

ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS - MINUTES OF MEETING  
FEBRUARY 11, 1969 - 55TH LEGISLATIVE SESSION

38

Present: Smith, Wood, Branch, Lingenfelter, Mello, Bryan Hafen, Getto, Hilbrecht, Dini

Absent: None.

(NOTE: The record of the Joint Meeting of this Committee with the Senate Committee dated February 6, 1969 should be corrected to show that Assemblyman Mello was present and Assemblyman Wood was absent.)

Chairman Smith convened the meeting at 3:00 p.m. and announced that the first item on the agenda would be a forum presentation prepared by the Nevada Jaycees. He introduced the Nevada President of the group, Mr. Bob Mitchell, and the group's Governmental Affairs Chairman Larry D. Wadsworth.

Mr. Wadsworth provided the committee members with copies of a brochure prepared by his committee outlining "Facts, Figures and Proposals regarding Reorganization and Consolidation of Counties in Nevada by Initiation of a Nevada Constitutional Convention".

Mr. Wadsworth stated that his group had adopted this project recognizing that the State's present constitution dated from the early 1860's. Attempts to bring it up-to-date by constitutional amendment process are lengthy and often fail because the amendments are not properly understood by the voters. The financial benefits of county consolidation were presented. Mr. Wadsworth indicated that the suggestions in the brochure he had circulated for county consolidation were merely suggestions and that any actual plans would, of course, be left for legislative determination. He noted that if a bill calling for a constitutional convention were passed out at this session it would not be until 1971 at the earliest that a new constitution could be presented for approval. This, he said, is another reason why the process should be begun now and why his group were urging that the proposal be started.

Assemblyman Hilbrecht indicated that other states have adopted constitutional conventions at great cost to the taxpayers and that in many instances the constitutions arrived at have then failed to gain the approval of the electorate. He asked how the group would feel about legislation that would provide for county mergers as being a step in the right direction. Mr. Wadsworth said he felt the group would support such legislation but he indicated that this session of the legislature has 17 resolutions for constitutional amendment before it now and emphasized the value that could derive from the constitutional convention approach.

Chairman Smith thanked the gentlemen for their presentation and commended the group's work thus far. He stated that he knew that they had done an excellent job of bringing this matter to the attention of the public. He asked that if the group could gather additional information on the actual results of this movement in other states that the committee would be very anxious to have that information for consideration. They were then excused from the meeting.

Chairman Smith then stated that the purpose of this meeting was to

give an opportunity for the introduction of additional information on AB 60 which would ratify the California-Nevada Interstate Compact to be made. He asked that those present restrict themselves to new information rather than reiterate the presentations made in the joint hearing that was held with the Senate committee earlier.

He welcomed the following interested persons to the hearing:

Dr. Martin Mifflin, Desert Research Institute, University of Nevada  
Mr. Robert Leland, Attorney, Reno, Nevada  
Margaret Wheat, Foresta Institute on Ocean and Mountain Studies  
Stephen M. Born, Doctorate Student from University of Wisconsin  
James Bidavich, Pyramid Lake Paiute Tribal Council  
Charles Springer, Attorney, Reno, Nevada  
Fred H. Settlemyer, former State Senator, Minden, Nevada  
Ray Knisley, former State Senator, Lovelock, Nevada  
Bolton Minister, Nevada Compact Commission, Yerington, Nevada  
Robert S. Leighton, Nevada Compact Commission, Reno, Nevada

Also present at the meeting were three students from the University of Nevada who are participating in the state legislative internship program administered by the Department of Political Science at the University. They were William Eber, Kathy Daniels and LaVonne Douthit.

Chairman Smith introduced Dr. Mifflin for his remarks.

Dr. Mifflin said that he would not be presenting any official viewpoints of the Desert Research Institute with which he is connected. He was present as one who has been a citizen of Nevada for six years, who is professionally interested in water resources, and who is interested in the natural resources of Nevada generally. He said that he would approach the compact from a hydrologists viewpoint first, the actual articles of the compact, and comment on the alternatives to the compact.

The hydrology of the river systems cannot be ignored. The prime sources of runoff are from precipitation above 7,000 feet and most of it is in California. The sinks of water are another part. The sinks are Pyramid Lake and the Fallon area and the Carson sink; Walker River terminates in Walker Lake. Pyramid Lake, Walker Lake and the Carson sink are linked to the waters being divided in the compact. The waters in these systems are eventually used by transpiration or evaporation. The lakes are sustained by the flow of these rivers and prior to the development of the waters of these rivers for irrigation purposes or other uses, the lakes were adjusted to the inflow. This is still the case today except that there is an imbalance of diversions. Now the lakes are declining at various rates. This has been true since the early 1900's. Pyramid Lake is declining and so is Walker Lake. Walker Lake is declining at 2 acre feet a year greater than Pyramid. Carson Lake is no longer as it was. Nobody can interpret this compact truly now as a court 50 years from now may do so. After the fact that the compact is law, the intent of the compact may be lost.

The intent of this compact is clear and, I believe that the intent is in accord with one special interest group rather than the public interest. Article I, Lines 17 and 18 states among the purposes of the

compact "to protect and enhance existing economies". The commission is composed of persons whose interests are primarily agricultural. The most important article in the compact is Article II, Definitions, D, E, and F. As I read these definitions they purposely exclude Pyramid Lake and Walker Lake. On page 3, Article IV, lines 29 thru 41 reflect the interest of the authors of the compact. The Nevada representatives all can be interpreted as being connected with agriculture. I believe this is not in the interests of the general public. 10

Article V limits the use of basin derived water. It does not limit the use of imported water. This aspect does not necessarily protect Lake Tahoe as a natural reservoir. The Lake Tahoe Basin is protected as a storage facility. The overflow weir would permit the more rapid release of the water from the Lake. I believe this denies the hydrological. Evaporation will continue to exist. If you release the water fast enough, there has been less evaporation going on. This is a false argument. In Article VI it is specified that the water for Pyramid shall be used on the reservation. The 30,000 acre feet is a drop in the bucket as far as maintaining Pyramid Lake. In Article VII, lines 22 to 31, the waters of the Carson River are divided percentage-wise between California and Nevada with a water right given that is probably three times the amount of water that the land can get rid of. When you consider losses it is perhaps two times as much. This is a very generous allocation. The reason for this allocation is to establish a high water right that will justify building reservoirs. Another reason is that the authors feel there is no shortage of water on the Carson River so they can be liberal in the allocation of these waters. Par. c of Article VII recognizes that there may be even more water.

The Walker River Article is VII and has as its most important aspect the showing of the bias of the authors shown on page 14, lines 24 thru 39. In effect any water that passes through the Weber Reservoir should be considered to be irrigation water. In the intent then no water is indeed available for Walker Lake. On page 15, lines 26 and 27 is states "Unused water shall be used only within the Walker River Basin". If we believe Walker Lake is excluded, then all used water should be used upstream from Walker Lake.

Article XIII demonstrates a contradiction of most of the compact. If you do not let water into the lakes to maintain the lakes you could not protect the fish, wildlife and recreation uses of the water.

Nevada has the least water of any state in the nation. 90% of our resources are used in agriculture. Today our economy is not predicated upon agriculture. Each acre of cultivated land in the Fallon area produces about \$32 an acre net after fixed costs. There is about 60,000 acres in that area. This only \$2,000,000 a year. Recreation is a coming thing for Nevada. Agriculture is not increasing. It is stable and should not dictate the uses of this water for the people. This would be very unwise. I think any compact should be looked at with the future in mind.

Assemblyman L ingenfelter asked Dr. Mifflin how long it would be before Pyramid Lake is dried up. He replied that based on the past rate of decline, about 200 years. Lingenfelter than asked

if it would not reach a point of stabilization. Dr. Mifflin said not if it is used all up as at the present time.

Assemblyman Dini asked Dr. Mifflin what the alternatives were that he stated he would suggest. Dr. Mifflin said that they were to pass the compact, to pass it with amendments or not to pass it. Assemblyman Wood asked if Dr. Mifflin had any quarrel with the division of the waters as between the states. Dr. Mifflin stated that he quarellled with the idea that the compact must be interpreted as legislating in part the uses for the water.

When the committee had completed their questions of Dr. Mifflin he was thanked for his presentation and Chairman Smith called upon Mr. Robert Leland who had requested about five minutes for his comments.

Mr. Leland presented Chairman Smith with a letter outlining his position as presented at the previous hearing and also appending the positions stated by the Department of Interior to him in opposition to the compact. These letters are copied and made a part of these minutes. Mr. Leland said he presented these to the committee as promised in his capacity as attorney for the Pyramid Lake Paiute Tribe Council who are opposed to the compact. He said that the reasons stated by the Department of Interior are the same as those he had presented previously. Mr. Leland said that his position as well as that indicated by the government agency spokesmen was supported by such lawyers as the Chief of the Water Law Section in the University of Washington, Mr. John Frank of Yale, and a representative from Arizona on Water Law. They disagree with the lawyers from the compact commission. If there is that much doubt in the legal minds, Mr. Leland said he felt that the compact commission would want to amend the compact. He said if it is not the intent of the commission to prejudice the water rights of the Pyramid Lake allocation then let us say so. He said that he thought the language could make that clear. If it is felt that the water should be used elsewhere he said that fact should be spelled out.

The committee questioned Mr. Leland with regard to the professed opposition of the Department of Interior to the compact. Mr. Leland told Assemblyman Wood that his advice from the Department was dated January 14, 1969. It was acknowledged that the information submitted by Mr. Leland predated the present administration.

Chairman Smith then read into the record an office memorandum from State Engineer Roland D. Westergard with which was enclosed a letter from J. R. Riter, Federal Representative, California-Nevada Interstate Compact Commission dated February 5, 1969 advising that he had been informed that a formal Federal position has not been taken with regard to the proposed Compact. Copies are appended to this record.

Margaret Wheat of the Foresta Institute was asked to comment. She said that she would relinquish her time for the present to Mr. Stephen M. Born. If she cared to make further comment following his presentation she would.

Mr. Born introduced himself as a doctorate student from the University of Wisconsin seeking his Ph.D. Hydrogeology and working on his dissertation subject: Deltaic Sedimentation at Pyramid Lake, Nevada.



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Mr. Born appeared to oppose the compact on the basis that it is ambiguous and jeopardizes the existence of Pyramid Lake. He stated that nowhere in the compact is there any language guaranteeing an inflow to Pyramid Lake sufficient to sustain it. He presented the members of the committee with a prepared statement covering his position a copy of which is made a part of this record.

The committee members were given an opportunity to question Mr. Born on his statements.

Margaret Wheat was asked if she had any further comment and replied only that the committee should recognize the fact that the people on the Pyramid Lake Indian Reservation are not culturally attuned to a agricultural environment. Their historic development has been based upon the fishery and wildlife aspects of the region. She said that the future trend of development in the Pyramid Lake region was going to be recreational and that the Compact should recognize the preservation of the area for that purpose.

Mr. Charles Springer, attorney from Reno, was asked for his comments. He said he had little further to add to what had been said by Mr. Leland. He provided the committee, however, with a prepared statement of the position taken by the Toiyabe Chapter, Sierra Club, on the Compact. The position urges the committee to amend the Compact in a manner which would eliminate the serious threat to Pyramid Lake posed in the bill as now presented. A copy of this prepared statement is a part of this record. Mr. Springer said that the Indians are precluded by the compact from going to court to assert their water rights.

Chairman Smith then read into the record a letter from James W. Johnson, Jr., Legal Advisor for the Nevada Compact Commission. This letter is appended to this record.

Also read into the record at this time was a letter from the Nevada Legislative Counsel Bureau's Chief Deputy Frank Daykin which is also appended and made a part of this record.

The letters both support the position that the rights of the Pyramid Lake Indians and the preservation of Pyramid Lake are not subject to jeopardy by the Compact.

Mr. Springer reminded the committee that there are other legal minds he take exception to the positions stated in the above letters.

Mr. Bolton Minister, member of the Nevada Compact Commission, was asked for his comments. Mr. Minister reviewed the compact's basic provisions emphasizing the intent being to allocate the waters between the State of Nevada and the State of California. His more detailed presentation had been made at the earlier joint hearing with the Senate and is on record with the Senate Committee.

Assemblyman Hilbrecht asked Mr. Minister if the State of Nevada should establish by definition the "beneficial use of water" in such manner as to include recreational uses whether that would clarify the basis for objections that have been made. Mr. Minister stated that the Compact had attempted to do this in Article XIII wherein it is stated that use of waters for preservation, protection

and enhancement of fish, wildlife and recreation is a beneficial use. He said that if the State law established this within the statutes it would strengthen the compact's position on Pyramid Lake and other areas.

Mr. James Bidivich of the Paiute Tribal Council said that he represented 400 Indians on the Reservation who were deeply concerned for the protection of Pyramid Lake and the development of recreational programs in that area. He pointed out that boating and fishery licensing was becoming an important economic factor and that future development would improve that financial picture.

The presence of former State Senator Fred Settlemyer was acknowledged and he told the committee that in the interest of saving time he would make no statement other than to inform them that the presentations of the younger people did not have the value of years of experience in the Carson Sink with relation to water allocation problems and the conditions peculiar to the area. He said he supported the Compact.

Chairman Smith indicated that Assemblyman Homer was present on behalf of AB 9 and had brought Mr. Noel with him. Due to the lateness of the hour it was agreed that AB 9 would be considered at a later meeting.

Chairman Smith thanked all of those who had taken the time to make their presentations to the committee and excused them.

Chairman Smith stated to the committee that Assemblyman Hilbrecht has asked the legislative bureau to draw a bill amending the State Water Use Law to bring recreational uses under beneficial uses within the State of Nevada. The committee agreed that with this amendment the Compact would be more palatable.

Getto moved Do Pass AB 60.

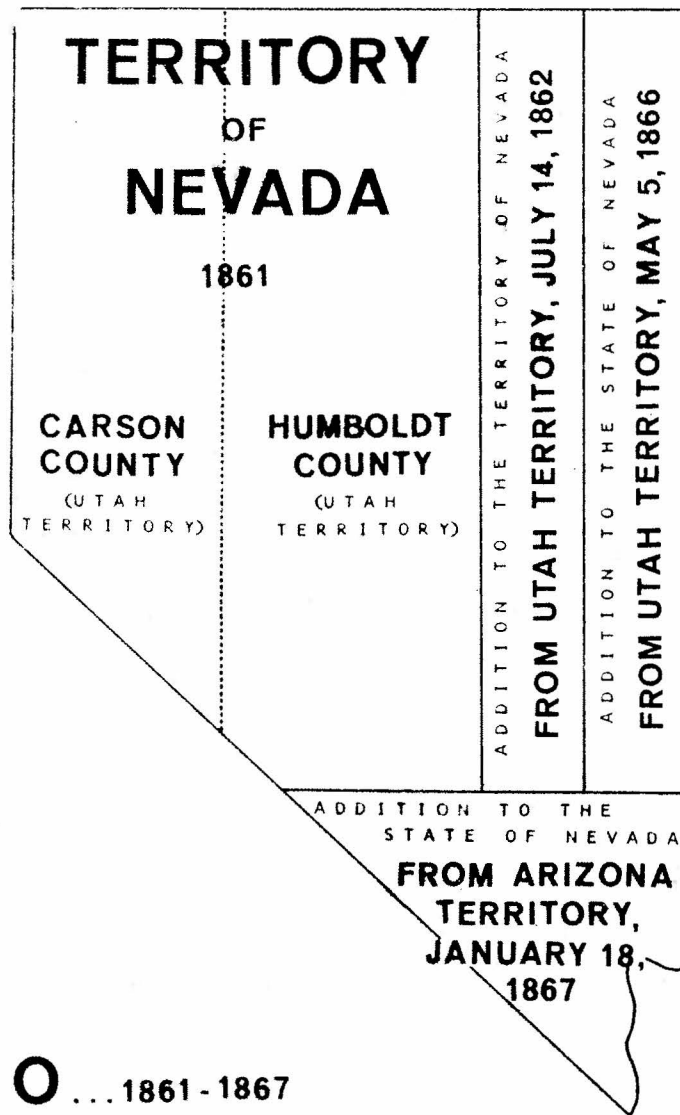
Lingenfelter seconded.

Motion passed over the objection of Assemblyman Mello.

Meeting was adjourned.

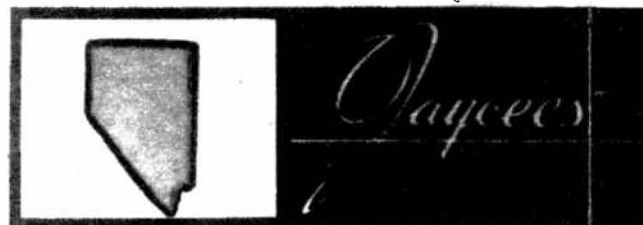
Note: Omitted from the minutes but included in the record are:

1. Two letters from Carole Wright, Editor, Native Nevadan
2. Prepared statement of Robert Soulages, Graduate Student, University of Nevada outlining values of preservation of wildlife at Pyramid Lake.



MAP O

1861-67—Territory of Nevada formed in 1861 from Carson and Humboldt counties of Utah Territory. In 1862 Nevada Territory enlarged by extension eastward one degree into Utah Territory. Enlarged Territory, and State as created in 1864, coextensive in size. Additional extension eastward one degree into Utah Territory in 1866 by State of Nevada. Extension south into Arizona Territory to the Colorado River by State of Nevada in 1867. Nevada Territory existed in two different sizes; Nevada as a state in three different sizes.



FEBRUARY, 1969

FACTS, FIGURES and PROPOSALS

REGARDING

REORGANIZATION AND CONSOLIDATION  
OF COUNTIES IN NEVADA

-BY-

INITIATION OF A NEVADA CONSTITUTIONAL  
CONVENTION - (Target Date May, 1971 )

PREPARED AND COMPILED

-BY-

NEVADA JAYCEES  
GOVERNMENTAL AFFAIRS

LARRY D. WADSWORTH  
CHAIRMAN

COUNTY	1968(Est.) POPULATION	TOTAL VOTE CAST 1968	LAND AREA SQ. MILES	1968 COUNTY GOVT. AND SCHOOL DISTRICT BUDGETS	1968 COUNTY ASSESSED VALUATIONS	1968 AD VALOREM TAX RETAINED IN COUNTY	COUNTY SEAT	POPULATION
CLARK	302,300	75,827	7,927	\$ 68,231,090.	\$ 730,456,746.	\$ 7,523,681.	LAS VEGAS	152,287
1909 -----	3,321							
WASHOE	125,100	43,387	6,281	29,398,874.	409,335,398.	5,803,222.	RENO	75,000
1861 -----	1,613							
ORMSBY	16,000	5,726	141	4,197,364.	39,595,604.	627,986.	CARSON CITY	12,500
1861 -----	2,076							
WHITE PINE	12,700	4,174	8,893	3,620,164.	28,237,264.	431,576.	ELY	6,800
1869 -----	8,935							
HUMBOLDT	12,315	2,574	9,702	2,573,858.	32,535,090.	270,893.	WINNEMUCCA	4,900
1861 -----	469							
ELKO	12,300	5,084	17,127	5,411,574.	67,251,340.	798,166.	ELKO	10,585
1869 -----	8,083							
CHURCHILL	11,003	3,835	4,907	3,878,535.	25,046,940.	445,837.	FALLON	3,544
1861 -----	569							
MINERAL	9,500	2,950	3,734	2,802,230.	9,100,763.	297,622.	HAWTHORNE	7,662
1911 -----	1,848							
LYON	7,800	3,055	2,012	2,829,607.	34,864,053.	464,221.	YERINGTON	3,442
1861 -----	1,650							
DOUGLAS	6,200	2,841	724	2,845,178.	59,697,209.	656,670.	MINDEN	2,500
1861 -----	1,057							
NYE	5,000	2,132	18,064	2,003,879.	21,090,371.	390,163.	TONOPAH	1,900
1864 -----	6,504							
LANDER	3,500	930	5,621	1,135,640.	14,847,690.	264,152.	AUSTIN	400
1862 -----	1,484							
LINCOLN	3,500	1,143	10,649	1,193,228.	9,347,594.	121,500.	PIOCHE	750
1866 -----	2,287							
PERSHING	3,200	1,238	5,993	1,268,542.	21,298,613.	235,200.	LOVELOCK	2,000
1919 -----	2,803							
EUREKA	1,000	500	4,182	820,432.	20,661,943.	230,640.	EUREKA	660
1873 -----	1,350							
ESMERALDA	700	363	3,570	423,375.	4,173,717.	108,664.	GOLDFIELD	95
1861 -----	3,286							
STOREY	600	458	262	322,822.	4,410,224.	101,483.	VIRGINIA CITY	546
1861 -----	4,581							



COUNTY	1967-68 GAMING TAX COLLECTIONS	AMOUNT OF GAMING TAXES RETURNED TO COUNTIES	1967-68 CIGARETTE TAX COLLECTIONS	1965-66 SALES TAX COLLECTIONS	MONTH OF SEPTEMBER, 1968 GASOLINE TAX COLLECTIONS
CLARK	\$17,581,927.	\$54,972.	\$3,094,749.	\$11,322,691.	\$115,843.
WASHOE	5,736,892.	54,972.	1,573,471.	6,796,011.	64,672.
ORMSBY	169,304.	54,972.	174,812.	508,170.	11,369.
WHITE PINE	36,736.	54,972.	118,755.	462,561.	7,029.
HUMBOLDT	69,188.	54,972.	80,874.	280,689.	14,595.
ELKO	330,065.	54,972.	160,031.	644,735.	23,594.
CHURCHILL	32,790.	54,972.	77,968.	315,696.	5,482.
MINERAL	88,573.	54,972.	70,790.	165,154.	3,862.
LYON	11,086.	54,972.	57,949.	247,689.	5,004.
DOUGLAS	4,124,463.	54,972.	175,529.	585,889.	6,213.
YE	33,483.	54,972.	39,533.	139,076.	7,034.
LANDER	11,036.	54,972.	21,630.	76,590.	5,215.
LINCOLN	4,164.	54,972.	4,038.	69,177.	2,213.
PERSHING	10,365.	54,972.	24,936.	118,468.	6,643.
EUREKA	1,617.	54,972.	2,750.	21,458.	1,701.
ESMERALDA	650.	54,972.	5,377.	18,406.	556.
STOREY	<u>21,418.</u>	<u>54,972.</u>	<u>6,492.</u>	<u>26,776.</u>	<u>250.</u>
	\$29,009,941.	\$934,537.	\$5,689,689.	\$23,542,257.	\$281,283.

PROPOSAL FOR COUNTY CONSOLIDATION

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USING LONGITUDE & LATITUDE DEGREES  
TO ESTABLISH NEW COUNTY BOUNDARIES

REORGANIZE OR CONSOLIDATE THE SEVENTEEN COUNTIES INTO SIX AS FOLLOWS:

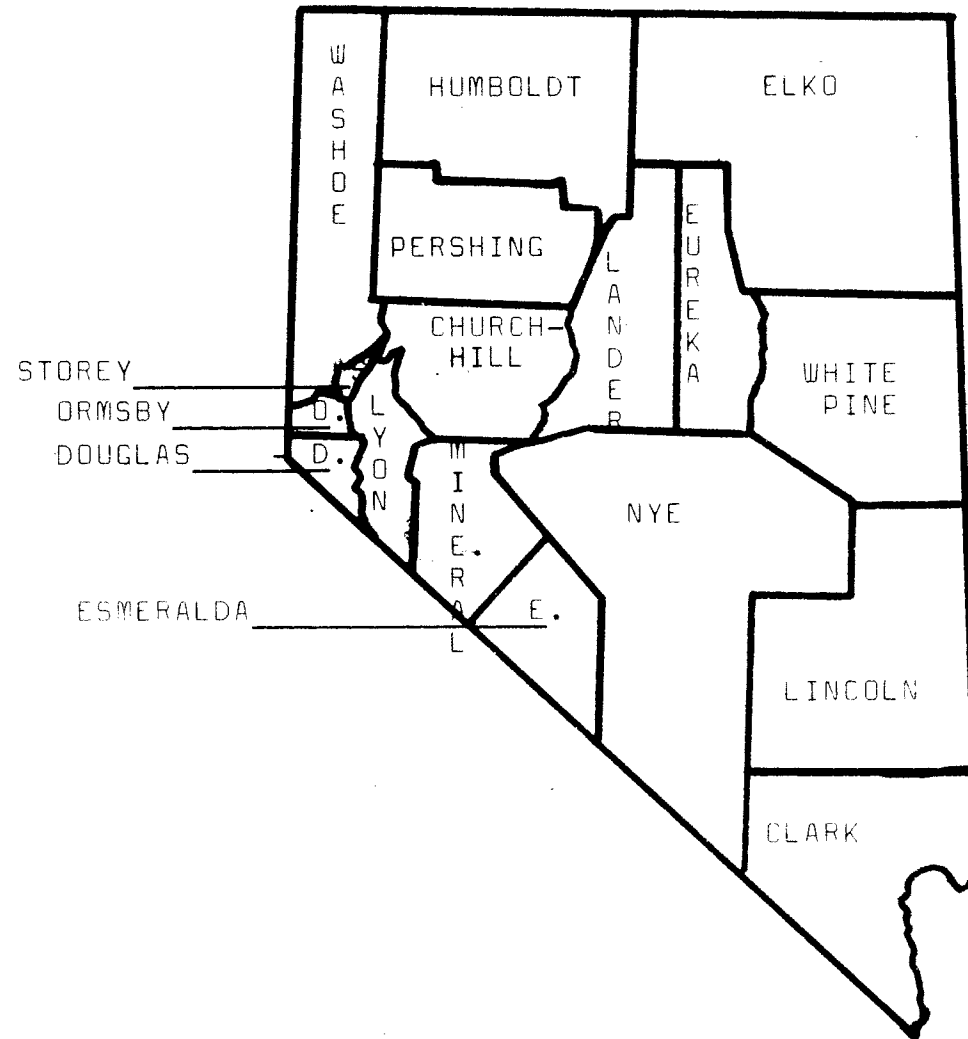
<u>COUNTY</u>	ESTIMATED 1968 <u>POPULATION</u>	<u>COUNTY SEAT</u>
CLARK	306,500	LAS VEGAS
ELKO	18,650	ELKO
HUMBOLDT	15,815	WINNEMUCCA
NYE	8,300	TONOPAH
WASHOE	169,393	RENO
WHITE PINE	14,060	ELY

TOTAL OF COUNTY BUDGETS  
-OF-  
COUNTIES ELIMINATED (11)

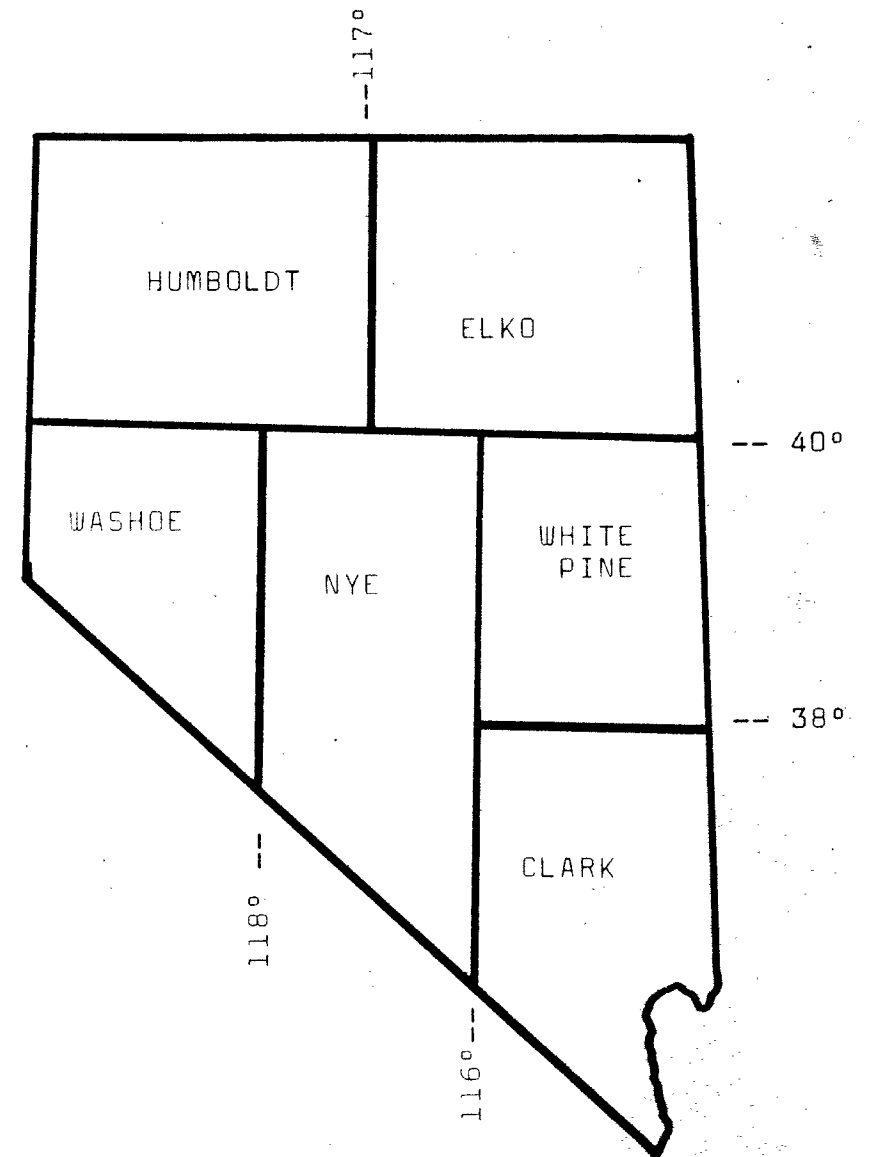
\$22,226,953.00

HOW MUCH OF THIS COULD BE SAVINGS???

EXISTING



PROPOSAL



ROBERT LELAND  
ATTORNEY

TELEPHONE 323-2757  
AREA CODE 702  
CABLES "ROBAND"

530 CALIFORNIA AVENUE

RENO, NEVADA 89502

February 11, 1969

Hon. R. Hal Smith, Chairman  
Committee on Government Affairs  
Assembly Chamber, Capitol Building  
Carson City, Nevada 89701

Assembly Bill No. 60 - To ratify  
California-Nevada Interstate Compact

Dear Mr. Smith:

Thank you for permitting me to testify at the hearings on the above bill before your Committee and the Senate Committee on Federal, State and Local Government, and for this opportunity to correct the record as to my position and the position of the Department of Interior in opposing the Compact in its present form.

Members of the Nevada Compact Commission testified that the Department of Interior (the Federal agency concerned with the waters covered by the Compact) was not opposed to the Compact. The facts are otherwise. On January 14, 1969, the Department of Interior detailed its opposition to the Compact you are now considering in a letter to the Bureau of the Budget (attached):

"We recommend that the Federal Government oppose the draft compact as it stands for the reasons stated below, including most particularly its adverse effect on Pyramid Lake."

A member of the Nevada Commission said I approved the provisions relating to Pyramid Lake in Article VI of the Compact and had proposed the language employed in Section A. This provision was adopted by the Compact Commissioners on October 27, 1968. I have most strongly opposed it at all times. Unfortunately for those interested in saving Pyramid Lake, I had no part in drafting the Compact.

We and many others, including private and public conservation agencies and the Department of Interior, oppose provisions in Article VI because they could be used to deny water to Pyramid Lake. My points in opposition are listed specifically and in detail in a telegram to the Legislative Counsel of the Interior Department dated September 26, 1968 (copy attached). The

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Department of Interior stated its opposition clearly on January 14:

"This provision is unacceptable. We would want express recognition in the compact of the right of the tribe to litigate its Winters' doctrine claim for Truckee River water."

Mr. Minister said that George Hedden of the Indian Service approved provisions in Article VIII affecting water and water rights for the Walker River Indian Reservation. Mr. Hedden is opposed to those provisions and he is opposed to the provisions relating to Pyramid Lake in Article VI. The Department of Interior specifically opposed the Walker River provision on January 14:

"Thus, under the Walker River decree, the Indian Reservation has been allocated approximately one-fifth the amount of water to which it would have been entitled if the more generous test of Arizona v. California had been applied. We are, therefore, considering the possibility of reopening the Walker River case. Article VIII should be amended to recognize the right of the Indians to reopen the case, with all parties to be bound by the results."

Our principal objection to the Compact centers on Article VI and Article VII. Section A of Article VI allocates to Nevada the amount of water decreed to Pyramid Lake in 1944 in the Orr Ditch case, for irrigation purposes only. The United States (not the Indians) is given the "right" to go to court and ask for a change in use for other purposes if "such change may be made without injury to the allocations of either state." This language, in the opinion of attorneys (other than the attorney for the Nevada Compact Commission, according to his testimony) would prevent any increase in the allocation to Nevada of water for use on the Pyramid Lake Reservation, because as the Compact is worded that would increase Nevada's allocation and decrease the allocation to California and California's power "to develop additional yields of water for use in California" from surplus or unused water sources as provided in Article VI, section B-4. Any doubt that the Compact limits the allocations to Nevada of water for Pyramid Lake to the approximately 30,000 acre-feet decreed in 1944 is removed by the section referred to above.

The Compact protects all other beneficial uses of water in Nevada except for Pyramid Lake when California exercises its right (under the Compact) to develop additional yields out of "surplus" Truckee River and Lake Tahoe water, with this language:

"... provided however, that the maximum amount of water to be recognized as an existing beneficial use of water



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in Nevada for the Pyramid Lake Indian Reservation shall be /about 30,000 acre-feet/ as allocated by Section A of this Article together with any additional water used for domestic or municipal purposes on said reservation; provided further however, that the water allocated in Section A of this Article must first be put to beneficial use before any credit will be given for said additional waters to be used for domestic or municipal purposes" (AB 60, pp. 8-9).

This peculiar language may tend to hide the obvious intention of the Compact (revealed many times during the protracted -- 13-year -- negotiations) to authorize for consumption in other uses the so-called "surplus" waters now reaching Pyramid Lake. It is these very waters, particularly heavy during "wet" years, that sustain Pyramid Lake. The Compact would allow California to develop these waters for its use but prevents Nevada from ever claiming that the use of this water for Pyramid Lake is or may be beneficial.

Twenty-five approved or proposed interstate water compacts are listed in Compacts, Treaties and Adjudications, U. S. Government Printing Office (1956). None contain any provision comparable to Article VI of the Compact you are considering. Sixteen compacts considered or approved up to 1956 involve or affect Indian water or water rights and all sixteen expressly protect Indian water or water rights. As the Department of Interior stated in opposing this Compact on January 14:

"The compact goes beyond the usual function of allocating water between party states and purports to bind the Federal Government both as a sovereign and as trustee for Indians. Specifically, paragraph (3) of Article XII provides, among other things, that the compact shall become effective only when Congress has agreed that certain provisions of the compact 'shall be binding on the agencies, wards, and instrumentalities of the United States of America.'" Most seriously affected would be the Winters' doctrine rights of the Pyramid Lake Indians. Because of these rights, we believe the United States should not consent to the draft compact as it stands, but should use the opportunity to renegotiate the compact so as to place the Indians in the best position to succeed in the proposed Winters' doctrine litigation."

While it may be argued that Article XXI is intended to protect the "obligations" of the Government to the Indians, this is not the same thing as allowing the Indians the right to protect themselves and their water and water rights claims.

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The very least that can be said about the Compact is that it throws great doubt on the validity of water rights for Pyramid Lake and Walker River Reservation and creates doubt as to whether or not the Indians may ever receive or be entitled to more water than the Compact specifically allows in its present form.

Since Nevada irrigators, the power company and the State Engineer represent Nevada on the Commission (not lawyers), it seems obvious that the language of the Compact should be clear and free from doubt as to meaning. If the Compact proposes to cut off Indian water -- say so, and take the consequences. If the Compact does not contemplate limiting Indian water -- say so and reap the benefits.

After public hearings held on the Washoe Project in Reno by the Department of Interior at the request of Governor Sawyer and Senator Bible, the Department drastically revised its program for the development of the Truckee and Carson River Basins and reported on October 5, 1964 (just before submission of the Washoe Project to the voters in the five counties involved) as follows:

"If the recommendations in the report are followed, for example, a Pyramid Lake Fishery would be restored as contemplated by the authorized Washoe Project. The possibilities of increasing flows to Pyramid Lake through water salvage and other waste preventative measures would be given priority consideration. Also, the task force has revised Recommendations II and IV so as to provide, specifically, for utilization of existing regulatory authority to assure that Truckee River water not required to meet commitments in the lower Carson Basin /Newlands Project/ will remain in the Truckee River below Derby Dam and flow into Pyramid Lake."

The Department of Interior then proposed regulations to put the recommendations of its Task Force into effect in order to preserve Pyramid Lake, and invited comment. The comments generally favored the purpose of the regulations to limit diversions out of the Truckee River and "thereby make additional water available for delivery to Pyramid Lake" (32 Fed. Reg. 418.1). The Department issued the regulations on February 21, 1967, requiring "the coordinated operation and control of the Truckee and Carson Rivers" so as to "maximize the use of the flows of the Carson River in satisfaction of Truckee-Carson Irrigation District's water entitlement and minimize the diversion of flows of the Truckee River for District use in order to make available to Pyramid Lake as much water as possible" (32 Fed. Reg. 418.3(a)).

The Interior Department issued further regulations restricting diversions out of the Truckee River and away from Pyramid Lake on September 27, 1967 (32 Fed. Reg. No. 190). The amount of water to be diverted out of the Truckee River and away from Pyramid Lake for storage in Lahontan Reservoir was limited to that deemed sufficient to accomplish the primary objective of utilizing Carson River water for irrigation so as to minimize diversions away from Pyramid Lake out of the Truckee River at Derby Dam.

Article VII of the Compact you are asked to ratify would in the opinion of hydrologists, and attorneys (not employed by the Compact Commission), nullify the recommendations and regulations outlined above for the following reasons:

Section A allocates to California water out of the west fork of the Carson River for irrigation purposes a flow of water of 168 cubic feet per second during a 7½-month irrigation season. Under certain circumstances this could be increased to 185 c.f.s. measured at points of diversions. This could amount to an allocation to California of from 13.5 to 14.7 acre-feet per acre for 5,600 acres in California with a priority ahead of Nevada uses. California is also given priority over Nevada for irrigation water from the east fork of the Carson River to irrigate 3,820 acres with a maximum diversion rate of 115 c.f.s. This could amount to about 13.25 acre-feet per acre.

With a priority junior to California's allocation, lands in Nevada above Lahontan Reservoir may receive under Section B of Article VII, water for 41,320 acres at diversion rates that could exceed 13 acre-feet per acre. Water for the Newlands Project (TCID) is allocated to Nevada out of the Carson with a lower priority.

The Orr-Ditch decree finds that 4.5 acre-feet per acre is the proper maximum to be applied to these TCID lands. And the Interim Restraining Order in the Alpine case would limit the irrigation duty to 2.9 acre-feet per acre on an averaged basis for lands above Lahontan,

The clear and intended effect of these provisions in the Compact is to permit first California, and then Nevada with a lower priority, to consume grossly unwarranted diversions from the Carson River system with the result that the Newlands Project and TCID will suffer shortages and therefore be required to take increased quantities of water (rather than less, as is now thought desirable and possible) from the Truckee River at Derby Dam. This would further reduce the inflow to Pyramid Lake, increase its salinity and speed its destruction as a great recreational asset. Seven substantial and experienced land development firms have submitted proposals for investment in lake-shore development at Pyramid Lake contingent

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on some assurance that water will be available to sustain Pyramid Lake.

The provisions of the Compact do not even require the application of the "beneficial use" standard to Carson River water, a standard specifically required for Lake Tahoe and the Truckee River system when "existing uses" are referred to in limitations on allocations of water to Nevada and for Pyramid Lake.

For the foregoing reasons, among others, we submit that the Compact proposed for ratification in AB 60 should not be approved without amendment. We request the privilege of submitting further testimony on this matter including further facts and data to indicate how and why this Compact is against the interests of Nevada and Nevada's legitimate concern about water for the Pyramid Lake and Walker River reservations.

For the past 50 years the Reclamation Bureau has been blamed for what happened to Pyramid Lake. As a former legislator told your Committee and the Senate Committee on January 29: "Everyone knows the Indians have been robbed of their water." Let us not now allow Nevada to become a party to this crime by approving a bill that will authorize additional water thefts from Indian reservations.

Respectfully submitted,

Robert Leland

/ / / /  
C O P Y  
/ / / /

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Harry J. Hogan, Legislative Counsel  
Department of the Interior  
Washington, D. C. 20240

NITE LETTER  
September 26, 1968

Consider at departmental meeting tomorrow following comments of Pyramid Lake Tribe on proposed California-Nevada Interstate Compact. Tribe opposes compact because it would destroy value of five hundred thousand-acre Pyramid Lake Reservation together with Pyramid Lake, greatest undeveloped national asset of its kind.

If approved by the states and Congress article ~~six~~ would deny water for Pyramid Lake except for thirty-thousand-acre-foot agricultural allocation established by 1944 Orr Ditch decree and freeze this limit for all time and prohibit access to courts to perfect, enhance, or establish rights to water for recreation, fishery, agricultural, industrial, or any other beneficial use. This confiscation or condemnation may be federally unconstitutional and litigable under federal law.

Pyramid Lake is uniquely singled out for prejudicial and unequal treatment by paragraph B of article six in that all other beneficial uses in Nevada are ratified, recognized, and established for all time under Nevada pro-the-irrigator laws to exclusion of a determination of issues by other authority or under federal law or any equity. No use of water there in excess of that permitted under quote paper unquote right established 1944 without hearing or independent counsel afforded Indians can ever be allowed by any court or authority. The anti-Pyramid Lake bias of total compact provides no additional water may be swallowed by an Indian or his non-Indian invitee or used to quench fire without consent of three-fifths of Nevada membership and then only if these representatives of and spokesmen for competing water users (see Nevada membership requirements prescribed in article four) determine every drop of Orr Ditch decree water has been beneficially consumed by Indians.

Compact is more biased against Indians than may be apparent to federal and state legislators and Bureau of Budget staff not attending the compact meetings held for ten years primarily, it seems, to dry up Pyramid Lake. Bias is patent since non-Indian irrigation interests have denied Indians even the minimal water allocated in 1944 by opposing appropriations necessary to deliver that restricted water.

We oppose articles two and four of compact because without consent or opportunity for Indians to be heard Commissioners are given jurisdiction over and access to all Pyramid Lake water and tributaries and lands owned by the Tribe, a quasi-municipal corporation with certain rights of sovereignty.

Compact contradicts in every Pyramid Lake respect Secretary's 1964 Action Program for Truckee and Carson approved by all bureaus

9-26-68



and by Nevada citizens (including Indians) at polls and regulations and rules promulgated by Interior to govern rivers and position taken by Nevada state political party conventions, Indian organizations both state and national, Indian rights associations, sportsmen and conservation groups including the Sierra Club and others interested in recreation, Nevada's major industry, and above all denies justice for inarticulate minority.

Compact would condone and continue unconscionable waste of Truckee and Carson waters to irrigate alkali flats and phreatophytes, and legalize consumption of water for purposes far less valuable, experts say, than present and proposed uses within Reservation. Article seven of the compact attempts to allocate water in Carson River Basin even though that is subject of pending Alpine litigation in which Indians have major interest. Moreover there is no attempt to restrict use of Carson River water to beneficial uses.

Major American investment and development firms have certified their interest in investing in and developing reservation provided water is available for industry, agriculture, recreation and fisheries. They refuse to invest and develop until such water is assured. Article six of compact does not protect Indian property rights and forestalls their future determination and adjudication. Article twenty-two abrogates federal authority and trust responsibilities over Indian property rights. Even yield from evaporation suppression on Pyramid Lake is denied Indians under article eleven. Nevada is given gratuitously right to develop and use ground water and springs within Reservation since compact may become federal law.

Present beneficial uses of water within Reservation are terminated except for minimal amounts now irrigating less than one thousand farm acres incidentally of higher classification than lands for which water destined for Pyramid Lake is diverted for Reclamation projects in another basin.

Comments addressed to Federal representative February twenty-five, 1966, including attachment, are by reference incorporated here in all major respects, together with Interior's Pyramid Lake water comments given to attorney for Tribe April twenty-five, 1966, by Secretary Udall.

Robert Leland



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UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240

Dear Mr. Zwick:

JAN 14 1969

This responds to your request for the views of this Department on the draft California-Nevada Interstate Compact concerning waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins.

We recommend that the Federal Government oppose the draft compact as it stands for the reasons stated below, including most particularly its adverse effect on Pyramid Lake. We believe, however, that a revised compact, acceptable to the United States, California and Nevada, can be negotiated and we recommend that the Federal Government now propose such negotiations.

As noted in a letter of August 1, 1968, to Mr. R. Riter, Federal Representative on the Compact Commission, from the Chairman of the California Commission and the Chairman of the Nevada Commission, the United States owns or controls virtually all the storage and diversion facilities on the Truckee and Carson Rivers and at Lake Tahoe. The rights of the United States on the Truckee River include the right to store water in Lake Tahoe between certain levels (described in the discussion of article V below) and the right to irrigation water for the Newlands project. On the Carson River the rights of the United States effectively preempt the flow of the river as of 1902. The United States supports the Winters' doctrine claim of the Pyramid Lake Tribe to Truckee River waters.

The compact goes beyond the usual function of allocating water between party states and purports to bind the Federal Government both as a sovereign and as trustee for Indians. Specifically, paragraph (3) of article XXII provides, among other things, that the compact shall become effective only when Congress has agreed that certain provisions of the compact "shall be binding on the agencies, wards, and instrumentalities of the United States of America." Most seriously affected would be the Winters' doctrine rights of the Pyramid Lake Indians. Because of these rights, we believe the United States should not consent to the draft compact as it stands, but should use the opportunity to renegotiate the compact so as to place the Indians in the best position to succeed in the proposed Winters' doctrine litigation.

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Our position with regard to the Indian water rights is predicated upon the principles enunciated in Winters v. United States, 207 U.S. 564 (1908), and in Arizona v. California, 373 U.S. 546 (1963). We consider that all waters from Lake Tahoe and the Truckee River system other than waters (1) appropriated by the United States for such other purposes as the Newlands project or (2) adjudicated to third parties in litigation to which the United States was a party, as in United States v. Orr Water Ditch Co., et al, Nev. Equity No. A-3, D.C. Nev., September 8, 1944, are reserved for present and future development of the Pyramid Lake Indian Reservation.

From the viewpoint of regional and national interest, the recreational development now underway in the Lake Tahoe area should be continued as the draft compact contemplates, to the extent this can be accomplished without imperiling Pyramid Lake. The maximum 50,000 acre-feet set aside by the draft compact for diversion upstream of the California state line for California use in the Upper Truckee River and for Lake Tahoe uses in both states should not prove a substantial loss to Pyramid Lake. About a third of the 50,000 acre-feet represents already existing uses which would almost certainly be recognized in any Winters' doctrine suit. Some substantial part of the diversions will be returned to the river, presumably after treatment in accordance with applicable water quality standards. Even the complete loss of 50,000 acre-feet would leave an average annual flow into Nevada of 450,000 acre-feet and would also leave available for Pyramid Lake the periodic great flows. There is also an advantage to Pyramid Lake in the setting of a ceiling on the Lake Tahoe and Upper Truckee uses.

Preliminary findings of studies regarding Pyramid Lake which we are conducting are as follows. First, Pyramid Lake is a recreation resource of national significance because of its large area and the recreation, sport fishing, aesthetic, geologic, ecologic, archeologic and historic values it provides. Second, the lake offers greater potential high quality water recreation for large numbers of users than any other lake in Northern Nevada or California, particularly in light of the unique opportunity for optimum recreation development afforded by the Pyramid Lake Indian Tribe's single ownership of the lake and most of its environs. Third, we believe that the recreation potential of the lake is imperiled gravely by the current decline in level due to upstream diversions and uses and prospectively by further decreased inflow if new upstream facilities on the Truckee River should be developed to hold back and divert for other purposes the

heavy spring runoffs which the lake now receives. Therefore, we propose negotiation of a revised compact which, together with a resolution of the other difficulties discussed herein, contains a recognition of the right of the United States to proceed with the Winters' doctrine litigation and the corresponding duty of all parties to be bound by the results of that litigation.

We hope to conclude in the near future studies which will show more clearly the relationship of Lake Tahoe and Upper Truckee River uses to maintenance of the level of Pyramid Lake. Even if the studies compel a modification of our position, we believe that negotiation of an acceptable compromise may be possible.

A brief description of the substantive provisions of the compact and their effect upon United States and Indian rights follows. A majority of the indicated problems could be resolved through negotiation.

Article I expresses the compact purpose to apportion between California and Nevada the water of the three rivers and Lake Tahoe.

Article II defines the terms used in the compact. The definition of the "Walker River Basin" should be modified to indicate that Walker Lake is in the Walker River Basin.

Article III contains general language with regard to "Sovereign Relationships."

Article IV establishes the composition, financing, procedure, and general powers of the Commission.

Article IV provides for one United States representative who shall be ex-officio chairman of the Commission without vote and who shall not be a domiciliary of or reside in either state. By reason of the substantial Federal interest in the area and the fact that the United States would be bound by the key provisions of the compact, the Federal representative should be a voting member of the Commission. In addition, the prohibition on domicile and residence appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would be biased in favor of the state of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and full Indian representation assured.

Article V deals with the allocation of water within the Lake Tahoe Basin. It confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to an elevation of 6230 feet in the decree entered in the case of United States v. Truckee Carson General Electric Company, in the District Court of the United States, Northern District of California, Second Division, on June 4, 1915. The figure 6229.1 feet is not descriptive of the storage rights of the United States, but of the agreement of the United States in the Truckee River Agreement of June 13, 1935, that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria, intended to prevent, insofar as possible, the lake elevation exceeding 6229.1 feet were agreed upon, but the latter figure is not the upper limit of the United States storage right. The storage rights of the United States are not affected by the 1935 contract. Therefore, the upper elevation of United States storage stated in the compact should be 6230 feet.

The major provision of article V permits total annual gross diversions of 34,000 acre-feet annually for use within the Lake Tahoe Basin, of which 23,000 acre-feet are allocated to California and 11,000 acre-feet are allocated to the State of Nevada. The allocation of 34,000 acre-feet is premised upon the construction of an overflow weir with a crest elevation of 6223 feet. The construction of such a weir would allow additional water to be developed from Lake Tahoe by enlarging the overflow cross-section of a present natural physical barrier above the outflow works which restricts the rate of flow between elevations 6225 and the low-water mark of 6223 feet. The lowering of the lake under the circumstances established in the compact would be allowable under the 1915 decree in which the United States acquired its storage rights in Lake Tahoe. In addition, recognizing that the construction of the weir may be some time later than the effective date of the compact, the states may use the same amount of water, 34,000 acre-feet, in the interim before the weir is actually built. Part of the 34,000 acre-feet is already being used within the basin.

Article VI of the compact allocates water of the Truckee River in the following order of relative priority as between the states. First, to Nevada the amounts provided for in the decree of United States v. Orr Ditch Company for irrigation on the Pyramid Lake Indian Reservation. Second, California is given the right to divert 10,000 acre-feet per year which may be stored when the flow in the channel of the Truckee River exceeds the so-called Floristan



rate of 500 cubic feet per second. Current use under present rights is estimated at 8500 acre-feet. Under the 1915 decree some of the water in the Truckee River in excess of the Floristan rate of 500 c.f.s. is "reserved" water of the United States.

California would also receive 6000 acre-feet annually from the conservation yield of Stampede Reservoir. This would appear to recognize the allocation of water to California under the Washoe Project Act. After the water allocated to California has been developed, California also may develop additional yields of water in California subject to then existing beneficial uses in Nevada. The beneficial use so recognized in the compact for this purpose for the Pyramid Lake Indian Reservation would be the amount of water stated in the Orr Ditch decree for agricultural use plus such additional domestic or municipal water as may have been then developed. In order to obtain this water Pyramid Lake development would have to precede the future development in California.

This provision is unacceptable. We would want express recognition in the compact of the right of the tribe to litigate its Winters' doctrine claim for Truckee River water.

Article VII allocates the waters of the Carson River in the following order of priority between the states. First, to California, a right to divert water from the West Fork to irrigate an additional 5600 acres. California is also given the right to store 2000 acre-feet per year within Alpine County for supplemental use on presently irrigable land, such storage to be adverse to Lahontan Reservoir but subject to other existing uses within Nevada. Nevada is allocated a right to divert water to irrigate approximately 41,320 acres with a rate of diversion essentially predicated upon alleged existing uses. Each state may also store upstream of Lahontan in existing reservoirs to the extent of their existing capacity and priority. Finally, the Newlands project water rights are recognized, but as inferior to those previously mentioned.

Since 1925, in the case of United States v. Alpine Land Company, the United States has been attempting to establish on a firm judicial basis its storage and diversion right for Lahontan Reservoir in relation to pre-1902 upstream diversion rights. Under proposed findings in that case, the United States essentially would recognize the priority attached to 41,800 acres. The compact would increase the upstream acreage with rights ahead of the United States to 50,740 acres. The increase is not acceptable because it may make necessary greater diversions from

the Truckee River for the Newlands project and so adversely affect Pyramid Lake. It is also better that negotiation to settle water rights in the Carson Basin be done within the framework of the Alpine Land Company case rather than in the proposed compact. Accordingly, the compact should be revised to accept the decision of the court in the Alpine Land Company case.

Article VIII allocates the water of the Walker River Basin recognizing, first, the rights established in decree C-125 in the case of the United States v. Walker River Irrigation District, 104 F. 2d 334 (1939). In that case, the Indian rights on the Walker River Indian Reservation were established at a continuous flow of 26.25 cubic feet of water per second during an irrigation season of 180 days for 2100 acres. It appears, however, from the report of the case, that irrigable lands within the Indian reservation amount to approximately 10,000 acres. The court in that case apparently was of the view that the acreage used to measure the reserved water right was the acreage historically shown to have been devoted to irrigated agriculture. The test applied was clearly more narrow than that used in Arizona v. California, 373 U.S. 546 (1963), where the court recognized the Indian right to water for all irrigable acreage within the reservation whether irrigated presently or not. Thus, under the Walker River decree, the Indian reservation has been allocated approximately one-fifth the amount of water to which it would have been entitled if the more generous test of Arizona v. California had been applied. We are, therefore, considering the possibility of reopening the Walker River case. Article VIII should be amended to recognize the right of the Indians to reopen the case, with all parties to be bound by the results.

Articles IX through XX deal with such other subjects as development of ground water and springs, interbasin transfers, suppression of evaporation, nonconsumptive uses and enforcement.

Article XIII states that the use of water for fish, wildlife and recreation is recognized as an inseparable part of the public interest and is beneficial. This is a step forward. However, it does not appear that the compact alone would ratify presently existing fish, wildlife and recreational uses of water which may have heretofore existed without benefit of state recognition. Only the groundwork, i.e., recognition as beneficial, is laid in the compact for further state procedures leading to a water right.

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Article XXI purports to protect the rights of the United States. Paragraphs A through D, article XXI, if taken alone, probably would give total protection to all present and future rights of the United States in the four basins which are the subject matter of the compact. However, article XXII, Ratification and Consent, an exception for which is contained in article XXI, would require the United States, by Act of Congress, to agree that the 14 critical paragraphs of the compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-references to other sections in the compact, the United States would be bound to still other provisions.

Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights and powers. For example, although the compact does not address itself to water quality per se, allocations and diversions under the compact could have serious effect upon water quality. Thorough consideration should be given to the quality levels of the water allocated by the compact. For example, if Pyramid Lake is to be of significant value as a national recreation resource, special effort will be required to protect the quality of water flowing into it. We are concerned, therefore, that the exception from impairment of rights and powers of the United States under article XXI might affect existing authority to set and enforce water quality standards under the Federal Water Pollution Control Act, as amended.

We realize that the compact as presently drafted represents an attempt to resolve definitively most of the outstanding questions of interstate water allocation and use in Lake Tahoe and the three river basins. A less ambitious but worthwhile and attainable goal would be a revised compact which constitutes a framework for recognition of existing uses but is flexible enough to accommodate future resolution of remaining conflicting claims. We propose that the Federal Government oppose the compact as it stands, but that it enter into negotiations with the two state commissions as soon as possible to arrive at a compact which is substantially in accordance with the views of this Department and the other Federal agencies with a program interest in the area subject to the compact.

We suggest that the work of negotiation be made the responsibility of a special task force on which this Department, as well as the Department of Justice, should be represented. We would like to be consulted on the naming of the negotiators. We also would like an opportunity to participate in the drafting of instructions to the negotiators.

Sincerely yours,

(sgd) Stewart L. Udell

Secretary of the Interior

Hon. Charles J. Zwick  
Director, Bureau of the Budget  
Washington, D. C.

## IN JEOPARDY: NEVADA'S DESERT LAKES

By

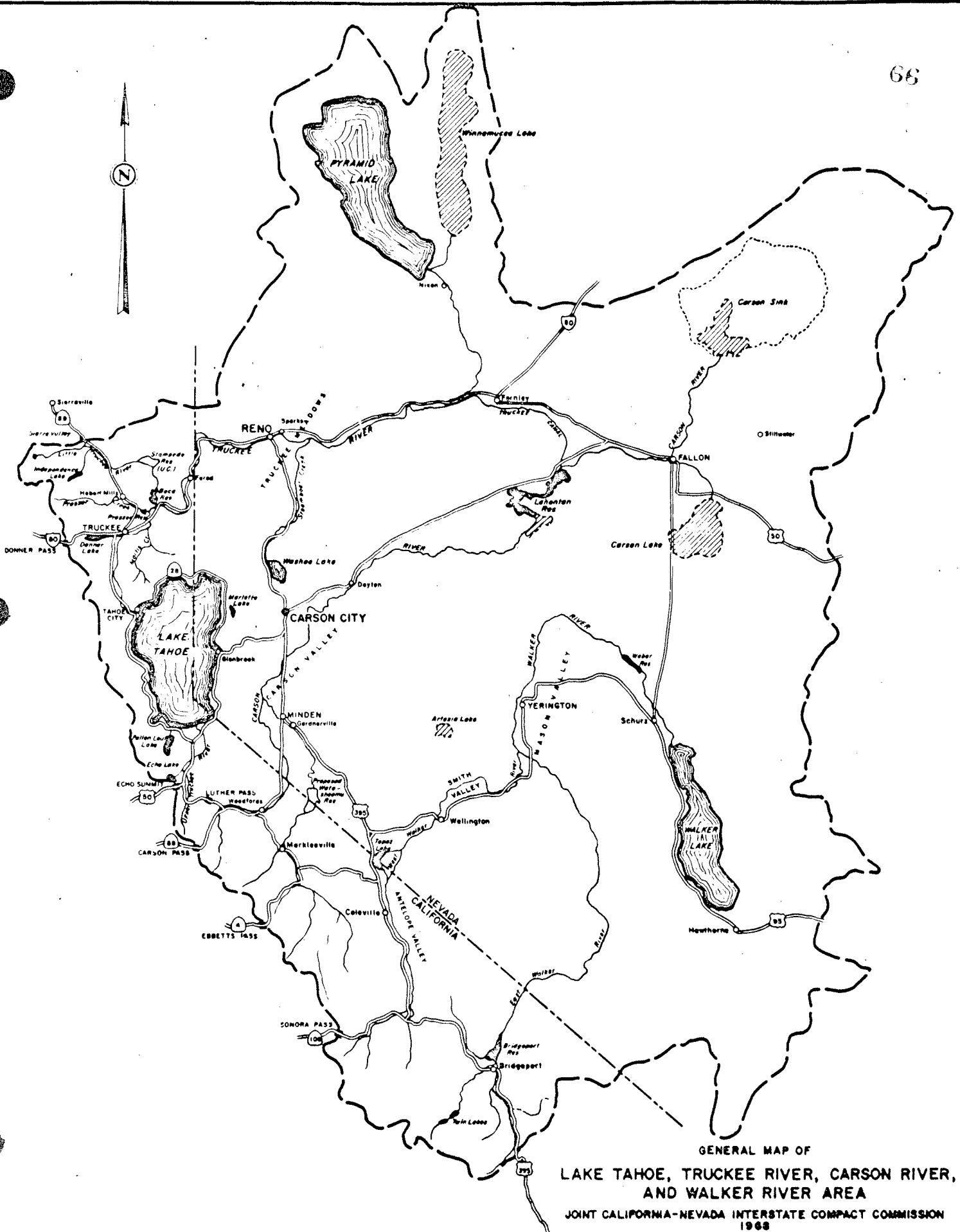
Stephen M. Born

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There are few natural resources in the world like the desert lakes of Western Nevada. Pyramid Lake, located some 30 miles northeast of Reno, and Walker Lake, its companion to the south are the principal assets of the Indian reservations on which they are located. From scenic, archaeologic, and geologic viewpoints, the areas are unique. These spectacular bodies of water currently are gaining wide use and increased appreciation from a general public which is starting to recognize the recreational opportunities available in, on, and near these lakes. Such activities include fishing, swimming, sailing, water skiing, camping, hiking, picnicing, exploring...the list is almost endless.

Lakes are ephemeral creatures; they come and go with the vagaries of climate. But desert lakes, whose very existence is dependent on the inflow of a single river, are subject to even a more tenuous lifespan, especially in arid areas where competing demands for water are intense. Now, at this moment, such demands are placing the future of the desert lakes, Pyramid and Walker, in jeopardy. The vehicle creating this frightening prospect is the widely acclaimed California-Nevada Interstate Compact. The following elaboration of this charge pertains largely to Pyramid Lake, but with few exceptions can be extended directly or tangentially to Walker Lake.

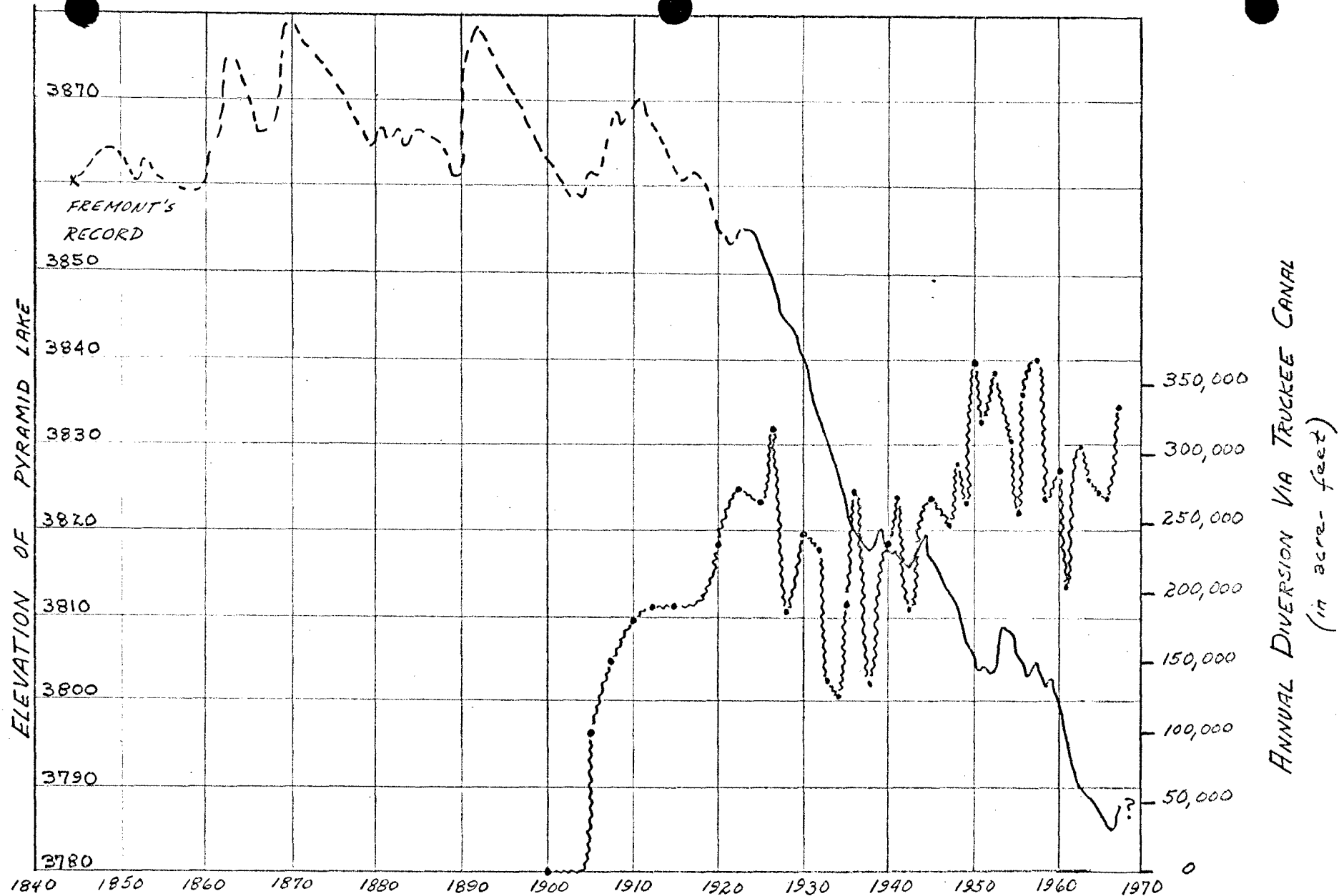




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Pyramid Lake, at modern levels, is a closed hydrographic basin; lake level therefore, is governed by the amount of inflow versus the rate of evaporation from the surface of the lake. The Truckee River is the only significant source of inflow to the lake. Runoff in the Truckee drainage basin exceeds 500,000 acre-feet annually, and prior to man's intervention most of the runoff reached Pyramid Lake. Inflow has been markedly reduced in recent decades owing principally to construction of the Truckee Diversion Canal in 1906. This canal has resulted in an average annual transfer of more than 250,000 acre-feet of water out of the basin (to the Carson Desert). Calculations by hydrologists indicate that the evaporation rate from the lake surface is four to four and one-half feet per year; for the lake's area of approximately 110,000 acres, this amounts to about 450,000 acre-feet of water annually. The evaporation from the lake was roughly in balance with the inflow via the Truckee River prior to the diversion of large portions of the river's discharge. Since 1910, however, largely as a result of upstream diversions, the level of Pyramid Lake has declined about 80 feet.

It would be foolish to condemn earlier generations for their wasteful practices and lack of 'conservation ethics.' Settlers in the arid West were confronted with challenges made fuzzy in the context of today's living conditions. Water and farming, water and livestock, water and mining; water was inseparable from forging a livelihood. But values and priorities are (should be) subject to change. Such is the case as we approach the last third of the



S.M. BORN  
1969

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Twentieth Century.

I hope it is clear, then, that I am not condemning the way in which the water resources of the Truckee (or Walker) River has been developed. Rather, it is the future development of Truckee River water which is of concern to me, and the relation of that development to the continued existence of Pyramid Lake.

This leads me to consider Bill No. 60, which is before this session of the Nevada Assembly. Bill No. 60 is "an act relating to interstate waters; ratifying and approving the California-Nevada Interstate Compact..." All publicity to date suggests that this Compact is a progressive and meritorious accomplishment--the product of thirteen years of negotiations between California and Nevada. The Nevada State Journal (September 26, 1968) calls it "a good compact for Nevada...deserves the support of all Nevadans." Similar journalistic opinion exists in California.

After a thorough reading and study of the bill, I have concluded otherwise. There is reason for concern, both with regard to its content and intent. This bill (and its counterpart in California), as presently written, should not be approved.

The Compact is quite clear with regard to its purposes. Notable among these are the following: 1) to protect and enhance existing economies, 2) to permit the orderly integrated and comprehensive development, use, conservation and control of the water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins (my emphasis). Nowhere does the Compact specifically allocate water to Pyramid Lake (or Walker Lake) in an attempt to retard the

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rate of lake-level decline. In fact, it does the opposite-- that is to make possible the "steal" of water presently reaching Pyramid Lake by declaring it "excess" water.

Documentation of the above requires careful consideration of the wording of the Compact. Let me be specific; page 8, line 43 onward, reads:

All existing beneficial uses of water in Nevada as determined by Nevada law as of that time...shall be recognized...provided, however, that the maximum amount of water to be recognized as an existing beneficial use of water in Nevada for the Pyramid Lake Indian Reservation shall be as allocated by Section A of this Article...

Section A allocates some 30,000 acre-feet of water to the Reservation in accord with an earlier decree. Other allocations are made for California, Stampede Reservoir, etc...but the key point here is that no allocation is made specifically with regard to inflow to Pyramid Lake. Article XIII of the Compact, Fish, Wildlife, and Recreation, states:

The use of waters for preservation, protection, and enhancement of fish, wildlife, and recreation is hereby recognized as an inseparable part of the public interest in the use of the waters of Lake Tahoe, Truckee, Carson and Walker River Basins in both states, and is, therefore, beneficial.

Seemingly this article provides protection for Pyramid (and Walker) Lake and recognizes recreational use thereon as beneficial; but this is not the case! To dispel any illusions, one must turn back to definitions of the Compact, page 2.

The term "Truckee River Basin" shall mean the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, excluding Lake Tahoe Basin (my emphasis).

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Pyramid Lake, amazingly enough, does not seem to be included in the "Truckee River Basin," and therefore does not receive the protection granted under Article XIII. The reader at this point might be prone to assume that I am splitting semantical hairs...that I am a bit paranoiac with regard to definitions. In my defense, note the way in which Lake Tahoe is specifically included in the definition of the Lake Tahoe Basin, page 2, line 7:

The term "Lake Tahoe Basin" shall mean the drainage area naturally tributary to Lake Tahoe including said Lake... (my emphasis).

Therefore, waters which enter Pyramid Lake and sustain lake level for recreational use are excluded from protection under the beneficial-use concept because Pyramid Lake itself is excluded from the Truckee Basin.

Moreover, no general protection can be sought in Nevada water law, because recreation is not explicitly identified in Nevada as a beneficial use. That a number of other states do so, and that perhaps tourist- and recreation-conscious Nevada would be well-advised to consider such action, is not at issue here.

One sentence of the Compact (page 9, line 13) delivers the crushing and summary blow: "There is allocated to Nevada all water in excess of the allocations made in Sections B and C of this Article" (emphasis mine). Sections B and C refer to allocations noted previously. WHAT EXCESS WATER? WHAT IS EXCESS WATER? WHERE FROM? Let us see what the Compact says. Answers

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to these questions are not to be found in the section of the Compact dealing with the Definitions of the Truckee River Basin. One must turn to page 14, line 24, under Walker River Basin to find a relevant discussion.

The term "unused water" includes all waters of the Walker River and its tributaries in excess of the amounts allocated, or required for satisfaction of rights and uses recognized and confirmed...

It would appear that "unused water" and "excess water" are synonymous. Excess water must therefore refer to water unallocated at present which eventually reaches Pyramid Lake. This conclusion seems inescapable since no provision is made in the Compact for specifically allocating a water right to water entering Pyramid Lake.

One further aspect of the Compact, which would be humorous were it not so typical of the ambiguous language used throughout the Compact, must be mentioned. The sections of the Compact pertaining to the Walker and Carson River Basins each clearly stipulate that "unused" water shall be allocated for use only within that particular river basin. But the Walker River Basin is defined like the Truckee Basin; i.e., Walker Lake is not specifically included. Given the above assemblage of definitions, it would then be illegal to permit water to reach Walker Lake 1) because such water would be "unused" and 2) because Walker Lake is not within the Walker River Basin (as defined).

My criticism of the Compact can be summarized as follows:

1. No provision is afforded in the Compact which would guarantee the inflow of a specified amount of water to



Pyramid or Walker Lake, although each lake is the hydrologic terminus for the respective river systems (in fact, no substantive reference to the lakes is to be found in the entire Compact).

2. About 250,000 acre-feet of water now reaching Pyramid Lake can be interpreted as "unused" and thus available for allocation and possible diversion (such diversion would cause the lake to decline about forty feet per decade).

3. The Compact is noteworthy for the lack of consideration given the public in general, who derive many and varied benefits from recreational use of Pyramid Lake, as well as Walker Lake. Recreation has not even been clearly identified as a beneficial use at either lake.

I have said nothing herein about obvious adverse effects of the Compact on the Indians who inhabit the reservations on which the lakes occur. No discussion is included as to the fate of one of North America's largest pelican rookeries, Anaho Island, which, with a lake-level decline of less than 30 feet, would cease to be an island, becoming accessible to predatory invasion (bobcats, coyotes, man, etc.). Nor have I raised the question of who might be the beneficiaries of the 'sudden' appearance of so much "excess" and "unused" water for allocation. I am not even suggesting that the Compact is part and parcel of some diabolical plot. What I am saying is that the Compact, as presently structured, is ambiguous and does not include and protect water resources which are a natural part of the total problem. Surely a document so many years in the making should not be so deficient in content. Furthermore, one would hope that so far-reaching a document, requiring the consent of the Congress of the United States, would be forward-looking enough to clearly recognize, identify specifically, and protect recreational

resources which are already at a premium nationally. This is especially true of so unique and spectacular a resource as the desert lakes. As written, the California-Nevada Interstate Compact should NOT be ratified...in the PUBLIC INTEREST.

## Appendix

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The enclosed article appeared in the local paper the same day that my manuscript was completed. It is typical of the publicity which has tended to dull the public's perception of the problem. The headline (which tells the full story to many readers) is untrue. Lakes, by definition, are ephemeral bodies of water; in arid areas they inevitably dry and/or fill up. The basin to the east of Pyramid Lake was occupied by Winnemucca Lake until about 1940; it dried up.

Furthermore, to allay public fear, the article's projections are based on the continued contribution of at least 215,000 acre-feet of water. This is my primary point--that nowhere in a Compact which deals directly with the Truckee River system is there a guarantee, or even a hint, to that effect. For that reason alone, and there are others equally as substantive, no 'whitewash' should be permitted to conceal the inadequacy of the proposed California-Nevada Interstate Compact.

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## Background Statement

Stephen M. Born

Born: 8/17/40

B. S. Geology, University of Illinois, 1961

M. S. Geology, University of Oregon, 1963

M. S. Water Resources Management, University of  
Wisconsin, 1968

Ph. D. Hydrogeology, University of Wisconsin, expected  
1969. Dissertation subject: Deltaic Sedimentation  
at Pyramid Lake, Nevada.

CHARLES E. SPRINGER  
ROGER E. NEWTON

LAW OFFICES  
**SPRINGER & NEWTON**  
333 FLINT STREET  
P. O. BOX 1948  
RENO, NEVADA  
89505

TELEPHONE  
323-2728

February 10, 1969

Nevada State Legislature  
55th Session  
Carson City, Nevada

Gentlemen:

The Sierra Club, Toiyabe Chapter, expresses its opposition to Legislative approval of the California-Nevada Interstate Compact in its present form on the ground that Article VI, Paragraph 4(a) limits "the maximum amount of water to be recognized for the Pyramid Lake Indian Reservation" to 30,000 acre-feet per year. This "maximum" allocation which is limited to use for irrigation purposes, is less than one-tenth the amount of water needed by Pyramid Lake to "stay even"; so we fear for the rapid extinction of this beautiful lake.

Representatives of the Sierra Club were present at the recent hearing on the Compact held by the Committee on Government Affairs. As we understand the position of those who urge the retention of the objectionable language there are two basic arguments. We firmly believe that these two arguments are without substance and would answer them as follows:

First, it has been argued that the questioned provision was included for the benefit and protection of the Indians. The Indians are already protected by virtue of the Orr Ditch decree and need no further protection in so far as their 30,000 acre-feet are concerned. The Indians have made it very clear through their counsel Robert Leland that they do not want any favors of this kind. Much more, counsel for the Pyramid Lake Indians and Legislative Counsel for the Department of Interior have expressed their strongly worded opposition to the mentioned language on the ground that it would restrict the rights of the Indians to seek the establishment of future water rights which would insure the preservation of Pyramid Lake.

Second, it was argued that the phrase "maximum amount of water to be recognized for the Pyramid Lake reservation" does not really mean the maximum amount of

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water to be recognized and that, consequently, the Indians and those who would preserve Pyramid Lake are expressing a foolish and groundless apprehension when they object to the stated "maximum". One becomes inclined to doubt the sincerity of this argument when told (as we were at the hearing) that this "meaningless" provision must be retained because California insists upon it. It is difficult to characterize such an argument as anything short of outright deception. "Maximum amount of water" still means "maximum" whether in an interstate compact or in some other form of English usage. If California insists on a maximum being set on the "amount of water to be recognized for Pyramid Lake," let us debate this issue rather than permitting the matter to be obscured by comforting assurances that the clear meaning of the language may be ignored and that we have "nothing to worry about."

It seems rather evident to us that the argument of the proponents of enactment of the compact in its present, unaltered state places them in a dilemma:

1. If the stated maximum is intended as an unwanted favor to the Pyramid Lake Indians, or if it is "meaningless" and has no legal or other future consequences upon the inflow into Pyramid Lake, then it may and should be stricken from the compact.

2. If "maximum" means maximum, and California does insist on limiting the "amount of water to be recognized" for Pyramid Lake in the future, then we shall have to debate the issue of our willingness to sacrifice Pyramid Lake to the future water needs of California.

Before concluding we would note another defect in Article VI of the compact, namely, the restriction upon use of water in the Pyramid area for drinking, fire-fighting and other domestic purposes which reads that "water allocated in Section A of this article must first be put to beneficial use." In other words the full 30,000 acre-feet per year provided in the Orr Ditch case must be used for agricultural purposes before any domestic use. Under present circumstances, use of 30,000 acre-feet for agricultural purposes is impossible (only about 5,000 feet are now in use); consequently for all

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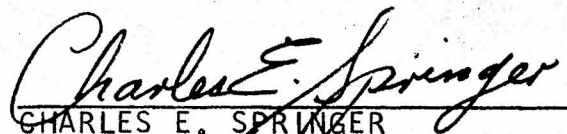
intents and purposes no rights for domestic uses are granted by this compact.

As we see the present situation it is simply this: The Pyramid Lake Indians have by court decree the right to 30,000 acre-feet per year for agricultural purposes. There are presently no legally recognized water rights which would guarantee the flow of any water into Pyramid Lake. The United States and the Pyramid Lake Indians are going ahead with plans to develop water rights necessary for preservation of the lake. Attorneys for the United States and the Indians and this writer are of the firm opinion that passage of the compact would absolutely frustrate all future plans for acquisition of legal water rights necessary for the development of the vast recreational potential of the area.

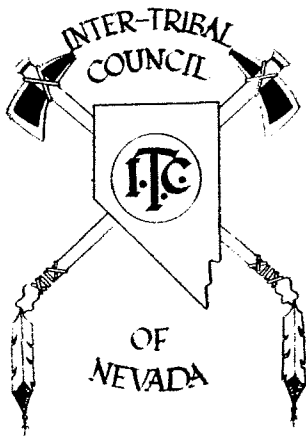
So, we conclude, the continued existence of Pyramid Lake is at stake; otherwise we should not ask the Legislature to alter a document which was so long in preparation. Adoption of the "don't-worry-about-it" attitude of the compact's proponents would be a great disservice to the people of this state.

We strongly urge amendment of the compact in a manner which would eliminate the serious threat to Pyramid Lake posed in the text as now presented.

Respectfully submitted,

  
CHARLES E. SPRINGER  
Special Counsel  
Sierra Club, Toiyabe Chapter





# INTER-TRIBAL COUNCIL OF NEVADA

PHONE 786-3128

1995 EAST SECOND STREET • RENO, NEVADA 89502

February 11, 1969

## OPEN LETTER TO ALL NEVADA LEGISLATORS

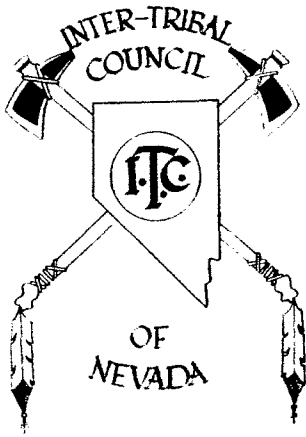
The American history testifies to the fact that Indian rights really doesn't mean very much and this becomes more apparent in the form of the California-Nevada Interstate Compact (AB-60).

In one month, the Pyramid Lake Tribe sells more permits to boaters and fishermen than there are Indians in the entire state of Nevada.

Pyramid Lake, belonging to the Indians and located in the center of their reservation; is a Nevada lake, used by Nevadans, and must be protected by the Nevada Legislators for the future of Nevada.

Respectfully submitted,

*Carole Wright*  
Carole Wright  
Editor, Native Nevadan



# INTER-TRIBAL COUNCIL OF NEVADA 81

PHONE 786-3128

1995 EAST SECOND STREET • RENO, NEVADA 89502

February 11, 1969

Dear Mrs. Brookman,

Enclosed is a letter I hope you will consider reading to the committee members working on the water compact bill.

I cannot attend today's meeting as I have already committed myself to other duties.

The attitude of the people at Pyramid Lake is as indicated in the letter - that Indian ownership <sup>of Pyramid Lake</sup> should not adversely persuade their voting or thinking as it is a Nevada lake.

I'd appreciate your help in getting this letter read to the members and other interested persons.

Sincerely,

Carole Wright

Mr. Chairman:

I am a Graduate Student of the University of Nevada majoring in Aquatic Biology; and am interested in the preservation of Pyramid Lake. I would like to say a few words concerning three species of animals now using Pyramid Lake.

The White Pelican will be seriously affected by the water allocation. At the present time the colony on Anaho Island is considered one of the largest (if not the largest) inland rookeries in the world. There are seven inland colonies of these birds, four of which are in the United States. The Pyramid rookery may support as many as 8000 birds. At present it is located on an island with fairly shallow water separating it from shore. It will not be too many years before a land bridge is established. Ornithologists believe that once this happens predation and other factors will eliminate the rookery in short order. Not much has been said of the economic benefits of this bird, but I feel that they play a part in the attraction to Pyramid. In the future it is certain that this colony should act as a drawing card for tourism in this area.

The Cui-ui is a sucker like fish inhabiting now only the Truckee River and Pyramid Lake. Only when the Truckee is flooding at this time do the fish get a chance to go up-river to spawn. In recent years the Fish and Game people have taken a number upstream and so there has been some recruitment to the population. This is a game fish taken by Indians and others. Its presence is a

drawing card to both fishermen and tourists. Its importance in this capacity is sure not to diminish. The fish is a natural asset of the lake which should be preserved.

The Lahontan Cutthroat trout is now enjoying a rebirth in Pyramid lake. The fish was at one time believed to be extinct in Pyramid due to the insurmountable obstacle presented by Derby Dam to their normal spawning runs. From then on it was only waiting for the existing population to die off. At present the Fish and Game people are stocking Pyramid and increased vigor has been noted in the fishery. The prospects for expanded recreational development at Pyramid lake increase with every large Cutthroat caught. As Pyramid fishing pressure increases the economic benefits for the area are obvious. Since Pyramid is the only lake in which large cutthroat trout (over 5 pounds) may be caught in any numbers, the future of this area drawing card looks very good; but only if we can maintain the Lake or at least slow its demise appreciably.

Thank you

Robert Soulages