

MINUTE ITEM

This Calendar Item No. 45
was approved as Minute Item
No. 45 by the State Lands
Commission by a vote of 3
to 0 at its 3-5-81
meeting.

CALENDAR ITEM

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AUTHORIZATION FOR SETTLEMENT OF LITIGATION IN
STATE OF CALIFORNIA V. COUNTY OF NEVADA, NEVADA
COUNTY SUPERIOR COURT NO. 21J43 AND STATE OF CALIFORNIA
V. COUNTY OF SIERRA, SIERRA COUNTY SUPERIOR COURT NO. 3334

On April 30, 1976, the State Lands Commission filed the above-captioned actions against Nevada and Sierra Counties under Section 5026 of the Revenue and Taxation Code. The lawsuits sought to have the counties reflect on their tax records that the bed of Independence Lake is sovereign land held by the Commission for benefit of the public.

Independence Lake is a navigable body of water located in part in Nevada County and in part in Sierra County. The surrounding uplands are owned by the Sierra Pacific Power Company, which contends that the lake is non-navigable and that its bed is therefore owned by Sierra Pacific.

In early 1976, the Commission staff and representatives of the Attorney General's Office were informed that Nevada and Sierra Counties had designated on their tax records that the bed of Independence Lake was owned by the Sierra Pacific Power Company. It was felt at the time that prompt action was necessary to correct the record because (1) the local tax records could conceivably prejudice the Commission's position in future litigation with Sierra Pacific Power Company over ownership rights to Independence Lake; and (2) the company was negotiating with third parties at the time to develop the area as a large private recreation area, to the detriment of the Commission's legal position and rights of the public. Accordingly, the Commission authorized the filing of a suit against both counties under the Revenue and Taxation Code seeking to correct the tax records.

Since the actions were commenced, however, additional information has come to light. First, the State Board of Equalization, which under the California Constitution has exclusive authority to assess property owned by utility companies, has never assessed the bed of Independence Lake to the Sierra Pacific Power Company. Second, Nevada and Sierra County officials

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CALENDAR PAGE	225
MINUTE PAGE	413

CALENDAR ITEM NO. 45 (CONTD)

have examined their records and concluded that in fact they have never designated the bed of the lake as being held by either the State or Sierra Pacific.

In light of these developments and the fact that the title dispute over Independence Lake directly involves only the Commission and the Sierra Pacific Power Company, reconsideration of the present litigation appears proper. At the Commission staff's request, the Nevada and Sierra County Boards of Supervisors have both adopted resolutions declaring that the counties take no position on the merits of the underlying title dispute, and that no previous county administrative actions should be construed as indicating any official view of the matter.

Based on these facts, the staff and Attorney General's Office believe that the pending cases no longer serve any useful purpose and should be dismissed.

Representatives of the Commission have already initiated discussions with the Sierra Pacific Power Company to determine if the underlying title controversy over title to Independence Lake can be resolved without further litigation. Sierra Pacific has asked that these negotiations be held in abeyance pending the California Supreme Court's decision in the related high water/low water litigation. If the negotiations ultimately prove unsuccessful, the staff will return to the Commission to request authorization to commence a quiet title action against the Sierra Pacific Power Company to resolve the matter.

EXHIBIT: A. Site Map;

IT IS RECOMMENDED THAT THE COMMISSION:

1. AUTHORIZE THE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO FILE DISMISSALS WITHOUT PREJUDICE IN STATE OF CALIFORNIA V. COUNTY OF NEVADA, NEVADA COUNTY SUPERIOR COURT NO. 21043 AND STATE OF CALIFORNIA V. COUNTY OF SIERRA, SIERRA COUNTY SUPERIOR COURT NO. 3334, AND TO TAKE SUCH OTHER ACTION AS MAY BE NECESSARY TO ACCOMPLISH THE DISMISSAL OF THESE CASES.

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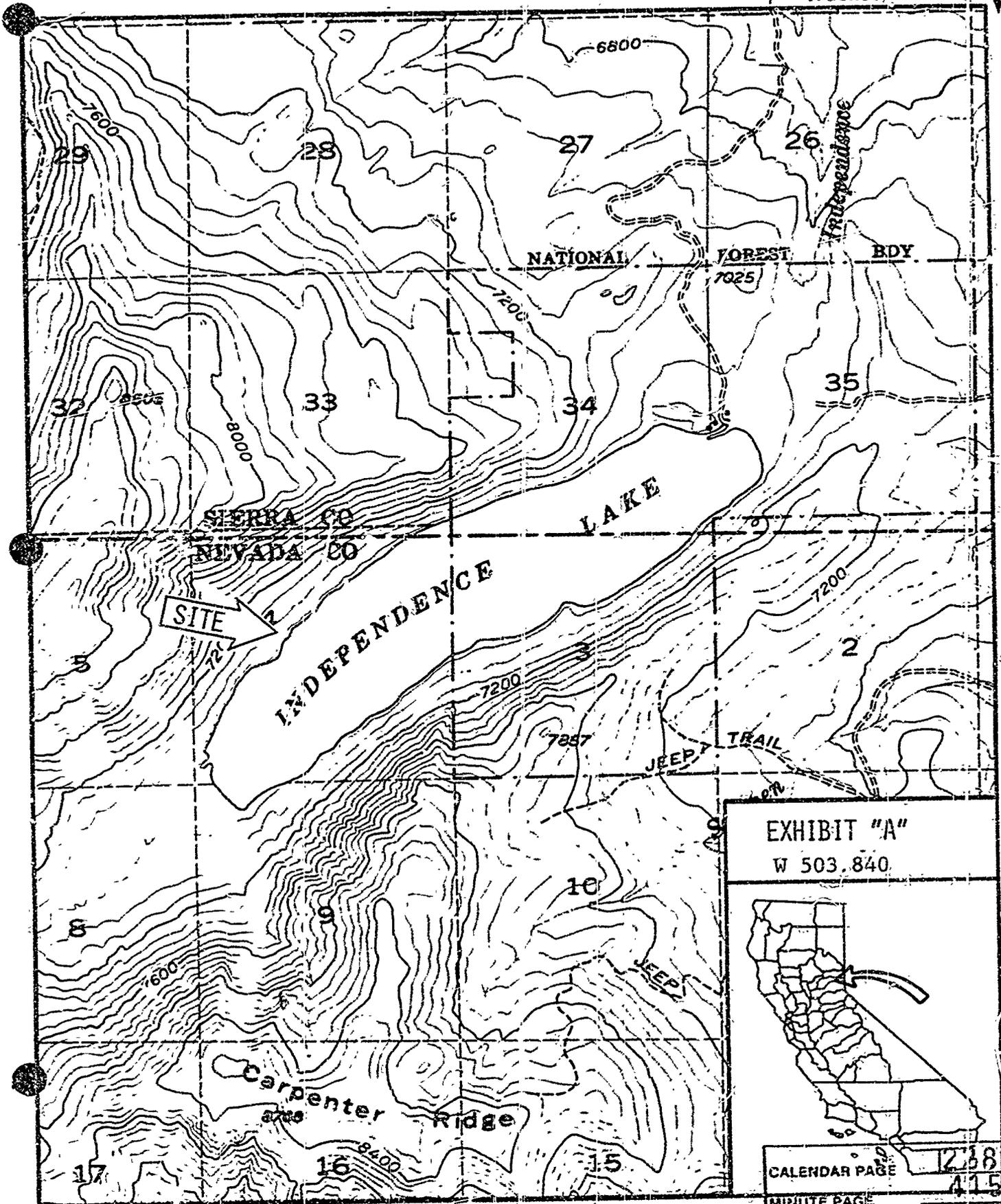


EXHIBIT "A"
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CALENDAR PAGE 1238
MINUTE PAGE 415