

The subcommittee meeting was called to order at 2:30 p.m. Senator Neal in the Chair.

MEMBERS

PRESENT: Senator Joe Neal, Chairman
Senator Wilbur Faiss
Senator Mike Sloan

OTHERS

PRESENT: Senator Norman Glaser
Senator Lawrence Jacobsen
Mr. Fred Welden, Senior Research Analyst, Legislative Counsel Bureau
Senator John Garamendi, California State Senate
Mr. James Burns, Assistant Secretary of Resources, State of California
Mr. Mark Hite, Administrative Aid to Senator Garamendi
Assemblyman Joe Dini, District No. 38

The subcommittee completed reviewing the mark-up prepared by Fred Welden where they had left off (Page 10) from the previous subcommittee meeting (April 25th).

The meeting was in recess at 3:12 p.m. for 10 minutes to allow representatives from California to enter the meeting. Senator Neal announced that the committee would reconvene to discuss the present status of California Senate Bill 82. The California delegation consisted of Senator John Garamendi, Mr. James Burns and Mr. Mark Hite.

The meeting reconvened at 3:22 p.m.

Senator Garamendi gave some background on the California bill as it now stands. He stated that the latest reprint of California S.B. 82 was changed from the version agreed to by the governors of both states because of the negotiations between this committee, the ad hoc committee, and the California legislators. They took into account the concerns raised by the ad hoc committee about language vagueness and uncertainties, and significant policy issues. The amendments California made were mostly to gain clarification and clarity.

Page 1

Senator Garamendi stated that Article I dealing with Findings and Declarations is a statement of policy and should not be in the back of the bill. In regard to the mention of the federal role on lines 4 - 6, he felt that it is merely a statement of fact that the federal government has interests and investment in 60% of the land

in the Tahoe Basin. The rest of the language is a statement of what California wants the policy to be.

Page 3

Senator Sloan pointed out that there are conflicting definitions of "project." The Assembly-amended version of A.B. 503 clearly excluded the single-family dwelling in the definitions. Senator Garamendi responded that they felt no need for every single-family dwelling to be included, however, there are some single-family dwellings that might be substantial in and of themselves, or substantial because of their location, design or construction. Senator Sloan asked how the determination is to be made of which are to be considered. Senator Garamendi answered that in the planning process, the TRPA is given the power to provide categorical exemptions, and they could exempt all residences done in certain locations or with certain characteristics. It can also be done through the Environmental Impact Statement.

Senator Sloan asked if there would be any lag time in the interim before the body of data would be available to the single-family lot owner. He rephrased the question by asking how long he would have to wait assuming he wanted to build at the Lake. Senator Garamendi answered that if he would presently have no cause to go before the TRPA, as is the case with most single-family dwellings, he could begin as soon as he received his building permit from the county. In the interim time between the ratification by Congress and the new ordinances, there are only certain types of projects, not including single-family dwellings, that are prohibited. Therefore, a person wishing to build would fall under the existing ordinances for either California or Nevada.

Senator Sloan asked for clarification of the difference between the definitions of "criterion of environmental quality" and "environmental threshold carrying capacities." Senator Garamendi explained that they interpret the four words "environmental threshold carrying capacity" to be the environmental standard necessary to maintain the values listed in the definition and the public health and safety within the region. The 4-word definition is used to equal an environmental standard because many people involved with the negotiations have come to understand that there would be a standard against which to measure the projects and they became accustomed to using the phrase "environmental threshold" or "carrying capacity". The California version would combine the four words. Mr. Burns added that the University of California at Davis has begun teaching classes in the "environmental threshold carrying capacity" concept.

Senator Sloan asked about the definition of "public use area" which is not in either version of Nevada's bills. Senator Garamendi commented that although "public use area" is not defined in S.B. 323, California wanted to take a shot at what it should be defined as. He commented further that the whole issue of gaming needs to be negotiated further, but was confident it could be dealt with.

Page 4

Regarding this page which deals with organization, Senator Garamendi stated that California revamped their membership to put it in line with the ad hoc committee discussions. Fred Welden stated that since the last ad hoc meeting, there have been discussions regarding the membership composition in light of the 9th Circuit Court's ruling about the status of the states' liability. This committee agreed to go back to a 3-3-1 ratio and suggests California follow suit. Senator Garamendi commented that the California Assembly much preferred the 3-local, 4-state membership, and there might be some trouble backing away from that now.

With regard to the conflict of interest provision which begins at the bottom of Page 4 on line 14, Senator Garamendi felt that those provisions are a combination of California and Nevada laws. Senator Sloan suggested incorporating items B and C of the California bill into the statement in Nevada's bill which says that each state may provide by law the manner of disclosure and elimination. This would provide minimum requirements for ethical conduct and allow for stricter requirements. Senator Garamendi remarked that the ad hoc negotiations on this matter were not conclusive. Each state agreed that there ought to be standards so there was an attempt to use the standards from Proposition 9, but the Nevada delegation did not want to go with those straight across. Fred Welden added that there has been no agreement since then and each state has been sticking with its own standards. However, there was no provision in Nevada's bill for members disqualifying themselves, and that is why there was a suggestion to leave each state to its own standards, except specify disqualification.

Senator Garamendi remarked that California would have no objections to the minimum standards being included, but the disqualification language is similar to the language in the California law which was prescribed by a vote of the people, so they would have to abide by it regardless of whether it was in the compact or not.

Page 6

Senator Neal asked Senator Garamendi to explain the voting structure contained in the California bill.

Senator Garamendi explained that their bill is a simple reversal of the present voting structure. In the earliest negotiations dating back 10 years ago, both states felt very strongly about maintaining sovereignty. He feels that the dual majority maintains the sovereignty of both states. He went on to state that also implicit in the language is the fact that gambling is excluded from the purview of the TRPA, so that creates some problems. California has given the TRPA control over its side of Lake Tahoe without exclusion but Nevada has not because of the gambling issue. California is giving up C-TRPA and the control of her portion of the Lake, and in exchange they would like a voting procedure that calls for California's 4 votes to be equal to Nevada's 4 votes. He felt the dual majority provides the greatest protection to California and her views of what the Lake should be.

Senator Sloan commented that because of the reversal of the roles between the existing compact and the proposal, it could be characterized as anything but an element of maintaining sovereignty. In his personal opinion, if you give one state the right to veto what the other state wants to do, independent of what the majority or unanimous membership wants to do, it will not maintain sovereignty.

Senator Garamendi replied that their problem with the simple majority is that they could lose sovereignty entirely. He felt that the voting procedure can not be looked at as a separate issue from the rest of the legislation. The rest of the bill gives the basis from which the votes and the action are determined. To say that Nevada's voting procedure is good because it allows California prior approval before it goes to the full board for a majority vote is fine in part. But it is bad in that it proposes a simple majority for the most important issue, which is the determination of the thresholds of environmental standards, plans and ordinances. Those things set the standards by which individual projects are judged. So for the crucial issue, Nevada's bill provides a simple majority which is extremely weak in the protection it affords the Lake.

Page 6

On line 6, Nevada has suggested that the four lay members be required to be residents of the region. Senator Garamendi felt that they wanted the flexibility for the TRPA to appoint from outside the region, but this is a negotiable item.

Page 8

Senator Sloan expressed his concern about the word "local" on line 20, Page 8, and asked if the federal and state air and water quality standards for the agency are presently being attained or maintained. Senator Garamendi stated that issue is keenly felt in California since the air and water quality have been the focal point of the environmental concerns. Mr. Burns stated that this provision should state "the regional plan shall provide for attainment and maintenance of " federal, state or local, whichever is strictest. The idea being that whatever governmental entity within

the Basin sees the need for having a higher quality, they should be able to attain and maintain that through the regional plan.

Fred Welden asked why the implementation plan was revised. Senator Garamendi answered that the California Assembly staff felt that this section deals with the relationship between the state and federal laws and the revised California bill allows for changes to be made in the future. He felt there should be discussion with experts on the relationships between the air and water quality laws of the state and federal governments and the way in which they interact.

Page 9

On lines 12 and 13, Senator Garamendi explained that the changes in their bill reflect the discussion in the ad hoc committee and discussions in this committee. Since S.B. 323 used the date of enactment as the effective date, California felt that is what should be written into the legislation when the "gambling" bill is merged. Fred Welden mentioned that he understood that California-TRPA is in the process of revising all of their plans and ordinances so Nevada is not sure what will be implemented. Senator Garamendi retorted that California is not sure what will be implemented by S.B. 323 either. Senator Sloan asked if S.B. 323 was signed within the next week and the effective date of that provision would be set, would California be willing to use that date in this provision. Senator Garamendi felt that should be left open for discussion.

Fred Welden felt there was a problem in that Nevada's bill called for the C-TRPA plans to be in effect until the regional plans and ordinances are adopted, or the time limit for such action has passed (2 years). Senator Garamendi stated that the issue of the flooring of the C-TRPA rules and regulations has been brought up several times. (Flooring means taking the existing C-TRPA plans and regulations and putting them into the plans and regulations for the TRPA for the California side only). California has several reasons for wanting those plans and regulations put into effect. Firstly, California felt that TRPA failed to control growth or anything else in the Basin and that is why C-TRPA came into effect. C-TRPA should be a base in the compact for the California side as far as planning is concerned. California has never agreed, nor ever will agree, to the C-TRPA plans and ordinances automatically disappearing as of a specific date. If they are to be changed, repealed or continued, it would take a vote of the TRPA. That, once again, relates to the voting procedure.

Page 10

Regarding the expansion of public services, Senator Garamendi explained that lines 7 - 13 would cover the interim time before the environmental threshold carrying capacities are determined and the plans and ordinances are adopted. There was never agreement reached with the ad hoc committee, so California wrote some language in their bill which they felt would cover the interim. It speaks to new sub-

divisions, sewage treatment plants, sewer trunk lines and highways because those are the 4 major growth-inducing infra-structures or public works so that there will be a severely limited moratorium on these 4 items.

Senator Sloan felt it would be illusory to tell the owners of lots in the Basin that they can build a home but will not have sewer trunk lines to hook up to. He questioned whether this would disallow any additional sewage treatment plants to handle the existing homes already on site to attain the water quality standards. Senator Garamendi felt the California version might preclude the construction of a single-family residence if there was no additional sewer capacity, and that is now a problem in part of the Basin. However, any project could be justified, including a freeway, if language relative to "serving the present inhabitants needs" is put in.

Page 12

Since this page deals with the gambling issue, Senator Garamendi wanted to defer any discussions until the issue can be discussed at length. He stated that California has written in some language which they feel is acceptable and it should not be ignored.

Page 13

Senator Sloan asked if there could be some language written into the bill which would provide a recognized procedure to be followed for litigation to be patterned after either state's or the federal administrative procedures act. Senator Garamendi hesitated to comment since he is not a lawyer. He did state that the process of judicial review is a sensitive issue to both states.

Page 15

Senator Neal asked why California chose 180 days to compel the board to take action. Senator Garamendi stated that their experience indicates that is the necessary time to review Environmental Impact Statements, get public comment, and have hearings. Senator Sloan asked if there has been any thought given to deeming a project rejected if nothing happens within 180 days rather than allowing a court case to compel action. Senator Garamendi felt that would put the person proposing the project in a difficult position because the board could just sit on it. He felt it was their intent to compel action to give a person a right to have his project at least come to a vote. Assemblyman Joe Dini remarked that the Assembly felt the 180-day language would tie up the process and everybody would be in court.

Page 18

Regarding the funding levels and the apparent unwillingness of California to come up with adequate funding, Senator Sloan commented that it seemed anomalous that the people most insistent on having the most safeguards are the least willing to put in the money to make the compact work. Senator Garamendi felt that adequate money will be put in. California does not want to give its appropriation process over to the TRPA or any other agency. Assemblyman Dini stated that it was their intention to force both states to provide up-front money and to avoid the problem of the states withholding funds. Senator Garamendi stated that there is a spending procedure in California that the legislature appropriates, but does not write the checks. To put this provision in the law does not guarantee the check will be written.

Senator Jacobsen mentioned that he had heard on the news that the California governor did not intend to fund TRPA. Senator Garamendi stated that every year there is a similar legislative-administrative battle, but he felt the governor does not have the power to withhold the funding. Mr. Burns stated that C-TRPA and TRPA are funded at the same level in the governor's budget for the next fiscal year. The action the governor takes on the budget will depend on the success or failure of the compact.

Senator Neal expressed the committee's appreciation and thanks to Senator Garamendi and his staff for spending the time to discuss their bill. Senator Garamendi thanked the committee also.

There being no further business, the meeting was adjourned at 5:45 p.m.

Respectfully submitted,


Eileen Wynkoop
Committee Secretary

APPROVED:



Joe Neal, Chairman