The meeting was called to order at 2:15 p.m. Senator Neal in the Chair.

PRESENT: Senator Joe Neal, Chairman
Senator Norman Glaser, Vice-Chairman
Senator Wilbur Faiss
Senator Lawrence Jacobsen
Senator Mike Sloan

EXCUSED: Senator Floyd Lamb

OTHERS PRESENT:
Senator Thomas Wilson, Washoe District #1
Mrs. Emily Griel, League of Women Voters
Mr. John Gianotti, Harrah's Lake Tahoe
Mr. John Crossley, Legislative Auditor
Mr. Jac Shaw, Administrator of State Lands
Mrs. Kathi Nelson, Reno resident
Assemblyman Bob Weise, District #23
Assemblyman Louis Bergevin, District #39
Mrs. Eleanor Savage
Mr. Robert Pruitt, Lake Tahoe - South Shore resident
Mr. Gary Sheerin, Harvey's Wagon Wheel and Marla Bay Property Owners
Mr. Roland Westergard, Department of Conservation and Natural Resources
Mr. Bryce Wilson, resident of Glenbrook, Nevada
Mr. W. W. White, Incline Village General Improvement District
Assemblyman Ted Bedrosian, Washoe #24
Ms. Lona Sahagian, Vice President, Elko Point Country Club Board of Directors
Mr. Jack Ross, Marla Bay resident
Mr. Curtis Patrick, Glenbrook
Mr. Kenneth Jones, Zephyr Cove Property Owners Assoc.

Senator Neal announced that the hearing on S.B. 323 would be continued from Tuesday, March 20th, and then the committee would open hearings on S.B. 332, A.B. 443 and A.B. 234.

S.B. 323 - Limits licensed gaming in Tahoe Basin.

Senator Thomas Wilson, Washoe District #1, explained that the Senate members of the Ad Hoc committee and the Chairman, Assemblyman Joe Dini, got together after Tuesday's meeting and discussed this bill and proposed the amendments contained in Exhibit A. Senator Wilson briefly explained the amendments.

Senator Wilson explained that the change in the language in lines 6 - 8 adding the words "attacking agency approval which is" after the word "litigation" was to clarify the fact that there could be litigation of all kinds and purposes which may only incidentally affect the licensee or a permit.

Senator Wilson explained that the reason for the amendment in lines 9 - 11 was to clear up the ambiguity in the reference to the word "agency." The word "agency" refers to the Nevada TRPA and the required approval for that provision to be effective must be obtained through the Tahoe Regional Planning Agency. The additional wording of "affirmatively or by default" is added after the reference to TRPA because approval under the provisions of the act creating the TRPA agency occurs either where the agency approves or where it fails to deny with a dual majority.

He explained that lines 24 - 27 would change the date that gaming will be frozen from January 1, 1979 to the date of passage and approval of the act at the request of the Nevada TRPA. They requested this amendment because it would be difficult to go back to January 1, 1979 and verify the use of the public area on that date. They would be in a better position to make an examination and specify what is public area as of the effective date of the bill.

Senator Wilson stated that lines 29 -30 limit the area in which gaming can be conducted. It puts a limit on the expansion of the activity which is attracting public activity in the first place. The theory of the amendments, and of the bill, is to state there will be a freeze on gaming. Not only can you not put gaming outside the public area, but you can not take the public area and double it is size and by virtue of that double the gaming area.

He further explained that lines 31 - 33 address any structure housing gaming being destroyed or damaged and that language is not very workable. It would be changed by this amendment to provide that the structure may be rebuilt or replaced to a size not exceeding the existing or approved cubic volume. This was changed after a point was made in previous testimony that a hotel or structure should not have to be destroyed in order to qualify under this act to rebuild or replace an existing building.

Senator Wilson explained that lines 34 - 43 deal with limiting restricted gaming. He felt that it makes no sense to restrict gaming when it is only limited to 15 slot machines and it is incidental to another operation of business. The amendment exempts the restricted gaming license activity from the provisions of the act and defines what restricted gaming is.

Senator Wilson then stated that the bill is designed to accomplish three things. It is intended to unilaterally act to limit gaming at the Lake. Hopefully, this will take the issue of gaming out of the TRPA Compact negotiations. If the Ad Hoc committee is not successful in reaching an agreement with California, Nevada will have taken a responsible step which will contribute to the general environment of the Lake. The concept of the bill is that except for what has been constructed and approved by the Agency, there will be no more gaming casinos at Tahoe. It also states that beyond what has been constructed and what has been permitted to be constructed, there will be no expansion of what is presently permitted, designed and licensed to be public area.

The next speaker was Ms. Emily Griel representing the League of Women Voters. She submitted a written statement in favor of the bill, but suggested several small amendments which would further limit public area expansion. Her statement is attached as Exhibit B.

Ms. Griel further stated that she felt that all the cubic foot restrictions add up to a desire for a limit on people and all the pollution they are responsible for. She mentioned the pollution now found in the Lake Tahoe area. She suggested that since there are more cubic feet to be found elsewhere in the state, why not develop further gaming elsewhere and leave the Basin's cubic feet as they are forever.

Mr. John Gianotti, representing Harrah's Lake Tahoe, asked to make several observations. He cited another poll which was taken which showed that Californians are not in favor of banning gaming at Lake Tahoe. A copy of the article in the Reno Evening Gazette on February 7, 1979 regarding that poll is attached as Exhibit C.

Mr. Gianotti made other observations about the responsibility taken by the casinos regarding the environment at the Lake.

Senator Neal closed the hearing on S.B. 323.

S.B. 332 - Revises certain accounting practices of the state department of conservation and natural resources.

Mr. John Crossley, Legislative Auditor, provided the committee with a written explanation of the bill and some suggested amendments which would improve the accounting procedures defined in the bill. That explanation is attached as Exhibit D.

Mr. Crossley further explained that the bill addresses the proper accounting procedures to be used in the Division of Water Resources and the Division of State Lands for use in the Carey Act Fund and the Water Distribution Funds.

Senator Neal closed the hearing on S.B. 332.

A.B. 443 - Abolishes state land registrar appraisal and publication revolving fund.

Mr. Jac Shaw, Administrator of the Division of State Lands, testified that this bill is a minor housecleaning bill that was discovered during a Legislative Audit. The bill would eliminate a revolving fund for the state land registrar simply because it has not been used for a good many years.

Senator Neal closed the hearing on A.B. 443.

A.B. 234 - Establishes boundary between Lake Tahoe and adjoining lands.

Ms. Kathi Nelson, speaking as a private citizen, asked that her letter opposing A.B. 234 be entered in the record. It is attached as Exhibit E. The thrust of her testimony is that the state now owns the land between the low and high water mark at Lake Tahoe and this bill would give that land away.

Assemblyman Bob Weise, Washoe District #23, testified in favor of A.B. 234 and explained what prompted the bill and what it is intended to accomplish. He emphasized that the bill would not be giving anything away.

Mr. Weise explained that at the beginning of the century the federal water storage project was affected at Lake Tahoe by the construction of a bridge at Tahoe City. With the construction of that bridge, all private and public properties around the Lake had water stored on top of them to 8 feet. That made the water line at 6,229 feet and the natural rim of the lake is approximately 6,221 feet. In several instances, the federal government actually obtained easements from private property owners, but in many other instances they did not. There is no question that private properties at the Lake ran down to the water at that time.

Mr. Weise stated that last session, without the benefit of any public hearing and on the third amendment processed in a bill to reorganize the Department of Conservation and Natural Resources, there was incorporated a provision for people who own property at the Lake to obtain permits to construct piers below the 6,229 foot elevation. Things came to a head within the last two years because with the drought situation the Lake receeded and the state started charging fees for improvements made on the property below 6,229 feet.

Mr. Weise stated that the bill provides that the state owns that land which is under the high water mark at the Lake or the navigable waters of the Lake at the time it was admitted to the Union. The imposition of federal waters after that time should not affect ownership. If ownership is affected, there should be condemnation hearings and proceedings and the state should pay for the land.

Assemblyman Louis Bergevin, Douglas #39, testified that this problem did not exist prior to the legislation which was passed in the 59th Session, S.B. 153. That bill created NRS 321.595 which says that the Division shall establish by regulation a reasonable fee to be paid when an application is made for a permit and establish a schedule of annual rates according to the size and use of the pier. This was followed up by an attorney general's opinion which was requested by the Fish and Game Department. The opinion by then Attorney General Bob List stated that his office expresses no opinion as to the precise location of the present ordinary high water mark.

Mr. Bergevin stated that he had personally testified on S.B. 153 of the 59th session on a good number of occasions and had perused the bill very carefully. In the last two days of the session when reprint #3 came out, this language relative to obtaining permits for construction of piers was incorporated into the bill. There is no record in the Legislative Counsel Bureau of any testimony being given on this particular section and no record of who proposed the amendment and why.

Mr. Bergevin concurred in Mr. Weise's testimony concerning the federal reservoir built on top of Lake Tahoe which raised the high water mark from 6,223 to 6,229.1. Mr. Bergevin clarified for Senator Neal that 6,223 is the present rim of the federal reservoir. That is the lowest the water can be physically drawn down, but a drought could evaporate the level lower than that.

Assemblyman Bergevin stated that California is also involved in a controversy about water marks and property rights at Clearlake, which is identical to the Lake Tahoe situation because it also has a federal reservoir on top of it. California's statutes use the low water mark and lower court decisions on Clearlake have stated that property owners own to the ordinary, not artificial, low water mark. He felt that because 6,229.1 is an artifical water mark created by a federal reservoir, the state should use either 6,223 or 6,221 as the water mark.

Mr. Bergevin commented on the testimony of Mrs. Kathi Nelson and her fears that property owners at the Lake would be building fences into the Lake and thereby blocking public access to the shoreline. Mr. Bergevin noted that the bill states that all construction or alteration of the Lake Tahoe shoreline below the high water elevation of 6,229.1 requires written permission of the State Department of Conservation and Natural Resources and a permit from the TRPA. This is not recognizing 6,229.1 as an ordinary water mark, it is recognizing that water does get to that point at times and in order to protect the integrity of the Lake, it should be under a permit procedure.

Senator Neal asked Mr. Bergevin what will happen if this piece of legislation is not processed. Mr. Bergevin answered that the Legislative Commission met and asked the Department of Conservation and Natural Resources to hold in abeyance the promulgation of rules concerning permits and fees prior to a legislative analysis of this problem.

Senator Glaser questioned the value of this legislation to the property owner and taxpayer. Mr. Bergevin answered that the owner is now paying taxes on the land deeded to him, so what will happen without this bill is that a strip of beach will be created which is presently being maintained by private property owners.

Mrs. Eleanor Savage, speaking as a concerned citizen, submitted a letter and a report which were presented to Assembly Government Affairs Committee and Assemblyman Weise stating her opposition to A.B. 234. A copy of her letter and report are included as Exhibit F. Mrs. Savage expressed concern about public access to the beaches around the Lake if this bill is passed.

Mr. Robert Pruitt, resident of Lake Tahoe's South Shore, stated that the constitutions of the State of Nevada and the United States grants the quiet enjoyment of private property. He commented on the deed signed by his forefathers and the subsequent agreement granting the federal government the right to flood the land and then to take the water off. The contract he referred to is found in the information submitted by Mr. Bryce Wilson in later testimony given this day.

Mr. Gary Sheerin, representing Harvey's Wagon Wheel and the Marla Bay Property Owners, stated that this bill answers two issues. Firstly, it defines the boundary of Lake Tahoe. Secondly, it repeals 321.050 which was passed in the last legislative session.

Beginning with the latter issue, Mr. Sheerin stated that in 1967 NRS 445.080 was passed, which is Section 2 of the original bill, which granted the State the right to regulate piers, gravel taken out of the Lake, and construction down to the shores of the Lake at the height of 6,229.1 which was the first time that any kind of a height crept into the Nevada statutes. However, Chapter 445 has to do with water control and water purification and nothing to do with ownership. The next time height was involved was in 1977 when S.B. 153 added NRS 321.050 which allows fees to be charged for permits and rent to be charged on the land used. S.B. 153 of the 1977 Session was a bill to reorganize state government as far as energy levels are concerned and somehow 321.050 was incorporated in that bill and amounted to a substantive change, not a simple procedural matter.

Mr. Sheerin stated that the Division of State Lands subsequently felt that 321.050 and 445.080 gave them the basis for promulgating regulations to charge rent and charge fees for the construction below the 6,229.1 elevation. Property owners interpreted the word "rent" to mean that the State feels that it owns the land below 6,229.1 and they objected very strongly to these regulations. The State then said it is willing to change the regulations to apply to the elevation 6,223, but the Legislative Commission felt the 1979 Session of the Legislature should get involved before the regulations become effective on April 10, 1979. If the Legislature does nothing, those regulations will come into effect and there will be a lot of unhappy Nevadans.

Mr. Sheerin felt that if fees and rents are going to be charged, the Legislature and not a state agency should set those fees and rents. He asked the committee to keep in mind that the State still has control of the land below 6,229.1 in NRS 445.080, but that section has nothing to do with ownership. He suggested that the best theory for setting the boundary is to use the natural rim, which is said to be 6,223 He felt 6,221 was used in the bill because the Lake has not gone below that in many years and so that figure would cause no "strip" problems. The people he represents would accept either figure.

He also mentioned that if 6,223 is used and there is a necessity to pump water from the Lake, the property owners would not have to get involved. Another reason to use 6,223 is because the deed mentioned by Mr. Pruitt gives the federal government the right to store water in the Lake between 6,223 and 6,229.5.

Senator Neal asked Mr. Sheerin if the property owners wanted the land involved or just wanted the regulatory provisions for fees and permit charges removed from the statutes. Mr. Sheerin answered that the property owners want to retain the land they own and don't want the State to obtain it through the use of the artificial high water mark, 6,229.1.

Senator Glaser noted that if the property owners are paying taxes down to the 6,221 or 6,223 level, a court of law is apt to rule, inasmuch as they have been paying taxes on the property for over 50 years, that is a recognition that they own land down to that point. Mr. Sheerin agreed that would be a factor the courts would look at.

Mr. Roland Westergard, Department of Conservation and Natural Resources, testified that the Department supports A.B. 234 as amended. The bill would give the Department responsibilities pertaining to regulations governing the issuance of permits and it would facilitate administration of provisions of the act and protection of the resource in that respect. Mr. Westergard stated that this bill in his opinion would in no way adversely affect or jeopardize anyone's rights to appropriate water from Lake Tahoe or its tributaries. Those rights are covered by existing federal court decree and by agreements between parties involved.

Senator Neal asked Mr. Westergard where the 6,229.1 figure originally came from. Mr. Westergard stated that it came from the fact that the high water elevation as allowed in the federal decree was 6,229.1. When he referred to high water elevation he made it clear that he was not referring to ownership. That is the upper limit on the right to store water at Lake Tahoe.

Mr. Bryce Wilson, resident of Glenbrook, testified in favor of A.B. 234 as amended. He read from a prepared memorandum which is attached as Exhibit G. His testimony concurred with most of Mr. Sheerin's testimony. His memorandum also contains copies of the deed referred to by Mr. Pruitt, copies of NRS 321.595 and 445.080 and a copy of an opinion on who owns the land below the high water mark at Lake Tahoe by deputy attorney general Harry Swainston, among other documents relative to this issue.

Senator Jacobsen asked if the property owners around the Lake are unanimous in agreeing to the elevation of 6,223. Mr. Wilson stated they are unanimous in agreement with 6,221, 6,223 or the water's edge.

Mr. W. W. White, representing Incline Village, stated that he has been engaged in the controls of Lake Tahoe for 30 or 40 years. He stated that the figure 6,229 came into the statutes by his request in a bill he had introduced in 1947 for controlling septic tanks. The bill was needed because Incline Village was building against the shoreline and putting in septic tanks and below that level, the septic tanks were flooded. There have been times since 1946 when there were attempts to build into Lake Tahoe and Mr. White invoked that particular statute.

Mr. White felt that most of the problems come from the fact that the word "rent" appears in the statute and that word implies ownership. Using the figure 6,229 would mean the property owners would be giving up rights which they already possess.

Mr. Ted Bedrosian, Assemblyman from District #24, spoke in opposition to A.B. 234 on behalf of his constituents. He was worried about the effect this would have on the people in Reno, Sparks, and all the water users of northwestern Nevada because they get 90% of their drinking water from Lake Tahoe via the Truckee River. He felt the bill might be beneficial only to 600 or 700 property owners at Tahoe compared to the 300,000 water users downstream.

Assemblyman Bedrosian felt that the Legislature should not be in a position of giving away public land. He felt that this issue probably should be brought to court, but the private land owners should be the ones to take it to court and pay the expense.

Senator Sloan asked how this bill dealing with boundaries would affect downstream water users. Mr. Bedrosian stated that his fear is that if the private land ownership extends down to 6,221, it will open up the state's liability for damages to the beneficial use of piers and docks at Lake Tahoe which will be clearly on private land if the state has to pump water downstream during drought areas. He felt there were political motivations behind the bill.

Senator Neal temporarily closed the hearing on A.B. 234 so the committee could take some action on bills heard previously since several members had to leave due to other scheduled meetings.

S.B. 323 - Limits licensed gaming in Tahoe basin.

Senator Sloan had difficulty with the limit on the public space going as far as alterations or relocation of gaming tables or slot machines from one spot to another within the public area.

The committee agreed to schedule an additional meeting to discuss this bill on Thursday, March 22nd at 12:00 noon.

S.B. 332 - Revises certain accounting practices of the state department of conservation and natural resources.

Senator Jacobsen moved that S.B. 332 be passed out of committee with the recommendation: Amend, and do pass as amended.

Seconded by Senator Faiss.

Motion carried.

A.B. 443 - Abolishes state land registrar appraisal and publication revolving fund.

Senator Jacobsen moved that A.B. 443 be passed out of committee with the recommendation: Do Pass.

Seconded by Senator Sloan.

Motion carried.

A.B. 116 - Establishes state duck stamp program.

Senator Jacobsen moved that A.B. 116 be passed out of committee with the recommendation: Do pass.

Seconded by Senator Sloan.

Senator Glaser stated that he would vote to move the bill out of committee but reserves the right to vote against it on the floor.

Motion carried.

The hearing on A.B. 234 was continued with a subcommittee of three consisting of Chairman Neal, Senator Jacobsen and Senator Faiss for the purpose of taking testimony.

Ms. Lona Sahagian, Vice-President of Elk's Point County Club Board of Directors, pointed out that if the 6,221 elevation were taken out, the wells at Elk Point would drop exceedingly. Their water is pumped from out of the Lake. Previously, if their water got down exceedingly low, they would put a line further out into the Lake. Many property owners' associations around the Lake have lines and pump water out of the Lake. The water users now have to pay for the pipeline rental as well as the cost for maintaining the water system.

She also objected to being charged rent on private piers which the property owners maintain at their own expense. She agreed that the word "rent" would denote ownership on the part of the State.

Senator Neal asked how many wells are in operation in the area. Someone from the audience responded that there are probably hundreds of wells and pipelines issued by the State and approved by the TRPA.

Mr. Jack Ross, resident of Marla Bay, testified in favor of the bill. He stated that all of the lakefront owners, without exception, attest to the fact that the public has the right to the use of the waters of Lake Tahoe provided they do so in a safe and sane manner. The property owners work hard and donate time and money to keep the beach maintained and safe.

Mr. Curtis Patrick, representing Glenbrook, read a statement prepared by Mr. Ron Nahas who could not remain at the meeting. Mr. Nahas is developing the Glenbrook Ranch in cooperation with the Bliss family. Mr. Nahas felt there are two questions regarding the use of the shore zone: First, what is the historic common practice at Lake Tahoe with regard to occupancy of the land. Second, what are the rights of the public which must be protected. With regard to the first question, Mr. Nahas stated that the shorelines have

been privately owned for over 100 years. In answer to the second question, the entire concept of the public ownership of the beds of navigable waters relates to the public's right to navigate and fish and that right does not allow the public to use perfectly dry lands for unrelated purposes. He felt an analogy to this situation which would be far more familiar to property owners would be streets in many developments with rights of way.

Mr. Kenneth Jones, representing Zephyr Cove Properties, Inc., and a descendent of the original subdividers of the Marla Bay - Zephyr Cove area, explained how the properties in the Zephyr Cove area were acquired, subdivided and title handed down. Zephyr Cove, Inc. reserved roads and easements to the beachfront property for the subdivision community.

Senator Neal closed the hearing on A.B. 234.

There being no further business, the meeting was adjourned at 5:47 p.m.

Respectfully submitted,

Eileen Wynkoop
Committee Secretary

APPROVED:

Joe Neal, Chairman

AMENDMENTS TO S.B. 323
March 21, 1979

Page 2	Amendments
6-8	Sec. 3. 1. Subject to the final order of any court of competent jurisdiction entered in litigation attacking agency approval which is pending on January 1, 1979, the agency shall recognize as a permitted and conforming use:
9-11	(a) Every structure housing licensed gaming which existed as a licensed gaming establishment on January 1, 1979, or whose construction was approved by the [agency] Tahoe Regional Planning Agency affirmatively or by default before that date.
24-27	The area within any structure housing licensed gaming which may be open to public use (as distinct from that devoted to the private use of guests and exclusive of any parking area) is limited to the area existing or approved for public use on the date of passage and approval of this act.
29-30	Within these limits, [the expansion of gaming or remodeling of the structure requires approval from the agency.] any modfication of the structure that requires local government permit must also receive approval from the agency. Restaurants, convention facilities, showrooms and other public areas shall not be permitted to be constructed elsewhere in order to replace areas now existing or approved for public use.
31-33	2. [If] Any structure housing licensed gaming [is destroyed or damaged, the structure] may be rebuilt or replaced to a size not to exceed the existing or approved cubic volume and land coverage [which existed on January 1, 1979].
34-43	Sec. 4. [Any project * * * can be accommodated.] "Restricted gaming license" means a license to operate slot machines on which a quarterly tax is levied pursuant to NRS 463.373. Gaming conducted pursuant to a restricted gaming license to operate not more than 15 slot machines is exempt from the provisions of this act if it is incidental to the other use of the premises.

Proposed amendments to Senate Bill No. 323:

Sec. 3a, line b; between structure and to add "or accessory structure." The text would then read (This is appropos "permitted and conforming use") "Every structure housing licensed gaming which existed as a licensed gamin establishment on January 1, 1979 or whose construction was approved by the agency before that date. The agency shall not permit the construction of any structure or accessory structure to house gaming under a non-restricte license, not so existing or approved, or the enlargement in cubic volume o any such existing or approved structure, but may permit any alteration, re struction or change of location which does not enlarge the cubic volume of the structure.

Sec. 3b, line 17-19; These are deletions: omit other between every and non-restricted; omit "whose use was seasonal and" between establishments and; between 1979 and delete for the same season and. So section b would read; every non-restricted gaming establishment whose license was issued before January 1, 1979 for the number and type of games and slot machines on which taxes or fees were paid during the calendar year 1978.

Sec. 3c, line 21; Add between restricted/gaming and; "or a non-restricted" gaming license issued before January 1, 1979 to the extent permitted by that license on that date. This is the way c would read.

Sec. 3 c, line 27; between 1979 and gaming add "public area shall not be construed as an accessory facility or an accessory use.

Sec. 3c, line 28; between conducted and on insert "nor may public areas be created". This paragraph would then read the area within any structure housing licensed gaming which may be open to public use (as distinct from that devoted to the private use of guests and exclusive of any parking area) is limited to the area existing or approved for public use on January 1, 1979. Public area shall not be construed as an accessory facult or as an accessory use. Gaming must not be conducted nor may be public areas be created on any story of the structure not so used or approved

EXHIBIT B

for use on that date. Within these limits, the expansion of gaming or remodeling of the structure requires approval from the agency.

Emily W. Gill for
Nev. League of Women Voters

EXHIBIT C

Reno Evening Gazette Wednesday, February 7, 1979—21

California poll favors Tahoe casino gaming

The GNS California Survey was conducted Jan. 16-17 by the National Center for Telephone Research of New York for Gannett News Service through a telephone survey of 1,008 registered voters representing a cross-section of the statewide electorate.

—

Californians want to preserve Lake Tahoe's scenic beauty, but not to the extent that they'd like to see casino gambling banned from the lake's Nevada shoreline, according to the GNS California Survey.

More than half of the registered voters contacted in the poll said they favor establishment of a national recreation area under federal management in the Lake Tahoe Basin.

But more than two-thirds of them oppose the idea of doing away with gambling at the lake as an environmental protection measure.

Lake Tahoe currently is a battlefield between environmentalists and gambling interests, with the former pressing for stronger development controls in the basin, the latter resisting them.

California Resources Agency Secretary Huey Johnson has called for creation of a Tahoe national recreation area under U.S. Forest Service management if Nevada spurns a strengthened planning compact negotiated at the bi-state executive level last fall.

Asked whether they favor a national recreation area at Lake Tahoe, those surveyed responded:

—Favor, 56.4 percent.

—Oppose, 25.6 percent.

—Not sure, 18.0 percent.

"It's being developed too much; it would reduce the air and water pollution," a young, low-income Sacramento resident said.

"We've got too much junk up there now," a San Diego senior citizen said. "It's about time we do something to save that lake. The way it is now, they're killing all the fish."

The high percentage of "not sure" responses indicates that the national recreation area concept espoused by Johnson still is a rather vague proposition to the public. It was the highest such response among the questions asked for the GNS California Survey.

Californians clearly like the convenience of being able to visit Lake Tahoe to indulge in casino gambling, and when, after being asked the environmental question, they were asked if they favored banning gambling, the response was clearcut:

—Favor, 25.6 percent.

—Oppose, 67.5 percent.

—Not sure, 6.9 percent.

"Gamblers places are okay; as senior citizens have courtesy buses that take us up there, and our only recreation," a low-income Sacramen- commented.

"Only the people who want to gamble do it," a middle-aged teacher from Sacramento said. "Most people who live there don't. It's a good form of revenue. It would not eliminate it. It'd just pop up somewhere else."

The idea of banning gambling at Lake Tahoe was least popular among those under 35 (72.2 percent), union members (73.3 percent) and blacks (74.7 percent).

AUDIT DIVISION
SB 332

In audit reports on the Division of State Lands and the Division of Water Resources presented by the Audit Division to the Legislative Commission, there were recommendations regarding the classification, creation and repeal of funds in the State's accounting system.

This bill classifies the funds that have been statutorily created, and clarifies the components that make up the Water Distribution Fund in the Division of Water Resources.

DIVISION OF STATE LANDS

Section 2 reclassifies the Carey Act Fund. The Fund was originally created as a trust fund. The audit recommendation was that it be classified as a special revenue fund, not a trust fund.

DIVISION OF WATER RESOURCES

The present law provides for a Water Distribution Fund as a revolving fund, several Water Distribution Funds, one for each stream system, and several well basin funds.

The way it is and should be accounted for, is one fund with various accounts. This would provide better control and could result in a financial presentation that would be meaningful.

Section 7 addresses the Water Distribution Fund; a revolving fund created pursuant to the provisions of Chapter 232, Statutes of Nevada 1931, and Chapter 23, Statutes of Nevada 1943. The bill continues the revolving fund as a revolving account within the Water Distribution Fund and deletes all references to the Water Distribution Revolving Fund.

Section 11 classifies the Water Distribution Fund as a special revenue fund, and clarifies the components of the Fund.

Section 14 provides that the accounting for well basin operations shall be accomplished in accounts in the Water Distribution Fund.

The other sections of the bill clarify the use of the revolving account, stream system accounts, and well basin accounts within the Water Distribution Fund.

We have not changed the authority or responsibility of the State Engineer or the county commissioners.

SB 332
REQUESTED AMENDMENTS

Page 4, line 22:

Insert after "chapter 534":

, 535, and 536

Page 4, line 46:

Delete the word "fund" and insert before the "." the following word:

accounts

Page 4, line 50:

Delete the word "fund" and insert before the "." the following word:

accounts

Page 5, line 42:

Delete the word "in"

Page 5, line 43:

Insert before the word "the" the following words:

"for credit to"

Page 8, line 12:

Delete the word "revolving"

Page 8, lines 22 and 23:

Delete lines 22 and 23 and replace with the following:

"from the water distribution [fund,] revolving account, as provided in NRS 534.040;[] revolving account;] but any such cost in any event [shall be] is a lien on the land"

SB 332
REQUESTED AMENDMENTS
(continued)

Page 9, line 5:

1) Remove "[" in front of word "water";

2) Place "[" in front of word "fund";

3) Delete the following words:

"of the proper district"

Page 9, line 21:

Remove "[" in front of word "water"

Page 9, line 22:

1) Place "[" in front of word "fund";

2) Delete the following words:

"of the proper district"

EXHIBIT E

March 21, 1979

Senator Joe Neal, Chairman
Committee on Natural Resources
Nevada State Legislature
Carson City, N. 89701

Dear Senator Neal and fellow committee members

May I request that this letter be entered as a matter of record in the committee hearings regarding AB234.

I speak as a private citizen. I serve on the Truckee River Advisory Board representing the city of Reno. The major task of that board is to review all building development along the River to assure the quality and asthetics of this body of water is not disturbed. We are trying to maintain a corridor along the river banks open to the public so this place of natural beauty may be enjoyed by the public. Where there is great development, this is not always easy or possible. I see a great parallel between our efforts along the Truckee, and my reason in appearing before you in regards AB234. The state of Nevada would be abdicating its responsibility to hold in trust the land along the shore of Lake Tahoe by giving away land it holds between the high water mark and the land at elevation 6,221 feet.

Not only to divest itself of this prime land, but to give it away outright smacks of fiscal malfeasance. The property owners along the shore have no monopoly on the beauty that Lake Tahoe holds. Freedom of egress should prevail for all residents and visitors to this place. I am not denying there will be problems. but the governing bodies involved must accept the responsibility for adequate supervision of public lands because of the greater responsibility they have to all of the citizens, rather than to a vocal minority who demand exclusionary privileges.

I ask you to search out who the winners and losers will be if AB234 is passed. This is special interest legislation not directed at the public good. Do not vote in favor of it.

Sincerely,

Kathi W. Nelson
1010 pine ridge dr.
Reno, Nv. 89509
826-3265

February 5, 1979

Mrs. Eleanor U. Savage
655 Hillcrest Drive
Reno, Nevada 89509

Mr. Robert Weise, Assemblyman Distr. #23
Nevada State Legislative Bldg.
Carson City, Nevada

Dear Mr. Weise:

I am writing in regard to A.B. 234, which you introduced with Mr. Glover and Mr. Bergevin. I am very much opposed to this measure.

I speak as a private citizen, who is not a member of any environmental or tax group. I have no motive other than the protection of public and non-lakeshore property owners.

I have been spending vacation time at Lake Tahoe since 1932 and my sister and I owned a non beach front home on the California side of the Lake for approximately 20 years. Our friends and my children and their friends have been enjoying Lake Tahoe for many years; so I am very familiar with the problems of finding a place to get to the beach without crossing private property.

California recognizes 6229.1 as the high water mark and property line. In addition, they have seen to it that there are clearly marked easements to allow access to beaches.

I realize that there are problems in policing public property at Lake Tahoe, just as there are problems on the banks of the Truckee River, the desert areas and the mountains i.e. any public property. I cannot accept this as a valid excuse for giving away public land.

It is obvious that land values at Lake Tahoe have increased tremendously and there is no reason to doubt that such increases will continue. The High Water Line, while not making up for the earlier lack of foresight for more State owned public beaches, at least preserves a basic portion of vital land for future adjustment of the situation. It is not realistic to believe that the private owners, once given the additional land, would not immediately consider it a part of the fee and claim additional value --- except to the Tax Assessor. Ultimately, some realistic provision of additional public beach area, either State or Federal, must be made, which will involve acquision of some of these same private lands. At that time, Mr. Weise, I feel sure that you would find a very high price set on this same land you want to give away. It appears to be a generous act for the few owners, but has little in the way of a solution for the future and unavoidable population growth. Lake Tahoe is not just a Nevada-California resource, it is a national resource, and this Bill could invite federal intervention.

We are all entitled to opinions, I trust that others will be more interested in protecting the future of the general public.

Yours truly,

Eleanor U. Savage

REPORT TO THE GOVERNMENT AFFAIRS COMMITTEE HEARING ON A.B. 234

This is a statement in regard to A.B. 234, which was introduced by Mr. Weise, Mr. Glover and Mr. Bergevin. I am very much opposed to this measure. I speak as a private citizen, who is not a member of any environmental or tax group. I have no motive other than the protection of the rights of the vast number of non-lakeshore property owners and all the residents of the State of Nevada. My position is that this is a needless and ill-advised giveaway of State property - for the financial benefit of a very few lakefront property owners.

I have been spending vacation time at Lake Tahoe since 1932 and my sister and I owned a non-beachfront home on the California side of the Lake for some twenty years. Our friends and our children and their friends have been enjoying Lake Tahoe for many years. I am very familiar with the problem of finding a place to get to the beach without crossing private property. California recognizes 6229.1' as the high water line and property line. In addition, they have seen to it that there are clearly marked easements to allow public access to the beaches. Nevada has been derelict in its duty to preserve Lake Tahoe for its citizens, and this Bill would simply compound that dereliction.

The Attorney Generals of both Nevada and California have issued opinions that recognize 6229.1' as the high water mark and no court challenge of this decision has met with success. I feel sure that all legal precedents were carefully considered in issuing these opinions.

If we consider what A.B. 234 does, we see that by changing property lines to 6223', it will give some very choice beachfront property to the present owners of the land adjacent to the present 6229.1' high water line. It will also extend the present legislative controls to the new areas (below 6223'). The objectives are to limit access to lakefront property, to give title to private owners and to clear up title questions.

The reasons advanced for the proposed changes are; first of all, it is a "housekeeping" measure to clear up claims of ownership as set forth in old deeds (some of which give ownership down into the water). This is a legal matter which is already clarified by the 6229.1' high water and property line. Any challenge of ownership is a matter for the courts.

SUMMARY: THE ATTORNEY GENERALS OPINION OF 6229.1' AS THE HIGH WATER MARK AND PROPERTY LINE HAS ALREADY ACCOMPLISHED THIS.

The second reason advanced is that it is difficult to administer this strip of land in regard to littering, general policing and may lead to tresspassing on private property, as well as littering of private property.

I realize that there are problems in policing public property at Lake Tahoe, just as there are problems on the banks of the Truckee River, the desert areas, the mountains or any other public property. If the goal of this Bill is to protect the private property owners from having other people using the beaches in front of their homes, then there are some alternatives:

The proper Nevada agency can post the beaches in front of private property as " Not open for public use" and provide additional policing if needed.
Or - Lease this extra property to the private owners with the stipulation that at such time as the State of Nevada or the County requires that portion for use as a part of the development of a public beach area, it would be theirs. The public should not have to pay, at some future date, to regain these parcels as a part of an overall project.

SUMMARY: THIS BILL IS NOT NEEDED TO SOLVE THESE PROBLEMS, AS WE NOW HAVE STATE AGENCIES EMPOWERED TO CONTROL THEM.

The third reason advanced is that this land is of no value to the State of Nevada and title should be transferred to the lakefront property owners. It should be acknowledged, while these areas are presently of so-called limited value to the general public, due to their limited access, at some future time these areas, particularly the broader beaches, will be provided with suitable public access and will become important additions to the enjoyment of Lake Tahoe by all of Nevada's people and visitors.

SUMMARY: THIS PROPOSED LEGISLATIVE ACTION FINANCIALLY BENEFITS A FEW LAKE TAHOE BEACH FRONT PROPERTY OWNERS AND IS NOT IN THE BEST IMMEDIATE OR LONGTERM INTERESTS OF THE RESIDENTS OF NEVADA.

Eleanor Savage

EXHIBIT G

BRYCE WILSON
P.O. BOX 277 • GLENBROOK, NEVADA 89413

March 20, 1979

MEMORANDUM

TO: Senate Natural Resources Committee

FROM: Bryce Wilson

SUBJECT: Lake Tahoe, Nevada, Boundary Legislation AB234 As Amended.

Exhibits

A - Deed - Park to USA, June 7, 1919, Douglas County Book Q of Records page 209.

B - Deed - Krick to Greenwood, Oct. 6, 1961, #18381 Book 9 page 16, Douglas County.

C - NRS 321.595, and 445.090, existing statutes.

D - Atty Gen'l Opinion #204, April 20, 1976, signed by Harry W. Swainston, Deputy Atty Gen'l.

E - Letter, Senator Sheerin, July 21, 1978, to State State Lands Division

F - Statement of Atty Gen'l Robert List before Public Hearing of the Nevada Division of State Lands, July 21, 1978

G - Resolution, The Legislative Commission, Aug. 15, 1978

1. It is respectfully recommended that AB234, as reprinted with adopted amendments, first reprint, be approved by the Senate Committee on Natural Resources, and be passed by the Senate.

2. Basic facts concerning Lake Tahoe are:

a. Lake Tahoe is a natural lake with an artificial reservoir on top of the lake. This reservoir was created by a dam built at the outlet of Lake Tahoe at Tahoe City prior to 1915 in which year it was acquired by the Bureau of Reclamation through condemnation proceedings. There was no such dam when Nevada was admitted to the Union in 1864, nor was there until 1902.

b. The reservoir on top of the lake is a Federal Reservoir the level of which is controlled by a Federal Watermaster.

c. Pertinent elevations, Lake Tahoe Datum, are:

(1) 6231.19: Artificial all time high water mark, 1907.
(2) 6229.1 : Artificial high water controlled by agreement.
(3) 6223.0 : Rim of the natural lake and bottom of the reservoir.
(4) 6221.32: Natural low since records began in 1902.
(5) 6212 : Undocumented low prior to 1902. This figure may be as low as 6208.

3. The Purpose of this legislation is to accomplish the following:
   a. Establish the claim of the State of Nevada to ownership of the bed of the lake (within State boundaries) to a line that conforms to the conditions, practices and law pertaining thereto that have existed since Nevada was admitted to the Union in October, 1864.
   b. Provide for regulation of, permits for, and attendant fee schedules for construction of new structures and maintenance of old structures on the shoreline or in the lake.
   c. Eliminate requirements in existing law for rental of such State lands as might be under such structures. Such rentals would be contrary to past practice, difficult to administer, difficult to price equitably, as well as being contrary to the well established right of the littoral parcel owner for wharfage to navigable water.
   d. Reaffirm the right of the public to the use of the navigable waters of Lake Tahoe to the waters edge.
   e. Retain provisions of the current law contained in:
      (1) NRS 321.595 par. 1 and par. 3.
      (2) Nrs 445.080 par. 1, 2 and 3.
   f. AB234 as reprinted with adopted amendments, first reprint, accomplishes these objectives.

4. AB234 will NOT serve to transfer public land to private ownership. If the artificial high water mark of 6229.1 is adopted as the boundary between State ownership of the bed of the lake and adjacent private property it will serve to make private property public by legislative fiat. Irrefutable documentation of the fact that private property ownership of littoral parcel owners extends to a natural lake level, not the artificial high water line is presented here-in. It should be recognized that the present artificial high water mark of 6229.1 feet has, since 1918, only been achieved in 1957, 1958, 1959 and in 1969, 1970 and 1971. The low water mark, since construction of the dam, was achieved in 1936 at 6221.82. It is evident, therefore, that most of the time during this entire century there has been a significant strip of land around the lake between the natural high and the artificial high water marks. In many areas this can amount to several hundred feet of exposed beach. Throughout this century up to the time the current problem arose, littoral parcel owners title to their land to the shoreline at the water's edge or 6223 or lower has not been challenged. Many deeds are in fact couched in such phrases as: "and the westerly boundary of said parcel is the water line of said Lake Tahoe". See Exhibit B, attached hereto, typical Deed. Recalling the fact that the Bureau of Reclamation acquired the dam in 1915 to create a Federal reservoir on top of Lake Tahoe, please note that the Bureau then entered into agreements, on behalf of the US, with littoral parcel owners to flood their lands between 6223 and 6229.5. Copy of such a deed is attached hereto as Exhibit A.

Quoting in part therefrom:

"This Indenture, made this 7th day of June, 1919, in pursuance of the Act of Congress of June 17, 1902 (32 Stat. 388) and the Acts amendatory thereof and supplementary thereto...

"Whereas the Land owner owns the following land riparian to Lake Tahoe, which Lake the United States is using and desires to use more extensively as a storage reservoir for the storage of waters for irrigation, power and other purposes which said lands are located in the County of Douglas, State of Nevada and are more particularly described as follows, to-wit.....

Now, therefore, in consideration of One Dollar paid by the United States to the Land Owner, receipt of which the Land Owner hereby acknowledges the said Land Owner,

1. Hereby releases and quit-claims to the United States for its use and for the fulfillment of its obligations to others the right for reservoir irrigation, power and other purposes, to flood with the waters of said lake and withdraw the said waters from and uncover the above described lands by the regulation of the levels of said lake between elevations 6223.0 feet and 6229.5 feet above sea level, as said elevations are now recognized and accepted by the United States Reclamation Service....."

Now, if the State ownership of the lake-bed is extended to 6229.1, significant problems result. Among them are:

a. Title of most if not all littoral parcel owners to land extending to "the water line" or 6223.0 or lower, such title insured by title insurance, nullified.
b. Abrogation of the rights of wharfage to navigable water for owners of littoral parcels. The common law from which Nevada law is derived and under which Nevada was admitted to the Union in 1864 on an equal footing basis, provided for such rights.
c. Public access to heretofor private beaches and shoreline will create attendant problems of State liability, littering and cleanup, policing, pollution, traffic and parking (already a problem on highway 28 between Glenbrook and Incline), fires, vandalism of adjacent private property and structures, and administration,
d. Cleanup and care of the shoreline will cease under public ownership. Private owners currently do a good job of "housekeeping" their shoreline.

Public beaches, previously acquired by the State for use and enjoyment by the public, currentlyexist and are excellent facilities operated and maintained by the State. They encompass some of the best beaches in the entire basin. If additional public access is desireable, additional shoreline should be acquired by the State and should be developed and utilized in a similar manner. It should be noted, however, that at the present time more than 60% of the Nevada shoreline is already in public ownership.

5. AB234 has no bearing on down-stream water rights.

6. Attorney General's Opinion #204, April 20, 1976, signed by Deputy Atty Gen'l Harry W. Swainston, states the opinion the State of Nevada "owns the land below the present ordinary and permanent high water mark...." -- see Exhibit D, page 1. The same document also states "this office expresses no opinion as to the precise location of the present ordinary high water mark which may be considered permanent for title purposes." -- See Exhibit D, page 7.

Public Statement by the Attorney General, now Governor Robert List, on July 21, 1978, firmly supports:

a. Protection of the right of private property owners fronting on the lake to wharfage and direct access thereto.
b. Legislation which will eliminate rental charges for piers and wharves extended from private property.
c. The concept that the boundary between state owned lands and private property adjacent to the lake be the water's edge, wherever it may be.
d. The view that no one ever intended at the time Nevada was admitted to the Union for the state to acquire what would be at most a narrow ring of land surrounding the lake on dry years. The State does not have the resources to manage or assume the responsibility that would accompany such ownership. See Exhibit F, attached.

NRS 445.080, a statute that has been on the books for several years, provides in paragraph 2: "Construction or alteration of the Lake Tahoe shoreline below the high water elevation (6229.1 feet) requires written permission from the state department of conservation and natural resources."

NRS 321.595 (Senate Bill 153 in the 1977 Legislature) contains a section, added by amendment with no public notice or testimony, which requires the Division of Lands to establish a schedule of fees and regulations governing structures extend- into the lake. See Exhibits C and E attached.

It seems apparent that this entire controversy has been generated by three seperate factors: (1) an Atty Gen'l opinion which establishes no specific level for the line between State and private property, and which is at variance with previous such opinions, and (2) provisions contained in SB153, 1977, now NRS 321.595, which

provisions are of questionable origin, requiring rents below 6229.1 plus (3) assumption by the Division of Lands, which was required to establish those rentals, that the State owns the land as well as the water below 6229.1. Regulations promulgated by the Division of Lands pursuant to NRS 321.595 now are in abeyance pending legislative action. See Exhibit G.

7. A recent legal action, LYON vs STATE OF CALIFORNIA, in the Superior Court of Lake County, Action #13925, dated October 25, 1973, concerning Clear Lake, which has a reservoir on top of the lake, similar to that which exists at Lake Tahoe, resulted in a decision which states:

> "No portion of the property which is the subject of this action lying landward of the last, natural, ordinary low water mark of Clear Lake is sovereign property of the State of California....."

8. It is suggested, therefore, that your favorable disposition of AB234 and its passage by the Senate will resolve the problems, inequities and confusion which currently exist with respect to title, management, development and preservation of the lakeshore, as well as preserve the right of the private property owner to the peaceful enjoyment of his property, which right is inherent and basic in our system.

Bryce Wilson

Bryce Wilson
Phone: 749-5667

~~EXHIBIT G~~

Book Q of Records, Douglas County p. 209

Deed.
B. L. Park and
Mrs. U. Park
2249. to
United States of America

This Indenture, made this 7th day of June 1919, in pursuance of the Act of Congress of June 17, 1902 (32 Stat, 388), and the Acts amendatory thereof and supplementary thereto — between B. L. Park and Mrs. U. Park his wife of Minden, Douglas County, of the State of Nevada, hereinafter referred to as Land Owner, their heirs, executors, administrators and assigns, and the United States of America, and its assigns; Witnesseth:

Whereas, the Land Owner owns the following land riparian to Lake Tahoe, which lake the United States is using and desires to use more extensively as a storage reservoir for the storage of water for irrigation, power and other purposes, which said lands are located in the County of Douglas, State of Nevada and are more particularly described as follows, to-wit:

A. That portion of Lot three (3), that borders on Lake Tahoe and all of Lot four (4), Section twenty-two (22), Township thirteen (13) North, range eighteen (18) East, M. D. M.;

B. ... all of section twenty seven (27) in said township and range in the State of Nevada, bordering on Lake Tahoe except a small tract at the Nevada-California State Line belonging to F. ... Moore:

Now, Therefore, in consideration of One Dollar paid by the United States to the Land Owner, receipt of which the Land Owner hereby acknowledges, the said Land Owners

1. Hereby release and quit-claims to the United States for its use and for the fulfillment of its obligations to others the right for reservoir, irrigation, power and other purposes, to flood with the waters of said Lake and withdraw the said waters from and uncover the above described lands by the regulation of the levels of said Lake between elevations 6223.0 feet and 6229.5 feet above sea level, as said elevations are now recognized and accepted by the United States Reclamation Service, and also the right to store in said Lake the waters thereof up to said elevation 6229.5 feet, and withdraw said waters therefrom down to said elevation 6223.0 feet and to use said waters for the purposes aforesaid or any of them, and also, in order to make said regulation, storage and use more effective, hereby releases and quit-claims to the United States the right, in so far as the said Land Owner can do so, to make ...

~~EXHIBIT C~~

of the Secretary of the Interior may be necessary to effect said regulation of the lake [illegible] and to use the waters stored therein; such changes, however, to be so made as to prevent [illegible] from the lake when the waters therein shall have been lowered to an elevation 6223.0 feet.

2. [illegible] [illegible] States [illegible] [illegible] [illegible] [illegible] resulting from the [illegible] of said lake by the United States heretofore [illegible] [illegible] from the regulation thereof hereby authorized.

In Witness Whereof, the said Land [illegible] [illegible] [illegible] his hand and seal the day and year first above written.

Witness
R. M. Patrick }. B. L. Peck (Seal).
[illegible] Peck (Seal).

[illegible] [illegible] } On this [illegible] day of [illegible] 1914,
[illegible] } ss [illegible] [illegible] before me, R. M. Patrick, personally known to me to be the person whose name is subscribed to the foregoing instrument as witness thereto, and being [illegible] [illegible] deposes and says (1), that the said instrument [illegible] [illegible] [illegible] presence by B. L. Peck and [illegible] Peck,
(2), that said parties whose names are subscribed to such instrument as a party thereto are the [illegible] described in and who executed the same and
(3), that affiant subscribed his name to said instrument as a witness thereof.

(Seal). Geo. D. [illegible]
Notary Public.

My commission expires [illegible] 30, 1923.

Filed for record [illegible] [illegible]
at [illegible] [illegible] o'clock [illegible] M.
[illegible] County Recorder

[illegible] / 20
[illegible] [illegible] and [illegible] [illegible]

Exhibit A
p. 2 of 2

193

EXHIBIT B

Affix I R S $ ____

18881

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That GROVER L. KRICK and HATTIE E. KRICK, his wife,

in consideration of $ 10.00 the receipt of which is hereby acknowledged, do hereby Grant, Bargain Sell and Convey to ROBERT STRATTON GREENWOOD and PATRICIA GRIFFIN GREENWOOD, his wife, as Joint Tenants, with right of survivorship, and not as tenants in common

all that real property situate in the ____ County of Douglas State of Nevada, bounded and described as follows:

Commencing at a point whence the Southeast corner of Section 3, Township 14 North, Range 18 east, M.D.B.&M. bears South 49°14' East, 645.75 feet; thence North 89°50' East, 30.02 feet to the true point of beginning, being also the Southwesterly corner of the parcel of land deeded to Martha A. Waterhouse, et al, in Deed recorded in Book Y, Page 103, Deed Records Douglas County; thence along the westerly boundary line of said Waterhouse parcel, North 11°13' West, 283.62 feet; thence South 73°33' West, 30.13 feet; thence South 70°31' West, 301.59 feet to the Northeast corner of that parcel of land deeded to Catherine L. Knight in deed recorded in Book X, Page 248, Deed Records of Douglas County; thence South 10° 37' West along the Easterly boundary of said knight parcel, 203.77 feet to the Southeast corner of said knight parcel; thence South 89° 17' East, 198.50 feet; thence North 80°50' East, 180.07 feet; thence North 50°50' East, 30.02 feet to the true point of beginning.

Together with an easement described as follows:

The point of beginning is a point marked by an iron pipe setin concrete whence the meander corner between Sections 3 and 10, Township 14 North, Range 18 East, M.D.B.&M., bears North 33°13' West 1,627.24 feet. The Northerly boundary of the parcel hereinafter referred to is a line extending South 69°42' West from said point of beginning to the water line of Lake Tahoe. The Easterly boundary of said parcel is a line extending from said point of beginning South 20°18' East, 300 feet to a point. The Southerly boundary of said parcel is a line extending from said last mentioned point South 69°42' West to water line of Lake Tahoe; and the Westerly boundary of said parcel is the water line of said Lake Tahoe.

all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness our hand S this ____ day of ____, 19 61

XXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXX

Grover L. Krick

Hattie E. Krick

STATE OF NEVADA } ss.
COUNTY OF ____ }

On ____, 1961

before me, the undersigned a Notary Public in and for said County and State, personally appeared

GROVER L. KRICK and HATTIE E. KRICK, his wife,

known to me to be the person S described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal

Notary Public in and for said County and State

RECORDER'S NO. ____ RECORDED
ORDER NO. ____ INSTRUMENT
WHEN RECORDED MAIL TO ____

SPACE BELOW FOR RECORDER'S USE ONLY

18881

Recorded at Request of
PIONEER TITLE INSURANCE CO.
OCT 6 1961
At 56 min P.M.

Fee $2.00

18881

194

Exhibit B

~~EXHIBIT G~~ J

Nevada law – Excerpts

LAKE TAHOE

321.595 Permit to erect structures extending into Lake Tahoe or remove material from lakebed: Requirement; regulations; penalty.

1. When any person desires to erect any pier, breakwater or other structure extending into Lake Tahoe, or remove any material from the bed of the lake, he shall first obtain a permit to do so from the division of state lands. The division shall not issue the permit until it has consulted the Nevada department of fish and game and the division of environmental protection.

2. The division shall establish by regulation:

(a) A reasonable fee to be paid when an application is made for a permit.

(b) A schedule of annual rents, according to the size and use of the pier, to be paid for the use of the underlying land.

3. Any person who engages in any activity for which a permit is required by this section, without first obtaining the appropriate permit, is guilty of a misdemeanor.

(Added to NRS by 1977, 1124)

PROTECTION OF LAKE TAHOE AND ITS WATERSHED

445.080 Construction permits, other permission required from state department of conservation and natural resources.

1. It is unlawful for any person, firm, association or corporation to:

(a) Construct a pier, breakwater or marina in or to alter the shoreline of Lake Tahoe;

(b) Remove gravel, sand or similar material from Lake Tahoe; or

(c) Deposit any fill or deleterious material in Lake Tahoe,

without first having secured written permission from the state department of conservation and natural resources.

2. Construction or alteration of the Lake Tahoe shoreline below the high water elevation (6,229.1 feet) requires written permission from the state department of conservation and natural resources.

3. A permit shall be denied when the source of domestic water or the place of disposal of sewage or other wastes would create a health hazard or the quality of Lake Tahoe waters would be impaired.

[1:306:1949; 1943 NCL § 8247.01]—(NRS A 1963, 957; 1967, 404, 1171; 1973, 1406; 1975, 1402; 1977, 1139)

Exhibit C

EXHIBIT G

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
SUPREME COURT BUILDING
CARSON CITY 89710

ROBERT LIST
ATTORNEY GENERAL

April 20, 1976

OPINION NO. 204

Lands Beneath Navigable Waters: The State of Nevada owns the land below the present ordinary and permanent high-water mark of the portion of Lake Tahoe within Nevada and beneath the ordinary and permanent high-water marks of other navigable bodies of water within the boundaries of the State.

Mr. Glen K. Griffith
Director
Nevada Department of Fish and Game
1100 Valley Road
Reno, Nevada 89510

Dear Mr. Griffith:

You have requested an Attorney General's opinion concerning the following question.

QUESTION

Who owns the land below the high-water mark at Lake Tahoe?

ANALYSIS

In 1864 the State of Nevada was "admitted into the Union on an equal footing with the original states." See, President Abraham Lincoln's Proclamation of October 31, 1864. The "equal-footing doctrine" was explained by the U. S. Supreme Court in Bonelli Cattle Co. v. Arizona, 414 U.S. 313, 317-318 (1973) as follows:

> "When the Original Colonies ratified the Constitution, they succeeded to the Crown's title and interest in the beds of navigable waters within their respective borders. As

Exhibit D
D. 1 of 7

~~EXHIBIT G~~

> new States were forged out of the federal territories after the formation of the Union, they were 'admitted [with] the same rights, sovereignty and jurisdiction...as the original States possess within their respective borders.' Mumford v. Wardwell, 6 Wall. 423, 436 (1867). Accordingly, title to lands beneath navigable waters passed from the Federal Government to the new States, upon their admission to the Union, under the equal-footing doctrine. See, e.g., Pollard's Lessee v. Hagan, 3 How. 212 (1845); Shively v. Bowlby, 152 U.S. 1 (1894); Weber v. Board of Harbor Comm'rs, 18 Wall. 57, 65-66 (1873)."

Lake Tahoe was held to be navigable in Davis v. United States, 185 F.2d 938, 942-943 (9th Cir. 1950). Thus, when Nevada achieved statehood in 1864, it assumed title to the land beneath Lake Tahoe and its shores by virtue of the equal-footing doctrine, and such title was later confirmed by the Submerged Lands Act of 1953. Considering the effect of the Act, the Supreme Court in Bonelli, supra, explained at 318 that:

> "The Act merely confirmed the States' pre-existing rights in the beds of the navigable waterways within their boundaries by, in effect, quitclaiming all federal claims thereto...43 U.S.C. § 1301 (a)(1)."

According to principles early announced in Barney v. Keokuk, 94 U.S. 324 at 336 (1877), the extent of Nevada's ownership on October 31, 1864, was to the then ordinary high-water mark, and conversely, the

> "[T]itle of the riparian proprietors... extends only to ordinary high-water mark, and that the shore between high and low water mark, as well as the bed...belongs to the State. This is...the common law with regard to navigable waters; although, in England, no waters are deemed navigable except those in which the tide ebbs and flows. In this country, as a general thing, all waters are deemed navigable which are really so...."

This office is of the opinion that under federal law, the State of Nevada was vested with the title to the bed and shores of Lake Tahoe below the ordinary high-water mark as it existed October 31, 1864. Accord, Utah v. United States, 420 U.S. 304 (1975); Bonelli Cattle Co. v. Arizona, supra, at 318; Brewer-Elliott Oil & Gas Company et al v. United States, et al, 260 U.S. 77, 84 (1922); Arkansas v. Tennessee, 246 U.S. 158, 176 (1918); Shively v. Bowlby, 152 U.S. 1, 40, 49-50 (1894); Hardin v. Jordan, 140 U.S. 371, 381, 383 (1891); Packer v. Bird, 137 U.S. 661, 666-667 (1891). The State holds its title as a public trust for navigation, fishery, and related public purposes. See Bonelli, supra, and the cases discussed therein at 321.

A determination of the extent of the present day ownership of the land below the high-water mark at Lake Tahoe necessarily entails an inquiry into whether the State has divested itself of any interest since the time of statehood and whether there has been a permanent change in the high-water mark.

The question of whether the State has granted interests in the beds of navigable waters or otherwise divested itself of such interests is governed by state law. See Bonelli Cattle Co. v. Arizona, supra, at 319-320; Arkansas v. Tennessee, supra, at 175-176; Scott v. Lattig, 227 U.S. 229, 242 (1913); Shively v. Bowlby, supra at 40; Hardin v. Jordan, supra, at 382; Barney v. Keokuk, supra at 338. As Mr. Justice Brewer in beginning his dissenting opinion in Hardin v. Jordan, supra, at 402 said:

> "Beyond all dispute the settled law of this court, established by repeated decisions, is that the question how far the title of a riparian owner extends is one of local law. For a determination of that question the statutes of the State and the decisions of its highest court furnished the best and final authority."

As a general proposition, the Nevada Legislature has not divested the State by statute of any interest in the beds of its navigable waters. On the contrary, in 1921, the Legislature declared that the Colorado River and Virgin River were navigable and the title to the lands below the high-water mark

~~EXHIBIT O~~

thereof is held by the State. See NRS 537.010 and NRS 537.020. Although the Nevada Supreme Court in State Engineer v. Cowles Brothers, Inc., 86 Nev. 872, 876, 478 P.2d 159 (1970) held that the issue of navigability is a judicial question, and that the "statement in the statutes therefore served no purpose", it is the opinion of this office that the statutes at least have expressed the legislative intent to claim complete sovereignty and ownership to the high-water mark of waters declared navigable by the courts.

The Supreme Court of Nevada in State Engineer v. Cowles Brothers, Inc., supra, at 877 recognized the applicability of the common law to questions of the ownership of beds of navigable lakes as a consequence of the Legislature's declaration "that the common law shall be the rule of decision in the courts of this state unless repugnant to the constitution and laws of this state. NRS 1.030." A decision consonant with the common law would recognize the ordinary high-water mark as the proper boundary as was done in Barney v. Keokuk, supra.

In the case of Nevada v. Julius Bunkowski, et al, 88 Nev. 623, 503 P.2d 1231 (1972), the Supreme Court of Nevada apparently recognized the high-water mark as the extent of the State's ownership of the beds of navigable waters. In Bunkowski the Court quoted at 629 the following excerpt from People of the State of California v. Mack, et al, 19 Cal.App.3d 1040, 1050, 97 Cal. Rptr. 448, 454 (1971):

> "[M]embers of the public have the right to navigate and to exercise the incidents of navigation in a lawful manner at any point below high water mark on waters of this state which are capable of being navigated by oar or motor propelled small craft." (Emphasis added)

Although the Court cited People of the State of California v. Mack, et al, supra, and the cases discussed therein for the proposition that state courts have not striven for uniformity as to the test for navigability, the inference is that once the uniform federal test of navigability for title is answered in the affirmative, then the State's title extends to the high-water mark.

The case of Nevada v. Bunkowski, supra, appears to have overruled dicta contained in the early Nevada case of

John A. Shoemaker, et al v. A. J. Hatch, et al, 13 Nev. 261, 265, 267 (1878) that the "low water mark, and not the middle thread of the stream, was the proper boundary." The Court in Shoemaker, supra, cited Railroad Company v. Schurmeir, 74 U.S. (7 Wall.) 272, 286-287 (1868) for its holding. A close reading of the cited portions of Railroad Company v. Schurmeir, supra, discloses that only the river, the watercourse or the stream is a boundary of navigable streams but the fine distinction between the high and low water marks simply was not made. It is important to note that in Shoemaker, supra, the State of Nevada was not a party and did not have an opportunity to litigate the extent of its ownership on behalf of the public. For these reasons, this office is of the opinion that Shoemaker v. Hatch, supra, is not a controlling precedent with respect to the extent of the State's ownership of the beds of navigable waters.

Attorney General Opinions No. 632 dated January 6, 1970, and No. 59 dated May 17, 1951, indicated that the low-water mark is the boundary of the State's ownership of the Carson and Truckee Rivers. Both opinions cited Shoemaker v. Hatch, supra, as the sole support for the proposition. For the reasons mentioned above, that Shoemaker, supra, is not controlling with respect to the issue, and because of the clear and contrary legislative intent, this office is compelled to disapprove statements in the prior opinions issued by this office which delineate the low-water mark as the boundary of State lands under navigable waters.

It is the present opinion of this office that the title to lands beneath navigable waters in Nevada is bounded by the ordinary and permanent high-water mark and prior opinions to the contrary are hereby superseded.

Having established the extent of the State's ownership to the beds and shores of navigable waters which include Lake Tahoe, the final consideration is the effect that changes in the elevation of the Lake have on the extent of the State's ownership.

As the United States Supreme Court explained in Bonelli, supra, at 318:

> "In order for the States to guarantee full public enjoyment of their navigable watercourses, it has been held that their title to the bed of a navigable river mechanically follows the river's gradual changes

~~EXHIBIT G~~ D

> in course. See Oklahoma v. Texas, 268 U.S. 252 (1925). Thus, where portions of a riparian owner's land are encroached upon by a navigable stream, under federal law, the State succeeds to title in the bed of the river to its new high-water mark." [1] (Emphasis added and footnotes omitted)

The foregoing principle announced in Bonelli, supra, is the result of the policies subserving the common law doctrines of erosion, accretion and reliction and is equally applicable to navigable lakes as to navigable streams. See United States v. Utah, 403 U.S. 9, 10 (1971); United States v. Oregon, 295 U.S. 1, 14 (1935).

We know that because of certain artificial controls at the mouth of Lake Tahoe the elevation has been controlled since 1870, first by private parties and thereafter by the United States. In Bonelli, supra, at 327 the Court considered the effect of artificial changes:

> "The doctrine of accretion applies to changes...due to artificial as well as natural causes. [Citations omitted] Where accretions to riparian land are caused by conditions created by strangers to the land, the upland owner remains the beneficiary thereof."

By giving the upland owner the benefit of relictions and accretions, riparianness is maintained, but he is subject to losing land as well by erosion or submergence due to the same policy of maintaining riparianness. See Bonelli, supra, at 326; see also State Engineer v. Cowles Brothers, Inc., supra at 876.

At the present time Lake Tahoe is controlled between the elevations of 6223.0 and 6229.1 feet (Lake Tahoe datum). Stabilization of the Lake's surface elevation between these levels has resulted in a relatively permanent high water level somewhat less than 6229.1 feet. Seasonal or temporary

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1 Although the federal question jurisdiction suggested by Bonelli, supra, in purely intrastate title disputes has now been challenged in the case of Oregon v. Corvallis Sand and Gravel Company, Nos. 75-567 and 75-577 before the United States Supreme Court, the federal common law principles announced in Bonelli, supra, are for the most part well settled common law doctrines applied by the State of Nevada. See State Engineer v. Cowles Brothers, Inc., supra, at 874-877.

effects such as cresting during periods of rapid runoff or the necessity of pumping water out of the Lake during periods of drouth are transient effects and are not significant with respect to a permanent high-water mark. The common law has always seemed to contemplate a result substantially permanent; thus the land "hath been formed, and hath been settled, grown and accrued upon." The King v. Lord Yarborough, 107 Eng. Rep. 668 (K.B. 1824).

This office expresses no opinion as to the precise location of the present ordinary high-water mark which may be considered permanent for title purposes. The United States Department of the Interior, Geological Survey, has kept records of the elevation of the Lake since 1900 and such records, especially those of recent years, are good evidence of the elevations of the permanent high-water mark below which title to that portion of the shore and bed of Lake Tahoe within the State of Nevada inures to the State.

CONCLUSION

The State of Nevada owns the bed and shores of Lake Tahoe and other navigable bodies of water within Nevada to the present ordinary and permanent high-water mark. The State of Nevada has not divested itself of any interest in the subject lands by state law or usage. Rather, it holds them in trust for full public enjoyment of navigation, fishery and related purposes.

Very truly yours,

ROBERT LIST
Attorney General

By Harry W Swainston
Harry W. Swainston
Deputy Attorney General

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COMMITTEES
CHAIRMAN
ENVIRONMENT AND PUBLIC RESOURCES
MEMBER
JUDICIARY
TAXATION

Nevada Legislature

EXHIBIT E

FIFTY-NINTH SESSION

July 21, 1978

Mr. Robert E. Erickson
Acting Administrator
State of Nevada, State Lands Division
Capitol Complex
Carson City, Nevada 89710

Dear Bob:

I would like to make the following comments on the proposed Regulations Governing the Use of State Lands currently under consideration by your department.

The statutory authority for such regulations is derived from NRS 445.080 and 321.595. NRS 445.080 is a statute that has been on the books for several years. It simply provides that if a pier is to be built or if gravel is to be removed from Lake Tahoe, written permission is required. In 1977, we changed that statute so that the written permission would come from the State Department of Conservation and Natural Resources in place of the Bureau of Environmental Health.

→ NRS 321.595 was passed by the 1977 Legislature. I am embarrassed to say that I have no recollection of this section, and I recently discovered why that is the case. This new statute was buried in a 59-page bill that was designed to reorganize state agencies---Senate Bill 153. The title of that bill reads as follows:

> "An Act relating to governmental agencies; reorganizing certain of those which deal with energy and the use and conservation of natural resources; and providing other matters properly relating thereto."

A careful reading of this title would not lead a legislator to think that the bill contained substantive changes that granted the State Lands Division power to make regulations and charge fees.

→ I have researched the record of the passage of Senate Bill 153 - - -

Exhibit E 203
page 1 of 3

and I am enclosing a complete copy of that record for your use. A recapitulation follows:

1. The original version of SB153 did not contain Section 23---the section that is now known as NRS 321.595.

2. On pages 1112 and 1114 of the record, there is written testimony of Norman Hall. It simply said,

> "The Division of State Lands will be the state agency responsible for issuing pier permits at Lake Tahoe,"
>
> and
>
> "Adds and consolidates land acquisition administration and pier permitting at Lake Tahoe to the existing Division of State Lands."

3. The record is completely void as to any public notice or legislative or public input as to a section of this bill that would allow the State Lands Division to make regulations and charge fees!

4. When SB153 was first amended, it added paragraphs 2 and 3 of the present NRS 321.595. However, there is nothing in the record to show any public input on this matter.

5. When SB153 was amended a second time, paragraph 2 of NRS 321.595 was added. This is the paragraph that concerns regulations and fees. Again, there is absolutely nothing in the record to show that the public was given notice of this addition and there was no public input shown in the record.

6. Mr. Hall's testimony again shows up on pages 1354 and 1356 before the Assembly Committee on Governmental Affairs. It was the same written statement mentioned above.

In view of the fact that there was no public notice as to this specific substantive addition to the state statutes and the public was not given a chance to testify, I would request that your division take no action on the regulations until the 1979 Legislature hears this matter in full.

I believe the Legislature should set any fees that would be charged. It is a duty that should be undertaken by the elected

EXHIBIT E - 3

officials and should not be delegated to a state agency.

I realize your division has been very careful in giving adequate public notice on all your hearings and you have listened to much public input. I appreciate your procedure. However, the Legislature should have taken that same procedure on this specific item. I propose to introduce legislation in 1979 that will be adequately noticed so the statute coming to you will be more complete.

Sincerely,

GARY A. SHEERIN

GAS/bb
cc: Governor Mike O'Callaghan

enclosures

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
CARSON CITY 89710

ROBERT LIST
ATTORNEY GENERAL

JAMES H. THOMPSON
CHIEF DEPUTY ATTORNEY GENERAL

July 21, 1978

Incline Village, Nevada

STATEMENT OF ATTORNEY GENERAL ROBERT LIST BEFORE PUBLIC HEARING OF THE NEVADA DIVISION OF STATE LANDS

Upon examining the record of the hearing on March 6, 1978, I directed my staff to work with Mr. Erickson to seek to resolve the problems raised on that occasion. His statement reflects the results of that effort.

I am accutely aware of the fundamental concern of those who will be affected by these regulations. Those concerns cut deeper than the cost of pier or wharf rental. The underlying question involved affects the basic property rights of citizens who have made substantial investments in the Lake Tahoe Basin. The question involved is whether government is going to be practical and responsive. It is more than a question of law or of emotion--in my mind it is a question of fairness.

I wish to make the following observations:

1. The right of private property owners fronting on the lake to wharfage and direct access must be protected.

2. While current state law mandates the State Lands Division to establish a rental fee to be charged for new piers, and I recognize that this hearing must result in such a determination, I personally support legislation which will eliminate such rental charges for piers and wharves extended from private property. I see no jusitifcation for the state collecting rental on such structures.

3. On the question of the boundary between state-owned lands and private property adjacent to the lake, it is my view that as a matter of policy the state should not have ownership above the water's edge, wherever it may be.

4. Everyone is no doubt aware that my office issued an opinion concerning the question of the state's title which reached the conclusion that the state owns to the ordinary and permanent high water mark. Exactly where that mark may be is a question which no one in this room can answer with certainty. Suffice it to say that there is an honest and legitimate legal controversy pending in the courts on this issue. One thing is clear though: No one ever intended at the time Nevada was admitted to the Union for the state to acquire what would be at most a narrow ring of land surrounding the lake on dry years. Any such ownership that might exist only exists as an accident of law because of a technicality. The state does not have the resources to manage or assume the responsibility that would

accompany such ownership. I therefore reiterate my proposal for legislative action to clarify the law in the upcoming session of the Nevada Legislature. The property line between state-owned land beneath the lake and private property adjacent to the lake should be no higher than the water's edge.

There are a number of related areas of concern which touch upon today's proceedings and upon which I wish to comment briefly.

FIRST, the public access to the lake should be guaranteed by the continuing development of beaches and parks on land which the state has bought and paid for and which is appropriate for such development. This will permit harmonious enjoyment of Tahoe by everyone concerned.

SECOND, it is imperative that the relationship between Nevada and our neighboring state of California be improved upon. Let me warn that without a workable bistate agreement we will soon find ourselves under yet another direct federal intrusion. Such a solution must provide for a working participation on the part of those who live and work in the Tahoe Basin. I strongly believe that this splendid lake can be preserved through a cooperative effort by the land owners, residents, government and those who visit here to share the wonders of Lake Tahoe and I believe just as strongly that while protecting this scenic basin it is

imperative that we protect the individual rights of property owners.

Let this be the beginning of a new sprit of cooperation.

RESOLUTION

WHEREAS, The legislative commission has considered Chapter I of the Regulations Governing the Use of State Lands, relating to the use of lands beneath Lake Tahoe, and believes that this regulation is within the statutory authority of the division of state lands of the state department of conservation and natural resources to adopt; but

WHEREAS, It was suggested to the commission that adverse public reaction to the proposed adoptions stems from a lack of public awareness at the time of the enactment in 1977 of NRS 321.595 which provides for the establishment of fees for the use of these lands; now, therefore, be it

RESOLVED BY THE LEGISLATIVE COMMISSION OF THE STATE OF NEVADA, That the division of state lands is requested to defer the effective date of its proposed regulation until after the 1979 regular session of the legislature, to permit reconsideration of NRS 321.595 by that session.

Adopted this 15th day of August, 1978.

Donald R. Mello, Chairman
Legislative Commission

Attest:

Arthur J. Palmer, Ex officio Secretary
Legislative Commission

210

Exhibit G

STATE