The meeting was called to order at 3:15 p.m. Chairman 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:
Mr. Harry Swainston, resident of Carson City
Mr. Bryce Wilson, resident of Glenbrook
Mr. Bill Chidlaw, representing Tahoe Shore Zone Representation
Mr. Les Burkson, General Counsel for the Incline Village General Improvement District
Mr. Curtis Patrick, representing property owners in Glenbrook
Mr. Glen Griffith, Department of Fish and Game
Mr. Larry Smith, Nevada Trappers Association
Ms. Unilda Marshall, National Animal Protection Assoc.
Mr. Fred Rodgers, resident of Carson City
Mr. Joe Souza, Nevada Highway Department
Mr. John Madole, Associated General Contractors
Mr. Roland Westergard, Department of Conservation and Natural Resources

Senator Neal announced that there was a quorum present so the committee would hear testimony on A.B. 234, A.B. 15, and A.B. 312.

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

Senator Neal asked Mr. Harry Swainston, who is a deputy attorney general, to testify on the legal ramifications of the attorney general's opinion in which he gave no opinion as to where the high water mark is.

Mr. Swainston stated that he is a resident of Carson City and is testifying before the committee as an individual not as a representative of the attorney general's office. He submitted a statement relative to A.B. 234 and that statement is attached as Exhibit A. Mr. Swainston did not follow that statement exactly, but did use most of the information contained in it.

Mr. Swainston questioned who the proponents of the bill were who found it so necessary to make this assault on property the state holds in trust for the people. He made a study tracing this legislation to a public meeting held in Lake Tahoe where the Governor promised to recommend this type of legislation. The purpose of the study was to identify what areas of the Lake were more concerned with the problem of ownership than others and those areas identified were based on campaign contributions. Mr. Swainston presented Senator Neal with a document which listed Governor List's campaign contributions filed with the Secretary of State. There was $24,600 worth of contributions in the Incline Village area and $2,000 in the Glenbrook area. Mr. Swainston stated that then the question becomes, "who are these people and are they deserving to be beneficiaries of $50 to $100 million worth of property." Through the assessor's office it was determined, based on the mailing addresses, that 76% of them were out-of-state or absentee owners.

Mr. Swainston was concerned about a serious problem in the water area. He stated that by establishing a water line of 6,221 ft. there would be a 2-foot elevation level between the natural rim of the Lake at 6,223 and the 6,221 level. This creates a reservoir of 240,000 acre feet. The water master informed Mr. Swainston that the Lake is at 6,224 at the present time, but is expected to be at the rim sometime later this year. When the Lake is at the rim, the only way water can be gotten out is by pumping. Pumping involves entering into a bi-state agreement with the State of California as set forth in the Truckee River Agreement. A copy of that agreement is attached to Mr. Swainston's statement.

Mr. Swainston referred to Page 4 of his statement concerning the conditions of indemnifying California from damages to shore zone property owners if pumping must take place. This bill would create an ownership between 6,223 and 6,221 that is a property right for shore zone owners. The Supreme Court has held that by creating this type of property right, the property owners can use it against the state. He cited the Mono Lake and Pyramid Lake cases as examples. Mr. Swainston felt that the research he had done convinced him there would be a serious problem in the case of a drought which would require pumping from Lake Tahoe just to satisfy the minimal needs for sanitary and domestic purposes in Reno and Sparks.

Mr. Swainston referred to Page 9 of his statement regarding myths. One myth he mentioned was whether the shore zone owners would have any claim to additional land under this bill. He felt that they would not, and cited the equal footing doctrine which provides that the state owns to the high water mark. He cited the Supreme Court case identified in his statement on Page 10 which holds that artificial controls are the same as natural controls.

He remarked on the fact that the shoreline property owners claim they pay taxes on this property, but Mr. Swainston found that the tax assessments are based on frontage rather than acreage. The titles use a metes and bounds description down to the meander line, which is 100 feet above the water itself. The only thing that gives the owners a figment of a claim is the quitclaim deed attached to conveyances that gave ownership down to the low water mark. But a quitclaim deed, as a matter of law, only conveys as much property as the person giving the deed had. As it turns out, the person giving the deed did not have property interest below the high water mark because it has belonged to the state and never been disposed of since 1864.

Senator Glaser asked Mr. Swainston if he contends that when the water was artifically raised, the claim on the land inundated reverts to the state. Mr. Swainston replied that is absolutely true. He stated that any time land on a navigable body of water is purchased, the purchaser gets the risk along with the benefit. If Lake Tahoe were to dry up, as did Winnemucca Lake, the state's ownership would be extinguished. If the waters rise, which is what happened, the property owners stand to loose some land. Mr. Swainston emphasized that the law is well settled in this area, and it states that an artificial change, as long as it was not done to affect the change of ownership, is considered as a natural change. He cited the case of Hoover Dam where the state originally owned the bed of the Colorado River, but since the level of the water was raised several hundred feet, the state now owns the bed of the entire Lake Mead. The people who previously owned land there were essentially bought out. The people at Lake Tahoe were also paid for flooding easements by the United States, and if they were not, they had good cause of action to go to court and complain.

Mr. Swainston felt that the bill is meant to exclude the public to the benefit of a few people, who for the most part are not residents of the State of Nevada. He recommended the bill be "killed."

Senator Neal asked Mr. Swainston about the pending court case involving Incline Village. Mr. Swainston replied that Incline Village General Improvement District has sued the State of Nevada to determine the line of demarcation where the state ownership ends and private property begins. He felt that Incline would prefer to have this matter settled by the Legislature because the law is so well settled against them.

Senator Jacobsen asked Mr. Swainston where he determines the historical, average, common, natural or ordinary high and low water marks to be. Mr. Swainston remarked that when he speaks of historical, he speaks of the water mark that has been set over the last 78 years since records have been kept. The high water mark over that historical period is 6,227.6 elevation, which might be called the artifically controlled high water mark. He referred to it as the ordinary and permanent high water mark, the mean high water mark and simply the high water mark. The natural water mark is prior to any controls whatsoever, and the Lake has been controlled for over 100 years.

Senator Jacobsen mentioned the fact that the attorney general's opinion of April 20, 1976 signed by Mr. Swainston, expressed no opinion as to the water mark. Mr. Swainston replied that the opinion expressed no opinion to the precise level of the high water mark because that level has to be set by the type of study recently done by the State of California and referred to previously. He emphasized that the attorney general's office is not a survey office.

Mr. Bryce Wilson, resident of Glenbrook, disputed Mr. Swainston's testimony relative to the statistics of the percentage of non-resident owners in the Tahoe area. He stated that a lot of the people who own property are residents of the state. He felt that Mr. Swainston's proposition is wrong, and that title can be traced back to patents that go to the Lake. He felt 6,223 is an equitable line of division because that is what is has always been considered to be.

Mr. Bill Chidlaw, representing Tahoe Shore Zone Representation, which has a membership of 200 lakefront owners and various home-owners associations who collectively own beachfront areas. He would like to see the bill amended back to 6,223 which is a line which has been established as the low water mark for many years.

Mr. Chidlaw commented on Mr. Swainston's reference to the scientific study done by California which determined the water mark. He questioned the feasbility of suggesting that the natural level of a basin whose outlet is at 6,223 exceeding that level by 3 feet at the low water mark. Also, before the issue of title to property at Lake Tahoe, the California State Lands Commission did a survey in 1950 on the California side which concluded that the ordinary low water mark was 6,223. He stated that it was because of the attorney general's opinion of 1976 signed by Mr. Swainston that this issue came to be. Previous to that opinion, there were 3 other attorney generals' opinions, two supreme court cases and 112 years of property transactions which used the low water mark as the line between public and private ownership and that is a critical consideration.

Senator Neal asked Mr. Chidlaw if he agrees with Mr. Swainston's argument that when a dam is built to back up the water, that the land that is covered then belongs to the state. Mr. Chidlaw felt that Mr. Swainston was mixing several legal theories. He challenged anyone to show him a case where changing the level of a Lake artificially by installing a dam would transfer title to the part flooded. He felt Mr. Swainston was mixing up the flowing easement which would become the property of the condeming agency unless the upland owner protects his rights. Another concept he felt Mr. Swainston was mixing in is a recreational easement which says the public has the right to use the water. So the question is not fee title, but the navigation of those waters.

Mr. Chidlaw felt the premise that the public would lose access to the water if this bill passed was unfounded since in Nevada, public agencies own 60% of the shoreline.

Senator Neal asked Mr. Chidlaw about the claim that property owners in Calfornia and Nevada would have a cause against the state if it should become necessary to pump water out of the Lake in times of drought or other necessity. Mr. Chidlaw asked how the property owners could be damaged under such emergency situations when the state would have to enter into an agreement with California to pump water out of the Lake. Senator Sloan then asked why California requires the State of Nevada to agree in advance to indemnify and hold them harmless for any damages to people in California. Mr. Chidlaw felt that many public agency lawyers are supercautious. He still questioned what damages would be suffered under pumping conditions. Senator Neal mentioned the concern of the water users downstream on the Truckee River.

Senator Sloan asked Mr. Chidlaw if he would have any objection to taking the specific eleveation out of the bill and specifying "low water mark." Mr. Chidlaw said he would have no problems with that.

Mr. Les Burkson, General Counsel for the Incline Village General Improvement District, stated that they have been very concerned about this issue since the attorney general's opinion of 1976. He explained that they have an understanding with the attorney general's office that they will not continue with their suit against the state unless this bill does not get passed. He also stated that many of the property owners in Incline have owned their property for many years. He stated that 60% of the shoreline is open to the public.

Mr. Burkson stated that when Incline was begun, they had depended on the three attorney generals' opinions which all referred to the state's ownership being below the low water mark. He indicated that the low water mark has been established as 6,223 in the Truckee River Agreement, in legislation prior to 1945, and the rim level is tantamount to the natural low water level.

Mr. Burkson felt that as far as liability is concerned, the Corps of Engineers permit given to Incline in 1978 contained a disclaimer by the permittee, Incline, as far as liability to the Corps, federal, state and local authorities by reason of the permit. There have been no cases of liability because of this disclaimer. He also stated that in 1923 the question of damages to the riparian shoreline owners by reason of the water level being raised was tried in federal court. The federal authorities claimed that this was not a question of ownership but proscriptive right to flood. The property owners were denied the right to make a claim because the statute of limitations had run out.

Mr. Burkson pointed out that the shoreline property owners maintain liability insurance down to the 6,223 level, which eliminates that responsibility for the state.

Mr. Burkson remarked that the access problem for property owners would not be any different under this bill than it is presently since the water level goes down below 6229.1 now and the lakefront owner loses his access.

Senator Sloan pointed out that the disclaimer Mr. Burkson referred to only holds harmless activities of the federal government. He asked Mr. Burkson why, if he felt there would be no reason for the requirement of indemnification, the State of California routinely asks Nevada to enter into an agreement to indemnify. Mr. Burkson also felt it was a matter of prudent practice.

Senator Sloan asked if Mr. Burkson agreed that the statute passed two years ago did not interfere with the property rights. Mr. Burkson agreed. Senator Sloan then stated that the removal of that statute would leave only the attorney general's opinion of 1976 to contest and it is only instructive to state agencies. Mr. Burkson replied that the problem is that the state agencies have been directed to take action based on the attorney general's opinion.

Mr. Curtis Patrick, representing 150 property owners in Glenbrook, objected to Mr. Swainston's reference to a "bunch" of California and foreign owners purchasing property in the Tahoe basin.

Senator Neal closed the hearing on A.B. 234

A.B. 15 - Defines fur-bearing animals as the property of the owner of the trap in which they are caught.

Mr. Glen Griffith of the Fish and Game Department stated that this bill was developed in collaboration with the Nevada Trappers Association. The bill basically requires that traps used be marked and a registration fee paid. Also, people taking furs for commercial purposes would have to have a license. It would be unlawful to remove or disturb the trap of any holder of a license while that trap is being legally used on lands where the licensee has permission to use them.

Mr. Griffith stated that the fur industry is a new industry with approximately $1-1/2 million revenues yearly, and the proposals in this bill will help to provide better regulation, enforcement and protection of the industry and the resource.

Senator Neal asked if it is possible to provide that the visitation of the traps be more frequent. Mr. Griffith stated that in the last two sessions, the Fish and Game Department has tried to reduce the visitation to 48 hours, which they feel is more reasonable and responsible, but that provision would not pass. Rather than jeopardize the bill, they have not asked to lessen it.

Senator Jacobsen asked how Mr. Griffith planned on taking care of the attrition factor in the registration procedure. Mr. Griffith replied that he is not worried about that procedure since it would be similar to registering brands.

Mr. Griffith stated that the bill is intended to provide protection from people coming in from out of state and ripping off the trappers' traps and animals.

Mr. Griffith introduced Mr. Larry Smith of the Nevada Trappers Association who stated that their organization consists of about 400 trappers. He stated that last year there were about 640 licensed trappers.

Ms. Unilda Marshall, representing the National Animal Protection Association read from a prepared statement in opposition to the bill. Her statement is attached as Exhibit B.

Mr. Fred Rodgers, resident of Carson City, concurred in Ms. Marshall's testimony. Mr. Rodgers demonstrated a steel leg-hold trap and pointed out the viciousness and cruelty of the traps. He was also concerned that pretty soon there would be no more animals left to trap. Mr. Rodgers stated his opposition to the provision that it would be unlawful to remove an animal from a trap. He felt there could be circumstances where an animal could be caught in the trap that wasn't intended to be caught.

Senator Neal closed the hearing on A.B. 15.

A.B. 312 - Exempts department of highways and its contractors and subcontractors from permit requirements for appropriating public waters under certain circumstances.

Mr. Joe Souza, Highway Department, spoke on A.B. 312, which was proposed by the Highway Department to allow them to get a waiver from the state engineer for well permits for construction. In the past it has been difficult to get a permit for all the contracts let throughout the year. Sometimes it took as long as 6 months before the contractor or the state could get a well permit. The Department of Conservation and Natural Resources concurs with this bill.

Mr. John Madole, Associated General Contractors, stated that they support A.B. 312.

Mr. Roland Westergard, Director of the Department of Conservation and Natural Resources stated that he has no objections and supports the bill as presented in the first reprint. Mr. Westergard stated that the bill is not going to require a lot of water, and it has safeguards built into it because it requires a written application and a written waiver so the state engineer can put in conditions to protect the resource and water users. The applicant would be the Highway Department.

Senator Faiss moved that A.B. 312 be passed out of committee with the recommendation: Do pass.

Seconded by Senator Glaser.

Motion carried.

Senator Neal called for final action on A.B. 15

A.B. 15 - Defines fur-bearing animals as the property of the owner of the trap in which they are caught.

Senator Sloan asked why the trappers object to visiting the traps more often than weekly, and if there is a valid concern that children or household pets could get caught. Senator Glaser answered that humans could get themselves out. He also stated that there could be 100 miles of trap and it takes about 2 days to lay the lines so the trapper would just barely get it laid, and then have to turn around and check it again if it were reduced to 48 hours.

Senator Faiss suggested amending the bill to require visitations every 96 hours, but Senator Glaser felt that would jeopardize passage of the rest of the bill. Senator Jacobsen agreed, and stated that anyone out trapping for pelts would want to be more diligent in checking the traps, but the farmer trying to trap a coyote whose been killing his sheep wouldn't care about the pelts and wouldn't need to visit the traps any sooner than weekly.

Senator Neal asked the committee to hold final action on this bill because the Humane Society from Las Vegas has asked to have the opportunity to testify on it.

There being no further business, the meeting was adjourned at 5:45 p.m.

Respectfully submitted,

Eileen Wynkoop
Committee Secretary

APPROVED:

Joe Neal, Chairman

STATEMENT RELATIVE TO A.B. 234
BEFORE THE NEVADA SENATE
NATURAL RESOURCE COMMITTEE,
March 28, 1979

The State of Nevada acquired absolute title to the beds and banks of Lake Tahoe and other navigable bodies of water within its boundaries to the ordinary high water mark by the operative effect of the equal footing doctrine, a doctrine incorporated in the admission acts of the states and specifically incorporated in Abraham Lincoln's Proclamation admitting Nevada into the Union. See Exhibit A attached hereto; see also Oregon v. Corvallis Sand & Gravel Co., 429 U.S. 363 (1977); The Submerged Lands Act of 1953, 43 U.S.C. § 1301, et seq.

The United States Supreme Court early recognized in Martin v. Waddell, 41 U.S. 367, 410 (16 Pet. 1842) that:

> "For when the revolution took place, the people of each state became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use subject only to the rights since surrendered by the constitution to the general government . . . "

See also Pollard's Lessee v. Hagan, 44 U.S. 212, 230 (3 How. 1845); Mumford v. Wardwell, 73 U.S. 423, 436 (6 Wall. 1867). The Court observed in Illinois Central Railroad v. Illinois, 146 U.S. 387, 452 (1892) that the State's title is:

> " . . . different in character from that which the State holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to preemption and sale. It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties."

See also Smith v. Maryland, 50 U.S. 71, 74-75 (18 How. 1855); Shivley v. Bowlby, 152 U.S. 1, 11, 14 (1894).

The right of the public to use the beds and shores of navigable waters for purposes of navigation, fishing and recreation has always been recognized at common law. See Shivley v. Bowlby, supra, 152 U.S. at 14. As the representative of the people, the Nevada Legislature bears the responsibility and trust obligation to preserve these rights. See Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892); State v. Bunkowski, 503 P.2d 1231, 1237 (1972), Morse v. Oregon Division of State Lands, 581 P.2d 520, 524 (Or. App. 1978).

The Legislature may convey title to parcels only if done so to improve the public interest held by the State in trust for the people, or when parcels can be disposed of without detriment to the public interest. See Illinois Central Railroad, supra, at 453. The Nevada Supreme Court in Bunkowski, supra, at 1237, noted that if parcels are to be transferred free from the trust obligation a proper legislative determination must be made. This determination is precisely the test imposed by the Illinois Central Railroad case, that is, a two-pronged determination either that the public's interest will be improved or in the alternative that there will be no public detriment.

A.B. 234 satisfies neither prong of the test. The sole purpose of A.B. 234 is to effect a transfer of the State's lands to enable a few private landowners at Lake Tahoe to exclude members of the public. Such a result would clearly be a detriment to the public's interest and in no way would serve to improve any aspect of the public's interest in navigation, fishery or recreation.

Even if the transfer contemplated by A.B. 234 might survive a court challenge, which is unlikely, only the bare legal title would be deemed transferred. The public right to use the lands would remain unimpaired. This is because the citizens of the State of Nevada are the beneficiaries, in common, of a gift directly from the Constitution. The Legislature is not competent to destroy that interest. See, e.g., Illinois Central Railroad, supra; Scott v. Lattig, 227 U.S. 229, 243-244 (1913);

Marks v. Whitney, 491 P.2d 374, 379 (Cal.App., 1969); Brusco Towboat Co. v. State, By And Through Straub, 567 P.2d 1037, 1042-1043 (Or.App., 1977); Morse v. Oregon Division of State Lands, 581 P.2d 520, 522-523 (Or.App., 1978); New Jersey Sports & Exposition Authority v. McCrane, 292 A.2d 545, 579 (N.J.App., 1972); People v. California Fish Company, 138 P.79 (Cal.App., 1913).

Dominion as opposed to the ownership of the bare fee simple title (jus privatum) which is invested in the State as representative of the public is called the jus publicum. Shivley v. Bowlby, supra, 152 U.S. at 11. Because the jus publicum aspect of the State's ownership is not transferable, the purpose of A.B. 234 cannot be accomplished even if it were at all prudent to do so. The only result which it will serve to accomplish is to exacerbate the conflict and antagonism between the public in the exercise of their rights and the private rights of the upland owners at the Lake.

Conflicts

One would anticipate, if A.B. 234 is passed, that pressure will be brought to bear on local law enforcement authorities to make arrests for trespass in the area between the high water mark and elevation 6,221. This undoubtedly will lead to lawsuits for false arrest and imprisonment which will have to be satisfied from the State's treasury.

The urge to exclude the public has other ramifications perhaps more serious and far-reaching than the exclusion of the public itself. A.B. 234 was amended by the Assembly Government Affairs Committee from elevation 6,223 to 6,221, an elevation two feet below the natural rim of the Lake. In the years 1924, 1929, 1930 and 1934 it was necessary to pump water from Lake Tahoe in order to provide minimal quantities of water for sanitary and municipal purposes in the Reno-Sparks area. In 1961 and 1962 and again in 1977 negotiations were conducted with officials of the State of California relative to an agreement to pump water from the Lake.

The Truckee River Agreement which is incorporated in the final decree in United States v. Orr Water Ditch Co., et al., In Equity No. A-3, prescribes the procedure to be

used to pump from Lake Tahoe. See Exhibits B and C attached hereto. Pumping may be accomplished only by agreement between the States of California and Nevada. A condition that California has insisted upon is as follows:

> "Any damage to property owners in California as a result of pumping from Lake Tahoe must be assumed by the State of Nevada. The State of Nevada must also assume the obligation of indemnifying the State of California in the event the state is held liable to individual property owners as a result of giving its consent to pumping from Lake Tahoe."

See Exhibit D attached hereto. Damage to the California property owners may take a number of forms. California passed an act in 1872, Cal. Civil Code § 830 which as amended in 1873-1874 reads in pertinent part as follows:

> "Except where the grant under which land is held indicates a different intent, . . . when it borders on a navigable lake or stream, . . . the owner takes to the edge of the lake or stream, at low water mark . . ."

The construction of the foregoing statute and its constitutionality are being litigated by California in cases involving Clear Lake and Lake Tahoe at the present time. Until those issues are settled in favor of the State of California, damage to the upland owners in California may result because the pumping may expose their piers and wharves, and uncover the intake of pipes which extract domestic water from the Lake, etc. If A.B. 234 is passed it will create an even greater property interest in the property owners on the Nevada side. Exposure of their submerged lands between elevations 6,223 and 6,221 feet may require the payment of damages by the State of Nevada for loss of similar interests as presently are claimed in California. Pumping will be strenuously opposed because exposure of additional shore lands may encourage additional public use of the shorezone lands.

It is imperative that during a time when transbasin sanitary diversions out of the Tahoe Basin are reducing the overall net inflow into the Lake, the State's options for insuring adequate water supplies under drought conditions are maximized. This is especially true when the ultimate resolution of the water cases involving Truckee River water may require the State and municipalities to exhaust all available water options in return for federal cooperation. A.B. 234 may seriously impair some of those options by creating property rights in the shorezone owners which may be used against the State.

In a case involving an improvement of the Rouge River in Michigan, United States v. River Rouge, 269 U.S. 411 (1926), the United States Supreme Court recognized rights created by State law in the riparian owners along the stream. In United States v. Rands, 389 U.S. 121, 126 (1967), the Court again recognized special interests created by state law:

> "And, in River Rouge, it was recognized that state law may give the riparian owner valuable rights of access to navigable waters good against other riparian owners or against the State itself." (Emphasis added.)

In City of Los Angeles v. Aitken, 52 P.2d 585 (1935), the shorezone owners on navigable Mono Lake were awarded $278,837 (1935 dollars) for the lowering of Mono Lake caused by the diversion of water which would have maintained the level of Mono Lake. Similar results were obtained in Litka v. City of Anacortes, 167 Wash. 259, 9 P.2d 88 (1932) (just compensation awarded against city of Anacortes for damage to lake property resulting from its pumping water from the lake for municipal purposes). See also Martha Lake Water Co. v. Nelson, 152 Wash. 53, 277 P.382 (1929).

POLITICS

The Governor's Recommendation

On Wednesday, January 17, 1979, Governor Robert

List in his State of the State address stated at page 42:

> "I also respectfully call on the Nevada Legislature to enact a law which would clear up the shoreline controversy at Lake Tahoe.
>
> It presently is unclear as to where private ownership along the Lake's shore ends, and State ownership begins. Clearly, legislation is needed to establish the boundary once and for all. A logical solution to the problem would be to designate a fixed point, at the low water level, for a permanent boundary."

Contrary to the Governor's recommendation, experts in constitutional law and water law almost unanimously agree that "the logical point to differentiate between land and water is the high-water mark." Player and Maloney, Multiple Interests in Riparian Land, Subdivision Platting, and the Allocation of Riparian Rights, 46 J. of Urb. Law 41, 42 (1968). Aside from this fact the Governor's recommendation that the low water mark be established as the permanent boundary has somehow gone awry.

A.B. 234 was drafted in response to the Governor's request and at least one State official, at his direction, has testified in its favor, those that could say nothing good about the bill have obligingly stayed away from the hearings. Even though as much as $50 million to $100 million of State property may be disposed of by A.B. 234, not a single State official has come forward to oppose it.

One fact which has not been recognized is that A.B. 234, as drafted is not what the Governor requested. Neither the elevations of 6,223 as originally drafted nor 6,221 as amended represent the low water mark.

The State of California State Lands Division in cooperation with the California Attorney General's Office

has hired experts to study the levels of Lake Tahoe through precise scientific methodology. I have been authorized to present their preliminary findings with the expectation that they may be helpful to the Committee in its deliberations. Two studies were accomplished. The first is a study of the best data available from the United States Coast and Geodetic Survey and the Truckee Carson Irrigation District to delineate the actual historical high water mark and the actual historical low water mark. The study analyzed end-of-month Lake levels from the year 1900 through 1978 and produced the following results:

Actual high water elevation = 6,227.6 feet

Actual low water elevation = 6,225.5 feet

The second study was substantially more complex. It simulated the Lake in its natural condition by mathematically removing the outlet dam from a model constructed by synthesizing all of the input-output hydrological conditions at the Lake. The study produced the following levels:

Natural high water elevation = 6,226.4 feet

Natural low water elevation = 6,224.6 feet

Thus, under either natural or historical conditions elevation 6,221 feet is well below the low water elevation.

It's interesting to note that the high water and low water are nearly the same whether the Lake is in its natural or controlled condition. The reason for this is that the capacity of the outlet channel is the major factor in controlling the level of the Lake. According to the Federal Water Master, when the water level is 1/4 foot above the rim (6,223 feet), only 15-20 cubic feet per second (cfs) will flow out of the Lake. When the level is 1/2 feet above the rim, 50-75 cfs will flow out of the Lake. The rating curve developed by the California study predicts 150 cfs flow at elevation 6,224 feet.

As can be seen, the Governor's low water level recommendation has not been followed. Perhaps one reason is because of the misunderstanding and misinformation that has been presented at the hearings on A.B. 234. The record will show that one proponent was so misinformed that he thought the high water level was the natural rim of the Lake. This is as ridiculous as considering the capacity of one's bathtub to be measured by the level of the drain plug. Another proponent testified that the Lake had reached a low water level of 6,208 feet. There is no historical record of this event and if there was it would underscore the advisability to proceed cautiously in this matter should such a drought occur again.

Probably the most important reason that the elevation of 6,221 feet has appeared in the present bill is because the proponent property owners, having duly noted the lack of opposition to A.B. 234 as drafted, determined that the Assembly could be stampeded into passing any bill on this subject and therefore there was no reason not to go for broke. Unfortunately, their assessment of the Assembly was correct and the greedy designs of the few prevailed.

The beneficiaries of A.B. 234 are simply not deserving of the windfall that the bill would give them. With very few exceptions, these people are either foreign, absentee owners, who own property at the Lake for tax reasons or people who have made their money in other States and have come to Nevada for the sole purpose of taking advantage of the favorable tax laws. The State of Nevada owes them nothing in terms of gratitude for helping to develop Nevada industry or to promote the general welfare of the State. Certainly, they do not deserve the gift of one of the State's most prized possessions.

In 1972-1974 the California Franchise Tax Board requested the Registrar of Voters of Washoe County to determine the number of residents who voted in the Incline Village or Crystal Bay areas as absentee voters. The Registrar of Voters found that approximately 40% of the property owners were absentee voters who had permanent addresses elsewhere.

A cursory examination of the tax assessors' rolls in Washoe, Carson City or Douglas counties confirms that the mailing address of the tax bills do reflect a substantial percentage of foreign addresses.

When the question is raised whether the Legislature should pass A.B. 234 so as to transfer the State's lands to foreign interests with no public benefit and severe impairment of the public interest, there can be no answer but ABSOLUTELY NOT!

MYTHS

Private Ownership Claims

In the case of Hardin v. Jordan, 140 U.S. 371, 380 (1891), the United States Supreme Court noted that:

> "It has been the practice of the government from its origin, in disposing of the public lands, to measure the price to be paid for them by the quantity of upland granted, no charge being made for the lands under the bed of the stream, or other body of water. The meander lines run along or near the margin of such waters are run for the purpose of ascertaining the exact quantity of the upland to be charged for . . ."

And at 383:

> "What will pass then by a grant bounded by a stream of water? At common law, this depended upon the character of the stream, or water. If it were a navigable stream, or water, the riparian proprietor extended only to high-water mark." (Emphasis added.)

In a case styled State Engineer v. Cowles Bros., Inc., 86 Nev. 872, 478 P.2d 159 (1972), the Nevada Supreme Court recognized the application of the common law to questions of the State's ownership of the beds of navigable waters.

The fact that title insurance policies do not insure titles below the high water mark at Lake Tahoe further diminishes any validity in the upland owners' claim or expectancy of any interest below the high water mark.

The claim that the upland owners have been paying taxes on lands below the high water mark is sheer fantasy. The parcels of land on the shore of Lake Tahoe are taxed on the basis of frontage on the Lake rather than acreage.

The proponents of A.B. 234 argue that the Attorney General's Opinion No. 204, dated April 21, 1976, is a State taking or condemnation of private lands. Their argument proceeds upon the theory that the artificial controls at the outlet of the Lake which raised the Lake did not affect their ownership.

At the outset it must be noted that the difference between the natural and historic high water marks is only about 1.2 feet. Additionally, the proponents' argument overlooks the law which holds that permanent changes in the level of the water adjusts the boundary line between the State's and the upland owners' property to the new high water mark. In County of St. Clair v. Lovingston, 90 U.S. 46, 68 (23 Wall. 1874), the United States Supreme Court noted:

> "Whether it is the effect of natural or artificial causes makes no difference. The result as to the ownership in either case is the same."

In State Engineer v. Cowles Bros., Inc., supra, at 875, the Nevada Supreme Court held in a case in which the State lost its entire interest in Winnemucca Lake:

> "When the exposure [or submergence of the shore] is due wholly or in part to artificial causes and those causes are not the act of the party owning the shoreland the rules that prevail as to ownership of the accreted or relicted land are the same as in the case of accretion or reliction solely by natural causes."

In a case styled United States v. Claridge, 416 F.2d 933 (1969), the Ninth Circuit Court of Appeals held that:

> "Whether the Hoover Dam affected the course of the [Colorado] river is of no significance, for it did not result in avulsive changes and it was not constructed for the purpose of reducing riverbed holdings. 43 U.S.C. § 617. As this court stated in Beaver v. United States, 350 F.2d 4, 11 (9th Cir. 1965), cert. denied, 383 U.S. 937, 86 S.Ct. 1067, 15 L.Ed.2d 854 (1966):
>
> > "The erecting of artificial structures does not alter the application of the accretion doctrine . . . unless, perhaps, structures are erected for the specific purpose of causing the accretion."

A recognition by the Nevada Legislature that artificial structures do not alter land titles could. in a case brought for that purpose, support an argument that the lands submerged by Lake Mead are not owned by the State of Nevada in trust for its citizens but rather by the United States or, in rare instances, private parties as owners of such lands prior to the building of Hoover Dam. Because State law controls these questions, a valuable natural resource may revert to the federal government to the loss of the citizens of Clark County and the State of Nevada.

The elevation of Lake Tahoe has been controlled since 1871 when the Von Schmidt Dam was built. The acquisition of private property, with rare exceptions, occurred later. Present day landowners simply do not have an argument that they have been deprived of anything.

Respectfully Submitted

Harry A. Swainston

11.

EXHIBIT A

No. 21.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA: Oct. 20, 1864.

A PROCLAMATION.

Day of thanksgiving and praise appointed.

It has pleased Almighty God to prolong our national life another year, defending us with His guardian care against unfriendly designs from abroad, and vouchsafing to us in His mercy many and signal victories over the enemy, who is of our own household. It has also pleased our Heavenly Father to favor as well our citizens in their homes as our soldiers in their camps, and our sailors on the rivers and seas, with unusual health. He has largely augmented our free population by emancipation and by immigration, while He has opened to us new sources of wealth, and has crowned the labor of our working men in every department of industry with abundant rewards. Moreover, He has been pleased to animate and inspire our minds and hearts with fortitude, courage, and resolution sufficient for the great trial of civil war into which we have been brought by our adherence as a nation to the cause of freedom and humanity, and to afford to us reasonable hopes of an ultimate and happy deliverance from all our dangers and afflictions:

Now, therefore, I, ABRAHAM LINCOLN, President of the United States, do hereby appoint and set apart the last Thursday of November next as a day which I desire to be observed by all my fellow-citizens, wherever they may then be, as a day of thanksgiving and praise to Almighty God, the beneficent Creator and Ruler of the Universe. And I do farther recommend to my fellow-citizens aforesaid, that on that occasion, they do reverently humble themselves in the dust, and from thence offer up penitent and fervent prayers and supplications to the Great Disposer of events for a return of the inestimable blessings of peace, union, and harmony throughout the land which it has pleased Him to assign as a dwelling-place for ourselves and for our posterity throughout all generations.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this twentieth day of October, in the year
[L. S.] of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States the eighty-ninth.

ABRAHAM LINCOLN.

By the President:
WILLIAM H. SEWARD, *Secretary of State.*

No. 22.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA Oct. 31, 1864.

A PROCLAMATION.

Preamble. 1864, ch. 36. *Ante*, p. 30.

WHEREAS the congress of the United States passed an act, which was approved on the 21st day of March last, entitled "An act to enable the people of Nevada to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states;"

And whereas the said constitution and state government have been formed, pursuant to the conditions prescribed by the fifth section of the act of congress aforesaid, and the certificate required by the said act, and also a copy of the constitution and ordinances, have been submitted to the President of the United States:

Nevada admitted into the Union.

Now, therefore, be it known, that I, ABRAHAM LINCOLN, President of the United States, in accordance with the duty imposed upon me by the act of congress aforesaid, do hereby declare and proclaim that the said State of Nevada is admitted into the Union on an equal footing with the original states.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this thirty-first day of October, in the year

[L. S.] of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States the eighty-ninth.

ABRAHAM LINCOLN.

By the President:
WILLIAM H. SEWARD, *Secretary of State.*

No. 23.

Nov. 19, 1864. BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A PROCLAMATION.

Preamble. Vol. xii. p. 1258.

WHEREAS by my proclamation of the nineteenth of April, one thousand eight hundred and sixty-one, it was declared that the ports of certain states, including those of Norfolk, in the State of Virginia, [and] Fernandina and Pensacola, in the State of Florida, were, for reasons therein set forth, intended to be placed under blockade; and whereas the said ports were subsequently blockaded accordingly, but having, for some time past, been in the military possession of the United States, it is deemed advisable that they should be opened to domestic and foreign commerce:

Blockade of Norfolk, Fernandina, and Pensacola to so far cease that, &c.

Now, therefore, be it known that I, ABRAHAM LINCOLN, President of the United States, pursuant to the authority in me vested by the fifth section of the act of congress approved on the 18th of July, 1861, entitled "An act further to provide for the collection of duties on imports, and for other purposes," do hereby declare that the blockade of the said ports of Norfolk, Fernandina, and Pensacola shall so far cease and determine, from and after the first day of December next, that commercial intercourse with those ports, except as to persons, things, and information contraband of war, may, from that time, be carried on, subject to the laws of the United States, to the limitations, and in pursuance of the regulations which may be prescribed by the Secretary of the Treasury, and to such military and naval regulations as are now in force, or may hereafter be found necessary.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this nineteenth day of November, in the [L. S.] year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States the eighty-ninth.

ABRAHAM LINCOLN.

By the President:
WILLIAM H. SEWARD, *Secretary of State.*

No. 24.

Dec 19, 1864. BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A PROCLAMATION.

Preamble. 1864, ch. 237. *Ante*, p. 379.

WHEREAS by the act approved July 4, 1864, entitled "An act further to regulate and provide for the enrolling and calling out the national forces, and for other purposes," it is provided that the President of the United States may, "at his discretion, at any time hereafter, call for any number of men, as volunteers, for the respective terms of one, two, and three years, for military service," and "that in case the quota, or any part thereof, of any town, township, ward of a city, precinct, or election district, or of any county not so subdivided, shall not be filled within the space of fifty days after such call, then the President shall immediately order a draft for one year to fill such quota, or any part thereof, which may be unfilled;"

And whereas by the credits allowed in accordance with the act of Congress, on the call for five hundred thousand men, made July 18th, 1864, the number of men to be obtained under that call was reduced to two hundred and eighty

DRAIN AND WASTE W[illegible]—(Continued)

No.	Date of Priority	Owner	Ditch	Point of Diversion: Side of Stream	Point of Diversion: In ¼ of ¼	Section	T. N.	R. E.	Acres Irrigated: Direct Cult'd	Acres Irrigated: Direct Wild Hay	Acres Irrigated: Drain Cult'd	Acres Irrigated: Drain Wild Hay	In ¼ of ¼	Section	T. N.	R. E.	Approximate Diversion: Inches	Approximate Diversion: Sec. Feet	Estim'd Transm. Loss Per Cent.	Amount Allowed Delivered to Land: Maximum Flow In. equals 1/40 sec. ft.: Inches Per Acre	Amount Allowed Delivered to Land: Maximum Flow In. equals 1/40 sec. ft.: Total Inches	Amount Allowed Delivered to Land: Maximum Flow In. equals 1/40 sec. ft.: Sec. Feet	Amount Allowed Delivered to Land: Per Season: Ac. Ft. Per Acre	Amount Allowed Delivered to Land: Per Season: Acre Feet
742	1920	C. S. Laughton	By Pumping from Well	On	W½ Lot 1 of NW¼	5	19	20	34.0				N½ Lot 1 of NW¼	5	19	20				1½	52	1.30	4.0	130
741	1870	C. S. Laughton							Waste Water from Peoples' Drain ditch by Lally ditch through Lot 2 of NW¼ Sec. 5, T. 19 N., R. 20, E., of a priority of 1870, also allowed for the east 17.6 acres of this area provided water from all sources shall not exceed the single amount of 71 acre feet provided for said 17.6 acres.													
744	1920	George Peno	By Pumping from Well	On	W¼ Lot 1 of NW¼	5	19	20	17.5				W½ Lot 1 of NW¼	5	19	20				1½	10	0.25	4.0	70

GENERAL PROVISIONS

In the foregoing table and columns pertaining to irrigation water rights the word, "Direct," means that the acreages specified thereunder are irrigated by water hereby allowed to be diverted from the river, creek or stream last named above the acreage; the word, "Drain," means that the acreages thereunder are irrigated by drain or waste water hereby allowed and ordered for the irrigation thereof; the word, "Season," means the time in any calendar year when irrigation may be needed; the word, "Priority," means the time when the water right was initiated. "Inch" means one-fortieth (1/40th) of one cubic foot per second, which, in general is the amount of water which will flow through an orifice having an area of one square inch, under a pressure of six (6) inches at the center of the opening. "Acre Foot," means the amount of water which will cover an area of one acre to a depth of one foot.

All of the above described ditches, lands and sections are in townships north and ranges east, Mount Diablo Base and Meridian. All of the irrigated lands are in the State of Nevada, except a part of the tracts listed under Dog, O'Neil, and Sunrise creeks. All of the ditches, canals and flumes are in the State of Nevada excepting the Farad and the upper end of the Fleish. Lake Tahoe is partly in Nevada and partly in California and the outlet of the lake to the Truckee River and the dam controlling the storage in the lake are in the State of California.

Without the application of water thereto the above described lands are dry and arid and irrigation is necessary for the production of valuable crops thereon. The respective amounts of water hereinbefore stated to have been appropriated for or used on these lands, are in each instance as specified therefor necessary and sufficient for the reasonable and economical irrigation of crops thereon other than grain, potatoes, corn and beets. These do not need to be irrigated for so many months as alfalfa and pasture. Only two-thirds of the amount of water in acre feet hereinbefore specified or allowed for the irrigation of any of the above described tracts of land is necessary for, or should be or is allowed for the irrigation of grain grown thereon. Only four-fifths of the amount of water in acre feet designated above for the irrigation of said tracts of land is necessary for, or should be or is allowed for, the irrigation of potatoes, corn or beets grown thereon. Young alfalfa needs frequent irrigations for a long season. An additional amount of ten per cent of the quantity of water hereinbefore specified in acre feet for the irrigation of any of the above described lands is necessary for and should be and is allowed for the irrigation thereof during the first year that alfalfa is sown thereon, whether the alfalfa be sown with o. without grain.

The amounts of water which the parties to this action have appropriated and used for purposes other than the irrigation as stated above are necessary and sufficient for the uses for which they have been appropriated.

The above named parties who so appropriated water for irrigation have also used and in addition thereto are entitled and allowed to use water for livestock and domestic purposes, but only in such amounts as may be necessary for watering stock and for domestic purposes; provided that the priority in respect of the use of water for livestock and domestic purposes of any person shall be identical with the priority of such party for irrigation.

IT IS FURTHER ORDERED AND DECREED that that certain agreement known as the Truckee River Agreement, dated July 1, 1935, entered into by the United States of America, party of the first part, Truckee-Carson Irrigation District, party of the second part, Washoe County Water Conservation District, party of the third part, Sierra Pacific Power Company, party of the fourth part, and such other users of the waters of the Truckee River as may have or shall become parties to said agreement by signing their names thereto, parties of the fifth part, which agreement provides (among other things) for the upstream storage of the waters of the Truckee River and its tributaries, be and the same is hereby approved, adopted by the Court and made a part of the decree and shall be binding as between the signatory parties to said agreement.

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EXHIBIT A

loss and when applied to the land, 3.5 acre feet per acre for the bottom lands, nor 4.5 acre feet per acre for the bench lands under the Newlands Project.

LAKE TAHOE STORAGE

Claim No. 4. Under the Reclamation Act and for irrigation and other beneficial uses on lands under said project and on lands within the basins of the Truckee, Carson and Humboldt rivers in Washoe, Storey, Lyon, Churchill and Humboldt counties, in the State of Nevada, and pursuant to notice posted, by direction and authority of the Secretary of the Interior and for and on behalf of the United States, on the right bank of the Truckee River at the site of the dam in said river near Tahoe City and in Placer County, California, and about 500 feet downstream from Lake Tahoe, on the 21st day of May, 1903, plaintiff is entitled to, and is allowed with a priority of that date and during all seasons of the year, to have flow into and to hold and store in Lake Tahoe and in a reservoir made of said lake by a dam at said site in said river constructed with the spillway crest thereof six feet above the floors of the flow-ways of said dam as then existing, all waters of or coming into said river or said lake, both surface and under flow, to the extent of 3,000 cubic feet per second and to the extent of the capacity of said lake as a reservoir made by said dam, to said height and subject to the continuous out-flow through said river from said lake or reservoir so made by said lake or dam, of such an amount of water as plaintiff may desire to release or may discharge from said lake or reservoir not exceeding at any time a flow of 3,000 cubic feet of water per second.

In addition to the above specified rights, the United States is entitled to store, discharge and control water in Lake Tahoe as provided in the judgment and decree filed and entered on June 4, 1915, in the case of the United States, plaintiff, versus The Truckee River General Electric Company, a corporation defendant, in the District Court of the United States in and for the Northern District of California, Second Division, and subject to said decree the United States shall be entitled to discharge from Lake Tahoe an amount of water sufficient to deliver to the head of the Truckee Canal at the Derby Dam, after transportation loss, 1,500 cubic feet per second. The plaintiff is entitled and allowed at will to release and discharge any of the water stored, or by this decree allowed to be stored, in Lake Tahoe and to flow the same and any other water to which it is entitled, acording to its priority, through the Truckee River to the Derby Dam and there divert the same through the Truckee Canal for irrigation, for storage in the Lahontan Reservoir, for generating power and for other purposes. The rights of said defendant Sierra Pacific Power Company (formerly The Truckee River General Electric Company) under said judgment and decree are hereby recognized and confirmed.

Power Ditches

FARAD PLANT

Claim No. 5. The Sierra Pacific Power Company, a corporation owner, is entitled an dallowed to divert at all times from the Truckee River through the Farad Power Flume, which has its intake on the north bank of the Truckee River in the S½ of Lot 6 in the NW¼ of Section 30, Township 18 North, Range Eighteen East, sufficient water, with a priority of the year 1899, to deliver, after transportation loss, to the wheel of the Farad Hydro-Electric power plant, 325 cubic feet of water per second and sufficient additional water with a priority of 1906 to deliver, after transportation loss, to the wheel of said plant, 75 cubic feet of water per second, said plant being situate in the SE¼ of Section 12, Township 18 N. R. 17 E., for the generation of electric power in said plant.

FLEISH PLANT

Claim No. 6. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Fleish Power Ditch and Flume, which has its intake on the east bank of the Truckee River in the SE¼ of Section 6, Township 18, N. R. 18 E., sufficient water with a priority of February 16, 1904, to deliver, after transportation loss, to the wheel of the Fleish Hydro-Electric power plant, 327 cubic feet of water per second, said plant being situate in the NE¼ of the SE¼ of Section 30, Township 19 N. R. 18 E., for the generation of electric power in said plant.

VERDI PLANT

Claim No. 7. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Verdi Power Ditch and Flume, which has its intake on the east bank of the Truckee River in the SE¼ of the SE¼ of Section 19, T. 19 N. R. 18 E. sufficient water, with a priority of October 21, 1909, to deliver, after transportation loss, to the wheel of the Verdi Power Plant 399 cubic feet of water per second, said plant being situate in the SE¼ of Section 8, T. 19 N. R. 18 E. for the generation of electric power in said plant.

In addition to such diversion for power purposes, Sierra Pacific Power Company, a corporation, is allowed to divert from said river through the Verdi Power Ditch 220 inches or 5.50 cubic feet of water per second for supplying the Katz Ditch for irrigation to the extent and with the priority hereinafter allowed to this company, for the Katz Ditch under irrigation rights.

In addition to such diversions for power purposes and for so supplying the Katz Ditch with water for irrigation, Sierra Pacific Power Company, a corporation, is entitled and allowed to divert and transport from the Truckee River, through the Verdi Power Ditch and Flume and to deliver to Verdi Lumber Company, a corporation, and Verdi Lumber Company is entitled to have diverted from said river through said ditch and flume by, and to receive from the Sierra Pacific Power Company, 100 inches of water with a priority of the year 1894 for supplying and maintaining the log pond of the Verdi Lumber Company in the Town of Verdi, and for logging and saw mill purposes.

WASHOE PLANT

Claim No. 8. The Sierra Pacific Power Company, a corporation owner, is entitled and allowed to divert at all times from the Truckee River through the Washoe Power Ditch and Flume, which has its intake on the south bank of the Truckee River, in the NW¼ of the NE¼ of Section 16, T. 19 N. R. 18 E. sufficient water, with a priority of October 27, 1902, to deliver, after transportation loss, to the wheel of the Washoe Hydro-Electric Power Plant 396 cubic feet of water per second, said plant being situate in the SW¼ of the SW¼ of Section 14, in said township and range, for the generation of electric power in said plant.

Of the water so allowed to be diverted through the Washoe Power Ditch and Flume, Sierra Pacific Power Company is allowed to use during the irrigation season 12.4 inches or .31 cubic feet of water per second, not exceeding a seasonable amount of 50 acre feet for the irrigation of 12.4 acres of its land as hereinafter described and provided under Washoe Power Ditch under irrigation rights.

Also of the amount of water allowed to be diverted through the Washoe Power Ditch, Sierra Pacific Power Company is entitled and allowed to deliver to the defendant Leonidas Frederick Johnson and he is entitled and allowed to

EXHIBIT A-13

In the District Court
of the United States
in and for
The District of Nevada

— IN EQUITY DOCKET No. A3 —

The United States of America
Plaintiff

— VS —

Orr Water Ditch Company, et al
Defendant

FINAL DECREE

EXHIBIT A

TRUCKEE RIVER AGREEMENT

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provisions of this agreement, and to that end, the Irrigation District shall, so long as it shall be permitted to remain in control thereof, operate the gates and controlling works at the outlet of Lake Tahoe as herein provided and prescribed, and the Conservation District and the Power Company, respectively, shall operate SUPPLEMENTAL RESERVOIR and PONDAGE in accordance with the provisions hereof, and all of the parties hereto shall in good faith perform all agreements, obligations and covenants herein assumed or agreed to be performed by them respectively.

The Irrigation District, the Conservation District and the Power Company shall each keep adequate records pertaining to their operations under this agreement and, upon request of any of said parties or the Water Master referred to in Paragraph (B) of Article XVIII hereof, such records shall be made available to the party making request therefor.

(B) Nothing contained in this agreement shall preclude any of the parties hereto from acquiring hereafter in the manner provided by law, rights to the use of water in addition to the rights now possessed by them respectively.

Nothing herein contained shall preclude any of the parties hereto from diverting water into the Truckee River Water Shed from another water shed, and the party so diverting the same shall have all of the rights in respect of water so diverted which are or may be provided by law.

(C) The parties hereto agree that in the event the Power Company should desire hereafter to change the place of diversion of water provided to be diverted for MUNICIPAL AND DOMESTIC USES by means of the Highland Ditch, it may make such change in the place of diversion; provided, however, that such changed place of diversion will not create a condition which will be detrimental to any of the rights of the other parties hereto under this agreement.

(D) Wherever the words "flow" or "rate of flow" are used in this agreement and the amount thereof is stated in cubic feet per second, such words shall mean rates of flow during each day equivalent to a constant and uniform flow at the rate stated.

(E) For the purpose of this agreement a depth of one foot in Lake Tahoe shall be assumed to have a capacity of 120,000 acre feet.

(F) For the purpose of this agreement, all elevations herein mentioned shall be determined by reference to that certain bench mark identified in the 1915 DECREE as the top surface of a hexagonal brass bolt ¾" in diameter projecting 1" from the vertical face of the left hand or Southerly concrete abutment wall of the present existing Lake Tahoe dam, at approximately 3.2 feet below the top thereof and approximately in line, both horizontally and vertically, with the upstream ends or "cutwaters" of the concrete piers between the sluiceways of said dam, which said bench mark shall be conclusively presumed to be 6230.00 feet above sea level.

(G) From and after the OPERATIVE DATE OF THIS AGREEMENT, all of the parties hereto agree as follows: (1) That the natural conditions obtaining on said date in the bed and banks of Lake Tahoe and of the Truckee River at and in the vicinity of the outlet of Lake Tahoe, above the dam that is at or near the point where said Lake empties into the Truckee River near Tahoe City, Placer County, California, shall not be disturbed or altered by any of the parties hereto without the approval of the Attorney General of the State of California; provided, however, that in the event that said conditions existing on said date shall alter or change for any cause or reason, then the parties hereto respectively shall have the right to restore said conditions; (2) that they will not create nor cause to be created any outlet of said Lake in addition to the present natural outlet thereof; and (3) that they will not remove water from Lake Tahoe for irrigation or power uses by any means other than gravity, except upon the condition that the Secretary of the Interior of the United States shall have first declared the same a necessity, and that they will not remove water from Lake Tahoe for sanitary or domestic uses by any means other than gravity, except upon condition that the Departments of Health of the States of Nevada and California, or other officers exercising similar authority, shall first have made and filed with the Attorney

fish + Wildlife use?

General of the State of Nevada and the Attorney General of the State of California certificates showing that a necessity for the same exists.

ARTICLE XXVI. Execution of agreement in counterparts, etc.

This agreement and/or the stipulation referred to in Article hereof may be executed in any number of counterparts, each of which shall for all purposes be deemed to be the original; and such counterparts singly or together shall constitute one and the same instrument. The Conservation District, the Irrigation District and the Power Company shall be entitled to affix to any duplicate executed copy or copies of said agreement the signature affixed to such counterparts, in order to facilitate the recordation thereof.

Any user of the waters of the Truckee River and/or its tributaries within the Conservation District, who shall not have become a party to this agreement by signing his name hereto prior to the OPERATIVE DATE OF THIS AGREEMENT, may nevertheless become a party hereto and be entitled to the benefits hereof by thereafter signing this agreement, provided the Conservation District shall consent thereto.

ARTICLE XXVII. Irrigation District contract authorized by election and confirmed by Court.

The execution of this contract shall be authorized by the qualified electors of the Irrigation District and Conservation District at elections held for that purpose. Thereafter without delay the two districts shall prosecute to decree proceedings in court for a judicial confirmation of the authorization of this contract. The United States shall not be bound in any way to proceed under the terms of this contract unless and until confirmatory final judgments of such proceeding shall have been rendered, including a final decision in any appeal therefrom. The two districts shall without delay furnish the United States for its files certified copies of all proceedings relating to the elections upon this contract and the confirmation proceedings in connection therewith.

ARTICLE XXVIII. Member of Congress Clause.

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom. Nothing herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, the day and year first above written.

UNITED STATES OF AMERICA,

By .....

Party of the First Part.

TRUCKEE-CARSON IRRIGATION DISTRICT,

By .....

By .....

Party of the Second Part.

WASHOE COUNTY WATER CONSERVATION DISTRICT,

By .....

By .....

Party of the Third Part.

SIERRA PACIFIC POWER COMPANY,

By .....

By .....

Party of the Fourth Part.

EXHIBIT A

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ARTICLE V. Lake Tahoe Basin

A. The right of the United States or its agent to store waters in Lake Tahoe between elevations 6,223.0 and 6,229.1 feet (Lake Tahoe datum) and to release said stored waters for beneficial uses downstream from Lake Tahoe Basin is hereby ratified and confirmed subject to the rights granted in Section D of this article.

B. It is agreed by the states subject to the consent of the head of the federal agency having jurisdiction thereof, that an overflow weir of approximately 140 feet in length with a crest elevation of 6,223.0 feet, Lake Tahoe datum, upstream from the Lake Tahoe outlet gates shall be constructed and installed with necessary channel improvements within four years from the effective date of this compact provided that should the commission decide that it is in the best interests of each of the two states, it may extend such period for such additional period or periods as it may deem reasonable. The cost of this installation shall be borne by the States of California and Nevada in equal amounts. As used herein, Lake Tahoe datum shall be measured with respect to the top surface of the hexagonal brass bolt seven-eighths inch in diameter, projecting one inch from the vertical face of the southerly concrete abutment wall of the present existing Lake Tahoe Dam, at approximately 3.2 feet below the top of the wall and approximately in line with the upstream ends of the cutwaters of the concrete piers between the sluiceways of the dam. This surface of the brass bolt is presumed for the purposes of the compact to have an elevation 6,230.0 feet Lake Tahoe datum, notwithstanding that it was determined by the U.S. Geological Survey on November 15, 1960, to be at an elevation of 6,228.86 feet above sea level datum of 1929.

C. The storage rights in Lake Tahoe shall be operated alone or in conjunction with other reservoirs so as to minimize the period and duration of high and low water elevations in Lake Tahoe, provided that exchanges of water or releases between Lake Tahoe and other reservoirs shall not measurably impair the intended purpose of such reservoirs.

D. Upon construction of the overflow weir provided for in Section B of this article, the total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in said basin shall not exceed 34,000 acre-feet annually, of which 23,000 acre-feet annually is allocated to the State of California for use within said basin, and 11,000 acre-feet annually is allocated to the State of Nevada for use within said basin. After use of the water allocated herein, neither export of the water from the Lake Tahoe Basin nor the reuse thereof prior to its return to the lake is prohibited. This allocation is conditioned upon the construction of the overflow weir; however, it is recognized that there may well be a period of time between the effective date of the compact and the construction of the overflow weir; during that period of time both states shall be permitted to use waters within the Lake Tahoe Basin subject to the same conditions, both as to place of use and amounts of use, as are provided in this Article V.

E. In addition to the other allocations made by this compact, transbasin diversions from the Lake Tahoe Basin in both states existing as of December 31, 1959, may be continued, to the extent that such diversions are recognized as vested rights under the laws of the state where each such diversion is made.

The diversion of a maximum of 3,000 acre-feet per annum from Marlette Lake for use in Nevada is hereby recognized as an existing transbasin diversion within the meaning of this Section E.

F. Pumping from Lake Tahoe Basin for the benefit of downstream users within the Truckee River Basin shall be permitted only in the event of a drouth emergency as declared by the commission to the extent required for domestic, municipal, and sanitary purposes, and when it is determined by the commission that all other water available for such uses from all sources is being so utilized. In the event of such declaration of emergency, use of this water for such purposes shall have priority over use of water for any other purpose downstream from Lake Tahoe Basin. Pumping shall be done under the control and supervision of the commission and water pumped shall not be charged to the allocation of water to the Lake Tahoe Basin made herein.

ARTICLE VI. Truckee River Basin

The following allocations of water of the Truckee River and its tributaries, including Lake Tahoe releases, are hereby made in the following order of relative priority as between the states:

A. There is allocated to Nevada water for use on the Pyramid Lake Indian Reservation in amounts as provided in the 1944 Truckee River Decree (Final Decree in United States vs. Orr Ditch Company, et al. United States District Court for the District of Nevada, Equity No. A3). By appropriate court order, the United States, for and in behalf of the Pyramid Lake Indians shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so allocated so far as such change may be made without injury to the allocations to either state.

B. There is allocated to California:

1. The right to divert within the Truckee River Basin in California 10,000 acre-feet of water per calendar year which may be stored in reservoirs at times when the flow in the channel of the Truckee River at the United States Geological Survey Gauging Station at or near the California-Nevada state line exceeds 500 cubic feet per second; provided that such diversions shall not in the aggregate exceed 2,500 acre-feet in any calendar month and the amount of such storage in any one reservoir, except Donner Lake, shall not exceed 500 acre-feet of active storage capacity.

2. The amount of water as decreed to the Sierra Valley Water Company by judgment in the case of United States vs. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

3. Six thousand acre-feet of water annually from the conservation yield of Stampede Reservoir having a storage capacity of 225,000 acre-feet, subject to the execution of a contract or contracts therefor with the

Exhibit C

EXHIBIT A

ADDRESS REPLY TO
P. O. Box 388
Sacramento 7, Calif.

THE RESOURCES AGENCY OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES
1120 N STREET, SACRAMENTO

January 9, 1962

Mr. W. W. White, Bureau of Environmental Health
Chairman, Nevada Committee on Pumping from Lake Tahoe
Division of Public Health Engineering
State Health Department
Reno, Nevada

COPY

Dear Mr. White:

The members of the California Committee on Pumping from Lake Tahoe appreciated the opportunity to meet with the Nevada committee on August 23 for the discussion on the situation as it obtained at that time, relative to the possible need for pumping from Lake Tahoe this season. We are pleased, and I am certain that you on the Nevada side are also, that it has turned out that it was not necessary to take up a specific request for pumping from the lake at this time. However, we are aware that there is still a possibility that drought conditions may extend over into this year and that should such a condition prevail, it might then be necessary for Nevada to extend a specific request to California to permit pumping from the lake.

Aware of this possibility, the California committee has given consideration to the kind of conditions which it would appear necessary to include in any agreement between the two states, upon which pumping would be predicated. These conditions are set out below and I can assure you that we would be glad to meet with you at your convenience to discuss these conditions if you desire to do so. These conditions follow:

1. Any damage to property owners in California as a result of pumping from Lake Tahoe must be assumed by the State of Nevada. The State of Nevada must also assume the obligation of indemnifying the State of California in the event the state is held liable to individual property owners as a result of giving its consent to pumping from Lake Tahoe.

2. All other available storage should be utilized prior to pumping from Lake Tahoe.

~~Exhibit D~~

3. The quantity of water pumped from Lake Tahoe should be limited to the amount required to supplement any other existing sources of water available to meet the minimum domestic and sanitary requirements in the Reno-Sparks area.

4. Establish appropriate water conservation measures in the area served to minimize the amount of supplemental water required, such as metering.

There are other more detailed conditions that would have to be worked out at the time that any request was received for pumping from the lake. However, these other conditions would have to be developed in the light of the specific circumstances applicable at the time.

Since certain of the conditions outlined above might require the enactment of legislation or an appropriation, we thought you would wish to have this information as soon as possible, so we are supplying this letter for your use at this time, rather than waiting for some emergent condition. Should you desire to meet to discuss such legislation, it is our feeling that it would be helpful to have the Attorneys General from Nevada and California both represented at the meeting and also the Nevada Department of Finance.

The California committee feels that the most effective way of meeting the situation of drought emergency is to complete the negotiation and adoption of the California-Nevada Interstate Compact. You will recall that the compact draft now under consideration by the commission contains a provision under which a permanent commission could permit pumping under certain circumstances in times of unpredictable shortages in domestic water supplies that are of temporary nature.

However, pending the realization of a compact, we welcome the opportunity to discuss with you, at your convenience, the conditions which are outlined above.

Sincerely yours,

/s/ R. C. Price

R. C. Price, Chairman
California Committee on
Pumping from Lake Tahoe

TAHOE REGIONAL PLANNING AGENCY

P.O. Box 8896
South Lake Tahoe, Calif. 95731
(916) 541-0246

EXHIBIT A

March 7, 1977

Jim Thompson
Deputy Attorney General
Supreme Court Bldg, Capitol Complex
Carson City, NV 89710

Dear Mr. Thompson:

Due to TRPA Governing Board interest in the level of Lake Tahoe and its affect on TRPA management decisions, we would like to invite you to a meeting to discuss this subject.

The waters of Lake Tahoe are extremely low. A drop of one more foot and the Lake waters will fall below the natural Lake rim and below the Tahoe Dam crest for Truckee River outfall. Speculation is that this will occur in mid-summer, 1977. Upon this condition, the only method for supplying water to the Truckee River and its users will be to siphon water over the Dam, as discussed in 1962 negotiations, but evaporated upon substantial rainfall.

Potential changes in the level of Lake Tahoe will affect management decisions of the Tahoe Regional Planning Agency, especially in regard to the Shorezone Ordinance and its application. Lake level will affect permit decisions for boat ramp extensions and modifications, pier extensions, marina dredging, location of buoys, and removal of natural hazards. Changing of the Lake level could also affect TRPA's Erosion and Stormwater Runoff Management (208) Program and related shorezone drainage facilities.

For management considerations, it is essential for TRPA to know when a Lake level of 6,223 feet will be reached; will siphoning over the Dam be instituted; and if so, what quantities will be siphoned on a month by month basis. This information will also be crucial to future TRPA planning and implementation programs.

The meeting will be held at 10:00 a.m. on March 22, 1977 at the Tahoe Regional Planning Agency offices in South Lake Tahoe, 2155 South Avenue.

If you have any questions, or would like further information, please contact Germaine Bissell or Tom Jacob at TRPA, (916) 541-0246.

Sincerely,

Richard M. Heikka
Executive Officer

kl

cc: Harry Swainston

Exhibit B

"We spread our wings"

NATIONAL ANIMAL PROTECTION ASSOCIATION

CARSON CITY CHAPTER • P.O. BOX 2102 • CARSON CITY, NEVADA 89701

Telephone: 883-3275

March 28, 1979 - Committee on Environment and Public Resources
Bill A.B. 15

I am Mrs. Unilda Marshall residing in Carson City. I am speaking for the Carson City Chapter of the National Animal Protection Association's membership.

Needless to say the membership would like to see A.B. 15 or any type trapping of wildlife be banned in our State. We are no longer living in the 16th to 18th centuries where this type of hunting was a necessity for a meager living, food on the table or the necessity of clothing.

We would like to be certain of the registration fee under Section 2. It is shown as $5.00 for one trap, a one time fee - is this correct? We feel this is utterly ridiculous for this era of inflation and ask it be raised to at least $50.00. No one has such a small fee to pay in other ventures. Traps can be placed at the "drop of a hat" so to speak, for a petty $5.00 fee.

On Section 5 - 503.570:- We are at a complete loss with the wording, "visit or cause to be visited at least once each week each such trap, snare and so forth". We cannot express our amazement at such wording. We ask this be corrected to read "on a daily basis". What happens if you, your sons or daughters, or even your hunting dog should become snared in a leg hold trap? Would they quietly sit and play a game of jacks waiting one week for someone to discover them?

Many states are in the process of now changing their laws banning the use of the steel leg hold trap with teeth and we request this Committee to do the same. The un-teethed traps are available for purchase and we also request the definition and use of these unteethed traps be specifically named in this bill.

As stated before, our membership and many other residents would like to see trapping of wildlife banned in our State. The approximately 600 trappers licensed by Fish and Game are a minority and will never compensate for the immoral degradation that hangs over Nevada by allowing this mud mired venture.

Thank you.

Private citizen Paul Harvey

Mrs Unilda Marshall

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