

SENATE

ENVIRONMENT, PUBLIC RESOURCES and AGRICULTURE COMMITTEE

MINUTES OF MEETING  
Wednesday, March 9, 1977

The tenth meeting of the Environment, Public Resources and Agriculture Committee was called to order on the above date at 1:35 p.m.

Senator Gary Sheerin was in the Chair.

PRESENT: Chairman Sheerin  
Senator Echols  
Senator Dodge  
Senator Lamb  
Senator Glaser  
Senator Neal

OTHERS PRESENT: Jim Lien, Department of Taxation  
Roland D. Westergard, Nevada State Engineer

Committee action was taken on AB216, AB232 and AB104.

AB216 Increases compensation of certain interstate water compact commissioners.

ROLAND WESTERGARD, Nevada State Engineer, in explaining SB216, stated it is basically to correct an oversight during the last legislature when daily salaries of boards and commissions were raised from \$25 to \$40. The two statutes referred to in SB216 (NRS 538.560 and NRS 538.620) covering the salaries of the California Nevada Interstate Compact Commission and the Columbia Compact Commission were omitted.

Senator Lamb moved "DO PASS."  
Senator Echols seconded the motion.  
Motion carried unanimously.

AB232 Provides for recordation of certain conveyances to the United States.

JIM LIEN, Department of Taxation, in explaining this bill, said it is a result of an opinion by James D. Salo, Deputy Attorney General, dated September 2, 1975, (attached as Exhibit "A") affecting the consent statutes when the Federal Government acquires land in the State of Nevada. Prior to this opinion the Federal Government was required to receive a consent from the Nevada Tax Commission whenever it acquired a piece of property in Nevada. The Attorney General's opinion is consistent with several law cases and Supreme Court cases stating that the Federal Government need not go through a hearing and acquire consent if it is

merely acquiring property and does not want to have exclusive jurisdiction over it, allowing the state to retain jurisdiction over the property as far as police, fire, etc. The opinion arose, stated Mr. Lien, because of a rash of Federal Government applications for consent when it was going to buy a lot to building a post office or similar type building, and had no interest in acquiring the property for exclusive jurisdiction, merely a site for a building, consequently the issue was raised and the attorney general researched it. AB232 is to clarify the statutes for consistency with what the Supreme Court interprets as to the acquisition of rights to be of the Federal Government. Mr. Lien said the only reason the state reviews the acquisition of property by the Federal Government is to determine if the U. S. wishes to have exclusive jurisdiction over that property and therefore the state would not have jurisdiction of enforcing its own laws on that property. It is the only time the state does have, by legal interpretation, the right to question the acquisition of federal property. It is not necessary to have a consent form from the Nevada Tax Commission for recording purposes because the Federal Government is not asking for exclusive jurisdiction. The language in AB232 spells out that the county recorder can accept and record acquisitions without a consent form, but in the absence of a consent form it is necessary to have a statement from the respective U.S. Department involved stating they are not desirous of exclusive jurisdiction.

Senator Lamb moved "DO PASS."  
Senator Echols seconded the motion.  
Motion carried unanimously.

SB104      Changes prescribed boat lights; requires counties to pay fish and game department for boat registration and tax services.

Senator Neal moved "DO PASS."  
Senator Glaser seconded the motion.  
Motion carried unanimously.

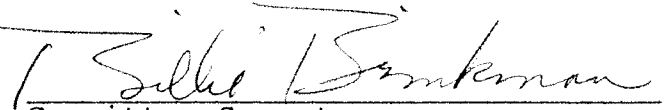
SENATOR GLASER requested Committee sponsored resolution pertaining to the Ruby Marshes, Elko County, urging Congress to remove Ruby Marshes from National Wildlife Refugee system and grant management to the Nevada Fish and Game Department.

Senator Lamb moved the Committee request a draft of such a resolution.  
Carried unanimously.

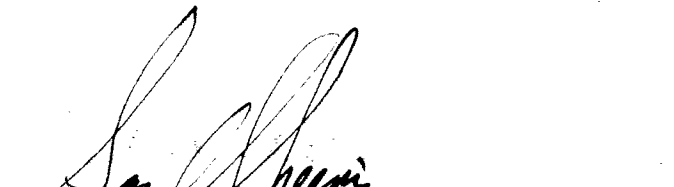
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There being no further business, the meeting was adjourned at 1:50 p.m.

Respectfully submitted,

  
\_\_\_\_\_  
Committee Secretary

APPROVED:

  
\_\_\_\_\_  
Gary A. Sheerin, Chairman

GUEST REGISTER

DATE: March 9, 1977

COMMITTEE

THOSE WISHING TO TESTIFY SHOULD IDENTIFY THEMSELVES BEFORE GIVING TESTIMONY.....

NAME	DO YOU WISH TO TESTIFY	BILL NO.	REPRESENTING
<i>Jim [unclear]</i>	<i>yes</i>	<i>AB 232</i>	<i>Dept of Taxation</i>
<i>Robert D. Westergaard</i>	<i>yes</i>	<i>AB 216</i>	<i>State Engineer</i>



*Ephraim A' Lein*

*AB 232*

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
TAX DIVISION

ROBERT LIST  
ATTORNEY GENERAL

CAPITAL PLAZA  
1100 E. WILLIAMS  
CARSON CITY, NEVADA 89701

JAMES D. SALO  
DEPUTY ATTORNEY GENERAL

September 2, 1975

OPINION NO. 192

RECORDATION OF DEEDS - UNITED STATES  
AS GRANTEE

The United States and its agencies or instrumentalities may purchase or acquire real property, or interests therein, without the consent of the State of Nevada and such deeds or documents of conveyance must be recorded by county recorders upon presentation with appropriate fees. The United States must secure the consent of the State of Nevada pursuant to NRS 328.030 to 328.150 if it desires to acquire full, exclusive jurisdiction over the property acquired.

Mr. Jerome Mack, Chairman  
Nevada Tax Commission  
1501 South 6th Street  
Las Vegas, Nevada 89104

Dear Mr. Mack:

During the past meetings of the Nevada Tax Commission, questions have arisen concerning the constitutional authority of the State of Nevada to bar recordation of any deed or conveyance in which the United States of America is the grantee unless there shall first have been placed on record a certificate of consent to the transaction on behalf of the State of Nevada as provided in NRS 328.100. Additionally, an action has been initiated in United States District Court, District of Nevada, challenging the constitutionality of such a prohibition. United States Postal Service vs. Ardis C. Brown, Washoe County Recorder, (Civil No. R-74-145-BRT.) You have asked this Office for an opinion clarifying the appropriate legal and constitutional role of the State of Nevada in considering granting consent for the acquisition of land or water interests by the United States within Nevada.

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QUESTION

May the United States of America, or its agencies or instrumentalities, purchase or acquire interests in real property within the State of Nevada without the prior consent of the State of Nevada?

ANALYSIS

The resolution of the question presented requires an analysis and comparison of the provisions of NRS 328.030 through 328.150 with applicable provisions of the United States Constitution, as interpreted by the United States Supreme Court. In particular, Article 1, Section 8, Clause 17 of the United States Constitution reads as follows, in part,

"The Congress shall have the Power . . .

\* \* \*

To exercise exclusive Legislation in all Cases whatsoever, . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; . . ."

In an apparent effort to provide a reasonable procedure by which the United States of America could acquire the consent of the State of Nevada to the acquisition of property within this State, the Nevada Legislature adopted the provisions contained in NRS 328.030 through 328.150. In general terms, these provisions direct and authorize the Nevada Tax Commission to accept applications for such consent, and to give or withhold the consent of the State of Nevada to the acquisitions of real property or rights therein, including water rights, by the United States of America. NRS 328.030(1) reads in part,

"The consent of the State of Nevada to the acquisition by the United States of America of any land or water right or interest therein in this state, . . . desired for any purpose expressly stated in clause 17 of section 8 of article I of the Constitution of the United States, may be given by concurrence of a majority of the members of the Nevada tax commission, upon finding that such proposed

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acquisition and the method thereof and all other matters pertaining thereto are consistent with the best interests of the state . . ."

After setting forth several statutes relating to the application for the consent of the State of Nevada, and the conditions and requirements of consent to such acquisition of interests in real property, the Nevada Legislature provided in NRS 328.110,

"No recorder of conveyances of real property in this state shall accept for recordation any deed of conveyance wherein the United States is the grantee unless there shall first have been placed on record with the official a certificate of consent pertaining to transaction as provided for in NRS 328.100."

We are informed that the practical effect of this last-quoted statute was the precipitating factor leading to the filing of the action by the United States Postal Service against the County Recorder of Washoe County, supra. We are further informed that the United States Postal Service presented a properly executed and acknowledged deed for recordation to the County Recorder of Washoe County. The deed evidenced a transfer of real property, for consideration, from two private land owners to the United States Postal Service. The County Recorder of Washoe County, relying upon the language of NRS 328.110, refused to record the deed due to the lack of evidence of consent to the transaction on behalf of the State of Nevada.

While the literal language of Article 1, Section 8, Clause 17 of the United States Constitution, supra, appears to require the consent of a state legislature prior to the purchase of real property by the United States, significant limitations upon this language have been consistently applied by the United States Supreme Court. In particular, as the Supreme Court indicated in Paul vs. United States, 371 U.S. 245, 264-265 (1962),

"The power of the Federal Government to acquire land within a State by purchase or condemnation without the consent of the State is well established. Kohl v. United States, 91 U.S.

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367, 371. But without the State's 'consent' the United States does not obtain the benefits of Art. I, §8, cl. 17, its possession being simply that of an ordinary proprietor. James v. Dravo Contracting Co., 302 U.S. 134, 141-142. In that event, however, it was held in Ft. Leavenworth R.R. Co. v. Lowe, 114 U.S. 525, 541, 542 that a State could complete the 'exclusive' jurisdiction of the Federal Government over such an enclave by 'a cession of legislative authority and political jurisdiction.'

"Thus if the United States acquires with the 'consent' of the state legislature land within the borders of that State by purchase or condemnation for any of the purposes mentioned in Art. I, §8, cl. 17, or if the land is acquired without such consent and later the State gives its 'consent,' the jurisdiction of the Federal Government becomes 'exclusive.' . . . (A) State may condition its 'consent' upon its retention of jurisdiction over the lands consistent with the federal use. James v. Dravo Contracting Co., supra, 146-149."

The fact that the judicial interpretation outlined above is inconsistent with the literal language of the United States Constitution was recognized by the United States Supreme Court in Fort Leavenworth R.R. Co. vs. Lowe, (1885), supra, 530-531, wherein the Court stated,

"Purchase with such consent was the only mode then [at the time of the adoption of the Constitution] thought of for the acquisition by the general government of title to lands in the States. Since the adoption of the Constitution this view has not generally prevailed. Such consent has not always been obtained, nor supposed necessary, for the purchase by the general government of lands within the States. . . . The consent of the States to the purchase of lands within them for the special purposes named is, however, essential, under the Constitution, to the transfer to the general government, with the title, of political jurisdiction and dominion. . . ."



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It is therefore the clear, and long-standing interpretation of the United States Supreme Court that the requirement of the consent of the various states referred in the United States Constitution, supra, is only necessary if the United States desires to acquire full and exclusive legislative authority and jurisdiction over any property acquired for the purposes mentioned in the Constitution.

CONCLUSION

It is therefore the conclusion of this Office that the United States of America, and its agencies or instrumentalities, may freely acquire real property, or interests therein, within the State of Nevada and record the appropriate deeds and other evidences of such transactions with the appropriate county recorders upon posting of the appropriate statutory recordation fees without the specific consent of the State of Nevada. The State of Nevada retains concurrent jurisdiction, at a minimum, over property purchased or acquired by the United States without the specific consent of the State. We further conclude that the refusal by a county recorder to record a deed in which the United States is the grantee pursuant to the terms of NRS 328.110 will be violative of the United States Constitution, and therefore illegal.

Respectfully submitted,

ROBERT LIST  
Attorney General

By James D. Salo  
James D. Salo  
Deputy Attorney General

ASSEMBLY BILL NO. 216—COMMITTEE ON JUDICIARY

FEBRUARY 1, 1977

Referred to Committee on Government Affairs

SUMMARY—Increases compensation of certain interstate water compact commissioners. (BDR 48-312)

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

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

AN ACT relating to interstate water compact commissions; increasing compensation of certain commission members; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 538.560 is hereby amended to read as follows:  
2 538.560 1. The commissioner appointed pursuant to NRS 538.550,  
3 if not in the regular employ of the state, [shall receive] *is entitled to*  
4 compensation of [\\$25] \$40 a day for time actually spent on the work of  
5 the Columbia Compact Commission, and subsistence allowances and  
6 travel expenses as provided by law.  
7 2. If such commissioner is in the regular employ of the state, he  
8 [shall receive no] *is not entitled to additional* compensation, but [shall  
9 receive] *is entitled to* subsistence allowances and travel expenses as pro-  
10 vided by law.  
11 3. Claims for payment of all expenses incurred by the commissioner  
12 shall be made by the office of the state engineer on vouchers approved by  
13 the state engineer and the state board of examiners and paid as other  
14 claims against the state are paid.  
15 SEC. 2. NRS 538.620 is hereby amended to read as follows:  
16 538.620 1. The Nevada members of the California-Nevada Inter-  
17 state Compact Commission, designated or appointed pursuant to Article  
18 IV of the compact, if not in the regular employ of the state, are entitled  
19 to [receive] compensation of [\\$25] \$40 a day for time actually spent  
20 on the work of the compact commission, and subsistence allowances and  
21 travel expenses as provided by law.  
22 2. The state engineer and any other Nevada commission members  
23 who are in the regular employ of the state [shall receive no] *are not*  
24 *entitled to* additional compensation, but are entitled to [receive] *subsist-*  
25 *ence allowances and travel expenses provided by law.*

Original bill is 2 pages long.  
Contact the Research Library for  
a copy of the complete bill.

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ASSEMBLY BILL NO. 232—COMMITTEE ON JUDICIARY

FEBRUARY 1, 1977

Referred to Committee on Judiciary

SUMMARY—Provides for recordation of certain conveyances to the United States. (BDR 26-234)

FISCAL NOTE: Local Government Impact: No.  
State or Industrial Insurance Impact: No.

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

AN ACT to amend NRS 328.110 to provide for the recordation of deeds of conveyance of real property to the United States where exclusive federal jurisdiction over the property is not sought; and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 328.110 is hereby amended to read as follows:  
2 328.110 **[No]** A recorder of conveyances of real property in this  
3 state shall *not* accept for recordation any deed of conveyance wherein  
4 the United States is the grantee unless there **[shall first have been placed**  
5 **on record with the official a certificate of consent pertaining to the trans-**  
6 **action as provided for in NRS 328.100.]** *is recorded with the deed of*  
7 *conveyance:*  
8 1. *A certificate of consent pertaining to the transaction as provided*  
9 *for in NRS 328.100; or*  
10 2. *The written statement of a representative of the United States,*  
11 *contained in the deed or accompanying it, that the United States does*  
12 *not seek exclusive jurisdiction over the property.*  
13 SEC. 2. This act shall become effective upon passage and approval.

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Original bill is on file at  
the Research Library.

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. B. 104

ASSEMBLY BILL NO. 104—COMMITTEE ON TAXATION

JANUARY 20, 1977

Referred to Concurrent Committees on Taxation and Environment  
and Public Resources

SUMMARY—Changes prescribed boat lights; requires counties to pay fish and  
game department for boat registration and tax services. (BDR 43-211)

FISCAL NOTE: Local Government Impact: Yes.  
State or Industrial Insurance Impact: Yes.

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

AN ACT relating to watercraft; providing changes in required lighting for boats;  
and providing other matters properly relating thereto.

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

- 1 SECTION 1. NRS 488.175 is hereby amended to read as follows:  
2 488.175 1. Except as provided in subsection 2, a motorboat need  
3 not be numbered pursuant to the provisions of this chapter if it is:  
4 (a) Already covered by a number in effect which has been awarded  
5 or issued to it pursuant to federal law or a federally approved numbering  
6 system of another state if [such] the boat has not been [within] on the  
7 waters of this state for a period in excess of 90 consecutive days.  
8 (b) A motorboat from a country other than the United States tempo-  
9 rarily using the waters of this state.  
10 (c) A public vessel of the United States, a state or a political sub-  
11 division of a state.  
12 (d) A ship's lifeboat.  
13 (e) A motorboat belonging to a class of boats which has been exempted  
14 from numbering by the department after it has found that the numbering  
15 of motorboats of [such] that class will not materially aid in their identi-  
16 fication; and, if an agency of the Federal Government has a numbering  
17 system applicable to the class of motorboats to which the motorboat in  
18 question belongs, after the department has further found that the motor-  
19 boat would also be exempt from numbering if it were subject to the  
20 federal law.  
21 2. The department, pursuant to department regulation, may issue  
22 exempt numbers for motorboats not required to be registered under the  
23 provisions of this chapter.

Original bill is 6 pages long.  
Contact the Research Library for  
a copy of the complete bill.