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# GEOTHERMAL DEVELOPMENT AND LAND USE/ENERGY PLANNING BY THE STATE OF CALIFORNIA AND ITS POLITICAL SUBDIVISIONS



A Report To The Pacific Region Team,
Division of Geothermal Energy,
U.S. Department of Energy

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Jack McNamara, President

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## DISCLAIMER

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## INTRODUCTION: THE PROBLEM IS US

Energy development in the United States has entered into a troubled period, even as its viability becomes all the more crucial to our national and collective futures. This new era has little in common with the storied, freewheeling days of the Standard Oil Trust, Spindletop and Teapot Dome. Instead, it features the complicated and seemingly interminable deliberations of a host of governmental entities. Under the multi-layered texture of our system, this arduous balancing/trade off process often finds concurrent and seemingly duplicative regulatory processes swirling about and often swamping energy projects. Geothermal development is no exception.

Much is made of the snails pace of geothermal leasing on the federal lands. But in fact, the two most promising geothermal areas are located under privately-owned acreage. Worse, both The Geysers and Imperial Valley are today productive at but a fraction of their total potential, despite nearly two decades of active development. Nor can technological problems alone be held accountable for this gap. The real key to unlocking the full force of these and many of the other promising prospects located throughout the Pacific Region lies in our understanding that, in essence, the problem is us.

We believe in local autonomy and home rule, in cleaning up our much-fouled air and water, in the preservation of wildlife and

wilderness areas, and in safeguarding the public health and safety. All of this is to our credit. Unfortunately, the legal mechanisms we have constructed to carry out each of these societal goals have created a paper gauntlet through which each and every energy project must pass. It is in the multitiered innerworkings of this passage that geothermal development in California has become ensnared. We have never bothered to plan for energy development, or any other type of growth, for that matter. Such planning was/is considered Socialistic, and is resisted.

Thus the private sector is forced to carry the full planning burden. Various government agencies then scrutinize their proposals from disparate viewpoints. The bottom line is usually inaction, as development and non-development values cancel each other out.

This is an intolerable situation and we must not allow it to continue. The State of California and its political subdivisions must decide where geothermal development may take place, and then carry out that program. Private firms can then tailor their futures to fit the state/county vision, and no further policy trade-offs will be necessary. This is not to say that all current projects must come to a halt while long-term planning exercises are undertaken at great expense. Geothermal resource exploration, field development and reservoir modeling can all contribute to the ultimate decisions as to the most suitable

and acceptable use for any given area. In the absence of satisfactory resource data, such decisions are nothing more than the calcification of idle speculation. A prime example is the Forest Service's R.A.R.E. and R.A.R.E. II programs.

Presently, California law contains several vehicles for the implementation of geothermal planning. If utilized correctly, supplemented by additional amending legislation and supported by strong administrative policies, they could ease the burden upon and greatly facilitate the future of geothermal development within the state.

In the Report that follows, we will examine these mechanisms and their impact. First, (in Section One) at the State level upon (I) the California Energy Commission (CEC) and (II) the Division of Oil and Gas (D.O.G.) in the Department of Conservation.

Next, (in Section Two), after some background on county planning in California (III), we turn to the always unique situation in the counties of greatest geothermal potential. These include: (IV) Imperial County and (V) the four Geysers Counties (Sonoma, Napa, Mendocino, and Lake), as well as their joint powers agency — G.R.I.P.S.. Lastly (VI) we submit our own conclusions and recommendations.

## SECTION ONE: THE STATE

### I: The California Energy Commission And Energy Planning For Geothermal Development In California

The Warren-Alquist Act of 1975[1] directed the new Energy Commission (CEC) to include, within its "Biennial Reports", "a list, including maps, of possible areas appropriate for additional electrical generating sites . . ."[2] Due to the obvious scope of such a task and the paucity of staff available, the CEC has not yet begun to fulfill this mandate.[3] This is extremely unfortunate from the geothermal perspective. Most, if not all of the effected counties have done little or no geothermal planning of their own. If the Commission could provide them with "a list . . . of possible areas appropriate" for geothermal plant sites, it would greatly expedite those local planning efforts. No one would bother to argue over the rights to explore or develop a lease play which is not "appropriate" for a power plant, particularly when that decision has been made by the very agency that must certify all thermal power plant sites. The CEC's deliberations on each area would, of course, be conducted jointly with the city and/or county involved.

The input of that local entity must be given great weight by the CEC in arriving at its decision. With geothermal, perhaps more so than with other energy fuels, there is a large potential for conflict between the CEC and local government. A recent report to the Division of Geothermal Energy/DOE put it this way: "In many respects, the creation of the State Energy Commission was in response

to a 1971 State Supreme Court decision. In Orange County Air Pollution Control District v. Public Utilities Commission, [cite] the state's highest tribunal held that both the local A. P. C. D.'s and the state P. U. C. had concurrent siting authority over power plants. [cite] One commentator has stated that the decision "reinforced the fragmentation which utilities claimed could paralyze the power plant siting process". [cite] As a result, a flurry of siting bills were introduced in the legislature, of which the survivor was Warren-Alquist. All had as their goal the creation of a single power plant siting authority. [cite] It thus comes as no surprise to read the following statutory language: " . . ., the commission shall have the exclusive power to certify all sites and related facilities within the state . . . . The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law . . . ." [cite] The issue of centralized power vs. local (or home) rule is a sensitive one in California, however. Despite the sweeping language just quoted, Warren-Alquist was the product of compromise between these opposing forces.

While the Commission has the final say, other agencies participate in that decision [cite] and the Commission may not override

any local or state agency unless it finds that the proposed plant "is required for public convenience and necessity"[cite] and "there are not more prudent and feasible means of achieving such public convenience and necessity."[cite] Thus, Commission pre-emption may be challenged in Court on the basis that e.g., there was another "more prudent and feasible means", etc. of satisfying state electrical needs. In addition, it is still not clear just where the substantive foundaries of the Commission's pre-emptive powers lie in the fields of air and water pollution. [cite]

A legal challenge of some sort seems inevitable, and the outcome is by no means clear. This somewhat muddy picture as to the relative power of local regulators vis-a-vis the Commission has great significance for the future of geothermal development in California."[5/]

Given the enlightened posture adopted by the CEC under the guidance of Commissioners Reed and Pasternak,[6/] there is no question that they recognize the delicacy of this situation and would go out of their way to avoid it. Joint state/local hearings would undoubtedly take place.

Unfortunately, however, with the passage of Proposition 13 (limiting property taxes), and the political atmosphere left in its wake, it is highly unlikely that the CEC could obtain funding adequate to such a task from the State Legislature. Nor could its siting staff be

stretched far enough to cover this planning function in addition to its mounting plant-specific responsibilities. There are several other funding possibilities available, however.

They include: (1) earmarking the $7 million currently held in escrow pending resolution of the state's own mineral-severed land litigation.[7/] Assuming that the State continues to be victorious, this funding could be turned to the CEC's geothermal plant site planning duties. A portion could then be allocated to the relevant local entities by the CEC, easing their Prop. 13 worries as well; (2) The Federal Land Policy and Management Act of 1976[8/] contained an overlooked amendment to the Mineral Leasing Act of 1920[9/] and the Geothermal Steam Act of 1970.[10/] It altered the federal/state sharing of federal energy lease revenues under both statutes. "All money received from sales, bonuses, royalties and rentals of the public lands under the provisions of . . . the Geothermal Steam Act of 1970, notwithstanding . . . section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the may direct, giving priority to those subdivisions of the state socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construc-

tion and maintenance of public facilities, and (iii) provision of public service; . . ."[11/] ; and (3) The Division of Geothermal Energy's Pacific Region Team currently allocates several hundred thousand dollars annually for "planning" activities within California. These are carried out by various contractors, all from the private sector. The State should press for a large share of this money for the use of the CEC in supporting joint county planning activities.

The creation of an acceptable geothermal plant site "list" by the CEC will be an important factor in the State's geothermal future. Funding is available, as noted. But their are other agencies of State government who can also play key roles in expediting geothermal growth through planning. One of the most important is within the Department of Conservation — the Division of Oil and Gas.

## FOOTNOTES

1/ CAL. PUB. RES. CODE, DIV. 15, § 25000 et. seq., STATS 1974, c. 276, p. 501, § 2.

2/ CAL. PUB. RES. CODE § 25309(e).

3/ See California Energy Trends and Choices, 1977 Biennial Report (CEC, 1977).

4/ See Sections III - VII, below.

5/ J. McNamara, The Regulatory Process Confronting Geothermal Development In California: Can We Burn The Paper Mountain? (USC Law Center Geothermal Energy and The Law Project, April 1, 1978), at pp. 18-19.

6/ Its "Geothermal Policy Committee".

7/ Pariani v. State of California (SF. Superior Court 657-291). A decision was entered in favor of the State on De. 13, 1977 but an appeal has been filed.

8/ P.L. 94-579 [S. 507], Oct. 21, 1976.

9/ 41 Stat. 437, 450; 30 U.S.C. 181, 191.

10/ 84 Stat. 1566; P.L. 91-581.

11/ Emphasis added. P.L. 94-579, § 317, 30 USC 191, 1001 (note).

II: California Department of
Conservation/Division of Oil and Gas

DIVISION OF OIL AND GAS (DOG)

This agency has responsibility for the siting/permitting of all geothermal wells drilled on non-federal land in California.[1/] It issues its permits as a matter of course, and there have been few, if any operator complaints about D.O.G..

Unfortunately, the various counties also issue a permit for geothermal wells.[2/] This county "use permit", and the attendant environmental reporting requirements associated with it, have caused considerable outcry from industry.[3/] Their jurisdiction over drilling activities on private land within their boundaries was upheld by the State Attorney General in a 1976 Opinion.[4/] Developers have decried the clear "duplication" involved in securing both county and state drilling permits.[5/] It should therefore come as no surprise that many of the efforts aimed at "streamlining" the state's permitting process have focused upon replacing the county use permit with D.O.G.'s permit (or on upgrading and accelerating county planning efforts).[6/] The main legislative vehicle currently under consideration includes precisely such a consideration.

Assemblyman Terry Goggin's A.B. 2644 would, if enacted, seem to pre-empt the field of geothermal well regulation,[7/] thus obviating the need for local use permits. As presently constituted, it would

define "geothermal exploratory projects."[8] D.O.G. would be designated as "lead agency" for such projects,[9] and would be required to complete "public and agency review and approval or disapproval of the project, within 135 days of the receipt of the application for such project."[10]

D.O.G.'s designation as "lead agency" and the time limit given to it would provide an effective "lid" on actions by all other agencies, state or local.[11] Under the strictures of A.B. 884, passed last year, "lead agencies" have the final say as to whether an environmental impact report or a simple "negative declaration"[12] shall be required. The 135 days allotted to D.O.G.'s role is also an improvement upon the 365 day limit imposed on all "lead agencies"[13] and enacted last year as another part of A.B. 884.

Unfortunately, the "geothermal exploratory projects" so expedited are defined rather narrowly as "composed of not more than four wells and associated drilling and testing equipment . . . . Such wells must be located at least one-half mile from other geothermal wells which are capable of producing geothermal resources in commercial quantities."[14] More than the four allowed wells may be needed to confirm a discovery. D.O.G. could be granted discretion to approve up to eight, e.g., within the confines of an "exploratory project."

Originally,[15] Goggin's bill would have required D.O.G. to set

up a "regulatory program . . . pursuant to Section 21080.5. Such regulatory program shall approve or deny applications in no more than 60 days . . . ."[16/] Strengthened and continued by A.B. 884, a certified "regulatory program"[17/] is exempt from the environmental reporting requirements of CEQA.[18/] It is apparent that the Legislature is unwilling to go that far at this time. Thus we have the compromise — "lead agency" status for D.O.G.. If the burdensome county use permits are thereby eliminated, this will be a step forward. But there are problems with its approach.

In the first place, the affected counties can be expected to resist termination of their control over local land use. Practically speaking, D.O.G. can hardly be expected to compile detailed EIR's within the 135 days granted to it. Negative declarations or brief addendums to existing, neighboring documents will doubtless be the rule. This, in turn, will further arouse the counties. Legal and legislative challenges are likely.

Worse, A.B. 2644 goes on to define "geothermal field development project"[19/] as a follow on to the exploratory phase changes noted above. It then states that ". . . only one permit from the lead agency and one permit from each responsible agency shall be required . . . during the course of the productive life of the [field development] project, . . . ."[20/] D.O.G. itself protested the limitations this imposed

upon it. The recent inclusion of a rather inexplicable sentence ("This section shall not apply to any permit whose issuance is a ministerial act by the permitting agency.") to this provision may reflect their thinking, though it is hard to perceive of their regulatory function as "ministerial" (i.e., without discretion).

This blanket, shotgunnish approach to streamlining is probably destined for failure, like the abortive "certified regulatory program" approach to exploratory projects. But D.O.G. does have existing statutory authority which could be used in concert with the Energy Commission's preparation of a "list" of "appropriate sites" to speed up development in suitable areas while screening out those felt too sensitive for energy resource use.

D.O.G. is authorized[21/] to designate "geothermal resources areas". At present, this designation is mainly for administrative convenience and carried with it no significance in terms of CEQA. It could be easily amended, however, to render any further actions within said area exempt from CEQA for both exploratory and developmental work. In order to justify this exemption, D.O.G. would have to show that it had a program for designation which thoroughly considered the possible impact of full-field development upon any given area.[23/] They would also have to show that, in issuing later permits within the area they would continue to scrutinize the impact from

already-approved work, as well as that potentially flowing from the individual permit then being sought. Practically speaking, they should also be able to show the participation, if not the actual concurrence, of the effected county. Whether or not this participation concurrence could or should be required as a matter of law is a decision whose resolution must await our analysis of the counties themselves.

## FOOTNOTES

1/ CAL. PUB. RES. CODE §§ 3714, 3714.5, 3715.

2/ For a full discussion of this latter institutional problem, See McNamara, The Regulatory Process Confronting Geothermal Development In California: Can We Burn The Paper Mountain?, to be published in TRANSACTIONS (Geothermal Resources Council, 1978) hereinafter cited as "McNamara".

3/ See "McNamara", and an identically titled Report by McNamara (USC Geothermal Energy and The Law Project, April 1, 1978), the latter at pp. 2-6.

4/ 59 Ops. Atty. Gen. 461 (Opinion No. SO 76/32 (8/24/76).

5/ The State's counties have also required oil, gas and geothermal operators to obtain use permits prior to drilling on federal land. This practice has recently been successfully challenged in court. See

6/ The County Planning aspects are discussed below. See III — VII.

7/ The 1976 A.G.'s opinion was based on the state's failure to preempt local government, thus leaving them with residual.

8/ A.B. 2644, at Sec. 4, adding § 21065.5 to the Public Resources Code.

9/ A.B. 2644, at Sec. 3, adding §3715.5 to the Public Resources Code.

10/ id.

11/ Stats. 1977, c1200

12/ CAL. PUB. RES. CODE § 21064.

13/ CAL. GOVT. CODE § 65950.

14/ A.B. 2644, Sec. 4, adding § 21065.5 to the PUB. RES. CODE.

15/ As introduced on Feb. 28, 1978.

16/ A.B. 2644, at Sec. 3 (2/28/78).

17/ CAL. PUB. RES. CODE § 21080.5 (as amended by STATS. 1977, (1200). The Resources Secretary does the certifying. (21080.5 (a)).

18/ CAL. PUB. RES. CODE § 21080.5 (c).

19/ A.B. 2644, at Sec. 1, adding § 65928.5 to the GOVT. CODE.

20/ ibid, at Sec. 2, adding § 65960 to the GOVT. CODE.

21/ CAL. PUB. RES. CODE § 3714.5.

22/ CAL. PUB. RES. CODE § 21084.

23/ Designation of a "Geothermal Resources Area" could not qualify as a "certified regulatory program" (under §21080.5) because it is neither the "issuance . . . of a lease, permit, license, certificate, or other entitlement for use; or (2) the adoption of [standards, rules, etc.] for use in the regulatory program." (CAL. PUB. RES. CODE § 21080.5 (b).

## SECTION TWO: CALIFORNIA'S COUNTIES AND GEOTHERMAL PLANNING

### III: Some Background

California's counties have been authorized to adopt a "master plan" since 1927.[1/] Not long thereafter, the creation of such a planning document was made mandatory for counties (or cities) which established planning commissions.[2/] Not until 1947 was the requirement of a "general plan" imposed upon ". . . the legislative body of each county and city . . . ."[3/] In addition, after amendment in 1965, that statutory requirement extends to " . . . any land outside its boundaries which in the planning agency's judgment bears relation to its planning."[4/]

Just what is a "master plan" or "general plan"? In brief, it is a "long-term general outline of project development . . . ."[5/] More descriptive perhaps is T.J. Kent Jr.'s "the official statement of a municipal legislative body which sets forth its major policies concerning desirable future physical development; . . . a single, unified general physical design for the community, [which] must attempt to clarify the relationship between physical — development policies and social and economic goals."[6/] This is precisely what California's counties must do if geothermal development is to proceed — "clarify" the relationship between that resource's development and their community's other values. Unfortunately for geothermal, it has been established that local entities "may proceed with their normal zoning functions prior to or pending the adoption of a general plan."[7/] In other words, no county can be compelled to create a general plan, or a "geothermal element" to such

a plan at this time. It can rely, instead, on the wheel re-creation of the "conditional use permit" for every single well application. There simply are no sanctions or penalties attached to non-compliance. This is doubtless the result of pressure from both the counties and the private sector (primarily land developers). This does not mean that the state legislature's mandate has been ignored. Since 1965, when that policy decision was placed specifically within the state's Government Code,[8] the pace of plan adoption has accelerated. Only 12 counties had such blueprints before that date. Seventeen more adopted same within four years after enactment.[9]

Many federal assistance programs are unavailable to localities lacking such a plan. There is also a greater amount of control over annexations and other local planning actions.[10] Moreover, the judicial validation of many zoning actions rests on their degree of consistency with a general plan.[11]

Once a county opts for creation of a general plan, it must follow the statutory guidelines for its substance.[12] This guidance is subject to a seemingly constant stream of amendments. As first enacted in 1965, it prescribed only "(a) a land use element" and "(b) a circulation element."[13] As of this year, it now requires "(c) a housing element . . . (d) a conservation element . . . (e) an open-space element . . . (f) a seismic safety element . . . (g) a noise element . . .

(h) a scenic highway element . . . and (i) a safety element . . . ."[14/] In addition, the legislature has listed "permitted elements". These include "(a) a recreation element . . . (b) a [parking] circulation element . . . (c) a transportation element . . . (d) a transit element . . . (e) a public services and facilities element . . . (f) a public building element . . . (g) a community design element . . . (h) a housing element . . . (i) a redevelopment element . . . (j) a historical preservation element . . . and (k) Such additional elements dealing with other subjects which in the judgment of the planning agency relate to the physical development of the county or city."[15/]

It was under this broad grant of discretionary authority that Imperial County adopted a "Geothermal Resource Element" to its General Plan last November.[16/] It does not appear likely that the other impacted counties will follow their lead. In the absence of such planning elements, geothermal development will continue to suffer from the case-by-case approach of the use permit procedure.[17/]

The State Geothermal Resources Task Force wrestled with this problem last year. They finally recommended that " . . . local jurisdictions adopt zoning ordinances designating areas for geothermal development . . . and that the state provide funds to the appropriate local jurisdiction to prepare the documents necessary for zoning decisions for the area."[18/]

This approach was then embodied in draft legislation by the Governor's Office of Planning and Research (OPR).[19] It is this agency which has been designated by the Legislature ". . . as the most appropriate state agency to carry out [the] statewide land use planning function."[20] Unfortunately, the next sentence should have given the Task Force some pause. O.P.R. is specifically shorn of "any direct operating or regulatory powers over land use, public works, or other state, regional, or local projects or programs."[21] Even before the bill was submitted to key legislators to secure a sponsor, it came under fire from within OPR itself as too violative of "home-rule". It was therefore watered down to allow counties to adopt a geothermal resource element and appropriate implementing zoning ordinances.

Just prior to its introduction however, the draft bill was criticized on the grounds that its real-life model — the Imperial County Element — was ineffectual as an instrument for clarifying and expediting geothermal development.

Before coming to any firm conclusions on the subject of state/county geothermal planning, it is necessary to examine the Imperial County experience and that of the other major counties impacted by geothermal resources throughout the state.

## FOOTNOTES

1/ CAL. STAT. 1927, Ch. 874, § 4.

2/ CAL. STAT. 1929, Ch. 838, § 4.

3/ CAL. STAT. 1947, Ch. 807, §§ 10, 35, now found in CAL. GOVT. CODE, Title 7, Ch. 3, Art. 5, § 65300.

4/ id.

5/ Haar, "In Accordance With A Comprehensive Plan", 68 Harv. L. Rev. 1154 (1954).

6/ T.J. Kent, The Urban General Plan (1964), at p. 18 (emphasis added).

7/ Alan R. Perry, "The Local 'General Plan' In California" 9 U. San Diego L. Rev. 1 (1971), at p. 3, citing Ayres v. City Council of Los Angeles, 34 CAL. 2d 31, 207 P. 2d 1 (1949).

8/ See fn. 3, above and Stats. 1965, c. 1880, p. 4336, §5.

9/ Perry, op. cit., at p. 4.

10/ California Zoning Practice 30 (1969), cited in Perry.

11/ O'Loane v. O'Rourke, 231 C.A. 2d 774, 42 CAL. R. 283 (1965).

12/ CAL. GOVT. CODE § 65302.

13/ STATS. 1965, c. 1880, p. 4336, § 5.

14/ CAL. GOVT. CODE § 65302 (as amended through 1977).

15/ id. (emphasis added).

16/ See "Resolution Adopting The Geothermal Resource Element To The General Plan", Imperial County Board of Supervisors, Nov. 22, 1977. The situation in this county is discussed in IV, below.

17/ See, McNamara, op. cit., for a discussion of this problem.

18/ Report of The State Geothermal Resources Task Force - Executive Summary (Dec. 1977) at pp. 18-19.

19/ CAL. GOVT. CODE § 65037 (formerly § 65013.1, STATS. 1959, c. 1641 p. 4011, §2).

20/ CAL. GOVT. CODE § 65035 (STATS. 1976, c. 1386, § 10.

21/ id.

# IV. Imperial County's "Geothermal Resource Element"

The Imperial County "Geothermal Element" states the importance of its undertaking "Imperial County overlies a major geothermal resource which can provide energy . . . of . . . between 10,000 and 40,000 megawatts . . . . . This . . . implies satisfying electrical needs for between 10 and 40 million urban dwellers."[23/]

The Element's purpose was "to lay necessary groundwork and to establish goals and policies which assure maximum benefits and minimum impacts from development of the resource."[24/] In order to fund such an ambitious undertaking, the County, in 1973, sought the support of the National Science Foundation. Two years later, a grant for roughly $330,000 was approved. The overall aims included the description of "a research, planning and implementation methodology which can be used by areas experiencing comparable development."[25/] Imperial was proud of the fact that it was "the first local government to study the resource to develop management strategies."[26/] They felt that "the techniques used and the lessons learned are applicable to any community dealing with geothermal resource management."[27/] It is the purpose of this section to analyze their final output and weigh its value to the many other areas of the state which have yet to reach Imperial's level of planning.

It is somewhat ominous to read the introductory section of the Imperial County element and find that " . . . adoption of a Geothermal Element does not obviate the requirements for environmental impact reports . . . ."[28/] This is particularly true when one reads that "An Environmental Impact Report has been prepared as part of the adoption process for the Geothermal Element."[29/]

Despite that Element EIR, the County has decided to "cause a master EIR to be prepared for each anomaly."[30/] Furthermore, "The County intends to seek reimbursement for the costs of the preparation of the Master EIR's from government and industry."[31/]

In order to implement its Element, then, the County is initiating yet another round of EIR preparation. The EIR's in question, however, will not be one-shot, one per each well documents. They will provide the definitive environmental scrutiny for a full anomaly. A developer must come forward with a "Master Plan" for anomaly-wide development and produce an EIR for it. If the County ultimately agrees on the boundaries they will designate the acreage in question as a "Geothermal Overlay Zone".[32/] Subsequent use permit applications for work within that area, though still required, can then be more expeditiously processed by referencing the anomaly-wide EIR. The conditional use permit issued will contain "performance standards"[33/] and will be issued only after public hearings.[34/]

The first such Master EIR has recently been completed for the Heber anomaly. It was submitted by the field operator — Chevron — and was completed in six months.[35/] Follow-on permits for individual well permits, etc., should be issued as a matter of course.

How good is the Imperial County procedure, and is it transportable to other counties? Though Master EIR's for an anomaly is a tidy-looking process, it will only work in areas that are both: (a) relatively mature (in terms of exploration and reservoir modeling) and (b) in which there is one dominant operator, preferably a large oil company. Clearly both requirements are met at Heber. They are also going to be found at Brawley, where Union Oil is in charge.[36/] East Mesa and Niland-Salton Sea are more questionable. No one operator will want to foot the bill for the Master EIR, allowing the others a "free ride". This is a classic economic case of being unable to capture the "externalities" — the benefits generated by one's work. The classic response is inaction.

The applicability of the Imperial County Element to other areas of the state is even more problematical. Most are still in the exploratory stage. This includes even those parts of The Geysers outside of those presently producing or committed to production. There are a multiplicity of players involved and the other impacted counties have taken far less initiative than Imperial thus far.

It is also doubtful that the speed of the Heber anomaly-wide Master EIR preparation can be duplicated elsewhere without large injections of federal and/or state funding.

Nor is the roughly six month time span achieved there all that spectacular. Many individual EIR's already existed on the area. There was also an EIR prepared for the Element itself. State law, even prior to the passage of A. B. 884, required local government to complete EIRs within one year.[37/] Given this background, the entire two-year-plus process which led to the adoption of the Element and its attendant EIR seems like lost time.

## FOOTNOTES

22/ Supported by NSF and DGE/ERDA under Grant AER 75 08793, hereinafter cited as "Element".

23/ Element, at p. 2.

24/ id.

25/ ibid., at p. 3.

26/ id.

27/ ibid., at p. 4.

28/ id.

29/ id.

30/ ibid., at p. 63.

31/ id.

32/ ibid., at p. 64.

33/ id.

34/ ibid., at p. 65.

35/ Mitchell

36/ Though McCulloch Oil's South Brawley play may soon render this untrue.

37/ CAL. GOVT. CODE § 21151.5 (added by STATS. 1976, c. 1312, p. , § 18).

V. G.R.I.P.S. and Participants:

Sonoma County; Napa County
Mendocino County; Lake County

(a) "G. R. I. P. S."

The governments of the four counties which are being or will be impacted by The Geysers KGRA found that they were unable to come to rational decisions on the multitude of well and other applications they were facing. Their main problem is clearly lack of data on the present situation. Without this information, projecting future impacts from various types and levels of geothermal activity. In order to remedy this situation, Sonoma, Napa, Lake and Mendocino counties formed a "joint powers" agency [1/] which they named "G. R. I. P. S." — "Geothermal Resources Impact Projection Study."

The G. R. I. P. S. Joint Powers Agreement was finally ratified on February 3, 1978. It squarely sets out the problem faced by the four local governmental units. Namely, they "are in need of considerable data and analysis . . . [in order to] . . . adequately and correctly fulfill their responsibility as permit granting agencies, as planning organizations, and as local governmental units in administering and monitoring the development of geothermal energy within their respective governmental boundaries;" [2/]

The goals of G. R. I. P. S. are therefore heavily weighted towards gathering that missing data. Specifically, they want to " . . . (2) to develop a specific management structure and technical plan for creating, assembling, and utilizing a common information base; (3) to

implement the common information base and integrated assessment system for geothermal resource impact projections; and; (4) to create a system to make data available for coordinated policy determination and decision making among governmental jurisdictions."[3/]

The parties made their emphasis on fact gathering even more explicit by then adding, as further goals, "(b) . . . [as] a set of operational objectives of the information system . . .:

(1) To improve the basic methodology of determining the proper balance between environmental consequences, social needs, energy demands, land use policies, and the allocation of costs, revenues, benefits and responsibilities;

(2) To create a method to improve the evaluation of environmental consequences;"[4/]

Similarly, the most important technical work to be performed by G.R.I.P.S. — their "Air Pollution Study Plan" — is clearly intended to pull together the requisite information and provide it to the member counties. As that document states: "Sufficient information and understanding must be developed to allow the appropriate regulatory agencies to control the increased drilling and construction activity planned in the area without serious impact on the surrounding air environment."[5/]

The point here is that G.R.I.P.S. is not a joint planning entity. Rather it is a joint data gathering entity. Under California law, the

four counties could have formed a "Regional Planning District".[6] Such a body would have had the authority to "assist in the solution of problems . . . involving two or more governing bodies . . . ."[7] It would be a cross between consultant and handholder. But it could make policy recommendations.

There is yet another provision of California law which the G. R. I. P. S. members could have utilized. It allows "two or more entire counties" to create a joint "planning district".[8] This would be an official planning, as opposed to consultative or data gathering, entity. It would "prepare, maintain, and regularly review and revise, a district plan and shall, . . . adopt such plan as the district plan for the district . . . . . In preparing, . . . [etc.] the district plan, the board shall . . . seek to harmonize within the framework of the needs of the district community as a whole, the master or general plan of cities or counties within the district, and the plans and planning activities of state, federal and other public and private agencies, . . . within the district and adjacent to it."[9] The emphasized language sounds like what many outside observers fervently hoped G. R. I. P. S. would be. It is not such a planning agency, however.[10]

G. R. I. P. S. is a "joint powers agency".[11] That is a far different animal from a joint planning district, a regional planning district or an area planning district. "Joint Powers" agreements

simply allow "two or more public agencies . . . [to] jointly exercise any power common to the contracting parties, . . ."[12/] The "power common" may be anything from garbage disposal,[13/] group insurance for school district employees,[14/] or the construction of common fallout shelters.[15/] Rather extensive bonding authorities are conferred on joint powers agencies as well.[16/]

Though more general than the various co-planning entities discussed above, it is specifically intended that counties may enter into regional planning through the joint powers mechanism.[17/] The statute in question requires, in fact, that "regional planning districts" take a back seat to "regional planning pursuant to a joint powers agreement . . . ."[18/] There are a few notable examples statewide of joint powers being used as a planning mechanism. However most commentators view the use of joint powers as "an attempt to achieve complete local autonomy,"[19/] at the expense of substantive planning. G.R.I.P.S. appears to fall into this category.

The G.R.I.P.S. agreement[20/] does not even mention joint planning. As noted, it seems to contemplate instead a form of "joint blind faith" in the skills of methodology and their ability to expedite the quantification of policy/value choices. Once correctly quantified, G.R.I.P.S. seems to say, all trade-offs between, e.g., geothermal development and air quality can be made. They never say that those

decisions will be made, however.

Perhaps it was unnecessary for the G. R. I. P. S. joint powers agreement to take up the thorny issue of regional, area or district-wide planning. Perhaps the four individual counties, all of who already have general plans, have already included "geothermal resource elements" in those documents, a la Imperial County. If that were the case, then a common data gathering forum would be all that is necessary. Unfortunately, none of the involved counties except Sonoma has such an element. The fate of their jointly gathered information/ data base is thus far from assured.

Worse, the very integrity of their undertaking seems open to question. They have made no attempt to exercise the revenue-raising capabilities of their joint powers agency. Considering the fact that there is more than a possibility of geothermal-derived income flowing to them at some point,[21/] this is a striking omission. All the moreso when one considers their total reliance upon chancy state and federal grant moneys and the recent emasculation of the Lake County Planning Department. By way of contrast, one need only look at the agressive posture of another joint powers agency — the nine-city-one-coop Northern California Power Agency. Member cities have put in millions of their own dollars in an attempt to obtain reliable, reasonably priced geothermal-based capacity.

In order to more fully understand G. R. I. P. S. and the rationales underlying its choice of vehicles, it is necessary to examine its constituent parts.

JPL once attempted to describe these four entities as a group[22] and was forced, within one page, to admit that the area was, "politically, a complex environment"[23] and that "it is, at the very least, difficult, if not patently inadvisable, to present or manage this region as a single undifferentiated entity."[24] Several of their four-county generalizations seem to hold up well nonetheless.

One is that, with the exception of Sonoma, "each . . . is seeking to plan for and manage a slow-growth economy."[25] Also, all four have economies "which are strongly influenced by agricultural production."[26] Given these two constants, we will briefly examine each county.

(b) SONOMA COUNTY:

Sonoma is by far the most populous (263,000) and wealthy (assessed value of $1.3 billion) of the four counties. It has a specific section on geothermal in its general plan, and is generally considered to be positive towards development.[27] Unfortunately, though almost all of the present Geysers production lies within its boundaries, only 16.1% of the total Geysers-Calistoga KGRA is within Sonoma County. Sonoma's relatively positive attitude towards geothermal growth may stem, in

part, from its ongoing receipt of revenue. The county has picked up several million dollars annually from geothermal properties. It is not clear what level these collections will fall to under Prop. 13's 1% limit on property taxes. Supervisor Will Johnson represents Sonoma on G. R. I. P. S..

(c) NAPA COUNTY:

Napa has an almost identical percentage of the Geysers-Calistoga KGRA within its borders as Sonoma — 16.4%. Its population density is almost the same as well — 101/sq. mile to 128/sq. mile in Sonoma. Its per capita income is also close — $10,738 to Sonoma's $9,666. But its total assessed value is far less ($503 million) and its county budget is around $30 million, less than one-third of Sonoma's near $100 million outlay. Napa's posture is one of cautious involvement. Very little exploration or development has yet taken place. One reason may have been a 1974 county ordinance which flatly prohibited all but exploratory work. As one analysis put it, "Napa wants to avoid being the king's taster for geothermal development . . ."[28/] Napa Supervisor Dowell Martz is currently Chairman of the G. R. I. P. S. commission.

(d) MENDOCINO COUNTY:

This county, which lies north of Sonoma and west of Lake, is a relatively minor player at this time. Only 4.3% of the Geysers-Calistoga KGRA lies therein. It is the most like its Eastern neighbor Lake County

in terms of population density (15/sq. mi. to Lake's 16) and high unemployment rates (11.2% to Lake's 11.3%), while its county budget ($29 million) and median family income ($8,867) are closer to NAPA. Mendocino, though a member of G.R.I.P.S., rarely takes part in its deliberations. Geothermal is simply not important enough yet in this county.

(e) LAKE COUNTY:

At the heart of The Geysers, both geographically and politically, lies Lake County. It embraces nearly two thirds of the Geysers — Calistoga KGRA, as well as all of the Little Horse Mountain KGRA, most of Witter Springs KGRA and all of the Knoxville KGRA. It is the key to the future development of this entire region.

Feelings in Lake are strongly divided. There are both pro and anti-development groups, and all are extremely vocal and well-informed. Lake is basically a rural community. As noted, its population density is only 16/sq. mi., less than 1/8th of Sonoma's. It has a high unemployment rate (11.3%) and by far the lowest median family income in The Geysers ($6,551). The latter is roughly two-thirds of that in Sonoma and Napa. Its county budget is similarly limited ($15 million), compared to Sonoma's $100 million and Napa/Mendocino's $30 million. Lake also has the highest median age of any California county.

In the aftermath of Prop. 13, its ability to carry out the requisite degree of planning, etc., is severely circumscribed. Though Lake has a county general plan, it makes no mention of geothermal. The required county mapping is not yet complete, particularly in the southern area of the county where the major initial geothermal activity is taking place.

Lake, has had up till now, a small but excellent Planning Department, headed by Don Johnson and staffed by Larry Vollintine. Johnson, in particular, has been a strong voice. He has constantly attempted to get his county to face up to its geothermal planning responsibilities. For his efforts, he has been fired, effective mid-August. Vollintine was also let go, then hired back and assigned, nominally, to G.R.I.P.S.. Whether this "detailing" will be carried through is questionable.

The Board of Supervisor's Chairman (who cast the deciding vote against Johnson) is being recalled and several other members are up for re-election in hotly-contested races. Politically, Lake is a pot about to boil over.

## FOOTNOTES

1/ CAL. GOVT. CODE, §§ 6500-6578.

2/ Geothermal Resources Impact Projection Study (G. R. I. P. S.) Joint Powers Agreement, Feb. 3, 1978, reprinted here as Appendix A. (emphasis added).

3/ ibid., at p. 2. (emphasis added)

4/ id. (emphasis added)

5/ G. R. I. P. S. Air Pollution Study Plan (1978), at p. 1. (emphasis added)

6/ CAL. GOVT. CODE §§ 65060 – 65069.5.

7/ CAL. GOVT. CODE § 65065.1 (c).

8/ CAL. GOVT. CODE §§ 66100 – 66390 (STATS. 1957, c. 2001, p. 3573, §1). The Cited language is in § 66140.

9/ CAL. GOVT. CODE § 66241(a) (emphasis added)

10/ They also could have formed an "area planning" district under CAL. GOVT. CODE §§ 65600 – 65604.

11/ CAL. GOVT. CODE, §§ 6500 – 6578.

12/ CAL. GOVT. CODE § 6502. The language is very broad. A California agency may enter into such an agreement with parties "outside this state." (id.).

13/ 15 Ops. Atty. Gen. 269.

14/ 23 Ops. Atty. Gen. 146.

15/ 39 Ops. Atty. Gen. 39.

16/ CAL. GOVT. CODE §§ 6540 - 6578.

17/ CAL. GOVT. CODE § 65061.4.

18/ id.

19/ Perry, Op. cit., at p. 10.

20/ Appendix A.

21/ See I, above.

22/ Report On The Status of Development of Geothermal Energy Resources In California, JPL (Document 5040-25, 3/31/76), at p. 5-26.

23/ id.

24/ id.

25/ id.

26/ id.

27/ ibid, at p. 5-27.

28/ JPL, at p. 5-39.

# VI. Conclusions and Recommendations

(A) CONCLUSIONS:

To summarize what we have said thus far, it is clear that, federal lands problems aside,[1/] there are thorny land use planning/permitting issues bedeviling geothermal development on the equally abundant private lands in California.

Further expansion of The Geysers, in particular, is vulnerable to a slowdown or stoppage due to the inability of the resident counties to adequately respond to requests for well drilling and other approvals.

The four counties in question have formed a "joint powers" agency under state law but limited its functions to data collection. Actual land use planning is left to the discretion of each member.

Of the four, Lake County is the most important. It contains nearly two-thirds of the main KGRA, and all or part of three others. It is a sparsely populated, very rural area with a low county budget. The latter has been aggravated by Prop. 13. Worse, the county Board of Supervisors has consistently failed to bite the bullet on its geothermal planning responsibilities and recently fired its resident Cassandra — Planning Director Don Johnson — for just as consistently pointing this out. The Board Chairman is up for recall and several other supervisory seats may change hands as well.

Even if Lake went all out on land use planning for geothermal, it is doubtful if the Gordian Knot of red tape in The Geysers could be

significantly cut. Imperial County spent several years coming up with a scheme which, on paper, saves little time and is probably unworkable in The Geysers area.

State legislation requiring Lake (or G. R. I. P. S.) to undertake adequate planning seems politically impossible. A bill which merely allowed such geothermal planning was scotched even before reaching the hopper. Even if it were enacted, the time frame allowed would probably be overly generous (the draft bill allowed four or five years). Given the Imperial County example, it seems like a long time to wait for so little improvement.

It is also unlikely that the G. R. I. P. S. participants will re-constitute themselves as a planning entity with "district", "regional" or "area" responsibilities. The land use issue is too sensitive for any of them to voluntarily delegate it to a central body.

(B) RECOMMENDATIONS:

The range of possibilities is somewhat limited. The state could, of course, legislate a regional planning entity. It has done so in the past in order to preserve the state's entire coastline,[2/] plan for the Bay Area's transportation needs,[3/] conserve the waters of San Francisco Bay,[4/] and coordinate planning in the Lake Tahoe area on the Nevada border.[5/] In all of these cases there was a statewide need for the rational planning dictated by the Legislature which overrode the parochial

interests involved. Politically, however, there would seem to be insufficient muscle behind such a solution. The situation in The Geysers is not widely understood. The "home rule" banner would doubtless be raised and G. R. I. P. S. itself would become a point of contention. Though there is no logical reason why it could not continue to gather data for its constituents in the presence of a state-created, area planning entity, the politics of the situation would probably result in G. R. I. P. S.' demise or at least a pull out by several counties. There is also the spectre of Prop. 13 and the Governor's oft-voiced opposition to the creation of any new agency to be contended with.

Despite these problems, the agencies of the State Geothermal Resources Board (G. R. B.)[6/] should strongly consider recommending such action to the legislature. It has both substantive merit and the advantage of being a possible "stick" to G. R. I. P. S. /Lake County action.

As for a possible "carrot", there are several to be considered.

First is the provision of Assemblyman Goggin's A. B. 2644 that "would authorize the State Energy Commission to approve an equivalent certification program . . . which would delegate to a county which has adopted a geothermal element, as defined, to its general plan, full authority for the certification of all geothermal powerplants within such county . . . ."[7/] The definition of "geothermal element"[8/] seems innocuous enough to fit anything. That is the problem. It is

doubtful that the involved counties could, or would adequately discharge such responsibilities. Or that they want to.

A better approach would involve state funding of joint, state - county planning efforts. After Prop. 13, the state has added some built in leverage with its counties. But rather than an entire county-general plan-geothermal element project, the state-funded county planning should focus on "geothermal field development projects" within "geothermal resource areas" as defined by the Department of Conservation's Division of Oil and Gas.[9/]

By amendment to the Public Resources Code section in question,[10/] D.O.G. would be designated as "lead agency"[11/] for "geothermal field development projects"[12/] within such areas.

This would be in addition to their proposed "lead agency" status on "geothermal exploratory projects."[13/] Under A.B. 2644, D.O.G., as "lead", would have 135 days to complete its review of such exploratory work, including EIR preparation.

Assuming that their approval were forthcoming, and the exploration located a commercial discovery, D.O.G. would then designate the acreage as a "geothermal resources area" (GRA). They would focus, as they do now, on the presence of a commercial well in making this designation.

Once a GRA were designated, any operator could submit a "geo-

thermal field development project" to D.O.G.. As "lead agency" for such projects, D.O.G. would then have 270 days (roughly nine months) to approve or disapprove the field project.

During this period, the county where the GRA is located would participate, along with D.O.G., in the decision-making process, using state funds extended to it by the G.R.B..

The G.R.B. funds would, in turn, come from one of the three sources listed in I, above. That is, state revenues from geothermal development, the state's share (50%) of federal geothermal revenues from within the state, or funding by D.O.E.'s Pacific Region Team/ Division of Geothermal Energy.

Similarly, the State Energy Commission would be involved during the 270 day period, studying the area for possible inclusion on its "list of appropriate sites" for a geothermal powerplant.

Once a project had been approved by D.O.G., and the site tentatively tabbed by the Commission for a future plant application, further field work would not require the creation of additional EIRs by either D.O.G. or the county.

1/ Those are discussed in detail in JM Energy Consultants, Inc., Streamlining The Federal Geothermal Leasing and Permitting Process A Report To The Pacific Region Team, Division of Geothermal Energy (July 30, 1978).

2/ CAL. PUB. RES. CODE, Division 20, Chs. 1-10 ("California Coastal Act"), STATS. 1976, c. 1330, p. , § 1 et. seq..

3/ CAL. GOVT. CODE § 66500 et. seq., STATS. 1970, c. 891, p. 1624, § 1. The Metropolitan Transportation Commission is defined therein "as a local area planning agency" (§ 66502).

4/ CAL. GOVT. CODE § 66600 et. seq., STATS. 1965, c. 1162, p. 2940, §1.

5/ CAL. GOVT. CODE § 67000 et. seq., STATS. 1967, c. 1589, p. 3811, § 3.

6/ CAL. PUB. RES. CODE § 3742. As presently constituted, the G.R.B. includes the Department of Conservation (Chairperson), the P.U.C., Dept. of Fish & Game, Air Resources Board, OPR.

7/ A.B. 2644, Legislative Counsel's Digest, at p. 3.

8/ A.B. 2644, at § 9, adding § 25133 to the CAL. PUB. RES. CODE.

9/ CAL. PUB. RES. CODE § 3714.5.

10/ id.

11/ As defined in CAL. PUB. RES. CODE § 21067.

12/ As defined in A.B. 2644, at § 1, adding said definition to the CAL. GOVT. CODE AS § 65928.5.

13/ As discussed in II, above.

GEOTHERMAL RESOURCES IMPACT PROJECTION STUDY (GRIPS) JOINT POWERS AGREEMENT

THIS AGREEMENT made and entered into by and between the counties of Lake, Mendocino, Napa, and Sonoma, who have become signatories to the establishment of a joint-powers entity which shall be called the:

"GRIPS COMMISSION"

ARTICLE I: FINDINGS

(a) WHEREAS, the "GRIPS REGION", which includes the four counties named in this Agreement as well as other possible counties and has the capacity and capability of providing a significant contribution to the energy requirements of these counties and of the State of California; and

(b) WHEREAS, the four counties' Boards of Supervisors as well as their planning and other departments require and in fact are in need of considerable dat and analysis so that these individual counties may adequately and correctly fulfil their responsibility as permit granting agencies, as planning organizations, and a local governmental units in administering and monitoring the development of geothermal energy within their respective governmental boundaries; and

(c) WHEREAS, Title One, Division Seven, Chapter Five of the Government Code of the State of California authorizes the joint exercise by agreement of two or more public agencies of any power common to them; and

(d) WHEREAS, the parties hereto possess in common the power and responsibilities to study, discuss, recommend and analyze data and solutions to problems of common interest in the performance of their constitutional and statutory functions and to join associations and expend public funds for these purposes;

ARTICLE II: DECLARATION OF GOALS AND OPERATIONAL OBJECTIVES

(a) NOW, THEREFORE, in consideration of the mutual terms, covenants an

conditions herein agreed, the parties hereto agree that the purpose of this Agreement is to create an entity with the following goals:

(1) To document and integrate the interests of Federal, State, and local agencies in planning the development of a common information base for integrated assessment of geothermal resource impact projections;

(2) To develop a specific management structure and technical plan for creating, assembling, and utilizing a common information base;

(3) To implement the common information base and integrated assessment system for geothermal resource impact projections; and

(4) To create a system to make data available for coordinated policy determination and decision making among governmental jurisdictions.

(b) The parties hereto further agree that a set of operational objectives of the information system are for it:

(1) To improve the basic methodology of determining the proper balance between environmental consequences, social needs, energy demands, land-use policies, and the allocation of costs, revenues, benefits and responsibilities;

(2) To create a method to improve the evaluation of environmental consequences;

(3) To reduce the costs and time for compliance with Federal, State, and local environmental legislation, and

(4) To utilize skills, facilities, and equipment available within the member entities to optimize the combined effort as well as to maximize the utility of the common information base and system for

use by the individual member entities for their own unique uses.

ARTICLE III: DEFINITIONS

As used in this Agreement:

(a) "GRIPS Region" shall mean those Counties represented as signators to the Agreement.

(b) "Geothermal Resources" means those steam, hot water, or hot rock resources used for either electric generation or non-electric purposes.

(c) "Commission" means the multi-agency association governing body of this joint-powers Agreement.

(d) "Member Counties" means the four parties hereto and such additional counties as may become parties to this Agreement in the future.

ARTICLE IV: ORGANIZATION AND PROCEDURES

(a) The Commission shall serve as the governing body of this multi-agency association and shall be the agency which administers this Agreement and which shall be constituted as follows:

(1) One Commissioner appointed from and by the Board of Supervisors from each of the Member Counties; and

(2) In the event the Calif. Energy Commission and/or Federal Dept. of Energy choose to participate, then they shall be entitled to one commissioner of their own choice who shall be non-voting members.

(b) The members of the Commission shall serve without compensation, but the expenses of each member shall be met by the individual Member Counties or other body which he or she represents in accordance with the law of that body. All other expenses incurred by the Commission in the course of exercising the powers conferred upon it by this Agreement, unless met in some other manner specifically provided, shall be paid by the Commission out of its own funds.

(c) The term of office of the Commissioners shall be at the pleasure of the appointing body in each case but each appointment shall be reviewed annually by the appointing agency.

(d) The Commission shall select a Chairperson and Vice-Chairperson, whose terms shall be for one year and who may be re-elected, at the first meeting of each calendar year.

(e) The Commission shall meet at least quarterly on the third Thursday of the first month of each quarter. Additional meetings shall be called as required by the Chairperson of the Commission and shall be on a Thursday of a month. Notice of all regular meetings shall be published at least thirty days prior to the meeting date. Two or more Commissioners shall have the authority to call special meetings as required; such meetings shall be publically noticed at least five (5) days prior to the meeting as provided by Section 54956 of the Government Code.

(f) The position of a Commissioner shall be considered vacant upon his or her unexcused absence from three (3) consecutive meetings or upon his or her loss of qualifications as required by the Member County. In such event, a successor shall be appointed by the Member County or other body as soon as possible.

(g) A simple majority of all Commissioners shall constitute a quorum for the transaction of business of the Commission. A majority vote of all Commissioners who are members party to this Agreement shall be necessary for the Commission to take action with respect to any matter.

(h) The Commission shall have the power in its own name and through its designee to make and enter into contracts; to employ agents and employees; to acquire, hold and dispose of personal property; and to incur debts and liabilities or obligations necessary to accomplish the goals and objectives for which the Commission was formed. The exercise by the Commission of the power to sue and

be sued in its own name shall be subject to the restrictions on the exercise of such power applicable to each of the parties hereto.

(i) Any additional County which wishes to become a party hereto shall be permitted whenever a majority of the Commission favors such admission after petition by the County wishing membership or by nomination of an established member with concurrence from the entering County.

(j) The Commission shall conduct itself according to rules as set forth for the operation of counties at Sections 25000 et. seq. of the Government Code unless specifically in conflict with a rule set forth herein in which case the latter shall prevail.

(k) The fiscal year from July 1 to June 30 shall be the operating year for the Commission.

ARTICLE V: ADMINISTRATION AND ORGANIZATION

(a) The Commission shall establish and maintain an office within the GRIPS Region.

(b) The day-to-day administration of the Agreement shall be by Executive Director appointed by a majority vote of the Commission. That person shall be responsible to the Commission to carry out programs in accordance with the aforestated goals and objectives.

(c) The Commission shall have the power to retain and pay for legal counsel.

(d) A certified public accountant shall be hired to conduct an annual audit of the Commission accounts and records. The audit shall be performed to the requirements of Section 26909 of the Government Code and shall be submitted within three (3) months of the close of the Commission's fiscal year to the Commission.

(e) The Commission shall designate the officers or persons who have

charge of, handle, or have access to any property of the Commission. These officers or persons shall be bonded by the Commission in an amount to be fixed by the Commission and shall submit an annual property inventory to the Commission as part of the audited report specified in the preceding paragraph.

(f) The Commission shall have the power to establish such other officers, committees, and subcommittees as necessary and proper to carry out its purpose and objectives. Such powers may be delegated to the Executive Director subject to annual budgetary review.

ARTICLE VI: CONTRIBUTIONS AND LIABILITIES

(a) Contributions in the form of a total membership assessment of not more than $50,000.00, less amount covered by grants, shall be made annually by the parties to the Agreement in accordance with the formula defined in Article VI, paragraph (b). Said contributions may come from the party's treasury, other available public funds, or may take the form of personnel, equipment or property in lieu of funds determined to be acceptable by the Commission. Said contribution shall be for the purpose of defraying the costs of operating the Commission. All payments of funds shall be paid to and disbursed by the Commission, which shall be accountable for all funds and responsible for reporting annually to the parties hereto concerning all receipts and disbursements. The Commission shall maintain books in accordance with currently acceptable accounting procedures and as specified in Article V, paragraph (d).

(b) Contribution by each member County shall be in the ratio of the following percentages: Lake, 30; Mendocino, 10; Napa, 15; and Sonoma 45. Such allocations may be revised annually at the first annual meeting of the Commission, if necessary, and at the time of the addition of another party or parties to this Agreement pursuant to Article IV; and adjustments would have to be ratified by the parties to this Agreement.

(c) The Treasurer of the County of Sonoma shall be designated as the

depository for all monies of the Commission and shall perform such duties and possess such powers as specified by Government Code Section 6505.5.

(d) Liability, as between the parties hereto, for damages from injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement shall be as provided in Chapter 21 (commencing with Section 895) of Part 2 of Division 3.6 of Title 1 of the Government Code of the State of California; provided that, pursuant to Government Code Section 895.4, the parties hereto shall each be solely liable for their respective solely negligent or wrongful acts or omissions, without contribution by the other parties. For the purposes of this section, "damages" shall include liability to compensate under Article I, Section 19, of the Constitution of the State of California. Each party hereto agrees to indemnify, defend and save harmless the other parties, their officers, agents and employees from any and all claims and losses approximately caused by the former party's solely negligent or wrongful acts or omissions.

(e) Pursuant to the provisions of Government Code Section 6508.1, the signatories to this Agreement shall bear no liability whatsoever for the acts or omissions of the Commission, and the debts, liabilities and obligations of the Joint Powers Agency shall be the debts, liabilities and obligations of the Commission and not of the parties to this Agreement.

(f) The Commission shall, if available, purchase insurance policies to cover all reasonable liability caused by the negligent or wrongful act or omission of any officer, agent, or employee of the Commission which cannot be classified as an officer, agent or employee of one of the parties to this Agreement.

ARTICLE VII: TERMINATION

(a) Termination of this Agreement shall be by agreement of a majority of the parties to the Agreement. Unilateral withdrawal of one member of the Commission

shall not constitute termination of the Agreement. In the event that a majority of the parties hereto wish to terminate this Agreement, the Commission shall take immediate steps to terminate all business and distribute property and funds on a pro rata basis in accordance with their total contributions to the date of termination.

(b) Upon termination of this Agreement, any property acquired by the Association by this Agreement shall be distributed among the then existing parties hereto in accordance with the respective total contributions of each of said parties.

(c) Upon termination of this Agreement, any money in possession of the Commission after the payment of all costs, expenses and charges validly incurred under this Agreement, shall be returned to the then existing parties in proportion to their total contributions in accordance with Article VI.

(d) Upon termination, the debts, liabilities, and obligations of the Commission shall be the debts, liabilities, and obligations of the parties hereto in direct proportion to the total contributions made in accordance with Article VII.

ARTICLE VIII: WITHDRAWAL OF PARTIES

(a) Any party hereto may, on or before 180 days before the end of any fiscal year, notify the Commission in writing of its desire to terminate its participation in this Agreement effective at the conclusion of the fiscal year in which such notice is served on the Commission.

(b) In the event of such withdrawal, the withdrawing party shall have no further obligation under this Agreement and shall not be entitled to participate in any subsequent distribution of assets.

ARTICLE IX: ADOPTION AND AMENDMENT

(a) This Agreement shall be effective upon its execution by the four (4) counties named herein.

(b) This Agreement may be amended by the written agreement of a major-

ity of the parties hereto. In the event of a tie vote, the Agreement shall stand as written.

(c) The Commission shall prepare and file a statement with the Secretary of State which complies with Government Code Section 6503.5 within 30 days of formation.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed this 3rd day of February, 1978.

BOARD OF SUPERVISORS
LAKE COUNTY

Robert M. Jones
Chairman

FEB 3 1978
(Date)

ATTEST: LOIS R. ROSENBERG
CLERK OF THE BOARD
BY _____
DEPUTY CLERK

BOARD OF SUPERVISORS
NAPA COUNTY

Dowell Martz
Chairman

FEB - 3 1978
(Date)

BOARD OF SUPERVISORS
MENDOCINO COUNTY

Ted Galletti
Chairman

February 7 1978
(Date)

BOARD OF SUPERVISORS
SONOMA COUNTY

Brian Kahn
Chairman

2-3-78
(Date)

attest: Albert P. Battreni
By: Dorothy U. Stark, Dy
Clerk of the Board

attest: Athena Brown
Asst Clerk of the Board