

MARCH 16, 1971

PRESENT: Ronzone, Dreyer, Olsen, Homer, May, Smith and Fry

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ABSENT: None

OTHERS: Ray Nisely and Glen Griffith, Bill Hicks and Fred Settlemeier

Chairman Ronzone called the meeting to order at 10:50 A.M. for the purpose of discussing A.B. 521.

Mr. Griffith of the Fish and Game Department commented that this is one bill the Department requested. The purpose of it is to try to clarify for both the public and the private land owners adjacent to water the division point of private and public land as far as access is concerned.

Tom Truleece said the Department was suggesting a need for law establishing a high water level. The reason for this is that fisherman do not know whether or not they are on private land. This was our suggestion, he said, but added that the bill did come back from the drafter somewhat different.

Chairman Ronzone asked if the sportsmen had any right along the bank as the law stands now. Mr. Truleece said they cannot traverse private property to reach this section. Chairman Ronzone wondered if the English law came in here allowing people to traverse a bit of private property coming and going to public land. Mr. Truleece said this controversy had come up in Colorado and after much difficulty, it was decided this was not allowed.

Ray Nisley then spoke. He commented that in Section 2, "navigability" is a federal question. He quoted a case where the decision was that waters must be navigable in fact. They must be used in customary trade and travel. He said this was not the case on any of these waters.

In Paragraph 2a, a great deal of land had been patented before statehood. Thus, the center line of a stream was the boundary. These were privately owned lands. There is no doubt that the State of Nevada, through its legislature, can take these lands but they certainly will have to pay for them. He said you can't with any justice abrogate the doctrine of reliction. He also added that all bodies of water are receding and by reason of the old common law, the property extends out to meet the receded water line.

In Section 3, in reference to the "high water mark" he stated that it would be almost impossible legally to determine this. He said extensive gauging, etc., would be needed and also that some of the streams are flash flood areas and it would just not be conceivable and the cost would be tremendous.

He questioned what was meant by "their banks" in Section 4.

In Section 5, the Humboldt is not a navigable stream and was never used for customary trade or travel. If it was declared so, all the ranchers would be cited as trespassers.

In Section 6, Tahoe is a navigable water. The bed, however is federal property and thus an area in which the State may not legislate.

The Truckee as a navigable river, in Section 8, cannot be true. A great deal of the end of it is on an Indian reservation and almost the entire area of the river running through Reno is owned to the center line of the river.

His comment to Section 10 was that he could not see what is trying to be accomplished unless the State is prepared for numerous lawsuits. He felt sure the damages would far exceed the State's ability to pay.

In Sections 11 and 12 he felt there was language in here that would indicate that the intent was to get something more than the land between high and low water marks. He felt that the bill covered much more area than what the Fish and Game Department wanted. He said it was not practical.

Dr. Homer then commented that the only interest the Fish and Game Department or the State of Nevada has in this thing is to protect the right of the individual to use these areas. It is not interested in deeds or titles, etc.

Bill Hicks then spoke. He was representing the Nevada Agriculture and Livestock Council which speaks for ranchers in the State. He said the ranchers were fearful that the passage of this bill would prohibit the normal operation of livestock operators. He said ranchers on the whole have been fair in this matter. They can be dealt with.

Fred Settlemyer then spoke. (See attachment)

Dr. Homer asked of him what happens to the prior rights of land when these lands along the rivers are sold for subdivision. He wondered if it was conceivable that all land in the State could be privately owned. Mr. Settlemyer said that theoretically it was possible but not probable. Mr. Nisely added that perhaps the Fish and Game Department could lease land along streams so that these waters could be used publicly. Mr. Settlemyer felt that the problems that would be created would be greater than the problems which are trying to be solved.

Mr. Smith commented that the land now available does not produce enough for the public. In the future, we are going to have to set aside land for the public hunter and sportsman. We should be out now acquiring more land for the public and leave the private property owner alone.

Mr. May said he felt the Department had sought an answer for a particular problem but the bill drafter was not specific enough. He said he could not support the bill as it is although he did sympathize with its intent.

Mr. Smith questioned if the Fish and Game Department could enter suit to protect the public. Mr. Griffith supposed it could but he didn't know how effective that would be.

Dr. Homer then moved that A.B. 521 be indefinitely postponed. Mr. Olsen seconded. The motion was carried.

Meeting was adjourned at 11:50 A.M.

jb

After careful study of AB 521, I would be remiss in my duty to the State of Nevada and many of its people if I did not voice my apposition to AB 521. For the present, I shall comment only as it may affect the Carson River. However, I believe the principles are the same on all the streams mentioned in the Bill.

Comment on Paragraph (a) beginning on line 11-a with particular reference to line 14 where by affirmation, the State of Nevada will become owner in "fee simple absolute" of certain lands in questions. I believe those very same lands have been in "fee simple absolute" ownership by various owners and their successors for more than 100 years. To the best of my knowledge, State and County taxes have been paid by the original owners and their successor from the earliest settlement to the present time on the very same land.

I am not a lawyer. However, it appears to me that enactment of this measure would raise a very real constitutional question and could result in a multiplicity of inverse condemnation suits in which the State of Nevada would be the defendant.

I am also of the opinion that the enactment of AB 521 would create a situation of the stream system that would be utterly chaotic and unbearable. Contiguous property owners could not regulate a head gate without being in trespass. All animals whether wild or domestic would be in trespass if they attempted to cross the stream.

I should also like to comment on Section 10, page 2, lines 24 through 28, wherein an exception is made to lands conveyed by the U. S. prior to Statehood. A search of the record indicates that on the Carson River system above Lahontan reservoir within Nevada, there are 20774.4 acres (figures taken from masters findings) of land with a priority of 1864 or earlier. I am sure that this acreage takes between 95% and 100% of all land that is contiguous to the Carson River System. If you assume that this is correct, it would seem that including the Carson River in AB 521 is rather insignificant or unimportant. I should add that proof of use of water was made in 1905 or prior thereto by Mr. A. E. Chandler, the first State Engineer of Nevada.

AB 522 has much the same reaction on me. I am apposed to that Bill because its philosophy is the same.

ASSEMBLY

AGENDA FOR COMMITTEE ON FISH AND GAME

Date MARCH 19, 1971 Time 8:00 A.M. Room 222

<u>Bills or Resolutions to be considered</u>	<u>Subject</u>	<u>Counsel requested*</u>
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All bills having been referred to this Committee will be included in this meeting. Those bills which have not yet been acted upon will probably be at this time. The Assembly Bills referred to the Fish and Game Committee are:

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| <u>A.B. 104 (I.P.)</u>         | Provides free hunting and fishing licenses for certain disabled veterans.  |  |
| <u>A.B. 265 (amend/pass)</u>   | Requires hunter safety training before obtaining hunting licenses.   |  |
| <u>A.B. 367 (do pass)</u>      | Prohibits recreationists from accruing any property rights in real property used for recreation.   |  |
| <u>A.B. 383 (I.P.)</u>         | Protects coyotes and all species of wildcats.  |  |
| * <u>A.B. 396 (amend)</u>      | Extensively amends fish and game license, tag, and permit provisions, and hunting, fishing, and trapping laws.   |  |
| <u>A.B. 397 (do not pass)</u>  | Clarifies regulation of guide services by State Board of Fish and Game Commissioners.  |  |
| <u>A.B. 399 (amend/pass)</u>   | Extensively amends administration and enforcement provisions of fish and game laws.  |  |
| * <u>A.B. 442 (amend/pass)</u> | Establishes title system for motorboats.   |  |
| * <u>A.B. 451 (amend)</u>      | Changes regulation of zoos in certain counties from State to county.   |  |
| <u>A.B. 514 (amend/pass)</u>   | Prohibits certain hunting without guide and permits Nevada Department of Fish and Game to limit area of guide licenses and number of nonresident guide licenses. |  |
| <u>A.B. 521 (I.P.)</u>         | Affirms state ownership of beds of navigable rivers and lakes, and abrogates common law doctrine of reliction.   |  |
| <u>A.B. 603 (I.P.)</u>         | Specifies compensation of fish and game license agents.  |  |
| <u>A.B. 650 (I.P.)</u>         |  |  |

\*Please do not ask for counsel unless necessary.

HEARINGS PENDING

Date \_\_\_\_\_ Time \_\_\_\_\_ Room \_\_\_\_\_  
 Subject \_\_\_\_\_

Date \_\_\_\_\_ Time \_\_\_\_\_ Room \_\_\_\_\_  
 Subject \_\_\_\_\_