

Minutes of the Nevada State Legislature

Senate Committee on Government Affairs

Date: March 14, 1979

Page: One

Present:

Chairman Gibson  
Vice Chairman Senator Keith Ashworth  
Senator Dodge  
Senator Echols  
Senator Ford  
Senator Kosinski  
Senator Raggio

Also Present:

See Attached Guest Register

Chairman Gibson called the twentieth meeting of the Government Affairs Committee to order at 2:00 p.m. with all members present.

ACR-19 Encourages Anaconda Company to make available its mine and mill in Yerington to local governments.

Assemblyman Dini, District 38, testified to the committee the reasons for introducing this piece of legislation. Mr. Dini stated that the bill is to help economic development in the Mason Valley since the Anaconda Company has discontinued its mining business. Mr. Dini turned the testimony over to Mr. Rob Minister who is a member of the Mason Valley Development committee.

Rob Roy Minister, Mason Valley Development Committee, testified to the committee that since the area has become depressed after Anaconda discontinued its mining business the community is working with Anaconda to buy the mine and mill for the Yerington community. It is hoped that with proper utilization of the mine facilities the town and area will not become a "ghost town". Mr. Minister stated that housing is the biggest problem and since Anaconda had to build a town when it started business they are in hopes of acquiring the housing. There are presently some 250 homes in the area. Mr. Minister concluded by stating that they will have an independent appraisal by the 15th of April.

Katie Galli, representing the Lyon County Commissioners, read a letter to the committee from the Commissioners supporting ACR-19. (See Attachment #1)

Senator Ford moved to adopt ACR-19  
Seconded by Senator Echols  
Motion carried unanimously.

AB-347 Amends 1977 special law authorizing cities of Reno and Sparks and Washoe County, Nevada to issue general obligation bonds for purchase of San Rafael Ranch to be devoted to park purposes.

Minutes of the Nevada State Legislature  
Senate Committee on Government Affairs  
Date: March 14, 1979  
Page: Two

Tod Bedrosian, Assemblyman from District 24, stated that this bill was changed to drop Sparks from the project and to increase the bond amount from six million dollars to nine million dollars. After a Washoe County Commission meeting the county supported the concept of San Rafeal Ranch and bond counsel felt that the bonds should be handled by one entity. There will be an election on the matter June 5, 1979. This bill is no longer necessary.

Russ McDonald, Washoe County legal counsel, testified that Washoe county will be placing the matter on the June, county wide election. Mr. McDonald explained the history behind the drafting of the bill and suggested that the committee indefinitely postpone the bill since Washoe County is taking the matter to the voters.

Senator Keith Ashworth moved "Indefinite Postponement" on AB-347  
Seconded by Senator Ford  
Motion carried unanimously.

At this time Mr. McDonald stated he would like to present the committee with the information on AB-345 requested during the March 9th meeting. (See Attachment #2)

Senator Kosinski was concerned about the authority that Carson City would be acquiring with this bill and although the matter of concern should be addressed in Human Resources the Senator wanted to express concern.

Senator Raggio voiced concern about the legality in Carson City being able to acquire water within and without, also the portion regarding eminent domain troubled the Senator.

Chairman Gibson stated that the portions of the bill that troubled the committee should be addressed with separate legislation in the Human Resources committee.

Senator Dodge moved "Do Pass" on AB-345  
Seconded by Senator Raggio  
Motion carried with one "no" vote cast  
by Senator Echols

SB-315 Allocates interest earned on funds  
administered by division of Colorado  
River Resources of department of  
energy to those funds.

Mr. Duane Sudweeks, Administrator of the Department of Colorado River Resources, testified to the committee in favor of this bill and read his prepared testimony to the committee. (See Attachment #3)

Minutes of the Nevada State Legislature  
Senate Committee on.....Government Affairs  
Date:.....March 14, 1979  
Page:.....Three

Mr. Jim Long, Division Financial Manager, was present and indicated to the committee the amounts in the funds noted in Attachment #3.

Senator Dodge asked if any of the funds have connection with the retirement funds. Mr. Long stated that they did not. Senator Dodge further asked if the sources of these funds were user fees and Mr. Long stated that they were.

Chairman Gibson noted that if the bill is processed the bill will go to the Finance committee due to the fiscal impact.

Mr. Long noted that if the funds requested in their budget request were granted then they would have funds in the general fund. This bill has been reviewed by the Treasurer and Mr. Colton stated that the bill causes no difficulties for his office.

Senator Dodge moved "Do Pass and Refer to Finance" on SB-315  
Seconded by Senator Echols  
Motion carried unanimously.

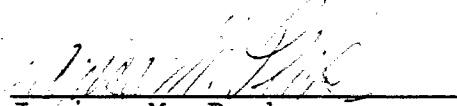
At this time Chairman Gibson informed the committee that SB-317 which had been referred to their committee should be referred to Finance.

Senator Keith Ashworth moved "Re-Refer to Finance"  
on SB-317  
Seconded by Senator Dodge  
Motion carried unanimously.

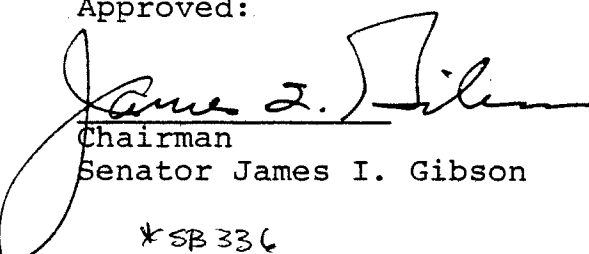
BDR-23-1093<sup>\*</sup> - Requested by the State Employees revises certain procedures of the law regarding investment of compensation. Chairman asked the committee to consider this for committee introduction. There was no objection from the committee.

With no further business the meeting was adjourned at 3:10 p.m.

Respectfully submitted,

  
Janice M. Peck  
Committee Secretary

Approved:

  
Chairman  
Senator James I. Gibson

\*SB 336

March 14, 1979

Senate Government Affairs Committee 2 p.m.

With reference to the loss of economic base in Mason Valley due to the closure of Anaconda Mining Operations at Weed Heights:: The Lyon County Board of Commissioners wishes the record to show their expressed appreciation for Assemblyman Dini's guidance and assistance toward the revitalization of the Mason Valley community.

Through his efforts and those of Rob Minister and other members of the Mason Valley Industrial Development Committee, along with the efforts of many interested members of business and industry over the past 1 1/2 years, the concept of utilizing abandoned industrial operation sites as the base for new industrial development to ensure economic growth of a small community has been resolved to a practical matter: That the Anaconda Company make available to the City of Yerington and Lyon County the facilities and land at Weed Heights for industrial development.

With the continued cooperation of all concerned and their final analyses of ongoing and planned feasibility studies and appraisals, the quiet fruition of this transition from a formerly 2 industry community, presently a 1 industry economically depressed community, to a diversified industrial, economically sound community is assured.

March 13, 1979

Re: A.B. 345 proposing to amend the Carson City Charter to authorize the board of supervisors to operate a water project within and without Carson City.

Members of the Senate Committee on Government Affairs:

During my testimony at the hearing on A.B. 345 on March 9, 1979, you requested that I provide you with:

1. My opinion concerning the power of an incorporated city to exercise the right of eminent domain to acquire water rights; and

2. Existing NRS references which empower Carson City to acquire and operate a water project both within and without its territorial limits.

My opinion, statutory citations, a discussion of the existing statutes and conclusions follow.

1. Exercise of the Right of Eminent Domain by a City to Acquire Water Rights

From 1873 to 1949 the Supreme Court of Nevada in three cases declared a water right to be a right to be regarded and protected as property. In Dalton v. Bowker, 8 Nev. 190 (1878) at page 201 the court said: "It is undoubtedly true that running water, as long as it continues to flow in its natural channel, can not be made the subject of private ownership except as a right incident to property in land; but it is well settled that a right may be acquired to its use by appropriation, which will be regarded and protected as property." In Nenzel v. Rochester Silver Corporation, 50 Nev. 352 (1927), at page 357 the court stated: "It is well settled that a water right is realty." And in Application of Filippini, 66 Nev. 17 (1949) at page 22 the Supreme Court declared: "When used in connection with a water right, the sense of the term ("vested rights") is immediately apparent. It means simply that a right to use water has become fixed either by actual diversion and application to beneficial use or by appropriation, according to the manner provided by the water law, and is a right which is regarded and protected as property."

Carson City v. Estate of Lompa, 88 Nev. 541 (1972) is dispositive of the question. In this case Carson City sought to condemn a parcel of real property and all water appropriated from the point of diversion located thereon. The district court entered judgment on the jury verdict fixing the value of the water right, and the city appealed. Holding that the water right was subject to condemnation the Supreme Court said:

When a right to use water has become fixed either by actual diversion and application to beneficial use or by appropriation as authorized by the state water

law, it is a right which is regarded and protected as real property. \* \* \* Indeed, NRS 37.010(3) specifically allows for a city to exercise its right of eminent domain to acquire water rights."

NRS 37.010, cited by the Supreme Court in the Lomba Case reads in part:

Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

3. \* \* \* reservoirs, water rights, canals, aqueducts, flumes, ditches and pipes for conducting water for the use of the inhabitants of any county, or incorporated city or town \* \* \* and all other public uses for the benefits of any county, incorporated city or town, or the inhabitants thereof. (Italics added)

NRS 37.030 also provides that the private property which may be taken under Chapter 37 of NRS includes all real property belonging to any person, company or corporation.

## 2. Powers of Carson City and its Board of Supervisors Under the Carson City Charter

The following sections of the Carson City Charter (Chapter 213, Statutes of Nevada 1969, as amended) are pertinent to the inquiry.

Section 1.010, in subsection 2, reads:

Any powers expressly granted by this charter are in addition to any powers granted to a city or county by the general law of this state \* \* \*. All provisions of Nevada Revised Statutes which are applicable to counties or generally to cities \* \* \* or to both and which are not in conflict with the provisions of this charter apply to Carson City. If there is a conflict between the law pertaining to counties and the law pertaining to cities, the board of supervisors may, by resolution choose which law shall apply.

By the provisions of Section 1.040 of the charter Carson City may "purchase, receive, hold and enjoy personal and real property wherever situated," and "determine and declare what are public uses when the necessity exists of condemning lands." (Italics added)

Section 2.140 provides that the board of supervisors may "purchase, receive, hold, sell, convey and dispose of property, real and personal, wherever situated, for the benefit of Carson City, improve and protect such property, and do all other things in relation thereto which natural persons might do." (Italics added)

Under Section 2.150 the board of supervisors may condemn property for the public use in the manner prescribed by chapter 37 of NRS.

Section 2.270 authorizes the board of supervisors to provide, by

contract, franchise or public enterprise, for any utility to be furnished to Carson City or the residents thereof; to provide for the construction of any facility necessary for the provisions of such utilities; and fix the rate to be paid for any utility provided by public enterprise.

### 3. Territorial Limits of the Power of Eminent Domain

#### (a) Property Lying Outside a City's Territorial Limits

Incorporated cities and counties do not have the power to condemn property situated outside their territorial limits unless such power has been conferred on them by the legislature either expressly or by necessary implication. 29A C.J.S. page 234, Eminent Domain.

At the present time there are four statutes in NRS where the legislature has expressly conferred on incorporated cities and counties (including Carson City) the power to condemn property situated outside their territorial limits. All such statutes, among other things, relate to water projects.

##### (1) City Bond Law (NRS 268.672 et. seq.) enacted in 1973.

NRS 268.696 defines "municipality" to include any incorporated city, and NRS 268.728 defines a "water project." By the provisions of NRS 268.730 any governing body of a municipality, upon its behalf and in its name, may at any time or from time to time acquire, improve, equip, operate and maintain, within or without or both within and without the municipality a water project.

The contents of A.B. 345 were adapted from NRS 268.728 and 268.730.

##### (2) Consolidated Local Improvements Law (Chapter 271 of NRS) enacted in 1965.

By the terms of NRS 271.015 and 271.145 this chapter applies specifically to Carson City. NRS 271.265 empowers the governing body of a municipality, upon behalf of the municipality and in its name, without an election, from time to time to acquire, improve, equip, operate and maintain, within or without the municipality, or both within and without the municipality a water project. "Acquire" as defined in NRS 271.035 includes "condemnation," which in NRS 271.065 is defined. In this section a municipality may exercise in the state the power of eminent domain, either within or without the municipality, and, in the manner provided by law for the condemnation of private property for public use, may take any property necessary to carry out any of the objects or purposes of chapter 271 of NRS.

"Water project" as defined in NRS 271.250 is substantially the same as the definition of "water project" in A.B. 345.

##### (3) County Improvements Law (NRS 244.815 et seq.) enacted in 1965.

This law is identical with the Consolidated Local Improvements Law, but applies only to counties. Under NRS 244.829 for the purposes of the County Improvements Law Carson City is considered as a county. Equivalent sections of those discussed under the Consolidated Local Improvements Law are NRS 244.820, 244.827, 244.862 and 244.865.

(4) Water and Sewer Revenue Bond Law (NRS 350.350 et seq.)  
enacted in 1937.

This act was first enacted in 1937 to apply only to unincorporated towns. Amendments in 1949 and 1969 make it also applicable to incorporated cities and special districts.

NRS 350.360 defines an "undertaking" to include systems, plants, works, instrumentalities and properties used or useful in connection with the obtaining of a water supply and the conservation, treatment and disposal of water for public and private uses. NRS 350.370 empowers a municipality to:

(a) Acquire by gift, purchase or the exercise of the right of eminent domain, to construct and improve any undertaking, wholly within or wholly without the municipality, or partially within and partially without the municipality, and to acquire by gift, purchase or the exercise of the right of eminent domain, lands, easements, rights in land and water rights in connection therewith.

(b) To operate and maintain any undertaking for its own use and for the use of public and private consumers, and users within and without the territorial boundaries of the municipality.

(b) Property Situated Outside the Territorial Limits of the State

General authority granted to an incorporated city or a county to acquire property by way of condemnation does not extend to property situated outside the territorial limits of the state. By NRS 37.250 the Nevada legislature has granted the right of eminent domain to foreign corporations provided such foreign corporations comply with Nevada law prescribing the conditions in which such foreign corporations may be authorized to do business in the state. By the enactment of Chapter 107, Statutes of Nevada 1933 (now Chapter 273 of NRS) the Nevada legislature requires foreign municipal corporations entering the state for the purpose of doing business to meet certain requirements.

Foreign municipal corporations have been regarded as within the meaning of statutes relating to "foreign corporations." 93 ALR 510. Whether or not a foreign municipal corporation qualified to do business in Nevada is empowered to exercise the right of eminent domain granted to foreign corporations by NRS 37.250 apparently has not been judicially determined in Nevada.

The right of a foreign corporation to expropriate property for public use does not have its origin in the comity existing between states, but is regarded as in derogation of common right and can exist only by an affirmative grant of authority from the legislature of the state in which it is sought to be exercised. Foreign corporations are not entitled by their charters to exercise the right of eminent domain in the absence of such authority. Whether or not Carson City can exercise the power of eminent domain in another state depends upon the statutes of such other state.



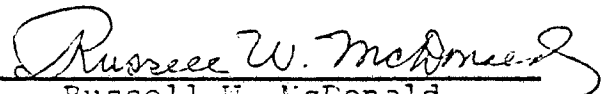
4. Conclusions

(a) Incorporated cities in Nevada (including Carson City) possess the power to exercise the right of eminent domain to acquire water rights.

(b) Existing Nevada statutes authorize Carson City to exercise the power of eminent domain for water projects both within and without Carson City.

(c) The enactment of A.B. 345 would only be a continuation of the policy of the legislature declared in the City Bond Law, the Consolidated Local Improvements Law, the County Improvements Law and the Water and Sewer Revenue Bond Law.

It is respectfully requested that the Senate Committee on Government Affairs report A.B. 345 to the Senate with a "do pass" recommendation.

  
\_\_\_\_\_  
Russell W. McDonald

DEPARTMENT OF ENERGY

DIVISION OF COLORADO RIVER RESOURCES

Testimony Regarding Senate Bill No. 315 -  
Senate Committee on Government Affairs

March 14, 1979

Mr. Chairman and Committee members, for the record I am Duane Sudweeks, Administrator of the Division of Colorado River Resources. Joining me is Jim Long, the Division's Financial Manager. We are here to offer testimony in support of Senate Bill 315.

The Division presently administers six different funds which are a part of the State's accounting system. These funds are:

Colorado River Resources Fund - No. 296

AMOUNTS TO DATE IN FUNDS  
\$47,000

Power and Water Fund - No. 350

\$ removed to zero acc. month

Research and Development Fund - No. 317

\$2,200.00

Fort Mohave Valley Development Fund - No. 207

\$132,000

Enterprise Funds } Alfred Merritt Smith Water Treatment Facility Fund - No. 501 \$

Funds } Federal Pumping and Transmission Facilities Fund - No. 502 \$

Funds A & B → These funds vary day to day.  
from zero up to \$22,000

The first four funds are Special Revenue Funds, and the last two are Enterprise Funds. In all cases, fund cash balances at year end are carried forward to the subsequent fiscal year. These

cash balances are part of the money in the State Treasury that the State Treasurer has available for investment. To date, these funds have not been eligible for a share of the investment income earned by the State Treasurer.

All revenues deposited to Division funds are derived either from sales of power and water or from sale of land or forfeited option fees. Present fund balances do not include any unexpended appropriations of General Fund money. Since Division power and water contractors are supplying the revenues, we feel that the benefits of investing this money should accrue to the respective funds.

There is precedent for this philosophy. We understand that NRS 356.087 presently provides that certain funds shall be entitled to a share of investment income. Included are the State Highway Fund, Taxicab Authority Fund, Legislators' Retirement Fund, Public Employees' Retirement Fund, State Permanent School Fund, the Silicosis and Disabled Pension Fund and the Fish and Game Fund.

If Senate Bill 315 is passed, we estimate that for fiscal years 1979-80 and 1980-81 the General Fund would lose approximately \$22,750 and \$22,960, respectively, with concurrent amounts accruing to the six funds administered by the Division. Although these are relatively minor amounts compared to the total

investment income expected for deposit to the General Fund, they are significant amounts to the Division. They could represent the difference between having to increase the administrative charge to the Division contractors during the 1981-83 biennium or being able to defer increases to a later date.

I appreciate the opportunity to present our position today in support of Senate Bill 315. If you have any questions, Mr. Long and I would be pleased to answer them.

