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

Also Present: See Attached Guest Register

Chairman Gibson called the thirty-first meeting of the Government Affairs committee to order at 11:50 a.m. in order to continue with testimony regarding SB-253 & SB-254 being presented by Mr. Tom Bass. (Presentation began during meeting #27, April 4 & 5)

Tom Bass, representing White Pine County, continued his testimony by referring the committee to Page 11, paragraph 3. (See Attachment #1) Mr. Bass read from his prepared testimony to the committee.

Senator Dodge asked how long the pay out on the bound would be and Mr. Bass responded that that the construction bonds would be for about 35 or 40 years.

Senator Dodge asked Mr. Bass if there would by any objection to requiring the power plant to be located within White Pine County. Mr. Bass stated that there would be no objection to this specification.

The committee discussed the problem of "dual pollution". If the Kennecott plant were to resume its normal capacity at some time there would be problems with the pollution level of both the power plant and Kennecott. At this time Chairman Gibson explained to the committee how the E.P.A. handles the problem of pollution when considering a new plant. Funds are derived to control the pollution from Kennecott. It is possible that these funds would be paid back to the power plant people. The project may not begin if there is a pollution problem.

Michael R. Brown testified from the audience to clarify the operational level now being used at Kennecott. Mr. Brown stated the mining and concentration operations are shut down, smelting is the only operation still going at this time. Mr. Brown concluded by stating that the smelting operation is what concerns the power plant people.

Norm Nichols also testified from the audience noting that Kennecott has a variance to operate until 1987. In 1987 they will have to sign new variances.

Mr. Bass continued at this time with the prepared testimony as noted above.

Chairman Gibson stated that the percentage rate regarding the recapture provisions should be flexible so that it could be changed with the federal regulation changes. Mr. Bass and Mr. Nichols felt that this was acceptable to them and it could be amended into the statutes. Mr. Nichols stated that this portion could be worded in the same language as was used in the Valmy Plant.

Senator Kosinski asked if a provision could be written in so that the Nevada utilities would have first right of refusal for additional power after the bonds are paid off.

Senator Dodge informed the committee and those proponents of the bill that without adequate protection for water rights to be used for Nevada utilities he would not support the bill. The Senator continued that the power plant in White Pine County is a good idea and would probably be passed but he definitely wanted to see adequate protection put in the bill.

Mr. Bass stated that the protection lies within the legislature and this should alleviate the Senator's worries.

Chairman Gibson stated that the provisions for this plant must be designed to protect the interests of Nevada. Mr. Bass completed his testimony and Chairman Gibson stated that the committee would work on the two bills using the written information provided by both the proponents and opponents.

Mr. Gremban stated that he had some further testimony to give the committee but since the committee was out of time he would present the written testimony to the committee for their consideration during the work session. (See Attachment #2)

With no further business the meeting was adjourned at 12:40 p.m.

Respectfully submitted

Janice M. Peck
Committee Secretary

Approved:

Chairman
Senator James I. Gibson

Note: Included in the attachments is a copy of the suggested amendments provided by Sierra Pacific Power - Mr. Bass' testimony was based upon these amendment suggestions. (See Attachment #1A)

Comments of MRG&A, Bond Counsel for White Pine County, to the Amendments to SB 253 proposed by Sierra Pacific Power Company.

MRG&A is bond counsel to White Pine County (the " County" As such, when bonds are issued to finance the White Pine County Pow Project (the "Project"), our primary function will be to render a legal opinion regarding the legality of such bonds and the exemption of the interest thereon from federal income taxation. Our ability to be able to render such an opinion is absolutely critical to the Project for, without it, no bonds could be issued or sold to finance the project.

Our review of the County Economic Development Revenue Bond Act, NRS 244.9191 to 244.9219, inclusive, (the "Act"), indicated that, in its present form, it did not provide the methods required to finance the Project in the manner contemplated by the participants therein nor in a manner commonly employed, and acceptable in the market place, in the financing of public power projects. Accordingly, we, in connection with the participants and the Nevada legislative counsel, drafted the minimum amendments to the Act necessary to permit the financing of the Project in a manner which would accomodate the wishes of the participants, which would be acceptable in the market place and which would enable us to render our approving legal opinion. These amendments are incorporated in S.B. 253.

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EXHIBIT 1 #1

(a) The second sentence proposed to be added relating to approval of the Public Service Commission, ("PSC") would seek to greatly expand the powers over the Project over those which the PSC could now exercise were the Project owned by a private utility. It is not the intention of the legislation to avoid regulatory jurisdiction, so long as that jurisdiction is clearly defined. It appears that that jurisdiction already exists with respect to the necessary approvals for the siting of the Project as well as for approvals required under NRS 704.320 of the wholesale contracts for the sale of power. Accordingly, this provision is really unnecessary unless it is to suggest that the Public Service Commission have more jurisdiction over a project of this type than it does over a project of a investor-owned utility. In addition, approvals by the Public Service Commission might, in effect, be considered regulation by a state of electricity being transported in interstate commerce in violation of the commerce clause of the United States Constitution.

It is important to understand how the Project will be constructed and operated. The County will enter into an agreement with one of the participants to perform these functions. Since the operator will also be a participant in the Project and will therefore be responsible for paying the proportion of the costs of the Project (debt service on bonds and operating and maintenance costs), equal to the percentage of the output of the Project it is entitled to take, the larger the participation of the operator in the Project, the greater the incentive of such operator to insure that the Project is built, operated and maintained in the most economical manner. In addition, there will be a management committee, composed of all participants in the Project, that will exercise overall supervision of the construction and operation of the Project. Each participant in the Project will therefore have direct involvement in the actual construction and operation of the Project.

The arrangement involved in the sale of public power revenue bonds is one involving participation. The participant is entitled to a portion of the output of the Project and has an obligations to pay a commensurate share of the costs. There are no rates, per se. The payment a participant is required to make does not depend upon whether that participant takes any power at all: the participant is obliged to pay his share, in any event. However, it should again be noted that the original power sales contracts are no doubt presently under Public Service Commission jurisdiction. See NRS 704.320.

(b) The sentence regarding a nationally recognized engineering firm does nothing more than recognize what the participants in the Project would insist on. Obviously, since they are paying for the Project, they would not entrust its acquisition and construction to anyone other than a nationally recognized firm. However, by requiring this, it may unnecessarily increase the cost of the Project. For example, the participant who is designated to construct the Project may be capable and qualified to oversee all or a portion of the acquisition and construction of the Project. Requiring that an outside firm be called in to do this work could very well cause an increase in the cost over that which such participant could do such work for.

It should be kept in mind that the aforementioned management committee, composed of all purchasers, would approve any plans, including the hiring of any architect and engineering firm and the entering into of any contracts relating to the acquisition of the Project.

(c) The provision regarding bidding of construction contracts is unnecessarily restrictive. As stated above, the management committee would approve construction contract procedures. Since they will have the ultimate responsibility for paying for the Project, it is in their best interest to permit them maximum flexibility in determining whether the most cost effective method of construction can be achieved by public bid, negotiated contract or any combination thereof. Since they will be paying the cost, it seems inconceivable that they would decide to negotiate a contract if public bidding would result in a lower cost. In addition, the proposed amendment would requiire bidding of all construction contracts, even those for which there is only one supplies, or one best supplier, for the needed item. It would seem to be a very cumbersome and time consuming procedure to require notice, waiting periods, submission of a bid, approval of the bid and so forth, in such a situation. In addition, in the case of a single supplier, his response to a bid request might very well be much higher in cost than if the participants were able to enter into direct negotiations with such supplier. Finally, it should be noted that the proposed amendment sets forth none of the procedures for the proposed public bidding.

The concept of public bidding is appropriate that the determination of the most cost effective method of constructing such project be left in the hands of the participants.

2. Amendments to Section 5 of S.B. 253:

This provision would be absolutely unacceptable. The provisions of Section 5 of S.B. 253 are complimentary to the provisions of Section 3 of S.B. 253 which requires a county, once it has agreed to do so, to continue to finance an electric generating project to completion. These provisions have been inserted in the Act for a very definite reason. Normally, power projects of this magnitude are owned and financed by agencies or entities the governing body of which is composed of representatives of the purchasers of the output of such project. It is the responsibility of such governing body to authorize the issuance of bonds from time to time in amounts necessary to complete the financing of such project. Were they not to continue the financing of such power project, the result would be a non-completed, non-operating project and an unconditional obligation on the part of the purchasers that they represent to pay off the bonds theretofore issued. Obviously, then, there is a definite economic compulsion on the part of such governing body to continue to authorize the issuance of bonds until the power project is completed. To the best of our knowledge, the White Pine Project will be the first such project ever financed under an industrial development revenue bond law. Financing of electric power projects under an

EXHIBIT

that the governing body of a county is not under the same economic compulsion as the governing body of an agency or entity of the type described above. The members of the County Commission do not represent purchasers of power from the Project nor does the County have any economic interest or liability in a power project or the bonds issued or to be issued to finance such project. Therefore, absent a contractual obligation, a county could, with impunity, walk away from a half completed project, and leave the participants in such project with nothing but an uncompleted project and an unconditional obligation to pay for the bonds previously issued to finance such uncompleted project. The possibility that this could happen has two effects: first, no utility would be willing to participate in a project, and; second, no one would purchase bonds for a project which could so easily be abandoned. For these reasons, it was felt absolutely critical to the Project that the County be empowered to agree, at the time of the initial issuance of construction bonds, to continue to finance the Project to completion. This insures the participants that there will be financing available to complete the Project and also insures the purchasers of bonds that the Project will be completed. Nevada law is such that we believe that if a county is given, by statute, the power to agree to complete the financing of a project, then, if a county does so agree, such agreement is enforceable. However, we also believe that, absent specific statutory authority to so contract, any such contract on the part of a county would not be enforceable.

Therefore, Sierra Pacific is incorrect when it states that the County could, without statutory authority, agree by contract to continue to finance a project to completion. Sierra Pacific's proposed amendment would do away with the power on the part of a county to contract to complete the financing of a project and instead give the county the right to be "freed" of the project at any time, whether before or after it was completed. Upon such a unilateral disavowal of a project by a county, Sierra Pacific's proposed amendment would require that each participant in the project be obligated to purchase an interest in the constructed portion of the project equal to the percentage of the energy such participant had agreed to purchase. This buy-out provision is unworkable. The proposed amendments make no mention of when this buy-out is to take place, how much each participant would be required to pay for its ownership interest, what would be the effect if one or more participants were unable or unwilling to comply with their buy-out obligation, what would be the effect of this buy-out on existing contracts or how the participants, who would now be co-owners, rather than power purchasers, would regulate the construction, ownership and operation of the Project. One of the most serious deficiencies in this buy-out provision is the very great possibility that, were it triggered, one or more of the participants would be unable or unwilling to obtain the funds to purchase its interest in the Project and/or to complete the construction of its interest in the Project. Presumably, were this provision triggered, the buy-out would have to take place immediately in order to prevent a default

in payment of the bonds previously issued to finance the Project. Each participant would, therefore, have to immediately obtain the funds to purchase its interest. It is very doubtful that the larger participants would be able to obtain the huge amounts of money that would be necessary to purchase their interests on such short notice. Obviously, if one or more of the participants were unable or unwilling to comply with their buy-out obligation, then there would not be sufficient funds to pay off the outstanding bonds. Because of this distinct possibility, it is very doubtful that bonds could be sold to finance a project if this buy-out provision were in effect. Another serious defect in this provision is that, were it triggered, the relationship of the participants would be drastically altered. They would go from purchasers of power from a project to co-owners of such project. This would probably result in, among other things, changes in the method in which they report, for financial purposes, their participation in the project. As power purchasers, their participation in the project would probably be carried "off balance sheet". As co-owners, their participation would probably have to be reflected on their balance sheets. This could cause drastic adverse changes in their financial conditions.

It seems very odd to us that Sierra Pacific, who has indicated an interest in participating in the Project by agreeing to paying ten per cent of the costs of the preliminary feasibility studies, would want to see a provision of this type inserted in S.B. 253. By doing so, Sierra Pacific is in the incongruous position of advocating that, as a participant

in the Project, it would prefer to be subjected to the uncertainty and jeopardy indicated above, rather than being able to rely on an agreement of the County to continue to finance the Project to completion.

3. Amendments to Section 6 of S.B. 253:

This proposed amendment is totally unacceptable. It seeks to affirmatively empower the State to, at any time, impair the rights of bondholders and participants in a project. In short, the bondholders and participants would be at the mercy of the State and could find, at any time, that their rights had been taken away. It is questionable that, in light of the contract clause in the United States Constitution, such a provision would be constitutional. However, in any event, this provision is an absolute guarantee that no bonds could be sold and that no utility would participate in the Project. Again, as a potential participant in the Project, it seems odd to us that Sierra Pacific would propose an amendment which would permit the State to take this action.

The buy-out provisions of this proposed amendment are subject to the same deficiencies discussed above under Paragraph 2. In addition, it should be noted that here, the buy-out is only at the option of the participants. This, of course, is no protection at all for the holders of bonds.

4. Amendments to Section 7 of S.B. 253:

Contracts let in respect of a project should not be subject to the same requirements as any other county contracts for the reasons discussed above under Paragraph 1(e), namely, these contracts do not involve general county funds.

5. Amendments to Section 10 of S.B. 253.

This amendment, by deleting clause (c) of paragraph 2 of N.R.S. 244.9196, has the very unfortunate result of removing from the definition of a "project" facilities for the furnishing of electricity. In short, this deletion, rather than clearly defining a project for the generation and transmission of electricity, removes such projects from the list of types of projects that a county may own and finance under the County Economic Development Revenue Bond Law. This, of course, means that the County would have no power to so own or finance the Project.

In addition, the deletion from the definition of a project for the generation and transmission of electricity of leases and rights to take water or fuel means that a county, as part of such a project, could not own or acquire or finance such leases or rights. This leads to the obvious question of where the fuel and water for the project would come from. It is obvious that a power plant without fuel or water is useless and therefore the right to acquire fuel and water must be included as part of an electric project.

6. Amendments to Section 12 of S.B. 253.

The first proposed amendment, restricting the location of out-of-county portions of a project to only transmission lines, is unnecessarily restrictive. Among other things, since coal for the Project will come from Utah, portions of the Project relating to obtaining such coal and transporting it to the Project site may have to be located outside of White Pine County. (The same may be true regarding water transportation facilities).

The second proposed amendment, requiring that all bonds be sold at public sale, rather than quaranteeing the lowest cost of money may very well have the opposite effect. In addition, our experience is that the great majority of bond issues for public power projects are sold upon a negotiated rather than public bid basis for the simple reasons that not only is this the only practical way that issues of this size can be sold, but also selling on a negotiated basis in fact in many instances results in the lowest cost of money. Again, the proposal amendment appears to be unnecessarily restrictive and unwarranted. The management committee, composed of participants in the project, will have approval and authority over the methods chosen to sell each series of bonds issued to finance the Project. These participants should have the flexibility to determine whether to sell a particular series of bonds on a negotiated or public bid basis. Again, since they are responsible for paying the

costs of the Project, it would appear only logical to permit them to determine, in a particular case, which is the most advantageous method to use. Restricting the sale of bonds to public sales only may very well mean that a particular series of bonds cannot be sold or that, if it is sold, it will be sold at a much higher interest cost than would be the case had the bonds been sold on a negotiated basis, resulting in a higher cost power.

EXHIBIT 1

7. Amendments to Section 17, subsection 2 (g) of S.B. 253.

This amendment would take away the right of a county to require, as a part of a power project, fuel and water. The defects in this proposal are discussed above under Paragraph 5.

8. Amendments to Section 17, subsection 2 (j).

The deletions contained in the amendment would prevent a county from (i) financing or making impact payments to alleviate the increased demands in municipal services caused by a project or (ii) financing pollution control equipment for other entities to minimize pollution in the vicinity of the project caused by the simultaneous operation of the project and such other entity. Both of these proposed deletions are unacceptable.

The first deletion takes away from White Pine County a means of insuring that adequate governmental services are provided from the beginning of the construction of the Project. The rationale given by Sierra Pacific for prohibiting impact payments is that taxes generated during the course of construction of the Project should be sufficient to provide for these services. This is probably not the case. The greatest impact from the Project will probably be during the initial stages of construction. It will be during this time that, because of an influx of construction that the greatest increase in demand for governmental services will be experienced. Yet it is also the case that during this time the Project, because it is only in the initial stages of construction, will be generating the least amount of tax revenues. Hence, tax revenues will probably not be sufficient to alleviate such impacts. In order to protect

White Pine County, there must be a means to provide "up front" money to take care of these impacts. The California participants in the project have agreed to the mechanism currently contained in Section 17 of S. B. 253 for alleviating these impacts and have agreed to pay their share of such impact payments. It seems odd that Sierra Pacific, a Nevada Utility, who has expressed such concern over the consequences that the Project will have on the County and the State of Nevada, would propose to take away this benefit for White Pine County.

The removal of the right to finance pollution control facilities for other entities may very well mean that the Project will not be able to meet environmental standards and therefore cannot be built. The Project will be located near Kennecott's facilities in White Pine County. If Kennecott were to continue to operate such facilities at their current levels of emissions, then when these levels are combined with the emissions of the Project, the resulting pollution may exceed permissible levels. Therefore, the only way the Project could be built would be to lower the levels of pollution at the Kennecott facility, through the installation of pollution control facilities, so that the combined levels of pollution will meet permissible levels. In this situation, removing the power of the County to provide

these facilities means that the Project could not be built. The California participants in the Project have agreed to the financing of such pollution control facilities, and, again, it seems odd that Sierra Pacific, a Nevada utility, would propose removing from the County the power to insure that the overall pollution levels in the County were held to a minimum.

9. Amendments to Section 18, subsection 2.

These defects in this proposed amendment are discussed above under paragraph 1 (a).

EXHIBIT 1

11. Amendments to Sec. 22, Subsection 3 of S.B. 253.

This proposed amendment is unacceptable because, among other things, it purports to grant review and approval authority over the Project in three named Nevada departments without specifying exactly the extent of such authority. The defect in this is discussed above under Paragraph 1.

The participants in the Project have never felt that they did not have to comply with applicable permit, license and approval requirements. Nothing in S.B. 253 indicates that they do not have to so comply. The provisions of Subsection 3 of Section 22 are commonly found in industrial development statutes and relate to financing of projects only.

12. Amendments to Section 25 of S.B. 253:

These provisions for recapture are unacceptable. The suggested amendments would permit, at some time in the future, up to fifty per cent of the output of the Project to be taken by Nevada private utilities. In general, for bonds issued to finance the Project to be exempt from Federal income taxation, no more than twenty-five per cent of the output of the Project, <u>including recapture rights</u> (whether such rights are to increase an allotment under a power sales contract or to increase the output taken by purchasing an individual ownership interest in the Project) may go to private utilities. Obviously, the provision would, on its face, prevent <u>any</u> bonds issued to finance the Project from being exempt from Federal income taxation.

EXHIBIT 1

SIERRA PACIFIC POWER COMPANY

I would like to take a few minutes to respond to the comments of Bond Counsel of White Pine County to the proposed amendments by Sierra Pacific to SB-253.

In our opinion neither Los Angeles Department of Water & Power nor White Pine County have offered any solutions to the problems we originally brought to the attention of the Legislature during the course of the first hearings on this bill.

The following are responses to these comments:

Page 1

The inference has been made that the proposed changes in the County Economic Development Bond Act (Senate Bill No. 253) was drafted with the support and approval of all the participants in the project. I would like to clarify for the record that Sierra Pacific was not asked nor did we participate in the drafting of Senate Bills 253 or 254.

Page 2

I fail to understand how our proposed amendment to include the Public Service Commission of Nevada jurisdiction over the project would in any way expand the powers of that regulatory agency.

Our proposed amendment simply states that we would expect the PSC to exercise the same jurisdiction over the White Pine Project as they would over any private utility in the State of Nevada who constructs a power plant project.

Existing Nevada revised statutes would apply to County projects as they now apply to any private utility, should our recommended amendment be adopted.

Page 3

Reference has been made that a management committee, made up of the participants in the project, will supervise the construction and operation of the project. Sierra Pacific has not been advised as to how the committee would be structured so as to protect minority participants or Nevada rate payers.

Page 4

This page discusses our proposed amendment of selecting a nationally recognized architect/engineer to design and manage the project.

On page 4, the inference is made that the participants would insist on such a condition. Should this be the case, there should be no disagreement that it be retained as proposed.

Page 5

We see nothing restrictive in our proposal that all construction contracts be bid. This is an accepted and common procedure in the utility business.

I would also like to point out to you that in reviewing the California Bond Law, we have found it specifically provides that all items over $10,000 shall be bid.

Page 6

Our amendment to Section 5 of SB-253 provides a means for the County to extricate itself from being forever bound to issue additional securities for the project. Our Bond Counsel has stated that the language proposed in SB-253 was extraordinary and should be considered only if absolutely necessary to accomplish the objective of the State. He knew of no such provision having been adopted by any other State. He also stated that such restrictions are contained in the purchase agreements of the participants.

We must remember that the bond-holders of such securities are highly sophisticated financial people representing primarily insurance companies, banks, trusts and other financial institutions. They can insist on whatever provisions they deem necessary.

In checking California Bond Law, we were not able to find such provisions. The provisions and terms for a buy-out by the participants present no difficulty to Sierra and should be worked out in the purchase agreement. Our financial and resource planning would be made to accommodate such a provision.

Page 9

The next to last paragraph on page 9 discusses financial reporting and off-balance sheet financing. Our Independent Auditors - Coopers & Lybrand - state that a purchase power agreement as proposed commits a utility to the payment of principal and interest just as effectively as issuing bonds and so should be included on the balance sheet as though it were a bond. The Financial Accounting Standards Board and the Securities Exchange Commission feel strongly about the subject and the rating agencies consider it as a balance sheet item in arriving at ratings.

Our proposed amendments to Section 6 propose to relieve the State from forever prohibiting changes in the Bond Act with regard to a project. The same statement as County liabilities apply. Furthermore, we have reviewed the California Bond Act and find no such a provision exists in that act. In fact, quite a number of amendments have been adopted by the State of California and I am unaware of any inability of California counties to issue additional securities.

Page 12

The clause "C" of Section 10 was inadvertently omitted.

The water rights leases referred to are covered in Section 17, Subsection 2 (g) which provides for the acquisition of water resources and rights thereto.

We feel fuel is inapplicable since it is an operating cost of the project and not part of the cost of construction.

Securities should be issued by competitive bid. It is not uncommon to issue public power securities by competitive bid. In 1978 the Washington Public Power Supply System issued $1.210 billion competitively...$180 million of that in December 1978. Lower Colorado River Authority issued competitively $48 million; State of California, $150 million; State of Pennsylvania, $183 million and State of Nevada, $44.5 million. In addition, the majority of private utilities go competitive. For the protection of County Commissioners, such a provision should be included in order to avoid any criticism.

Page 15

This proposed amendment would permit acquisition of water resources and water rights rather than deny the County the right to acquire such resources.

Page 16

As I have previously stated, we are concerned about the control of both construction and operating costs of such a project and we have an obligation to our customers to keep them as low as possible.

Section 17, Subsection 2 (j) is in effect a blank check, with no control as to amount or entity participating who could make demands on the project.

These impacts can be addressed by taxes generated payable to the County during the course of construction as is being done for Humboldt and Pershing. Advance payments against future taxes can be arranged without difficulty. We have calculated that such taxes would generate $44 million during the course of construction.

With respect to Kennecott pollution control facilities, our environmental people who have followed the project inform us that it would take $50 million in capital expenditures to meet existing air quality standards. Operating costs which would have to be borne by the project would run several million a year. Then, in order to build a power plant, further scrubbing equipment would have to be constructed to maintain these standards, since even with scrubbers, a power plant does have emissions. All these costs are proposed to be borne by electric customers.

By way of information, the County can, under present statutes, issue tax-exempt pollution control bonds with Kennecott - such costs would then be borne by Kennecott customers throughout the world not just by the customers of this project.

Page 20

The amendment we have proposed would merely place the project under the same regulatory requirements applicable to Nevada utilities. Since County Bond Counsel states they felt they would have to comply, there should be no objection to including this provision. The reference to Nevada Revised Statutes specifically defines the extent of authority.

Page 21

The provisions outlined do not prevent the issuance of tax-exempt securities. The project would provide outright ownership of 33% to Nevada utilities and 67% by the tax-exempt project. A 25% portion of the 67% would be made available to private Nevada utilities, thus giving 50% ownership to Nevada (33% + 25% of 67% or 17%). In no way would the tax-exempt status be endangered.

In response to the request of Senator Kosinski on April 5, we have obtained an opinion from Rueben Goldberg, of the law firm of Goldberg, Feldman and Letham, P.C., Washington, D. C. regarding (1) whether Nevada may regulate sales for resale of electric energy in interstate commerce by a municipality of the State, and (2) whether any federal or state regulatory agency will have jurisdiction over the rates at which the County makes sales for resale to Nevada wholesale customers. The opinions are:

1. It is our opinion, therefore, that the State of Nevada is prohibited from exercising regulatory jurisdiction over the sale of electricity for resale in interstate commerce by White Pine County, Nevada to the Department of Water and Power of the City of Los Angeles, California.
2. The answer is that no federal or state body will have ratemaking jurisdiction over such (intra-state) sales.

I have attached copies of his remarks for your review.

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes

Sec. 4. A county may issue bonds to finance solely the cost of studies, surveys and options with respect to a project for the generation and transmission of electricity. Before doing so, the county shall arrange for the repayment of those costs under an agreement or agreements which may provide for the purchase by the obligor or obligors thereunder of the studies, surveys and options through payments sufficient to pay the principal of and interest on the bonds issued to finance those costs if and to the extent the principal of and interest on such bonds are not paid from the proceeds of additional bonds issued to finance the remaining costs of the project. In the event the project is not deemed feasible, the obligor or obligors shall pay the costs of the aforementioned studies, surveys, and options within a time certain of one (1) year. Prior to any financing of a utility project or transmission facilities of the project any and all agreements applicable to the construction, operation, and sale of electricity generated by the project, and use of transmitting facilities of the project to be entered into by the county shall be subject to review and approval of the Nevada Public Service Commission. The project shall be operated by a Nevada electric utility subject to the jurisdiction of the Nevada Public Service Commission. [Such agreements may also include a commitment or agreement by the county to enter into contracts at a later date for the sale of all or a portion of the electricity generated by the project to or for the use of the transmitting facilities of the project by the obligors and for the construction and operation of such project by one or more purchasers of the electricity or users of the transmitting facilities. The terms and provisions of such contracts to be executed at a later date must be approved by the board of county commissioners at the time of or before the first issuance of bonds.] The county and the purchasers of electricity generated by the project shall jointly select a nationally recognized architect-engineering firm to design and manage the construction of the project. All materials and construction shall be competitively bid and awarded to the lowest bidder.

Explanation

Should a project not develop after the completion of studies financed by the County, we believe the proposed law provides for the repayment of the bonds issued over their life. We feel that since the commitment for such studies would be small compared to the total project costs, all participants should be required to pay the total costs of such studies within one year, and relieve the County of any obligations.

The present proposed act does not provide for any federal or state regulation over these matters. All arrangements should have prior approval by the Nevada Public Service Commission just as is required today of privately owned utilities.

The operation of a Nevada electric generating facility by a Nevada public utility insures the control of operating costs by the Nevada Public Service Commission as well as adherence to other Nevada state regulations.

Because of the magnitude of the project, it is essential that costs be effectively controlled since it impacts on the rates to be charged Nevada consumers. It is therefore imperative that an experienced architect-engineer be retained to insure the design of a reliable and efficient project. It is an equally sound business practice to insure effective cost controls by competitively bidding all materials and construction.

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes	Explanation
Sec. 5. Any lessee, purchaser, obligor, trustee or other representative of bondholders or any other interested party is entitled as of right to the enforcement of the obligations, if any, of the county to sell and issue additional bonds to finance the remaining costs of acquiring, improving, and equipping a project, however, should a county at any time decide for any reason to be freed from the project, the participating utilities shall be obligated to purchase the constructed portion of the project at the same ratio as participating utilities have agreed to purchase energy. [*or contract for the sale of the electricity generated or for the transmission of electricity by a project or for the construction and operation of a project, by mandamus or other suit, action or proceeding at law or in equity to compel the county, its board of county commissioners or other appropriate officers to perform those obligations.*]	We do not believe the County or the State should be unconditionally committed to a project. A county should be given the flexibility of being freed from all obligations of a project at any time it desires. Our bond counsel, Kutak, Rock & Huie, have informed us that the language proposed in SB 253 is most extraordinary and should be considered only if absolutely necessary to accomplish objectives vital to the State of Nevada.

EXHIBIT 2A 764

AMENDMENTS TO SB 253
SIERRA PACIFIC POWER COMPANY
April 5, 1979

Proposed Changes	Explanation
Sec. 6. Should the state repeal, amend, or modify NRS 244.9191 to 244.9219, inclusive, and sections 2 to 7, inclusive, of this act, impairing any outstanding bonds or any revenues pledged to their payment, or to impair, limit or alter the rights or powers vested in a county to acquire, finance, improve and equip a project in any way that would jeopardize the interest of any lessee, purchaser or other obligor, or to limit or alter the rights or powers vested in the county to perform any agreement made with any lessee, purchaser or other obligor, before all bonds have been discharged in full or provision for their payment and redemption has been fully made, the participating utilities shall have the option to purchase the then constructed portion of the project at the same ratio as the participating utilities have agreed to purchase energy. [The faith of the state is hereby pledged that NRS 244.9191 to 244.9219, inclusive, and sections 2 to 7, inclusive, of this act, will not be repealed, amended or modified to impair any outstanding bonds or any revenues pledged to their payment, or to impair, limit or alter the rights or powers vested in a county to acquire, finance, improve and equip a project in any way that would jeopardize the interest of any lessee, purchaser or other obligor, or to limit or alter the rights or powers vested in the county to perform any agreement made with any lessee, purchaser or other obligor, until all bonds have been discharged in full or provision for their payment and redemption has been fully made.]	If the State should adopt the proposed legislation and subsequently discover it has erred and a modification is required, it should not be precluded from making such modification. In order to protect the participants in the project and their security holders, the participants should have the option of purchasing the then-constructed portion of the project.

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Proposed Changes	Explanation
Sec. 7. The board of county commissioners may enter into any contract, lease or other agreement or transaction appropriate to carry out the provisions of NRS 244.9191 to 244.9219, inclusive, and sections 2 to 7, inclusive, of this act even though it extends beyond their terms of office. [*, without setting forth in detail in any notice the proposed terms or conditions thereof.*]	Contracts, leases or other agreements should be subject to the same requirements as any other county contract.

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706

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EXHIBIT 2A 1267

Proposed Changes

Sec. 10. NRS 244.9196 is hereby amended to read as follows:

244.9196 "Project" means:

1. Any land, building or other improvement and all real and personal properties necessary in connection therewith, whether or not in existence, suitable for manufacturing, industrial, warehousing or research and development enterprises.

2. Any land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment, or any combination thereof or any interest therein, used by any individual, partnership, firm, company, corporation (including a public utility), association, trust, estate, political subdivision, state agency or any other legal entity, or its legal representative, agent or assigns:

(a) For the reduction, abatement or prevention of pollution or for the removal or treatment of any substance in a processed material which otherwise would cause pollution when such material is used.

(b) In connection with furnishing of water if available on reasonable demand to members of the general public.

3. Any undertaking by a public utility, in addition to that allowed by subsection 2, which is solely for the purpose of making capital improvements to property, whether or not in existence, or a public utility.

4. *In addition to the kinds of property described in subsection 2, if the project is for the generation and transmission of electricity, the generation facilities shall consist of one or more generating units using common facilities located at an environmentally acceptable specific site within a county of the State of Nevada as approved pursuant to NRS 704.820 to 704.900, inclusive, (Utility Environmental Protection Act).* [*any other property necessary or useful for that purpose, including without limitation any leases and any rights to take water or fuel.*]

Explanation

We believe that the proposed law should clearly define a project and unambiguously state that the project is subject to the provisions of the Nevada Environmental Protection Act.

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EXHIBIT 2A

768

Proposed Changes

Sec. 12. NRS 244.9198 is hereby amended to read as follows:

244.9198 In addition to any other powers, [which it may now have,] each county [shall have] *has* the following powers:

1. To finance or acquire, whether by construction, purchase, gift, devise, lease or sublease or any one or more of such methods, and to improve and equip one or more projects or parts thereof, which [shall] *shall* [except as otherwise provided in this subsection must] be located within this state, and which may be located within or partially within [such] [*that*] *such* county. *If a project is for the generation and transmission of electricity, only the electrical transmission lines may be located outside of the county which provides the financing.* [*and the county deems it necessary to connect the project with facilities located outside this state, a part of the project necessary for that inter-connection may be located outside this state.*]

2. To finance, sell, lease or otherwise dispose of any or all its projects upon such terms and conditions as the board considers advisable.

3. To issue revenue bonds for the purpose of financing or defraying *all or any portion of* the cost of acquiring, improving and equipping any project as set forth in NRS 244.9213. *All such securities shall be issued on a competitive bid basis and awarded to the bidder with the lowest cost of money.*

4. To secure ..... (to end of Section 12).

Explanation

This provision insures that the generation facility associated with the project must be located within the county providing the financing.

For generation projects involving massive financing, we strongly urge this requirement be included in whatever statute is finally agreed upon. This is the only way all future customers can be assured of the lowest possible cost of money. A difference of one-tenth of one percent in the bond interest rate on a $2 billion project, would cost consumers $2 million additionally per year or an additional $70 million over the life of the project. Similarly, a difference of one-quarter of one percent, which would not be uncommon, would cost consumers an additional $5 million per year, or $175 million over the life of the project.

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Proposed Changes	Explanation
Sec. 17, Subsection 2(g) *(g) Acquisition of water resources and rights thereto [, facilities and suppiles (sic), including rights thereto, for fuel, fuel transportation and water];*	We believe that remote from the proj defined and should b operator of the faci
Sec. 17, Subsection 2(j) [(h)] *(j)* All other necessary and incidental expenses[.] *[, including expenses incurred to assist in meeting the financial demands placed by a project upon the population of, or services furnished by, this state, a county, city or town, or any political subdivision, agency or district thereof or created thereby, and capital contributions made by the county to, or facilities provided by the county for the use of, any corporation or other legal entity to minimize pollution in the vicinity of the project, if that pollution relates to the simultaneous operations of the project and the corporation or other legal entity in those areas].*	Financing should be limited to the construction of plant facilities. Taxes generated during the course of construction should be more than adequate to cover the impacts on governmental entities.

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Proposed Changes	Explanation
Sec. 18, Subsection 2	
2. No county may operate any project as a business or in any other manner except as a lessor or seller thereof. *If the project is for the generation and transmission of electricity, and the county retains ownership and sells the electricity generated or charges for the use of the transmitting facilities, the responsibility for the construction and the direct operation of the project shall be by a Nevada electric utility subject to the jurisdiction of the Nevada Public Service Commission. [the project must be constructed and operated by one or more of the purchasers of that electricity or users by the transmitting facilities pursuant to agreement with the county.]*	The operation of a Nevada electric generating facility by a Nevada public utility insures the control of operating costs by the Nevada Public Service Commission as well as adherence to other Nevada state regulations.

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EXHIBIT 2A 1971

Proposed Changes	Explanation
Sec. 20, Subsection 2	
2. If the project is for the generation and transmission of electricity, the county financing the project may acquire land or rights of way [for transmission facilities,] for the transportation of fuel or water, or for production facilities within such county and may acquire land or rights of way for transmission facilities within and without said county by the exercise of condemnation through eminent domain, unless the property to be acquired is owned or otherwise subject to use or control by public utilities within the state.	The county should not be able to locate a generating project in another county through the use of eminent domain. Under the proposed SB 253, a county can obtain lands through condemnation in any other county in the state.

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EXHIBIT 2A

Proposed Changes	Explanation
Sec. 22, Subsection 3	
3. The provisions of no other law, either general or local, except as provided in NRS 244.9191 to 244.9219, inclusive, [shall] *and sections 2 to 7, inclusive, of this act* apply to doing of the things authorized in [NRS 244.9191 to 244.9219, inclusive,] *those sections* to be done, *excepting if a project is for the generation and transmission of electricity, the project shall be subject to the review and approval of the following Nevada regulatory agencies, including but not limited to the Nevada Public Service Commission (NRS 704.010 to 704.900, inclusive), the Nevada State Environmental Commission (NRS 455.401 to 455.601, inclusive, and NRS 704.880 to 704.900, inclusive), the Nevada State Department of Conservation and Natural Resources (NRS 232.010 to 232.158, inclusive).* [and no board, agency, bureau, commission or official not designated in [NRS 244.9191 to 244.9219, inclusive, shall have] *those sections has* any authority or jurisdiction over the doing of any of the acts authorized in [NRS 241.9191 to 244.9219, inclusive,] *those sections* to be done, except as otherwise provided in [NRS 244.9191 to 244.9219, inclusive.] *those sections.*]	We believe it should be clearly stated and understood that the project shall fall under the jurisdiction of the appropriate state regulatory agencies.

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EXHIBIT 2A - 273

Proposed Changes	Explanation
Sec. 24. NRS 704.892 is hereby amended to read as follows: 704.892 [When] [*Except as provided in subsection 2, when*] *When* application is made *by a Nevada electric utility, out-of-state electric utility, or any governmental entity* for the construction of a plant for the generation of electrical energy using any natural resource of this state, including but not limited to coal, geothermal steam and water resources, for export outside this state, the commission [may]: [1.] [*(a)* Grant] *1. May grant* or deny the construction permit. [2.] [*(b)* Condition] *2. Shall condition* the granting *or denying* of the construction permit on the public utility's *or applicant's* making available *to public utilities within this state* [for use within this state] an amount of electrical energy equal to or less than the amount exported, [as the commission may prescribe.] *in one of the following manners:* *(a) Fifty percent (50%) of the capacity and energy from the project must be made available to Nevada utilities; or* *(b) If less than fifty percent (50%) of capacity and energy initially is taken by Nevada utilities, provision must be made for recapture by Nevada utilities of up to fifty percent (50%) of the capacity and energy available from the project; and* *(c) Provide for a reciprocity commitment by out-of-state participant agreeing to allow the Nevada utilities to participate in any future capacity and energy supply of such participants to the same extent that the out-of-state participants have participated in capacity and energy from Nevada projects.* [*2. This section does not apply to a project for the generation of electricity which is to be constructed pursuant to NRS 244.9191 to 244.9319, inclusive, and sections 2 to 7, inclusive, of this act.*]	P. We believe that the future of the State of Nevada depends upon careful regulation of the development of our valuable natural resources so as to provide the people of Nevada with a reliable, efficient and inexpensive source of power. In order to accomplish this goal, it is essential to provide for the recapture and reciprocity of those resources exported from this state.