Editor's Note: appeal filed sub nom. Bedroc Limited, L.L.C. v. U.S., Civ. No. CV-S-98-0102-PMP (LRL), (D. Nev.), aff'd (May 24, 1999), 50 F.Supp.2d 1001; aff'd, No. 01-17080 (9th Cir. Dec. 30, 2002), 314 F.3d 1080; petition for cert granted, S.Ct. No. 02-1593 (Sept. 30, 2003); reversed and remanded (March 31, 2004)

EARL WILLIAMS

IBLA 93-414 Decided October 6, 1997

Appeal from a decision issued by the Area Manager, Caliente Resource Area, Caliente, Nevada, Bureau of Land Management, assessing damages for mineral material trespass. N57158.

Affirmed.

1. Statutory Construction: Generally--Statutory Construction: Analogous Statutes--Statutory Construction: Legislative History

   Contemporaneous statements of the sponsor and committee man in charge of Senate consideration of the bill later enacted as the Pittman Underground Water Act of 1919 that it was the intent of the Congress to reserve to the United States all subsurface minerals in lands patented under the bill will be given considerable weight when construing whether ownership of subsurface minerals passed to a patent-holder under that Act.

2. Mineral Lands: Mineral Reservation--Patents of Public Lands: Reservations--Trespass: Generally

   Sand and gravel has been reserved to the United States under the Pittman Underground Water Act of 1919, 43 U.S.C. §§ 351-355 (1958), and removal of sand and gravel from land patented under that Act for commercial purposes constitutes a trespass.

APPEARANCES: Earl M. Hill, Esq., Reno, Nevada, for Appellant; Burton J. Stanley, Esq., Office of the Solicitor, Pacific Southwest Region, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Earl Williams has appealed an April 23, 1993, Decision issued by the Area Manager, Caliente Resource Area, Nevada, Bureau of Land Management (BLM or Bureau), finding Williams had committed mineral material trespass when he removed sand and gravel from a 560-acre tract of land owned by Williams. 1/ The Decision was based upon a finding that the Pittman Act patent of the tract reserved the minerals to the United States. 2/

The land owned by Williams is situated in the E½, E½W½ sec. 24 and the E½NE¼ sec. 25, T. 11 S., R. 62 E., Mount Diablo Meridian, Lincoln County, Nevada. The surface estate of this tract was conveyed to Williams' predecessor-in-interest pursuant to the Pittman Act by United States Patent No. 1107339 issued March 12, 1940. Section 8 of the Pittman Act reserved

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1/ A deed executed by Franklin B. and Mary B. Snyder on Feb. 24, 1993, conveyed the tract to Earl C. Williams and Ruth Williams. Earl and Ruth Williams conveyed the tract to the Ron and Lynn Williams Family Trust on Mar. 8, 1993. Earl and Ruth Williams also executed a Short Form Deed of Trust to Robert W. Steadman, Trustee, Steadman Trust, on Mar. 18, 1993. In an Oct. 27, 1993, letter to the Assistant Regional Solicitor, counsel for Williams states that the deed dated Mar. 8, 1993, was not recorded until May 7, 1993. Counsel asserts that title was vested in Williams when the trespass notices were issued and that Williams has standing to appeal.

2/ The Act of Oct. 22, 1919, 41 Stat. 293-295; 43 U.S.C. §§ 351-355 (1958), is commonly referred to as the Pittman Act or the Pittman Under ground Water Act of 1919. By Act of Sept. 22, 1922, 42 Stat. 1012, 43 U.S.C. § 356 (1958), Congress authorized the Secretary of the Interior to grant extensions of time "not exceeding two years" to permittees under the Pittman Act for "beginning, recommencement, or completion" of operations for the development of underground waters. The Pittman Act was repealed by the Act of Aug. 11, 1964, Pub. L. No. 88-417, 78 Stat. 389, subject to valid existing rights and obligations, and without prejudice to the processing of valid applications for permits on file at that date. See 29 Fed. Reg. 13387 (Sept. 26, 1964).

to the United States "all the coal and other valuable minerals in the lands so entered and patented."

The Bureau issued notices of trespass for the removal and sale of sand and gravel on March 26, 1993, and April 1, 1993. On April 13, 1993, Williams met with BLM and questioned BLM's determination that the sand and gravel he had removed was "valuable mineral" within the meaning of the reservation in the patent. At BLM's request, Williams submitted an April 16, 1993, letter stating that "[t]his property is my own personal property and I do not feel that these are valuable minerals. Once we remove the over burdens and the fact that it is 70 miles from Las Vegas, it is not valuable to anyone."

After considering Williams' response, BLM issued its April 23, 1993, Decision that Williams removed and sold Federally owned mineral material without the benefit of a mineral materials contract. In its Decision, BLM cited Watt v. Western Nuclear, Inc., 462 U.S. 36, 59 (1983), to support its conclusion that the sand and gravel deposit on Williams' property was reserved to the United States. In Western Nuclear, the Supreme Court found sand and gravel to be "mineral reserved to the United States in lands patented under the SRHA [Stock-Raising Homestead Act]." Id. 3/ The Bureau also found Williams in violation of 43 C.F.R. § 9239.0-7, which provides:

3/ The Act of Dec. 29, 1916, 39 Stat. 862, 43 U.S.C. §§ 291-301 (1970), as amended, popularly known as the "Stock-Raising Homestead Act," was repealed by the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, Title VII, § 702, Oct. 21, 1976, 90 Stat. 2787. Section 701(a) of FLPMA provided that "[n]othing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act."

> The extraction, severance, injury, or removal of * * * mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution for such unlawful acts.

Williams' trespass was deemed to be innocent. However, Williams was also advised that he should cease sand and gravel removal immediately, and that continued removal without a mineral materials contract would be considered willful trespass. 4/

On appeal, Williams contends that when the Government issued a Final Certificate on August 29, 1939, and Patent No. 1107339 on March 12, 1940, his predecessors-in-interest acquired the sand and gravel. The patent was issued pursuant to the Pittman Act, which provides in pertinent part:

> That the Secretary of the Interior is hereby authorized to grant to any citizen * * * a permit, which shall give the exclusive right, for a period not exceeding two years, to drill or otherwise explore for water beneath the surface * * * of unreserved, unappropriated, nonmineral, nontimbered public lands of the United States in the State of Nevada not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply * * * And provided further, That said land shall theretofore have been designated by the Secretary of the Interior as subject to disposal under the provisions of this act.
>
> SEC. 2. That the Secretary of the Interior is hereby authorized, on application or otherwise, to designate the lands subject to disposal under the provisions of this act: Provided, however, That where any person * * * qualified to receive a permit under the provisions of this act shall make application for such permit upon land which has not been designated as subject to disposal under the provisions of this act * * * such application * * * shall be * * * suspended until it shall have been deter mined by the Secretary of the Interior whether said land is actually of that character. That during such suspension the land described in the application shall not be disposed of; and

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4/ On June 14, 1993, the Assistant Regional Solicitor submitted a stipulation entered into by Williams and BLM permitting continued production of sand and gravel pending appeal.

> if the land shall be designated under this act, then such application shall be allowed; otherwise it shall be rejected, subject to appeal.
>
> * * * * * *
>
> SEC. 8. That all entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

In his Statement of Reasons (SOR), Williams contends that BLM's reliance upon Watt v. Western Nuclear, Inc., supra, is misplaced because the Court's interpretation of the SRHA in Western Nuclear is not applicable to Pittman Act entries or patents. (SOR at 4.) He argues that no land entry could be made under the Pittman Act until after the land had been deemed to be "nonmineral," noting that if an application for a permit was filed for land which had not been designated as nonmineral, the application was suspended until the land had been designated nonmineral in character, and an application would be rejected if the land was found to be "mineral in character." Williams further argues that only "valuable minerals," locatable under the 1872 mining laws, were reserved to the Federal Government in a Pittman Act patent. (SOR at 4-7.)

Williams notes that on October 2, 1934, the Director of the Geological Survey certified that the land patented to Williams' predecessor-in-interest was nonmineral and recommended designating it as suitable for disposal under the Pittman Act. (SOR at 7; Appellant's Exhibit (Ex.) 1: Letter dated Oct. 2, 1934, from the Director, U.S. Geological Survey, to the Secretary of the Interior.) The nonmineral designation was approved on

behalf of the Secretary on October 5, 1934. (Appellant's Ex. 1: Notation dated Oct. 5, 1934, by First Assistant Secretary of the Interior T.A. Walters on Letter dated Oct. 2, 1934, from the Director, U.S. Geological Survey, to the Secretary of the Interior, at 2.) Williams contends that after this designation was approved, a filing of final proof and issuance and approval of the Final Certificate rendered the nonmineral designation irrevocable. Williams reasons that this designation rendered the mineral reservation in the patent inoperative. (SOR at 8.) He concludes that if Congress had intended to reserve all minerals from Pittman Act patents, including minerals discovered after patent issued, it would have expressed an intent to do so. (SOR at 10.) Williams urges a finding that a patent issued pursuant to the Pittman Act conveyed all minerals not known to exist when the equitable title vested in the patent recipient. (SOR at 10-11.)

Williams contends that the difference between the SRHA reservation of "all the coal and other minerals," and the Pittman Act reservation of "all the coal and other valuable minerals," is significant. He asserts that "valuable minerals," other than coal, were locatable under the 1872 mining laws. He then argues that the sand and gravel deposit on his land had no special value when the land was taken to patent, and was therefore not locatable under the 1872 mining laws at that time, and that the land was properly identified as not being mineral in character. This characterization agrees with the conclusion made by the Director of the U.S. Geological Survey when the Director declared the land to be nonmineral. Williams contends that, as a result of this determination, the sand and gravel on his land was not included in the mineral reservation found in the patent. Williams argues that the term "valuable minerals" distinguishes the Pittman

Act reservation from the reservation found in SRHA patents, which extends to all other minerals, regardless of their value at the time of patent. (SOR at 11-12.)

As further support for his argument that the SRHA and Pittman Act mineral reservations are not analogous, Williams notes that an SRHA "entry" could be made on any "unreserved public land" including mineral land, and that "all the coal and other minerals" were reserved to the United States. Williams notes that this procedure differs materially from the procedure for making an entry pursuant to the Pittman Act, because the Pittman Act prohibited "entry" unless and until the land had been designated nonmineral. (SOR at 12-13.)

Williams contends that the true test of whether a mineral deposit is owned by the Federal Government is whether the mineral deposit was locatable under the 1872 mining laws when the Pittman Act permit was issued. (SOR at 15.) He notes that the Materials Act of July 31, 1947, as amended, 30 U.S.C. §§ 601-604 (1994), excluded deposits of sand and gravel and other named minerals materials from location under the 1872 mining laws, and after the passage of the Materials Act of July 31, 1947, sand and gravel deposits were not "valuable deposits" that could be located under the 1872 mining laws unless they had some property or characteristic that gave them a special value. Williams asserts that between October 22, 1919 (the date of enactment of the Pittman Act) and July 31, 1947 (the date of the Materials Act) sand and gravel and other common varieties were not locatable under the 1872 mining laws unless they had distinct characteristics giving them special value. Therefore, Williams reasons, if any entry was allowed,

and final certificate or patent issued prior to 1947, the Pittman Act mineral reservation would not have included sand, gravel, or other "common varieties" if the deposits were not known to have special values, including a profitable market, prior to issuance of final certificate. Williams asserts that the final certificate, entry, and patent to his land all predate the 1947 Act, and if BLM cannot demonstrate that a valuable deposit of sand and gravel was known to exist prior to issuance of the final certificate, the statutory mineral reservation does not include sand and gravel. (SOR at 15-16.)

Mineral material cannot be removed from lands administered by BLM without prior authorization in the form of a mineral material sales agreement or permit issued under the Materials Act of July 31, 1947, 30 U.S.C. §§ 601, 602 (1994), and Departmental regulations. See Richard Connie Nielson v. BLM, 125 IBLA 353, 363 (1993); Frehner Construction Co., 124 IBLA 310 (1992); Curtis Sand & Gravel Co., 95 IBLA 144, 161, 94 Interior Dec. 1, 10 (1987). Williams does not contend that BLM had authorized the removal of the sand and gravel, and the sole question on appeal is the ownership of the sand and gravel. The answer to that question depends on whether the sand and gravel was reserved when the land was patented. The question of the ownership of sand and gravel on lands patented under the Pittman Act is one of first impression.

The BLM Decision assumes a connection between the mineral reservation provisions of section 9 of the SRHA and section 8 of the Pittman Act. An examination of the provisions of the two Acts shows that they are similarly structured and contain similar language. The Bureau apparently concluded that the Supreme Court's holding in Western Nuclear construing

section 9 of the SRHA and finding sand and gravel reserved in SRHA patents is also applicable to the mineral reservation in Pittman Act patents. (Decision at 1.) In our view, we cannot rely on Watt v. Western Nuclear, Inc., supra, to support BLM's Decision, because the holding in Watt v. Western Nuclear, Inc. applies to the reservation of sand and gravel in patents issued pursuant to the SRHA and does not reflect consideration of the ownership of sand and gravel in lands patented under the Pittman Act.

[1] We conclude that sand and gravel was reserved to the United States in Pittman Act patents. Our conclusion is based on the intent of Congress, as reflected in the legislative history of that Act.

It is a well established rule of statutory construction that reliance on analogous legislation is of limited probative value when interpreting the intent of lawmakers:

> Caution must be exercised in applying the rule that one statute will be interpreted to correspond to analogous but unrelated statutes for the reason that by way of contrast an inclusion or exclusion may show an intent or convey a meaning exactly contrary to that expressed by analogous legislation. Therefore, the rule tends to be of greater value where analogy is made to several statutes or a general course of legislation.
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> The interpretation of one statute by reference to an analogous but unrelated statute is considered an unreliable means of discerning legislative intent. Consequently, the chief value of the rule is to be found in the fact that it serves as a criterion for showing the general course of legislative policy.

(Footnotes omitted.) Norman J. Singer, 2B Sutherland Stat Const § 53.05 (5th ed. 1992).

Two additional canons of statutory construction should be considered at this point in our analysis. First, because "[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent, * * * each part or section should be construed in connection

with every other part or section so as to produce a harmonious whole." Norman J. Singer, 2A Sutherland Stat Const § 46.05 (5th ed. 1992). Second, although the plain meaning rule focuses on the importance of a literal reading of the language of a statute, a "literal interpretation of the words * * * should not prevail if it creates a result contrary to the apparent intention of the legislature[.]" Id. at § 46.07. At the same time, the language and structure of a statute should be carefully considered, especially when the Act being considered is derived from carefully considered legislative compromises. Community for Creative Non-Violence v. Reid, 490 U.S. 730, 748 n.14 (1989).

The legislative record indicates that the mineral reservation provisions of the Pittman Act were neither accidental inclusions nor mere boilerplate. They were carefully crafted and thoroughly debated by the Congress. It is clear that Congress considered them to be a crucial part of the Act.

The record shows that Senator Key Pittman of Nevada introduced the precursor of the Pittman Underground Water Act of 1919 on December 29, 1914. That bill, known as S. 7109, was reported favorably unanimously by the Committee on Public Lands of the Senate on February 3, 1915. S. Rep. No. 64-4, at 1 (1915). An identical bill, known as H.R. 21377, was introduced in the House of Representatives by Representative Carl Hayden of Arizona, at the request of Mr. Pittman. The House version, H.R. 21377, was referred to the Committee on Public Lands, which reported it favorably,

with amendments, on February 18, 1915. 5/ H.R. Rep. No. 63-1418, at 2 (1915). The House Report describes H.R. 21377 as follows:

> The purpose of the bill is to encourage the discovery of artesian water on the public domain in the State of Nevada, without appropriation or expense on the part of the Government. The bill is local in effect and extends only to the State of Nevada, where peculiar conditions seem to require such form of development.
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> According to the census of 1910 the land of Nevada is segregated as follows:
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> | | Acres |
> |---|---|
> | Total area | 70,285,440 |
> | Reserved by the Government as forest reserves, Indian reservations, etc. | 12,068,250 |
> | Held in private ownership | 2,714,757 |
> | Unreserved and unappropriated | 55,502,439 |
>
> According to the census of 1910 the population of the State of Nevada is 81,875. There is very little surface water in the State and practically all that does exist has been appropriated. The future development of the agricultural land of the State seems to depend largely upon the development of artesian water. Congress has time and again refused to appropriate money for the exploration and development of artesian water, and therefore if the vast areas of arid lands in the State are to be developed it must be done through the individual and with private capital.
>
> By reason of the peculiar condition that exists in the State it is not to be expected that the remaining great areas of public land will be developed under the homestead or other existing laws.

H.R. Rep. No. 63-1418, at 2 (1915).

5/ Neither S. 7109 nor H.R. 21377 contained a provision reserving minerals to the United States. House bill No. 21377 was amended in committee to change the allocation of funds received at public auction from the sale of remaining lands not patented to Pittman Act permittees. Money received from the sale of the remaining lands was to be deposited in a reclamation fund pursuant to the Reclamation Act of June 17, 1902, 32 Stat. 388. Several additional amendments were made in committee; none is at issue in this appeal.

Secretary of the Interior Franklin K. Lane submitted reports to the Senate and House Committees recommending enactment of S. 7109 and H.R. 21377 and observing:

> The large surface areas, small population, and comparatively small amount of assessable property at present in the State, together with the limited number of wagon roads, railroads, and other transportation facilities, indicate strongly the need of further development in this direction and the necessity of Federal assistance.

Letter dated Jan. 7, 1915, from Franklin K. Lane to Hon. Henry L. Myers, Chairman, Committee on Public Lands, United States Senate, as printed in H.R. Rep. No. 63-1418, at 2, 3 (1915).

The bills identified as S. 7109 and H.R. 21377 died without consideration upon the adjournment of the 63rd Congress. Senator Pittman introduced S. 2519, a bill identical to S. 7109, in the First Session of the 64th Congress. Senate Bill 2519 was reported favorably on December 17, 1915. As reported, the bill contained a provision enumerated as section 6, which is identical to the section 8 mineral reservation provision in the Pittman Act, when it was enacted by Congress on October 22, 1919. 6/

Senate Bill 2519 was considered by the Senate, sitting in Committee of the Whole, on January 8, 1916. Senator Pittman, the sponsor of the bill, was responsible for explaining the bill to his colleagues and man aging debate. 54 Cong. Rec. 705 (1916). The floor debate is revealing and illustrates the careful consideration given by the Senate to the mineral reservation provision of S. 2519 and the reasons Senator Pittman

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6/ 53 Cong. Rec., Part 1, S705 (1916).

and the Committee on Public Lands saw fit to recommend its inclusion in the bill. 7/

The debate quickly focused on the intent, purpose, and scope of the mineral reservations in section 6 of S. 2519. The following exchange took place between Senator Thomas of Colorado and Senator Pittman:

> Mr. THOMAS. Mr. President, section 6 of the proposed bill provides for the reservation from the operating clause of the patent of "all the coal and other valuable minerals in the lands so entered and patented." I wish to inquire of the Senator from Nevada whether that reservation is broad enough, or is intended to be broad enough, to include veins of gold, silver, lead, and other metalliferous deposits?
>
> Mr. PITTMAN. In line 25, at the bottom of page 3, in section 6, the bill says:
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> > The coal and other valuable mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

7/ It is well settled that special import is accorded Senator Pittman's explanations and assertions. He was discussing a bill he had introduced and was also managing floor debate during the Senate consideration of that bill. See generally Norman J. Singer, 2A Sutherland Stat Const § 48.14 (5th ed. 1992), which discusses the weight given to statements of the committeeman in charge of a bill during legislative debate:

"When a bill is reported out of a standing committee, the member in charge of the bill, normally the chairman, explains its meaning to the house. He also answers questions concerning the meaning of particular sections or phrases. The committeeman in charge has the duty of defending the bill, has familiarized himself with the situation sought to be remedied by the bill and his statements may be taken as the opinion of the committee about the meaning of the bill. * * *

"His remarks upon presenting the bill to the house and his answers to questions asked by members will be considered by the courts in construing provisions of the bill subsequently enacted into law. These statements are regarded as being like supplemental committee reports and are accorded the same weight as formal committee reports."

See also Duplex Printing Press Co. v. Deering, 254 U.S. 443, 474-475 (1921) (explanatory supplemental statements made by a Member of Congress in charge of a bill in its course of passage may be resorted to in construing an Act of Congress).

Mr. THOMAS. If it does include that class of deposits, I can foresee a great deal of complication and trouble arising from the attempt to prospect for valuable mineral deposits on these lands under the mining act of 1872, which is confined to lands upon the public domain, and which requires certain preliminary steps to be taken before the right to locate can be exercised. I believe it would be very much better for the Government, for the prospector, and for the operator under the provisions of this bill, if there were no such exception; and I shall therefore offer an amendment to eliminate section 6 from the bill.

Mr. PITTMAN. Mr. President, before the Senator does that, I trust that he will consider the matter for a minute. This bill, as it was originally prepared by me, did not contain that reservation. When a similar bill was introduced in the House of Representatives, at my request, it met with serious opposition on the very ground that it might be used for the purpose of grabbing mineral lands. There was not the slightest chance on earth of passing such a bill through the House of Representatives if there was the slightest suspicion that the bill could be used for the purpose of acquiring mineral lands under the guise of obtaining agricultural lands. This reservation from all characters of agricultural entries is usual; and, without discussing the question of whether or not it is a good provision, I must say that it is the policy of Congress, as I see it, not to permit the acquisition of any character of minerals through any agricultural entry. [8/]

In my opinion, if the Senator should carry such an amendment as that he would destroy the bill. It would be subject to a suspicion which I had not in mind at the time I originally introduced the bill, but which might very well be entertained. I certainly ask him to allow the bill to remain in the form which it has been approved by the Public Lands Committees of both bodies and by the Department of the Interior.

53 Cong. Rec. S707 (1916) (emphasis added). The debate continued with Mr. Thomas' reply.

Mr. THOMAS. Will the Senator please tell me how a citizen of the United States can exercise his right of acquiring a vein of gold, silver, lead, or other metalliferous deposit upon or within a 640-acre tract that is designed to reward the finder of water in the area which is included in his permit?

Mr. PITTMAN. I may answer, if the Senator will permit me, by saying that if a patent were granted for agricultural

8/ We observe that in his Apr. 15, 1993, letter Williams states that the sand and gravel on his patented lands was not exposed, and that it was necessary to remove overburden before mining the sand and gravel deposit.

purposes, including the minerals, the prospector would be in exactly the same position with regard to that particular piece of land. Undoubtedly, if the minerals under the land are not exposed they are not subject to location either by the man who owns the surface right under this bill or by outside prospectors. In neither case are the minerals subject to location under the mining law; but the Government by this bill reserves those minerals. It segregates them from the lands primarily granted for agricultural purposes. * * *

Id. (emphasis added). The Honorable Senator spoke further.

Mr. THOMAS. I am aware, of course, of the effect of the measure in that it provides that the Government shall retain title to virtually everything except the surface of the ground and such rights as are inseparable from its use for agricultural purposes. It appears to me, however, that the practical operation of this section would be, and I think it ought to be, to confer upon the successful prospector for water the metalliferous deposits, if any, which may be within his ground. At the same time, if not excluded, it may prove a fruitful source of litigation. I think the bill would be a great deal better if these reservations did not appear, and if, as to land classified as agricultural land---because I presume that is the only land upon which these permits would be issued---the bill should provide for acquisition of complete title to 640 acres as a reward for developing its subterranean water courses.

Mr. PITTMAN. Mr. President, I believe that a person who goes to the expense of prospecting for artesian water in the State of Nevada is entitled as a matter of right to everything which is contained in his land. I would favor that if I thought it would pass the bill; but I am confident that the inclusion of any such right in this grant would mean the destruction of the bill.

* * * [I]f these minerals are disclosed on the surface of the ground, the ground is not subject to this bill. If they are not disclosed on the surface of the ground, still the Government desires to prevent any fraud on the Government in the acquisition of this land under the guise of entering it for agricultural purposes, while at the same time it may be to acquire large bodies of coal or other valuable minerals that are apparently concealed under the surface, but are known to the entryman.

As I have said before, I think the entryman should have whatever is in his land; but I assure * * * Senator [Thomas], from having studied this question, from the experience I have had in the House with this bill, from the expressions by the leaders of both sides of the House of Representatives, that I believe

> if the Senator's amendment carries the bill will die; and I certainly would rather have what I can get for the people of our State than to stand here on a technical question trying to get more, with the probability of losing all.

Id.

Senator Thomas's amendment to strike section 6 of S. 2519 was considered and rejected by the Senate. The Senate agreed to amend section 5 of the bill by striking a provision which would have distributed a percentage of certain monies from the sale of Pittman Act lands to the State of Nevada. As amended, S. 2519 was passed by the Senate. 53 Cong. Rec. S712 (1916).

Senate Bill 2519 was sent to the House of Representatives, where it was referred to the Committee on Irrigation of Arid Lands. The Committee reported S. 2519, recommending passage by the House and including a May 18, 1916, letter to Committee Chairman W.R. Smith, from Interior Secretary Franklin K. Lane which stated, in part: "As finally passed by the Senate some changes were made in * * * [S. 2519], notably as to the disposition of receipts and reservations of minerals in all patents issued. These amendments are, in my opinion, an improvement upon the original measure, and I have no objection to interpose thereto." H. Rep. No. 64-731, at 2 (1916). The bill died without consideration upon the adjournment of Congress. Senator Pittman introduced S. 27, which was identical to S. 2519, in the 65th Congress, and it also died without consideration upon the adjournment of Congress. 9/

In the 66th Congress Senator Pittman again introduced a bill for the reclamation of arid lands in the State of Nevada. The bill, designated as

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9/ S. Rep. No. 65-170, at 1 (1917).

S. 9, was reported with amendments by the Committee of Public Lands and considered by the Senate on July 8, 1919. 10/ The mineral reservation provision in S. 9 was renumbered section 8 but otherwise was identical to the provision enumerated as section 6 in S. 2519. 11/ Senate Bill 9 was passed by the Senate with no further debate on the section providing for a mineral reservation and referred to the House for consideration. 12/

The House Committee on Irrigation of Arid Lands reported S. 9 without amendment on September 4, 1919. The Committee Report reads in pertinent part:

> Section 8 of the bill contains the same reservations of minerals, with the facility for prospecting for and developing and mining such minerals as was provided in the 640-acre grazing homestead act which was passed by Congress. [13/]
>
> The bill only applies to unreserved, unappropriated, nonmineral, nontimbered public lands of the United States in the State of Nevada not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply. In other words, it applies to land that there is no substantial hope of improving and cultivating in any other way.

H. Rep. No. 66-286, at 1 (1919).

The House considered S. 9 on October 6, 1919. Representative Kinkaid of Nebraska presented the bill for the Committee, with the assistance of Representative Evans of Nevada. Three times during the debate questions were raised regarding the mineral reservation provisions. In the first instance, Representative Blanton offered an amendment "to reserve the

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10/ S. Rep. No. 66-66 (1919).
11/ 58 Cong. Rec. S2268 (1919).
12/ Id.; see also 58 Cong. Rec. H2333 (1919).
13/ This is a reference to the Stock Raising Homestead Act of Dec. 29, 1916, 39 Stat. 862, 43 U.S.C. §§ 291-301 (1970).

mineral rights of the Government[.]" Mr. Kinkaid replied: "They are reserved." The following colloquy then ensued:

> Mr. EVANS of Nevada. They are already reserved.
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> Mr. BLANTON. The way I caught the bill it just spoke of the lands as nonmineral lands. Many lands classified as nonmineral and nonagricultural lands are, as a matter of fact, mineral and agricultural in some instances.
>
> Mr. TAYLOR of Colorado. Those reservations are made now by general law. It is not necessary to put that in. You cannot get oil land by homesteading nowadays.
>
> Mr. BLANTON. Is it all reserved?
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> Mr. TAYLOR of Colorado. Yes.
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> Mr. BLANTON. These lands come under the general reservation?
>
> Mr. TAYLOR. Yes.
>
> Mr. BLANTON. These homesteads to-day do not contain any oil?
>
> Mr. TAYLOR of Colorado. When you get a homestead, you do not get any oil under it. The oil that may be underneath it is reserved.
>
> Mr. BLANTON. This is not with respect to any homestead rights. It carries with it the right to exploitation with regard to the reclaiming of arid lands.
>
> Mr. TAYLOR of Colorado. Yes; by expending a lot of money and digging an artesian well.
>
> Mr. BLANTON. If the mineral rights are properly reserved, I have no objection.
>
> Mr. EVANS of Nevada. They are properly reserved.

58 Cong. Rec. H6469 (1919).

Later in the debate, Representative Gard of Ohio, concerned that there might be something "concealed in the bill by which the Government might be defrauded out of valuable land, [or there might be] obscure and ambiguous language by which the Secretary of the Interior may not at all times have

the proper jurisdiction or control of the allotment of the land," offered an amendment intended to vest the Secretary of the Interior with "* * * continuing authority * * * until the final allotment is made" to the permittee. 58 Cong. Rec. H6470 (1919). Representative Gard's amendment was opposed as unnecessary and an attempt to "send [the] bill back to conference." 58 Cong. Rec. H6471 (1919). A vote was taken and Representative Gard's amendment was rejected.

Still later, Representative Jones of Pennsylvania asked whether the term "valuable mineral deposits" would include oil and gas. Mr. Kinkaid replied in the affirmative that "certainly, those are all minerals." Id. Senate Bill 9 was passed by the House. 58 Cong. Rec. H6472 (1919). On October 9, 1919, the Speaker of the House and the President of the Senate signed enrolled bill S. 9, which was then forwarded to the President for signature. Senate Bill 9 was approved by the President on October 22, 1919.

The Congressional policy reflected in the legislative history of the Pittman Act is one of concurrent development of surface and subsurface resources. 14/ Congress enacted the Pittman Act to encourage the reclamation of arid lands in Nevada, to allow the use of the surface estate for agricultural purposes, and to encourage settlement and increase the State's population and tax base.

[2] The legislative history of the Pittman Act gives us no reason to infer that when Congress included a provision in that Act reserving valuable mineral to the Federal Government, Congress intended to have sand and

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14/ This same Congressional policy was reflected in the mineral reservation provisions of the SRHA. See Watt v. Western Nuclear, Inc. supra, at 52.

gravel pass to the patentee as a part of the surface estate. 15/ The conclusion that sand and gravel is reserved to the United States by the reservation found in Pittman Act patents is consistent with the Congressional purpose of encouraging the concurrent development of the surface and subsurface estates and is in accord with "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." Watt v. Western Nuclear, Inc., supra, at 59, quoting United States v. Union Pacific Railway Co., 353 U.S. 112, 116 (1957). See also Andrus v. Charlestone Stone Pro ducts Co., 436 U.S. 604, 617 (1978); Caldwell v. United States, 250 U.S. 14, 20-21 (1919); Northern Pacific Railway Co. v. Soderberg, 188 U.S. 526, 534 (1903).

We previously noted that mineral material cannot be removed from lands administered by BLM without prior authorization in the form of a mineral material sales agreement or permit issued under the Materials Act of July 31, 1947, 30 U.S.C. §§ 601, 602 (1994) and Departmental regulations. Unauthorized removal of mineral materials from public lands is

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15/ See generally United States v. Union Oil Company of California, 549 F.2d 1271, 1279 (9th Cir. 1977), cert. denied sub nom. Ottoboni v. United States, 434 U.S. 930 (1977). A review of the legislative history of the SRHA led the court to conclude that the mineral reservation in that Act "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." Thus, the court found that patents issued pursuant to the SRHA reserved to the United States geothermal resources underlying the patented lands—resources not likely contemplated when the SRHA was enacted in 1916.

an act of trespass, and trespassers are liable for damages to the United States. 43 C.F.R. §§ 3603.1 and 9239.0-7; Richard C. Neilson, 129 IBLA 316, 324 (1994); Richard Connie Neilson v. BLM, 125 IBLA at 363. Having determined that the United States owns the sand and gravel, we find that Williams' removal of the sand and gravel without authorization from BLM constitutes an unintentional trespass, and Williams is liable for damages to the United States. Therefore, BLM must determine damages under 43 C.F.R. § 9239.0-8. See also 43 C.F.R. § 9239.1-3 and CM Concepts of Nevada, 126 IBLA 134, 139 (1993). 16/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

R.W. Mullen
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

16/ We wish to reiterate that this is a case of first impression. The Bureau may wish to consider the policy it adopted following the Court's finding in Watt v. Western Nuclear, Inc., supra. As noted in Curtis Sand & Gravel Co., supra, at 147 n.2, trespass damages were deemed actionable from and after July 21, 1983, 45 days after the June 6, 1983, Supreme Court decision in Watt v. Western Nuclear, Inc. that "sand and gravel" was reserved mineral under an SRHA patent. With limited exceptions, trespass damages prior to July 21, 1983, were waived by BLM as an "exercise of prosecutorial discretion."