

Decision No. 80340

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHWEST GAS CORPORATION For a
Certificate of Public Convenience
and Necessity Under Article I,
Chapter V, Public Utility Code of
the State of California to Construct
and Operate a Natural Gas Distribution
System, to Exercise Franchise Rights
when Granted, and to Deviate From
Filed Main Extension Rules in the
Vicinity of the Northstar Project
Near Lake Tahoe, California.

Application No. 53033

(Filed November 29, 1971)
(Amended December 7, 1971,
and December 13, 1971)

Darrell Lincoln Clark, Attorney at Law,
for applicant.

Richard G. Campbell, Attorney at Law,
General Counsel; and Graham & James,
by Boris H. Lakusta, Attorney at Law,
for Sierra Pacific Power Company,
protestant.

David Mathews, Attorney at Law, Deputy
Attorney General, for State of Nevada,
Public Service Commission of Nevada,
intervenor.

Brobeck, Phleger & Harrison, by Gordon E.
Davis, Attorney at Law, for Trimont Land
Company, interested party.

James J. Cherry and Janice Kerr, Attorneys
at Law; J. Dutcher and J. J. Gibbons,
for the Commission's staff.

O P I N I O N

Southwest Gas Corporation (Southwest) is engaged in the business of distributing and selling natural gas in certain portions of San Bernardino and Placer Counties, California, as a public utility subject to the jurisdiction of this Commission. Southwest is also engaged in the transmission, sale and distribution of natural gas as a public utility in certain portions of the States of Nevada and Arizona. Southwest seeks to extend its existing certificated territory within Placer County to an area which includes all or part of Townships 15, 16 and 17 North, Ranges 16, 17, and 18 East. See Appendix A for a map of Southwest's present certificated area in Placer County and the area that Southwest seeks by this application. Southwest seeks this additional territory in order to serve a proposed real estate development known as Northstar-at-Tahoe. For the purpose of serving this development Southwest also seeks authority to exercise certain franchise rights granted by the Board of Supervisors of Placer County and seeks authority to deviate from its Gas Main Extension Rule No. 15 and its Gas Service Extension Rule No. 16 to the extent required to construct its facilities to the development. Public hearings were held on the application on February 22 and April 4 and 5, 1972, at Tahoe City before Examiner Robert Barnett.

Trimont Land Company (Trimont), a wholly owned subsidiary of Fibreboard Corporation, has planned an all-year resort community, Northstar-at-Tahoe, to be developed on portions of a privately owned 26,000-acre site located in Placer County outside the Tahoe Basin near Lake Tahoe's north shore. This development will include a major ski complex, summer recreational facilities, condominium residences, lot parcels for single-family dwellings,

and a commercial village center. The certificated area requested by Southwest encompasses the entire 26,000-acre site plus more. The entire development is expected to take over eight years to complete. The portion subject to this application concerns the first phase of the development, which involves some 2,560 acres.

The Sierra Pacific Power Company originally opposed the application, but has since withdrawn that opposition. The State of Nevada opposes the application on the ground that Southwest does not have an adequate gas supply to serve both its customers in the State of Nevada and the customers forecast for the Northstar project. The staff asserts that Southwest has an adequate gas supply to serve the initial development of 2,560 acres, but the staff opposes granting a certificate for an area greater than this initial development, and opposes the method of deviation from the main extension rule as proposed by Southwest.

On the issue of adequacy of gas supply the State of Nevada presented no evidence. Both Southwest and the staff presented evidence that gas supplies were adequate to serve the proposed 2,560-acre development. That evidence shows that for the 1979-1980 heating season Southwest estimates a firm peak-day demand of 108,780 Mcf on its northern system. Southwest's present contract with El Paso Natural Gas Company allows daily firm purchases of 108,408 Mcf. In addition, Southwest has an option for an additional 5,300 Mcf per day. On this basis, Southwest has sufficient gas available to meet firm requirements through 1979-1980. The Northstar development represents about 2½ percent of the 1979-1980 firm peak-day requirements.

We will grant the certificate as prayed for with certain restrictions. We do this because we wish to assure the public that there is a gas corporation available to serve natural gas in the North Tahoe area when certain conditions as to availability of gas and adequacy of financing have been met. Because Southwest can extend its mains into contiguous territory under Public Utilities Code Section 1001 without Commission approval, we feel that the Commission will be in a better position to supervise orderly economic growth in the area if we were to certificate the area to Southwest, but restrict further expansion without prior Commission approval. It serves no useful purpose to go through another certificate hearing such as the one in this case when Trimont begins its second phase of construction. At that time, the issues will be availability of gas and adequacy of financing, not the need for natural gas in the area. That need has been established in this case and should not have to be reestablished.

Applicant's main extension rule requires developers to advance the costs of construction of gas mains prior to commencement of work by the utility. These costs are then refunded to the developer as loads become available on which the utility can earn. The refunds are determined by multiplying the unit cost per foot of the main extension times the footage allowances currently applicable for various types of gas consuming equipment. Trimont opposes application of the main extension rule because of the substantial amount of money, about \$360,000, that would be required to be advanced. Southwest opposes application of the main extension rule because of the method of refund. Under the

rule, if Trimont's projected sales are realized, Southwest would be required to refund to Trimont the total cost of the extension within two years. However, gas consumption at the end of two years would fall far short of the amounts needed for Southwest to earn a reasonable rate of return on its investment. To avoid the problems inherent in applying Southwest's main extension rule, Trimont and Southwest entered into an agreement whereby Southwest would advance all monies necessary to install gas mains and Trimont would pay 11 percent interest on monies expended by Southwest on Southwest's "excess investment". The "excess investment" is determined to be the plant investment made by Southwest in excess of five times operating revenue less cost of gas. As gas sales increase, the allowable investment increases and the excess investment decreases. In effect, refunds take place as revenues increase. The amount of excess investment would be determined every ninety days and interest payments made accordingly.

The Utilities Division of the staff objected to the proposed deviation from the main extension rules on the grounds that it provided for Southwest to advance funds rather than the developer, and that it provided for refunds based upon revenue generated rather than upon the free-footage allowance for gas appliances. The Finance and Accounts Division of the staff objected to the proposed deviation on the grounds that it provided for Southwest to advance funds rather than the developer, and that the method of refunding might cause Southwest to make substantial paybacks before it could earn a reasonable return on its investment. A staff accountant asserted that if revenues are to be the basis for refunds, the formula to determine the amount of refund should be such that it takes approximately six years to make refunds at current projections.

In response to the staff objections, Trimont and Southwest amended their agreement as follows:

"5. Advances in Aid of Construction and Refunds.

5.1 (a) Advances in aid of construction shall be made annually by Trimont in accordance with the provisions of Southwest's presently effective Rule No. 15, Gas Main Extensions, applicable to main extensions to serve Subdivisions, Tracts, Housing Projects and Multi-Family Dwellings, for the estimated cost of gas distribution main extensions to be made during that year.

(b) For any such extension to be made during the first year of construction by Southwest, in lieu of a cash advance, Trimont may deliver to Southwest Trimont's note in the principal amount of a full estimated cost of such first year's extension. Trimont's note shall be senior in priority with respect to principal and interest to any obligation of Trimont to Fibreboard or any successor to Fibreboard's interest; shall be dated as of the same date a cash advance would otherwise have been due; shall mature and be payable in full, less any allowable refunds which would then have been due in the case of a cash advance, one year from the date of issue; shall bear interest to maturity at the rate of 7% per annum; and shall be secured as to the payment of principal and interest by a guarantee of Fibreboard which guarantee may be called upon by Southwest for payment upon default by Trimont with no necessity for prior presentment to Trimont or other effort by Southwest to obtain payment from Trimont. If the note tendered by Trimont in satisfaction of the provisions of this subparagraph does not comply with all requirements of this subparagraph, a cash advance shall be required in accordance with subparagraph 5.1 (a) above.

5.2 (a) Refunds shall be paid to Trimont by Southwest in accordance with Southwest's Rule No. 15 except that in lieu of the free footage allowances provided in Section B thereof, such refunds shall be made at the rate of \$700.00 for each permanent new service connection made to the distribution mains constructed in the extension.

(b) The refund allowance of \$700 per customer provided in subparagraph (a) above is based on the assumption that use and occupancy by the customers to be connected will be seasonal. At such time as there shall have been made 500 or more permanent new service connections to the extended distribution mains constructed to serve Northstar, a review shall be made of the use of gas by such customers as experienced by Southwest. For any permanent customer theretofore or thereafter connected whose use of gas is shown not to be seasonal in nature, refunds shall be made at the rate of \$1,100 per customer, less any refunds previously made with respect to such service connection. For this purpose a customer shall be considered as not seasonal whose billings for the most recent 12 months shall have cumulatively totalled in excess of \$235.00 and whose billings for at least 9 of such twelve months shall have exceeded the minimum bill under the applicable rate schedule for such service.

5.3 In the event that any portion of an advance has not qualified for refund at the end of 12 months after completion of the extension for which the advance was made, Trimont shall pay to Southwest an allowance for ownership costs on that portion of the advance for which no refunds have been made or are eligible to be made. Such allowance shall be at the rate of 1% quarterly of the difference between the total amount advanced and any refunds made or eligible to be made to Trimont. Such payments shall be made quarterly for the same ten-year period that refunds may be made by Southwest under the provisions of its Rule 15."

Fibreboard has executed a guaranty in favor of Southwest of promissory notes issued by Trimont to Southwest to cover costs of gas facilities to be installed by Southwest pursuant to the agreement set forth above. Among other things, the guaranty is limited to \$750,000; may be enforced directly by Southwest against Fibreboard; is not subject to any statute of limitations; and is enforceable under the laws of the State of California.

The Commission staff has analyzed the amendment, which provides for advances in accordance with Southwest's present main extension rule, and recommends that postponement of advances in the manner set forth in paragraph C.1 (a) of Southwest's main extension rule be prohibited prior to 1975. That paragraph provides that Southwest may postpone collection of advances for a period of six months. The staff argues that as the most speculative period for the Northstar project is the initial years, prohibiting the postponement of advances will better protect Southwest.

Paragraph 5.1 (b) of the amendment provides that in lieu of a cash advance, Trimont may deliver to Southwest Trimont's note, payable one year from date, in the principal amount of the full estimated cost of such first year's extension. The note is to be dated as of the same date a cash advance would otherwise have been due. This provision could be interpreted to mean that Trimont has a year and a half before it is required to make any cash payments to Southwest. We agree with the staff that this is too long a period of time for Southwest to wait. Our order will be conditioned upon the note being dated as of the effective date of this order. We have considered the fact that the Utilities Division of the staff disapproves of the use of a one-year note, and that the Finance & Accounts Division does not object to the use of a note for the first year's extension.

The Utilities Division opposes the refund basis of \$700 a service connection. It prefers any refund to be based upon connected appliances and free-footage allowances. The Finance & Accounts Division has no objection to the refund basis of \$700 a service connection as this method provides that at a designated rate level the utility's actual investment will produce a reasonable return. We agree with the Finance & Accounts Division.

The reevaluation provision in the amendment (paragraph 5.2 (b)) is satisfactory to the staff with the condition that reevaluation should not be allowed if Southwest is not earning a reasonable return on its investment. The staff recommends that our order be conditioned as follows:

The reevaluation and refund based on permanent usage as opposed to seasonal usage shall be allowed only if the earnings of the utility after payment of the additional refunds will be sufficient to provide a return on the Northstar plant investment equal to that last found reasonable by this Commission for any of Southwest's operations within the State of California.

We find that this condition is reasonable and we will adopt it.

In all other respects the amendment to the agreement and the Fibreboard guarantee are adequate.

The staff recommends that Southwest be required to maintain separate accounting records for the Northstar development until further order of the Commission, for (a) plant; (b) depreciation reserve; (c) advances for construction; (d) revenues;

(e) cost of gas; (f) property taxes; (g) other directly assignable expenses; and (h) records of other expenditures that are allocable in part to Northstar should be maintained in a manner that will permit a ready determination of the return on investment.

The staff also recommends that Southwest be required to submit annually written reports showing the progress of its service to the Northstar development regarding: (a) number of customers; (b) number of services; (c) miles of mains; and (d) sales in therms.

It is also recommended that a separate column be added to Southwest's semi-annual report filed with the Commission titled "Summary of Earnings, Rate Base, and Rate of Return - California Operations" reflecting service to the Northstar project.

Because of the highly speculative nature of the Northstar project and the possible adverse effects on the remainder of Southwest's system, the staff's recommendations are reasonable and will be adopted.

Southwest submitted an environmental impact statement which reflected the guidelines of the National Environmental Policy Act of 1969. The study leading up to the statement was prepared by a firm of independent consulting engineers. In the opinion of the engineers, and based on detailed field inspection in the proposed area, "no adverse ecological or environmental

affect will result in constructing the proposed natural gas transmission line." The consultants based their opinion on the facts that: The proposed pipeline will be constructed primarily within the right of way designated California State Highway No. 267, and on logging trails. No vegetation exists within the area to be utilized by the proposed pipeline installation. The proposed pipeline will be constructed along the shoulder and the bar ditch as required by the California Highway Department. This utilization of existing roadways and logging trails will avoid disturbance to native vegetation. The proposed pipeline will have little or no effect on the natural wildlife habitat. Pipeline crossing of creeks will not cause an irreversible or irretrievable commitment of the natural resource. The disturbances to the environment caused by construction will be abated upon completion by revegetation of the areas disturbed.

Southwest proposes to set rates in the Northstar development at 165 percent of existing Placer County rates. The staff has no objection to this rate level. In fiscal 1974 this rate level is expected to earn Southwest a rate of return of 8.4 percent, according to Southwest's estimates, and 6.4 percent, according to staff estimates. Under either estimate the return is reasonable and the rates will be authorized. If, in the future, it appears that the rates are excessive, the staff is expected to institute procedures to bring them closer to existing Placer County rates.

Findings of Fact

1. Southwest seeks to extend its existing certificated territory within Placer County to an area which includes all or part of Townships 15, 16 and 17 North, Ranges 16, 17, and 18 East.

2. Trimont, a wholly owned subsidiary of Fibreboard Corporation, has planned an all-year resort community, Northstar-at-Tahoe, to be developed on portions of a privately owned 26,000-acre site located in Placer County outside the Tahoe Basin near Lake Tahoe's North Shore. This development will include a major ski complex, summer recreational facilities, condominium residences, lot parcels for single-family dwellings, and a commercial village center.

3. There is an adequate gas supply to serve the Northstar development. For the 1979-1980 heating season Southwest estimates a firm peak-day demand of 108,780 Mcf on its Northern System. Southwest's present contract with El Paso Natural Gas Company allows daily firm purchases of 108,408 Mcf. In addition, Southwest has an option for an additional 5,300 Mcf per day. On this basis, Southwest has sufficient gas available to meet firm requirements through 1979-1980.

4. Southwest may deviate from its filed main extension rule to the extent necessary to comply with its contract with Trimont, as amended, except that any note signed by Trimont pursuant to paragraph 5.1 (b) of the agreement, shall be dated

no later than the effective date of this order; and, except that the reevaluation provision in the amendment (paragraph 5.2 (b)) shall include the following language: "The reevaluation and refund based on permanent usage as opposed to seasonal usage shall be allowed only if the earnings of the utility after payment of the additional refunds will be sufficient to provide a return on the Northstar plant investment equal to that last found reasonable by the Public Utilities Commission of the State of California for any of Southwest's operations within the State of California."

5. The guarantee executed by Fibreboard is adequate.

6. Additional accounting records will be required as set forth in the following order.

7. We find that the proposed transmission line will not have an adverse effect on community values, recreational and park areas, historical and aesthetic values, and the environment in the area through which it traverses.

8. The rates proposed by Southwest for the Northstar development are reasonable.

9. The present or future public convenience and necessity require the granting of the certificate as modified by the following order.

The Commission concludes that the application should be granted as set forth in the following order.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to the Southwest Gas Corporation authorizing it to serve natural gas within the area set forth in its application and to extend its gas mains in the manner and along the routes set forth in its application, on condition that no further extension of its gas mains within the area certificated to Southwest Gas Corporation by this order shall be made without further order of the Commission.

2. Southwest is authorized to deviate from its filed main extension rule to the extent necessary to comply with its contract with Trimont Land Company, provided that:

(a) The note referred to in paragraph 5.1 (b) of the amendment to the contract shall be dated no later than the effective date of this order; and

(b) The reevaluation and refund provision set forth in paragraph 5.2 (b) of the amendment to the contract shall be exercised only if the earnings of the utility after payment of the additional refunds will be sufficient to provide a return on the Northstar plant investment equal to that last found reasonable by this Commission for any of Southwest's operations within the State of California.

3. Southwest shall maintain separate accounting records for the Northstar development until further order of the Commission for (a) plant; (b) depreciation reserve; (c) advances for construction; (d) revenues; (e) cost of gas; (f) property taxes; and (g) other directly assignable expenses. Records of other expenditures that are allocable in part to Northstar should be maintained in a manner that will permit a ready determination of the return on investment.

4. Southwest shall annually submit written reports showing the progress of its service to the Northstar development regarding: (a) number of customers; (b) number of services; (c) miles of mains; and (d) sales in therms. These reports shall terminate when Southwest has refunded all advances from Trimont or in seven years, whichever is longer.

5. Southwest shall add a separate column to its semiannual report filed with the Commission titled "Summary of Earnings, Rate Base, and Rate of Return - California Operations" reflecting service to the Northstar project.

6. Southwest is authorized to exercise any and all franchise rights relating to serving the Northstar development, when granted.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 15th day of AUGUST, 1972.

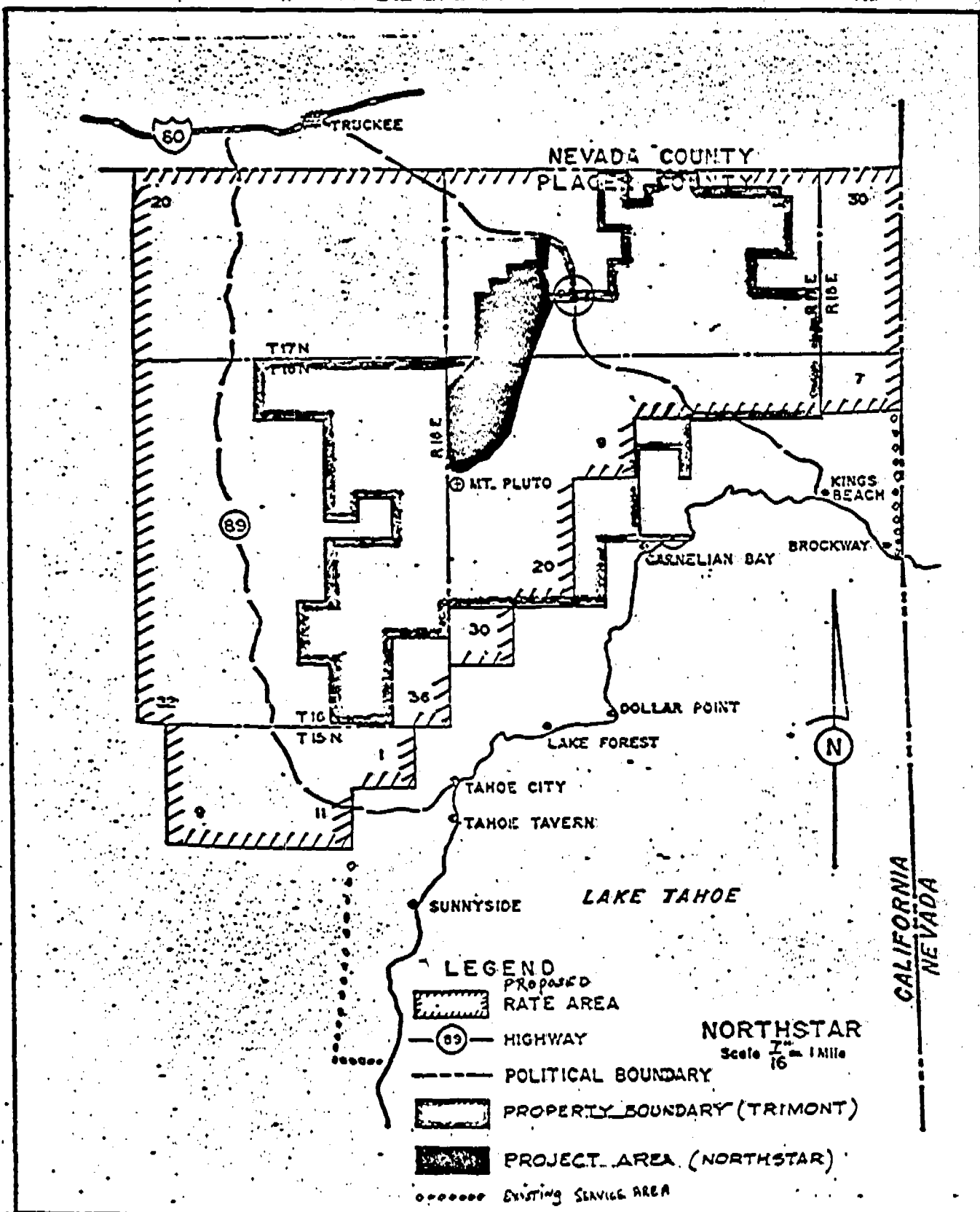
Vernon L. Stinson
President

William J. Stinson

William J. Stinson

William J. Stinson

William J. Stinson
Commissioners



APPENDIX A