



Winter 1978

## Federal Reservation of Geothermal Resources

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### Recommended Citation

Ruth M. Silver, *Federal Reservation of Geothermal Resources*, 18 Nat. Resources J. 213 (1978).  
Available at: <https://digitalrepository.unm.edu/nrj/vol18/iss1/17>

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# RECENT DEVELOPMENTS

## FEDERAL RESERVATION OF GEOTHERMAL RESOURCES

NATURAL RESOURCES LAW—Geothermal resources held to be included in mineral reservation to the United States under the Stock-Raising Homestead Act of 1916 and therefore not subject to development by owner of surface estate. *United States v. Union Oil Co.*, 549 F.2d 1271 (9th Cir. 1977).

A case of statutory construction, *United States v. Union Oil Co.*<sup>1</sup> deals with the unprecedented issue of whether patented reservations of mineral interests under the Stock-Raising Homestead Act of 1916<sup>2</sup> (hereafter the Homestead Act) include geothermal resources.<sup>3</sup> Examining legislative history, statutory language, Congressional reports, and records of floor debates over the Homestead Act, the Ninth Circuit concluded that the reservation of mineral interests to the United States under the Act included geothermal steam, thus precluding development of the resource by appellees.

Appellees, Union Oil and others, own land or are lessees of land owners in "The Geysers" area in Sonoma County, California. The land is owned under the Homestead Act, which granted surface ownership of public lands to private individuals while retaining mineral interests in the U.S. Expressly reserved were "all the coal and other minerals to the lands so entered and patented, together with the right to prospect for, mine and remove the same."<sup>3</sup> Union Oil had developed or was seeking to develop wells on the land in Sonoma County, in order to produce geothermal steam for generating electricity. The U.S. Attorney General brought a quiet title action pursuant to § 21(b) of the Geothermal Steam Act of 1970 to determine whether geothermal resources are included in the mineral reservation under the Homestead Act.<sup>4</sup> The U.S. District Court granted Union Oil's motion to dismiss for failure to state a claim upon which relief

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1. 549 F.2d 1271 (9th Cir. 1977).

2. 43 U.S.C. § § 291 *et seq.* (1970).

3. 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 vapor rises to the surface through a natural vent, or well, it flashes into steam.

4. *Supra* note 2, at § 299.

may be granted.<sup>5</sup> On appeal the Ninth Circuit reversed and remanded.

The court found no language in the Act or in its legislative history that referred to geothermal resources, but this was logically attributable to the fact that the commercial use of geothermal energy in the early twentieth century was virtually unknown. However, since the Geothermal Steam Act of 1970 expressly specified that hereinafter geothermal resources would be included in mineral reservations,<sup>6</sup> the court found that the Homestead Act was capable of including those resources. Studying the legislative history of the Act, the court established that Congress' overall legislative intent would be furthered by construing the Act to include geothermal resources. This finding was predicated upon the fact that the Act's purpose was to grant land units for agricultural uses only, with the intent to reserve all subsurface resources to the U.S.<sup>7</sup>

The court considered events that occurred before the creation of the Homestead Act in determining the scope of the reservation of minerals. In 1907, Theodore Roosevelt first suggested separation of surface and mineral estates in order to retain mineral fuels for the public. Such a separation would protect the resources and still allow private agricultural development.<sup>8</sup> In 1909, the Secretary of the Interior advised that such a separation would prevent fraud and monopoly of coal deposits.<sup>9</sup> That year Congress passed the first statutes that reserved mineral interests to the United States in the sale of public land.<sup>10</sup> The U.S. Geological Survey Bulletin of 1913 supported the separation of surface and mineral estates and the leasing of natural resources.<sup>11</sup> And in 1914 the forerunner of the Act was being considered by Congress. Based on this historical background, the court concluded that Congress had meant to retain government control of "subsurface fuel sources, appropriate for purposes other than stock raising or forage farming."<sup>12</sup>

The court next considered the statutory language of the Homestead Act. Noting that the title itself refers to the nature of the Act, the court found that the land grants were made exclusively for stock raising purposes. Land under the Act had been designated by the

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5. 30 U.S.C. § 1020(b) (1977 Supp.).

6. *United States v. Union Oil Co.*, 369 F. Supp. 1289 (N.D. Cal. 1973).

7. 30 U.S.C. § 1024 (1977 Supp.).

8. *Supra* note 1, at 1274.

9. 41 CONG. REC. 2806 (1907).

10. 1909 Dep't Interior Ann. Rep. pt. 1, at 7.

11. 1 AMERICAN LAW OF MINING § 3.23, at 532 (1976).

12. *The Classification of Public Lands*, 537 U.S. GEOLOGICAL SURVEY BULL. 45 (1913).

Secretary of the Interior as suitable for stock raising only, and owners were required to make improvements on the land for "stock-raising purposes."<sup>13</sup> Rights of owners of the surface were subservient to rights of the government and its mineral interest, subject only to payment for damages to crops and improvements.<sup>14</sup>

Reviewing the House and Senate committee reports, the court encountered numerous references to the need for reserving all mineral interests to the government. Congressional sentiment seemed to be that the Act should strictly limit the grants to surface estates and that the surface owners would not want the subsurface resources anyway.<sup>15</sup>

The floor debate over the Homestead Act was also reviewed. Supporters of the large grants emphasized that only the surface estate would be privately owned, and the manager of the bill noted that the mineral reservation would cover every type of mineral, even those not technically referred to as minerals.<sup>16</sup> Union Oil argued that Congressman Mondell, an opponent of the Act, felt that the grants would convey fee simple titles. The court, however, found that Mondell opposed the Act specifically because it did reserve all minerals to the United States; he felt that the reservation was "monarchical" and that everything that could be classified as a mineral could cover a broad range of substances.<sup>17</sup>

Finally, the court considered and distinguished each one of Union Oil's major arguments. Union Oil urged that the Congressional record referred to wells and developing springs as part of the homestead grants, but the court found that commercial development of such sources of water was not contemplated and that the record referred to the springs in the context of stock watering only.<sup>18</sup> It was also argued that the Department of the Interior did not consider geothermal resources to be included in mineral reservations, but the court simply found that opinions within the Department were not dispositive of the legal question.<sup>19</sup> Finally, appellees argued that the Underground Water Reclamation Act of 1919<sup>20</sup> is evidence of the fact that Congress did not consider subsurface water as a mineral. The court,

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13. *Supra* note 1, at 1276.

14. 43 U.S.C. §§ 292-93 (1970).

15. *Id.* at § 299.

16. H.R. REP. NO. 35, 64th Cong., 1st Sess. (1916), quoted with approval in S. REP. NO. 348, 64th Cong., 1st Sess. 2 (1916).

17. 53 CONG. REC. 1171 (1916).

18. 54 CONG. REC. 687, 10494 (1916).

19. 52 CONG. REC. 1810 (1915); 52 CONG. REC. (APP.) 521 (1915); 53 CONG. REC. 1127, 1170 (1916).

20. *Supra* note 1, at 1279-80.

however, found this Act to be concerned only with agricultural purposes and not with natural resources.

In summary, the court concluded on the basis of the legislative history of the Stock-Raising Homestead Act that sources of energy are intended to remain in the government's possession, and the purposes of the Act will be best served by including geothermal resources in the reservation of mineral interests. Noting the strictly agricultural purpose of the Act, the subsurface estate reservation was broadly interpreted, even though title passed to all rights that were not expressly reserved. The court left open on remand the question of estoppel of the government from interfering with private lessees by developing subsurface resources compensation.<sup>21</sup>

This is a unique and intriguing decision, as it opens wide the definition of "mineral interest," construing it in the timely terms of a valuable natural resource that may be in great demand for future energy needs. The decision is being appealed to the United States Supreme Court, and it will be interesting to observe whether this liberal interpretation of mineral interests will be upheld.

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21. 43 U.S.C. § 351 (1964).

22. *Supra* note 1, at 1281.