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JOINT HEARING SENATE COMMITTEE. ON FEDERAL STATE AND LOCAL GOVERNMENTS,
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS, 55TH SESSION OF NEVADA LEGIS-
LATURE - JANUARY 29, 1969

SUBJECT: A. B. 60 - An Act relating to interstate waters; ratifying
and approving the California-Nevada Interstate Compact.

This hearing was attended by the following interested parties:

Ed Fike, Lt. Governor of Nevada
James W. Johnson, Jr., Counsel, Nevada Compact Commission
Roland D. Westergard, Nevada Compact Commssion
Fred H. Settelmeyer, Minden, Nevada
Ray Knisley, Lovelock, Nevada
Robert Leland, Attorney, Reno, Nevada
Richard C. Sill, Toiyabe Chapter Sierra Club Conservation Committee
Carole Wright, Editor, Native Nevadan
Assemblywoman Eileen Brookman,
State Senator Cliff Young
Maya Miller, League of Women Voters of Nevada
Tina Nappe, Citizen
Hubert Bruns, Chairman, California Compact Commission
John C. Buckwalter, Citizen, Incline Village, Nevada
Ruth Buckwalter, Citizen, Incline Village, Nevada
R. Johnson, Indian Affairs Commission
Grace Bordewich, Citizen
Jose A. Zuni, Bureau of Indian Affairs
Mike Kruglak, Nevada Appeal, Carson City, Nevada
Charles E. Springer, Toiyabe Chapter Sierra Club Conservation Committee
Martin D. Mifflin, Desert Research Institute, University of Nevada
Verl Hendrix, Fallon, Nevada
R. S. Leighton, Nevada Compact Commission, Reno, Nevada
J. D. Wood, T.C.I.D., Fallon, Nevada
Bolton Minister, Nevada Compact Commission, Yerington, Nevada
Robert Hunter
Alvin James and Nancy Bowers, Citizens

Senate Committee: James I. Gibson, Farr, Dodge, Hecht, Monroe, White,
Bunker

Assembly Committee: Hal Smith, Branch, Dini, Hilbrecht, Getto, Wood,
Bryan Hafen, Lingenfelter, Mello

Chairman Hal Smith, Assembly Committee on Government Affairs opened the hearing by announcing the purpose was to consider AB 60, that it was a joint Senate and Assembly Committee hearing, and that a list of people had asked to introduce information. He asked Mr. Roland Westergard, State Engineer and member of the California-Nevada Interstate Compact Commission to introduce the speakers he wished. Mr. Westergard stated that another member, Robert Leighton, would be available for questioning, that Mr. Jim Johnson, legal advisor, was also available, and that Mr. Bolton Minister would make the Commission presentation. He stated that he had prints made of the area involved and Chairman Smith invited him to place the print on the blackboard within vision of all present.

It was acknowledged that Mr. Hubert Bruns, Chairman of the California Compact Commission was present. Mr. Bruns in answer to the introduction stated that he was present primarily to listen.

Mr. Westergard introduced Mr. Bolton Minister, Mason Valley Representative on the compact commission.

Mr. Minister said that he would undertake to present not only the compact but also some background on the reasons why the negotiations were undertaken, what effect the compact would on the State of Nevada, and also, failing the compact, the effect on the State. He called the committees' attention to Sec. 2, lines 6 thru 9, the phrase "and approved by the representatives of the United States". He said that the committee may wish to clarify inasmuch as the compact has not been ratified by the U. S. Congress. At this time no approval is expected until both states have ratified the compact. He said that he felt the agreement that had been reached with California is firm. Three interstate rivers and one lake are involved. The compact will probably yield Nevada in excess of one million acre feet of water per annum. The reasons for the compact negotiations were that both states and the United States authorized negotiations which would seek to resolve the water problems of each of the two states for increasing a limited common water supply. In order to back up long term water storage problems in the late 1940's the two states joined to investigate the Lake Tahoe watershed to see whether additional water could be granted to upstream users. The conclusions were that additional water could be granted. However there were also the protests of downstream users. In the early 'thirties they were trying to adjust problems of the lake level at Tahoe and integrate the Truckee River into the Tahoe Basin area as a part of the Truckee River negotiations. This did establish minimum levels at the Lake but many problems were unsolved. Problems regarding the fluctuations of lake levels, allowing the lake to recede too far, etc. The Carson River Basin has been in litigation since 1945 and is still not settled. The Truckee River is in the same place as Tahoe regarding the protests of downstream users. The Walker River is in dispute by the Walker River Irrigation District directors with regard to California users' restrictions. As a result of all of these problems it was determined between the two states to determine the waters available and the waters which are the property of both states. With the passage of the compact the problems could be resolved by the authorities of each state. The need for a settlement has been accentuated primarily by developments at Lake Tahoe. Given the compact as now presented the problems are resolved. Each of the two states will be able to determine the amount of water available. Changes in the types and places of use may be permitted as changes occur. The professed claims of the United States for water reserve in the Truckee River Basin exceed the annual flow of the Truckee River. Beneficial uses are recognized as having the highest priority for water rights. Waters not needed for these beneficial uses are to be divided. Uses under federal claims of right are limited by the beneficial uses for the states. No compact could be arrived at if the full professed use of federal claims were admitted. Water use is the basis for the compact; not water rights.

Mr. Minister then referred to the Article IV of the compact which establishes the California-Nevada Compact Commission, outlines the membership, powers and duties and functions. He said that after the first few years it is believed the compact will be largely self-enacting. Once the compact is established, the directions

given, and the uses of the water are cataloged, he foresees that the compact will then be self operating. This in turn will lead to lesser costs.

Article V recognizes the right of the United States to Lake Tahoe storage in part of the lake subject to the construction of an overflow weir when new allocations are established. The State of Nevada will be obligated to participate in one half the cost of the overflow weir which is estimated to be \$100,000.00. It is believed that improved efficiency created by the overflow weir will allow creation of 7500 acre-feet of new water in Tahoe by allowing efficient outflow of water and reduction of evaporation. It would minimize high and low levels of the lake. Trans-basin diversions are recognized and permitted as they now exist. Echo Lake can be diverted. Marlette Lake diversion to Nevada and North Creek diversion into Washoe Valley are long established. The compact permits pumping from Lake Tahoe for downstream users.

Article VI recognizes the 1944 Truckee River Decree and allocations for the Pyramid Lake Indians in amounts determined in the decrees. A maximum amount of water is recognized as an existing beneficial use of water in Nevada for the Pyramid Lake Indian Reservation with any additional water used for domestic or municipal purposes on the reservation.

The Article in Section B sets forth the California allocations from the Truckee River Basin. California is allocated 10,000 acre-feet of water per calendar year for reservoir storage at times when the flow in the channel of the Truckee River at the United States Geological Gauging Station at or near the California-Nevada State line exceeds 500 cubic feet per second subject to the provision that such diversions shall not in the aggregate exceed 2,500 acre-feet in any calendar month and the amount of storage in any one reservoir. Donner Lake shall not exceed 500 acre-feet of active storage capacity. The Sierra Valley Water decree judgment is recognized. California is allowed to divert 6,000 acre-feet of water annually for the conservation yield of Stampede Reservoir subject to contract negotiations with the United States of America. Also, subject to the guarantees established for the Pyramid Lake Indian Reservation, California is permitted to develop additional yields of water for use in California if it becomes imminent that present uses have been realized in full. Nevada is permitted to share in this additional yield upon bearing a proportionate share of the cost of its development. Storage of 30,000 acre-feet annually as set forth in California State Rights permit 11666 in Prosser Creek Reservoir is recognized and confirmed.

Nevada is allocated all water in excess of the allocations made in Sections B and C of Article VI.

Mr. Minister then outlined the Carson River Basin allocations as set forth in Article VII of the compact. He stated that the agreements in this basin between upstream and downstream users were of long-standing. Article VII A sets forth the California allocations from the natural flow of the West Fork Carson River and its tributaries for existing nonirrigations uses and for direct irrigation use. The same is subsequently provided for the East Fork Carson River and its tributaries. The right to store 2,000 acre feet of water per annum within Alpine County subject to existing uses in Nevada is recognized.

Section B of Article VII establishes the State of Nevada allocations. Irrigation diversions for use on presently irrigated lands in the area above Lahontan Reservoir are determined. Diversion uses are established for irrigation either directly or by storage in Lahontan Reservoir or other existing reservoirs for use on the Newlands Project.

Present uses of water on National Forest Lands in the Toiyabe National Forest are confirmed in the compact and recognized by both states with such priority as may be appropriate.

With the satisfaction of existing beneficial uses additional yields are recognized for development by the Washoe Project or such new projects as may be authorized and constructed. These additional yields are to be allocated between the states with equal priority 20 percent to California and 80 percent to Nevada. Except for express provisions, the waters of the Carson River shall not be used outside the Carson River Basin.

The Walker River Basin allocations are with few exceptions covered by the rights and uses established in Decree C-125 between the United States and the Walker River Irrigation District. Allocations for the Walker River Indian Reservation, storage in Weber Reservoir, Topaz Reservoir, diversions for Antelope Valley, and allocation of unused water in the basin shall be administered by a Watermaster whose responsibilities and powers are set forth in Sec. C of Article VII of the compact.

Mr. Minister stated that is the compact is not consented to the basic problems that now exist will continue except that they will be greater. The downstream users will continue to protest. California recognizes riparian rights which Nevada does not. Court suits will continue unless the compact succeeds in establishing equitable allocations of water.

Chairman Smith of the Assembly Committee thanked Mr. Minister for his presentation. Senate Committee Chairman Gibson asked Mr. Minister if the compact was being considered presently in the State of California. It was confirmed that the compact has been presented and is being considered by the California Legislature.

Assemblywoman Brookman asked Mr. Minister why an Indian had not been appointed to the Compact Commission and he stated that that was a determination of the State Governors about which he could not offer an answer.

Mr. Westergard was asked if he had anything he wished to add to the comments of Mr. Minister and he said that he did not but would be glad to answer any questions from the committee should they arise.

Former State Senator Ray Knisley was invited to make his remarks to the committees. He stated that he felt the Lake Tahoe interests were well covered in Article V of the compact. He said that the State of California in accepting Article V was giving up all riparian rights in lieu of the waters allocated. He said that there is no trespass. He said he believed that if the compact is accepted it would be highly beneficial for Lake Tahoe and for the Lake Tahoe

planning presently underway.

Mr. Robert Leland, as spokesman for the Paiute Indian Inter-Tribal Council, was introduced to the committees.

Mr. Leland stated that he was an attorney from Reno and that he represented the Pyramid Lake Paiute tribe. He took exception to the remarks of Mr. Minister with regard to the language of the compact relating to U. S. approval. He said the U. S. Interior Department had been holding joint meetings during the past four months and that on January 14 the Department took a forthright stand opposing the compact. He said they opposed it for the same reasons that conservations groups and sportsmen generally oppose it. He said that Article VI did not contain any language he had presented to the compact commission for their consideration.

First, he said that the compact does not contain any positive provision for the Pyramid Lake Indian Reservation water rights to be effected. It would be left for the determination of Federal Law. He said it would seriously interfere with the water users' right to go to court. Although Article VI A does recognize the Orr Ditch decree allocating to Nevada water use on the Pyramid Lake Indian Reservations that in fact it seriously limits it. It does not mean they will get the water. He said that the compact binds Nevada so that it could never claim more than the 30,000 acre-feet decree allocation for Pyramid Lake. He said it would prevent them from going to court to assert their legal right to any more water than is granted under the present Orr Ditch decree. He said that a 1902 agreement allowed the diversion of a major portion of the Pyramid allocations at Derby Dam for the Newlands Project. He said that in the 66 intervening years of operation only 5,000 acres of land could be irrigated at the highest point. Mr. Leland said that 350,000 acre-feet of water a year is necessary to sustain Pyramid Lake. He said that whereas the Carson River Basin is presently relied upon for sustaining the Newlands Project it is foreseeable that if that basin fails to do so diversions could be made from the Truckee that would be ruinous. He said that the Indians are under the trusteeship of the United States. The compact would limit U. S. rights to intervene on their behalf. Mr. Leland stated that there were available to the committees hydrologist's reports clarifying the actual needs essential to the sustaining of Pyramid Lake with its vast income and recreational potential.

Chairman Smith requested that Mr. Leland make these reports available.

Senator Dodge said that he wished to assure Mr. Leland and those he represents that the Nevada Legislature's intent was to sustain Pyramid Lake and protect the allocations essential to such sustenance. Senator Dodge asked the Compact Commission legal counsel whether he could clarify matters with this regard.

Mr. James Johnson, the compact legal counsel, said that there is a basic misconception of what the compact is supposed to do. He said that the "uses of the water" provided the guidelines for the commissions deliberations in determining allocations rather than the "claimed rights" of some water users. Mr. Minister stated that the U.S. Government's so-called "claimed rights" to Truckee River Basin water far exceed the actual annual flow of the river. In effect

then the compact commission had of necessity to provide clarification and ask the U. S. Congress for consent provisions as provided in Article XXII. Mr. Johnson said that the compact attempted to provide a practicable technique by which the State of California and the State of Nevada could equitably allocate the disputed waters. It is not the intent of the compact to determine how the allocated waters shall be utilized within the boundaries of each state. That is a determination to be made on another level and will only confuse the issues in making a determination of acceptance for the compact. The commission used the basis of existing water uses and concerned itself only with the water rights which have been legally decreed. With regard to the water rights presently existing for the Pyramid Lake Indian Reservation, Mr. Johnson stated that those will have to be arbitrated between the Department of Interior and the Bureau of Indian Affairs thus falling outside the concerns of the compact commission. Mr. Johnson emphatically reiterated, however, the concern the commission had for the decreed water rights for the Pyramid Lake Indian Reservation and that in effect the compact guarantees those rights by specific inclusion. He stated that this inclusion does not limit future allocations for Pyramid Lake but rather that it provides a minimal guarantee.

Senator Gibson asked Mr. Leland if he felt that the compact gave the State of California water that belonged to Pyramid Lake. Mr. Leland replied that his objection was based on the limitations placed on Pyramid allocations.

Chairman Smith asked Mr. Leland to provide the committees not only with the hydrologist's reports but also with the referenced objections to the compact implied from the Department of Interior representatives.

Mr. Ray Knisley asked to make further comment and stated that there is no question that the Pyramid Lake water users have been "jobbed". He stated, however, that that fact had nothing whatever to do with the compact. It was done by the U. S. Government. He reminded the committee that recognition of the compact should not be delayed by consideration of claims not germane to the compact itself and the allocations the compact provides. He said failure of the compact could result in California legal suits that conceivably could deny the eastern Lake Tahoe Basin users to proper allocations.

It was suggested that the Department of Justice be petitioned to go to court for the purpose of decreeing the water rights of the Indian Reservation.

Assembly Chairman Smith state that Mr. Charles Springer had asked to be heard and he was introduced to the committees.

Mr. Springer said that he represented the Toiyabe Chapter Sierra Club's Conservation Committee and that he agreed with the objections outlined by Mr. Leland. He said that he saw an unnecessary danger in the compact, a possibility that Pyramid Lake may be destroyed. If this danger exists, he said, why not spell it out. He said that government lawyers have expressed the same concern. He said he would appreciate the opportunity to present evidence to the committees. Previous experience indicates that the 30,000 acre-feet allocation for Pyramid Lake will be interpreted as a

limiting allocation rather than a minimal guarantee. He said the Sierra Club felt that the committees should consider an amendment to the compact that would eliminate this danger.

Assemblyman Hilbrecht asked Mr. Frank Daykin of the Legislative Counsel whether there was in his opinion an amendment which would simply accomplish the objectives stated by Mr. Leland. Mr. Daykin said that he did not feel the language of the compact could be altered by simple amendment in such manner. He said the effect of such amendment might undo the compact commission's lengthy accomplishment.

Chairman Smith introduced Miss Tina Nappe a citizen who had asked to speak.

Miss Nappe said she appeared as an interested citizen who felt that the compact does not insure the water rights of the Pyramid Lake Indian Reservation and that it should be clarified accordingly.

Mr. Jose Zuni from the Bureau of Indian Affairs said that he merely wanted to assure the committees that the Indians are hopeful that the days of exploitation are over. He said the history of the treatment in the past was a bleak one but that he felt the Indian people are hopeful the committees will look on them as a part of the community within the State of Nevada.

Senator Gibson asked that the allocations of the compact to the State of California be clarified with regard to the effect upon the Pyramid Lake allocations. Mr. Hubert Bruns of the California Compact Commission said that the allocations within California would have little effect. They have been protected and future allocations within Nevada would be determined within Nevada or by the Department of Interior.

Assembly Chairman Smith assured Mr. Springer that he would have an opportunity to present his objections but noted that the present hearing had been given 10-day notice to all those interested.

Mr. Alvin James was introduced and made a statement supporting Mr. Leland. He noted that the representation of Northern Nevada and the Indian community on the compact commission was lacking. He said he would like to see all of the various interests properly represented. He emphasized the value of Pyramid Lake as a part of northwestern Nevada.

It was agreed that commendation was due the compact commission for the long period of time that they have spent in trying to arrive at an agreement and the diligent work that has been preparatory to the sending of the compact to the committees.

On motion of Senator Farr the hearing was adjourned.

INFORMATION MEMO TO: PAT BURKE, SECRETARY, SENATE COMMITTEE ON 17
FEDERAL, STATE AND LOCAL AFFAIRS.

The Assembly Committee on Government Affairs would appreciate your office furnishing copies to them of your minutes covering all Joint Hearings your Committee in the Senate has with the Assembly Committee.

The membership of the Assembly Committee is as follows:

Hal Smith, Chairman
Norman (Ty) Hilbrecht, Vice Chairman
James Wood, C. W. Lingenfelter, Virgil Getto, Bryan Hafen, David Branch,
Joseph Dini, and Donald Mello.

Unless other interested parties request copies a total of 15 copies of these minutes will cover the Assembly needs. It would be appreciated if you would have these copies delivered to me as Committee Secretary of the Assembly Committee on Government Affairs. I will take care of the distribution. Thank you.

James F. (Jim) Tranter
Assembly Comm. on Govt Affairs.