v. Tallman*, 380 U.S. 1, 17, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965).

Moreover, the expressions of opinion relied upon by appellees are weakly reasoned. They rest entirely upon the premise that geothermal resources are simply water. Water, the argument then proceeds, ordinarily is not included in mineral reservations by the courts, or treated as a mineral in public land laws. But all of the court decisions relied upon in the communications concern fresh water brought to the surface by means of a well. *See Mack Oil Co. v. Laurence*, 389 P.2d 955 (Okl.1964); *Fleming Foundation v. Texaco*, 337 S.W.2d 846 (Tex. Civ.App.1960). *See Estate of Genevra O'Brien*, 8 Oil & Gas 845 (N.D.Tex.1957) (charge of the court). And if geothermal resources are indeed "water," the later enactment of the Geothermal Steam Act has undercut the statement that "water" is not treated as a mineral in public land laws. But the principle deficiency in the documents relied upon by appellees is this: the sole question is the meaning of the statute; the answer therefore turns entirely upon the intent of Congress, and the documents do not mention that subject at all.

20. *See, e. g., Power Reactor Dev. Co. v. International Union of Electrical, Radio & Machine Workers*, 367 U.S. 396, 408–09, 81 S.Ct. 1529, 6 L.Ed.2d 924 (1961).

21. The Underground-Water Reclamation Act authorizes the issuance of permits to explore for underground water on not to exceed 2,560 acres of public lands in Nevada (§ 351). The Act provides that if a permittee discovers and makes available for use a supply of underground water in sufficient quantity "to produce at a profit agricultural crops other than native grasses upon not less than twenty acres of land," he will be entitled to a patent on 640 acres of the public land embraced in his permit (§ 355). The Act further provides for reservation of "all the coal and other valuable minerals in the lands" patented (§ 359). Appellees argue that the term "minerals" in the latter provision must not include underground water, for if it did the reservation would deprive the patentee of the very water he had discovered.

But again, the obvious distinction is between underground water suitable for agricultural purposes and geothermal resources. The purpose of the Underground-Water Reclamation

EXHIBIT C

The district court granted appellees' motion to dismiss for failure to state a claim upon which relief could be granted. 369 F.Supp. at 1299. The State of California, as amicus, suggests that questions of fact are presented as to the nature of geothermal resources. We are persuaded that the facts necessary to decision are not disputed. The appeal presents only a question of law as to the proper construction of the statute, which we have answered.

Whether the United States is estopped from interfering with the rights of private lessees without compensating them for any losses they may sustain will be open on remand.

Reversed and remanded.

UNITED STATES of America, Plaintiff-Appellee,

v.

Dennis Garland ANDY, Defendant-Appellant.

No. 76-1667.

United States Court of Appeals, Ninth Circuit.

Jan. 31, 1977.

As Amended Feb. 22, 1977.

The United States District Court for the Eastern District of Washington, Marshall A. Neill, Chief Judge, adjudicated minor a juvenile delinquent for assault with a dangerous weapon, and minor appealed. The Court of Appeals held that where minor was in constant pretrial custody, federal or state, from January 2, 1976, until he was brought to trial in federal district court on February 19, 1976, minor's adjudication as juvenile delinquent would be vacated and cause remanded to permit district court to determine whether more than 30 days elapsed from date that prosecuting officer for federal Government, acting with reasonable diligence, could have certified that state courts did not have jurisdiction over minor or did not have available programs and services adequate for needs of minor.

Judgment vacated; cause remanded.

1. Infants ⇐16.9

Thirty-day speedy trial rule applicable to federal delinquency proceedings runs from date Attorney General certifies, or in exercise of reasonable diligence could have certified, to conditions stated in statute governing delinquency hearings in district courts, or date upon which Government formally assumed jurisdiction over juvenile, whichever event earlier occurs. 18 U.S.C.A. §§ 5032, 5036.

2. Infants ⇐16.14

Where minor Indian was in constant pretrial custody, federal or state, from January 2, 1976, until he was brought to trial in federal court on February 19, 1976, minor's adjudication as juvenile delinquent would be vacated and cause remanded to permit district court to determine whether more than 30 days elapsed from date that prosecuting officer for federal Government, acting with reasonable diligence, could have certified that state courts did not have jurisdiction over minor or did not have available programs and services adequate for needs of minor. 18 U.S.C.A. §§ 5032, 5036.

Act is fully realized and all of its provisions made fully effective if the term "minerals" is read to exclude the former but include the latter. As noted in the text, the significance of the Underground-Water Reclamation Act may be the opposite of that suggested by appellees when the statute is considered in conjunction with the Geothermal Steam Act of 1970, for the latter statute was adopted on the premise that existing legislation, presumably including the Underground-Water Reclamation Act of 1919, did not authorize the Department of Interior to dispose of geothermal resources in public lands. *See, e. g.*, H.R.Rep. No. 91-1544, *supra* note 1, at 5115.

SENATE BILL NO. 460—COMMITTEE ON NATURAL RESOURCES

APRIL 12, 1979

Referred to Committee on Natural Resources

SUMMARY—Provides for seizure, care and disposition of animals being cruelly treated and requires frequent visits to certain traps. (BDR 50-1579)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to animals; authorizing certain officers to take possession and care for animals being treated cruelly; creating a limited lien for the costs of the care; authorizing judicial determination of the final disposition of those animals; requiring trappers to visit certain traps at more frequent periods; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 574 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. Any peace officer and any officer of a society for the prevention of cruelty to animals authorized to make arrests pursuant to NRS 574.040 shall, upon discovering any animal being treated cruelly, take possession of it and provide it shelter and care or, upon written permission from the owner, may destroy it in a humane manner.

2. At the time of taking possession of such an animal, the officer shall give to the owner, if he can be found, a notice containing a written statement of the reasons for the taking, the location where the animal will be cared for and sheltered, and the existence of a limited lien for the costs of such care and shelter. If the owner is not present at the taking and the officer cannot find the owner after a reasonable search, the officer shall post the notice on the property from which he takes the animal. If the identity and address of the owner is later determined, the notice must be mailed to the owner immediately after the determination.

3. An officer who takes possession of an animal pursuant to this section has a lien on the animal for the reasonable value of care and shelter furnished to the animal and, if applicable, for its humane destruction, except that the lien does not extend to the costs of care and shelter for longer than 2 weeks.

S. B. 523

SENATE BILL NO. 523—COMMITTEE ON COMMERCE AND LABOR

APRIL 26, 1979

Referred to Committee on Natural Resources

SUMMARY—Declares that geothermal resources belong to public and requires state engineer to adopt regulations governing development of those resources. (BDR 48-1800)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to geothermal resources; declaring that geothermal resources belong to the public; requiring the state engineer to adopt regulations governing the development, control and conservation of those resources; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 534A of NRS is hereby amended by adding thereto a new section which shall read as follows:

All geothermal resources within the boundaries of this state belong to the public.

SEC. 2. NRS 534A.020 is hereby amended to read as follows:

534A.020 1. The state engineer [may adopt such regulations as are necessary to insure] *shall adopt regulations to insure* the proper development, control and conservation of Nevada's geothermal resources.

2. The regulations may include: [but are not restricted to:]

(a) Defining geothermal areas;

(b) Establishing security requirements;

(c) Establishing casing and safety device requirements;

(d) Establishing recordkeeping requirements;

(e) Establishing procedures to prevent pollution and waste;

(f) Authorizing investigations and research which may be in conjunction with other governmental and private agencies; and

(g) Establishing well-spacing requirements.

S. B. 524

SENATE BILL NO. 524—COMMITTEE ON COMMERCE AND LABOR

APRIL 26, 1979

Referred to Committee on Natural Resources

SUMMARY—Requires department of energy to adopt regulations to govern marketing of devices for reducing consumption of energy and devices for use of solar energy. (BDR 46-1802)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Effect less than $2,000.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to energy resources; requiring the department of energy to adopt regulations governing the marketing of devices for reducing use of energy and devices utilizing solar energy; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter 523 is hereby amended by adding thereto a new section which shall read as follows:

1. The department shall adopt regulations governing the marketing of:

(a) Devices which are designed for or represented to be capable of reducing the consumption of energy.

(b) Devices which have as their principal function the collection or concentration of solar energy for the purpose of providing heat or electricity.

2. The regulations must include definitions of the kinds of devices which are subject to the regulations.