SENATE & ASSEMBLY JOINT HEARING ON S.B. - 250 & A.B. - 503

(TAHOE REGIONAL PLANNING AGENCY)

MEMBERS PRESENT

SENATOR J. NEAL, CHAIRMAN
SENATOR N. GLASER
SENATOR W. FAISS
SENATOR F. LAMB
SENATOR M. SLOAN
SENATOR L. JACOBSEN

ASSEMBLYMAN J. DINI, CHAIRMAN
ASSEMBLYMAN J. JEFFREY
ASSEMBLYMAN J. MARVEL
ASSEMBLYMAN L. BERGEVIN
ASSEMBLYMAN P. WESTALL
ASSEMBLYMAN V. GETTO
ASSEMBLYMAN T. BEDROSIAN

GUESTS

SEE ATTACHED.

Senator Neal opened the hearings and announced the format which included the expert and technical testimony first, followed by those interested parties.

DOCTOR BOB LEONARD, FROM THE TAHOE RESEARCH GROUP AT THE UNIVERSITY OF CALIFORNIA AT DAVIS. informed the committee that as stated previously in many sessions at the Lake, scientists' feel that degradation is underway now and has been for many years. He did however point out that Lake Tahoe is extremely clean. He said that he felt that the question which should be answered today, with regard to anything which would have impact on future development is what change is the Lake undergoing on the geological time table. He informed further that development at Lake Tahoe began in the 1800's with logging and that if his information regarding what is necessary to save the lake is in error it is on the conservative side. He explained that the algae growth has significantly increased in the past twenty years and showed a chart of photosinthesis by algae. As a visual guide he showed the committee pictures of the beach and a ladder which indicated heavy growth of algae. He said that there is currently a study being made to determine whether the patterns of growth and production of the damaging material correlate with development. He further explained that Tahoe's ability to recover is an unknown, and it is a feeling shared by scientists that the primary cause of pollution at the Lake is the nitrate which is getting into the lake as a result of extensive development. Past sewage practices have put nitrate into the ground water.

Mr. Getto asked by what chemicals the nitrate is getting into the lake, asphalt, gas fumes, petroleum products?

Dr. Leonard said that partially because automobiles spew nitrous oxides into the air, precipitation is loaded with nitrate, also complex compounds which, when broken down result in nitrate.

MR. DICK PYLE OF THE U.S. SOIL CONSERVATION SERVICE AT SOUTH LAKE TAHOE SPOKE ON SOIL EROSION from a prepared statement, attachment # 1, saying that although erosion is a natural process, when man enters the picture it is tremendously enhanced. He cited four main causes of erosion: 1. highway construction; 2. residential/commercial development; 3. development of impervious areas; 4. breakage of the drainage patterns. He showed slides which demonstrated erosion areas and also some areas where competent conservation techniques had been applied and stemmed the tide of erosion.

MR.MAURICE BIDART, CHAIRMAN OF THE NEVADA TAHOE CONSERVATION DISTRICT

talked about the 208 plan which is a combined effort of building ordinances which, when followed, will do the least damage in terms of erosion. He re-capped Mr. Pyle's presentation and told the Committee that the conservationists needed all the help they could get. (Attachment # 2)

MR. DICK SERDOZ, NEVADA DIVISION OF ENVIRONMENTAL PROTECTION, TALKED about the air quality at Lake Tahoe, telling the committee that they had been monitoring the air since 1968. He said that since 1973 there have not been any violations of the standards with regard to dust the ozone is holding it's own. He did not feel that this would continue due to the growth and increase in the vehicle miles in the basin. Part of the problem is due to the area of the air mass which is approximately 500 SQ. miles. It will not get better.

Mr. Dini questioned Mr. Serdoz as to whether there was any difference when the portion of the loop road at South Shore was opened. Mr. Serdoz responded that with only seven months of data it appears that there is less of a violation. Mr. Dini asked if a by-pass road had ever been considered and was answered that while that is a possibility, to meet the state and federal standards by the minimum dates he did not know the solution.

Mr. Bedrosian asked about alternate methods of transportation and was told that there have been studies and some are currently being conducted concerning many modes. Mr. Serdoz said that the big push right now is to get the federal standards out of the way, then work on the state problem.

MR. JIM JORDAN, EXECUTIVE DIRECTOR OF TRPA WHO TOLD THE COMMITTEE that he and Mr. Tom Jacob were appearing after lengthy communications with Fred Welden, our Legislative Researcher, to discuss growth and trends of growth in the Tahoe Basin. He presented a map and charts pertinent to his presentation and included a prepared statement with attachments. (Attachment # 3) He explained the TRPA as primarily a zoning agency in accordance with ordinances adopted by both states for the environmental protection of Lake Tahoe.

Mr. Dini asked when CTRPA came into strong existence and was told that their plan was enacted in 1973 legislation and became effective

in 1975. Since their plan was adopted there has been a preponderance of single family development.

Chairman Neal stated that this concluded the technical presentation and would now entertain comments from the audience, after some additiona information from MR. FRED WELDEN.

FRED WELDEN asked MR. DINI, CHAIRMAN OF THE AD HOC COMMITTEE TO ADDRESS THE COMMITTEE REGARDING THE ORIGIN OF AB-503.

Mr. DINI gave the history of the ad hoc committee and explained the effort expended in putting together a bill which would be palatable to both states. (See attachment # 4)

FRED WELDEN proceeded to summarize A.B. 503 article by article, (see attachement # 5)

Mr. CAMERON WOLFF, JR., PRESIDENT OF THE LEAGUE TO SAVE LAKE TAHOE

said that his organization consisted of approximately 3,000 members of which one-sixth came from Nevada, and noted that there must be revisions to the compact. He claimed that without exception every project to come before TRPA has been approved and that the League believes that people do not want to see further development. He declared that in a poll that the League had conducted 83% of the people from Nevada who responded indicated that they felt there was a need for revision of the compact. The League has been very concerned with the negotiated bill (AB-503) it needs to be one everyone can live with and one which will accomplish it's purpose. He addressed five points the League feels are necessary to any bill:

1. Control of gaming; 2. Requirement of an Environmental Impact Statement; 3. The interim standards should not be watered down; 4. The provisions of CTRPA are the most significant factor in lessening the development. He said that the League feels that CTRPA should be permitted to continue until the new plan is in effect. He also stated that the voting procedure is the key to effective planning, and that the state of California is firmly committed to a dual majority which the League believes is correct.

Mr. Bergevin asked Mr. Wolff how the poll was conducted and was informed that it was a telephone poll with 602 respondents being asked questions from a questionaire.

Ms. Westall requested a copy of the poll and noted that she did not feel the League should be so hard on the Nevada side.

Mr. Bergevin stated that he would venture to say that there are many buildable lots existing at the Lake which would require an EIS in accordance with what the League proposes.

Mr. Dini said, "apparently the League and California and both hung up on the voting procedure. This thing is probably the biggest sticker with California and I cannot understand why your position is so

stringent with no deviation from the double majority voting." "If you want to declare a moratorium at Lake Tahoe why not just say so in black and white; you certainly don't need the fifty plus page bill that Garamendi introduced in California to accomplish it." He further confirmed that that was what would happen with the double majority system. The ad hoc committee's position has been that if you go through all of this environmental stuff and implant the lawyer's relief act of 1979 since it will take 11 courts to decide what will happen. It is foolish to expect people to have to go though all of this, delays, having their property down-zoned, and then have it disapproved.

Mr. Wolff said that it has been their experience that the locals have not been able to say no to any kind of development. He further stated that since that is the history, the League is very concerned whether that pattern can be reversed so that TRPA can ever become an effective agency. He told Ms. Westall that it was not just a matter of the builders being more selective in their plans presented, but rather the economics and politics of local government.

Mr. Bedrosian asked Mr. Wolff if his organization would support a moratorium on building to which he was answered, "yes."

Mr. Bergevin also asked Mr. Wolff to name one project that had been approved that did not comply with the rules and ordinances of TRPA, the State of California and the State of Nevada to which Mr. Wolff said that Raley's did not qualify & that legal suits were pending.

Mr. ROBERT W. MAICH, VICE-CHAIRMAN OF THE SOUTHERN NEVADA CONSERVATION COUNCIL passed out a list of the people he is representing.(see attachment #6) saying that they basically support the concepts in .S.B. 250 and read a position letter into the record. See attachment # 7) AND in addition several letters were presented from the groups he represents. (SEE attachments 8 thru 17)

Mr. Bergevin questioned whether these various groups would support a moratorium on skiers coming up to the Lake, or gaming in Las Vegas as examples.

Mr. Maich said that these groups will support any positive environmental action although they were not necessarily in favor of a strict "no" on anything.

Senator Jacobsen asked if Mr. Maich knew that S.B. 250 was a California bill and if he believed in local control or if he would like to see everything at Lake Tahoe cast in cement so that there could never be change.

Mr. Maich said he felt that his position basically is that he would rather see us do it than the Feds, and perhaps give a little now as opposed to a lot later. We are giving you our vote of support to get these things together so that there can be a workable compact.

Mr. Bergevin brought out the point that while he keeps hearing everyone ask the Nevada legislature to do something to accomodate California, "what in the hell is California doing to accomodate Nevada in

these negotiations?"

MR. HENRY J. MARTIN, RESIDENT OF STATELINE NEVADA told the committee that while he was not belittling either bill, he did not feel either should be supported. He passed out a handbill emphasizing the environmental overkill that has occurred under the TRPA. He also informed the members that under the guise of the compact the problems which have beset the residents of the Tahoe basin would never have been perpetrated by the well-intentioned, hard-working, people who devised it. They simply did not realize all of the implications in how a regional planning concept would be manipulated into regional governing reality. He passed out a supreme court judgement (see attachment # 19) He complained about the down-zoning happening at the Lake and said that it is the result of legislators abdicating their responsibility to an appointed body. He said that of the allegation that development is out of control at the Lake, to the contrary, 87% is already green belt, only 1.5% remains to be developed. The water, he claimed is 99.7% pure, if it were more pure, it could not sustain fish life. He said that few people in the world drink water more pure.He further refuted the scientific claims of degradation. He asked that Nevada be put back in the union with reduced government by elected officials.

ASSOCIATE PROFESSOR OF ECONOMICS, WILLIAM EADINGTON SPEAKING as a private citizen told the committee that Tahoe has a limited caring capacity and very strong economic forces at work. There is an increased demand for recreational facilities, increased development, and therefore an increased amount of day use. All of these factors have taxed to a large extent the resources at the Lake, he said. All of the problems that have been enumerated are due to these increases. It was his feeling that gaming became a scapegoat due to it's impact on the economy. In 1970 the population was 26,000 and presently it is 50,000 for permanent residents. He declared that there is wide spread understanding and acknowledgement that we can not expand gaming further but although the casino issue may be somewhat settled, there will be other problems because of the recreational uses at the Lake. He requested timely efforts because of the limited caring capacity. He asked that a TRPA have a voice in any project which would have major impact economically or environmentally. He reminded the committee that as decisions are made which use up the various capacities of the Tahoe Basin, you close up the alternatives. He felt that there must be a view taken by the TRPA that they are acting as trustees for all who do now or may exist. He said that over the past few years the relationship between California and Nevada has been characterized by mutual mistrust and working at cross-purposes. He concluded by stating that Lake Tahoe is our legacy and we have to preserve this unique resource. He presented petitions with over 250 signatures in support of S.B. 250 which are a part of the permanent record.

MS. EMILY GRIEL, appeared to speak for the League of Women Voters in favor of S.B. 250 although we would like to more about A.B. 503. She noted that she was not opposed to gambling but does not feel that it belongs at the Lake. She felt that it should be saved for environmentalists and recreationists.

Mr. Dini asked Ms.Griel whether the League would be able to raise the money to buy out the casinos. She also claimed to believe in down-zoning.

MR. DEAN CHISEL, spoke as a resident of Incline Village in opposition to A.B. 503 and in favor of S.B. 250. He talked about the contamination due to development. He said that A.B. 503 offers little improvement over the present TRPA. He showed some rocks to the committee members which were covered with algae. He said that he had picked them up on the beach at North Shore. He admonished the committee to support S.B. 250, " a bill which will minimize influence of the special interest groups, and the influence they exert.

Mr. Bergevin ASKED for specific names of the "special interest groups". Mr. Chisel responded that the only thing he knew was that any time a major project of economic import was applied for it was approved.

Ms. Westall commented that rocks similar to those displayed could be found on the edge of even the purest fastest flowing stream.

Mr. Dini observed that he felt Mr. Chisel had missed the perspective used in developing A.B. 503 vs S.B. 250, which was to implement legislation both states could live with and questioned whether it would be responsible of the Legislature to mandate a bill which would not allow Nevada citizens and property owners to build on their own property. He told the audience that there was no consistency in voting for Prop.#6 and recommending tearing out the gaming facilities at the Lake or buying existing rights.

Ms. Westall commented that she hoped everyone realized that the committee was also dedicated to the premise of saving the Lake, but not in the process of destroying private interests or property rights.

MR. DAVID COOPER read a letter from TOMAS COOKE, THE GOVERNOR'S APPOINTEE TO TRPA into the record. (See attachment # 20)

MR. GORDON DEPAOLI, ATTORNEY FOR PARK TAHOE HOTEL AND CASINO gave a thirty-four page critique of A.B. 503 (see attachment #21) and upon completion was asked by Senator Neal if the people he represented would be willing to trade the completion of the loop road for a dual majority voting procedure. Mr. DePaoli replied that the obligation of the legislature is to come up with a compact that is better not worse.

Mr. Dini noted that the compact has been opposed by Mr. DePaoli's employer since 1969, and recommended that some constructive solutions be offered by Mr. DePaoli.

GARY SHEERIN, REPRESENTING HARVEY'S, appeared to tell the committee that he concurred in the remarks offered by Mr. DePaoli and would like to see "orderly growth"left in the bill. He also outlined other ARTICLES WHICH he felt required attention. (See attachement #22) Mr. Dini explained the method of appointment, and the reason for taking the legislature out of the appointment language. Mr. Sheerin informed the committee that the existing rules and ordinances call for completion of the loop road which Nevada in good faith has completed and California in bad faith has not. He asked for specifics in the compact; define the loop road, forget about CTRPA don't get our nose in their business. He cited Page 11, Lines 24 thru 32.. S.B. 323 makes these lines superfluous. He requested language that would say that that while Nevadans want limited growth, gaming is our livelyhood, it is not a nuisance. He also objected to the amount of the fine which he felt should be amended to $10,000. Nevada has compromised, and compromised; California has done nothing. Mr. Sheerin requested inclusion of an exhibit on behalf of Harveys, complete with plans, etc. It is hereby made a part of the permanent record.

MR. HAROLD DAYTON, DOUGLAS CO. COMMISSIONER FOR THE PAST 11 years, FORMER MEMBER OF TRPA, and resident of Lake Tahoe for 32 years, told the committee that while noone questions the problems at Lake Tahoe, we do not need TRPA to solve them. He said that the residents were not aware of the negotiations between the governor's until it was completed and published in the papers. He declared that the residents are far more concerned about their surroundings than people in Sacramento or Los Angeles. He commented that while the Legislature deals with the problem every two years, the local governments deal with it every day. "California has done nothing to improve the environment at Lake Tahoe." He quoted quarantees from the U.S. Constitution, Article 4, Section 4; Article 5; Article 14. He cited several problem areas with A.B. 503. Page 3, Line 22 only applies to locals and should apply to all; Line 50, he asked why they should not be residents, since they were being controled. Page 4, Line 20= residents again; Page 5, Line 25 should be simple majority; Line 47 does not specify who appoints, although Mr. Dini pointed out that the agency appoints. Page 10, under project, he felt it would include even a private home. Page 13, Line 14, the penalty section is a ridiculous amount.

Senator Jacobsen asked if enlarging the agency has any advantage, to which Mr. Dayton responded it would further complicate the meetings and add to their length.

MR. KEN KJER, CHAIRMAN OF THE DOUGLAS CO. BOARD OF COMMISSIONERS, CHAIRMAN OF NTRPA, AND SERVE ON THE TRPA GOVERNING BOARD, SPOKE

in favor of S.B. 323 and said that Douglas Co. has supported the federal governments purchase of the remaining gaming approved property. It should be evident that the people of Douglas Co. want no further expansion of gaming, he re-iterated. He stated that it was his understanding of a bi-state compact, that it was an agreement of cooperation between two states. It has however, he said, been his experience that there has not been any cooperation from the

state of California. It has been a move for political power and control over the state of Nevada. They have consistently aggravated environmental problems. He says they have refused to complete the loop road which would enhance the environment and said that S.B. 250 is the pits, it is a California bill... If we must maintain a bi-state agreement with California, I am pleased to see A.B. 503, although I do have a few operational concerns. Page 9, he objected to grandfathering CTRPA, feeling that not enought information is known about that agency. He claims that it is designed around inverse comdemnation without compensation. Page 11, Line 30 applies CTRPA rules to Nevada projects. Page 10, talking about housing being exempt...if that is what you want, "say it", please put it in the bill and make it clear.

Mr. Dini asked Mr. Kjer how bad Page 9 language would hurt the TRPA. Mr. Kjer said that he is very concerned about protecting the property rights of the individuals and this disallows expansion of public services, which is the responsibility of the community. Page 13 and 14, the approval of a project time limit causes concern since there is not many people who will have the resources to go to court and fight the agency if the project is disapproved if it is a single family residence. There should be some requirement on the part of the agency to make a decision. He suggested biting the bullet and coming up with the money to buy some of these projects out. Mr. Kjer pointed out in response to Senator Neal's questions that Douglas Co. has spent over 3,000,000. to improve and protect. Mr. Kjer made a sincere plea for assistance in citing the restrictions placed on projects. He closed by saying that he believes in Lake Tahoe, but he believes in the constitution in guaranteeing private rights even more.

Mr. Ronald Nahas, A developer from Lake Tahoe, suggested some amendments which would make the bill more palatable..(see attachment #23) There were no questions. He did, however, suggest a day use fee which would put the responsibility on the people who used and' enjoyed the facilities.

CAVE ROCK MANNY, presented an amendment to S.B. 323 which Senator Neal accepted due to the lateness of the evening. He also admonished the members about unresponsive politicians. "The TRPA is a bunch of crap!"(See attachment #24)

MR. JOHN MCCLINTON RILEY, RESIDENT OF CRYSTAL BAY AND DEVELOPER, said that he had come with a particular message. He said that he had done the entire sub-division at Alpine Meadows and was very proud also of the Bear Valley association. He asked for recognition of the multitudes of skiers and requested inclusion of the word skiers on Page 9 of S.B. 250 Line 11. He said that Garamendi had assured him that he would not object.

MR. FRAN BREEN, REPRESENTING OLIVER KAHLE AND STEPHEN BJORN told of the experiences he has had in litigation over TRPA. He pointed out that Page 11 of A.B. 503 and Page 17 of S.B. 250 should read "was approved or deemed approved" the difference exists in the approval by the TRPA dual majority or approval by lack of voting. He also noted that in S.B. 250 a situation exists whereby four people can

Even in A.B. 503 if the four people stand together you are really saying that you have to have five. He recommended simple majority of people present. He explained that under the existing system the counties are the permit issuing authority and that all this language is an attempt to get this authority away from the counties. He told of the fact that in all of the hearings on Kahle and Jennings there was no California input and felt that there should be a requirement to participate and exhaust administrative remedies. In other words if you don't participate initially forfeit the right to litigate. He re-affirmed that gaming is not the real problem. The back country people do not go near the casinos and that area requires a permit now. Every recreational facility is having to limit the number of people they can serve during a specific period of time. He also made further mention of the 12,000,000 that the Federal Government would make available under certain circumstances.

There being no further testimony, the Hearing was adjourned at 11:15PM.

Respectfully submitted,

Barbara A. Carrico

Barbara A. Carrico

GUEST LIST

NAME (Please print)	REPRESENTING	IF YOU WISH TO SPEAK Pro	Con
Henry J Martin	Nevada Citizens		X
Nat Hellman	Nevada Citizens		X
Terry Trupp	Self		X
[illegible]	[illegible]		X
John M Reilly	Self		X
Ronald C. Nahas	Glenbrook Properties.		X
[illegible]	[illegible]		X
Gene Osborne	Douglas County Comm		
Margaret Eadington	Nevada Citizen	X	
Lt Grant Snyder	Sierra Club	X	
Robert Griffin	Cedar Flat Asso.	X	
Bruce Wilson	Self Res. Douglas Co		
~~Arthur McGlothlin~~	~~Douglas County Self~~		~~X~~
Nanny + Daisy	Self		X
Robert W. Maichl	Southern Nevada Conservation Council	X	
KEN KJER	DOUGLAS COUNTY		X
William Regan	Self		
Emily Grier	League Women Voters		
Kenneth E Smith MD	League to Sv. Lake Tahoe		

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

ARTHUR J. PALMER, *Director*
(702) 885-5627

LEGISLATIVE COMMISSION (702) 885-5627
DONALD R. MELLO, *Assemblyman, Chairman*
Arthur J. Palmer, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 885-5640
FLOYD R. LAMB, *Senator, Chairman*
Ronald W. Sparks, *Senate Fiscal Analyst*
William A. Bible, *Assembly Fiscal Analyst*

FRANK W. DAYKIN, *Legislative Counsel* (702) 885-5627
JOHN R. CROSSLEY, *Legislative Auditor* (702) 885-5620
ANDREW P. GROSE, *Research Director* (702) 885-5637

March 1, 1979

M E M O R A N D U M

TO: Senator Joe Neal

FROM: Fred W. Welden, Senior Research Analyst FW

SUBJECT: Experts to Testify on TRPA Bill

I have sought to identify the most knowledgeable people concerning the Lake Tahoe Basin environment. Experts in four areas--water quality, air quality, soil erosion and growth/development--have been asked to testify at committee hearings. The list is as follows:

Water Quality ✓	-	Dr. Bob Leonard The Tahoe Research Group University of California - Davis
Air Quality	-	Dick Serdoz Nevada Division of Environmental Protection ✓
Soil Erosion	-	Dick Pyle / Maurice Bidart U.S. Soil Conservation Service South Lake Tahoe
Growth/Development	-	Jim Jordan, Executive Director Tahoe Regional Planning Agency
		Tom Jacob Government Affairs Coordinator Tahoe Regional Planning Agency

I have indicated to each person that we would appreciate a 10-15 minute presentation concerning the environmental

EXHIBIT

situation and trends in the basin. Dr. Leonard suggested that he would appreciate receiving assistance with per diem and travel expenses; however, he will come "on-his-own" if necessary. I also told the speakers that I would call them to inform them of the time and place of the hearings.

If you want to change anything I have told them or have anything else for me to do at this time relative to the speakers, give me a call.

FWW/jld

✓ William R. Eadington, Dept of Economics - UNR

✓ Cameron Wolfe, President, League to Save Lake Tahoe

✓ Dean Chisel, Legis. Chairman for Concerned Citizens

✓ Bob Michael, So. Nev. Conservation Council

David Cooper, Statement from Tom Cook.

EXHIBIT 455

1

CAUSE AND EFFECT OF EROSION
in the
TAHOE BASIN

Senator Neal and members of the Natural Resources Committee: Assemblyman Dini and members of the Committee on Government Affairs:

It is with a great deal of pleasure that we have been asked to appear before you to present information concerning erosion problems in the Tahoe Basin. We would like to offer a brief background on erosion, though I am sure you understand the problem and how it occurs.

Erosion is a natural process that takes place constantly. When Man enters the picture, he causes a change in the natural, or background, erosion process - he causes it to increase. The Tahoe Basin has witnessed the effects of Man for the past 100 years or so, and there are several periods of this effect which we would like to discuss briefly.

The first period was during the Comstock Lode mining days; the Basin was basically clearcut, but the records show that erosion was fairly minor. There were several reasons for this; one was the type of logging that took place at that time - the use of animals for hauling meant that the roads, for the most part, were flat; there were no major cuts, due to the lack of equipment. Also, all of the slash was returned to the ground; in other words, we were not faced with the cleanup that is necessary today. It was fortunate that there were no major fires during that period. Although some of these logging roads are still eroding, they are now in public ownership and the Forest Service is doing a good job of controlling this erosion. With re-growth of the trees, the soil surface was again protected from erosion; regeneration took place by natural means, and the trees you see in the Basin today are a product of that period.

Following World War II, as the Basin began to be recognized as a prime summer resort area, further major erosion continued. Many people, having the desire to escape "city life", began searching for new areas of retreat; Tahoe was one area that was highly publicized. It is one of the national "jewels", and therefore extremely desirable. Unfortunately, along with the people came the problems. I don't imagine anyone, at that time, realized what the area would eventually become.

Presented by Richard C. Pyle, District Conservationist, USDA-SCS at joint hearing of Senate Committee on Natural Resources and Assembly Committee on Goevernment Affairs
Carson City, Nevada March 29, 1979

EXHIBIT 45

From the late fifties on up to the present the major impact, as we see it, was the rapid development in the Basin, caused first by the winter Olympics being held at Squaw Valley. The north end of the Lake was more fully developed for winter sports at that time; shortly thereafter, we saw an increase in development throughout the entire Basin. During this period of expansion, few people were aware of the problems and damage which could be caused to the soil resource.

When we talk about "cause", I believe we need to discuss some of the main contributors to the problems. One is the type of soil in the Basin; the soils are derived from granitic rock, which is coarse textured, has low water retention capability, is low in nutrients, and, for the most part, has a high erosion potential; and from volcanic rock, which is finer textured, moderate in water retention capability and nutrients, and has a high erosion potential. The vegetation and plant communities are related to the soil, exposure, and moisture; these patterns are evidenced by the meadow and chaparral to the extensive conifer forests. The growing season is quite short in the Basin, and it is very important that we maintain the vegetation we have, or at least protect it.

At this point, we would like to review the major causes of erosion.

1. Roads 60%

    a. Unvegetated roadway slopes
    b. Oversteepened roadway slopes
    c. Areas stripped of vegetation
    d. Eroding roadway shoulders
    e. Unstable drainage systems
    f. Eroding dirt roads

2. Development Sites

    a. Cut slopes
    b. Fill slopes

3. Impervious Areas

    a. Breakage of drainage patterns
    b. Channeling of discharge

Let's discuss the erosion from road construction; when many of the roads were built, it was done with no care or consideration of vegetation, or thought taken to allow for re-establishment. That is why, today, erosion is still extensive. Roads being the prime contributor, there are a number of things that should be done. There is a good inventory of these problems in the "208

EXHIBIT 457

Plan" developed by a number of agencies under the leadership of the Tahoe Regional Planning Agency. This "208 Plan" has been accepted by the State of Nevada. The Tahoe Regional Planning Agency, working with the counties, has developed a set of ordinances pertaining to new construction and re-construction of roads or highways; these ordinances can be very effective when enforced.

One very good example of road-construction-caused erosion which we have studied is the Zephyr Heights-Marla Bay area. This is rather an extensive problem, requiring everything from stabilizing the toes with both rock walls and gabions and installing curbs and gutters to revegetation; if this is not done, the erosion will continue to be a major problem. There is a silt trap in this area which was put in a number of years ago; unfortunately, due to snow removal, etc., quite frequently it is not maintained. One of the recurrent problems we find is that no one seems to want to take responsibility, and of course the counties do not have the funds available for this type of thing. We have many Improvement Districts, but they were established to furnish water, sewer, etc., and many are now at their $5.00 limit, as we understand it. The technical problem remains, and until something is done on these slopes they will be a major contributor of sediment.

We would like to mention a few things that have been accomplished on the roads at Tahoe (these were pointed out on the tour that was sponsored by the Nevada Tahoe Conservation District). The Nevada Highways Department must be commended on the work they have done on Mt. Rose; Jack Lane has done an outstanding job on Phase I, as well as the second phase, which they are working on now. Mt. Rose is an excellent beginning, and we must build from there.

Another effort deserving high praise is the SWEEP Program in Washoe County. They used CETA workers to do vegetative work in the Incline Village General Improvement District area, and it was one of those tremendous cooperative efforts with the local people and the Federal Government, through the CETA Program, working solidly together. Unfortunately, after two years that program will be discontinued due to lack of CETA funds.

Douglas County, the Carson Walker Resource, Conservation and Development Project, and the Nevada Tahoe Conservation District, all working together, stabilized the roadway erosion problems in the Kingsbury Grade area. There will be some vegetative work done to complete the first phase of the Kingsbury C.A.T. Project; that should take place this summer.

EXHIBIT

Again, this is a very small part of what is needed, but it does demonstrate what can be accomplished.

The technical expertise is available, and we are well aware of what needs to be done, but the lack of financing and staff prohibits accomplishment.

The second major contributor is the development of homesites, commercial structures, etc.; the same problems are taking place in these areas. It is doubtful whether anyone realized, 25 years ago, that the residential areas would be subjected to year round use. This factor contributes about 25% of the soil erosion problems in the Basin. Under the ordinances of the various counties and the Tahoe Regional Planning Agency, developers must have approved erosion control plans. It should be pointed out that the Nevada Tahoe Conservation District has Memorandums of Understanding with both Douglas and Washoe Counties and with TRPA, to review and make recommendations upon request. In this particular area, we believe the main problem is the lack of expertise, or training, for inspectors. Enforcement is probably the weakest link in the ordinances at the present time; this is due to lack of funding for this type of work Mr. Bidart will comment on a proposal that might assist in this area. The ordinances are there, and we think they are good ones, but they do need enforcement.

The third item consists of the impervious areas that are developed. They are rather small, not a big contributor to erosion, and most of them have adequate drainage systems.

The fourth item is one with which we are largely concerned. Quite often, in building homes, parking lots, or roads, we break the natural drainage pattern. It is not taken into consideration that, when water is consolidated into a specific area, it can cause gullies to develop.

I believe we have covered the main points that we see as the major causes of erosion; following are some of the effects.

The one major effect caused by soil erosion is the transporting of sediments and nutrients into the water system. Under natural conditions, vegetation was able to filter out the majority of these pollutants; as a result of the vegetation being altered or destroyed, a large percentage of this filtering capability has been lost, therefore creating an increase in the volume of sediment reaching the waters.

"Estimated annual sediment yield from the developed portions of the watersheds in this area is from 12 to 13 times that from the undeveloped area. The highest measured concentration of nitrogen consisted of dissolved ammonia and occurred during the periods of heavy runoff coinciding with heavy sediment transport. The Incline Village watersheds total approximately 21 percent developed and the remainder in a natural forest state. The sediment contribution from undeveloped areas ranges from 50 to 920 tons per acre while that from areas being urbanized ranges from 620 to 7,600 tons per acre". (1

"The products of erosion have resulted in visible siltation in surface streams in the immediate vicinity of land disturbances and in muddy surface waters in Lake Tahoe where streams draining urbanized and developing areas enter the Lake". (1

"The major effect of failure to properly manage surface runoff will be experienced in further degradation of shoreline waters near densely developed lands. Available data strongly indicate that major reductions in water clarity and increases in algal density can be anticipated in shoreline areas unless stringent controls are required for all future development and existing surface water management problems are corrected". (1

(1: U.S. Geological Survey, Incline Village Study, 1970-1973

This concludes my presentation on cause and effect; we would like to show you a few slides, then Mr. Bidart will proceed with his comments. At the conclusion of his presentation, we will be happy to answer any questions.

SOURCES OF REFERENCE

for

CAUSE and EFFECT of EROSION in the TAHOE BASIN

1. Lake Tahoe Basin Water Quality Management Plan

2. A Special Place Lake Tahoe USDI-BOR

3. Sedimentation & Erosion in the Upper Truckee River and Trout Creek Watershed, Lake Tahoe, CA, State of California, Resources Agency Department of Conservation, Division of Soil Conservation

4. A Guide for Planning - prepared for Tahoe Regional Planning Agency and USDA-Soil Conservation Service

5. Guides for Erosion and Sediment Control, USDA-Soil Conservation Service

6. Kingsbury Grade Critical Area Treatment - Carson Walker RC&D and Douglas County

Nevada Tahoe Conservation District

#2

P.O. BOX 10529 SO. LAKE TAHOE, CALIFORNIA 95731 PHONE (916) 541-1496 / (916) 541-5654

COMMENTS BY MAURICE BIDART, CHAIRMAN

NEVADA TAHOE CONSERVATION DISTRICT

Senator Neal and members of the Natural Resources Committee: Assemblyman Dini and members of the Committee on Government Affairs:

The Nevada Tahoe Conservation District would like to thank you for the opportunity to make this presentation. The Conservation District would also like to thank you for taking part in the Legislative tour which we sponsored in the Tahoe Basin.

In recapping Mr. Pyle's presentation, I would like to offer a few brief comments on where we are today, what we are doing, and some possibilities for the future.

As Mr. Pyle indicates, we are facing the Clean Water Program with two definite tasks; first, the task of cleaning up the old problems which occurred several years ago. You have seen what is being done now, as well as the recurring problem of financing for these projects. Last week, in Portland, Oregon, I represented the Nevada State Association of Conservation Districts at a workshop on the Rural Clean Water Program; unfortunately, this program deals only with the agricultural water quality problems. Public Law 92-500 mandated the Department of Agriculture and the EPA as lead agencies, and the local Conservation Districts as the management and administering agencies for the entire 208 Program, not just the agricultural portion, adding the water quality duties along with the soil erosion and crop production programs to the local districts. I was assured that monies would be forthcoming in the future to implement the non-agricultural portion of the 208 Program; how much, when, and in what form, your guess is as good as mine.

The second task we must face is making sure that the problems, once solved, do not recur. In this respect, as Mr. Pyle pointed out, we are very pleased with the ordinances of the Tahoe Regional Planning Agency, which have been adopted by the counties and local governments. Again, as stated by Mr. Pyle, we do have some concerns regarding inspection enforcement. The Nevada Tahoe Conservation District would like to offer assistance with financial support from the state or counties, either in educational or actual involvement in these matters. The NTCD, along with many other

---

Presented by Maurice Bidart, Chairman, Nevada Tahoe Conservation District, at joint hearing of Senate Committee on Natural Resources and Assembly Committee on Government Affairs
Carson City, Nevada March 29, 1979

EXHIBIT 462

conservation districts throughtout the state where water quality problems exist, are in the process of updating their long range programs to include water quality. As you can see, the increased workload on the districts coming from local, regional, and state planning groups, has developed a need for additional financial assistance to these districts. The day of equipment rental and the 'tin cup' approach can no longer cope with our present-day problems.

In conclusion, I ask that you consider the proposal in the Nevada State Conservation Commission's budget for assistance to the conservation districts. If you have any questions on this or any other matters, I will be happy to try to answer them during our question and answer period.

Mr. Chairman and members of the committee, I am very grateful to you for inviting us to appear before you, and sincerely hope our presentation has been helpful in your deliberations.

EXHIBIT

TAHOE REGIONAL PLANNING AGENCY

3

P.O. Box 8896
South Lake Tahoe, Calif. 95731
(916) 541-0246

March 5, 1979

Fred Weldon

Tom Jacob

Development Potential, Lake Tahoe Basin

As per your inquiry of last week, attached are two tables summarizing (1) the existing and potential development within the Tahoe Basin, and (2) the recent trends in the construction of residential units within the Basin.

Estimated Existing and Potential Land Use

This table is based upon a detailed inventory of existing and potential land use in the various local jurisdictions within the Basin as of January, 1977. Building permit records for the 1977 and 1978 building seasons have been added to this detailed inventory to provide the updated figures reflected on the table.

In summary, the table indicates that approximately 44% of the development potential in California under the TRPA General Plan has yet to be developed; while the Nevada side is less than half built out, with over 52% remaining to be developed. Please note that this does not include lands zoned to permit development but which are presently outside the existing limits of urbanization. The development potential reflected on the table does include both buildout of existing subdivisions and buildout of some substantial amounts of unsubdivided land within the existing communities. The biggest single category in the latter circumstance is the large amount of high density residential and tourist commercial land in Incline Village.

Building Permits - Total Units

This table reflects the rate of buildout within the various local jurisdictions of the Tahoe Basin over the past five years. The totals include both residential and tourist residential units; identifying the total number of units for which building permits were issued within the given year. It should be noted that some of the jurisdictions use the calendar year for recording purposes and some use the fiscal year. The totals may not precisely correspond, therefore, but the overall trends reflected in the table are accurate.

In summary, the table identifies a relatively consistent level of buildout for the Basin as a whole over the five year period, but shows very pronounced shifts in the location of that buildout from the California side of the Basin in the initial years to the Nevada side in the later years. It is our belief that the principal reason for this is the slowdown in California development which has accompanied the current sewage capacity problems on the California side of the Basin.

EXHIBIT 464

Future Prospects

In the next three to five years, it appears that the trends reflected in these figures are likely to continue. It does not appear that the sewage capacity increases necessary to allow a substantial increase in California development will occur within that timeframe, and we continue to see an accelerated development on the Nevada side of the Basin. Indicative of the latter is the following summary of major projects. These have either been before the Nevada local governments and TRPA as project applications within the past two months, or have had preliminary consultation with TRPA staff prior to project application.

Washoe County Totals

Hotels:	Two projects totalling 632 rooms (including 20,000 square feet of casino)
Condominiums:	Three projects totalling 404 units
Apartments:	Two projects totalling 340 units

Total Units Contemplated: 1376

Douglas County Totals

Condominiums:	One project totalling 100 - 200 units
Subdivision:	One project totalling 73 units (It should be noted that this project represents only a portion of a development which is envisioned to total 600 - 700 units if all phases are completed).

It should be noted that these projects are not necessarily destined for action. The TRPA Governing Board on February 28, 1979 did turn down one of the Washoe County hotel projects listed above (212 units). This was the first of the above projects to reach a final decision, and its denial may dampen the push on these major projects somewhat. The fact that they have all reached the stage of serious proposals, however, is indicative of a continuing pressure for major development on the Nevada side of the Basin.

Attachments

TRJ:md

BUILDING PERMITS - TOTAL UNITS*

	1974	1975	1976	1977	1978
South Lake Tahoe	963	523	720	326	164
El Dorado County	419	391	574	419	206
Placer County	449	174	377	596	284
California Total	1,831	1,088	1,671	1,341	645
Washoe County	65	68	158	398	766
Douglas County	157	169	338	405	531
Nevada Total	222	237	496	803	1,297
Basin Total	2,053	1,325	2,167	2,144	1,942

* From figures transmitted by local building departments

TRPA General Plan
Estimated Existing and Potential Land Use [1]
(As of January 1979)

Jurisdiction	Buildout Potential Total Units	Existing Units	Potential Additional Units [2]	Percent Existing
South Lake Tahoe	28,857	17,414	11,443	59%
El Dorado County	13,869	6,565	7,304	47%
Placer County	17,692	9,773	7,919	55%
California Total	60,418	33,752	26,666	56%
Washoe County	11,473	5,351	6,122	47%
Douglas County	10,574	5,189	5,385 [3]	49%
Nevada Total	22,047	10,540	11,507	48%
Basin Total	82,465	44,292	38,172	54%

1) Estimates based on TRPA Land Use Districts which are within existing developed areas (i.e., land which is either developed or substantially surrounded by developed land). Includes both residential and Tourist Commercial units.
2) The California figures are based upon the TRPA General Plan, even though the CTRPA General Plan would currently allow fewer units.
3) Includes 2,066 hotel units which have been approved but not yet constructed (Harvey's Masterplan expansion, Hotel Oliver and Tahoe Palace).

EXHIBIT

INTRODUCTORY REMARKS FOR JOINT HEARING
ON S.B. 250 AND A.B. 503

A COUPLE OF YEARS AGO, GOVERNOR O'CALLAGHAN AND GOVERNOR BROWN INITIATED NEGOTIATIONS IN AN EFFORT TO DRAFT PROPOSED REVISIONS TO THE TAHOE REGIONAL PLANNING COMPACT. THEIR STAFF MEMBERS SPENT A CONSIDERABLE AMOUNT OF TIME IN THE EFFORT, AND S.B. 250 IS THE RESULT OF THEIR WORK.

LAST FALL, THE NEVADA LEGISLATIVE COMMISSION APPOINTED A SUBCOMMITTEE TO REVIEW THE PROPOSED MODIFICATIONS TO THE TRPA COMPACT AND TO DISCUSS THESE REVISIONS WITH INTERESTED CALIFORNIA LEGISLATORS. THE NEVADA SUBCOMMITTEE CONSISTS OF MYSELF AS CHAIRMAN,

SENATOR SPIKE WILSON, AS VICE CHAIRMAN

SENATOR KEITH ASHWORTH

SENATOR JIM GIBSON, OUR SENATE MAJORITY LEADER

SENATOR LAWRENCE JACOBSEN

SENATOR JOE NEAL

ASSEMBLYMAN PAUL MAY, SPEAKER OF OUR ASSEMBLY

ASSEMBLYMAN DON MELLO

ASSEMBLYMAN SUE WAGNER

ASSEMBLYMAN BOB WEISE

AND, MR. RAY KNISLEY AS AN EX-OFFICIO MEMBER.

OUR SUBCOMMITTEE HAS MET FOR POLICY DISCUSSION ON AT LEAST 11 OCCASIONS WITH SOMETHING BETWEEN 40 AND 50 HOURS OF TIME INVESTED IN THESE MEETINGS. WE HAVE MET WITH CALIFORNIA LEGISLATORS ON THREE OCCASIONS, AND STAFF HAS MAINTAINED ALMOST CONTINUOUS CONTACT.

IT HAS BEEN OUR INTENT TO THOROUGHLY UNDERSTAND EVERY BIT OF LANGUAGE CONTAINED IN THE GOVERNORS' PROPOSALS. WE FOUND MOST OF THE BROAD POLICY TO BE POSITIVE, BUT WE HAVE ENCOUNTERED DEFINITE PROBLEMS WITH CERTAIN PROVISIONS AND WITH THE TEDIOUS LANGUAGE. A.B. 503 IS INTRODUCED AS A RESULT OF OUR SUBCOMMITTEE DISCUSSIONS. IT IS OUR MODIFICATION OF THE GOVERNORS' PROPOSALS AS THEY ARE OUTLINED IN S.B. 250.

WE BELIEVE THAT IT IS TIME TO ASK FOR PUBLIC INPUT TO THESE EFFORTS. WE HAVE WORKED HARD, BUT IT IS ESSENTIAL THAT WE FIND OUT WHAT THE FEELINGS OF THE CITIZENS OF NEVADA ARE BEFORE WE CONTINUE WITH THE BISTATE NEGOTIATIONS OR PASS A BILL.

I MIGHT QUICKLY ADD THAT OUR SUBCOMMITTEE HAS MAINTAINED SEVERAL OBJECTIVES THROUGHOUT ITS WORK. WE ARE ALL INTERESTED IN PRESERVING THE ENVIRONMENTAL QUALITY AT LAKE TAHOE. BUT WE ARE ALSO INTERESTED IN PROTECTING PRIVATE PROPERTY RIGHTS AND RETAINING SOME DEGREE OF NEVADA CONTROL OVER OUR OWN LANDS. NO ONE WANTS "TO KILL THE GOOSE THAT LAID THE GOLDEN EGG," BUT THERE MUST ALSO BE SOME CONSIDERATION GIVEN TO THE PROPERTY OWNER WHO HAS PAID TAXES, SEWER ASSESSMENTS AND OTHER FEES FOR YEARS.

ALTHOUGH IT IS TIME-CONSUMING, I BELIEVE THAT WE ALL SHOULD HAVE A FEELING FOR THE CONTENTS OF THE PROPOSALS. I HAVE A SUMMARY OF A.B. 503 THAT OUTLINES THE HIGHLIGHTS OF THE BILL.

#5

Summary of A.B. 503

I. Article I contains the findings and declarations of policy. The only proposed change from the existing compact is deletion of the phrase "of resource conservation and orderly development" from the final sentence in the article.

II. Article II defines the terms that are used in the compact. New definitions include those for "gaming," "restricted gaming license," "project" and "criterion of environmental quality."

III. Article III creates the Tahoe Regional Planning Agency and specifies its organization. Proposed is change from a 10-member to a 14-member governing body. Presently the three California and the three Nevada local governments each have a representative on the agency governing body, and there are two people from the state government level in each state. The proposed change would retain the local representatives. California state-level representatives would include one appointee of the governor, one appointee of the speaker of the assembly, and one appointee of the senate rules committee. The seventh California member would be appointed by the other six. If they could not agree, the seventh appointment would be made by the governor.

The Nevada delegation would also retain the three local representatives. In addition, two members would be appointed by the governor; the secretary of state or his designee would serve; and the director of the department of conservation and natural resources or his designee would be the seventh member.

Article III also outlines that four members from each state constitute a quorum. Except for project review which is discussed in Article VI, the affirmative vote of a majority of the governing body is sufficient to take action in any matter.

Finally, Article III reorganizes the agency's advisory planning commission.

EXHIBIT 471

IV. Article IV deals with agency personnel. The only change in Article IV is to add a statement limiting personnel liability.

V. Article V outlines the agency's planning responsibilities. Several technical changes are made. For example, the time for reviewing plan amendments is expanded from 60 to 180 days and all references to an interim plan are deleted. Provisions are made for formulating a new master plan for the region. Until the revised plan and ordinances are adopted or the time limit of 2 years is exceeded, the plan, ordinances, rules and regulation of the California Tahoe Regional Planning Agency are to be in effect in the California portion of the basin. They do not apply to the Nevada side of the basin, and they may be amended by the governing body. Expansion of public services and facilities, unless they are essential to meet the needs of present inhabitants, are not to precede revision of the land-use plan.

VI. Article VI discusses the agency's powers. Many proposed compact revisions are contained in Article VI. The states and the agency are to cooperate in developing a comprehensive statement establishing for the region criteria of environmental quality and limits on the capability of the ecological system to tolerate human activity. An 18 month time limit is set for this activity. After completion of this statement, the agency is to revise the regional plan, ordinances, and standards based upon the new criteria and limits. The agency is also to adopt regulations defining specific written environmental findings that must be made prior to approval of any project in the region. Until these findings are adopted or 2 years have elapsed, a project may be approved only after making written findings that the project is consistent with regional, state and federal plans and standards relative to environmental quality.

Article VI next proposes limitations on the gaming industry in the Tahoe Basin. The provisions of this bill are different than those in S.B. 323 which has recently been heard by the Senate Committee on Natural Resources. The intention is to replace the gaming provisions of this bill with the provisions as they are finally adopted for S.B. 323.

EXHIBIT 472

Article VI would also make all public works projects subject to agency approval, and the misdemeanor penalty for violation is substantially increased.

The final major proposal in Article VI specifies that approval of a project requires the affirmative vote of a majority of the members of the governing body from the state in which the project is located and the affirmative vote of a majority of all the members of the governing body.

VII. Article VII deals with environmental statements. Under provisions of Article VII, new projects in the basin would have to be accompanied by an environmental impact statement. Basically, the provisions of the National Environmental Policy Act (NEPA) are written into the compact. However, the agency would be able to specify the types of projects that do not have a significant effect on the environment and will therefore be exempt from the requirement for preparation of an environmental impact statement.

VIII. Article VIII specifies the financial arrangements for the agency. The county payments are identified, and it is specified that Nevada will contribute $100,000 and California $200,000 annually. If additional funds are required, the agency can request them from the states.

IX. Article IX includes the miscellaneous items. The only proposed modification in Article IX is to specifically state that the compact has no effect upon water storage rights.

STATEMENT OF PURPOSE AND MEMBERSHIP

The Southern Nevada Conservation Council was founded to bring together users of Nevada for recreation. Our purpose is to bring widely diverse views and information together to search out a core of agreement. Issues such as Fish and Game funding, federal land policies, wilderness studies, and other state and national problems dealing with the use of land for recreation are researched. We wish to offer the information gathered this way as representing a reasonable compromise in controversial areas that are agreeable to a maximum number of people.

Organizations currently sending representatives to our meetings are:

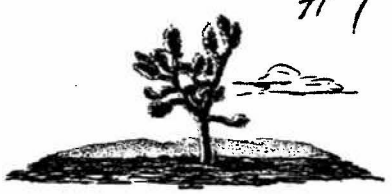
Desert Sportsman's Rifle and Pistol Club	230	members
Henderson Rod and Gun Club	21	
Las Vegas Archers	150	
Las Vegas Jeep Club	110	
Las Vegas Silver Flippers Diving Club	255	
Moapa Sportsmen's Association	60	
Motorcycle Racing Association of Nevada	1200	
National Muzzle Loading Rifle Association	93	
Nevada Bow Hunters Association	235	
Nevada Frontloaders	55	
Red Rock Audubon Society	225	
Sierra Club	1010	statewide
	(300	local)
Silver State Bassmasters	35	
Southern Nevada Landcruisers	35	
Southern Nevada Off Road Enthusiasts	800	
Southern Nevada Waterfowlers	50	
Spring Mountain Free Trappers	350	
Virgin Valley Sportsmen	40	

The above listing represents regular, paid-up members. In addition, we have regular attendance by representatives of the following organizations. These organizations are intensely interested and supportive of our goals; they provide input and use the Council as a resource:

Bureau of Land Management
National Park Service
Nevada Department of Fish and Game
Nevada Wildlife Federation
State Fish and Game Commission
Clark County Game Management Board
U.S. Forest Service

Many other organizations attend as issues being discussed require input, such as legislators, The Vegas Wash Commission, The Las Vegas Air Pollution Control Division, and others.

#7



Southern Nevada Conservation Council

210 South 16th Street **Las Vegas, Nevada 89101**

SOUTHERN NEVADA CONSERVATION COUNCIL
POSITION PAPER ON LAKE TAHOE BASIN

The Southern Nevada conservation Council is concerned with the continued decline in the environment of the Lake Tahoe Basin. Our expression of concern demonstrates that the preservation of the Lake is of importance statewide, if not nationwide. The member organizations of the Council ask that the Nevada Legislature respond to the widespread concern over the Lake Tahoe Basin by passing new enabling legislation for the Tahoe Regional Planning Agency.

The Council believes that this legislation should include:

1. The replacement of the present voting structure with the requirement that a majority of both state delegations exist before a project is approved

2. The expansion of the state delegations so that both delegations will represent more equitably the interests of all Nevadans

3. The requirement for a study of the environmental impacts that are associated with present, future, and proposed developments

4. The prohibition of any future expansion of gambling facilities since the present facilities have already had a significant impact on the quality and character of the Lake Tahoe environment

I believe that the resolution of the Lake Tahoe issue deserves your full attention. I would hope that the concerns of the Council are shared by yourselves. In either case, I would appreciate hearing your views on this issue.

David F. Rollins

David F. Rollins
Chairman, Southern Nevada Conservation Council

Home Address and Telephone:
702-878-9351
116 South Jones Boulevard
Las Vegas, Nevada 89107

EXHIBIT

RED ROCK AUDUBON SOCIETY

P. O. Box 42944, Las Vegas, Nevada 89104

SOUTHERN NEVADANS COMMITTED TO CONSERVATION

March 27, 1979

Joe Neal
Chairman
Nevada State Senate Committee on Environment and Natural Resources

Dear Sir:

We of the Red Rock Audubon Society would like it to be known that we strongly support SB 250 which is concerned with the future of the Lake Tahoe Regional Planning Agency.

We feel that Lake Tahoe is one of the most impressive and beautiful lakes in North America, and indeed the whole world. Hence we feel that very substantial efforts should be made to preserve its unique attributes, i.e., clarity of water and air and its beautiful forest setting.

We believe that the legislation now under consideration should include the following features:

1. The prohibition of future expansion of gaming facilities. The present facilities have had a strong negative impact on the nature and quality of the Lake Tahoe Environement.
2. A thorough study of the impact of all development in the basin; past, present and future and wide dissemination of this information.
3. A voting structure of the bi-state agency such that a majority of each state delegation is required to approve any project.

Sincerely,

John E. Hiatt

John E. Hiatt

Vice-President and Conservation Chairman

EXHIBIT

Gamblers M/C
3433 East Casey
Las Vegas, Nevada
89120

Senator Joe Neal
Chairman Natural Resourses Committee
Carson City, Nevada

Dear Senator Neal

The Gamblers M/C wishes to give are support to SB-250. We wish to join with the Motorcycle Racing Association and the Southern Nevada Conservation Council in urging passage of this bill.

Sincerely

Tom Fisher
Secretary Gamblers M/C

Tom Fisher

EXHIBIT 1477

Las Vegas Jeep Club
c/o Bruce Vomacka
5711 madre Mesa Dr.
Las Vegas, Nevada 89108

Senator Neal
Nevada Legislature'
Carson City, Nevada

Dear Senator Neal;

The Las Vegas 4 Jeep Club supports the position of the Southern Nevada Conservation Council with regard to S.B.250; that is, we do support passage of this measure.

Our group represents approximately 100 Southern Nevada voters.

Sincerely,

Bruce Vomacka

Bruce Vomacka
Legislative Committee

EXHIBIT 478

Elizabeth Jane Cowart
5251 Pearl
Las Vegas, Nevada 89120

March 28, 1979

Senator Joe Neal, Chairman
Natural Resources Committee
Carson City, Nevada

Re: S.B. 250

Dear Senator Neal:

The Desert Radio Club joins the Southern Nevada Conservation Council in seeking passage of S.B. 250.

The Desert Radio Club is an Amateur Radio Club in Southern Nevada with 24 active members.

Sincerely,

Elizabeth Jane Cowart
KA7AOP

EXHIBIT F 479

SIERRA CLUB

Las Vegas Group of TOIYABE CHAPTER
P.O. Box 19777, Las Vegas, Nevada 89119

March 28,1979

Senator Joe Neal: Chairman-Natural Resources Committee
Carson City
Nevada

Dear Senator Neal:

We would like to offer our wholehearted support of your Bill SB-250 cooperating with the State of California to control the growth and protect the Lake Tahoe Basin.

We are convinced that further developement would threaten the lake itself and diminish the opportunity for the General Public to enjoy the Lake in its present state.

Sincerely,

Bill Chivvis

Bill Chivvis, Chairman
Las Vegas Group, Toiyabe Ch.
Sierra Club

EXHIBIT - 481

Chargers West Motorcycle Club
c/o Jon Ogren
5156 Margo Drive
Las Vegas, Nevada 89122

March 28, 1979

Senator Veal
Committee Chairman
Carson City, Nevada

Dear Senator Veal,

In regard to S.B. 250 the Chargers West Motorcycle Club supports the Motorcycle Racing Association of Nevada in seeking passage of this important piece of legislation.

Sincerely,

Jon Ogren
President, Chargers West
Motorcycle Club

EXHIBIT 480

Motorcycle Racing Association of Nevada
3475 Boulder Highway
Las Vegas, Nevada 89122

March 28, 1979

Senator Joe Neal, Chairman
Natural Resources Committee
State of Nevada Legislature
Carson City, Nevada

Re: S.B. 250

Dear Senator Neal:

The Motorcycle Racing Association of Nevada feels the compelling need of the State of Nevada to adopt needed legislation with regard to the Lake Tahoe Basin. S.B. 250 goes a long way toward accomplishing these goals. The 1200 members of our organization support passage of S.B. 250. This truly remarkable lake and surrounding area is not regional but rather of concern throughout the state unchecked development can only deteriorate further the condition of the environment in the Lake Tahoe Basin. If the Nevada Legislature does not act now we can fully expect federal involvement. This involvement may come too late to save Lake Tahoe, it will surely erode state control.

Because of these and other pressing problems we urge you to insure passage of S.B. 250.

Sincerely,

Betty Johnson

Betty Johnson
Secretary, Motorcycle Racing
Association of Nevada

EXHIBIT 182

DAVID F. SCHEID

The Palisade

Custom Firearms ◆ Black Powder ◆ Archery Supplies

3804 West Vegas Drive - Las Vegas, Nevada 89108 - (702) 648-8838

Senator Neal

Committee on Natural Resources

In Reference to Bill S.B. 250 The Tahoe Regional Planning Bill. The Spring Mountain Free Trappers support passage of this measure and the position as taken by the Southern Nevada Conservation Council.

David F. Scheid

Boothway

Spring mountain Free Trappers.

EXHIBIT - 23

Casey Folks, Jr.
3570 East Sunset Road
Las Vegas, Nevada 89120

March 28, 1979

Senator Joe Neal
Chairman, Natural Resources Committee
Carson City, Nevada

Re: S.B. 250

Dear Senator Neal:

The Groundshakers Motorcycle Club supports the position of the Southern Nevada Conservation Council on S.B. 250. Action must be taken now to preserve the quality of Lake Tahoe.

Sincerely,

Casey Folks, Jr.
President, Groundshakers Motorcycle Club

EXHIBIT - 184

17

3/28/79

Senator Joe Neal
Nevada Legislature
Carson City, Nevada

Dear Senator Neal:

The Southern Nevada Landowners, Inc support the position of the Southern Nevada Conservation Council with regard to Senate Bill 250; that is, we fully support passage of this measure

Our group represents approximately 75 votes.

Sincerely,

Peggy Hensley
Southern Nevada Landowners
Secretary - Legislative Committee

EXHIBIT 485

PLEASE DO NOT THROW AWAY!!
KEEP FOR REFERENCE, OR PASS
ALONG TO A NEIGHBOR (Our funds are limited).

April 17, 1977

SO YOU THINK YOU KNOW WHAT HAS BEEN HAPPENING AT LAKE TAHOE!!

The following is a capsulized review of the environmental overkills imposed on the community and the thousands of property owners here at Lake Tahoe by the Tahoe Regional Planning Agency (T.R.P.A.), California Tahoe Regional Planing Agency (C.T.R.P.A.) pressured by, and largely controlled by, appointees from the Sierra Club and the League to Save Lake Tahoe (for themselves).

1. In 1971 the T.R.P.A. massively down-zoned 34,000 acres of private lands to General Forest zonings. This meant if a private property owner had a parcel of 1 acre or 500 or more acres (size did not matter), only one house could be built upon the whole. A clear example of a taking of private property without one owner receiving compensation. Liken that to your having ten houses and the State taking nine in the public interest, without compensation. Morally or legally right? We think not!

2. T.R.P.A. also down-zoned all other parcels of land (except existing single family subdivisions) this had the instant effect of subtracting massive values from private property. This act also made nearly every commercial property non-conforming. If an owner wanted to remove an old structure and rebuild, he could not. Thus, it "locks in" the aged and obsolete, performs no valid service to our community---in short this is prostituted planning.

3. T.R.P.A. then grandfathered all properties---effectively saying, "we recognize major economic injury has happened to the property owner, the grandfathering will protect him from further loss".

4. C.T.R.P.A. was re-empowered because the Sierra Club and League to Save Lake Tahoe (for themselves) complained that the T.R.P.A. was not strict enough and pressured the California Legislature to place Sierra Club and League appointees to a majority vote on C.T.R.P.A. governing board.

5. C.T.R.P.A. came to Tahoe, removed the "grandfather" protection set by T.R.P.A., massively down-zoned again all the properties previously injured, and many more besides, without compensation.

6. C.T.R.P.A. then denied all the property owners the right to develop their land for a period of approximately 20 years, except that irrespective of parcel size, 1 acre or 2000 acres, the owner would be allowed to build one house. Again, clearly a taking of property without compensation, and the owner continues to pay the sewer bond assessments and taxes. Legally or morally right? Again, we think not!

7. The latest effort to deny all building is a clever ruse of using up sewer plant capacity by demanding water treatment far above drinking water standards produced by S.T.P.U.D. for over 10 years. Reason? To use sewer capacity as a tool to deny building permits.

8. The ultimate coup de gras will be the C.T.R.P.A.'s (anti) Transportation Plan. C.T.R.P.A. has already introduced a bill into the Legislature, the effect being to originate a Transit Authority in South Shore that will impose a "user fee" (tax) on residents and visitors alike. This governing board will also be appointed from the Sierra Club and the League to Save Lake Tahoe (for themselves). The Sierra Club has already stated, "what we want is gaming and automobiles out of the basin". Soon these are the types who will be "controlling the gates" on all California basin entrys. How? By raising the user fee, discouraging and frustrating those who want to enjoy Tahoe.

9. T.R.P.A. and C.T.R.P.A. have together (so far) removed $27,500,000 of assessed valuation from down-zoned properties, this burden was shifted to improved properties causing unnecessary burdens to others. Now, C.T.R.P.A. is proposing to eliminate the possibility of 12,000 lot owners the right to build a home. These 12,000 lots (South Shore California only) have an approximate value of $132,000,000. If the assessed

(OVER)

EXHIBIT 186

valuation was only 20% of that figure, or $26,400,000---this amount too would be transferred to already improved properties, either through higher assessed valuations or increased tax rate. Obviously again eliminating the ability of most to own property---except the wealthy.

So we now have regional government (appointed, not elected) instead of regional planning. What has it done for us?

A. Denied us elected representation.

B. Taken or prevented use of property without compensation.

C. Ignored realistic solutions to our traffic problems.

D. Tarnished Tahoe's image with untrue statements about "polluted" air and water.

E. Designed a "playground for the wealthy" that will exclude most Americans.

F. Replaced orderly growth with panic building.

G. Caused accelerated taxes and rents, with even greater increases to come.

H. Increased the cost of building a home without increasing its value.

I. Because of excessive regulations, forced condominiums upon us that are not in the Tahoe image.

J. Prevented the rebuilding of older blighted areas that down-grade our community either because of arbitrary land coverage restrictions or massive down-zoning.

It is vital to understand that regional government is stealing private property through abusive uses of the Police Power (zoning regulations). Why is it happening? Because the California Legislature has <u>over reacted to misrepresentations</u> provided them by extremists in the environmental movement.

THE THREE BASIC MISREPRESENTATIONS ARE:

1. "Development is out of control." FACT: 87.5% of land in the Tahoe Basin is already in greenbelt; 11% has been developed; only 1.5% remains to be developed.

2. "Lake Tahoe's waters are being polluted." FACT: The water of Lake Tahoe is 99.7% pure. If it were much more pure, it could not sustain fish life. It has been---and remains one of the two purest lakes in the world. Few people in the world drink water as pure as the <u>untreated</u> water of Tahoe.

3. "Tahoe's smog is worse than L.A.'s". FACT: Our air quality is one of our principal assets. It is already known that the major cause of any lessening of Tahoe's air quality is from the westerly winds bringing in Bay Area and Sacramento air problems to our Basin. Further, because the C.T.R.P.A. refuses to allow a traffic solution, the stop and go traffic can only add to an environmental problem that principally emanates from the Bay Area.

These misrepresentations are now believed by the California Legislature, who, while reacting in good conscience, have been lobbied and mislead by extremists in the environmental movement. An example of---"When a lie is told often enough, it becomes believed"---unfortunately, to the detriment of citizens and property owners at Lake Tahoe. Council for Logic has the only organized force representing residents and property owners in the Tahoe Basin and opposing what you read above. Join us, we need your support badly, both financially and your personally becoming involved.

IF ENOUGH OF US JOIN FORCES WE CAN RID OURSELVES OF THE OPPRESSIVE TYRANNIES IMPOSED ON US. HELP US!!

Ed McCarthy
Chairman

Council for Logic
P.O. Box 6126
So. Lake Tahoe, CA 95729

Terry Trupp
Executive Director

March 28, 1979

Memorandum for Nevada Legislators:

The attached Nevada Supreme Court ruling was released mid February1979. It affirmed the judgement rendered by Judge Stanley A. Smart August 9th, 1976 in favor of the Tahoe Regional Planning Agency. These two actions, if followed to their logical conclusions, dictate the elimination of Douglas, Carson City, and Washoe Counties Commissioner positions as they relate to their Lake Tahoe areas and constituencies. The TRPA's land use ordinance, passed by appointed officials, prevails over actions of locally elected county officials and is superior to county zoning laws and regulations.

The judiciary by these two actions is disenfranchising Nevada citizens. Local control by elected officials is being eliminated in favor of the appointed TRPA Board.

The land involved in this litigation was designated E-2 (½ acre residential) in 1968 by Douglas County and has since been so designated in the Douglas County Master Plan. This is only one small example of taking of property without just compensation. It is only one small example of bureaucrats disenfranchising Nevada citizens. It is one small example of the hundreds of problems generated when members of the Nevada Legislature abdicated their responsibilities and gave legislative authority to the appointed TRPA board.

It is not too late to take corrective action and elected legislators are urged to do so by following precepts of the Federal and State Constitutions and to abide by their oaths of office. I urge you to disregard the pressures from the self-serving lobbying groups which urge more and more constraints in the name of environmentalism. I urge you to eliminate this perverted form of government known as Regional Government and get Nevada back in the Union with reduced government by elected officials I urge you to pull the teeth of the TRPA jackal and give back those teeth to locally elected officials.

Henry J. Martin
Comdr. USN Retired
Box 4424
Stateline, Nv. 89449
702 588 2673

EXHIBIT - 187

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE COUNTY OF DOUGLAS, a political subdivision of the State of Nevada; ROLAND ADAMS, Planning Director and Manager of the County of Douglas; and ROBERT A. GARDNER, Engineer of the County of Douglas,

Appellants,

vs.

TAHOE REGIONAL PLANNING AGENCY,

Respondents.

Judith McCulloch

No. 9726

Appeal from judgment, Ninth Judicial District Court, Douglas County; Stanley A. Smart, Judge.

Affirmed.

Steven D. McMorris, District Attorney, and William J. Crowell, Jr., Deputy District Attorney, Douglas County, for Appellants.

Kenneth C. Rollston, and Owen and Rollston, South Lake Tahoe, California, for Respondents.

O P I N I O N

PER CURIAM:

The County of Douglas, Nevada, with its Planning Director/Manager and its Engineer, here appeal from a judgment enjoining their approval of any parcel maps violating the Tahoe Regional Planning Agency ordinances, and ordering them to vacate approval and certifications of one such parcel map, as well as to expunge that map from the county's official records.

The facts are undisputed. The county approved and certified a parcel map which satisfies Douglas County ordinances,

but violates TRPA's land use ordinance. TRPA brought this action to compel County and its officers to vacate their approval and certifications of that parcel map and to expunge it from County's official records.[1] Judgment was granted in favor of TRPA. Appellants claim they need not enforce the TRPA's ordinance, and proffer various arguments in support of their position. The trial court considered and disposed of all of these arguments in its decision, No. 7327, filed August 9, 1976, and captioned "Tahoe Regional Planning Agency (TRPA) vs. Henry J. Martin, et al." For the reasons given, and based on the authority set forth therein, we affirm the judgment.

Mowbray, C.J.

Thompson, J.

Gunderson, J.

Batjer, J.

Zenoff, S.J.[2]

Tahoe Tribune 2-21-79 -

Lawsuit targets parking project

California filed suit late Tuesday to block construction of a 3,572 car, seven-level parking garage at Harrah's Tahoe in U.S. District Court in Sacramento.

A spokesman for the court clerk said the suit was filed on behalf of the people of California, the California Department of Transportation, California Tahoe Regional Planning Agency and state Resources Agency.

As defendants, it names Harrah's Corp. Douglas County and the bistate Tahoe Regional Planning Agency.

– The suit alleges the garage was improperly approved and its construction would "further degrade" Lake Tahoe's environment, the spokesman said.

---

1 TRPA also requested injunctive relief against the owners of the premises described by the parcel map. However, direct relief against the owners was denied as rendered moot by the decision against the governmental defendants. The owners are not parties to this appeal.

2 Justice Noel Manoukian voluntarily disqualified himself from participating in the decision of this appeal.

The Chief Justice designated Hon. David Zenoff, Senior Justice, to sit in this case in place of the Hon. Noel Manoukian. Nev. Const. art. 6, § 19; SCR 243.

Attest: A full, true and Correct Copy.
J. R. Davenport, Clerk of the Supreme Court
By Judith McBride Deputy.

EXHIBIT 489

20

COOKE, ROBERTS AND REESE
ATTORNEYS AND COUNSELORS AT LAW
421 COURT STREET
P. O. BOX 2229
RENO, NEVADA
89505

THOMAS A. COOKE
BRUCE D. ROBERTS
DAVID J. REESE

AREA CODE 702
TEL. 329-1766

March 27, 1979

To: Senate Natural Resources Committee

Assembly Government Affairs Committee

Gentlemen:

I am presently serving as the Governor's appointee on the TRPA. However, the views expressed in this letter are my own.

The man who appointed me to serve on the Agency in 1975 has told us that this is the last chance for the two States to agree on amendments to the Compact, and he was right.

This is indeed the year of decision for Lake Tahoe. Unless an accord is reached, the grand experiment, so nobly conceived, will be no more.

Under the provisions of the present Compact, the TRPA has simply not been able to stem the tide of over-development and commercialization. However, this is not to say that it has done nothing. Indeed, it has initiated a number of excellent programs to protect the Basin's environment in spite of the limitations now imposed on it by the Compact. We must remember that the TRPA is a unique and really an extraordinary pioneer endeavor by two States to protect the exquisite beauty of this alpine lake, but each nevertheless, anxiously jealous of its own sovereignty. Under the circumstances, there was bound to be some serious imperfections. These flaws in the original Compact are now obvious to all of us. In 1975 and 1977 attempts to amend the Compact failed, and some say it will fail again in 1979.

I do not believe this. The two States have never before tried so hard or accomplished so much. We are so close to agreement; those differences that remain must not be allowed to block it.

EXHIBIT - 190

A Bi-State Agency is the best hope for Lake Tahoe. Once it is lost, I fear we may never be able to keep the fragile ecology of the Lake from tilting toward catastrophe. I do not believe that we should abandon the Bi-State Agency and let each State try to take care of its own side of the Basin. Lake Tahoe is one lake, and can only be protected by one regional agency empowered with sufficient authority to carry out its mandate.

I am in favor of SB 250, but either a majority vote, as provided by AB 503 or a reversal of the dual majority rule in SB 250 is so much better than what we have now. Clearly, a compromise should be reached;"the test is whether or not the compromise represents an advance over the status quo."

I feel confident that this year we will not fail, and Nevada and California will at last meet the challenge together.

Some say it is too late; that Tahoe is already nothing but a high altitude suburb. I would answer that in the words of Dr. Thomas Hamilton, President Emeritus of the University of Hawaii. "We can't undo the past, but we must be damn careful about the future."

Sincerely,

Thomas A. Cooke

TAC:ez

ANALYSIS OF SENTATE BILL 250 AND ASSEMBLY BILL 503

Prepared for: Senate Committee on Natural Resources and Assembly Committee on Government Affairs

Prepared by: Richard W. Blakey and Gordon H. DePaoli
Attorneys for Park Cattle Co., Owner of the Park Tahoe Hotel and Casino, Stateline, Douglas County, Lake Tahoe, Nevada

Dated: March 29, 1979

I. INTRODUCTION

The two Bills under consideration both seek to amend the Tahoe Regional Planning Compact. Senate Bill 250 is identical to California Senate Bill 82, the so-called Garamendi Bill. Assembly Bill 503 is a modified version of the Garamendi Bill.

The present Tahoe Regional Planning Compact was approved by Nevada and California in 1968 and by Congress and the President in 1969. The two states have had 10 years experience with that Compact. The lessons of those 10 years should not be discarded and ignored; they should be taken into account so that any amended Compact is better, not worse, than the present version.

The provisions of the two Bills may be categorized into various topics. For purposes of this analysis they have been categorized as follows:

EXHIBIT

1. General & Miscellaneous Provisions

   (a) Article I. Findings and Declarations of Policy

   (b) Article II. Definitions

   (c) Article VIII. Finances

2. Agency Structure and Voting

   (a) Article III. Organization

   (b) Article IV. Personnel

   (c) Article VI(q) in S.B. 250 and Article VI(o) in A.B. 503

3. Planning

   (a) Article V. Planning

   (b) Article VI. Agency's Powers

4. Litigation

   (a) Article VI(i) in S.B. 250 and Article VI(g) in A.B. 503

   (b) Article VI(r) in S.B. 250 and Article VI(p) in A.B. 503

5. Environmental Impact Statements

   (a) Article VII.

6. Gaming

   (a) Article VI(f) and (g) in S.B. 250 and Article VI(d) and (e) in A.B. 503

The categories overlap but are useful in analyzing this complex legislation. It should be understood, however, that the provisions are all interrelated.

EXHIBIT -

II. GENERAL AND MISCELLANEOUS PROVISIONS

Assembly Bill 503 and Senate Bill 250 propose to delete the "orderly development" language from Article I(c). The League to Save Lake Tahoe (League), the Sierra Club and the State of California (California) have attempted to establish that the Compact prohibits any further growth or development in the Basin. The courts have relied on the "orderly development" language as evidence that it was not such a measure. Recently, in a case involving Park and others, the United States Court of Appeals for the Ninth Circuit said:

> Focusing initially on the language of the Compact, it is clear that it was not designed to stop economic development in the Tahoe Basin. Article I(c) states that the parties sought to create a "regional plan of resource conservation and orderly development." See also Younger v. TRPA, 516 F.2d 215, 220 (9th Cir. 1975) to the same effect.

Deletion of the "orderly development" language will, as a matter of statutory construction, establish the Compact as a no-growth, no-development measure. If that is what is intended the remaining pages of the Bills are unnecessary.

Article II of both Bills provides definitions that will play key roles in other portions of the Compact. Article VI(d) requires agency review and approval of all "projects." Article II(i) of S.B. 250 defines project as an "activity undertaken by any person if the activity may substantially affect, or may specifically apply to the uses of land, water, air, space, or

any other natural resources of the region." [Emphasis added.] The language is so broad that it could be argued that the agency must review and approve a Fourth of July picnic at Sand Harbor. It could require agency review and approval of each and every single family dwelling to be constructed at the Lake.

A.B. 503 defines "project" as an activity undertaken by any person if the activity may substantially affect the land, water, air, space or any other natural resources of the region." While that is an improvement over S.B. 250 it still is quite broad, could require agency review and approval of the construction of single family dwellings or one-car garages and is likely to result in a great deal of litigation.

A better approach is that presently followed. Present TRPA ordinances provide a more specific listing of activities requiring agency approval. Those ordinances require agency review in the following circumstances:

When the use, activity or structure consists of:

(a) Airports, heliports and landing strips

(b) Batch plants

(c) Bulk storage

(d) Commercial developments covering three or more acres

(e) Commercial forest products removal

EXHIBIT -

(f) Commercial parking lots

(g) Construction in stream channels

(h) Fish and wildlife management projects

(i) Developed campgrounds

(j) Educational facilities, general

(k) Electric power plants

(l) Electrical substations

(m) Golf courses

(n) Harbors

(o) Hotels, motels and apartment houses of five or more units

(p) Marinas

(q) Medical facilities

(r) Mobile home parks

(s) Organized recreation camps

(t) Multiperson dwellings

(u) Outdoor amusement facilities

(v) Outdoor recreation concessions

(w) Overhead or underground utilities, but excluding service connections

(x) Public services

(y) Highways, roads and structures

(z) Sewage treatment plant

(aa) Water storage tanks and reservoirs

(bb) Water treatment plant

EXHIBIT 196

(cc) Quarries

(dd) Recreation vehicle park

(ee) Religious facilities

(ff) Radio, TV and telephone relay stations and transmission lines and structures

(gg) Skiing facilities

(hh) Private stream crossing

(ii) Solid waste transfer stations

(jj) Transportation facilities

(kk) Wrecking yards

Land Use Ordinance (LUO) Sections 7.12, 4.32 and 4.10(2).

The present agency also reviews all buildings and structures to be constructed to a height of 45 feet or more.

The agency should be given the power to specify by ordinance those "projects" which require its approval. Such a specification will be beneficial both to the agency and all persons proposing to undertake any activity in the Basin.

III. AGENCY STRUCTURE AND VOTING

Article III of both Bills changes the makeup of the Governing Body from a 10-person board with six local government members to a 14-person board with 8 members coming from or being chosen by state government.

Article III(a)(1)(C) of both Bills provides that the seventh member from California is to be chosen by at least four

EXHIBIT

of the six California members named in Article III(a)(1)(A) and (B). If four of the six cannot agree on the seventh member within 30 days the California Governor with the consent of the Senate will appoint a seventh member. Because California state government controls three of the six named members it is likely that the seventh member will be appointed and controlled by California state government.

The voting procedures in the two Bills are different and must be considered separately. Article III(g) of S.B. 250 requires a majority from each state to take action. The vote of four Californians must concur with the vote of four Nevadans. If at any meeting where a quorum is present and any matter before the governing body does not receive an affirmative dual majority vote it is deemed rejected.

This change reverses the present dual majority rule and gives California the victory it could not achieve in Younger v. TRPA, 516 F.2d 215 (9th Cir. 1975). It essentially gives California a veto power in the region. Moreover, it will require Nevada to accede to California's demands on adoption of a regional plan and ordinances mandated by the Compact or be faced with lawsuits filed by California's environmentalist friends to have a court adopt them. See discussion at pages 11 to 13, infra.

Article III of both Bills requires four members of the governing body from each state for a quorum. Article III(g) of A.B. 503 requires an affirmative vote of a majority of the

EXHIBIT _

members of the governing body, not a majority of a quorum, to take action. Under that Bill for action to be taken there must at least be four members from each state present and at least eight people must vote on one side or the other of the matter under consideration.

If the four members controlled by California state government simply refused to show up or if California state officials, including the Governor, simply refused to appoint their members (Governor Brown refused to appoint his delegate to the present governing body for an extended period - when he did he appointed Dwight Steele, who immediately before his appointment was the President of the League to Save Lake Tahoe.), no action could ever be taken. It's interesting to note that Article III of both Bills (page 4, lines 28-30) provides that members appointed by local government who miss three consecutive meetings automatically lose their seats. There is no comparable provision for state appointees and there should be.

Article VI(q) of S.B. 250 and VI(o) of A.B. 503 both provide that an applicant may bring an action in a court of competent jurisdiction to compel a vote, if such a vote did not occur within 180 days in the case of S.B. 250 and 90 days in the case of A.B. 503. California could require all applicants to file a suit to get a vote. Such a lawsuit would undoubtedly have to be brought in California. A similar lawsuit might have to be filed in Nevada. There has been far too much litigation under the Compact already without providing for litigation simply to

get a quorum and a vote. Both Bills are silent on what happens when there is no applicant. For example, California could prevent the adoption of a new regional plan and new ordinances favored by 10 members of the governing body by simply having its state controlled members not show up.

If the present dual majority provisions are to be changed at all, a simple majority of the governing body should constitute a quorum and a majority of the governing body should be permitted to take action. Such a provision will assure the appointment and regular attendance of all members of the governing body and will obviate the need for litigation to compel a vote.

Article III(a)(5) of S.B. 250 and Article III at page 4, lines 31-36 of A.B. 503 imply that only economic interests create a conflict. It should be made plain that all interests which evidence bias create a conflict.

Article IV(d) of S.B. 250 grants an immunity to members of the governing body, the planning commission and employees of the agency not enjoyed by their counterparts in state and local government. For example, an employee of the agency who negligently runs over a pedestrian while on his way from the agency office to inspect a project appears to be immune from liability for damages for that accident. Article IV(d) of A.B. 503 is much better.

IV. PLANNING

The key planning provisions of both Bills are identical except for some changes in terminology. For example, S.B. 250

speaks in terms of "environmental quality thresholds" and "ecological system carrying capacities," neither of which are defined. For those phrases A.B. 503 substitutes "criteria of environmental quality" and "limits of the capability of the ecological system to tolerate human activity." A.B. 503 does define "criterion of environmental quality" in Article II(i) as a "physically measurable standard for some element of the natural environment, such as water purity, or clarity, air pollution or noise." The other phrase is not defined but presumably would involve a statement of how much human activity can be allowed without exceeding the "criteria of environmental quality."

Article V(b) of both Bills and Article VI(e) of S.B. 250 and VI(c) of A.B. 503 require revision of the present regional plan and ordinances. The first order of business will be the development of a comprehensive statement establishing physically measurable standards of quality for elements of the natural environment such as air and water quality standards. The statement will also provide for "limits of the capability of the ecological system to tolerate human activity." This statement must be completed within 18 months.

When the comprehensive statement is completed the agency must revise the regional plan and adopt or revise ordinances and standards for the "preservation of the environmental quality

in the region" based upon the criteria and limits established in the comprehensive statement. There appears to be no deadline for completing this revision. Not later than 12 months after completion of the comprehensive statement the agency must develop a transportation plan which "substantially complies" with the criteria and limits established by the comprehensive statement.

It is clear therefore that the comprehensive statement is the key to all future planning in the region. It is as important as the Compact itself. Yet, there are no provisions which detail who will prepare it and how it will be adopted. The states and agency are to "cooperate," but what if they don't? What if the time constraints are not met? Who will determine whether the regional plan, ordinances and transportation plan comply with the comprehensive statement?

The Tahoe Regional Planning Agency has been this route before. On September 20, 1973, the League to Save Lake Tahoe and the Sierra Club filed an action in the United States District Court for the Eastern District of California against the TRPA, Park, Harvey's and Thomas P. Raley, hereinafter the Eastern District Action. They summarized their 59-page Complaint as follows:

> In particular, the Complaint in the First Cause of Action (Section V), seeks a declaration that the TRPA has failed to adopt a regional plan as required by the Compact; in the Second Cause of Action (Section VI), seeks a declaration that the TRPA has failed to adopt implementing ordinances as required by the Compact; in the Third Cause of Action (Section VII), seeks a declaration

that the TRPA has failed to prpare and maintain a detailed environmental analysis with appropriate data, as required by the Compact; in the Fourth and Fifth Causes of Action (Section VIII and IX), seek a declaration that Sections 7.83 and 7.93 of the Land Use Ordinance are null and void as in violation of the Compact and the Land Capabilities Map, adopted by the TRPA as part of its purported regional plan; in the Sixth and Seventh Causes of Action (Sections X and XI), seek a declaration that Sections 9.22, 9.23 and 9.24 of the Land Use Ordinance are null and void as in violation of the Compact and of said Land Capabilities Map; . . . .

In addition, the Complaint seeks injunctive relief:
1. To compel the TRPA within a reasonable time to submit to the court, and upon court approval to adopt by ordinance a regional plan and implementing ordinances meeting the legal requirements of the Compact; and

2. To compel the TRPA to submit said plan and implementing ordinances together with an environmental analysis & underlying data to public hearing and discussion as required by the compact; and

3. To compel the TRPA to adopt an ordinance, effective during the period before adoption of the regional plan and ordinances, prohibiting further development within the Tahoe Basin, except as necessary during the period to replace or repair existing structures or to prevent great hardship or to meet demonstrable public need; and

4. To compel the TRPA, without prejudice to reapplication following adoption of the regional plan and ordinances, to set aside, deny or revoke any "approvals" given the construction of the shopping center and hotel-casino projects and to refuse to take action to process, review, aid or approve any project prior to adoption of the regional plan and ordinances, except as necessary, during the period, to repair or replace existing structures or to prevent great hardship or to meet demonstrable public need; and

5. In any event, to compel the TRPA to deny approval of any project not consistent with Section 6.20 of the Land Use Ordinance.

EXHIBIT 503

The answers to the above questions are clear. If a stalemate develops, if time limits are not met, or if California, the League to Save Lake Tahoe and the Sierra Club are not completely satisfied, there will be litigation. They will seek to have the courts, probably a California federal court, do the planning for the Tahoe Basin. The approach to planning in Articles V and VI comes directly from the Eastern District action.

Article V(b)(2) is a blatant attempt to postpone for at least thirty months, if not forever, completion of the Loop Road. Even if completion of that road becomes part of any new plan, California and others will sue to stop its construction on the basis that the transportation plan does not "substantially" comply with the comprehensive statement or that the plan "disrupts normal outdoor recreation activities." If Nevada were to throw in the towel on every other issue, it should not budge on completion of the Loop Road. Any revision of the Compact should authorize and direct completion of that road forthwith.

The two Bills differ somewhat on what is to occur while the comprehensive statement, the new regional plan, ordinances and standards are adopted. Under S.B. 250 neither the agency nor the Nevada Environmental Commission (NEC) may approve a project except upon written findings supported by substantial evidence in the record. This provision is the product of two actions, one brought by the State of California and one by the League and Club against Park Cattle Co., Harvey's, Ted Jennings, Oliver Kahle and Douglas County in the United States District Court for

the District of Nevada on August 12, 1977. Agency and NEC decisions are set up for litigation. As Judge Bruce R. Thompson stated in the above cases:

> I know perfectionists, not only among lawyers but on the Court of Appeals, like to criticize findings, and there are sometimes two different ways to criticize them. One is that they parrot the language of the statute or ordinance and, therefore, they can't be genuine; and the other is they didn't parrot the language of the statute or ordinance and therefore they don't comply with the law.

The specific findings which must be made and based upon substantial evidence must be examined carefully. They are reproduced separately below.

> (A) The project is consistent with the regional plan, ordinances, regulations and standards of the agency and those adopted by federal and state agencies relating to the protecton, maintenance and enhancement of environmental quality in the region; [Emphasis added.]

There must be a written finding that the project is consistent with the regional plan, ordinances, regulations and standards of the agency. The Eastern District action referred to above is still pending. It challenges the present regional plan and ordinances as being invalid. That action will go to trial on October 29, 1978. If the plaintiffs are successful there or in the Court of Appeals there will be no existing regional plan or ordinances, and under their theory, no approvals of anything. Any amendments should recognize and validate the existing plan, ordinances and regulations as being valid and consistent with the Compact in all respects. In addition, there must be written

EXHIBIT

findings based upon substantial evidence that the project is consistent with "ordinances, regulations and standards" adopted by federal and state agencies relating to the maintenance and enhancement of environmental quality in the region. Arguably, that would permit some federal agency to begin to promulgate regionwide ordinances and regulations. In addition, there is no definition of which state agencies are referred to and which state's regulations a project must meet. For example, must a Nevada project meet a California Water Quality Board regulation? Any project approved prior to adoption of the new plan, ordinances and regulations will be subject to litigation and probably delayed indefinitely.

> (b) The project will not result in degradation in air quality;

Note the absence of any modifiers in front of "degradation." Arguably any project (keep in mind the definition of project) that brings one new car to the region will result in air quality degradation.

> (c) The project will not result in increased traffic congestion in the region;

Again, no modifiers in front of increased. Will one more car be enough?

> (d) The project will not result in increased runoff of pollutants or soil erosion or sedimentation; and

Any new impervious surface will result in increased runoff. Again, there is no modifier in front of increased. Pollutants is a key word -- even the smallest business or house can

EXHIBIT

generate water pollutants. Note the key word "and." All of these must be found or the project fails.

> (e) The project will not result in substantial increased demand for housing in the region. [Emphasis added.]

This section has a modifier in front of "increased." That strongly supports an argument that any negative impact requires rejection of a project under the other subsections.

In short, any approved project someone wishes to challenge in court will be delayed indefinitely. These provisions provide for a moratorium.

S.B. 250 provides that the California portion of the region will be governed by the California Tahoe Regional Planning Agency (CTRPA) forever. A.B. 503 unsuccessfully seeks to limit CTRPA's continued authority to a period of two years or until the comprehensive statement, the new regional plan, ordinances and standards are adopted, whichever is sooner. It fails because Article V(b)(5) at page 9, lines 9 - 12, and Article VI(a) at page 10, lines 7 - 8, provide that the plans, ordinances, rules and regulations adopted by the CTRPA and in effect on July 1, 1978, are recognized as establishing a higher standard applicable in California. To the extent there is a conflict between any TRPA provision, old or new, and a CTRPA provision the CTRPA provision will prevail. The Compact as it is proposed to be amended will essentially be an interstate Compact to govern the Nevada portion of the Tahoe Basin.

It is a serious mistake to provide in the Compact that the

CTRPA plan establishes a higher standard applicable in California. The Compact as proposed to be amended looks to the establishment of and attainment of physically measurable standards for elements of the natural environment, such as water purity, clarity, air pollution or noise. If any newly structured Tahoe Regional Planning Agency is to have an even chance to do its job and to adopt a plan and ordinances designed to attain the criteria of environmental quality, its plan and ordinances must apply throughout the region and must be supreme. There can and will be tensions as to what is the best way to meet the criteria of environmental quality. One example has been the type of transportation plan necessary to reduce and limit air pollution in the region. The TRPA and the CTRPA's plans collide in that regard. The Loop Road is part of the TRPA's plan but not of the CTRPA's.

On May 11, 1978, the Honorable Bruce R. Thompson issued a ruling on California's application for a temporary restraining order to prevent construction of the Loop Road in Nevada. Judge Thompson spoke directly to this question, and the proposed amendment to the Compact seeks to vitiate his conclusions. In his decision, Judge Thompson commented on the affidavit of John J. Vostrez, the head of the California Tahoe Regional Planning Agency:

> There is an affidavit from the plaintiff from Mr. John J. Vostrez, in which he states: "I am the executive officer of the California Tahoe Regional Planning Agency and I have held this position since November 17, 1975. CTRPA is a regional planning and regulatory agency and a political subdivision of the State of California. It has jurisdiction over the California portion of the Lake Tahoe region."

EXHIBIT 508

Judge Thompson commented:

> That is an untrue statement. I don't mean to say that he intentionally made an untrue statement, but that is not consistent with the jurisdiction given to the TRPA by the interstate compact.

Again quoting from Mr. Vostrez:

> The primary purpose of CTRPA is to function as an areawide planning agency with powers to adopt and enforce a regional plan of resource conservation and orderly development and to exercise effective environmental controls in the Lake Tahoe region.

Judge Thompson commenting again:

> That also is an untrue statement. Those powers are vested in the Tahoe Regional Planning Agency. The CTRPA does have authority to make and adopt such plans for conservation and orderly development subordinate to any plans and consistent with any plans adopted by the Tahoe Regional Planning Agency but not otherwise.
>
> I think that what we have involved here is primarily an effort on the part of the State of California to impose the will of the California Division of Transportation and the CTRPA upon the Tahoe Regional Planning Agency, which both states adopted and organized for the specific purpose of dealing with all environmental problems in the Lake Tahoe Basin."

The situation in the Nevada portion of the region pending adoption of the new plan, ordinances and regulations is somewhat different. It is set forth in A.B. 503 in Article VI(c) at page 11, lines 24 - 32. There the Agency and the State Environmental Commission of Nevada may approve a project in the region only after making written findings on the basis of substantial evidence in the record that the project is consistent with the regional plan, ordinances, regulations and standards of the

Agency, and those adopted by federal and state agencies relating to the protection, maintenance and enhancement of environmental quality in the region." The "written findings based upon substantial evidence in the record" provision is the product of unsuccessful actions brought by the State of California and the League to Save Lake Tahoe and Sierra Club against Park Cattle Co., Harvey's, Ted Jennings, Oliver Kahle and Douglas County in the United States District Court for the District of Nevada on August 12, 1977. Judge Thompson ruled in favor of the defendants in that action and his decision has been recently upheld by the United States Court of Appeals for the Ninth Circuit. The language requiring written findings supported by substantial evidence in the record is a setup for additional litigation. As Judge Thompson stated in the August 12, 1977 cases:

> I know perfectionists, not only among lawyers, but on the Court of Appeals, like to criticize findings, and there are sometimes two different ways to criticize them. One is that they parrot the language of the statute or ordinance and, therefore, they can't be genuine; and the other is they didn't parrot the language of the statute or ordinance and therefore, they don't comply with the law.

The specific findings which must be made and based upon substantial evidence should be examined carefully. First, there must be a written finding that the project is consistent with the regional plan, ordinances, regulations and standards of the Agency. The Eastern District action referred to above is still pending. It challenges the present regional plan and ordinances as being invalid. That action is set to go to trial on October 29, 1979. If the plaintiffs are successful there or in the Court of

Appeals there will be no existing regional plan or ordinances, and under their theory, no approvals of anything. Any amendments should recognize and validate the existing plan, ordinances and regulations as being valid and consistent with the Compact in all respects.

In addition, there must be written findings based upon substantial evidence that the project is consistent with "ordinances, regulations and standards" adopted by federal and state agencies" relating to the maintenance and enhancement of environmental quality in the region." Arguably, that would permit some federal agency to begin to promulgate regionwide ordinances and regulations. In addition, there is no definition of which state agencies are referred to and which state's regulations a project must meet. For example, must a Nevada project meet a California Water Quality Board regulation? Any project approved prior to adoption of the new plan, ordinances and regulations will be subject to litigation and probably delayed indefinitely.

Article V(b)(5) of S.B. 250 and Article V(c) at page 9, lines 27-29 of A.B. 503 preclude the expansion of public services and facilities" unless essential to meet the needs of present inhabitants" until revision of the land use plan. This provision will indirectly vitiate prior approvals granted under the existing Compact and ordinances. For example, some type of expansion of the Douglas County Sewer Improvement District No. 1 Waste Water Treatment Facility is necessary, not only to meet the needs of present

EXHIBIT J

inhabitants, but also to meet the needs of presently approved and permitted projects. To prohibit expansion of that facility would prohibit already approved development. Such a prohibition is probably unconstitutional and it is surely wrong. This Legislature has been careful to recognize and not affect prior approvals. It should not permit their indirect revocation.

This provision would also prevent completion of the Loop Road. As noted earlier any amended Compact should require completion of the Loop Road.

Finally, this provision could substantially increase the cost of new public services and facilities because it would require that they be constructed in a piecemeal fashion.

Article VI(j) and (k) of S.B. 250 and Article VI(h) and (k) of A.B. 503 amend the present Compact to require agency approval for public works projects to be constructed by a department of either state. Nevada has a responsibility to its own citizens to provide those services and facilities it deems necessary. It should not subordinate its ability to meet that responsibility to the TRPA or any other agency.

In conclusion the provision providing a moratorium on public services and facilities should be deleted. The present Compact provisions concerning public works projects should not be amended.

V. LITIGATION

A Compact is essentially a contract between two or more states. To work a contract requires parties that deal fairly and in

good faith. Each party must be willing to live with the contract's terms even though that party may later decide the contract was not in its best interests. Unquestionably parties to a contract may have good faith disagreements and may seek the assistance of the courts to resolve those good faith disagreements.

If the past is any indication of the future, the contract being proposed here does not involve two parties dealing fairly and in good faith. It does not involve two parties willing to live by its plain terms. California has not dealt in good faith under the present Compact. For example on August 7, 1974 the State of California filed an action entitled the People of the State of California, ex rel. Evelle J. Younger vs. Tahoe Regional Planning Agency, et al. in the United States District Court for the District of Nevada, Civil No. R-74-108 BRT. There California contended that Article VI(k) of the present Compact did not require a dual majority to take final action. The Ninth Circuit Court of Appeals said that "although we find California's argument extremely appealing on an emotional level, it simply does not take into account the plain meaning of the Compact and intent of its architects." Younger v. Tahoe Reg. P. Ag., 516 F.2d 215, 218 (9th Cir. 1975).

The case People of the State of California vs. Ted Jennings, et al., in the United States District Court for the District of Nevada, Civil No. R-77-0158 BRT, filed August 12, 1977, provides at least two examples. In that action California contended that TRPA Land Use Ordinance §7.13 created an absolute 40-foot height

limit in the Basin. Concerning that argument the Ninth Circuit Court of Appeals recently said that "section 7.13 on its face contemplates heights in excess of 45 feet." On the same argument Judge Bruce R. Thompson said:

> I find nothing ambiguous in the height-limitation ordinance 7.13. It is quite plainly different from other types of limitation ordinances. It was quite plainly adopted in contemplation of the probability that many, many requests for different height allowances would be made.

In that case California also contended that the gaming establishments involved constituted common law interstate nuisances. That contention was made in the face of the present Compact which provides that "every plan, ordinance, rule, regulation or policy adopted by the agency shall recognize" gaming "as a permitted and conforming use."

Article VI(i) of S.B. 250 and Article VI(g) of A.B. 503 are identical to present Article VI(e). It is not changed but it should be. Because of California's lack of good faith and because of others who believe they are more able to preceive what is right and good the present Compact has generated far too much litigation. Such litigation can be and often has been counterproductive. Set forth below is a chronology of only some of that litigation:

1. League to Save Lake Tahoe, et al. vs. Tahoe Regional Planning Agency, et al. in the United States District Court for the Eastern District of California, Civil No. S-2989, filed September 20, 1973.

2. League to Save Lake Tahoe, et al. vs. County of Douglas, et al. in the First Judicial District Court of the State of Nevada, in and for the County of Douglas, No. 6566, filed August 16, 1974.

3. People of the State of California, ex rel. Evelle J. Younger vs. Tahoe Regional Planning Agency, et al., in the United States District Court for the District of Nevada, Civil No. R-74-108 BRT, filed August 1974.

4. League to Save Lake Tahoe, Inc., et al. vs. Roger S. Trounday, et al., in the United States District Court for the District of Nevada, Civil No. R-76-85 BRT, filed May 3, 1976.

5. California Tahoe Regional Planning Agency, et al. vs. Ted Jennings, et al., in the United States District Court for the District of Nevada, Civil No. R-77-0158 BRT, filed August 12, 1977.

6. League to Save Lake Tahoe, et al. vs. Ted Jennings, et al., in the United States District Court for the District of Nevada, Civil No. R-77-0159, filed August 12, 1977.

7. People of the State of California vs. County of Douglas, et al. in the United States District Court for the District of Nevada, No. 78-0084 BRT, filed May 8, 1978.

8. League to Save Lake Tahoe, Petitioner, vs. Tahoe Regional Planning Agency, Respondent, in the Superior Court for the State of California, for the County of El Dorado, No. 31268 filed May 1, 1978.

Recently, several California agencies filed separate actions against Harrah's and the Sahara Tahoe to prevent construction of parking garages at those enterprises. Like the Loop Road cases those lawsuits were filed in spite of the fact that a majority of the California delegation to the TRPA had voted in favor of approval.

Only the Agency should be permitted to bring actions seeking to enforce its ordinances, rules, regulations and policies in

EXHIBIT J 15

both states. The states and the local governmental entities located in the Basin should be permitted to bring such actions only within the limits of their own territory. Private parties like the League to Save Lake Tahoe should not be permitted to bring enforcement actions at all. The various governmental entities involved can adequately enforce the Agency's ordinances, rules, regulations and policies.

All actions, whether brought in state or federal court, should be brought in a court sitting within the state where the violation is committed or where the property affected is situated. For example, Park and Harvey's were sued in the Eastern District of California, even though their projects are located wholly within the State of Nevada. Line 38, page 12 of A.B. 503 provided the rationale for allowing such an action to be brought in federal court. Because the judges in the Eastern District of California disqualified themselves, the case was properly assigned to an out of district judge. That judge, the Honorable James F. Battin, is from Billings, Montana. At one point when Judge Battin was unavailable, the matter was temporarily assigned to a judge in San Francisco. In that action Park was required to defend its project in Sacramento, California, in Billings, Montana, and in San Francisco, California. Requiring that actions be brought in a court located within the state where the property affected is situated, whether or not the action be brought in a state or federal court, is not unreasonable.

EXHIBIT

The final sentence at lines 38 - 40, page 12 of A.B. 503 should be deleted. That sentence was inserted in the original Compact for purposes of diversity jurisdiction. The Ninth Circuit Court of Appeals has determined that questions arising under the Compact and the Land Use Ordinance present federal questions so that such actions involving them may be brought in federal court.

New provisions dealing specifically with judicial review should be added to the Compact. Enforcement actions are not the same as actions seeking judicial review. Actions seeking judicial review involve court review of the Agency's judgmental decision approving or disapproving a particular project.

First, a very short time limit for seeking judicial review should be adopted. In the recently decided August 12, 1977 cases the State of California and the League to Save Lake Tahoe and Sierra Club sought judicial review of Douglas County's judgmental decision to allow the Park Tahoe hotel tower to exceed 40 feet in height. That action was brought over four years after approval and three years after the hotel tower reached its designed height. In that default approval situation the United States Court of Appeals for the Ninth Circuit applied Nevada's 25-day limitation period.

Actions seeking judicial review should be required to be filed in courts within the state where the property affected is located, whether or not the action is filed in state or federal court.

EXHIBIT

The judicial review section should require persons or entities seeking judicial review to have appeared before the Agency and substantially raised the grounds on which they seek judicial review. The United States Supreme Court said in the recent Vermont Yankee Nuclear Power Corporation v. NRDC case, 46 U.A.L.W. 4301, 4310 (1978):

> Administrative proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic and obscure reference to matters that "ought" to be considered and then after failing to do more to bring the matter to the agency's attention, seeking to have that agency determination vacated on the ground that the agency failed to consider matters forcefully presented.

Judicial review should be limited to the record made before the agency. The scope of review should be limited. Courts should not substitute their judgment for that of the agency. In short, if it is the judgment of the Nevada and California legislatures that the region should be governed by a regional planning agency, then every effort should be made to see to it that that agency does in fact govern and that it, rather than the courts, makes the essential and important decisions for the region.

The following amendments are suggested:

> All ordinances, rules, regulations and policies adopted by the agency shall be enforced exclusively by the agency within both states and by the respective states, counties and cities, each within its limits of territory. The appropriate courts [of] within the respective states each within its limits of territory and subject matter provided by [state] law are vested with jurisdiction over civil actions

[to which the agency is a party] arising under this act and over criminal actions for violations of [its] the agency's ordinances. Each such action should be brought in a court [of] sitting within the state where the violation is committed or where the property affected by a civil action is situated. [unless the action is brought in a federal court for this purpose the agency shall be deemed a political subdivision of both the State of California and the State of Nevada.]

Any person aggrieved by a final action of the agency is entitled to judicial review thereof. No action or proceeding shall be commenced for the purpose of seeking judicial review unless such action is commenced within 25 days from the date of final action by the agency. Actions seeking judicial review shall be instituted in a court sitting within the state where the property affected is located. The review shall be conducted by said court without a jury and shall be confined to the record and to issues substantially raised before the agency. Said court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the decision is: (1) In violation of constitutional or statutory provisions; (2) In excess of the authority of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

These suggestions are based upon the August 12, 1977 actions brought by California, the League and the Sierra Club. There the plaintiffs sought judicial review several years after agency action. The complete administrative record was no longer in existence. The grounds on which plaintiffs sought judicial review had not been specifically raised before the agency. They sought

EXHIBIT D

to supplement the administrative record with documents and evidence not even in existence when the agency reviewed the projects.

Article VI(m) of S.B. 250 and Article VI(k) of A.B. 503 provide for rather severe penalties, not only against private persons but also against governmental agencies. While A.B. 503 requires a willful violation as opposed to any violation whatsoever, the size of the penalty still leaves room for a good deal of blackmail. The power to secure penalties for willful violation of the Compact, the ordinances, etc., is necessary. However, a $100,000 fine for each violation seems excessive, particularly when one considers that such a fine could be extracted from a governmental entity.

Article VI(r) of S.B. 250 and Article VI(p) of A.B. 503 provide for automatic expiration of the approval of a project. The entire provision should be deleted. As written it provides an extension of time while a legal action, "the purpose of which is to prevent or modify a project," is pending. The modifying phrase defining the purpose of the action may be a trap for the unwary. A favorite trick of certain groups is to make it difficult or impossible for a development to secure necessary financing. Almost any legal action, whether its purpose be to prevent or modify a project or not, will make it difficult, if not impossible, to obtain financing. In addition the provision does not protect an applicant who starts construction and then stops for a 3-year period. Presumably, if the delay is not the result of a legal action, the approval expires no matter how

substantial the existing construction. While expiration of approval within a time certain may be a good planning technique, it is out of place in the Tahoe Basin. No one is going to go through all that one will be required to go through under these amendments and then not go forward with the project if it is at all possible.

VI. ENVIRONMENTAL IMPACT STATEMENTS

Article VII is taken from or is a paraphrase of the National Environmental Policy Act (NEPA), 42 U.S.C. §4321, et.seq. California, the League to Save Lake Tahoe and Sierra Club have unsuccessfully attempted to have the courts determine that NEPA applies to the present Tahoe Regional Planning Agency. Article VII will make NEPA a part of the Compact. Adoption of the NEPA language in the Compact will include the very large body of case law which has been decided under NEPA.

Article VII(b)(2)(C) of S.B. 250 and Article VII(a)(3) of A.B. 503 will require an environmental impact statement on any project which "may significantly affect the quality of the human environment." The courts have read the word "significant" out of NEPA for all practical purposes. They have pointed out that the phrase "significant effect on the environment" includes all potential environmental effects, not just adverse effects. See Hiram Clark Civic Club, Inc. v. Lynn, 476 F.2d 421 (5th Cir. 1973).

Article VII permits the agency to exempt certain classes of projects from the EIS requirement. However, the agency must find on the basis of "substantial evidence" that the class of projects

EXHIBIT 5 521

exempted will not have a significant effect on the environment. To the extent that the Agency attempts to use this section, it will generate a great deal of litigation. In addition, based upon the definition of "project" in Article II it would seem that a finding that an EIS is not required is also a finding that the matter under consideration is not a "project" within the meaning of Article II and, therefore, agency approval is not required.

The environmental impact statement requirement is for all practical purposes identical to 42 U.S.C. §4332. That section has probably generated more litigation than any other single section in the United States Code. It has been in existence only a few short years and has generated 214 pages of small print annotations of cases in the United States Code through 1977. The section has been used time and again by certain groups to delay and stop projects. Injunctions have been routinely granted for failure to prepare an EIS or failure to prepare an adequate EIS. The Ninth Annual Report of the Council on Environmental Quality indicates that through December 31, 1977, 938 NEPA cases have been filed against the federal agencies surveyed. The Department of Transportation with 211 cases is the agency most frequently involved in litigation. Second is the Department of Defense. In 67% of the total cases citizen and environmental groups have been the plaintiff. Business and industry have been plaintiff in only 15% of such cases. The most common complaint in NEPA cases, comprising 51% of all allegations, is that agencies should have prepared an EIS but failed to do so. The

EXHIBIT 322

second most common allegation is that an EIS is inadequate. Such claims often allege failure to examine fully either the environmental impact of an action or available alternatives. In 35% of the cases NEPA-related injunctions delayed the federal action or project at issue, in some instances for periods of longer than one year. However, in spite of all of this litigation no federal action has been permanently enjoined. Attached hereto as Exhibit A is a table giving a breakdown of NEPA cases.

Delays caused by Article VII litigation will have a much greater impact than delays under NEPA. Under NEPA the project delayed is usually a federally funded project. Because of the resources of the federal government those projects are often immune to inflation. The Tahoe projects which will be delayed will either be private or public works projects of state, county and local governments. Because of inflation delay could result in their undoing. The Park Tahoe provides an excellent example. It was approved in 1973 to be built in two years at a cost of approximately $30 million. Litigation is the reason it is not yet completed, and litigation is the reason that its projected cost of completion is now $60 million rather than $30 million.

Article VII will significantly add to the cost of projects, including public works projects because of the cost of the EIS, the time consumed in preparing the EIS, and the environmental impact statement litigation, which will result in litigation both before and after approval of the project. In addition it will significantly add to the cost of running the agency.

EXHIBIT J

The purpose of an environmental impact statement is to foster excellent decisions and action. Such a statement is intended to help public officials make decisions based on an understanding of the environmental consequences. The federal experience has been one of delay, huge volumes of sometimes useless and oftentimes highly technical paperwork and delay. In 1977 the Council On Environmental Quality held hearings on how to make the NEPA process work better. Witnesses from business, labor, state and local governments, environmental groups and the public at large participated. Those diverse groups agreed that the process had become needlessly cumbersome. They agreed that "the length and detail of EISes made it extremely difficult to distinguish the important from the trivial." Environmental Quality, The Ninth Annual Report of the Council On Environmental Quality at 401 (December, 1978).

This less than satisfactory federal experience should not be placed in a Compact which cannot be changed except with the agreement of Nevada, California, Congress and the President. The TRPA is not the federal government. It should have the ability to develop its own requirements concerning the type of information it requires to make its decisions. It should have the ability to modify those requirements as it gains additional experience to insure that the process fosters good decisions, not unnecessary delays, costs and litigation. It, rather than the courts, should do those things necessary to accomplish the Compact's goals.

EXHIBIT 524

VII. GAMING

Because the gaming portion of the Compact is being dealt with in separate legislation (S.B. 323 as amended by the Senate Natural Resources Committee) and because the Senate Natural Resources Committee has already held hearings on that legislation, no analysis of the gaming provisions of the Compact is set forth here. If and when the Assembly Government Affairs Committee holds hearings on that separate legislation an analysis and statement will be presented.

Table 9-3

NEPA-Related Cases[1] Completed, December 31, 1977

Agency	Cases	Lack of EIS challenged	EIS challenged as inadequate	Dismissed by trial court	Dismissed where lack of EIS challenged	Dismissed where EIS challenged as inadequate	Injunctions where lack of EIS challenged	Injunctions where EIS challenged as inadequate	Total permanent injunctions
USDA	56	39 (70)	22 (39)	19 (34)	13 (23)	6 (11)	8 (14)	5 (9)	0 (0)
USDA	4	4 (100)	0 (0)	1 (25)	1 (25)	0 (0)	1 (25)	0 (0)	0 (0)
APHI	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FMHA	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)
FS	41	28 (68)	16 (39)	15 (37)	10 (24)	5 (12)	5 (12)	3 (7)	0 (0)
REA	4	2 (50)	2 (50)	1 (25)	0 (0)	1 (25)	1 (25)	0 (0)	0 (0)
SCS	5	3 (60)	4 (80)	1 (20)	1 (20)	0 (0)	1 (20)	2 (40)	0 (0)
CAB	1	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOC	9	6 (67)	4 (44)	3 (33)	1 (11)	1 (11)	0 (0)	0 (0)	0 (0)
DOC	3	2 (67)	2 (67)	1 (33)	0 (0)	1 (33)	0 (0)	0 (0)	0 (0)
EDA	4	3 (75)	1 (25)	2 (50)	1 (25)	0 (0)	0 (0)	0 (0)	0 (0)
MA	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NOAA	1	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
CPSC	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	1 (50)	0 (0)	0 (0)
CEQ	3	2 (67)	1 (33)	0 (0)	0 (0)	0 (0)	1 (33)	0 (0)	0 (0)
DOD	107	56 (52)	61 (57)	28 (26)	19 (18)	14 (13)	11 (10)	20 (19)	0 (0)
DOD	7	6 (85)	1 (14)	3 (43)	4 (57)	1 (14)	0 (0)	0 (0)	0 (0)
USAF	2	0 (0)	2 (100)	1 (50)	0 (0)	1 (50)	0 (0)	1 (50)	0 (0)
USA	8	4 (50)	5 (63)	1 (13)	0 (0)	1 (13)	0 (0)	0 (0)	0 (0)
COE	72	33 (46)	46 (64)	17 (24)	10 (14)	8 (11)	10 (14)	16 (22)	0 (0)
USN	18	13 (72)	7 (39)	6 (33)	5 (28)	3 (17)	1 (6)	3 (17)	0 (0)
DRBC	2	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOE	26	20 (77)	9 (35)	3 (12)	1 (4)	2 (8)	0 (0)	1 (4)	0 (0)
BPA	1	0 (0)	1 (100)	1 (100)	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)
ERDA	5	5 (100)	2 (40)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FEA	5	4 (80)	1 (20)	1 (20)	0 (0)	1 (20)	0 (0)	0 (0)	0 (0)
FERC[2]	14	10 (71)	5 (38)	1 (7)	1 (7)	0 (0)	0 (0)	1 (7)	0 (0)
SWPA	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
EPA[2]	40	25 (63)	17 (43)	12 (30)	7 (18)	3 (8)	6 (15)	4 (10)	0 (0)
FCC	3	1 (33)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FDIC	1	0 (0)	1 (100)	1 (100)	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)
FRS	1	0 (0)	1 (100)	1 (100)	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)
FTC	3	3 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
GSA	17	10 (59)	9 (53)	6 (35)	3 (18)	3 (18)	1 (6)	3 (18)	0 (0)
HEW	17	13 (76)	3 (19)	8 (47)	5 (29)	2 (13)	1 (6)	0 (0)	0 (0)
HEW	14	11 (79)	3 (21)	6 (43)	3 (21)	2 (14)	1 (7)	0 (0)	0 (0)
FDA	2	1 (50)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)
PHS	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)
HUD	98	73 (77)	17 (17)	37 (38)	25 (26)	9 (9)	13 (13)	2 (2)	0 (0)
HUD	96	71 (74)	16 (17)	36 (38)	24 (25)	9 (9)	12 (13)	2 (2)	0 (0)
FDAA	1	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	1 (100)	0 (0)	0 (0)
IHS	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)
DOI	83	45 (54)	35 (42)	14 (17)	9 (11)	8 (10)	7 (8)	6 (7)	0 (0)
DOI	28	16 (57)	11 (39)	7 (25)	4 (14)	3 (11)	4 (14)	2 (7)	0 (0)
BIA	4	2 (50)	2 (50)	1 (25)	1 (25)	0 (0)	0 (0)	0 (0)	0 (0)
BLM	16	10 (63)	9 (56)	5 (31)	4 (25)	4 (25)	1 (6)	0 (0)	0 (0)
BOR	4	4 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
BuRec	11	2 (18)	6 (55)	1 (9)	0 (0)	1 (9)	0 (0)	3 (27)	0 (0)
FWS	7	4 (57)	3 (43)	0 (0)	0 (0)	0 (0)	1 (14)	0 (0)	0 (0)
USGS	1	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NPS	12	7 (58)	3 (25)	0 (0)	0 (0)	0 (0)	1 (8)	1 (8)	0 (0)
ICC	12	9 (75)	4 (33)	2 (17)	2 (17)	0 (0)	1 (8)	2 (17)	0 (0)
DJUS	16	13 (81)	6 (38)	5 (31)	5 (31)	1 (6)	2 (13)	2 (13)	0 (0)
DJUS	8	5 (63)	4 (50)	1 (13)	1 (13)	0 (0)	0 (0)	1 (13)	0 (0)
BP	2	2 (100)	1 (50)	0 (0)	0 (0)	0 (0)	1 (50)	1 (50)	0 (0)
INS	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
LEAA	5	5 (100)	4 (50)	1 (13)	1 (13)	0 (0)	0 (0)	0 (0)	0 (0)
LAB	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SA	3	1 (33)	2 (67)	0 (0)	0 (0)	0 (0)	0 (0)	2 (67)	0 (0)
CPC	9	7 (78)	2 (22)	2 (22)	1 (11)	1 (11)	1 (11)	1 (11)	0 (0)
RC	25	6 (24)	14 (56)	8 (32)	1 (4)	4 (16)	1 (4)	1 (4)	0 (0)

EXHIBIT A

EXHIBIT 526

Table 9-3 (continued)

NEPA-Related Cases[1] Completed, December 31, 1977

Agency	Cases	Lack of EIS challenged	EIS challenged as inadequate	Dismissed by trial court	Dismissed where lack of EIS challenged	Dismissed where EIS challenged as inadequate	Injunctions where lack of EIS challenged	Injunctions where EIS challenged as inadequate	Total permanent injunctions
OMB	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (50)	0 (0)	0 (0)
PRES	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (100)	0 (0)	0 (0)
USPS	3	2 (67)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SEC	4	0 (0)	0 (0)	2 (50)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SBA	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SSA	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
STAT	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)
TVA	13	12 (92)	5 (38)	2 (15)	2 (15)	1 (8)	0 (0)	1 (8)	0 (0)
DOT	137	88 (64)	61 (45)	40 (29)	25 (18)	15 (11)	17 (12)	13 (9)	0 (0)
DOT	17	11 (65)	9 (53)	4 (24)	2 (12)	2 (12)	4 (24)	4 (24)	0 (0)
USCG	7	6 (86)	1 (14)	3 (43)	2 (29)	1 (14)	0 (0)	0 (0)	0 (0)
FAA	18	13 (72)	9 (50)	2 (11)	2 (11)	0 (0)	1 (6)	1 (6)	0 (0)
FHWA	95	58 (61)	42 (44)	31 (33)	19 (20)	12 (13)	12 (13)	8 (8)	0 (0)
TREAS	14	13 (93)	1 (7)	2 (14)	2 (14)	0 (0)	2 (14)	0 (0)	0 (0)
TREAS	10	9 (90)	1 (10)	1 (10)	1 (10)	0 (0)	2 (20)	0 (0)	0 (0)
CURR	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
CS	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
ORS	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)
WRC	2	1 (50)	1 (50)	2 (100)	1 (50)	1 (50)	0 (0)	1 (50)	0 (0)

[1] There were 584 cases; the cases column totals are higher because often more than one agency was named as a defendant. A number in parentheses is the percentage of the total number of cases in which the corresponding agency was sued.

[2] Includes cases brought against the FPC.

[3] 1976 figures.

Table 9-4

NEPA-Related Cases[1] Pending, December 31, 1977

Agency	Cases	Lack of EIS challenged	EIS challenged as inadequate	Dismissed by trial court	Dismissed where lack of EIS challenged	Dismissed where EIS challenged as inadequate	Injunctions where lack of EIS challenged	Injunctions where EIS challenged as inadequate
USDA	33	21 (64)	11 (33)	0 (0)	0 (0)	0 (0)	6 (18)	4 (12)
USDA	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
APHI	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FMHA	5	4 (80)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FS	16	11 (69)	5 (31)	0 (0)	0 (0)	0 (0)	4 (25)	1 (6)
REA	6	2 (33)	3 (50)	0 (0)	0 (0)	0 (0)	2 (33)	0 (0)
SCS	7	5 (71)	1 (14)	0 (0)	0 (0)	0 (0)	2 (29)	1 (14)
CAB	4	3 (75)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOC	12	5 (42)	6 (50)	0 (0)	0 (0)	0 (0)	0 (0)	3 (25)
EDA	5	4 (80)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NOAA	5	0 (0)	5 (100)	0 (0)	0 (0)	0 (0)	0 (0)	2 (40)
CPSC	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)
CEQ	2	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOD	68	33 (49)	36 (53)	7 (10)	6 (9)	0 (0)	9 (13)	15 (22)
DOD	3	2 (66)	0 (0)	1 (33)	1 (33)	0 (0)	0 (0)	0 (0)
USAF	8	5 (63)	3 (38)	0 (0)	0 (0)	0 (0)	2 (25)	1 (13)
USA	8	6 (75)	4 (50)	2 (25)	2 (25)	0 (0)	1 (13)	0 (0)
COE	48	20 (42)	28 (58)	4 (8)	3 (6)	0 (0)	6 (13)	14 (29)
USN	1	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOE	21	14 (67)	0 (0)	1 (5)	1 (5)	0 (0)	0 (0)	0 (0)
DOE	2	2(100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
BPA	5	3 (60)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
ERDA	4	3 (75)	0 (0)	1 (25)	1 (25)	0 (0)	0 (0)	0 (0)

EXHIBIT A → 527

Table 9-4 (continued)

NEPA-Related Cases[1] Pending, December 31, 1977

Agency	Cases	Lack of EIS challenged	EIS challenged as inadequate	Dismissed by trial court	Dismissed where lack of EIS challenged	Dismissed where EIS challenged as inadequate	Injunctions where lack of EIS challenged	Injunctions where EIS challenged as inadequate
FEA	5	4 (80)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FERC[2]	5	2 (40)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
EPA[3]	19	8 (42)	8 (42)	0 (0)	0 (0)	0 (0)	1 (5)	1 (5)
EXIM	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)
FCC	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)
GSA	6	4 (67)	2 (33)	1 (17)	1 (17)	0 (0)	1 (17)	2 (33)
HEW	12	10 (83)	3 (25)	2 (17)	2 (17)	0 (0)	1 (17)	0 (0)
HEW	9	7 (78)	2 (22)	1 (11)	1 (11)	0 (0)	1 (11)	0 (0)
FDA	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)
NIH	1	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
HUD	36	27 (75)	4 (11)	2 (6)	1 (3)	0 (0)	8 (22)	1 (3)
HUD	34	25 (74)	4 (12)	2 (6)	1 (3)	0 (0)	7 (21)	1 (3)
ILSR	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (50)	0 (0)
DOI	79	51 (65)	22 (28)	3 (4)	2 (3)	2 (3)	5 (6)	8 (10)
DOI	23	16 (70)	3 (13)	0 (0)	0 (0)	0 (0)	0 (0)	1 (4)
BIA	8	7 (88)	1 (13)	0 (0)	0 (0)	0 (0)	0 (0)	1 (13)
BLM	15	8 (53)	6 (40)	1 (7)	1 (7)	1 (7)	0 (0)	2 (13)
BuRec	17	6 (35)	10 (59)	1 (6)	0 (0)	1 (6)	1 (6)	3 (18)
FWS	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
USGS	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NPS	13	11 (85)	2 (15)	1 (8)	1 (8)	0 (0)	4 (31)	1 (8)
ICC	5	3 (60)	3 (60)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DJUS	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NCPC	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (100)	0 (0)
NRC	24	5 (21)	12 (50)	1 (4)	0 (0)	1 (4)	0 (0)	3 (13)
OMB	3	2 (67)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
PRES	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
USPS	11	0 (0)	1 (9)	0 (0)	0 (0)	0 (0)	0 (0)	1 (9)
SEC	2	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
STAT	2	1 (50)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)
TVA	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (50)	0 (0)
DOT	74	33 (45)	39 (53)	5 (7)	2 (3)	5 (7)	10 (14)	7 (9)
DOT	14	9 (64)	4 (29)	1 (7)	0 (0)	1 (7)	1 (7)	1 (7)
USCG	8	3 (38)	5 (62)	0 (0)	0 (0)	0 (0)	1 (13)	0 (0)
FAA	16	5 (31)	8 (50)	1 (6)	1 (6)	0 (0)	0 (0)	0 (0)
FHWA	33	16 (48)	20 (61)	3 (9)	1 (3)	2 (6)	8 (24)	6 (18)
UMTA	3	0 (0)	2 (66)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
TREAS	3	2 (67)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
CS	1	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
ORS	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
WRC	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)

[1] There were 354 cases; the cases column totals are higher because often more than one agency was named as a defendant. A number in parentheses is the percentage of the total number of cases in which the corresponding agency was sued.

[2] Includes cases brought against the FPC.

[3] 1976 figures.

Table 9-3

NEPA-Related Cases[1] Completed, December 31, 1977

Agency	Cases	Lack of EIS challenged	EIS challenged as inadequate	Dismissed by trial court	Dismissed where lack of EIS challenged	Dismissed where EIS challenged as inadequate	Injunctions where lack of EIS challenged	Injunctions where EIS challenged as inadequate	Total permanent injunctions
USDA	56	39 (70)	22 (39)	19 (34)	13 (23)	6 (11)	8 (14)	5 (9)	0 (0)
USDA	4	4 (100)	0 (0)	1 (25)	1 (25)	0 (0)	1 (25)	0 (0)	0 (0)
APHI	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FMHA	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)
FS	41	28 (68)	16 (39)	15 (37)	10 (24)	5 (12)	5 (12)	3 (7)	0 (0)
REA	4	2 (50)	2 (50)	1 (25)	0 (0)	1 (25)	1 (25)	0 (0)	0 (0)
SCS	5	3 (60)	4 (80)	1 (20)	1 (20)	0 (0)	1 (20)	2 (40)	0 (0)
CAB	1	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOC	9	6 (67)	4 (44)	3 (33)	1 (11)	1 (11)	0 (0)	0 (0)	0 (0)
DOC	3	2 (67)	2 (67)	1 (33)	0 (0)	1 (33)	0 (0)	0 (0)	0 (0)
EDA	4	3 (75)	1 (25)	2 (50)	1 (25)	0 (0)	0 (0)	0 (0)	0 (0)
MA	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NOAA	1	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
CPSC	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	1 (50)	0 (0)	0 (0)
CEQ	3	2 (67)	1 (33)	0 (0)	0 (0)	0 (0)	1 (33)	0 (0)	0 (0)
DOD	107	56 (52)	61 (57)	28 (26)	19 (18)	14 (13)	11 (10)	20 (19)	0 (0)
DOD	7	6 (85)	1 (14)	3 (43)	4 (57)	1 (14)	0 (0)	0 (0)	0 (0)
USAF	2	0 (0)	2 (100)	1 (50)	0 (0)	1 (50)	0 (0)	1 (50)	0 (0)
USA	8	4 (50)	5 (63)	1 (13)	0 (0)	1 (13)	0 (0)	0 (0)	0 (0)
COE	72	33 (46)	46 (64)	17 (24)	10 (14)	8 (11)	10 (14)	16 (22)	0 (0)
USN	18	13 (72)	7 (39)	6 (33)	5 (28)	3 (17)	1 (6)	3 (17)	0 (0)
DRBC	2	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOE	26	20 (77)	9 (35)	3 (12)	1 (4)	2 (8)	0 (0)	1 (4)	0 (0)
BPA	1	0 (0)	1 (100)	1 (100)	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)
ERDA	5	5 (100)	2 (40)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FEA	5	4 (80)	1 (20)	1 (20)	0 (0)	1 (20)	0 (0)	0 (0)	0 (0)
FERC[2]	14	10 (71)	5 (38)	1 (7)	1 (7)	0 (0)	0 (0)	1 (7)	0 (0)
SWPA	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
EPA[3]	40	25 (63)	17 (43)	12 (30)	7 (18)	3 (8)	6 (15)	4 (10)	0 (0)
FCC	3	1 (33)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FDIC	1	0 (0)	1 (100)	1 (100)	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)
FRS	1	0 (0)	1 (100)	1 (100)	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)
FTC	3	3 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
GSA	17	10 (59)	9 (53)	6 (35)	3 (18)	3 (18)	1 (6)	3 (18)	0 (0)
HEW	17	13 (76)	3 (19)	8 (47)	5 (29)	2 (13)	1 (6)	0 (0)	0 (0)
HEW	14	11 (79)	3 (21)	6 (43)	3 (21)	2 (14)	1 (7)	0 (0)	0 (0)
FDA	2	1 (50)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)
PHS	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)
HUD	98	73 (77)	17 (17)	37 (38)	25 (26)	9 (9)	13 (13)	2 (2)	0 (0)
HUD	96	71 (74)	16 (17)	36 (38)	24 (25)	9 (9)	12 (13)	2 (2)	0 (0)
FDAA	1	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	1 (100)	0 (0)	0 (0)
IHS	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)
DOI	83	45 (54)	35 (42)	14 (17)	9 (11)	8 (10)	7 (8)	6 (7)	0 (0)
DOI	28	16 (57)	11 (39)	7 (25)	4 (14)	3 (11)	4 (14)	2 (7)	0 (0)
BIA	4	2 (50)	2 (50)	1 (25)	1 (25)	0 (0)	0 (0)	0 (0)	0 (0)
BLM	16	10 (63)	9 (56)	5 (31)	4 (25)	4 (25)	1 (6)	0 (0)	0 (0)
BOR	4	4 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
BuRec	11	2 (18)	6 (55)	1 (9)	0 (0)	1 (9)	0 (0)	3 (27)	0 (0)
FWS	7	4 (57)	3 (43)	0 (0)	0 (0)	0 (0)	1 (14)	0 (0)	0 (0)
USGS	1	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NPS	12	7 (58)	3 (25)	0 (0)	0 (0)	0 (0)	1 (8)	1 (8)	0 (0)
ICC	12	9 (75)	4 (33)	2 (17)	2 (17)	0 (0)	1 (8)	2 (17)	0 (0)
DJUS	16	13 (81)	6 (38)	5 (31)	5 (31)	1 (6)	2 (13)	2 (13)	0 (0)
DJUS	8	5 (63)	4 (50)	1 (13)	1 (13)	0 (0)	0 (0)	1 (13)	0 (0)
BP	2	2 (100)	1 (50)	0 (0)	0 (0)	0 (0)	1 (50)	1 (50)	0 (0)
INS	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
LEAA	5	5 (100)	4 (50)	1 (13)	1 (13)	0 (0)	0 (0)	0 (0)	0 (0)
DLAB	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
[illegible]ASA	3	1 (33)	2 (67)	0 (0)	0 (0)	0 (0)	0 (0)	2 (67)	0 (0)
[illegible]CPC	9	7 (78)	2 (22)	2 (22)	1 (11)	1 (11)	1 (11)	1 (11)	0 (0)
[illegible]RC	25	6 (24)	14 (56)	8 (32)	1 (4)	4 (16)	1 (4)	1 (4)	0 (0)

Table 9-3 (continued)

NEPA-Related Cases[1] Completed, December 31, 1977

Agency	Cases	Lack of EIS challenged	EIS challenged as inadequate	Dismissed by trial court	Dismissed where lack of EIS challenged	Dismissed where EIS challenged as inadequate	Injunctions where lack of EIS challenged	Injunctions where EIS challenged as inadequate	Total permanent injunctions
OMB	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (50)	0 (0)	0 (0)
PRES	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (100)	0 (0)	0 (0)
USPS	3	2 (67)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SEC	4	0 (0)	0 (0)	2 (50)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SBA	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SSA	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
STAT	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)
TVA	13	12 (92)	5 (38)	2 (15)	2 (15)	1 (8)	0 (0)	1 (8)	0 (0)
DOT	137	88 (64)	61 (45)	40 (29)	25 (18)	15 (11)	17 (12)	13 (9)	0 (0)
DOT	17	11 (65)	9 (53)	4 (24)	2 (12)	2 (12)	4 (24)	4 (24)	0 (0)
USCG	7	6 (86)	1 (14)	3 (43)	2 (29)	1 (14)	0 (0)	0 (0)	0 (0)
FAA	18	13 (72)	9 (50)	2 (11)	2 (11)	0 (0)	1 (6)	1 (6)	0 (0)
FHWA	95	58 (61)	42 (44)	31 (33)	19 (20)	12 (13)	12 (13)	8 (8)	0 (0)
TREAS	14	13 (93)	1 (7)	2 (14)	2 (14)	0 (0)	2 (14)	0 (0)	0 (0)
TREAS	10	9 (90)	1 (10)	1 (10)	1 (10)	0 (0)	2 (20)	0 (0)	0 (0)
CURR	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
CS	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
ORS	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)
WRC	2	1 (50)	1 (50)	2 (100)	1 (50)	1 (50)	0 (0)	1 (50)	0 (0)

[1] There were 584 cases; the cases column totals are higher because often more than one agency was named as a defendant. A number in parentheses is the percentage of the total number of cases in which the corresponding agency was sued.

[2] Includes cases brought against the FPC.

[3] 1976 figures.

Table 9-4

NEPA-Related Cases[1] Pending, December 31, 1977

Agency	Cases	Lack of EIS challenged	EIS challenged as inadequate	Dismissed by trial court	Dismissed where lack of EIS challenged	Dismissed where EIS challenged as inadequate	Injunctions where lack of EIS challenged	Injunctions where EIS challenged as inadequate
USDA	33	21 (64)	11 (33)	0 (0)	0 (0)	0 (0)	6 (18)	4 (12)
USDA	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
APHI	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FMHA	5	4 (80)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FS	16	11 (69)	5 (31)	0 (0)	0 (0)	0 (0)	4 (25)	1 (6)
REA	6	2 (33)	3 (50)	0 (0)	0 (0)	0 (0)	2 (33)	0 (0)
SCS	7	5 (71)	1 (14)	0 (0)	0 (0)	0 (0)	2 (29)	1 (14)
CAB	4	3 (75)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOC	12	5 (42)	6 (50)	0 (0)	0 (0)	0 (0)	0 (0)	3 (25)
EDA	5	4 (80)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NOAA	5	0 (0)	5 (100)	0 (0)	0 (0)	0 (0)	0 (0)	2 (40)
CPSC	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)
CEQ	2	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOD	68	33 (49)	36 (53)	7 (10)	6 (9)	0 (0)	9 (13)	15 (22)
DOD	3	2 (66)	0 (0)	1 (33)	1 (33)	0 (0)	0 (0)	0 (0)
USAF	8	5 (63)	3 (38)	0 (0)	0 (0)	0 (0)	2 (25)	1 (13)
USA	8	6 (75)	4 (50)	2 (25)	2 (25)	0 (0)	1 (13)	0 (0)
COE	48	20 (42)	28 (58)	4 (8)	3 (6)	0 (0)	6 (13)	14 (29)
USN	1	0 (0)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DOE	21	14 (67)	0 (0)	1 (5)	1 (5)	0 (0)	0 (0)	0 (0)
DOE	2	2(100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
BPA	5	3 (60)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
ERDA	4	3 (75)	0 (0)	1 (25)	1 (25)	0 (0)	0 (0)	0 (0)

Table 9-4 (continued)

NEPA-Related Cases[1] Pending, December 31, 1977

Agency	Cases	Lack of EIS challenged	EIS challenged as inadequate	Dismissed by trial court	Dismissed where lack of EIS challenged	Dismissed where EIS challenged as inadequate	Injunctions where lack of EIS challenged	Injunctions where EIS challenged as inadequate
FEA	5	4 (80)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
FERC[2]	5	2 (40)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
EPA[3]	19	8 (42)	8 (42)	0 (0)	0 (0)	0 (0)	1 (5)	1 (5)
EXIM	1	1 (100)	0 (0)	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)
FCC	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)
GSA	6	4 (67)	2 (33)	1 (17)	1 (17)	0 (0)	1 (17)	2 (33)
HEW	12	10 (83)	3 (25)	2 (17)	2 (17)	0 (0)	1 (17)	0 (0)
HEW	9	7 (78)	2 (22)	1 (11)	1 (11)	0 (0)	1 (11)	0 (0)
FDA	2	2 (100)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)
NIH	1	1 (100)	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
HUD	36	27 (75)	4 (11)	2 (6)	1 (3)	0 (0)	8 (22)	1 (3)
HUD	34	25 (74)	4 (12)	2 (6)	1 (3)	0 (0)	7 (21)	1 (3)
ILSR	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (50)	0 (0)
DOI	79	51 (65)	22 (28)	3 (4)	2 (3)	2 (3)	5 (6)	8 (10)
DOI	23	16 (70)	3 (13)	0 (0)	0 (0)	0 (0)	0 (0)	1 (4)
BIA	8	7 (88)	1 (13)	0 (0)	0 (0)	0 (0)	0 (0)	1 (13)
BLM	15	8 (53)	6 (40)	1 (7)	1 (7)	1 (7)	0 (0)	2 (13)
BuRec	17	6 (35)	10 (59)	1 (6)	0 (0)	1 (6)	1 (6)	3 (18)
FWS	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
USGS	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NPS	13	11 (85)	2 (15)	1 (8)	1 (8)	0 (0)	4 (31)	1 (8)
ICC	5	3 (60)	3 (60)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
DJUS	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
NCPC	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (100)	0 (0)
NRC	24	5 (21)	12 (50)	1 (4)	0 (0)	1 (4)	0 (0)	3 (13)
OMB	3	2 (67)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
PRES	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
USPS	11	0 (0)	1 (9)	0 (0)	0 (0)	0 (0)	0 (0)	1 (9)
SEC	2	1 (50)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
STAT	2	1 (50)	0 (0)	1 (50)	1 (50)	0 (0)	0 (0)	0 (0)
TVA	2	2 (100)	0 (0)	0 (0)	0 (0)	0 (0)	1 (50)	0 (0)
DOT	74	33 (45)	39 (53)	5 (7)	2 (3)	5 (7)	10 (14)	7 (9)
DOT	14	9 (64)	4 (29)	1 (7)	0 (0)	1 (7)	1 (7)	1 (7)
USCG	8	3 (38)	5 (62)	0 (0)	0 (0)	0 (0)	1 (13)	0 (0)
FAA	16	5 (31)	8 (50)	1 (6)	1 (6)	0 (0)	0 (0)	0 (0)
FHWA	33	16 (48)	20 (61)	3 (9)	1 (3)	2 (6)	8 (24)	6 (18)
UMTA	3	0 (0)	2 (66)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
TREAS	3	2 (67)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
CS	1	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
ORS	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
WRC	1	1 (100)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)

[1] There were 354 cases; the cases column totals are higher because often more than one agency was named as a defendant. A number in parentheses is the percentage of the total number of cases in which the corresponding agency was sued.

[2] Includes cases brought against the FPC.

[3] 1976 figures.

22

Law Offices Of
Sheerin, O'Reilly & Walsh
Gary A. Sheerin
James M. O'Reilly
Patrick B. Walsh
John W. Aebi

102 South Curry Street
Post Office Box 606
Carson City, Nevada 89701
702-882-1386

1466 Main Street
Post Office Box 1327
Gardnerville, Nevada 89410
702-782-3647

March 6, 1979

REPLY TO: Carson City

The Honorable Joe Dini
Chairman, TRPA Ad Hoc Committee
Nevada State Legislature
Capitol Complex
Carson City, Nevada 89710

Senator James Gibson
Assemblyman Paul May
Senator Joe Neal
Assemblyman Don Mello
Senator Thomas Wilson
Assemblyman Robert Weise
Senator Lawrence Jacobsen
Assemblyman Sue Wagner
Senator Keith Ashworth
Assemblyman Steve Coulter
Mr. Ray Knisley
Members, TRPA Ad Hoc Committee
Nevada State Legislature
Capitol Complex
Carson City, Nevada 89710

Dear Joe, Jim, Paul, Joe, Don, Spike, Bob, Jake, Sue, Keith, Steve and Ray:

I am not aware of any public hearings on the proposed TRPA Compact changes considered by your committee with California legislators on March 5, 1979. I would like to offer the following comments and requests for amendments on behalf of Harvey's Wagon Wheel.

(1) ARTICLE I: The proposed declaration omits the words, "of resource conservation and orderly development." Omitting this language will have a chilling effect on future development of the lake. The Ninth Circuit Court of Appeals relied on this language on page 9, line 4, of the decision I recently delivered to you. A policy of no development would be unfair to land owners. California Assemblyman Calvo made reference to "restricted growth." Consequently, we would request the present language remain in the declaration and the words, "with restricted growth" be added after the phrase, "orderly development."

EXHIBIT

532

(2) ARTICLE III: We do not feel the present make-up of the board consisting of three local and two state members should be changed. However, if it is changed to the proposed three local and four state members, the Nevada Governor should not make two of the appointments. The seventh member should be chosen by the other six members and there should be no residency requirement of within or outside the basin. If the six cannot agree, the Governor would appoint with concurrence of the legislative commission. This is similar to the California make-up and will produce a more fair balance on the board.

(3) ARTICLE V: Transportation plan. California and CTRPA continue to oppose the adequate completion of the loop road on the California side. Consequently, the regulations of CTRPA should not be put in this Compact unless the Compact also spells out that the loop road is to be part of the transportation plan, that California will have twelve months to complete their half and by defining the center line of the loop road.

(4) ARTICLE V: Page 14 provides, "Expansion of public services and facilities, unless essential to meet the needs of present inhabitants, shall not precede the development or revision of the land-use plan pursuant to paragraph (c) of Article VI." This language is taken (not verbatim) from page 19 of California SB82. This is simply another way to prevent the building of presently approved projects such as Harvey's master plan. There should be language added that public services and facilities may be added to meet the needs of present inhabitants "and the needs of presently approved projects."

(5) ARTICLE VI: Gaming. (a) Page 14 grandfathers in a gaming establishment "whose construction was approved by the agency before that date (January 1, 1979)." Harvey's masterplan and other projects were not "approved by the agency", but rather were approved by default because the agency could not agree to deny them. To help prevent future litigation, language should be added that construction "approved by the agency or approved by a default of the agency to prevent construction," should be included.

done in SB 323 amendments

(b) Page 18, paragraph (e) also provides that if a gaming building is destroyed it can be rebuilt as it existed on July 1, 1978. This could be interpreted that a building approved, but not built, before July 1, 1978, that was built sometime thereafter and then destroyed, could not be rebuilt. Language should be added to all reconstruction of a damaged or destroyed building that was approved July 1, 1978, even if not yet built.

done in SB 323 amendments

Harvey's also feels that language should be added here that if a gaming building exceeds its natural life, it would also be rebuilt to its same size.

(c) Page 18 provides for controls of gaming inside an existing or proposed building by the Nevada Environmental Commission. Harvey's does not feel this kind of governmental interference is warranted. If it is to come into existence, it would not be cast in the concrete of this Compact. We would request that this language be removed from the Compact. If you feel the control must exist, we would request the control be placed in the Nevada Revised Statutes and not in the Compact.

(d) California persists in bringing suits on the theory that gaming is a federal common law nuisance. To prevent further litigation, the Compact should be amended by adding language that the existing and approved gaming does not constitute an interstate nuisance.

(6) ARTICLE VI: The proposed civil fine for wilful violation of the Compact is $100,000.00. This is an unreasonable, excessive sum and is aimed at gaming. Such a large fine would probably not be imposed against an individual, but would probably be used against a gaming establishment. Further, venue should be clarified that an alleged breach would be tried in the county where the alleged breach occurred.

Thank you for your consideration of the above amendments.

Sincerely,

GARY A. SHEERIN

GAS/bb
cc: Frank Daykin
Fred Welden
Richard Kudrna
Peter Laxalt

EXHIBIT —

Law Offices Of
Sheerin, O'Reilly & Walsh
Gary A. Sheerin
James M. O'Reilly
Patrick B. Walsh
John M. Achi

102 South Curry Street
Post Office Box 606
Carson City, Nevada 89701
702-882-1386

1466 Main Street
Post Office Box 1327
Gardnerville, Nevada 89410
702-782-3647

REPLY TO:

Carson City

February 21, 1979

The Honorable Joe Dini
Chairman, TRPA Ad Hoc Committee
Nevada State Legislature
Capitol Complex
Carson City, Nevada 89710

Senator James Gibson
Assemblyman Paul May
Senator Joe Neal
Assemblyman Don Mello
Senator Thomas Wilson
Assemblyman Robert Weise
Senator Lawrence Jacobsen
Assemblyman Sue Wagner
Senator Keith Ashworth
Assemblyman Steve Coulter
Assemblyman Ray Knisley
Members, TRPA Ad Hoc Committee
Nevada State Legislature
Capitol Complex
Carson City, Nevada 89710

Dear Joe, Jim, Paul, Joe, Don, Spike, Bob, Jake, Sue, Keith, Steve and Ray:

The subject of Harvey's Master Plan has come up in your recent TRPA discussions. I represent Harvey's and want you to know the following facts concerning this Master Plan. Harvey's does not expect any special consideration to help its position with this plan. However, we do not want any legislative action that would damage any vested rights presently held by Harvey's.

1. On June 20, 1973, Douglas County issued its Special Use Permit for the Master Plan of Harvey's. A copy of the minutes is enclosed.

2. This Special Use Permit was substantially the same as the permits issued Parks Casino, (April 20, 1973), Jennings Tahoe Palace, (May 7, 1974), and Hotel Oliver, (May 7, 1973). Copies of these

EXHIBIT J

three Special Use Permits are also enclosed, and as you can see, they are substantially the same as the permit for Harvey's.

3. On July 18, 1973, the NTRPA acted on and approved the Harvey's Master Plan. A copy of a summary of the motions is enclosed.

4. On October 31, 1977, the United States District Court for the District of Nevada, entered its Findings of Fact, Conclusions of Law and Final Judgment in action R-77-0158. A copy of that document is enclosed. Judge Bruce Thompson concluded that Harvey's has a valid administration permit for its Master Plan, (Page 6, Paragraph 2), that the Master Plan conformed to all state, local and TRPA ordinances, (Page 7, Paragraph 6), and that Harvey's has a vested right to complete construction of its project, (Page 7, Paragraph 7, emphasis added).

5. Last Friday, the Ninth Circuit Court of Appeals affirmed the decision of Judge Thompson. I will send you a copy of that document in the near future.

In particular, we are concerned with the definition of specifications as used in California SB82, Page 32, Line 38, and following. This definition must be changed in light of the permits issued to date and the exisiting court decisions.

When you consider TRPA Compact amendments, I hope you will keep these vested rights of Harvey's in mind.

Sincerely,

GARY A. SHEERIN

GAS/bb
enclosures
cc: Richard Kudrna, Harvey's
Peter Laxalt, Esq.
Jim Jordan, TRPA
Fred Weldon, Legislative Counsel Bureau

EXHIBIT

Mr. Rankin read the Planning Commission recommendations to the Commissioners from the Minutes of the May 26, 1973 meeting. The recommendation was for approval of the Special Use Permit.

The following is the recommendation the Planning Commission stated must be met prior to the issuance of any other permits from Douglas County.

1. That the directives pointed out in the Environmental Information Report (and any addendums made a part thereof) shall be met.

2. That an Environmental Information Report in final form shall be supplied to the County for review and approval as outlined by the TRPA.

3. That rights of way and improvements therein shall be constructed prior to the issuance of a certificate of occupancy. Such roads and rights of way described shall be sufficient to meet the traffic and transportation requirements as depicted in the Environmental Information Report dated April 26, 1973 and updated May 25, 1973.

4. That the parking lot shall be redesigned taking into consideration existing topography, tree cover and vegetation and landscaped areas provided throughout in compliance with the objectives of Douglas County and the TRPA regulations and ordinances to the satisfaction of the Public Works Director.

5. That the building exterior, color and type, be precisely determined.

6. That signing is not made a part of this Special Use Permit but will be considered independently at a later date upon application for same.

Mr. Dennis Small, representing Harvey's Resort Hotel and Ian MacKinley, architect and Mickey Laxalt , attorney for Harvey's were present at this meeting.

Mr. Meneley asked when this project was supposed to be started?

Mr. Small stated they planned on doing some of the work this fall. In the Environmental Report we have proposed a storm water drainage treatment plant and we would like to start the excavation for that before winter.

Mr. Meneley asked if this was in conjunction with the other Clubs?

Mr. Small said this is not firmly tied down yet, and we would like to be prepared to do this on our own in case they decided to do something else, however we are prepared to build this storm water drainage treatment plant in conjunction with the other clubs if they sould decide to go ahead with it.

Mr. Small stated this application for a Special Use Permit is the result of 23 months of study and is the best of six plans that we have reviewed. It will be approximately two years before the first phase of this project is completed and 10 years before the whole project is completed.

Roy Godecke made a motion to approve this Special Use Permit for Harvey's Resort Hotel subject to the restrictions imposed by the Planning Commission as outlined in their minutes and with one other restriction--there will be no building permit issued until the transportation problem plan is agreed to by the County Commissioners. Charles Meneley seconded the motion and motion unanimously carried.

EXHIBIT D

IN THE MATTER OF
HARVEY'S
SPECIAL USE PERMIT - PUBLIC HEARING

Mr. Rankin read the Planning Commission recommendations to the Commissioners from the Minutes of the May 26, 1973 meeting. The recommendation was for approval of the Special Use Permit.

The following is the recommendation the Planning Commission stated must be met prior to the issuance of any other permits from Douglas County.

1. That the directives pointed out in the Environmental Information Report (and any addendums made a part thereof) shall be met.

2. That an Environmental Information Report in final form shall be supplied to the County for review and approval as outlined by the TRPA.

3. That rights of way and improvements therein shall be constructed prior to the issuance of a certificate of occupancy. Such roads and rights of way described shall be sufficient to meet the traffic and transportation requirements as depicted in the Environmental Information Report dated April 26, 1973 and updated May 25, 1973.

4. That the parking lot shall be redesigned taking into consideration existing topography, tree cover and vegetation and landscaped areas provided throughout in compliance with the objectives of Douglas County and the TRPA regulations and ordinances to the satisfaction of the Public Works Director.

5. That the building exterior, color and type, be precisely determined.

6. That signing is not made a part of this Special Use Permit but will be considered independently at a later date upon application for same.

Mr. Dennis Small, representing Harvey's Resort Hotel and Ian MacKinley, architect and Mickey Laxalt , attorney for Harvey's were present at this meeting.

Mr. Meneley asked when this project was supposed to be started?

Mr. Small stated they planned on doing some of the work this fall. In the Environmental Report we have proposed a storm water drainage treatment plant and we would like to start the excavation for that before winter.

Mr. Meneley asked if this was in conjunction with the other Clubs?

Mr. Small said this is not firmly tied down yet, and we would like to be prepared to do this on our own in case they decided to do something else, however we are prepared to build this storm water drainage treatment plant in conjunction with the other clubs if they sould decide to go ahead with it.

Mr. Small stated this application for a Special Use Permit is the result of 23 months of study and is the best of six plans that we have reviewed. It will be approximately two years before the first phase of this project is completed and 10 years before the whole project is completed.

Roy Godecke made a motion to approve this Special Use Permit for Harvey's Resort Hotel subject to the restrictions imposed by the Planning Commission as outlined in their minutes and with one other restriction--there will be no building permit issued until the transportation problem plan is agreed to by the County Commissioners. Charles Meneley seconded the motion and motion unanimously carried.

EXHIBIT 538

EXHIBIT "A"

IN THE MATTER OF PARKS CASINO-HOTEL SPECIAL USE PERMIT — Douglas County Commissioner April 20, 1973

RECOMMENDATION

It is recommended, therefore, that this Special Use Permit be granted with the following conditions which shall be met prior to the issuance of any other permits by Douglas County:

1. That the directives pointed out in the Environmental Information Report dated March 30, 1973, (and any addendums made a part thereof) shall be met.

2. That an Environmental Information Report in final form shall be supplied to the County for review and approval as outlined by the Tahoe Regional Planning Agency.

3. That rights-of-way and improvements therein shall be constructed prior to the issuance of a certificate of occupancy. Such roads and rights-of-way described shall be sufficient to meet the traffic and transportation requirements as depicted in the Environmental Information Report, dated March 30, 1973, Page 64, under Paragraph entitled "Transportation and Circulation Impact".

4. That the parking lot shall be redesigned taking into consideration existing topography, tree cover and vegetation and landscaped areas provided throughout in compliance with the objectives of Douglas County and the TRPA regulations and ordinances to the satisfaction of the Public Works Director.

5. That the building exterior, color and type, be precisely determined.

6. That signing is not made a part of this Special Use Permit but will be considered independently at a later date upon application for same.

The visual impacts of this application have been reviewed and the height indicated on the plans is in keeping with the immediate area and within the stated objectives of the TRPA Plan in that it enables the applicant to meet the required 50% open space criteria which is allowed under the Tourist Commercial Classification.

This recommendation is also to include stated conditions which may be imposed by the Public Works Department or legal counsel.

EXHIBIT "B"

IN THE MATTER OF JENNINGS TAHOE PALACE SPECIAL USE PERMIT — Douglas County Commissioner May 7, 1973

RECOMMENDATIONS

That no permits be issued by Douglas County until all the listed conditions are met.

1. That the directives pointed out in the Environmental Information Report dated April 1973 shall be met.

2. That an Environmental Report in final form shall be supplied to the County for review and approval as outlined by the Tahoe Regional Planning Agency.

2. That the rights-of-way and improvements therein shall be constructed prior to the issuance of a certificate of occupancy. Such roads and rights-of-way described shall be sufficient to meet the traffic and transportation requirements as depicted in the Environmental Information Report dated April 1973, Page 99, under paragraphs entitled Transportation and Traffic Impact. Calculations therein indicate a 25% increase in traffic should this hotel casino be constructed.

4. That the Landscaping shall be redesigned taking into consideration existing topography, tree cover and compliance with the objectives of Douglas County and the TRPA regulations and ordinances to the satisfaction of the Public Works Director.

5. That the building exterior, color and type, be precisely determined.

6. That signing is not made a part of this Special Use Permit but will be considered independently at a later date upon application for same.

7. Any variation or change in the plan or report deemed substantial in nature would require this application to be reheard.

The application of Ted Jennings for the construction of a six hundred (600) room hotel at the intersection of Highway 50 and Kahle Boulevard in the Stateline area of Douglas County have been presented to the Board of County Commissioners of Douglas County and that body having considered the environmental and community impact effects upon the development of the Lake Tahoe Basin, said Commissioners do hereby find:

1. That the proposed project does not endanger the natural beauty and economic productivity of the Lake Tahoe Basin.

2. That it preserves the scenic beauty of the area and enhances the recreation opportunities of the region and does constitute an orderly development of the area.

3. That the said project is to be constructed on land which was zoned for the use and businesses to be conducted thereon, which was so designated in the finally adopted Master Plan of February 5, 1968.

4. That the project does conform to all of the ordinances of Douglas County and the Tahoe Regional Planning Agency, save and except as to the limitation on height contained in Article 7.13 of the Land Use Ordinance of the Tahoe Regional Planning Agency, adopted February 10, 1972.

5. That pursuant to article 8.33 of the said Land Use Ordinance, it is recommended that the permit issuing authority issue a permit for the project for the heights as shown in the plans submitted because the said Board of County Commissioners has found that the maintenance and operation in his particular property is not detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the project and that the proposed project is not detrimental to or injurious to property or improvements in the neighborhood or to the general welfare of the region and will not cause any substantial, harmful environmental consequences on the land involved or on other lands or waters.

6. That it appears that the project will be of benefit to the general welfare of the region and will create substantial environmental benefits on the land involved and to other lands in the area.

The said Board of County Commissioners of Douglas County does also find that in connection with the greater height than is set out in Article 7.13, that: (1) provision has been made for protection from fire hazards and there is no need for protection against aviation accidents; (2) consideration has been given to the protection of view and to the character of the neighborhood; (3) proper provision has been made for light and air; and (4) such greater height will better promote protection of the environment of the area.

EXHIBIT B

EXHIBIT "C"

IN THE MATTER OF HOTEL OLIVER — SPECIAL USE PERMIT — Douglas County Commissioners May 7, 1973

RECOMMENDATIONS

It is recommended that this Special Use Permit be granted with the following conditions which shall be met prior to the issuance of any permits by Douglas County.

1. That the directives pointed out in the Environmental Information Report shall be met.

2. That an Environmental Information Report in final form shall be supplied to the County for review and approval as outlined by the Tahoe Regional Planning Agency.

3. That the rights-of-way and improvements therein shall be constructed prior to the issuance of a certification of occupancy. Such roads and rights-of-way described shall be sufficient to meet the traffic and transportation requirements as depicted in the Environmental Information Report, "Transportation and Circulation Impact".

TRAFFIC SOLVED BEFORE A BUILDING PERMIT.

4. That the parking lot shall be redesigned taking into consideration existing topography, tree cover and vegetation and landscaped areas provided throughout in compliance with the objectives of Douglas County and the TRPA regulations and Ordinances to the satisfaction of the Public Works Director.

5. That the building exterior, color and type, be precisely determined.

6. That signing is not made a part of this Special Use Permit but will be considered independently at a later date upon application for same.

STATE OF NEVADA
NEVADA TAHOE REGIONAL PLANNING AGENCY
NYE BUILDING, ROOM 216
201 S. FALL STREET
CARSON CITY, NEVADA 89701

MIKE O'CALLAGHAN
GOVERNOR

(702) 882-7482

EXHIBIT

SUMMARY MINUTES OF MEETING JULY 18, 1973
9:00 a.m. - Room 214, Legislative Building, Carson City

I Call to order and determination of quorum:

Roll Call: NTRPA members present: Elmo J. DeRicco
Walter MacKenzie
John Meder
Chas. Meneley
Ray Knisley

APC Members present: Norman S. Hall, Executive Officer

Richard Hanna, Legal Counsel

II Action on minutes of meeting June 14, 1973:

MOTION MADE BY Mr. DeRicco that minutes of meeting June 14, 1973 be approved. Second by Chas. Meneley. Motion carried.

Ayes: Meder, MacKenzie, Meneley, DeRicco, Knisley
Noes: None
Abstain: None
Absent: None

III HARVEY'S RESORT HOTEL

Dennis Small, Executive Assistant, Harvey's Resort Hotel, introduced Bill Ledbetter, Vice President and General Manager of Harvey's; Peter Laxalt, Attorney at Law, Harvey's Legal Counsel; Ian MacKinlay, Jim Stehr and Frank McCurdy of MacKinlay/Winnaker/McNeil, AIA and Associates, Inc., Architects; Dr. D. Jackson Faustman, Consulting Traffic Engineer; Jere Williams of Creagan and D'Angelo; Angus MacDonald, Statistician of Baxter, MacDonald and Smart, Inc.

Architects, consultants and engineers presented the proposed project covering all aspects of exterior finish, landscaping, pedestrian overpasses, floor area and number of rooms. Transportation and traffic circulation, patron and employee surveys, housing characteristics, travel patterns in the area, and occupancy counts were discussed. Sun studies were shown in an attempt to demonstrate there would be no adverse environmental impact from the proposed exterior finish.

MOTION MADE BY Elmo DeRicco for approval of the project, with Douglas County stipulations, APC stipulations, ~~height of building~~

EXHIBIT

~~being 193 feet, not including elevator tower on top, from the middle of the building to ground level.~~

Ayes: Meder, Meneley, DeRicco, Knisley
Noes: MacKenzie
Abstain: None
Absent: None Motion carried.

MOTION BY Elmo DeRicco that the Agency ~~reserve decision on exterior finish of the building until a future date~~, at which time, either by demonstration, public hearing, or with further information, in the eyes of the agency, it is determined to be acceptable.

Ayes: Meder, Meneley, DeRicco, Knisley, MacKenzie
Noes: None
Abstain: None
Absent: None Motion carried.

MOTION BY Elmo DeRicco that the structure be approved with present ~~footprint dimensions and height limitation of~~ 193 feet.

Ayes: Knisley, DeRicco, Meneley, Meder
Noes: MacKenzie
Abstain: None
Absent: None Motion carried.

MOTION BY Elmo DeRicco that the gaming area of both buildings, including bars, ~~not exceed 88,000 square feet~~.

Ayes: Knisley, DeRicco, Meder
Noes: Meneley, MacKenzie
Abstain: None
Absent: None Motion carried.

MOTION BY Elmo DeRicco that the Master Plan be approved, that as ~~each new phase is scheduled to begin, the applicant come back before the Agency to advise what has been completed and what the plan is for the future~~; subject to all previous motions and Douglas County conditions.

Ayes: Knisley, Meder, Meneley, DeRicco
Noes: MacKenzie
Abstain: None
Absent: None Motion carried.

MOTION BY Elmo DeRicco that the project be approved on the condition Douglas County provide an acceptable transportation solution, which is also acceptable to the TRPA and NTRPA; and that Douglas County will construct necessary

EXHIBIT

roads to handle local traffic problems; ~~that the drainage problem be considered in the same context as previous applicants;~~ that all conditions applying from Douglas County be a condition of this approval; ~~and that pedestrian separations be constructed.~~

Ayes: Meder, Meneley, DeRicco, Knisley
Noes: MacKenzie
Abstain: None
Absent: None Motion carried.

Meeting adjourned at 4:00 p.m.

This meeting was recorded and the tapes are on file in Room 216, Nye Building, Carson City, Nevada; telephone 882-7482. Anyone interested in listening to these tapes may call for an appointment.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

CALIFORNIA TAHOE REGIONAL PLANNING AGENCY; and PEOPLE OF THE STATE OF CALIFORNIA

Plaintiffs

vs.

TED JENNINGS; OLIVER KAHLE; HARVEY'S WAGON WHEEL, INC.; PARK CATTLE CO.,; and COUNTY OF DOUGLAS

Defendants.

NO. CIV. R. 77-0158

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT

THIS MATTER came before the Court on October 17, 18, and 19, 1977, pursuant to plaintiffs' Motion for Summary Judgment and Motion for Preliminary Injunction, and on various Motions of the defendants, including defendant Harveys' Motion to Dismiss, and the plaintiffs and all defendants having presented evidence, and the Court having considered the evidence presented by each party as being available to all parties, and the matter having been argued and briefed and submitted to the Court, and the Fourth Claim for Relief against defendant Harvey's Wagon Wheel, Inc., having been dismissed by the Court pursuant to stipulation of counsel, the Court being fully advised in the premises, and

758

EXHIBIT

based on the evidence submitted by plaintiffs and the undisputed evidence and facts submitted by defendants, the Court finds and concludes as follows:

FINDINGS OF FACT

1. That on or about June 20, 1973, the Douglas County Commissioners, the permit-issuing authority pursuant to the TRPA Land Use Ordinance, issued an administrative permit to defendant Harvey's Wagon Wheel, Inc., approving its Master Plan and allowing a new hotel tower with a height greater than 40 feet; that prior to issuing said administrative permit to said defendant, the Douglas County Commissioners required the presentation of extensive evidence in support of such additional height pursuant to §7.13 and §8.33 of the TRPA Land Use Ordinance.

2. That the Douglas County Commissioners, prior to the issuance of said administrative permit, fully complied with all provisions of all applicable ordinances and regulations including §§7.13 and 8.33 of the TRPA Land Use Ordinance.

3. That there was submitted to the Douglas County Commissioners, prior to the issuance of the above referenced administrative permit, substantial evidence pursuant to §§7.13 and 8.33, and upon such substantial evidence the Douglas County Commissioners determined and found, inter alia, that "such greater height will better promote the protection of the environment in the area"; that the administrative record before Douglas County contained substantial evidence to support such finding and determination.

4. That said permit was subsequently submitted to and approved by the Nevada TRPA, and thereafter on July 20, 1973, was submitted to the TRPA for review; that on or about the 25th day of July, 1973, a hearing was held on the Harvey's administrative permit before the TRPA, at which time the governing body did not obtain a dual majority vote to approve, modify or reject the

757

EXHIBIT

project, and that on or about September 20, 1973, the Harvey's administrative permit was deemed approved by operation of law, pursuant to the terms of the TRPA Compact and Land Use Ordinance.

5. That at the time of the adoption of the Land Use Ordinance there existed in the area where defendant Harvey's project is to be constructed several high-rise structures, including structures which were higher than those in the project proposed by defendant Harvey's; at that time, it was common knowledge that under the said Land Use Ordinance, and particularly §7.13, there would be structures many times higher than 40 feet or 45 feet.

6. That the plaintiffs herein did not appear at the hearing before the Douglas County Commissioners when the Harvey's administrative permit was approved; nor at the NTRPA hearing; nor at the TRPA hearing. At no time in said hearings did the plaintiffs herein raise any issue or contention that the Harvey's project was in violation of §7.13 or §8.33 of the Land Use Ordinance or otherwise was in violation of law.

7. That in processing defendant Harveys' application for administrative permit the provisions of the TRPA Land Use Ordinance were strictly and carefully followed and that the administrative permit is valid and was, when issued, valid and was valid on its face.

8. That after the administrative permit of defendant Harvey's became final on or about September 20, 1973, defendant Harvey's, in good faith, relied on that administrative permit and has expended the sum of approximately $2,795,348.88 in furtherance of its project; that plaintiffs, with full knowledge, allowed defendant Harvey's to proceed in reliance upon its administrative permit which was valid on its face.

9. That on July 22, 1975, defendant Harvey's was issued all necessary excavation, grading and building permits for the

760

EXHIBIT J

"first addition" of its Master Plan project. Pursuant to these permits, in a course of construction commencing September 10, 1 and continuing until September 15, 1976, Harvey's constructed sa addition, including administrative offices, employee lockers and cafeteria, warehouse and food lockers, all at a cost of approximately $2,795,348.88. Thereafter, pursuant to an excavation, grading and foundation permit issued February 4, 1977, Harvey's commenced construction of its parking garage under said Master Plan, accomplishing physical relocation of all utilities and having a construction company crew ready to commence excavation on September 1, 1977, when all activity was suspended voluntari due to the pendency of this action.

10. On September 20, 1973, the League to Save Lake Tahoe and the Sierra Club brought an action against the TRPA, Harvey's Wagon Wheel, Inc., Park Cattle Company and Tom Raley in the United States District Court for the Eastern District of California. The League to Save Lake Tahoe and Sierra Club did not and have not at any time in said action effectively seek or follow through with injunctive relief against Harvey's i that action.

11. That plaintiff, State of California, on or about August 7, 1974, filed suit in federal District Court entitled State of California ex rel Evelle Younger, Attorney General, versus Tahoe Regional Planning Agency, et al, case number R-74-108 BRT, (hereinafter referred to as the "Younger case"), which action attacked the validity of the administrative permits issue to defendants Jennings and Kahle and alleged, inter alia, that said projects if constructed "will be in violation of the TRPA Ordinance on land use intensity and height limits".

12. That on or about August 16, 1974, plaintiff League to Save Lake Tahoe filed suit number 6566 in Douglas County, Nevada (hereinafter "Douglas County" case), which action

761

EXHIBIT

attacked the administrative permit issued to defendant Harvey's and alleged, inter alia, said permit was issued in violation of §§7.13 and 8.33 of the TRPA Land Use Ordinance; was not supported by substantial evidence; and therefore was arbitrary, capricious and contrary to law.

13. That on or about June 5, 1975, plaintiff Californ petitioned the Douglas County Court to file an amicus curiae brief in the Douglas County action.

14. That on or about May 3, 1976, the League to Save Lake Tahoe filed a suit in federal District Court under the Clean Air Act, case number R-76-86 BRT, entitled League to Save Lake Tahoe v. Roger S. Trounday, et al (hereinafter referred to as the "Trounday case"), which suit sought to enjoin defendant Jennings' project.

15. That the Younger action was appealed to the Ninth Circuit Court of Appeals and the appellate Court first issued its opinion on April 30, 1975, and amended the same on June 11, 1975.

16. That none of the plaintiffs at any time have effectively sought and followed through with injunctive relief against defendant Harvey's project.

17. That all actions and cliams set forth in the within action were available, apparent, and known to plaintiffs at the time the Eastern District Action was commenced on September 20, 1973; and at the time of the filing of the Younger suit on August 7, 1974, and the within claims could and should have been included therein.

18. That all causes of action and all claims set forth in the within matter were available, apparent and known to plaintiffs at the time of filing the Douglas County case on August 16, 1974.

19. That the plaintiffs delayed an unreasonable period

762

EXHIBIT

of time in commencing the within action.

20. That any objections that a building higher than 40 feet violated §7.13 of the Land Use Ordinance should have been made by plaintiffs in the permit-issuing procedures and at the hearings before the Douglas County Commissioners, the Nevada Tahoe Regional Planning Agency, and the TRPA.

21. That after the decision of the Ninth Circuit Court of Appeals in the Younger case, plaintiffs made no attempt to amend their Complaint or file another action setting out the claims included in the within action.

22. That the Douglas County action was dismissed against the League to Save Lake Tahoe with prejudice, which dismissal was affirmed by the Nevada Supreme Court on May 3, 1977.

23. That additional delay in the construction of Harvey's project will result in substantial increase in the total cost of construction.

24. That the language of §7.13 of the TRPA Land Use Ordinance is not ambiguous.

CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction pursuant to 28 U.S.C. 1331(a).

2. That defendant Harvey's administrative permit was approved by operation of law under the terms of the TRPA Compact on or about September 20, 1973, which approval has the same legal effect as an approval by the unanimous vote of the governing body of the TRPA.

3. That plaintiffs' claims against defendant Harvey's are barred by NRS 278.027.

4. That plaintiffs' claims against defendant Harvey's are barred by the doctrine of laches as a matter of law.

EXHIBIT

5. That plaintiffs' claims against defendant Harvey's are barred by the doctrines of res judicata and collateral estoppel.

6. That in issuing the administrative permit to defendant Harvey's, Douglas County complied with all applicable local, state and TRPA ordinances, rules and regulations, and said permit was validly issued and is presently valid.

7. That defendant Harvey's has a vested right to complete construction of its project in accordance with the terms of its building and administrative permits.

8. That the Land Use Ordinance §7.13 is not ambiguous and plainly contemplates applications for, and the granting of, heights substantially in excess of 40 feet if the conditions of §7.13 and §8.33 are met.

9. That Douglas County made adequate findings that defendant Harvey's project meets all the conditions of §§7.13 and 8.33 of the Land Use Ordinance, and said determinations and findings are supported by substantial evidence in the record.

10. That the plaintiffs' claims against the defendant Harvey's were not timely raised or asserted before the various administrative bodies that reviewed the Harvey's administrative permit, and that therefore the plaintiffs have failed to preserve said claims for judicial review and the within action is barred for the failure of plaintiffs to exhaust and timely assert available administrative remedies.

11. That the First and Second Causes of Action against defendant Harvey's fail to state a claim for which relief can be granted.

JUDGMENT OF DISMISSAL

Pursuant to the Findings of Fact and Conclusions of Law set forth above, and good cause appearing, it is hereby

764

552

EXHIBIT

ORDERED, ADJUDGED AND DECREED as follows:

1. That the Motion of plaintiffs for Preliminary Injunction be and the same hereby is denied.

2. That the Motion of plaintiffs for Summary Judgment be and the same hereby is denied.

3. That the Motion of defendant Harvey's to Dismiss the First and Second Claims for Relief be and the same hereby is granted.

4. That the First and Second Claims for Relief are dismissed with prejudice and judgment is entered in favor of defendant Harvey's together with costs.

DATED this 5th day of October, 1977

U.S. DISTRICT JUDGE

EXHIBIT 23

Glenbrook Properties

March 29, 1979

Assemblyman Joe Dini
Nevada Legislative Building
State of Nevada
Capitol Complex
Carson City, Nevada 89710

Dear Assemblyman Dini:

Thank you for allowing me to comment on your bill. It is already a great improvement over Garimendi's bill, however, I would like to suggest the committee consider the following suggestions:

1. The definition of "project: should specifically allow for construction of a single family house on every parcel of record which is properly zoned.

2. Article 5 - The language "single enforceable plan" should be deleted. There will not be a single enforceable plan unless Nevada acquiesces to the current CTRPA plan. Also, in paragraph five, specific language should be added guaranteeing that the existing plan will be the plan for Nevada until amended.

3. Limiting expansion of public facilities to current inhabitants in Douglas County will require removing people from existing homes under construction, or creating greater wastewater violations. There is no justification for restrictions on public services, unless the intent is to deny existing lot owners the rights to build their homes.

4. In Article 6 all projects already approved by TRPA and in compliance with their conditions of approval should specifically be grandfathered.

20630 PATIO DRIVE CASTRO VALLEY CA. 94546 / (415) 538-9600 P.O. BOX 257 GLENBROOK NEVADA 89413 / (702) 749-5292

EXHIBIT

5. Also, in Article 6 there is no justification for requiring an applicant landowner or public agency to go to court to force a vote on a proposal. If for any reason a vote is not taken, the project should be approved. It is the only way to discipline the agency.

6. This compact should endorse the concept of a basin user fee to raise the hundreds of millions necessary to complete projects already proposed by the voluminous library of previous studies. California is proposing the fee to support their transportation plan. If Nevada does not support it, it could be inacted and controlled by someone over which Nevada has no control. The compact should endorse the concept, specify the intended use of the money, and establish a bi-state independent authority to administer it.

The time for berating the private landowner and adding to the hundreds of thousands of pages in the archives of existing studies is over. This compact should recognize the contribution of private landowners, and move rapidly to fulfill the public half of the bargain.

Cordially,

Ronald C. Nahas

RCN:sm

EXHIBIT 24

Senators, Representatives, and Interested Citizens,

I submit to you what my thoughts are when I read the Findings and declarations of S B 250, A.B. 503 and S.B. 323, the pride and joy of our great Nevada Governors, U.S. Senators, and distinguished State Legislators.

TAHOE REGIONAL PLANNING COMPACT

ARTICLE I. FINDINGS AND DECLARATIONS OF POLICY

(a) It is found and declared that the 'COFFERS' of the 'Unrestricted Privileged Few' and other 'Recipients' of the Lake Tahoe Region are threatened with "Competitive Generation Probability", which may endanger the Natural "Pot of Gold" and "Economic Monopoly" of the region.

(b) It is further declared that by virture of the special conditions and privilages of the 'Restricted Ones', developmental pattern, population distribution and human needs in the Lake Tahoe Region, the region is experiencing problems of " Free Competition', and deficiencies of "Monopolistic Control".

(c) It is further found and declared that there is a need to maintain an equilibrium between the region's 'Privilaged Few' and its manmade 'Restricted ones', to preserve the "Special Trusts" and "Special control" of opportunities of the 'Unrestricted Ones', and it is recognized that for the purpose of enhancing the efficiency and "Monopolistic Effectiveness" forthe 'Unrestricted Privileged Few', it is imperative that there be established a "Red Line District', and an area wide

EXHIBIT

planning agency with power to adopt and enforce a regional plan of resource conservation and orderly development, to exercise effective environmental controls and perform other essential functions so as to ' Suppress ' and put down with 'lengthy litigation' any " Silly Dreams " or exercises of ' vested Human Rights ' of the 'Restricted Ones', which might endanger even a little bit the " MULIT MILLION DOLLAR RAIN BOW ", of the ' UNRESTRICTED PRIVILEGED FEW '.

Gentleman, that is how I interpret S.B. 250, A.B. 503 and S.B. 323 ! I hope you can look beyond the 'Smoke Screens' and through the numerous 'Cloaking Devices' and interpret it the same way too!

Before closing there is one more point I would like to make. This day not only up on the Mountain but throughout the country there is much unrest, and that is putting it lightly. Government is experencing the shock of challenge and rebuff, and in most cases discust! The sting of sharp questioning and rejection is heavy with stench and reform is as heavy if not heavier, because of, 'Entrenched Politations', 'Fixtures in State Legislatures', and business interests whose lobbyists affect and most of them control legislative output and politicians are UNRESPONSIVE....TO THE PEOPLE, TO THE CONSTUTITION, AND EVEN TO THEIR OWN DAM TRUE CONVICTIONS!!! Gentlemen if the Halls of this legislature here in Carson City, and our Congress in Washington are crowded with lobbyists, PROMOTING THE DESIRES OF ORGANIZED INTEREST GROUPS AND IF SMALL INDEPENDENT BUSINESS PEOPLE AND PRIVATE CITIZENS ARE UNREPRESENTED BECAUSE THEY ARE UNORGANIZED... I ASK YOU .....

WHO IN THE HELL IS AT FAULT ?!!!!!!!!!

CAVE ROCK MANNY & DAISY MAE
Cave Rock, Glenbrook, Nevada 89413
Telephone 702 588 6446

Cave Rock Manny Daisy Mae