

JOINT HEARING

Senate Committee on Federal, State and Local Governments  
 Assembly Committee on Government Affairs

January 29, 1969

Subject: California-Nevada Interstate Compact

Committee members present:

James Gibson, Chairman	)	
Marvin L. White	)	
Carl F. Dodge	)	Senate Committee on Federal, State
Vernon E. Bunker	)	and Local Governments
Chic Hecht	)	
Francis F. Farr	)	
Warren L. Monroe	)	
Hal Smith, Chairman	)	
Norman Hilbrecht	)	
David Branch	)	
Don Mello	)	Assembly Committee on Government
C. W. Lingenfelter	)	Affairs
Bryan Hafen	)	
Virgil Getto	)	
Joseph Dini, Jr.	)	

Also present were:

Lt. Governor Ed Fike	
Senator Cliff Young	
Assemblyman Eileen Brookman	
James W. Johnson, Jr.	Counsel, Nevada Compact Commission
Roland D. Westergard	Nevada Compact Commission
Fred H. Settelmeyer	Minden, Nevada
Ray Knisley	Lovelock, Nevada
Robert Leland	Attorney, Reno, Nevada
Richard C. Sill	Tolyabe Chapter Sierra Club Conservation Com.
Carole Wright	Editor, Native Nevadan
Maya Miller	League of Women Voters of Nevada
Tina Nappé	Citizen
Hubert Bruns	Chairman, California Compact Commission
John C. Buckwalter	Incline Village, Nevada
Ruth Buckwalter	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 Springer	Attorney, Tolyabe Chapter Sierra Club
	Conservation Committee

Martin D. Mifflin  
Verl Hendrix  
R. S. Leighton  
J. D. Wood  
Bolton Minister  
Robert Hunter  
Alvin James  
Nacy Bowers  
Press representatives

Desert Research Institute, Univ. of Nevada  
Fallon, Nevada  
Nevada Compact Commission, Reno, Nevada  
T.C.I.D., Fallon, Nevada  
Nevada Compact Commission, Yerington, Nev.

Chairman Hal Smith called the meeting to order at 3:30 P.M. and announced that the purpose of the Joint Hearing was to consider AB-60.

AB-60 Proposed by Committee on Government Affairs.  
Ratifies California-Nevada Interstate Compact. Executive estimate of cost: For biennium 1969-1971, \$60,000 for operating expense; eventual expenditure of approximately \$100,000 for participating costs for weir construction at Lake Tahoe.

Chairman Smith introduced Mr. Roland Westergard, State Engineer and member of the California-Nevada Interstate Compact Commission. Mr. Westergard stated that Robert Leighton would be available for questioning, as well as Mr. James Johnston, who was legal advisor for the Commission. Mr. Bolton Minister would make the Commission presentation. Mr. Westergard stated that he had had prints of the area involved made and these were placed on the blackboard.

Mr. Westergard stated that Mr. Hubert Bruns, Chairman of the California Compact Commission, was present.

Mr. Minister said that he would discuss not only the Compact, but also some background on the reasons why the negotiations were undertaken and what effect the Compact would have on the State of Nevada and also, if the Compact failed, what effect this would have on the State of Nevada. He called attention to Section 2, lines 6-9, the phrase "and approved by the representatives of the United States." He said he felt the language was confusing, inasmuch as the Compact has not been ratified by the U. S. Congress. He felt better language would be "... acting pursuant to the authority granted by the legislature of this state, and the commissioners representing the State of California, and approved by the representatives of the United States ..." At this time, no approval is expected until both states have ratified the Compact. He added that he felt that the agreement that had been reached with California is firm.

Three interstate rivers and one interstate lake are involved in the Compact, and the Compact will probably yield Nevada in excess of one million acre feet of water per annum, as compared to the Colorado Compact which yields Nevada a rather uncertain 300,000 acre feet per annum. He stated that the reason for Compact negotiations in the first place was that both states and the United States, authorized by legislation, should seek means which would resolve the water problems arising from each of the two states' increasing use of a limited

common water supply. New applications for water rights upstream, primarily in California, were invariably protested by water user groups with established water rights downstream -- who held that there was no water available in most years in excess of their established rights and that new users upstream would have to be backed up by long-term water storage. In response to this problem, in the late '40's, the State of California and the State of Nevada joined together to make a joint investigation of the Lake Tahoe watershed to see if additional water could be granted to upstream users for recreational and domestic purposes. As a result of their studies, it was determined that additional applications could be met in the Tahoe Basin for these purposes.

In the early '30s, the Tahoe Water Conference Committee, created by both California and Nevada, was trying to adjust certain problems relating to the Lake level and integrate the Truckee River Agreement into the Tahoe Basin area to help solve some of the Tahoe Basin area's problems. This did establish maximum and minimum Lake levels, but left many other problems unsolved -- primarily these had to do with fluctuations of the Lake level, which could result in flooding of property, or in allowing the Lake to recede from property too far. The Carson River Basin has been in litigation since 1945 and is still not settled. The Truckee River is in the same place as the Tahoe Basin and the upstream use is protested by downstream users in Nevada, also. The Walker River Basin is in dispute as a result of changes in the directorship of the Walker River Irrigation District, who sought to have the decree more strictly enforced in the California reaches of the Walker River.

As a result of all these conflicts and problems, it was determined the best way to solve them would be through interstate negotiation to determine as to between the two states, the water rights of the two states -- the waters available and the waters that would be the property of each state. Mr. Minister stated that the above is the basic purpose of the Compact. It is not the intent, through the Compact, to adjudicate water rights as to the individual. Since the time of the beginning of these Compact negotiations in 1955, the need for a settlement has been accentuated with the growth in the area, particularly in the Tahoe Basin. Given a Compact as it is now presented, Mr. Minister stated that they now believe that the problems are resolved to the best interest of both of the states.

Each of the two states will be fully aware of the amount of waters available for each area; and through operations with state agencies, each state may take action on application for water rights under the direction of the laws of the state and handed down by the legislature. Additionally, changes in the types and places of use -- or manner or use -- may be permitted as changes occur. To understand the basis on which the Compact was arrived at, one should understand that the professed claims of the United States for water reserve in the Truckee River Basin exceed the average annual flow of the Truckee River. Beneficial uses are recognized as having the highest priority of the available waters. Waters not needed to satisfy these recognized existing uses are to be divided in proportion to the water use of each of the

two states. Uses under federal claims of right are limited by the beneficial uses for the states. No Compact could possibly 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 Article IV of the Compact, which establishes the California-Nevada Compact Commission, outlines the membership, powers, duties and functions. He stated that after the first few years of operation, the Compact will be largely self-enacting. It will not require great expenditures for the State of Nevada. Once the Compact is established and operating, the uses of the water cataloged, it is foreseeable that it will be self-operating and this in turn will lead to lesser costs.

Article V (Lake Tahoe Basin) recognizes the right of the United States to use the storage part of Lake Tahoe, between elevations 6223.0 and 6229.1 feet, subject to the construction of a new overflow weir, with proportioned acre-feet to go annually to California and Nevada. Nevada will participate in one-half of the cost of the overflow weir, estimated at an approximate total of \$100,000.00. It is thought that improved efficiency provided for by the weir will allow creations of 7500 acre-feet of new water in Tahoe by allowing efficient outflow of water and reduction of evaporation. This will minimize the high and low levels of the Lake. Trans-basin diversions existing in the Lake Tahoe Basin as of the time of the Compact are recognized and permitted in the amount that they presently exist. (These included the Echo Lake diversion to the power company in California, the Marlette Lake diversion to Nevada, and the North Creek diversion to Washoe Valley.) Finally, the Compact permits pumping from Lake Tahoe in drought emergencies for the benefit of downstream users for domestic and municipal sanitary purposes.

Article VI (Truckee River Basin) recognizes the 1944 Truckee River Decree and allocations for the Pyramid Lake Indians in amounts determined in the decree. 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 to be used for domestic or municipal purposes on the reservation. Mr. Minister stated that, of course, the Truckee River Decree could not be changed and we must recognize the Court's authority over the Decree. The language in the Article is such that the Compact can in no way be construed as a bar to changes of place, manner, use, or means of use of waters allocated to the Reservation.

Section B of Article VI sets forth the California allocations from the Truckee River Basin. Mr. Minister then read directly from the Article regarding the stipulations of the allocations. Section D allocates to Nevada all waters in excess of those mentioned in the preceding sections of Article VI.

Mr. Minister then outlined the Carson River Basin allocations as set forth in Article VII of the Compact. Agreements in this Basin between upstream and downstream users are longstanding. Section A of this Article defines the allocation to California and the right to divert from the natural flow of the

West Fork Carson River and its tributaries for existing nonirrigation uses and for direct irrigation use. The same is subsequently provided for the East Fork Carson River and its tributaries. There is also given to the State of California the right to store 2000 acre-feet of water annually within Alpine County, subject to all existing uses in Nevada. Section B of this article delineates allocations to Nevada. 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 this section. Additional yields of water over and above those made to California and Nevada are allocated for settlement on the basis of 20% to California and 80% to Nevada. Provision is made that the states may join together in developing this water or may do so separately.

Article VIII concerns the Walker River Basin and the main rights and uses are those set forth 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 duties and powers are set forth in Section C of this Article.

Mr. Minister then continued through the Compact, briefly touching on the other Articles: Ground Water and Springs, Interbasin Transfers of Use, Suppression of Evaporation, Coordination of Reservoirs, Fish, Wildlife and Recreation, Nonconsumptive Use, Diversion and Exchange of Yield from Future Reservoirs, Change of Point of Diversion, Manner, Purpose, or Place of Use, Imported Water, Compact Effect, Violations, Recourse to Courts, Non-Impairment of Right of United States, and Ratification and Consent.

Mr. Minister stated that at all times there would be recourse to the Courts for any decisions on the Compact. The Compact is not the ultimate authority. It is felt that if the Compact is not consented to, the basic problems that now exist will continue to be greater. Downstream users will continue to protest. Certain areas of the problems will affect Nevada more since California recognizes riparian rights and Nevada does not.

Chairman Gibson asked Mr. Minister what was the present status of the Compact in California. Mr. Minister said that California has had the Compact presented to them and it is being considered in the Legislature.

Mr. Getto asked how much State appropriated money has been spent on negotiations to this date and the answer was \$318,000.00 over a period of 13 years.

Former State Senator Ray Knisley 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 right in lieu of the waters allocated. He said that there is no trespass against the right



of exporting effluent and the Compact has remained silent on this. This matter is in the hands of sanitation authorities. He stated that if the Compact is passed, it will be highly beneficial for authorities. He stated that if the Compact is passed, it will be highly beneficial for Lake Tahoe and will tend to stop the hodge-podge development that is going on up there now, and will benefit the Basin as a whole.

Mr. Robert Leland, an attorney from Reno, and representative of the Pyramid Lake Paiute Tribe in legal matters, stated that he has been attending 10 years worth of meetings regarding the Compact. He said he would like to correct the record factually regarding several statements made by Mr. Minister. He added that the United States government as a whole has not taken a position on the Compact, but the Department of Interior, which is the principal agency involved, had joint Bureau meetings within the past four months and on January 14th, took a forthright stand opposing the Compact and transmitted that to the Executive Department. The Department of Interior opposed the Compact for most of the reasons that conservation groups, the Indian tribe involved, many sportsmen and many uncounted recreationists oppose it. He stated that another thing he would like to correct in this Compact is that unfortunately "Article VI does not contain any language proposed by Robert Leland."

In brief, Mr. Leland noted, and without going into hydrology, (although he would be willing to present testimony from hydrologists regarding the physical effect the Compact will have on water systems of Northern Nevada)-- he would like to highlight some of the objections he and the group he represents have to this Compact.

It is the first Interstate Compact of 18 that does not contain a positive provision that the water rights for Indian reservations are not to be affected. This Compact omits this point -- and in fact, he felt, has quite the opposite effect. If the two states adopt this Compact and it is then adopted and approved by Congress, it has the effect of Federal law and all the self-administering provisions that Mr. Minister mentioned go into effect and cut across law in conflict with it and seriously interfere with any water users' right, including the Pyramid Lake tribes, to go to Court.

From the point of view of Pyramid Lake, and here, he stated, he was not speaking merely for the Indian owners of the half-million acre reservation, but also for the people in northwestern Nevada whose primary industry is recreation and tourism. The Compact, in Article VI, part A, does recognize as a first priority in its allocations to the State of Nevada, that of approximately 30,000 acre feet of water for the Pyramid Lake reservation. But that does not mean it is going to get the water. Since the Ore Ditch Decree when that water right was established, for irrigation purposes only, the Indians have been able to utilize a mere 5,000 acre feet, because they have no way of taking the other water for irrigation. There is no pipe, the siphon has never been built, and it doesn't look as though it's going to be built -- to get the water from the Truckee Canal to the Indian lands for irrigation.

The Compact permits the United States, not the Indian tribe, to go to Court and ask for that use of water for irrigation only. No other water user has that limitation, he said. The United States is given the right in the Compact to ask to have that changed, so that the water may be used for other purposes; but there is no indication that the United States will ask for it, and Mr. Leland felt it could be argued under this Compact that if they did change the use of the water, either Nevada or California would complain that this affected their allocation.

He added that he felt the worst part about Article VI, part A, and the proviso further on in Article VI, is that while California is given the second priority over Nevada in most instances, and while California is given the right to develop additional water, so long as it doesn't interfere with existing uses in Nevada -- the Compact binds Nevada so that it can never claim as an existing use any more water for Pyramid Lake than part A gives it -- i.e., the 30,000 acre feet. He stated that if the Indians were able to use every drop for irrigation, (which they can't), they could then apply for more water for municipal and domestic uses. It is interesting to note, he said, that they cannot apply for municipal water until they do use up every drop of their irrigation water in an irrigation project. He said he felt the Compact would prevent the United States government, or the Indians on their own, from going to Court to assert a right for water other than for irrigation.

Mr. Leland noted 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 operations only 5,000 acres of land could be irrigated at the highest point. 350,000 acre-feet of water a year is necessary to sustain the Lake. He said that the Carson River Basin is presently relied upon for sustaining the Newlands Project, but if the Basin fails to do so, diversions could be made from the Truckee River that would be ruinous to Pyramid Lake. The Indians and reservations are, for all practical purposes under the trusteeship of the United States. The Compact would limit the government's rights specifically to intervene or interfere with the limitations placed on the water for Pyramid Lake. He spoke briefly of the income potential of the Pyramid area. He ended his formal remarks by saying that with amendments to the Compact that would not compel any restriction on water for Pyramid Lake, and that would not authorize a lavish and possibly wasteful use of the Carson River water, he felt they could live with this Compact.

It was requested of Mr. Leland that all the reports to which he referred be made available to the Committees.

Senator Dodge said that he would agree with Mr. Leland that it is to everyone's interest to try to sustain Pyramid Lake at whatever level the natural moistures and natural river flows will permit. He asked Mr. Johnson, the Compact Commission's legal counsel, to clarify matters in relation to this.

Mr. Johnson said he felt there is a basic misconception of what the Compact is supposed to do. The Compact does not establish a criteria for the operation of stream systems. It utilizes a technique to allocate water between two states.

The fact the Pyramid Indians are concerned about is to make sure that they get the first "right" in the allocation to Nevada. It is not the intent of the Compact, he said, to restrict either state or to tell either state how to utilize its water within the boundaries of that state. He stated that it was necessary to have some point from which to start -- so the Compact theory is to start as best as they can with existing uses, rather than existing rights. With regard to the water rights presently existing for the Pyramid reservation, he stated that those will have to be arbitrated between the Department of the Interior and the Bureau of Indian Affairs, thus falling outside the concerns of the Compact Commission. He repeated the concern the Commission has for the decreed water rights for the reservations and that, in effect, the Compact guarantees those rights by specific inclusion. He stated that this inclusion does not limit future allocations for the Lake, but rather provides for a minimal guarantee.

Senator Dodge asked Mr. Leland, assuming we did not now try to protect the Compact, did he think that the rights of Pyramid Lake, along with any other Nevada users might be jeopardized by the passage of time and the increasing pressures and demands for the use of water in California. Mr. Leland replied that he did not think so. He felt that time is on the side of the beneficial uses that Pyramid Lake could make of the water. He referred to the fact that there is 66% loss of water from the Reclamation projects and Senator Dodge questioned this figure.

Senator Gibson asked Mr. Leland if he felt the Compact was giving California water that belonged to the Pyramid Indians. Mr. Leland said that he couldn't say that it was giving California water that belongs to the Indians, but it is limiting the reservation to an amount of water which, if the Compact is enforced, would destroy the Lake.

Senator Dodge asked if any attorneys for the government, particularly the Department of Interior, feel that there is any conflict or any such restriction as Mr. Leland speaks about -- between the language in the Compact and the reservations which were made on behalf of the Indians by the United States government in the 1926 Amendatory Agreement. Mr. Johnson said that none had been expressed to him. Mr. Leland stated that all the attorneys in the solicitors' office of the Department of Interior have complained and filed a formal protest against this Compact with the Bureau of the Budget and the letter is signed by the Secretary and dated January 14th. Unfortunately, he said, he does not have a copy of their written objections. They have been read to him on the phone.

Mr. Knisley asked to make further comments and stated that before the Committees lose sight of Lake Tahoe, "we're allowing the tail to wag the dog" in this controversy. He said that there was no question in his mind but that the Pyramid Indians have been "jobbed" and it was done by the United States of America. The Compact has no means of rectifying that. This is a matter between the Pyramid Indians and the United States. He added that it should be rectified. He stated that if there is much more delay on this Compact, California would file a suit in the U. S. Supreme Court against the State of Nevada. California



is not a party to the 1915 Consent Decree of the allocation of the water of Lake Tahoe to the storage water of Lake Tahoe. Not one man on the California side is a party to this and he warned the Committees that what would be the end result would be getting a roughshod adjudication of water by a Court that is not nearly as competent to make a decision as these men who have been working on the Compact for the last 13 years. He said it was possible to end up with no water whatsoever for the east side of Lake Tahoe -- the money spent on parks will have been improvidently spent -- there will not be water for development at Tahoe and the greatest natural asset we have -- and, it would be impossible to settle the rights of the Indians versus the United States by the actions that California and Nevada take.

Mr. Springer said that he represented the Toiyabe Chapter of the Sierra Club and that most of the remarks he had to present had been covered by Mr. Leland. He said he saw an unnecessary danger in the Compact, the possibility that Pyramid Lake might be destroyed. If this danger exists, why not spell it out, and try to eliminate the danger. The government lawyers involved in this case, and the Secretary of the Interior have expressed the same concern. He said that he would appreciate the opportunity of presenting hydrological evidence to the Committees. He stated that 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 an amendment should be considered that would eliminate this danger.

Mr. Hilbrecht asked Mr. Frank Daykin if there was any way to easily reconcile the various interests other than "doing violence" to the Compact. Mr. Daykin said he did not feel there was a simple amendment which would reconcile them. Mr. Leland's amendment, he said, would be contradictory of establishing any of Article VI -- in removing another Article, which, in turn, would unbalance the priorities under Article VI as between Nevada and California. He said the effect of such an amendment might undo the Compact Commission's lengthy accomplishment.

Mr. 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 cited that the history of their treatment in the past was bleak, but hoped that now the Committees would look upon them as part of the community with the State of Nevada.

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

Mr. James made a brief statement supporting Mr. Leland's views. He felt that representation of northern Nevada and the Indian community on the Compact Commission was lacking and would like to see all the various interests properly represented. He emphasized the value of Pyramid Lake as a part of northwestern Nevada.

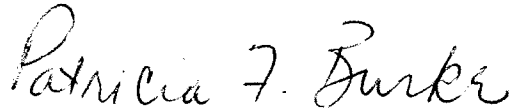
Senator Dodge said all the people on the Compact Commission for the patience and perserverance they have had over the long period of time -- in trying to arrive at an equitable agreement with California. He said he felt the pressures from California were such that it could never be consummated. He feels that they have done a wonderful job and have included language to protect the rights of the Indians at Pyramid Lake. He felt there should be no inferences left that the Commission has not acted in the public interest, and they have been objective as possible in accomplishing this.

Senator Farr moved that the meeting be adjourned on that note.

Mr. Knisley admonished the Committees not to be confused by matters over which the Compact has no jurisdiction. He said if one would read the legislation which set up the Compact Commission and gave it its powers, and also read completely the Compact itself, there is no doubt as to the aims and fairness. He asked that they all proceed diligently to send this Compact to Washington. If Washington is unhappy with it, they can delay, but he pleaded that the Committees and this Session not be guilty of the delay at this point.

There being no further testimony at this time, Chairman Smith adjourned the meeting.

Respectfully submitted,



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Patricia F. Burke,  
Committee secretary