

Background Paper 85-2

THE TAHOE REGIONAL PLANNING AGENCY  
AFTER AMENDMENT OF THE BISTATE COMPACT  
IN 1980



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# THE TAHOE REGIONAL PLANNING AGENCY AFTER AMENDMENT OF THE BISTATE COMPACT IN 1980

The Lake Tahoe Basin lies on the border between the States of Nevada and California. Because of its great natural beauty and water clarity, Lake Tahoe has been a scenic and recreational attraction for many years. Planning and management of private development within the Basin has become a major issue over the past 20 years.

The purpose of this background paper is to familiarize the reader with the history of activities of the Tahoe Regional Planning Agency (TRPA) after 1980 when the bistate compact which created the agency was amended. A brief overview of the activities before 1980 is also included to provide a historical perspective.

## I

### HISTORICAL PERSPECTIVE

The Tahoe Regional Planning Agency was created by the States of Nevada and California through bistate compact in 1969. The general responsibility of the agency was to plan and manage development in the Basin while preserving the environmental quality.

The history of the agency has been filled with turmoil. Planning and legislative activities have usually been complicated and controversial. Legislation concerning the Tahoe Basin has been enacted in Nevada during every regular session since the compact was originally adopted. Following is a summary of the legislative activities through 1980.

SUMMARY OF NEVADA LEGISLATION THROUGH 1980 CONCERNING THE LAKE TAHOE BASIN		
<u>Year</u>	<u>Bill Number</u>	<u>Bill Summary</u>
1968	S.B. 9 (Enacted)	Enacts Tahoe Regional Planning Compact.
1969	S.J.R. 4 (Adopted)	Memorializes Congress to ratify Tahoe Regional Planning Compact.
1971	S.B. 47 (Enacted)	Provides for early judicial hearings of matters concerning the Tahoe Regional Planning Agency.
	S.B. 413 (Enacted)	Makes an appropriation from the general fund to the department of conservation and natural resources fund for the purpose of preparing a regional plan as required by the Tahoe Regional Planning Compact.

<u>Year</u>	<u>Bill Number</u>	<u>Bill Summary</u>
1975	S.B. 254* (Enacted, but did not become effective.)	Provides substantive and technical changes to the Tahoe Regional Planning Compact.
	Proposals introduced but not enacted in 1975:	
	S.B. 326	A.B. 781
	S.B. 327	A.C.R. 75
	S.J.R. 13	A.C.R. 86
1977	S.B. 266* (Enacted, but did not become effective.)	Provides substantive changes to the Tahoe Regional Planning Compact.
	Proposals introduced but not enacted in 1977:	
	S.B. 108	A.B. 664
	S.B. 265	A.B. 740
	S.B. 267	
1979	S.B. 323 (Enacted)	Limits licensed gaming in the Tahoe Basin.
	A.B. 503* (Enacted, but did not become effective.)	Changes structure and substantive requirements of Tahoe Regional Planning Agency.
	Proposals introduced but not enacted in 1979:	
	S.B. 190	S.B. 489
	S.B. 250	A.B. 706
	S.B. 252	A.J.R. 39
	S.B. 482	
1980	A.B. 1 (Enacted)	Amends the Tahoe Regional Planning Compact. (This act became effective upon adoption of the same amendments in California and approval by Congress. Thus, it became the effective bistate compact.)
<p>*These Nevada proposals to amend the bistate compact did not become effective because the required concurrence of the State of California and congressional ratification were not received.</p>		

After several years of negotiation, the Tahoe Regional Planning Compact was amended substantially in 1980. Bistate compacts and their amendments must be adopted by all involved states and ratified by Congress. California's S.B. 82, which contained amendments to the Tahoe Regional Planning Compact, was enacted and signed by the governor on September 2, 1980. Nevada enacted the compact amendments by passing A.B. 1 in special legislative session on September 13, 1980. Congress ratified the proposal, and the President signed the measure on December 19, 1980.

## II

### PLANNING-RELATED ACTIVITIES

A large amount of planning had been conducted within the Tahoe Basin during the years before the bistate compact was amended. The amended compact, however, necessitated revision of most of the regional planning activities.

#### Water Quality Management Plan ("208")

One of the initial planning-related activities after amendment of the compact was revision of the regional "208" water quality management plan. Different strategies for water quality management had been employed in Nevada and California. Although the compact would have allowed continuation of the separate approaches, federal authority to certify regional plans and allocate grant funds provided an incentive for the TRPA to adopt a unified plan.

On June 25, 1981, the revised water quality management plan for the Basin was adopted. Ordinances to implement the plan were approved on the same day. The plan contained a controversial program for case-by-case review of proposals to construct single-family residences in "high hazard" zones. This topic is more fully discussed under the heading, "Project Review," in the present background paper.

#### Environmental Threshold Carrying Capacities

The amended compact directed the TRPA to adopt environmental threshold carrying capacities for the Basin within 18 months after the effective date of the 1980 revisions. An environmental threshold carrying capacity was defined as "an environmental standard necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the region or to maintain public health and safety within the region." The standards were to include at least air quality, water quality, soil conservation, vegetation preservation and noise. Future plans and ordinances were to be designed to achieve and maintain the environmental threshold carrying capacities.

The agency adopted environmental threshold carrying capacities for the Basin on August 26, 1982.

## Regional Plan

The bistate compact directed the TRPA to amend the regional plan to incorporate the environmental threshold carrying capacities within 1 year after their adoption. It also established a limited moratorium on development in the Basin until the regional plan was revised or May 1, 1983, whichever was earlier.

Amendment of the regional plan became a tremendously controversial undertaking. Although many factors presented difficulty, the most significant debates concerned the degree to which development would be allowed in "high hazard" zones.

The TRPA was not prepared to amend the regional plan when the limited moratorium established through the compact expired. The regional plan also was not amended by the August 26, 1983, deadline prescribed under the compact. Therefore, the agency established its own temporary building moratorium which went into effect on August 26, 1983. At that point, the City of South Lake Tahoe and the Tahoe-Sierra Preservation Council filed suit against the TRPA for missing the deadline. Although this suit is still officially pending, it will probably never be heard because the objective of ensuring adoption of the plan has been accomplished.

The process of attempting to develop a consensus of support for proposed amendments to the regional plan continued to be controversial. At one point, several members of the governing board allegedly met to discuss ways to overcome the obstacles. A suit was filed against some of the Nevada board members claiming violation of the state open meeting law and asking that the members be dismissed from their posts on the TRPA. The Nevada supreme court rejected the petition, but the controversy continued.

On April 26, 1984, the TRPA unanimously voted to adopt amendments to the regional plan. The agency simultaneously abolished its development moratorium. The new regional plan, designed to cover a 20-year period, placed limits on the amount of development to be allowed in the Basin and established a system for evaluation of applications. It also proposed that \$146 million be invested in erosion control projects. The overall cost to implement the new regional plan has been estimated to be in the range of \$250 million (in 1982 dollars).

On the same day that the new regional plan was adopted, the California Attorney General and the League To Save Lake Tahoe



filed suit against the TRPA claiming that the plan and its associated ordinances do not adequately protect the environment within the Basin. A restraining order was issued in May and an injunction in June of 1984 prohibiting the agency from accepting applications and issuing building permits under the new plan and ordinances.

On June 25, 1984, the Tahoe-Sierra Preservation Council filed suits against the TRPA and the States of California and Nevada in federal district courts in the two states. The suits list 779 Tahoe property owners as plaintiffs. They contend that the regional plan's limitations on development are unduly severe and that the review process restricts the property owners' right to appeal TRPA decisions. The Nevada plaintiffs seek damages in excess of \$17 million, and the California plaintiffs seek damages of at least \$9 million.

In summary, it is obvious that a great deal of controversy has been associated with adoption of the amendments to the regional plan for the Tahoe Basin. The amendments were not adopted until 10 months after the deadline established through the bistate compact. After the new plan was adopted, law suits challenging its adequacy were filed by people who contend it does not sufficiently protect the environment and by property owners who contend that it unduly restricts their development opportunities. These suits are pending, and the court has issued a restraining order and injunction prohibiting the TRPA from approving building permits until the issue is settled.

### III

#### ADMINISTRATIVE ACTIVITIES AND STATUS OF LITIGATION

##### Agency Budget and Expenditures

Funds for administration of TRPA activities are derived from several sources. The States of Nevada and California provide funds to the agency. As directed in the bistate compact, Nevada's basic participation is approximately a one-third share, while California is responsible for about a two-thirds share. The compact also specifies financial participation by local entities within the Basin. A large portion of the agency's budget also typically comes from federal grants.

A summary of budget figures for the past few years is contained in the following chart.

SUMMARY OF TRPA BUDGETS AND EXPENDITURES				
<u>Fiscal Year</u>	<u>Budget for Expenditures</u>	<u>Actual Expenditures</u>	<u>Nevada</u>	<u>California</u>
1980-81	\$ 320,327	\$ 317,838	\$ 50,000	\$ 100,000
1981-82	1,555,495	1,332,976	150,000	437,110*
1982-83	1,526,415	1,365,703	191,095*	457,223*
1983-84	1,584,826	1,529,011	231,667	684,560*
1984-85	1,887,500	---	168,555	700,788*
1985-86**	2,078,788	---	470,428	1,258,360
1986-87**	1,907,828	---	380,107	1,042,721
*Includes revenue derived from contracts with state agencies.				
**Proposed budget, approved by the TRPA but not acted upon by the state.				

Source: Tahoe Regional Planning Agency.

In addition to the state's regular appropriation, the interim finance committee authorized an additional \$148,167 in fiscal years 1983-85 for the following purposes:

- \$96,667 for legal services
- \$33,000 for development of in-stream flow standards
- \$18,500 for increases in cost of operation

The agency is requesting \$470,428 from the State of Nevada for fiscal year 1985-86 and \$380,107 for 1986-87. This money would help to finance four new programs in addition to the agency's existing activities. The new programs include a land capability remapping study, an evaluation of the new regional plan's effect upon attainment of environmental thresholds, a study of criteria for scenic management, and a public awareness program.

The governor has recommended that Nevada appropriate to the TRPA a total of \$646,260. This figure includes a recommended appropriation of \$196,263 for fiscal year 1985-86, \$150,000 for fiscal year 1986-87, a one-shot allocation of \$216,666 for legal support, and a one-shot appropriation of \$83,331 for special studies. The recommended sum is \$204,275 less than the agency's request for the biennium.

#### Status of Legal Actions Brought Against the TRPA

As is evident from the previous discussion, litigation is a major factor associated with the Tahoe Regional Planning Agency. There are approximately 33 cases pending which have been filed against the TRPA. Twenty-two of these cases involve California plaintiffs or courts, while 11 involve Nevada plaintiffs or courts.

Five of the cases are no longer viable. Many others are inactive, but it is possible that they could again become active.

The three most prominent recent cases are the Lake Country Estates suit, the California Attorney General/League To Save Lake Tahoe action, and the Tahoe-Sierra Preservation Council suit.

The Lake Country Estates case was an action filed against the TRPA by the owners of approximately 800 acres in the Meyers area. The property owners challenged the original zoning of their land in 1972. After a decade of litigation, the case was recently settled when the State of California purchased the property for approximately \$5 million.

The California Attorney General/League To Save Lake Tahoe suit, as previously discussed, challenges the validity of the new regional plan adopted under the 1980 amendments to the compact. It basically contends that the plan is not stringent enough to protect the environment in the Basin. The federal district judge in California found in favor of the plaintiffs and issued an opinion which held the plan invalid. The restraining order which he originally issued in May of 1984 is still in effect.

The TRPA has appealed the decision to the Ninth Circuit Court of Appeals. Concurrently, the governing body established a "Special Litigation Committee" to attempt to negotiate settlement of the case. Both the appeal and the negotiations are proceeding at this time. The Special Litigation Committee submitted recommendations on January 23, 1985, which the governing body accepted "as a tool for continuation of settlement discussions." However, it would still be necessary for the components of a negotiated agreement to be adopted through the environmental impact statement process, public hearings and amendment of the regional plan. The governing body also directed the Special Litigation Committee to attempt to develop an agreement whereby the court could specify classes of projects which would be approved for construction during the 1985 building season.

The Tahoe-Sierra Preservation Council suits were also outlined in previous discussion. The cases brought separately in federal district courts in Nevada and California basically contend that the regional plan unduly restricts private property rights. The plaintiffs seek damages in excess of \$17 million.

The TRPA has moved to dismiss the cases in both states. In an order issued on January 22, 1985, the judge in California declared that the monetary damages sought in that suit are not allowable. He indicated that a hearing on the summary judgment concerning dismissal of the case will be scheduled in the future. The case in the district court in Nevada has not yet been heard.

## IV

### PROJECT REVIEW AND ASSOCIATED TOPICS

The review of proposals for project construction has been one of the most disputed topics associated with the Tahoe Regional Planning Agency. The procedures by which applications to build single-family residences are reviewed have been especially controversial.

#### Single-Family Residences

A case-by-case review of applications for single-family residences in "high hazard" zones was established as part of the program to implement the "208" water quality management plan in June of 1981. Restrictions on development in these zones have been included in the new regional plan. Limitations have also been placed upon the total number of residences which may be built in the Basin, and yearly quotas have been established.

There are approximately 15,000 undeveloped lots in the California portion of the Basin and about 4,000 undeveloped lots on the Nevada side. Of these 4,000 Nevada lots, approximately 3,000 are located in Washoe County and 1,000 are in Douglas County. About 2,000 Nevada lots are in areas requiring case-by-case review. Following is a chart which outlines the TRPA's action on applications to construct single-family residences in the Nevada portion of the Basin.

STATUS OF APPLICATIONS TO CONSTRUCT SINGLE-FAMILY RESIDENCES IN THE NEVADA PORTION OF THE TAHOE BASIN SINCE 1980			
	Applications Not Requiring Case-by-Case Review	Applications Requiring Case-by-Case Review	Total Applications
Applications	600	595	1,195
Approvals With Permits	465	125	590
Approvals Without Permits	49	191	240
Total Approvals	514	316	830
Applications Denied	10	134	144
Applications Pending	45	87	132
Other	28	68	96

Source: Tahoe Regional Planning Agency, January 1985.

Based upon these statistics for the Nevada portion of the Basin, one may calculate that 86 percent of the applications for residences in zones which do not require case-by-case review have been approved. Two percent of the applications in these areas

have been denied. Fifty-three percent of the applications in zones which require case-by-case review have been approved, while 23 percent have been denied. Overall, 70 percent of the applications in the Nevada portion of the Basin have been approved, and 12 percent have been denied. However, it should be noted that new applications have not been accepted, nor have existing applications been processed, since August 26, 1983.

#### Mitigation Fees

Applicants who receive approval for construction in "high hazard" zones are charged a fee for mitigation of environmental damage. A great majority of this mitigation money has been collected from approvals for single-family residences.

The TRPA has collected a total of \$1,371,450 in mitigation fees. The sum of \$490,580 has been returned to local governments to match local, state or federal funds to finance environmental protection projects.

Balances of mitigation fees held by the TRPA as of December 31, 1984, are as follows:

Douglas County, Nevada	\$ 74,205
Washoe County, Nevada	525,918
City of South Lake Tahoe, California	148,681
El Dorado County, California	93,193
Placer County, California	38,873

Total: \$880,870

#### Santini/Burton Program

The Santini/Burton program was enacted by Congress to provide funds for purchase of sensitive lands in the Tahoe Basin. Under the terms of the program, the United States Forest Service is authorized to purchase environmentally sensitive property in the Basin. To offset this expenditure, the United States Bureau of Land Management is allowed to sell land which has urban development potential in Clark County, Nevada.

Congress has appropriated a total of \$37 million for Santini/Burton purchases. As of January 21, 1985, the Forest Service has made 778 offers to property owners. Five hundred fifty-five, or 71 percent, have been accepted. One hundred twenty-seven are pending. Approximately \$20 million has been spent on the program, and over 5,500 acres of environmentally sensitive land have been acquired. The following chart summarizes the status of the program.

STATUS OF SANTINI/BURTON LAND ACQUISITION PROGRAM				
	<u>Value</u>	<u>Acres</u>	<u>Number</u>	<u>State CA/NV</u>
Total Offers Made	\$27.1 million	7,485	778	559/219
Offers Accepted	20.0 million	5,660	555	417/138
Offers Declined	2.5 million	315	96	81/15
Offers Pending	4.6 million	1,510	127	61/66

Source: United States Forest Service

#### California Bond Issue

In 1980, the California Legislature passed two measures which dealt with bonds to purchase property at Lake Tahoe. First, a bill was passed which placed on the ballot a proposal to sell \$85 million in bonds to finance the land purchases. Another act would have created the Tahoe Area Land Acquisition Commission and designated its duties, if the voters had approved the bond issue. When placed before the voters in 1980, the bond issue failed by approximately 1 percent of the vote.

In 1982, the California Legislature enacted similar bills. The voters passed the \$85 million bond issue. The Tahoe Area Land Acquisition Commission has been established, and the required study has been completed. It is anticipated that the first bonds will be sold and the first property purchased in 1985.

One problem relative to public purchase of land in the Basin has been associated with the reduction in value of some parcels because of development restrictions. The California bond program addressed the issue by including the following language in the enabling act:

\* \* \* If the value of any land to be purchased by the agency has been substantially reduced by any statute, ordinance, rule, regulation, or other order adopted after January 1, 1980, by state or local government for the purpose of protecting water quality or other resources in the region, the agency may purchase the land for a price it determines would assure fairness to the landowner. In determining the price to be paid for the land, the agency may consider the price

which the owner originally paid for the land, any special assessments paid by the landowner, and any other factors the agency determines should be considered to ensure that the landowner receives a fair and reasonable price for the land.

V

NEVADA LEGISLATIVE ACTIVITIES SINCE 1980

Revision of the bistate compact in the 1980 special session did not bring a halt to the Nevada legislature's activities concerning the Tahoe Basin.

Summary of Legislative Activities

During the 1981 and 1983 legislative sessions, ten legislative measures relative to Tahoe were introduced. Eight of these measures were enacted, one was vetoed by the governor, and one failed to receive legislative approval.

Following is a summary of Nevada's legislative activities concerning the Tahoe Basin since 1980.

SUMMARY OF NEVADA LEGISLATION SINCE 1980 CONCERNING THE LAKE TAHOE BASIN		
<u>Year</u>	<u>Bill Number</u>	<u>Bill Summary</u>
1981	S.B. 347* (Enacted, but did not become effective.)	Corrects errors made in the enactment of amendments to the Tahoe Regional Planning Compact.
	S.B. 478 (Enacted)	Provides for issuance of bonds and allocation of bond proceeds totaling \$2,550,000 to assist in purchase of the Kahle property in the Tahoe Basin.
	S.B. 710 (Enacted)	Corrects minor errors in the methods of transmittal and procedures for determining effectiveness of S.B. 347, enacted earlier in the 1981 session.
	A.R. 25 (Enacted)	Expresses the Nevada assembly's interpretation of the Tahoe Regional Planning Compact. The two points for which interpretations are stated include:

- a. Not requiring an environmental impact statement for construction of single-family residences.
- b. Not requiring that environmental standards be uniform throughout the Basin.

1983	A.C.R. 1 (Enacted)	Urges Douglas County officials to assess property in light of the moratorium in the Tahoe Basin.
	S.B. 441 (Enacted)	Provides for conferring additional powers on the Tahoe transportation district which was established as part of the Tahoe Regional Planning Compact.
	A.B. 534 (Enacted)	Places a \$20 million bond issue for the purchase of land in the Tahoe Basin on the 1984 ballot in Nevada and provides for administration of the money if the proposal is approved.
	A.C.R. 52 (Enacted)	States the legislative intent that the Tahoe Regional Planning Compact not affect the construction of single-family residences in already approved subdivisions.
	A.B. 86 (Vetoed)	Creates a legislative committee to oversee the activities of the Tahoe Regional Planning Agency. (This measure was vetoed by the governor and will be returned to the 1985 legislative session.)

Proposals introduced but not enacted in 1983:

A.B. 86 (Vetoed by the governor.)  
A.B. 377

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\*This Nevada proposal to amend the bistate compact did not become effective because the required concurrence of the State of California and congressional ratification were not received.



Two measures from the 1983 legislative session require additional explanation. They are A.B. 534 and A.B. 86.

#### Assembly Bill 534 (1983 Session)

Assembly Bill 534 contained two major provisions relative to Lake Tahoe. First, it directed that a proposal to issue a maximum of \$20 million worth of bonds for the purchase of environmentally sensitive, private property and for erosion control within the Tahoe Basin be submitted to a vote of the people.

Second, if the vote were favorable, it established a mechanism for management of the program. The mechanism included:

1. Analysis by a commission of the details associated with administration of the program;
2. Issuance of the bonds at the direction of the board of examiners; and
3. Purchase of the property and initiation of the erosion control projects at the direction of the board of examiners.

The bond proposal was placed on the November 1984 ballot at the general election. It was defeated by a margin of 143,499 to 119,295 votes.

#### Assembly Bill 86 (1983 Session)

Assembly Bill 86 would have created a four-member legislative committee to review the activities of the TRPA and its adherence to the provisions of the bistate compact. The bill also directed the committee to review the agency's use of money received from the State of Nevada. This committee, which would have existed when the legislature was not in session, could have met four times per year and would have been required to submit a report of its findings to each regular session of the legislature.

The measure passed the assembly unanimously and passed the senate by a margin of 13 to 7 with one absentee. The governor subsequently vetoed A.B. 86 within the prescribed time after the legislature had adjourned. The 1985 legislature may override the governor's veto by vote of a two-thirds majority of each house.

Reasons expressed for the governor's veto of A.B. 86 have been summarized as follows:

1. The TRPA is not a typical administrative agency which requires oversight but rather a bistate agency dealing with regional concerns. The creation of a unilateral legislative oversight committee may, therefore, be inconsistent with the structure and purposes of the interstate compact.

2. None of the other interstate compacts in which Nevada participates is monitored by a permanent legislative committee.
3. The act would require the establishment of an oversight committee of indefinite duration which, in effect, creates an additional permanent layer of government with possible duplicative responsibilities.
4. The existing structure of the TRPA provides for adequate representation of the interests of Nevada's citizens.

Arguments to support override of the veto have been outlined as follows:

1. A basic concept within the American system is that decision-makers should be elected by the citizens. A majority of the governing board of the TRPA is appointed rather than elected officials.
2. The TRPA is an independent body which makes decisions affecting two states without review by duly elected officials.
3. In delegating major responsibilities and powers to the TRPA, the legislatures of Nevada and California did not provide a mechanism to review the ways the agency carries out its duties. No executive in private industry would create a major program without establishing a means of reviewing its activities.
4. The TRPA administers a multi-million dollar program. It is anticipated that implementation of the agency's new master plan will cost about \$250 million over a 20-year period. Oversight of the expenditure of these sums of money by a public agency is logical and reasonable.
5. The legislative committee which would be created through A.B. 86 is not designed to harass the appointed officials on the TRPA. Nor is another layer of government being created. The legislature is simply providing a formal, organized method to review the performance of an agency which it created.
6. Assembly Bill 86 passed the legislature in 1983 by an overall majority of 55 to 7, with one absentee. Even with this degree of support expressed for the bill, the governor chose to veto the legislature's action.

## VI

### CONCLUDING COMMENTS

Since its creation in 1969, the Tahoe Regional Planning Agency and its activities have been the focus of major public debate. The bistate compact which created the agency was amended significantly in December of 1980. The controversial attempts to plan the future of the Basin in such a way as to preserve the natural environment and also protect private property rights have continued.

It would be extremely difficult to chronicle all of the activities of the TRPA and the associated factors which have affected the agency. The purpose of this background paper is to summarize the major activities since the bistate compact was amended in 1980. The objective is to provide the reader with a good overview and background knowledge of the subject. Additional, more detailed information concerning any specific aspect of the topic may be compiled upon request.