

MEMBERS PRESENT: Chairman Jeffrey
Vice Chairman Redelsperger
Assemblyman Mello
Assemblyman Dini
Assemblyman Kovacs
Assemblyman Rhoads
Assemblyman Schofield
Assemblyman DuBois
Assemblyman Polish

OTHERS PRESENT: Please see attached Guest List

The meeting was called to order at 2:40 p.m. by Chairman Jeffrey.

SB 341 DESIGNATES LAHONTAN CUTTHROAT TROUT AS OFFICIAL STATE FISH.

Senator Sue Wagner was the first to testify regarding bill SB 341. She distributed a two-page history and explanation of why this particular fish has been chosen to be designated as the State Fish if this legislation is processed. This two-page history and explanation is attached hereto and marked as EXHIBIT A. She stated for this reason she did not have much to add unless there were specific questions. She did stress, however, that the cutthroat trout is one of the three native fish in this state and it has had tremendous historical and economic significance to this state. The world cutthroat trout was caught at Pyramid Lake in 1925 and supposedly weighed 41 lbs. This bill is supported by the Nevada Wildlife Federation, the Nevada Wildlife Commission, the Nevada Organization of Wildlife, the Nevada Department of Wildlife and the Ormsby Sportsmens Association and other sportsmens organizations.

Assemblyman DuBois wondered if the fish was found statewide. Senator Wagner replied it was her belief the fish were found in all the counties of the state but would defer to Mr. Dale Lockhart for more factual information.

Mr. Lockhart said they are essentially found in fourteen of the seventeen counties of the state. They are not native to Clark County but have been planted there.

Assemblyman Rhoads wondered if cutthroat was currently listed as an endangered species.

Mr. Lockhart stated they were currently listed on the Federal Threatened Species, which means they can be harvested pursuant to state laws and state regulations.

Assemblyman Rhoads wondered if designating the cutthroat trout as the State Fish would interfere with spraying projects used by the ranchers for the elimination of insects.

Mr. Lockhart replied he thought the distance requirement for the spraying was 100 yards and it was not the intention of the Department to hamper any of these spraying projects.

Assemblyman Rhoads then asked what the advantage would be to having a State Fish, other than costing the taxpayers money to process the bill.

Senator Wagner replied the rest of the western states or most of the rest of the western states had designated a State Fish and it was a drawing card for fishermen and that fishing is a serious form of recreation. She stated that she feels this particular fish has contributed greatly to the history and economics of the state and should be so designated.

There being no further testimony regarding SB 341 the public hearing was closed. Chairman Jeffrey called for testimony regarding AJR 28.

AJR 28 URGES CONGRESS TO REFRAIN FROM ESTABLISHING DESERT PUFFISH NATIONAL WILDLIFE REFUGE IN NEVADA.

Assemblyman Redelsperger explained that AJR 28 basically urges the Federal to refrain from establishing a pupfish refuge in the Armagosa Valley. He distributed maps showing the proposed location of the refuge. The maps are attached hereto and marked EXHIBIT F and EXHIBIT G. Although the bill was introduced in the United States Senate on January 19, 1981 by Allen Cranston* of California, Mr. Redelsperger pointed out that not one acre of it is in California. This proposed refuge is comprised of a total of 40 thousand acres. On the top of Map 1 is Lathrup Wells and is bottomed with the Parumph Valley. This indicates the demension of the area in question. He stated that in the back of the bill in subsection 4 there is authorized sums that may be necessary to carry out the provisions of this act. Mr. Redelsperger stated that it is his feeling the pupfish is adequately protected at this time, and there had been no input on this matter from the residents of the State of Nevada and especially those in the designated area. If this bill is passed, it will seriously curtail any further development.

Assemblyman Dini moved for a DO PASS on AJR 28, Assemblyman DuBois seconded the motion, the motion carried unanimously.

Chairman Jeffrey called for testimony on AB 383.

AB 383 REQUIRES FEDERAL GOVERNMENT TO PROVIDE CERTAIN INFORMATION AND OBTAIN PERMITS RELATING TO MX MISSILE PROJECT.

Before taking any testimony on AB 383, Chairman Jeffrey asked that Mr. Dale Lockhart testify on AB 220.

Mr. Lockhart explained there was a radio campaign at the present time in the Clark County area, implying the money received from the Big Horn Sheep Tag Auction would be used to augment salaries. He stated emphatically it is the intention of the commission to except sealed bids for one Big Horn Sheep. The experience of two other states has shown they have been able to take in \$20,000 in Utah in a similar auction, in Montana they took in \$29,000. He

* See Exhibit B

(Committee Minutes)

stated it is the intent of the Wildlife Commission to take this money and put it directly back into the wildlife account for the expansion of the Big Horn Sheep herd of Nevada. There is absolutely no intention for anything other than expansion of the sheep herd. He stated the Wildlife Commission will have an official letter stating this intention to the committee for their use.

Chairman Jeffrey then asked for further comments or questions on any of the three previously discussed bills. There being none, he directed attention back to AB 383.

Assemblyman Prengaman was the first to testify on AB 383 and he explained that the general purposes of AB 383 were stated in Subsection 2 where it says the Legislature hereby establishes a procedure for the timely communication of information as the development of projects, relating to the MX missile system, proceed. Specifying the kind of information which must be provided and the requirements which must be met, to permit the stated agencies effectively to participate evaluating the effects of the proposed Missile project, and to help fulfill the responsibilities of federal agencies to provide for public involvement in their deliberations concerning these projects.

The bill is designed to require agencies doing business in this state, in regards to the MX, to share information and apply for permits in a timely and established procedure. In the event this is not done, it gives the Attorney General clear power to take the legal action necessary to help the client.

Assemblyman Prengaman stated that Section 5 talks about provisions of this act applying to each federal agency whenever it is responsible for or involved in a project which anticipates (1) a need for access, (2) any use of sources of water, and (3) federal acquisition of state or private land, etc. Section 6 states each agency shall be for the preparation of a final environmental impact statement or the making of any final decision regarding the project and shall prepare and provide for the Governor, for transmission to appropriate state agencies and officials. Basically it is an environmental impact statement but tailored to the State of Nevada.

Subsection 1 is very important as it identifies for purposes of consultation and coordination, the officials of the federal agency who determine any matters relating to the project. In other words, the federal agency must specify who is in charge and who we will be dealing with in MX related matters. Then it goes on to specify further information in Subsection 3 and indicates how a proposed project might conflict with or adversely effect any plans for the use, conservation or environmental protection of state lands, water or federal lands. Subsection 4 deals with the financial effects of any project, which separately or cumulatively can be expected to add more than 10% to the expenditures of any state agency or political subdivision for providing services in any fiscal year. Section 7 is a very important section. After this statement is presented to the Governor and transmitted to the state agencies, if comment by a state official, agency or political subdivision,

identifies any conflicts with, or adverse effects upon state plans governing the use, conservation or environmental protection of state or private land or water facts material to the effect of the project upon those lands or water, the federal agency before the final preparation and distribution of any environmental impact statement and before making any final decision on the project, shall

(1) provide the Governor of this state and the state agencies which provided the comment, a further statement which describes any plan to mitigate any adverse effects and provide an explanation of any procedure it proposes to use in doing this.

Section 8: in constructing, developing or planning a project, every federal agency shall obtain (1) any license, permit or approval required by state law, (2) a permit for the appropriation of state water, except for any water which has been reserved for the purpose of the project, by the withdrawal of land, pursuant to the water law of this state.

Section 9 states no license, permit or approval may be granted before the applicant has complied with the provisions of this act and the expiration of 30 days after the application, in order to permit public comment.

Section 10 empowers the Attorney General to compel compliance with any section of this act.

Assemblyman Prengaman stated this is a very sweeping act. He has been notified by the Bill Drafter that several parts of this act were unconstitutional but the basic constitutional problem comes in Section 8 where it says that basically the federal agencies that come into the state to do business with the MX must obey state law and they apply for permits in a timely procedure. It is the opinion of the bill drafter this violates, among other things, the supremacy clause of the U. S. Constitution. (See Exhibit C)

Assemblyman Prengaman then referred to the Draft Environmental Statement. Anyone who expects the statement to protect the State of Nevada will be sadly mistaken because the Air Force is into their round of DEIS hearings and the thing that comes across over and over again is how inadequate this statement is. This information is coming from the state team assigned by the Governor to review certain sections of the statement.

The most damning evidence of what lies ahead comes from the Federal Government itself. Research on what has happened elsewhere bears this out. He stated that the greatest problem is that of the social problems. One of the first things you can expect when you have these large projects is that the older people will be driven out of town. The older people will be driven out of town because they are on fixed incomes and cannot cope with rapidly rising costs of living. High wage earners come in and force these people out. Assemblyman Prengaman stated this is a problem everywhere there has been a large governmental project and it is a problem that should be addressed in this statement. He then quoted the Governor's review committee report as to how they cope with this problem.

The DEIS in general fails to cite the impact upon senior citizens and the elderly population within the proposed basing areas. In other words, they do not consider this problem at all. Another serious problem will be the young people. The National Science Report states "More tragic is the effect boomtown living has on children, schools provided the state for their dramas. (Gillette, Wyoming) Gillette students demonstrated poor adjustment to school. Low achievement levels accompanied by truancy and high delinquent rates were observed." It also refers to the high rate assaults and cases of venereal disease among students. Again quoting from the Governor's review team, Assemblyman Prengaman stated, "As with other human service areas, the DEIS fails to address in any substantive fashion impacts on services involving youth." In other words, this is another group that was not addressed by the statement, together with other groups, such as housewives, etc. The Air Force has stated they recognize these problems and will address them in the future. It is Air Force's mode of operation to build the system and operate it, and let the consequences fall where they may. Assemblyman Prengaman stated that one of the tremendous problems faced by Alaska during the building of the pipeline was for each job opening, there were at least seven people there to fill the position. In Nevada it will be even worse because Nevada is not remote and hard to get to. There will be a great influx of poor people to get jobs and will have only what they can bring with them. Once they get here and can't find work, they will be trapped here and the state will have to take care of them. There is a very dangerous implication connected with all of this. In order to mitigate these effects, we are going to have to get aid from the Federal Government but we are also going to have to use existing programs. There are a large number of programs available and simply have to be utilized or applied for.

Assemblyman Prengaman stated when the time comes and this environmental statement is not any more complete than it is now and is being used as the reference to grant to deny these federal programs, will be indeed get any of these aid monies that are now being promised? So far, as stated by Mr. Steve Bradhurst, Nevada MX Coordinator, has not been guaranteed one red cent for MX impact aid. We will have to fight to get anything now. After the fact is not the time to address this problem! Assemblyman Prengaman's next comments pertained to matters dealing with water. A question arose in the Senate Finance Committee as to whether the Air Force was going to share the information they have been gathering on water by drilling deep wells. There was question as to whether this information was going to be shared or whether it was going to be classified. AB 383 speaks to that and any information gathered by the federal agency would have to be shared with the State of Nevada. That information would have to be available to us or the state could condition on getting permits so we have a handle on this. If the deep aquifers don't recharge themselves, they will be sentencing central Nevada communities to death.

Assemblyman Prengaman spoke to the magnitude of this project and reiterated that we are compelled to get commitments from the Federal Government ahead of time. We have to get commitments on information sharing, commitments on abiding with state laws, commitments on impacts. We have to get commitment on things that have never been committed before in history. This must be done ahead of time as it will never happen after the fact.

In response to a question by Assemblyman DuBois, Assemblyman Prengaman said it is his understanding the first step to getting mitigating funds is to have an adequate assessment of the problems, the Air Force admits this. The Federal Government is willing to pay for legitimate things relating to MX. The first step is to have an accurate and adequate statement of the problem and the present draft environmental statement does not do that -- neither does it address the major social problems. If the draft environmental statement does not address the problems of the elderly, poor, and the children, the chances of this enabling us to get aid are very slim. This bill would force information sharing. It would force the Air Force to come into the state with a very specific statement on the impact on the State of Nevada.

Mr. Pete Morros, Assistant Director of the Department of Conservation and Natural Resources, stated they support the bill and it provides guidelines and direction through the Legislature as to how they want the department to proceed. He commented on a language change they would like to see made on page 2 line 44. Section 3 indicates how a proposed project might conflict with or adversely affect any plans for conservation, or environmental protection of federal land or water. The inference here is that the Federal Government stated there is a big difference as to what they think of as their water rights and what we know they have as water rights. Under Section 8, lines 28, 29, 30, Mr. Morros stated they would like to see the word "reserved" changed to "any water that has been acquired."

Assemblyman Prengaman stated he has no objection to these changes.

Assemblyman Rhoads wondered if this bill will entail more work by the department if this is passed.

Mr. Morros responded by saying if the MX project does come, it will cause more for all agencies concerned.

Mr. Jim Wadhams was next to testify in regards to AB 383 with him was Mr. Steve Bradhurst. Mr. Wadhams is the Director of the Department of Commerce and Chairman of the intergovernmental working groups; Mr. Bradhurst is the Director of the MX Project Field Office. He stated they are sympathetic with the concept of the bill but is inclined to agree with Mr. Daykin regarding the constitutionality of the bill. Whether it is constitutional or not, it expresses the attitude and intention of the Legislature. It certainly gives the executive branch a much clearer direction on what you want these departments to take. The attitude expressed in the bill is expressly the attitude they have been taking and will continue to do so.

(Committee Minutes)

Mr. Bradhurst stated the bill is a good expression of the attitude of the legislation on the MX project. At this time the biggest problem is getting specific site information. They have been asking the Air Force to provide them with a management construction plan. The construction management plan should cite where construction workers will be at any specific time, how many, their job skills, etc. The job plan would help the local governments plan for the impact. If they know what is ahead of them in 1984 or 1985, etc., where construction workers will be needed and how many support jobs will be associated with those construction workers. At present they don't have this and if this is what AB 383 is expressing, they certainly concur. He stressed they would like to have this information immediately.

In answer to Assemblyman DuBois' questions regarding how it helps the state get money, Mr. Bradhurst replied the only way this bill will help the state get money would be that it at least gives Congress an indication where the state Legislature is coming from, relative to the adverse impacts. Mr. Andy Gross was present to provide information on SJR 16, which calls for the Federal Government to do several things including provision of information in a timely fashion, provision of mitigation funds, and so forth. He stated that it is his feeling the Federal Government will only provide information to the extent that the National Environmental Act and Federal Land Policy Management Act requires them to do. At this time they are the only tools that we have to use in getting the information we would like to have, relative to mitigation and impacts of MX employment. As far as mitigation money at this point in time, the State of Nevada has submitted a preliminary request to the Federal Government for \$250,000,000 for FY 82 money just for highways alone in the construction bubble. That is a request that has been documented by the Federal Highway Administration as well as by the Corp and the Air Force. Also, the Governor appeared on April 3, 1981, before the House Military Construction Authorization Committee and submitted to that committee a funding mechanism that would make it easy for the State of Nevada and its local jurisdiction to receive funds if MX comes to get funds from the Federal Government down to local jurisdictions as quickly as possible.

Assemblyman Kovacs wondered if the state might be putting too many constraints on the Air Force and might be sending the message to them and saying we don't want MX.

Mr. Bradhurst stated that he feels that what is being said is just what the Governor has been saying all along.

Whether the MX does or does not come, it is incumbent on the Air Force to furnish the state with this information and this bill is a statement that we need this information now, and it is the wish of the state that they cooperate with the state agencies involved.

Mr. Bradhurst stated that because of FY 81, the military construction appropriation bill, Congress is on record that the Air Force should be front and center providing this information, and the construction management plan should be provided because the state and local governments need as much information as possible, as early as possible, to gear up and prepare for the MX. This bill suggests that view.

Assemblyman DuBois asked what other funds other than the highway funds they would be getting.

Mr. Bradhurst stated during this last year specifically the request has been for 1 1/2 million at the local level for impact planning and one million at the state level. For this, the state agencies have prepared budgets to be submitted to Congress, for impact planning, it is a blue sky budget and he would say it is the neighborhood of 5 million dollars, in addition to \$250 million highway request. Primarily for planning.

At this point urgency is definitely needed in order for the local entities to determine what they need; they need information.

Assemblyman DuBois asked if this bill would give them the complete back-up for claims for mitigation funds.

Assemblyman Pregelman added to his previous testimony. Referring to the National Environmental Policy Act and Federal Land Withdrawal Act and one of the things that has not had much discussion is fast tracking the MX. He stated the Air Force has gone so far as to draft legislation to that regard. The following paragraphs concern fast tracking. SJR 16 is a resolution not a bill and does not lock anything into law; it does not demand that. He quoted from "MX Missile Experimental": Air Force seeks ways to duck environmental issues. In light of these apparent environmental obstacles to the MX deployment, the Air Force has drafted legislation to provide the means for expediting federal and state procedures required for selection of a basing area for the MX missile system. The proposed missile system basing act would waive certain environmental regulations under the 1969 National Environmental Policy Act and thereby streamline or narrow the process. This bill would make it easier for the Defense Department to withdraw public lands for MX basing, shorten the comment period on environmental impact documents and curtail judicial review of MX. Both the importance and controversial nature of this anti-environmental legislation is well illustrated by the twenty odd drafts of the bill already completed. It is as yet undetermined whether the Air Force will submit a final version to Congress. Senator William Proxmire, Democrat, Wisconsin, criticized the bill in December warning that it spelled trouble for the residents and local political leaders of Utah and Nevada. He pointed out that local residents would be and could be faced with the continued uncertainty of future land grabs by the Air Force which could intervene and overrule local and state permit granting authority, in short, in Proxmire's words, this bill would gut environmental laws, usurp local and

state control over land, curtail local legal rights and railroad the MX down the throats of residents in the affected areas. Assemblyman Prengaman stated that he feels it is very dangerous to expect the National Environmental Act to protect us or that the Federal Land Withdrawal Act is going to protect us. The state is going to have to act to protect itself.

Chairman Jeffrey then called for testimony on AB 440.

AB 440 PROVIDES MEASURES FOR ALLEVIATING THE EFFECTS OF THE MX MISSILE PROJECT.

Mr. Andy Grose was the first to testify regarding AB 440, and gave a general outline of the bill and some of the other MX legislation pending at this time. AB 440 came from two Legislators who are members of the special committee on MX during the interim, SB 241 is the major bill that came out of that committee. SB 241 did not include everything the committee had talked about or felt was necessary and the extra work of that committee is in AB 440. There are three pieces to AB 440, Section 1 establishes the state MX office as a statutory agency. Currently it exists under executive order. (See Exhibit D)

Mr. Grose stated that SB 229* was similar to this bill but had an amount specified in it that would be used as a revolving fund to be used for front money to be used for local governments and possibly for state agencies as well. When money has been committed from the Federal Government but is not yet here and yet there is need for money for architects, getting contractors, the local governments or other entities will be able to borrow from this revolving fund and then when the Federal Money arrives, you pay it back. Senator Ashworth proposed an amount of \$2,000,000 but the State MX office suggested and the review group concurred that \$10,000,000 is a more realistic amount.

Mr. Grose stated the third point he would like to make is an omission from SB 241. When the state agencies listed in this bill were authorized to accept MX money, the Department of Wildlife was added.

Mr. Jeffrey called for additional testimony on AB 440.

Mr. Bradhurst and Mr. Wadhams stated they would like to recommend some amendments to Section 1. Mr. Wadhams stated Section 1 was a very brief creation of a state agency and there is normally some need for legislation to go along with this so as to give some direction on how to operate. Basically the substance of the amendments are to create an agency that is sufficiently flexible so it can react to the constantly changing MX proposal which would be totally accountable to the Legislature. The budgets for the MX project office will be presented to the Ways and Means Committee and have already been submitted to the Senate Finance Committee.

* See Exhibit E

Mr. Bradhurst stated it would be his suggestion that a sunset clause be tacked on this bill so when this MX was completed, the department would be automatically done away with, and if it is decided the MX will not come into the state, the department would cease to be within a date of 30 to 60 days or if it was decided that the MX would be located in another state.

Mr. Bradhurst and Mr. Wadhams then went through the amendments section by section. The first section legislates in more specific language the creation of the office and breaks it down into three divisions.

Section 2 describes basically what the director is, that he is appointed and is similar to other department heads.

Section 3 allows the director to appoint the head of the various divisions that were described in the first section.

Section 4 is standard language out of NRS limiting the activity and describing the responsibility administratively of the division chiefs.

Section 5 allows the agencies to enter into contracts, accept grants, and all of this would be subject to the other laws relating to those sorts of activities, and that would be a presentation to the standing money committees or interim finance.

Section 6, permits employment of legal counsel and investigators and is subject to other provisions of Nevada law that requires legislative approval either by the appropriate committees or the interim finance.

Section 7 designates the Attorney General as the lawyer for the office. This again is consistent with other state agencies.

Section 8 allows employment of independent contractors that are engaged for consulting services on behalf of the state or the state agencies are part of the grant that is applied for and approved by the Federal Government and reviewed by the inter-governmental working group. That activity of the approval of those contracts has been taken care of through a federal process.

Section 9 allows money or grants of property or service to be accepted by the agency that would be reviewed by the Legislature.

Section 10 allows the agency to rent office space, subject to the limits of the appropriation.

Section 11 allows administrative supplies for reports, forms to be prepared.

Section 12 addresses administrative regulations. This section will allow exemption from the traditional administrative regu-
lative process. It would still be subject to review by the
Legislature, but would not be required to go through more time-
consuming aspects than an agency.

(Committee Minutes)

Section 13 requires reports to be submitted to the Legislature in the form and manner prescribed by the Legislature. The reason for this being the agency will be totally funded by federal funds and there will be no stated funds involved. Consequently the interim finance committee would be in a position to review the acceptance of that federal grant.

Section 14 follows up on that.

Section 15 creates a special revenue fund and is identified as monies from the Federal Government. In Subsection 2 it is identified source of funds to be used for paying salaries. The check and balance in this is that funds cannot be received in the first instance with the approval of a line item grant which has been presented both by the inner finance committee and will be heard by Ways and Means.

Section 16 allows the agency to function in a manner that will get the job done, consistent with the legislative grant.

Assemblyman Kovacs wondered about the state getting too involved with contracts and then not being able to function within the guidelines, he wondered about these contract being eligible to review by the Interim Finance Committee.

Mr. G. P. Etcheverry, representing the League of Cities, was the next person to testify regarding AB 440. He stated they concur with the mechanics of AB 440. In reviewing the amendments, he stated that they would urge the committee's very serious review of SB 241, SB 229, and SB 381, it is his feeling that these bills address the same problem as does this bill.

Mr. Etcheverry expressed the desire to make this bill consistent with the other MX bills now in the Senate.

Chairman Jeffrey called for further testimony regarding AB 440.


Mike Daley, Economic Development Director for the City of Las Vegas and MX Coordinator, stated much of the formulas and criteria in which eligible recipients make their grant applications for MX funds, whether it's planning or for construction, it should be consistent with the federal and the state entity in order to receive those funds. It is his feeling that AB 440 be consistent with bills in the Senate, Congress and the Department of Defense has outlined for eligibility to recipients within local and state governments. SB 381 calls for the creation of an impact mitigation board. It has taken some time for cities, counties, school districts, other forms of local governments, and state agencies to come to an agreement, that this is how the process should work. That we should have an impact mitigation board made up of equal representation of city, county, state, school districts, and federal representatives in order to identify, prioritize and then fund grants for the impact mitigation process. If we now give that power under AB 440 to give money by the State Board of Examiners, we are not going to be consistent with what the Federal Mechanism 3414

in agreement with what SB 381 already states and what cities, counties, school districts, and all entities of the government of Nevada have agreed to. Mr. Daley asked that the committee consider deleting the State Board of Examiners from being the agency that controls that revolving fund and giving that to the impact mitigation board which will be inacted by SB 381 in order that we be consistent with all those formulas and criteria that have been agreed upon. The State Board of Examiners does not really have the ability, or the staff, to handle these funds and their MX knowledge is limited. The mitigation board would be appointed by the Governor on a selection basis, with only those entities that are regarded as impacted in the MX deployment area. The mitigation board would be a nucleus of people who are highly MX knowledgeable and address those problems in a consistent fashion. The other request the City of Las Vegas would like to be considered is that each applicant who applies for planning funds under AB 440 be limited to no more than \$500,000 per application. They would be able to make sure that all entities throughout Nevada have an ability to the resources of that fund. By limiting this fund to \$500,000 per applicant, it could not be depleted by one entity or applicant.

There being no further testimony regarding this bill, the public hearing was closed.

There being no further business before the committee, the meeting was adjourned at 4:40 p.m.

Respectfully submitted,


Judy E. Sappenfield,
Committee Secretary.

ASSEMBLY

ECONOMIC DEVELOPMENT

AGENDA FOR COMMITTEE ON AND NATURAL RESOURCES

TUESDAY

Date April 14, 1981 Time 2:00 P.M. Room 222

Bills or Resolutions to be considered	Subject	Counsel requested*
AB 383	Requires Federal Government to provide certain information and obtain certain permits relating to "MX" missile project.	
AB 440	Provides measures for alleviating the effects of the "MX" missile project.	
AJR 28	Urges Congress to refrain from establishing Desert Pupfish National Wildlife Refuge in Nevada.	
SB 341	Designates Lahontan cutthroat trout as official state fish.	

*Please do not ask for counsel unless necessary.



AB 383 ASR-28
 AB 44 SB-341
 TUESDAY

GUEST LIST

DATE: APRIL 14, 1981

ECONOMIC DEVELOPMENT AND NATURAL RESOURCES

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL N
Diane Campbell	Nevada Miners & Prospectors Assn ASR-28	X		
Ann Wagner	State Senator SB 341	X		
Dale V. Lockard	Nevada Dept. of Wildlife	X		
MIKE DALY	City of Las Vegas			
Jay W. Shaw	State Assembly ASR 28	✓		
Pete Pringman	State Assembly AB 383	X		
Murphy	UPI			
Joe Cathcart	City of North Las Vegas			
Steve Bradhurst	State MX Office	X		440 303
Andy Grose	LCB			440
Pete Momo	Conservation			
Jim Wadhams	Commerce / MX			
Steve Bradhurst	MX FIELD OFFICE			

5216

THE LAHONTAN CUTTHROAT TROUT

The Lahontan cutthroat trout is Nevada's most important and interesting native fish. It was originally found in all of the source waters that entered prehistoric Lake Lahontan. These included the Carson, Humboldt, Truckee and Walker Rivers and their many hundreds of miles of tributaries. Geographically speaking these waters extended into portions of all Nevada counties with the exception of Clark, Esmeralda and Lincoln.

Lahontan cutthroat were utilized by Indians who existed in northern and central Nevada. They were first recorded by Captain John Fremont in his explorations through Nevada. Early settlers proceeded to catch and eat the native trout. In some areas they also transplanted them into formerly barren streams.

The large cutthroat that existed in Pyramid Lake and Lake Tahoe were then harvested and sold to markets as far away as San Francisco. As civilization progressed, the original range and extent of the Lahontan cutthroat diminished. As a means to help protect and increase the cutthroat populations, their culture was undertaken by the State of Nevada. Brood stocks of various groups of fish were developed and spawn taken annually. The young fish produced each year were stocked into numerous waters throughout Nevada and elsewhere.

Sport fishing for Lahontan cutthroat was frequently described in early day newspapers. As the fame of the fisheries spread, anglers from afar came to catch the lunker fish from Lake Tahoe, Pyramid and Walker Lakes. The world record for all varieties of cutthroat was set in 1925 by John Skimmerhorn with the capture of a 41 pound fish at Pyramid Lake. Accounts describe in glowing terms the numerous large trout taken from the above waters and from such places as Reese River, Humboldt River, South Fork (Humboldt), Maggie Creek and Mary's River.

Exhibit "A"

Today the Lahontan cutthroat is found in many of the same streams in which they originally occurred. This is particularly true of the Humboldt River system where they exist in approximately 60 streams. In addition, these fish are produced at both state and federal hatcheries and stocked into such waters as Lake Mohave, Walker Lake, Pyramid Lake, Blue Lakes, the Truckee River and several lakes in the Ruby Mountains. As they become available, additional waters will be stocked. Extending the distribution of wild populations of Lahontan cutthroat into some of the streams where they formerly existed is also occurring by transplanting. The overall goal of the Lahontan cutthroat trout program is to remove it from federal listing as threatened by using the above cited techniques. Thereafter, it will be managed as the important and unique species it deserves to be considered.

Aside from the large size this species is capable of achieving, unquestionably its ability to survive in the harsh rigors of the Great Basin is remarkable. Nevada's native trout is adapted to stream and lake environments that no other trout can withstand. These habitats range from high mountain creeks and alpine lakes to warm, intermittent lowland streams and large, alkaline lakes. This tenacity to not merely survive, but to even flourish in the wide variety of mountain and desert environments in which it is found, makes the Lahontan cutthroat trout very unique. Furthermore, this same ability makes Nevada's trout a very valuable manageable resource.

Various western states have already designated a specific fish as the "State Fish". In a survey of ten nearby states, six have already accomplished this and three others are currently anticipating doing so. Those already designated are as follows:

California	-	Golden Trout
Colorado	-	Rainbow Trout
Montana	-	Black Spotted Cutthroat Trout
New Mexico	-	Rio Grande Cutthroat Trout
Oregon	-	Chinook Salmon
Utah	-	Rainbow Trout

The Lahontan cutthroat trout should be designated as the Nevada "State Fish". For reasons given elsewhere in this report, it above all other fishes, richly deserves this title. Its historic, scientific, recreational and economic stature should not be denied.

John C. Ernest Newberry

97TH CONGRESS
1ST SESSION

S. 41

To authorize the establishment of the Desert Pupfish National Wildlife Refuge in the State of Nevada, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1981

Mr. CRANSTON introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the establishment of the Desert Pupfish National Wildlife Refuge in the State of Nevada, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That, in order to preserve and protect several species of
4 desert pupfish, and to interpret their evolution in areas of
5 their natural environment, for the benefit and education of
6 the people of the United States, the Secretary of the Interior
7 (hereinafter referred to as the "Secretary") is authorized to
8 establish the Desert Pupfish National Wildlife Refuge (here-

Exhibit "B"

1 inafter referred to as the "refuge") in the State of Nevada.
2 The refuge shall contain certain lands in Ash Meadows,
3 Nevada, comprising approximately forty thousand acres as
4 depicted on a map entitled "Ash Meadows, Nevada-Califor-
5 nia", dated January 1981.

6 SEC. 2. Within the boundary of the refuge, the Secre-
7 tary may acquire lands, waters, and interests therein by do-
8 nation, purchase with donated or appropriated funds, or ex-
9 change. Lands, waters, and interests therein owned by the
10 State or Nevada, or any political subdivision thereof, may be
11 acquired only with the consent of such owner. When the Sec-
12 retary determines that lands, waters, and interests therein
13 have been acquired sufficient to constitute an efficiently ad-
14 ministrable unit for the purposes of this Act, he shall estab-
15 lish the refuge by publication of notice to that effect in the
16 Federal Register. Pending such establishment and thereafter,
17 the Secretary shall administer the lands, waters, and inter-
18 ests therein within the boundary of the refuge in accordance
19 with the provisions of this Act.

20 SEC. 3. Effective upon establishment of the refuge pur-
21 suant to section 2, the Devil's Hole portion of Death Valley
22 National Monument, which was added to the Death Valley
23 National Monument by Proclamation Numbered 2961 of Jan-
24 uary 17, 1952 (66 Stat. c 18), is abolished, as such, and the
25 lands, waters, and interests therein are made a part of the

1 refuge established pursuant to this Act. Any funds available
2 for the Devil's Hole portion of Death Valley National Monu-
3 ment on the date of such establishment shall be available for
4 the purposes of the refuge established pursuant to this Act.

5 SEC. 4. There are authorized to be appropriated such
6 sums as may be necessary to carry out the provisions of this
7 Act.

○

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 885-5627

KEITH ASHWORTH, *Senator, Chairman*
Arthur J. Palmer, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 885-5640

DONALD R. MELLO, *Assemblyman, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

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March 5, 1981

Assemblyman Paul V. Prengaman
Assembly Chambers
Legislative Building
401 South Carson Street.
Carson City, Nevada 89710

Dear Assemblyman Prengaman:

We have drafted at your request the attached bill (BDR S-1043). In the opinion of this office, its provisions, as requested, contain several constitutional infirmities. The basic constitutional principle involved is that in the absence of a statute of Congress authorizing state regulation, the instrumentalities of the Federal Government are immune from state regulation if the regulation might interfere with the functions they are designed to perform or is inconsistent with the purpose of the federal statute involved. McCulloch v. Maryland 4 Wheat 316, 4 L.Ed. 579 (1819); Hancock v. Train 426 U.S. 167 (1976); Ventura County v. Gulf Oil Corp. 601 F.2d 1080 (1979). This principle also extends the same immunities to federal contractors. Miller v. Arkansas 351 U.S. 948 mem. (1956). This principle devolves from the existence of the Supremacy Clause and the Property power in the United States Constitution which reads in relevant part:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the supreme Law of the Land; (clause 2 of Article VI)

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; (clause 2, section 3 of Article IV)

1. In light of the above, the provisions of BDR S-1043, as requested, which require that certain information be provided

Exhibit "C"

0422

Assemblyman Paul V. Prengaman

March 5, 1981

Page 2

to state agencies on a timely basis are constitutional. These provisions are within the general purposes of 42 U.S.C. § 4332 and 43 U.S.C. § 1701 which govern land withdrawals and federal land management and provide an increased role for public involvement in these determinations and impose duties on federal agencies to provide information and assess environmental effects in consultation with public groups. These provisions of BDR S-1043 are consistent with these statutes and the federal purpose. Merrill Lynch, Pierce, Fenner and Smith v. Ware 414 U.S. 117 (1973). These provisions have been drafted as requested and constitute sections 6 and 7 of the attached draft.

2. The provisions which require federal agencies to apply for any licenses, permits or approval pursuant to state law for the effects on waters or the use or effects on state or private land are in our opinion unconstitutional. These provisions give the state a veto power over a use of federal land which has adverse consequences on uses of state or private land. At present, no federal statute expresses the policy that federal agencies involved in the "MX" project must obtain state permission for such uses. No congressional action makes this requirement clear and unambiguous and such requirements have consistently been held invalid. Nancock v. Train supra at 179, Ventura County v. Gulf Oil Corp. 601 F.2d 1080 (1979) at 1084; and Miller v. Arkansas supra.

The second concern of these provisions is the process by which federal agencies would obtain dominion over state or private lands. The Federal Government may take private property for a public use as long as just compensation is provided. U.S. v. Pewee Coal Co. 341 U.S. 114 (1951) This power extends to interferences with the use of property. Jacobs v. U.S. 290 U.S. 13, (1933). A taking of property does entitle the possessor to compensation, but any conditioning of the exercise of the power of eminent domain on compliance with state law is impermissible. These provisions have been drafted as requested and constitute subsection 1 of section 8 of the attached draft.

3. The provisions which require federal agencies to apply for permits to appropriate water pursuant to state law violate the Supremacy Clause to the extent discussed below.

Assemblyman Paul V. Prengaman
March 5, 1981
Page 3

Winters v. U.S. 207 U.S. 564 (1908) established that when the Federal Government withdraws its land from the public domain and reserves it for a specific purpose, the government, by implication, reserves the rights to then unappropriated water sufficient only to accomplish this purpose. When Congress authorizes land withdrawal for purposes of "MX" construction and operation, an implied reservation of surface and ground water may occur. Cappaert v. U.S. 426 U.S. 128 (1976). But only that amount of water necessary to fulfill the purpose of the land withdrawal may be reserved. U.S. v. New Mexico 438 U.S. 696 (1978) The state may require the federal agency to apply for a permit to appropriate all other water as long as it does not conflict with an explicit congressional directive to the contrary. California v. United States 438 U.S. 635 (1978). If Congress were to provide for the condemnation of water rights in legislation which withdraws land for "MX" missile development, any condemnation may only be able to proceed according to state water law. California v. U.S. supra at 662 and 669. Notably, Congress has never so provided, rather it historically has shown great deference to the water law of the western states. These provisions are considered unconstitutional only to the extent that they would apply to any reserved water rights, and, as drafted, do not apply to any reserved water rights and constitute subsection 2 of section 8. As drafted, in our opinion, they are constitutional.

Very truly yours,

FRANK W. DAYKIN
Legislative Counsel

By George V. Postrozny
George Postrozny
Deputy Legislative Counsel

GP:ab
attachment

0-121

DRAFT LEGISLATION FOR THE DEPARTMENT OF MX PROJECT COORDINATION

I. DEPARTMENT OF MX PROJECT COORDINATION; CREATION; DIVISIONS.

1. The Department of MX Project Coordination is hereby created.
2. The department consists of a director and the following division:
 - (a) Impact planning division.
 - (b) Contract and grant management division.
 - (c) Intergovernmental coordination division.

II. DIRECTOR: APPOINTMENT; QUALIFICATIONS; SALARY AND EXPENSES.

The Director shall:

1. Be appointed by, be responsible to, and serve at the pleasure of the governor.
2. Be in the unclassified service of the state pursuant to the provisions of chapter 284 of NRS.
3. Receive an annual salary in an amount determined pursuant to the provisions of NRS 284.182.
4. Receive the travel expenses and subsistence allowances fixed by law for state officers and employees.
5. Not engage in any other gainful employment or occupation.
6. Have had at least 5 years of responsible administrative experience in public or business administration or shall possess broad management skills in areas related to the functions of agencies composing the department.
7. Be selected with special reference to his training, experience and aptitude for coordinating agencies dealing with planning, financing, management, and coordination between levels and branches of government. His knowledge and abilities and should include the following:
 - (a) A comprehensive knowledge of administrative principles and a working knowledge of broad principles relating to subject matters under his administrative direction.
 - (b) Administrative ability to assess the adequacy of agency operations and the protection of the public interest as related to the subject fields.
 - (c) Ability to organize and present oral and written communication to the governor, the legislature and other pertinent officials or persons.

Exhibit "D"

0426

III. DIRECTOR: POWERS AND DUTIES; DESIGNATIONS OF DIVISION CHIEFS.

The Director shall:

1. Appoint with the consent of the governor, a chief of each division of the department.

IV. CHIEFS OF DIVISIONS: UNCLASSIFIED SERVICE; SALARIES; DUTIES; OTHER EMPLOYMENT PROHIBITED, EXCEPTION. The chief of each of the divisions of the department shall:

1. Be in the unclassified service of the state pursuant to the provisions of chapter 284 of NRS.
2. Receive an annual salary in an amount determined pursuant to the provisions of NRS 284.182.
3. Administer the provisions of law relating to his division, subject to the administrative supervision of the director.
4. Devote his entire time and attention to the business of his office and shall not pursue any other business or occupation or hold any other office of profit.

V. NATURE AND FUNCTIONS OF THE DEPARTMENT; POWERS.

1. The department may:
 - (a) Make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter with any governmental agency, private corporation or other entity, or natural person.
 - (b) Enter into agreements or other transactions with, and accept grants from and cooperate with any governmental agency or other source in furtherance of the purposes of this chapter.

VI. EMPLOYEE, LEGAL COUNSEL OF THE DEPARTMENT.

The director may employ, without regard to the provisions of Chapter 284 of NRS, legal counsel, investigators, and other professional consultants and such other employees as are necessary to the discharge of its duties.

VII. ATTORNEY GENERAL: OPINIONS AND ACTION AS ATTORNEY.

1. The attorney general shall act as the attorney for the department in all actions and proceedings brought against or by the project office pursuant to any of the provisions of this chapter.

VIII. INDEPENDENT CONTRACTORS.

NRS 284.173 (7) is hereby amended to add the following:

"(e) Contracts executed by the Department of MX Project Coordination."

IX. ACCEPTANCE OF GIFTS OR GRANTS OF PROPERTY OR SERVICE: PROCEDURE.

NRS 353.335 (5) is hereby amended as follows:

"This section does not apply to the Nevada Industrial Commission, the University of Nevada System, or the Department of MX Project Coordination."

X. PURCHASE, RENTALS, CONTRACTS FOR EQUIPMENT AND SUPPLIES.

The department may rent, lease, purchase, or contract all equipment and supplies that may be necessary for the purpose of this chapter.

XI. PRINTING AND STATIONERY.

The Superintendent of the State Printing and Records Division of the Department of General Services shall prepare and furnish such stationery and printing, including all such reports, statistics, forms, instruments and accounts as may be necessary for the use of the department and its offices upon the requisition of the department. Charges and payments for these items must be made as provided in NRS 344.110.

XII. ADMINISTRATIVE REGULATIONS.

1. NRS 233B.039(1) is hereby amended to add the following:

"(j) the Department of MX Project Coordination."

2. The department shall have unlimited power to make and from time to time amend and repeal bylaws, rules and regulations to carry into effect the powers and purposes of the department office.

XIII. ESTIMATES OF EXPENDITURE REQUIREMENTS. SUBMISSION BY STATE EXECUTIVE DEPARTMENTS; DELIVERY TO FISCAL ANALYSIS DIVISION OF LEGISLATIVE COUNSEL BUREAU.

NRS. 353.210(3) shall be amended as follows:

"Agencies, bureaus, commissions and officers of the legislative department, the public employees' retirement system, the Nevada Industrial Commission, the Department of MX Project Coordination and the judicial department of the state government shall submit to the chief for his information in preparing the executive budget the budgets which they propose to submit to the legislature."

XIV. BUDGET SUBMISSIONS.

NRS 353.246 is hereby amended as follows:

"Budgets of legislative, judicial departments, public employees' retirement system, Department of MX Project Coordination; form prescribed by legislative commission.

Exception as provided in Subsection 3 of NRS 353.210, the provisions of NRS 353.150 to 353.245, inclusive, do not apply to agencies, bureaus, commissions and officers of the legislative department, the public employees' retirement system the department of MX Project Coordination and the judicial department of the state government. They shall submit their budgets to the legislature in such form as shall be prescribed by the legislative commission."

XV. DEPARTMENT OF MX PROJECT COORDINATION FUND; CREATION, DEPOSITS, USES.

1. Department of MX Project Coordination fund is hereby created as a special revenue fund. All monies provided from the federal government for use by the department shall be deposited therein.
2. The Department of MX Project Coordination may:
 - (a) Maintaining staff and equipment necessary or convenient for the exercise of its powers and functions under this chapter.
 - (b) Audits, inspections, investigations, publication of notice reports and consultants.
 - (c) The salaries, travel expenses and subsistence allowances of the members of the department office and its staff.

XVI. ADDITIONAL POWERS OF THE DEPARTMENT OF MX PROJECT COORDINATION.

In addition to the express powers, duties and functions given to the department by this Title, the department has such other powers and rights as may be necessary or incident to the proper discharge of its duties.

SENATE BILL NO. 229--SENATORS KEITH ASHWORTH,
GLASER, GIBSON, CLOSE, BLAKEMORE AND LAMB

February 13, 1981

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Referred to Committee on Finance

SUMMARY--Makes appropriation to revolving account for certain expenses relating to 'MX' missile project. (BDR S-687)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Contains Appropriation.

EXPLANATION--Matter underlined is new; matter in brackets [] is material to be omitted.

AN ACT making an appropriation to a revolving account for planning expenses of political subdivisions in the State and State departments, agencies, commissions and instrumentalities relating to the 'MX' missile project; and providing other matters properly relating thereto.

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

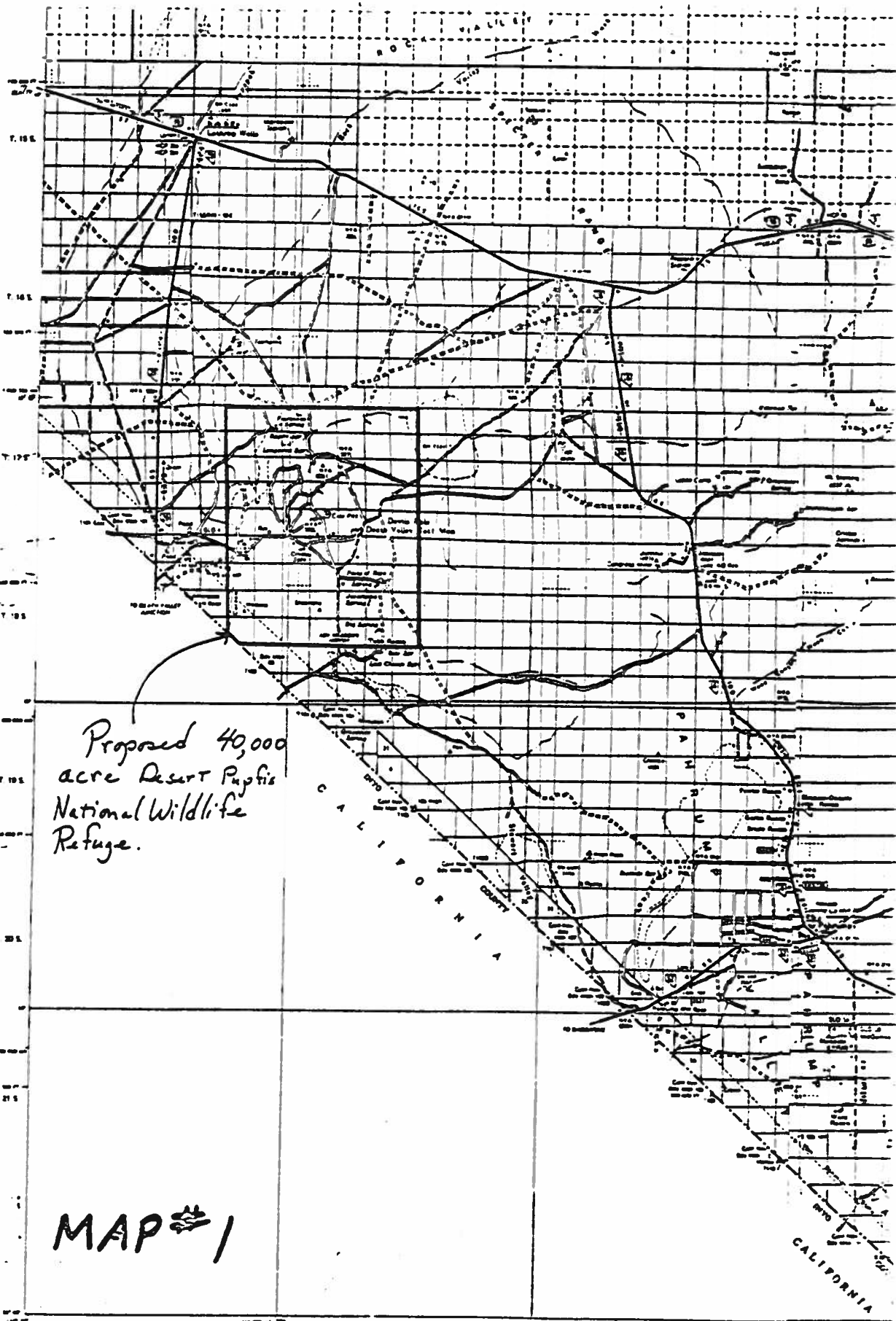
1 SECTION 1. There is hereby appropriated from the state general fund to the "MX" missile
2 planning account, which is hereby created as a non-reverting account within the fund, the
3 sum of [\$2,000,000] \$10,000,000. The State's contribution to the fund is to be diminished
4 by the amount the Federal Government might appropriate to the fund.

5 SECTION 2. This account must be administered by the state board of examiners and is to
6 be used for making advances to political subdivisions of this state and state departments,
7 agencies, commissions and instrumentalities for planning expenses relating to the
8 installation of the "MX" missile system which qualify for reimbursement by the Federal
9 Government.

10 SECTION 3. A political subdivision of the state and state departments, agencies,
11 commissions and instrumentalities may apply to the state board of examiners for an advance
12 from this account for planning expenses which it shows that the Federal Government has
13 agreed to reimburse.

14 SECTION 4. Upon reimbursement from the Federal Government, a political subdivision of
15 the state and state departments, agencies, commissions and instrumentalities shall deposit
16 the amount it received as an advance for planning expenses into the state treasury for
17 credit to the "MX" missile planning account.

Exhibit "E"

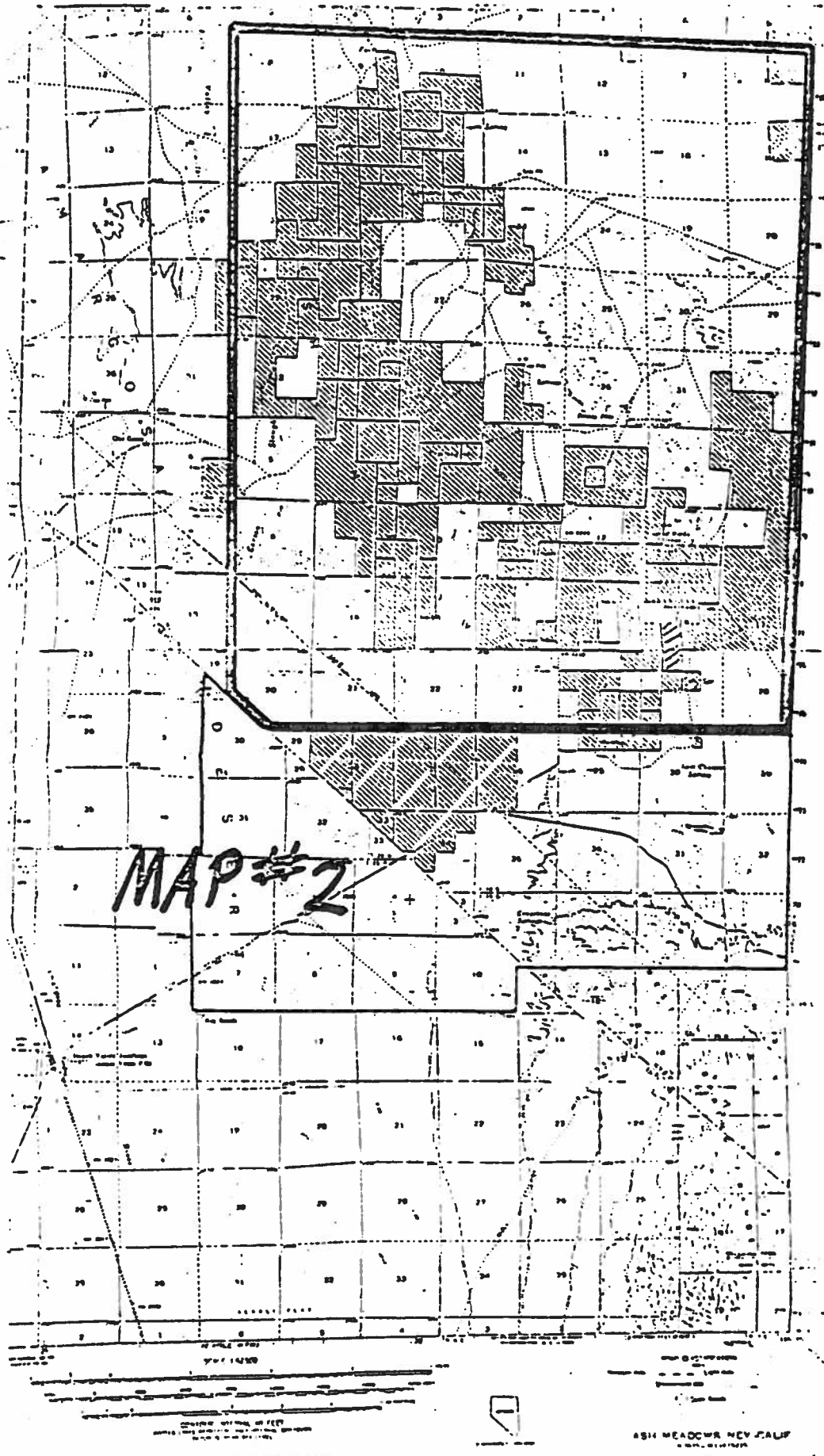


Proposed 40,000
acre Desert Pupfish
National Wildlife
Refuge.

MAP #1

<p>Legend</p> <p>--- Section Boundary</p> <p>--- Township Boundary</p> <p>--- Range Boundary</p> <p>--- County Boundary</p> <p>--- Township</p> <p>--- Range</p> <p>--- County</p> <p>--- Section</p> <p>--- Quarter Section</p> <p>--- Acreage</p> <p>--- Elevation</p> <p>--- Water</p> <p>--- Road</p> <p>--- Railroad</p> <p>--- Canal</p> <p>--- Pipeline</p> <p>--- Power Line</p> <p>--- Telephone Line</p> <p>--- Gas Line</p> <p>--- Oil Well</p> <p>--- Mine</p> <p>--- Quarry</p> <p>--- Cemetery</p> <p>--- School</p> <p>--- Church</p> <p>--- Store</p> <p>--- Post Office</p> <p>--- Gas Station</p> <p>--- Motel</p> <p>--- Hotel</p> <p>--- Restaurant</p> <p>--- Bar</p> <p>--- Tavern</p> <p>--- Club</p> <p>--- Park</p> <p>--- Golf Course</p> <p>--- Cemetery</p> <p>--- School</p> <p>--- Church</p> <p>--- Store</p> <p>--- Post Office</p> <p>--- Gas Station</p> <p>--- Motel</p> <p>--- Hotel</p> <p>--- Restaurant</p> <p>--- Bar</p> <p>--- Tavern</p> <p>--- Club</p>	<p>Scale</p> <p>0 100 200 300 400 500 Feet</p> <p>0 100 200 300 400 Meters</p> <p>North Arrow</p>	<p>LOCATION DIAGRAM</p>	<p>QUADRANGLE LOCATION</p>	<p>QUADRANGLE 12 S RANGE 31 E</p> <p>NEVADA STATE PLANNING SURVEY DIVISION</p> <p>U.S. DEPARTMENT OF AGRICULTURE FEDERAL BUREAU OF SURVEY</p> <p>130</p>
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Exhibit F



MAP #2

ASH MEADOWS NEV CALIF