

MOTION FILED  
FEB 10 1978

IN THE  
**Supreme Court of the United States**

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October Term, 1976  
No. 73, Original

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STATE OF CALIFORNIA,

*Plaintiff,*

vs.

STATE OF NEVADA,

*Defendant.*

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**Motion for Leave to File Brief Amicus Curiae on Behalf  
of California State Assemblyman Mike Cullen,  
Together With Brief Amicus Curiae.**

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MICHAEL CULLEN, Esquire,  
JAMES H. ACKERMAN, Esquire,  
JOE LING, Esquire,  
CARLTON E. RUSSELL, Esquire,  
FLORENCE A. LINSLEY, Esquire,  
JOSEPH N. MIRKOVICH, Esquire,  
ACKERMAN, LING & RUSSELL,  
444 West Ocean Boulevard, Suite 1000,  
Long Beach, Calif. 90802,  
(213) 436-9911,  
*Attorneys for Amicus Curiae.*







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of California State Assemblyman Mike Cullen and  
Brief Amicus Curiae.**

---

Assemblyman MIKE CULLEN, a member of the California Legislature, respectfully moves the Court for leave to file the accompanying brief *amicus curiae* in this case.

Movant is the author of Assembly Concurrent Resolution 34 passed by the Legislature and reprinted in plaintiff's Motion for Leave to File Complaint and in this Motion as Exhibit "A." This resolution urged the Attorney General to defend the Eastern boundary of California set forth in the 1849 California Constitution.

Since any judicial determination of the California-Nevada geographical boundary north of the 39° parallel in this case may impact the tax revenues of the state of California subject to appropriation by the Legisla-

ture, movant has a direct interest in the case as a representative of the people of California.

Movant believes, from a clear reading of the Complaint, that plaintiff has unwisely restricted its prayer by urging the Court to select an admittedly erroneous boundary surveyed in the last century. In effect, the Court is asked to perpetuate an error of the past and ignore evidence of an accurate alternative. The Court can order a precise measurement of described boundary, *i.e.*, 120th West Meridian, rather than engaging in the judicial legislation of selecting an inaccurate survey line.

Since neither boundary prayed for in the pleadings conforms with the boundary described in the California Constitution of 1849 approved by the Congress, *i.e.*, the 120th meridian of west longitude, movant seeks standing to brief this point in order that the Court will have a complete range of rational alternatives from which to render its judgment.

WHEREFORE, it is respectfully prayed that this Motion for Leave to file the annexed Brief Amicus Curiae be granted.

Respectfully submitted,

MICHAEL CULLEN, Esquire,  
JAMES H. ACKERMAN, Esquire,  
JOE LING, Esquire,  
CARLTON E. RUSSELL, Esquire,  
FLORENCE A. LINSLEY, Esquire,  
JOSEPH N. MIRKOVICH, Esquire,  
ACKERMAN, LING & RUSSELL,  
*Attorneys for Amicus Curiae.*







EXHIBIT A

California Legislature—1977-78 Regular Session  
Assembly Concurrent Resolution No. 34  
Introduced by Assemblyman Cullen  
March 29, 1977

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Referred to Committee on Governmental Organization.

Assembly Concurrent Resolution No. 34—Relative  
to the boundaries of the State of California.

LEGISLATIVE COUNSEL'S DIGEST

ACR 34, as introduced, Cullen (G.O.) State of  
California: boundaries.

This measure would request the Governor and the  
Attorney General to take such action as is necessary  
to verify and defend the boundaries of the State of  
California as they are set forth in the 1849 California  
Constitution.

Fiscal committee: yes.

WHEREAS, A question has arisen with respect to  
the correct location of California's eastern boundary  
from the southern boundary of the State of Oregon,  
running south on the 120th degree of west longitude  
to its intersection with the 39th degree of north lati-  
tude; and

WHEREAS, It is essential to maintain the integrity  
of the boundaries of the State of California as they  
were constituted and set forth in the 1849 Constitution  
of the State of California; now, therefore, be it

*Resolved by the Assembly of the State of California, the Senate thereof concurring,* That the Governor and the Attorney General of the State of California are requested to take such action as is necessary to verify and defend the boundaries of the State of California as they are set forth in the 1849 California Constitution; and be it further

*Resolved,* That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor and the Attorney General.







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**Brief Amicus Curiae on Behalf of California  
State Assemblyman Mike Cullen.**

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**Question Presented.**

In resolving the California-Nevada boundary dispute, should not the Congressionally-approved 120th meridian be established as the demarcation, rather than one of the two admittedly erroneous surveys advocated by the parties? The parties raise the question of a boundary dispute, then ignore the dividing line agreed upon when the states entered the Union.

**Interest of Amicus Curiae.**

As a representative of citizens of California elected to the California Legislature, movant desires to advance the historical Eastern boundary of California for the Court's consideration in deciding this case. Neither plaintiff nor defendant have advanced the true 120th meridian as an option open to the Court; yet

this is the boundary agreed upon by both states and approved by Congress. Calif. Const. of 1849, Art. XII, §1, (now Calif. Const. Art. III, §2); Nevada Const. Art. 14, §1; Act of Sept. 9, 1850, c. 50, 9 Stat. 452; Act of March 21, 1864, c. 36, 13 Stat. 30; Proclamation No. 22, 13 Stat. 749 (Oct. 31, 1864). Rather, the parties seek judicial legislation in the fixing of an erroneous survey by Court decree.

The 120th meridian boundary would inure to the benefit of the citizens of California by bringing into the state approximately 80 square miles of land now governed by the state of Nevada. Under present technology, this meridian can be accurately fixed to within a few feet. The relative position of the boundary lines are shown on Exhibit 2 of the Complaint, and Exhibit 1 attached to this brief. (Reprint of Lake Tahoe chart—2 pages).



### ARGUMENT.

Movant adopts, by reference, the background of controversy, surveys and investigations of the 120th meridian boundary set forth in plaintiff's Motion for Leave to File Complaint (pp. 3-10).

Plaintiff prays the Court to determine that the 1873 survey is the true boundary between California and Nevada. Defendant prays that the Court select the 1863 survey as the true boundary. Neither survey accurately fixes the 120th meridian. A third alternative, the true 120th meridian boundary described in the California 1849 Constitution, approved by the Congress, is mentioned only in historical narrative.

A current 120th meridian survey to establish the true boundary is the logical alternative to the prayers of plaintiff and defendant. The Court can order the parties to undertake an accurate survey to fix their agreed boundary.

If a current survey, using available space-age technology, were to confirm the location of the 120th meridian as shown on Exhibit 1, then approximately 80 square miles of land now governed by the state of Nevada would become situated in the state of California. This land is rich in resources, principally timber, and property taxes thereon would redound to the benefit of citizens of California. While there may be other factors for the Court to consider, nonetheless, California's citizens, by virtue of their 1849 Constitution, are clearly entitled to advance the 120th meridian, accurately fixed, as the true boundary between California and Nevada. Since the Attorney General has failed to do so, movant seeks standing to advance this alternative on behalf of the citizens of California.

**Conclusion.**

Modern survey techniques now make it possible to establish the true 120th meridian within an accuracy range of plus or minus a few feet. A current survey should be undertaken and the resultant location of the 120th meridian should be adopted as the separation between California and Nevada above the 39° parallel.

Respectfully submitted,

MICHAEL CULLEN, Esquire,  
JAMES H. ACKERMAN, Esquire,  
JOE LING, Esquire,  
CARLTON E. RUSSELL, Esquire,  
FLORENCE A. LINSLEY, Esquire,  
JOSEPH N. MIRKOVICH, Esquire,  
ACKERMAN, LING & RUSSELL,  
*Attorneys for Amicus Curiae.*

February 8, 1978.







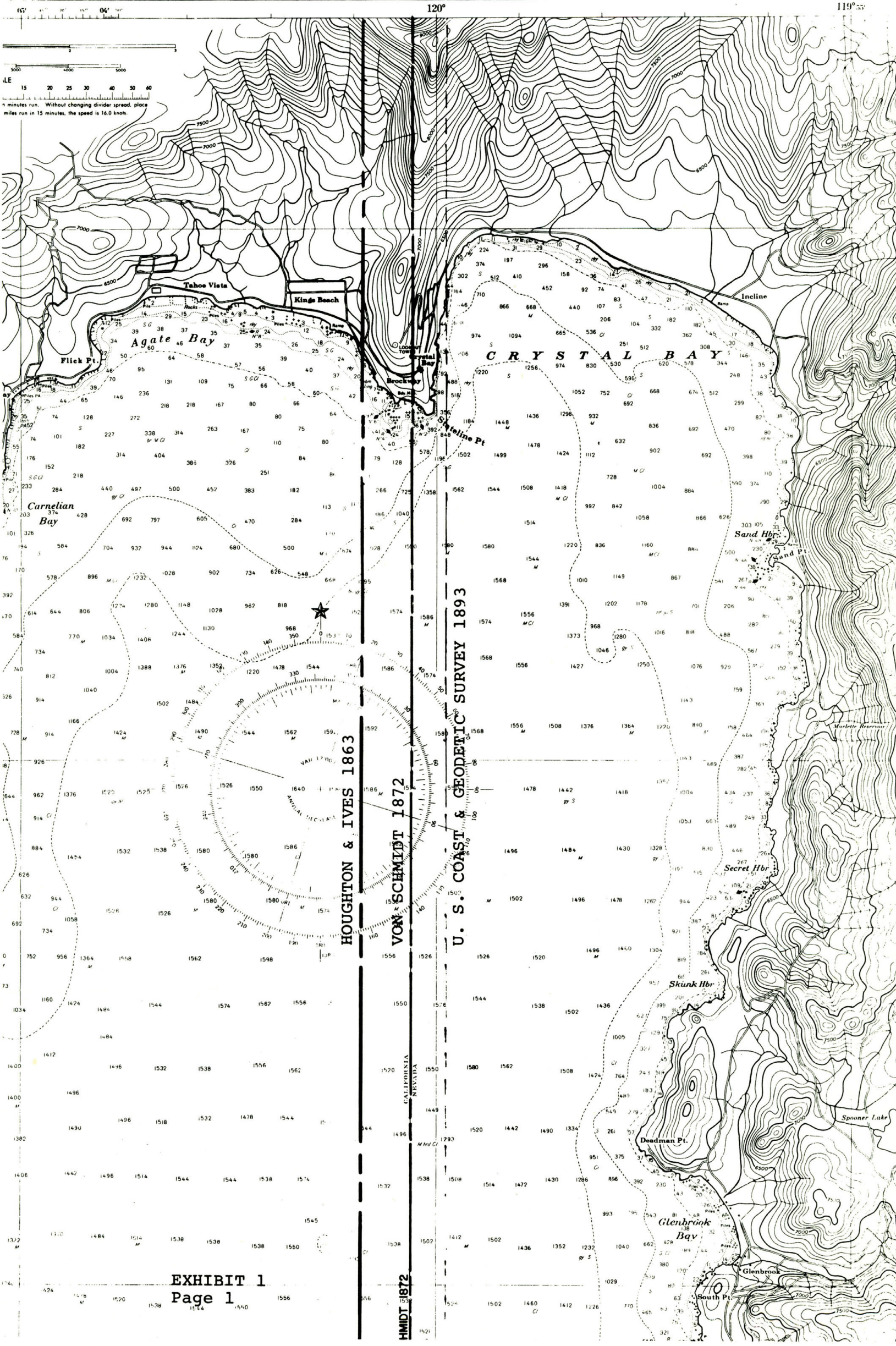
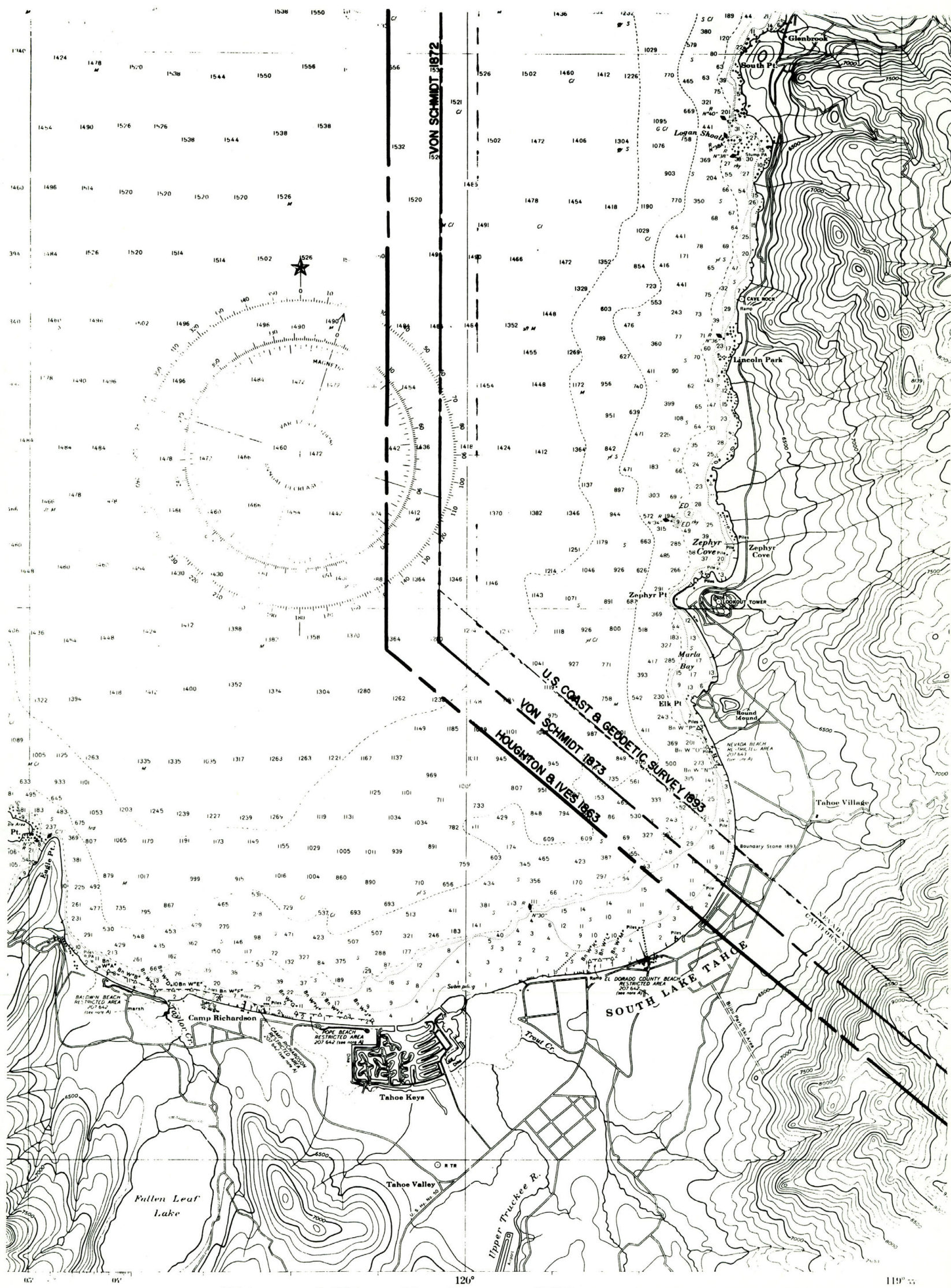


EXHIBIT 1  
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U. S. DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL OCEAN SURVEY

EXHIBIT 1  
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FATHOMS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
FEET	6	12	18	24	30	36	42	48	54	60	66	72	78	84	90	96	102
METERS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17

(Lake Tahoe)  
SOUNDINGS IN FEET SCALE 1















Service of the within and receipt of a copy  
thereof is hereby admitted this ..... day  
of February, A.D. 1978.

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