

# Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System



**Bulletin No. 13-13**

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**LEGISLATIVE COMMITTEE FOR THE REVIEW AND OVERSIGHT  
OF THE TAHOE REGIONAL PLANNING AGENCY AND THE  
MARLETTE LAKE WATER SYSTEM**

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**JANUARY 2013**





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## SUMMARY OF RECOMMENDATIONS

### LEGISLATIVE COMMITTEE FOR THE REVIEW AND OVERSIGHT OF THE TAHOE REGIONAL PLANNING AGENCY AND THE MARLETTE LAKE WATER SYSTEM

*Nevada Revised Statutes 218E.555*

The following is a summary of the recommendations approved during the 2011–2012 Interim by the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System.

#### RECOMMENDATIONS FOR LEGISLATION

No legislation was recommended.

#### RECOMMENDATIONS FOR COMMITTEE LETTERS

1. On May 21, 2012, the Committee voted to send a letter to Ray LaHood, Secretary of Transportation, United States Department of Transportation, in support of the Transportation Investment Generating Economic Recovery IV grant application from the Tahoe Transportation District and the Tahoe Metropolitan Planning Organization for the *U.S. Highway 50 South Shore Community Revitalization Project-California and Nevada*.
2. On October 1, 2012, the Committee voted to send a letter to Governor Brian Sandoval to encourage the issuance of General Obligation Bonds, as authorized with the enactment of Senate Bill 438 (Chapter 437, *Statutes of Nevada*) of the 2011 Session, when the State's bonding capacity recovers.



**REPORT TO THE 77TH SESSION OF THE NEVADA LEGISLATURE BY THE  
LEGISLATIVE COMMITTEE FOR THE REVIEW AND OVERSIGHT  
OF THE TAHOE REGIONAL PLANNING AGENCY AND  
THE MARLETTE LAKE WATER SYSTEM**

**I. INTRODUCTION**

The Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency (TRPA) and the Marlette Lake Water System (MLWS) (Committee) is an ongoing statutory committee of the Nevada Legislature whose authorization is set forth in *Nevada Revised Statutes* (NRS) 218E.555. (Please see Appendix A.) With the enactment of Senate Bill 216 (Chapter 408, *Statutes of Nevada 2003*), the Nevada Legislature created an ongoing statutory committee with oversight of both the TRPA and the MLWS.

Prior to 2003, review and oversight of the TRPA and the MLWS were conducted by two separate committees. Every interim since 1985, with the exception of one, the Nevada Legislature has provided review and oversight of the TRPA either through an interim study or this statutory committee. The MLWS has also been the subject of study by the Nevada Legislature for many years. The Legislature adopted Senate Concurrent Resolution No. 21 (File No 105, *Statutes of Nevada 1967*) to direct the Legislative Commission to study the feasibility and desirability of retaining the MLWS. This study was continued with the adoption of Assembly Concurrent Resolution No. 28 (File No. 112, *Statutes of Nevada 1969*). The Legislature enacted Assembly Bill 804 (Chapter 410, *Statutes of Nevada 1971*) which established the MLWS Advisory Committee. The Marlette Lake Water System Advisory Committee, as codified in NRS 331.165, existed for more than 30 years before the 2003 legislation created the Committee now in existence.

**A. Committee Members and Staff**

The following legislators served on the Committee during the 2011–2012 Legislative Interim:

Senator John J. Lee, Chair  
Assemblyman Kelly Kite, Vice Chair  
Senator David R. Parks  
Senator James A. Settelmeyer  
Assemblywoman Teresa Benitez-Thompson<sup>1</sup>  
Assemblywoman Marilyn Kirkpatrick

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<sup>1</sup>The Legislative Commission appointed Assemblywoman Teresa Benitez-Thompson to the Committee on February 15, 2012, to replace Assemblywoman Peggy Pierce, who resigned from the Committee on February 8, 2012.

The following Legislative Counsel Bureau (LCB) staff provided support for the Committee:

Jennifer Ruedy, Senior Research Analyst, Research Division  
Eileen G. O'Grady, Chief Deputy Legislative Counsel, Legal Division  
Heidi A. Chlarson, Principal Deputy Legislative Counsel, Legal Division  
Wayne Thorley, Program Analyst, Fiscal Analysis Division  
Janet Coons, Senior Research Secretary, Research Division

## **B. Meetings and Recommendations**

During the 2011-2012 Legislative Interim, the Committee held five meetings in the Lake Tahoe Basin which addressed a variety of issues, programs, and activities pertaining specifically to the TRPA and the MLWS, and relating generally to the Lake Tahoe Basin and the Carson Range. To view the meeting agendas and minutes, including copies of exhibits, please refer to the Committee's webpage (<http://www.leg.state.nv.us/Interim/76th2011/Committee/StatCom/Tahoe/?ID=9>).

As a result of these hearings, the Committee voted to send two Committee letters as described below:

1. On May 21, 2012, the Committee voted to send a letter to Ray LaHood, Secretary of Transportation, United States Department of Transportation, in support of the Transportation Investment Generating Economic Recovery (TIGER) IV grant application from the Tahoe Transportation District (TTD) and the Tahoe Metropolitan Planning Organization for the *U.S. Highway 50 South Shore Community Revitalization Project-California and Nevada*.
2. On October 1, 2012, the Committee voted to send a letter to Governor Brian Sandoval to encourage the issuance of general obligation bonds, as authorized with the enactment of Senate Bill 438 (Chapter 437, *Statutes of Nevada 2011*), when the State's bonding capacity recovers. (Please see Appendix B for copies of the letters.)

The revenue from these bonds is used to fund Nevada's portion of the Environmental Improvement Program (EIP), which is an integrated program for identifying the projects, continuing programs, and studies necessary to achieve environmental goals in the Lake Tahoe Basin. Of special significance has been the EIP's capital improvements element, which outlines specific projects (categorized by environmental thresholds) and funding sources.

In 1997, implementation of the EIP was estimated to cost \$908 million, and Nevada's share would be \$82 million. At the time, Nevada already had \$25.6 million committed toward the EIP (which included a \$20 million erosion control bond approved by voters in 1996, and \$5.6 million in current project and program funding by various State agencies), leaving a balance of \$56.4 million. In 1999, the Nevada Legislature authorized the issuance of \$56.4 million in bond funds to be made available through June 30, 2007. In addition, funding would be appropriated based on a program and schedule of projects coordinated through the

Division of State Lands, State Department of Conservation and Natural Resources (SDCNR). In each session since 1999, the Legislature has approved a specific bond appropriation to carry out projects identified in the EIP. Due to the State's reduced bonding capacity, the bonds authorized by the 2011 Legislature have not been issued.

### **C. Duties of the Committee**

The duties of the Committee set forth in NRS 218E.565 are:

- To review and oversee the budgets, programs, activities, responsiveness, and accountability of the TRPA and the MLWS;
- To study the role, authority, and activities of the TRPA regarding the Lake Tahoe Basin and the MLWS regarding Marlette Lake; and
- To communicate with members of the California Legislature to achieve the goals set forth in the Tahoe Regional Planning Compact (Compact) (NRS 277.200).

Senate Bill 271 (Chapter 530, *Statutes of Nevada 2011*) temporarily added duties of the Committee beyond the responsibilities set forth in NRS 218E.565. The additional duties are addressed in Section III of this report.

## **II. OVERVIEW OF THE TAHOE REGIONAL PLANNING COMPACT**

Previous reports of the TRPA and MLWS legislative committees contain extensive background information and prior recommendations concerning the history of the TRPA and the Compact. Copies of these reports are available online at <http://www.leg.state.nv.us/Division/Research/Publications/DivStudyLegReport.cfm> or by calling the LCB Publications Office at (775) 684-6835. The following is a summary of select topics that may be of particular interest.

### **A. Update on Revisions to the Environmental Thresholds and the 1987 Regional Plan**

Planning requirements of the TRPA are outlined in Article V of the Compact. As revised in 1980, the Compact required the TRPA to adopt environmental threshold carrying capacities, "thresholds", and a regional plan and ordinances designed to achieve the thresholds. The TRPA Governing Board adopted the thresholds in 1982 but missed the deadline for the adoption of the Regional Plan. Therefore, the Board imposed a moratorium until it adopted the Regional Plan in April 1984.

The same day the Regional Plan was adopted, two parties filed suit in federal court asserting that the Regional Plan would not adequately protect the Lake Tahoe environment. After a three-day hearing, a federal court judge in California issued a preliminary injunction stopping new construction at Lake Tahoe until the adoption of an adequate regional plan. In June 1984,

an advocacy group and individual property owners filed suit against the TRPA alleging that the Agency's Regional Plan constituted a taking without just compensation in violation of the Fifth Amendment of the *United States Constitution*.

The Executive Director of the TRPA called together a consensus group comprised of the plaintiffs in the lawsuits and other stakeholders to prepare a Regional Plan that would resolve the pending lawsuits. After three years of negotiations, the TRPA Governing Board adopted the 1987 Regional Plan, and the lawsuit with the preliminary injunction was settled and dismissed such that construction resumed in the Lake Tahoe Basin. The other lawsuit over property rights continued until it finally reached the U.S. Supreme Court in 2002.

Since 2002, the TRPA has been actively working to update the thresholds and the 1987 Regional Plan. This collaborative process was previously referred to as Pathway 2007. Self-imposed deadlines passed and agreement eluded the various representatives involved in the effort. The 2011 Legislature enacted S.B. 271, sharpening both states' focus on completing the Regional Plan Update.

On December 12, 2012, the TRPA Governing Board approved and adopted the Lake Tahoe Regional Plan Update (RPU) and the Regional Transportation Plan Update. Most updates and amendments approved on December 12, 2012, are expected to take effect 60 days after approval. As of January 1, 2012, no lawsuit challenging these plans has yet been filed. With adoption of the 2012 RPU, an area planning process is established to streamline the permitting process and focus TRPA's resources on regional priorities. Federal, local, State, and tribal governments are encouraged to adopt area plans to supersede any older plans for specific geographic areas; however, before taking effect, area plans must be in conformance with the RPU. The Committee received testimony on October 1, 2012, regarding the progress of local governments' preparations for drafting area plans.

## **B. Withdrawal From the Tahoe Regional Planning Compact**

### *Previous Legislation Introduced to Withdraw Nevada From the Compact*

Paragraph (c) of Article X of the Tahoe Regional Planning Compact provides that "A state party to this compact may withdraw therefrom by enacting a statute repealing the compact." Prior to 2011, legislation allowing Nevada to withdraw from the Compact had been introduced in several legislative sessions and failed, as follows:

- 1975  
Assembly Bill 781—sponsored by Assemblyman Lawrence E. Jacobsen; not voted out of initial committee.

- 1977  
Assembly Bill 740—sponsored by Assemblyman Jacobsen; not voted out of initial committee.
- 1979  
Senate Bill 482—sponsored by Senator Lawrence E. Jacobsen; no hearing held.
- 1985  
Assembly Bill 59—sponsored by Assemblyman Louis W. Bergevin; passed the Assembly but no hearing held in Senate committee.
- 1987  
Senate Bill 301—sponsored by the Senate Committee on Natural Resources at the request of Senator Jacobsen; passed the Senate but not voted out of Assembly committee.
- 2003  
Assembly Bill 305—sponsored by Assemblywoman Sharron E. Angle; no hearing held.

*The 2011 Legislature Enacted Legislation Relevant to the Compact*

Governor Brian Sandoval signed S.B. 271 into law on June 17, 2011, which provides for the withdrawal of the State of Nevada from the Compact under certain circumstances. This withdrawal will take effect on October 1, 2015, unless the Governing Body of the TRPA adopts an updated Regional Plan and certain proposed amendments to the Compact are enacted by the State of California and ratified by the United States Congress. These amendments include:

- Changing the voting requirement for the TRPA Governing Board to adopt, amend, or repeal environmental threshold carrying capacities, the Regional Plan, ordinances, and rules and regulations, and for granting variances for the ordinances, rules, and regulations from four members of the TRPA Governing Board from each state to nine members total;
- Changing the voting requirement for the TRPA Governing Board to approve a project from a minimum of five to four members from the state in which the project is located, but keeping the total votes required at nine members;
- Ensuring that the Regional Plan reflects the Lake Tahoe Basin’s changing economic conditions and the economic effect of regulation on commerce; and
- Setting forth in the Compact that any party challenging the Regional Plan has the burden of proof to show that the plan violates the Compact.

The Governor of Nevada may issue a proclamation extending this withdrawal deadline to October 1, 2017. Senate Bill 271 specifies that, if Nevada withdraws from the Compact, the Nevada TRPA (NTRPA) will assume the duties and powers currently held by the TRPA for the portion of the Lake Tahoe Basin within this State. Any approval for a project that was issued by the TRPA remains valid. *Nevada Revised Statutes* 278.780 through 278.828 address the organization and powers of the NTRPA. It should also be noted that various federal statutes with certain environmental restrictions, such as the Clean Air and Clean Water Acts, would continue to apply in the Lake Tahoe Basin.

### **III. STATES' FOCUS ON TAHOE REGIONAL PLANNING AGENCY ACTIVITIES INTENSIFIED IN 2011**

#### **A. Governors of California and Nevada Pledge Commitment to Lake Tahoe**

California Governor Jerry Brown and Nevada Governor Brian Sandoval attended the 15th Annual Lake Tahoe Summit (Summit) held on Tuesday, August 16, 2011, along with Leo M. Drozdoff, P.E., Director, SDCNR, and John Laird, Secretary, California Natural Resources Agency. At the Summit, the governors announced a renewed commitment to Lake Tahoe by the states of California and Nevada.

Mr. Drozdoff testified before the Committee throughout the 2011–2012 Interim regarding the progress of conversations between himself and Mr. Laird, which culminated in an informal bistate consultation group convening on several occasions throughout the spring and summer of 2012. The bistate consultation group included a small number of residents from the Lake Tahoe Basin, elected officials from local governments, representatives from the environmental and business communities, and the TRPA Governing Board members. The bistate consultation group worked to reach a consensus among the various stakeholders in Lake Tahoe on some of the outstanding issues of the update of the TRPA's Regional Plan. The bistate consultation group concluded its work with the presentation of a document of recommendations to the TRPA Governing Board for its consideration. (Please see Appendix C for these recommendations.)

#### **B. State Legislative Delegations Appointed to Meet**

Senate Bill 271 required the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System to appoint a delegation comprised of one Senator and two Assemblymembers from the Committee to work with a like delegation from the California Legislature to discuss possible changes to the Compact. On November 14, 2011, Chair Lee appointed the following members to the delegation:

- Senator James A. Settelmeyer, Chair;
- Assemblyman Kelly Kite; and
- Assemblywoman Marilyn Kirkpatrick.

On February 15, 2012, Senator Darrel Steinberg, President Pro Tempore, California State Legislature, appointed the following three Senators to the California delegation:

- Senator Ted Gaines;
- Senator Alan S. Lowenthal; and
- Senator Fran Pavley.

On March 7, 2012, John A. Pérez, Speaker of the Assembly, California State Legislature, appointed the following three Assembly members to the California delegation:

- Assemblyman Wesley Chesbro;
- Assemblywoman Beth Gaines; and
- Assemblyman Richard S. Gordon.

Senator Lee, Chair of the Committee, and Senator Settelmeyer, Chair of the delegation, visited the California State Capitol on Monday, September 24, 2012, to talk with the California delegation. At the Committee's meeting on October 1, 2012, Senator Settelmeyer reported the outcome of the delegation's work.

### **C. Statutory Deadlines Extended for the Committee**

*Nevada Revised Statutes* 218E.560 limits the timeframe in which the Committee may meet to no later than August 31 of even-numbered years. Subsection 4 of NRS 218D.160 requires any legislative committee created by statute to submit bill draft requests to the Legislative Counsel no later than September 1 preceding the regular session. California's Legislative session was scheduled to meet through August 31, 2012, which made scheduling a meeting between the two states' delegations before those deadlines problematic. On May 30, 2012, Chair Lee requested an extension of these two statutory deadlines from the Legislative Commission, and the deadlines were extended to October 15, 2012.

### **D. Nevada Tahoe Regional Planning Agency**

In addition to the appointment of a delegation, S.B. 271 also charged the Committee with holding hearings on various issues such as the structure and funding of the NTRPA. At the Committee's first meeting of the 2011-2012 Interim on November 14, 2011, James R. Lawrence, Administrator and State Land Registrar, Division of State Lands, SDCNR, provided the Committee with an overview of the current structure of the NTRPA and the membership of its Board. The NTRPA is comprised of the seven members from Nevada who serve on the TRPA Governing Board. Currently those members are:

- One member appointed by each of the Boards of County Commissioners of Douglas and Washoe Counties and the Board of Supervisors of Carson City;
- A Governor appointee;
- The Secretary of State or a designee;

- The Director of the SDCNR or a designee; and
- An at-large member selected by the other six NTRPA members.

Senate Bill 271 changes the composition of the NTRPA by replacing the Director of the SDCNR, or a designee, and the at-large member with the State Forester Firewarden, or a designee, and the Administrator of the Division of State Lands, or a designee.

The NTRPA is entirely funded by the State General Fund, and its legislatively approved budget for Fiscal Year (FY) 2012 was \$1,371. It expended \$398 in FY 2012 on expenses related to posting public meeting notices. The legislatively approved budget for the NTRPA for current FY 2013 is also \$1,371. The NTRPA is not currently budgeted for staff; its duties are absorbed by the Division of State Lands, primarily the Administrator and Deputy Administrator.

It is uncertain what the organizational and staffing needs of the NTRPA would be if Nevada withdrew from the Compact. The Compact, as amended in 1980, directed the TRPA to adopt environmental threshold carrying capacities for the region within 18 months of the amendment. The TRPA was to adopt a Regional Plan within a year after the adoption of the environmental threshold carrying capacities. It would be difficult to determine an appropriate schedule for the NTRPA to adopt a Regional Plan and necessary ordinances should it be necessary to assume the powers and duties of the TRPA for Nevada's portion of the Lake Tahoe Basin.

#### **E. Fiscal and Legal Analysis**

Senate Bill 271 required a fiscal and legal analysis concerning Nevada's potential withdrawal from the Tahoe Regional Planning Compact. However, as the Committee delved into the issues at its meetings, and as the Chair discussed the issues with staff in putting together the meeting agendas, it became apparent that meaningful fiscal and legal analyses were not feasible. This was due in large part to the broad spectrum of scenarios that were possible, fiscally and legally post-withdrawal, which the Committee had no authority to determine. For example, the post-withdrawal NTRPA could be operated as it is currently, with minimal staff and an insubstantial budget, if a more "hands-off" approach to regulation in the Lake Tahoe Basin is selected. On the other end of the spectrum, the NTRPA could be significantly expanded to assume the full role of the TRPA in the Nevada portion of the Lake Tahoe Basin with the concomitant increase in staff and budget. Obviously, between these two options at opposite ends of the spectrum, there would be a myriad of other options for the regulation or management of the Nevada portion of the Lake Tahoe Basin by the NTRPA. Ultimately, the Committee did not predict which post-withdrawal role the Nevada Legislature would choose along the broad continuum of possible scenarios for the NTRPA.

Similarly, it was determined that the preparation of a useful legal analysis was equally futile given the broad range of possible legal scenarios and the Committee's lack of control over the post-withdrawal reality. Whereas the Nevada Legislature would control the determination of the post-withdrawal fiscal reality, another branch of government, the courts, would be deciding the post-withdrawal legal reality. At one end of the spectrum, the courts might determine that

current cases pending against the TRPA were moot as a result of its post-withdrawal abolishment or, at the other end of the spectrum, the courts might equitably substitute the NTRPA in place of the TRPA and allow the litigation to continue. In addition, any potential litigation expenses directly related to the withdrawal are too speculative to determine. As a result of some of the ongoing bistate consultations among stakeholders over the issues, for example, litigation may not be commenced or, on the other extreme, many lawsuits may be instituted, regardless of the possibility of their ultimate success.

Finally, it was determined that any fiscal or legal analyses at this point in time would be premature given the fact that the potential withdrawal may not even become effective until October 1, 2017, and after two more legislative sessions have taken place since the passage of S.B. 271.

## **IV. OVERVIEW OF THE MARLETTE LAKE WATER SYSTEM**

### **A. Historical Background**

To appreciate the historical significance of the MLWS, it is important to understand its historic context. The Comstock Lode (Comstock), one of the richest mining areas in the world, was discovered in 1859 on the eastern flank of Mount Davidson in the Virginia Range. The Virginia Mining District was the first mining district organized in the western Utah Territory, and Virginia City was one of the greatest mining towns of its day. Together, with nearby Gold Hill and Silver City, these three towns supported large populations in the 1860s, 1870s, and 1880s.

Providing water to the mining towns on the Comstock posed a serious problem in early Nevada. Originally, several nearby springs and streams fed a series of tunnels, flumes, pipes, ditches, and reservoirs. By the early 1870s, however, these supplies of water had become inadequate to support the growing population.

In August 1871, the Virginia and Gold Hill Water Company decided to develop a water system stretching more than 21 miles west to the Carson Range—part of the Sierra Nevada Mountain Range. Surface water was plentiful in the Carson Range, but the key was bringing water out of the western mountains, across Washoe Valley, and back up the Virginia Range to Virginia City (at an elevation of 6,620 feet). The solution was an inverted siphon pressure pipeline designed by Hermann Schussler, a German-born engineer from San Francisco. In August 1873, the first water from Hobart Creek in the Carson Range reached Virginia City and Gold Hill.

Originally, the system included several components: (1) a small diversion dam on upper Hobart Creek at the Red House Diversion Structure; (2) a 4.62-mile wooden flume to a tank that marked the start of the pipeline, at an elevation 351 feet higher than the outlet end of the pipeline in the Virginia Range; (3) an 11.5-inch riveted, wrought iron pressure pipeline

extending seven miles down to the lowest point on the system at Lakeview (at the south end of Washoe Valley) and back up to the high point in the Virginia Range; (4) a 4.04-mile flume to a point where Five-Mile Reservoir was constructed; and (5) a 5.66-mile flume to tanks located above Virginia City and Gold Hill.

The pipe for the system was made of iron plates bent to a cylindrical shape and then riveted. The pipe, fabricated in San Francisco and shipped by train to Lakeview, came in 26-foot sections. The thickness of each pipe segment varied depending on where engineering calculations showed differences in internal pressure. The first pipe segments were laid on June 11, 1873, and in just six weeks, the last section was in place on July 25, 1873. There were 1,524 joints in the pipeline; 1 million rivets and 35 tons of lead caulk were used in its installation.

In 1875, a second flume/pipeline was installed adjacent to the first to double the original maximum production of 2.2 million gallons per day. Unfortunately, the flow of water in summer months from the Hobart drainage dwindled to only 700,000 gallons per day, and an additional water source was needed.

During the time the original pipeline was constructed, a lumbering enterprise in the Carson Range created a small reservoir in the Marlette Basin above Lake Tahoe at an elevation of 8,000 feet. Originally named Goodwin Lake, it was renamed Marlette Lake, honoring Seneca Hunt Marlette, the first Surveyor General of the State of Nevada. The water collected in Marlette Lake was to be used for fluming purposes to send logs through a six-inch V-flume south to Spooner Summit, then down the Clear Creek main flume to a lumberyard south of Carson City.

In 1876, the Virginia and Gold Hill Water Company received permission to draw water from Marlette Lake. The dam was raised to 37 feet high, 213 feet long, and 16 feet wide at its crest. A covered box flume was constructed from Marlette Lake north along the mountainside above Lake Tahoe, to the west portal of a 3,994-foot tunnel driven through the granite ridge dividing the Lake Tahoe drainage from the Hobart Creek drainage. A secondary flume north of the tunnel captured water from many small creeks on the west side of the mountain, bringing the water to the tunnel to join with the flow from Marlette Lake. With this increased water availability, a storage reservoir was needed at Hobart Creek to regulate the discharge of water, and thus the Hobart Reservoir was created.

In 1877, a third pressure pipe was installed in substantially the same location as the first two pipes. When completed, the water system included three reservoirs, 21 miles of pressure pipes, approximately 46 miles of covered box flume, several structures, and one three-quarter-mile tunnel. The total investment in the water system exceeded \$3.5 million.

With the decline of the Comstock in the years and decades to come, the fortunes of the water system suffered. In 1933, the water company's name was changed to the Virginia City

Water Company. By 1941, the company started to remove parts of the first (1873) and third (1887) pipelines to replace the flume between Five-Mile Reservoir and Virginia City. Continued failures in the aging pipeline and a lack of funds caused the company to sell the water system to the Curtiss-Wright Corporation in 1957, which planned to use water from the system for a proposed missile test site on lands it owned in Storey County. However, the contract for the missile testing program was never approved. After making certain improvements to the water system, the Curtiss-Wright Corporation subsequently sold it to the Marlette Lake Company.

In 1963, the Marlette Lake Company offered to sell the water system to the State of Nevada for \$1.65 million of the State's general obligation bonds. Included in the sale approved by the 1963 Legislature were water rights, over 5,300 acres of land, easements, pipelines, flumes, the Red House Diversion Structure, the caretaker's house at Lakeview (Lakeview House, 1873), and other water facilities. Administration of the system was assigned to Nevada's Department of Administration.

For many years, the State of Nevada was able to provide water to its Capitol complex and the maximum security prison, in addition to the water it continued to provide to Virginia City. Subsequently, the State began selling water to Carson City, particularly during periods of peak demand.

Other notable dates in the history of the MLWS include the following:

- The tunnel carrying water from Marlette Lake to the east portal collapsed in 1957. Efforts by the State of Nevada to reexcavate the tunnel failed.
- In 1959, the Marlette Dam was raised 15 feet, thus increasing the capacity of Marlette Lake to over 4 billion gallons (11,800 acre-feet).
- A diesel pump was installed at Marlette Lake in 1966 to pump water over a drainage divide to the Hobart Reservoir drainage.
- The wooden flume from the east portal to the Red House Diversion Structure was replaced with a pipeline in 1968.
- In 1974, a contract was signed between the State of Nevada and Storey County to ensure the supply of water by the State to Gold Hill, Silver City, and Virginia City on a continuing basis, and to convey from the State to Storey County the siphon system and relevant rights-of-way east of Highway 395 at Lakeview.
- In 1975, the MLWS was designated a Historic Civil Engineering Landmark. It was the first American system developed to overcome mountainous topography.

## **B. Recent Improvements**

Historically, pumping has been required seasonally from Marlette Lake over a drainage divide into the Hobart Reservoir drainage. During periods of pumping, State personnel used to monitor the diesel generator and pump on a 24-hour basis, routinely hauling diesel fuel to the site. A 2000 study commissioned by the Carson Water Subconservancy District (CWSD) evaluated various alternatives to this supplemental pumping from Marlette Lake. The diesel pump water delivery system was found to be seasonal, expensive, environmentally risky, and unreliable. The study pointed out that over the long-term the most cost-effective and environmentally sensitive method of conveying water from Marlette Lake to the Hobart Reservoir would be to bore a hole through the drainage divide between these two bodies of water.

In 2003, the CWSD received a grant from the U.S. Environmental Protection Agency to improve the distribution system out of Marlette Lake, making it more environmentally compatible with the surrounding area. The CWSD completed the environmental assessment on the preferred alternatives in 2006. Several capital improvements have been made to the water system over the past five years including:

- An existing 8-inch diameter pipeline was demolished in most areas, except in the Mountain Beaver habitat, and replaced with 7,390 feet of new 12-inch diameter pipe from Marlette Lake to Hobart Creek. Most of the pipeline was underground, with 828 feet of the pipeline constructed above ground in the Stream Environment Zone and the Mountain Beaver habitat.
- The diesel-powered pump was replaced with a permanent 250-horsepower submersible electric pump on the northeast shoreline of Marlette Lake.
- Power and fiber optic raceways were installed from the pump site to the generator site located at the Sierra crest.
- Road drainage was improved from the Lakeview tanks to Marlette Lake.
- A 650-foot intake suction line was constructed in Marlette Lake, approximately 40 feet below lake level.
- A building for the generator was constructed near the crest of the Sierras (outside of the jurisdiction of the TRPA) and two natural gas-powered generators (300 kW and 25 kW) were purchased.
- A four-inch natural gas line was constructed by an independent contractor through Southwest Gas, connecting the generator building site to the Paiute Pipeline.
- Automatic controls to monitor and adjust flow levels from remote locations via cell phone were installed at Marlette Lake, the Hobart Reservoir, the Red House Diversion Structure, and the Lakeview tanks.

Committee members received an overview of the MLWS, including recent capital improvements and continuing infrastructure needs, at its meeting on March 19, 2012.

## V. INFORMATIONAL TOURS

The Committee participated in two informational tours.

### May 21, 2012

The Committee was scheduled to board the University of California Davis' Research Vessel, John LeConte, at the Zephyr Cove Resort & Marina with Captain Brant Allen, but high winds cancelled the boat tour. The boat tour was planned to include a visit to nearby Marla Bay to see the infestation of Asian Clams, a Secchi disk demonstration to measure water clarity, and observation of phytoplankton and zooplankton. Mr. Allen and the Committee were joined by the following individuals:

- James R. Lawrence, Administrator and State Land Registrar, Division of State Lands, SDCNR;
- Robert Gregg, Lake Tahoe Coordinator, Nevada Tahoe Resource Team, Division of State Lands, SDCNR.
- Joanne Marchetta, Executive Director, TRPA;
- Julie Regan, Chief of External Affairs, TRPA;
- Ted Thayer, Program Director, Aquatic Invasive Species, TRPA;
- Sudeep Chandra, Ph.D., Associate Professor, Department of Natural Resources and Environmental Science, College of Agriculture, Biotechnology and Natural Resources, University of Nevada, Reno; and
- S. Geoffrey "Geoff" Schladow, Ph.D., Professor of Water Resources, and Environmental Engineering Director, Tahoe Environmental Research Center.

Despite the last-minute change of plans, all of the aforementioned individuals joined the Committee for a land-based tour of the following:

- Regan Beach, El Dorado County, California
  - The tour group discussed aquatic invasive species and lake clarity issues.
- Lakeview Commons, El Dorado County, California
  - The group toured the new facility which was dedicated on June 20, 2012. Lakeview Commons took approximately seven years to come to fruition; the project involved a major reconstruction of a previously dilapidated beach area. The project is a showcase of collaboration, innovation, and sustainable practices to improve erosion control and thus, lake clarity. The project also improves the visual appearance of the surrounding built environment and

provides visitors and residents with a world-class recreational space and civic gathering place.

- Wildwood Avenue, El Dorado County, California
  - The Committee viewed the practical implementation of some key concepts of the RPU. More than a decade ago, the Wildwood Avenue area had rundown motels and strip commercial development in an environmentally sensitive area along Highway 50. Today, after that development was removed and transferred to a hotel complex at the Ski Run Marina, the area is restored, drainage is improved, and Highway 50's visual aesthetics are enhanced. At this tour stop, the TRPA staff demonstrated how transfers of development through the RPU can deliver environmental, economic, and community benefits.
- Van Sickle Bi-State Park, Loop Road/Highway 50 Revitalization Project, El Dorado County, California, and Douglas County, Nevada
  - The Committee toured the park grounds and discussed the positive collaboration of California and Nevada, along with the private sector, in opening this park facility. As the only urban trailhead in the South Shore's Stateline area, the park provides an unprecedented opportunity for visitors to connect to the Tahoe Rim Trail and other recreational amenities. The support of the Tahoe Fund allowed the park to open to the public, and future phases are planned to improve the facility.
- Lake Village, Douglas County, Nevada
  - The tour group discussed water quality/storm water best management practices along with public-private partnerships to benefit Lake Tahoe. The Committee viewed the storm water treatment work completed by the owners of the adjacent property, which is the site of the proposed residential development, Sierra Colina Village. The group discussed the concept of area-wide storm water treatment as proposed in the RPU and the benefits of environmental redevelopment to deliver water quality threshold gains in the future.

### **October 1, 2012**

Committee members were joined on an informational tour by the following Agency representatives:

- Peter Etchart, P.E., Chief Engineer, Buildings and Grounds Section, State Public Works Division, Department of Administration;
- Jerry Walker, Water Systems Manager, State Public Works Division, Department of Administration;
- Blake Gudmundson, Water System Operator, State Public Works Division, Department of Administration;
- Roland Shaw, Forester III, Division of Forestry, SDCNR;

- James R. Lawrence, Administrator and State Land Registrar, Division of State Lands, SDCNR;
- Robert Gregg, Lake Tahoe Coordinator, Nevada Tahoe Resource Team, Division of State Lands, SDCNR;
- David K. Morrow, Administrator, Division of State Parks, SDCNR; and
- Jay Howard, Park Supervisor, Lake Tahoe Nevada State Park, Division of State Parks, SDCNR.

The Committee toured portions of the historic MLWS and received a progress report on the Environmental Improvement Program.

- The Committee visited Marlette Lake, the Hobart Lake dam and headworks, and the “Red House,” a historic cabin formerly used as a residence by the water tender. Mr. Howard discussed some of the efforts on behalf of the Division of State Parks to stabilize the Red House. Staff from the State Public Works Division discussed the importance of the MLWS, including being the sole provider of raw water to portions of Storey County, including Virginia City, and providing approximately 10 percent of Carson City’s water needs. The water system requires monitoring 24-hours a day, seven days a week, and its operations are solely funded by the sale of raw water to Storey County and Carson City. Future improvements to the MLWS are currently being discussed by the Marlette-Hobart Water System Coordinating Committee, comprised of representatives from the State of Nevada, Carson City, and Storey County.
- The tour group viewed the North Canyon wood sale area which has been thinned by Nevada’s Division of Forestry crews. Also discussed were the forest restoration efforts in the Lake Tahoe Nevada State Park backcountry and Aspen regeneration resulting from forest thinning projects. Mr. Shaw mentioned the need to carry out similar projects throughout the park.
- The group visited the Laxalt family retreat, which is privately held land surrounded by public lands.
- The group also visited the Marlette Fish Hatchery. Nevada’s Department of Wildlife (NDOW) collects Lake Tahoe Rainbow Trout eggs annually as part of its stocking program. The process involves netting fish from Marlette Lake, stripping eggs from the females, using the males to fertilize the eggs, growing the eggs to fingerlings in one of NDOW’s hatcheries, and finally planting the fingerlings in other lakes.



*Viewing the Department of Wildlife's Trout Spawning Station, from left to right, are: Peter Etchart, James Lawrence, Senator John J. Lee, Senator James A. Settlemeyer, David Morrow, Assemblyman Kelly Kite, Jay Howard, and Senator David R. Parks*

## **VI. CONCLUDING REMARKS**

The Committee would like to thank all of the federal, State, and local agencies; businesses; nonprofit organizations; professional organizations; the TRPA; and the public for their contributions to the work of the Committee during the 2011-2012 Interim. The members appreciate the time and expertise of those who testified at each meeting including the staff from the legislative and executive branches of California.

**VII. APPENDICES**

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**APPENDIX A**

*Nevada Revised Statutes 218E.555*



*Nevada Revised Statutes*

**NRS 218E.555 Creation; membership; budget; officers; terms; vacancies; reports. [Effective through September 30, 2015, and after that date if by that date the amendments to the Tahoe Regional Planning Compact proposed by this State are approved pursuant to Public Law 96-551, the State of California enacts amendments that are substantially identical to those amendments, and the governing board of the Tahoe Regional Planning Agency adopts an update to the 1987 Regional Plan, or effective through September 30, 2017, if those events have not taken place by July 1, 2015, and the Governor issues a proclamation before October 1, 2015, that those events are likely to take place in the reasonably foreseeable future and effective after September 30, 2017, if those events take place by September 30, 2017.]**

1. There is hereby created the Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System consisting of three members of the Senate and three members of the Assembly, appointed by the Legislative Commission with appropriate regard for their experience with and knowledge of matters relating to the management of natural resources. The members must be appointed to provide representation from the various geographical regions of the State.

2. The Legislative Commission shall review and approve the budget and work program for the Committee and any changes to the budget or work program.

3. The members of the Committee shall elect a Chair from one House and a Vice Chair from the other House. Each Chair and Vice Chair holds office for a term of 2 years commencing on July 1 of each odd-numbered year.

4. Any member of the Committee who is not a candidate for reelection or who is defeated for reelection continues to serve after the general election until the next regular or special session convenes.

5. Vacancies on the Committee must be filled in the same manner as original appointments.

6. The Committee shall report annually to the Legislative Commission concerning its activities and any recommendations.

(Added to NRS by [2003, 2504](#); A [2009, 1152, 1562](#); [2011, 3227](#))—(Substituted in revision for NRS 218.53871)



## **APPENDIX B**

Committee Letters of Support Regarding: (1) The U.S. Highway 50 South Shore  
Community Revitalization Project—California and Nevada; and  
(2) The Issuance of General Obligation Bonds  
When Bonding Capacity Recovers



JOHN J. LEE

SENATOR

Clark No. 1

COMMITTEES:

*Chair*

Government Affairs

*Vice Chair*

Select Committee on Economic  
Growth and Employment

*Member*

Natural Resources  
Transportation



# State of Nevada Senate

Seventy-Sixth Session

May 23, 2012

DISTRICT OFFICE:

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www.leg.state.nv.us

The Honorable Ray LaHood  
Secretary of Transportation  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E., 9th Floor  
Washington, D.C. 20590-9898

**Re: Support for TIGER IV Grant Application–U.S. Highway 50, South Shore  
Community Revitalization Project–California and Nevada Grant ID No. TTD47759**

Dear Secretary LaHood:

We are writing in strong support of the Transportation Investment Generating Economic Recovery (TIGER) IV grant application from the Tahoe Transportation District (TTD) and Tahoe Metropolitan Planning Organization for the *U.S. Highway 50 South Shore Community Revitalization Project–California and Nevada*.

As you are aware, the federal government owns and manages approximately 75 percent of lands within the Lake Tahoe Basin. These lands are managed by the U.S. Forest Service and feature world-class outdoor recreation in close proximity to the urban areas of Northern California and Northern Nevada. Lake Tahoe also has a national and international reputation as a travel destination. More than two million annual visitors are drawn to the South Shore alone.

U.S. Highway 50 is a federal transcontinental highway that connects the capitals of Nevada and California–Carson City and Sacramento. Its five-lane configuration bisects the downtown areas of South Lake Tahoe, California and Stateline, Nevada, in a manner that adversely affects the quality of the visitors' and residents' experience and is not compatible with local goals and objectives to create a sustainable resort destination. Further, it is not consistent with the principles of environmental stewardship as set forth in Public Law 96-551, the Tahoe Regional Planning Compact (the Compact). Article V of the Compact specifically calls for consideration and completion of this "loop road" concept.

The U.S. Highway 50 South Shore Community Revitalization Project represents a combined transportation, environmental, and community solution developed by a diverse public-private collaboration of agencies, business and property owners, local elected officials, residents and other stakeholders. The Federal Highway Administration, Nevada Department of Transportation, and California Department of Transportation are active partners in project planning and development. The project will improve access to recreation by facilitating multi-modal linkages to nearby beaches, parks and trailheads. It will expedite the efficient movement of goods by routing truck traffic out of the downtown area, creating a more enjoyable and desirable pedestrian, bicycle, and transit-friendly resort destination. It will deliver substantial environmental improvements, including a significant reduction in the runoff of sediment that the science community confirms is the primary source of pollution reducing Lake Tahoe's famed water clarity.

We appreciate your serious consideration and support for the U.S. Highway 50 South Shore Community Revitalization Project for TIGER IV funding.

Sincerely,

A handwritten signature in cursive script that reads "John J. Lee". The signature is written in black ink and is positioned below the word "Sincerely,".

Senator John J. Lee, Chair  
Legislative Committee for the Review and  
Oversight of the Tahoe Regional Planning Agency  
and the Marlette Lake Water System

JJL/lb: L13

cc: Carl Hasty, Tahoe Transportation District  
Nick Haven, Tahoe Metropolitan Planning Organization

JOHN J. LEE

SENATOR

Clark No. 1

COMMITTEES:

**Chair**

Government Affairs

**Vice Chair**

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**Member**

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[www.leg.state.nv.us](http://www.leg.state.nv.us)

October 29, 2012

The Honorable Brian Sandoval  
Governor  
State of Nevada  
101 North Carson Street, Suite 1  
Carson City, Nevada 89701-4786

## **Re: Support for Issuance of Bonds When Bonding Capacity Recovers**

Dear Governor Sandoval:

The Legislative Committee for the Review and Oversight of the Tahoe Regional Planning Agency and the Marlette Lake Water System (NRS 218E.555) has concluded its series of meetings for the 2011-2012 Interim.

Among the many items heard, the Committee received an update on the progress of the Lake Tahoe Environmental Improvement Program (EIP). As you know, the EIP is a partnership between Nevada and California, the federal government, local governments, and the private sector. Projects funded by the EIP have demonstrated improvements in: watershed restoration to improve water clarity; forest health to reduce the threat of catastrophic wildfire; and recreational facilities to build a vibrant ecotourism economy. The EIP has also funded a dedicated inspection/prevention program to address the continuing threat of aquatic invasive species in Lake Tahoe.

Nevada's EIP projects are carried out by a State interagency team referred to as the Nevada Tahoe Resource Team, which is coordinated by the Division of State Lands (DSL) of the State Department of Conservation and Natural Resources (SDCNR). Each interim, DSL provides the Committee with EIP progress reports. In turn, the Committee has sponsored legislation each session to provide continued financial support through the sale of general obligation bonds for the ongoing work of the Nevada Tahoe Resource Team.

Consistent with this approach, this Committee sponsored Senate Bill 438 (Chapter 437, *Statutes of Nevada 2011*), which required an amount of not more than \$12 million through the

sale of general obligation bonds be provided to carry out Nevada's share of the EIP. Senate Bill 438 was approved by the full legislative body and became effective July 1, 2011. To date, none of the \$12 million in bonds have been sold.

The Committee understands the budgetary constraints that have led to a suspension of bond sales. Based on a unanimous vote of the Committee members present at our October 1, 2012, meeting, we are writing to express our continued support of Nevada's EIP efforts and to urge that—in the event bond sales resume—a portion of those bond proceeds be made available to the Lake Tahoe EIP program. Even if it is not possible to secure the full \$12 million amount, a portion of the amount can make a significant difference in carrying out this program. This would allow for critical projects to move forward, taking advantage of a competitive economic climate, and maintaining Nevada's exemplary leadership and commitment to the EIP. This commitment is essential to leveraging the continued investment of federal dollars in the Lake Tahoe Basin.

On behalf of the Committee, we thank you for your consideration.

Sincerely,



Senator John J. Lee, Chair  
Legislative Committee for the Review and  
Oversight of the Tahoe Regional Planning Agency  
and the Marlette Lake Water System

JJL/jc:L14

cc: Jeff Mohlenkamp, Director, Department of Administration  
Leo M. Drozdoff, P.E., Director, SDCNR  
James R. Lawrence, Administrator and State Land Registrar, DSL, SDCNR  
Steve Teshara, Coordinator, Lake Tahoe Partnership, and Principal, Sustainable Community Advocates

## **APPENDIX C**

### **Bistate Consultation Group Letter and Recommendations Regarding the Regional Plan Update**





NEVADA DEPARTMENT OF  
**CONSERVATION &  
NATURAL RESOURCES**

July 26, 2012

Chair Norma Santiago and  
Members of the Governing Board  
Tahoe Regional Planning Agency  
P.O. Box 5310  
Stateline, NV 89449

Dear Chair Santiago and Members of the Governing Board:

The states of California and Nevada have closely examined the outstanding major issues of the TRPA Regional Plan Update (RPU). We are writing to share our recommendations for the Governing Board's consideration when finalizing policy in the RPU. The recommendations and language we have carefully provided is the product of consensus among the vast array of stakeholders in Lake Tahoe. We believe our recommendations offer the Governing Board an unprecedented opportunity to build upon environmental progress.

At the 15<sup>th</sup> Annual Tahoe Summit held in August 2011, Governor Brown and Governor Sandoval announced a renewed commitment by the states of California and Nevada to Lake Tahoe. Our states agreed<sup>1</sup> to work cooperatively with the shared goal of helping to complete the RPU by the end of 2012.

In the weeks and months since the summit, California and Nevada have remained focused on delivering this promise. The California Natural Resources Agency and the Nevada Department of Conservation and Natural Resources have dedicated hundreds of hours of time in an effort to come together as partners around policy solutions. We have met with, listened to, and solicited input from stakeholders within the Basin and have closely followed the work of the Governing Board's RPU Committee. Not unlike the Governing Board, we have heard from members of the conservation community, area business owners, civic leaders, local elected officials, technical experts, and – most importantly – residents and concerned citizens. Through this endeavor, we

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<sup>1</sup> "The best way to do that is by working cooperatively with the State of Nevada to promote policies that ensure both the environment and the economy of Lake Tahoe are protected in perpetuity," said Gov. Brown.

"Gov. Brown and I agreed that while much has changed at Lake Tahoe since the Bi-State Compact was created in 1969, our two states' dedication to the resource remains unwavering. I look forward to working with Gov. Brown on updating the Regional Plan," said Gov. Sandoval.

July 26, 2012

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believe that we have a much greater appreciation for the history, the concerns, and the hopes of all who have a stake in the success of the updated TRPA Regional Plan.

As the broader community and the Governing Board knows, over the past few months we have also embarked in a more formal bi-state consultation process in an effort to bridge differences identified through the work of the RPU Committee. This process was initiated with the hope of offering additional areas of agreement for the Governing Board to consider as part of its planning effort. We have not sought to re-do the draft work product already started by the RPU Committee and the Governing Board. In fact, we have concluded through our process that there is more agreement among the stakeholders than there is disagreement.

However, despite the RPU Committee's diligent work, the fact remains that significant unresolved issues have emerged that threaten the successful completion of the RPU. We created our bi-state consultation process to see if our engagement could help drive resolution of these policy issues by finding consensus positions around four broad areas of discussion: delegation of authorities and establishment of an appeals process; water quality; land coverage questions; and air quality.

Throughout our stand-alone effort, our approach was to listen carefully to all parties and build consensus where possible. We set out committed to a well-represented, collaborative process that would further unify California and Nevada's shared responsibility for the protection and preservation of Lake Tahoe and the economic viability of the region. We invited individuals from each state to meet with us for five all-day meetings and convened breakout work sessions in the interim. We challenged each individual participant to think broadly, to be creative and to represent interests greater than their own. Each participant – one conservation, one business, and one local government representative from each state, in addition to two members of the Governing Board who conveyed the RPU Committee's perspectives – diligently joined us in this group problem-solving endeavor. We thank each of them for their hard work and commitment to this collaborative effort.

We believe our efforts have yielded results that demonstrate strong merit and deserve further consideration by the RPU Committee and the Governing Board as part of its public deliberation process. Through our partnership and teamwork, we have forged agreement on language that offers real progress on approximately 17 previously unsettled policies contained in the Regional Plan Update. These areas of agreement – and the attached policy language drafted as an entire package through our consultation process – include:

- Level of Local Delegation and Appeal Process
- Commodities
- TAU Transfer Policy

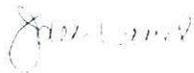
July 26, 2012

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- Site Specific Transfer Ratios
- New “Resort Recreation” Designation
- High Density Tourist District: Maximum Height
- Community Character: Community Design
- Community Character: Level of Service
- Land Coverage Transfers Across Hydrologic Zones: Excess Mitigation Fees
- Land Coverage Transfers Across Hydrologic Zones: Land Coverage Transfers
- Offsite Land Coverage Mitigation
- Land Coverage Allowances
- Areawide Coverage Management Plans
- TMDL
- Air Quality
- BMP Compliance
- Pilot Program for Drive-up Pharmacy Windows

The states of California and Nevada take seriously our unique, shared roles at Lake Tahoe. Through our personal engagement, we believe we have fostered a bi-state relationship that is healthier than in recent memory, is engendering stronger trust among other stakeholders, and represents a “new start.” We believe that our recommendations will protect the environment and will benefit the economy. We respectfully ask the RPU Committee and Governing Board to consider these consensus positions as it works to finalize the RPU in the coming months.

Sincerely,



John Laird  
Secretary for Natural Resources  
State of California



Leo M. Drozdoff, PE  
Director of Conservation and Natural Resources  
State of Nevada

cc: Governor Brown  
Governor Sandoval  
Senator Dianne Feinstein  
Senator Harry Reid  
Senator Dean Heller  
California Legislative Delegation to Lake Tahoe  
Nevada Legislative Delegation to Lake Tahoe  
Joanne Marchetta

Attachment



# California-Nevada Consultation

## Regional Plan Update Recommendations

July 25, 2012

### **Level of Local Delegation and Appeal Process**

The group recommends the following language and process:

*I. Once an Area Plan, and Zoning and Development Codes with the Plan, have been found in conformance with, and incorporated into, the Regional Plan, Local Governments may assume development review authority by Memoranda of Understanding with TRPA, subject to the following limitations:*

*A. The TRPA Governing Board shall annually review a sample of permits issued within each Area Plan, and shall certify that the Area Plans are being implemented in Conformance with the Regional Plan. If the TRPA Governing Board finds that development permitted within an Area Plan does not comply with the conforming Area Plan, TRPA may retract delegation of certain permitting authority and implement the conforming Area Plan.*

*B. Approval of projects within Area Plans shall require TRPA review and approval if the project includes any of the following criteria, except for minor improvements as further specified in the code of ordinances:*

- a. All development within the High Density Tourist District;*
- b. All development within the Shorezone of Lake Tahoe;*
- c. All development within the Conservation District;*
- d. All development within the Resort Recreation designation;*
- e. All development meeting criteria on the following table:*

	Regional Center	Town Center	Not in Center
Residential	100,000 sq.ft.	50,000 sq. ft.	25,000 sq. ft.
Non-Residential	80,000 sq. ft.	40,000 sq. ft.	12,500 sq. ft.

*C. The limitations specified in the Table above may be increased or decreased by the TRPA Governing Board if the Board finds that local governments, based on ongoing monitoring, reporting and performance review, are acting on projects consistent with the Area Plan and that the terms and conditions of the Area Plan are being met. After four years*

*there will be a discussion on increased levels of delegation moving forward.*

**II. *Local Government decisions on delegated project applications may be appealed to the TRPA subject to the following criteria and process:***

- A. *Appeals shall be limited to whether the decision by a local government is in accordance with an approved Area Plan and its implementing ordinances consistent with the Regional Plan and Compact.*
- B. *Appeals can only be filed by an "aggrieved person" as defined in the Compact [Article VI (j) (3)].*
- C. *Appellants who would be subject to the Compact's exhaustion provision (see Article VI (j) (3)) must demonstrate that they have exhausted all administrative remedies prior to appealing a decision to TRPA. It is recognized that public agencies have a specific role defined in the Compact; however, public agencies are encouraged to engage lead agencies as early as possible when projects are being processed pursuant to approved Area Plans.*
- D. *An appellant must file an appeal application to TRPA within 15 calendar days of the last local government decision.*
  - a. *The application to TRPA must include:*
    - i. *A clearly written statement explaining the grounds for appeal.*
    - ii. *A \$1,000 TRPA appeal fee (with the local government appeal fee not to exceed the TRPA fee for appeals.)*
    - iii. *Appellants are required to provide documentation to support their claims, and the applicant or lead agency may also augment the record.*
- E. *Once an application is received by TRPA, the project approved by the local government is stayed pending the outcome of the appeal.*
- F. *Within 60 days after receipt of an appeal, TRPA staff will make a recommendation on whether the appeal is frivolous as defined in II A, B, and C. This recommendation will serve as the basis for the TRPA Governing Board in its decision to proceed with an appeal hearing. The voting structure for appeal decisions will be the same as project votes before the Governing Board as defined in the Compact.*

G. *The TRPA Governing Board may take action the first time the appeal is presented to the board or, after hearing the appeal, defer action to the next Governing Board meeting.*

a. *Appeal review and action by the TRPA Governing Board is limited to whether the decision by a local government is in accordance with an approved Area Plan and its implementing ordinances consistent with the Regional Plan and Compact.*

b. *If no action is taken by the TRPA Governing Board at the initial meeting at which the appeal is presented, the Governing Board must take action at the Governing Board meeting the following month.*

H. *Appeals upheld by the TRPA Governing Board nullify the local government decision and the project applicant would be required to re-apply to the local government.*

I. *In very limited circumstances, consistent with Goal III. C below, the TRPA Governing Board may modify a local government decision on a project to make the decision consistent with the Area Plan.*

**III. Appeal Process Goals**

- A. *Eliminate frivolous appeals and appellants "laying in wait" by encouraging early and consistent engagement.*
- B. *Increase procedural certainty and timeliness (irrespective of outcomes).*
- C. *Establish that project-by-project negotiation should not be the Governing Board's default position.*

**Commodities**

The group supports the commodities reflected in DEIS Alternative #3, with clarifying language below in italics:

Residential Allocations:	2600	
Residential Bonus Units:	600	<i>(to be used in centers)</i>
Commercial Floor Area:	200,000	<i>(provided existing 383,000 available CFA square footage is first exhausted)</i>
Tourist Accommodation Units:	-0-	

There is no automatic recharge of commodities; however, the group recognizes that in the event commodities are exhausted the TRPA Governing Board may consider additional allocations.

## **TAU Transfer Policy**

The group recommends the following related to TAUs:

Transferred TAUs may be used to entitle, on a one-to-one basis, unit sizes described in subparagraph (b) below, provided the proposed project (receiving site) will be a professionally managed tourist accommodation facility containing three or more of the following on-site guest amenities or services:

a. On-site guest amenities or services:

- (i) front desk/check-in/lobby
- (ii) business center
- (iii) spa services
- (iv) fitness facility
- (v) restaurant
- (vi) bar
- (vii) conference space
- (viii) concierge's services
- (ix) pool or other resort recreation facilities
- (x) valet/below structure parking
- (xi) housekeeping
- (xii) bell desk

b. Providing three or more of the on-site guest amenities or services in subparagraph (a) are provided, 80% of the tourist accommodation units may be up to 1,200 square feet, with kitchens, and no more than 20% of the project's floor area may contain units not to exceed 1,800 square feet, with kitchens.

c. When transferred TAUs are utilized for smaller tourist accommodation facilities that are not operated as destination resorts, the facility must be professionally managed, units shall not be rented for a period longer than 29 days, and TAUs may be up to 850 square feet in size.

d. This transfer policy applies to hotels or timeshares and fractional units within a professionally managed tourist accommodation facility.

e. The group supports the creation of a pilot program allowing the conversion of a limited number of TAUs to ERUs for multi-unit projects. Each TAU can be used for a maximum of 1,250 sq. ft. of residential floor area on the same parcel.

## **Site Specific Transfer Ratios**

For site specific transfer ratios, the group recommends the following:

- a. Add to the TRPA “to do” list a review of the efficacy of the ratios;
- b. Remove references to increased ratios in the area plans in proposed Code Section 13.5.3.B.4 except for Stream Restoration Plan Areas;
- c. Leave the designation of Meeks and Motel 6 and add the Tahoe City golf course in Stream Restoration Plan Areas.

## **New “Resort Recreation” Designation**

The group recommends replacing the Draft RPU provisions regarding additional uses and subdivisions in recreation districts by establishing a new “Resort Recreation” designation and limiting the new development and subdivision allowances to this new district. The group further supports mapping the Heavenly California Base parcels and the Edgewood Mountain parcels with this new “Resort Recreation” designation in which TAUs, residential and commercial development could be allowed (including appropriate accessory uses). The designation of those mapped Heavenly and Edgewood parcels is subject to the following conditions 1) the parcels must become part of an approved area plan; 2) subdivisions will be limited to “air condos” (no lot and block subdivisions); 3) development is transferred in from outside the designated area; and 4) transfers result in the retirement of development. All areas currently designated “Recreation” in the existing Regional Plan would remain unchanged.

## **High Density Tourist District: Maximum Height**

The group agreed upon the following definition for maximum height in the high density tourist district:

*A maximum of 197 feet of building height may be permitted within the high density tourist district, limited to replacement structures, provided, the structures to be demolished and replaced are an existing casino hotel, with existing structures of at least eight stories, or 85 feet of height as measured from the lowest point of natural grade.*

## **Community Character**

### **I. Community Design**

The group recommends the following community design standards (reference 13.5.3 D 1.):

*Area Plans that include the Regional Center or Town Centers shall address the following design standards:*

- a. Existing or planned pedestrian and bicycle facilities shall connect properties within Centers to transit stops and the Regional Bicycle and Pedestrian network.*
- b. Area Plans shall encourage the protection of views of Lake Tahoe.*
- c. Within town and regional centers, building height and density should be varied with some buildings smaller and less dense than others.*
- d. Site and building designs within Centers shall promote pedestrian activity and provide enhanced design features along public roadways. Enhanced design features to be considered include increased setbacks, stepped heights, increased building articulation, and/or higher quality building materials along public roadways.*
- e. Area Plans shall include strategies for protecting undisturbed sensitive lands and, where feasible, establish park or open space corridors connecting undisturbed sensitive areas within Centers to undisturbed areas outside of Centers.*

The group also recommends the following language as an addition to the community design standards (reference the addition of an E. to 13.5.3):

#### *Town Center, Regional Center and High Density Tourist District Boundaries*

*When Area Plans propose modifications to the boundaries of a Town Center, Regional Center, or High Density Tourist District, the modification shall comply with the following:*

- a. Boundaries of centers shall be drawn to include only properties that have been developed. Any undeveloped parcels that are included in Centers shall have at least three sides adjacent to developed parcels.*
- b. Properties included in a Center shall be less than 1/4 mile from existing Commercial and Public Service uses.*

*c. Properties included in a Center shall encourage and facilitate the use of existing or planned transit stops and transit systems.*

The group further recommends that (reference CD2.1B.1) TAUs and affordable housing be deleted; that a footnote (reference Table 13.5.3-1 [2]) be deleted that reads: "*Except Area Plans may identify higher-density areas adjacent to town centers, regional centers, and the High-Density Tourist District and in other areas permitted by the Regional Plan*"; and that a statement be included that "*Community Plans outside of Town Centers shall not be eligible for additional height and density.*"

## **II. Level of Service**

The group recommends language (to replace the final bullet in T-10.7) to read:

*These vehicle LOS (Level of Service) standards may be exceeded when provisions for multi-modal amenities and/or services (such as transit, bicycling and walking facilities) are adequate to provide mobility for users at a level that is proportional to the project generated traffic in relation to overall traffic conditions on affected roadways.*

## **Land Coverage Transfers, Mitigation and Allowances**

### **I. Transfers Across Hydrologic Zones – Excess Coverage Fees**

The group supports a change to allow for the use of excess coverage mitigation fees outside the hydrologic zone in which the fees are collected to achieve more strategic environmental benefit.

### **II. Transfers Across Hydrologic Zones – Land Coverage Transfers**

Add to the TRPA "to do" list a detailed review of coverage transfers across hydrologic zones. This review will include presentations from the California Tahoe Conservancy and the Nevada Land Bank/Nevada Division of State Lands.

### **III. Offsite Land Coverage Mitigation**

The group supports a change to allow for offsite restoration across hydrologic boundaries for excess coverage mitigation purposes, provided the restoration occurs on more sensitive lands than the project area.

#### **IV. Land Coverage Allowances**

The group supports the coverage allowances and exemption proposed in the regional plan update for decks, sheds, and pervious coverage. The group further supports the proposed regional plan update exemptions for bike paths and ADA compliance.

#### **V. Areawide Coverage Management Plans**

The group supports the position that the benefits of a comprehensive area wide coverage management plan shall not accrue to the areas within 300 feet from the high water mark and coverage in that zone shall be governed by the current Regional Plan. Property owners that elect not to participate in areawide coverage management plans shall continue to be subject to the coverage provisions under the 1987 Regional Plan.

### **TMDL**

The group recommends inclusion of the following language:

*TRPA will utilize the water quality improvement plan for registered catchments, or TRPA default standards when there are no registered catchments, in the conformance review of area plans.*

*The TMDL regulatory agencies will, through the TMDL adaptive management system, provide to TRPA:*

*Annual progress reporting and analysis;  
Copies of all MOAs and NPDES permits;  
Notification of all breaches or violations of MOAs or NPDES permits.*

*Further, the Regional Plan Update provides for annual audits of each local jurisdiction's permitting actions under its approved area plan.*

*TRPA will use catchment data and all reporting to inform area plan re-certification every four years.*

### **Air Quality**

The group recommends, and affirms its support, for the proposed RPU in relation to 8 hour ozone standards, disbursement of air quality mitigation fees, and the prohibition of biomass facilities as described.

## **Additional Recommendations**

The group recommends that TRPA create a subcommittee of the TRPA Governing Board, along with interested parties, to explore options related to BMP compliance.

The group recommends TRPA develop and adopt a pilot program for drive-up pharmacy windows in the City of South Lake Tahoe, to be monitored for environmental impacts and evaluated for further opportunities in the Basin.

