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Submission of Comments, Letters to the Editor, and Articles is encouraged. We reserve the right to edit and/or print these materials.

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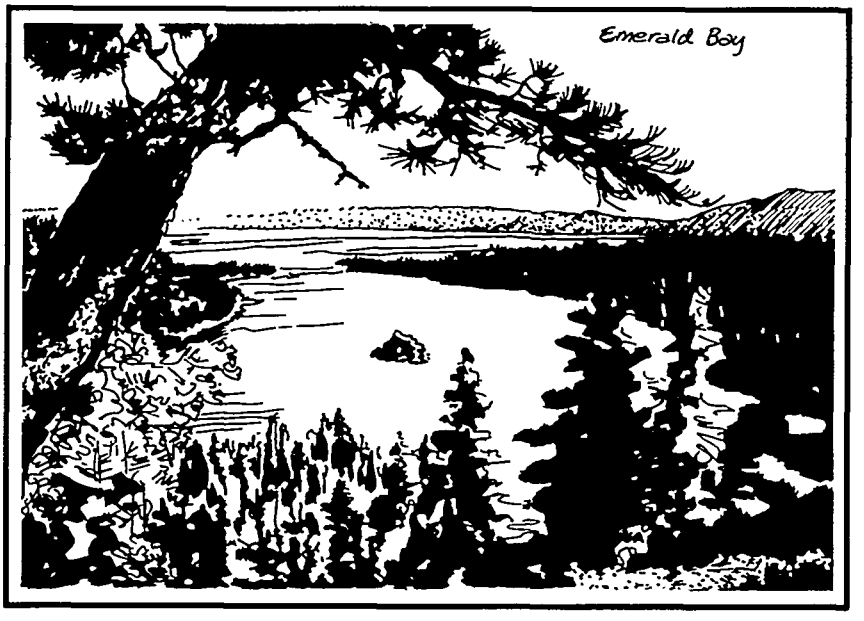
The Lake Tahoe Basin

AN OVERVIEW

The Lake Tahoe Basin, located on the California-Nevada border, has become a heated battlefront for environmental issues. Its year-round attractions include magnificent scenery, accessible wilderness, boating, gambling and nightclub entertainment. During the past two decades, concern has grown that urbanization of the Basin could destroy the beauty and recreational quality of the region. Heavy growth in the recreational use of the Basin has created a propitious atmosphere for business and real estate investment while placing greater burdens on the fragile Tahoe environment. Government agencies are struggling to keep up with the demand for public services while attempting to develop sound environmental policies. The classic confrontation between environmental and developmental interests has become volatile with each side feeling it has much to lose.

The federal government's Environmental Assessment demonstrates the Basin's growth and resultant burden on the environment. Studying the years 1970 to 1978, the Assessment found: the Basin's summer population grew 9.5 percent per year and grew from 81,000 to 159,000 on an average summer day, 223,000 on a peak summer day; the number of permanent residents increased 118 percent, rising from 33,600 to 73,200; traffic on roads entering the Basin increased 80 per cent; new housing units were constructed at an average rate of 1,970 per year; urban land use increased 150 per cent; Lake Tahoe's clarity dropped between 6 and 13 per cent; and auto congestion in the Basin caused the Environmental Protection Agency to designate Tahoe a nonattainment area for carbon monoxide gas.

(See **OVERVIEW**, page 16)



Letter From A Graduating Editor

GEORGE WAILES

ENVIRONS is published by the students of King Hall—the School of Law, University of California, Davis. It is edited by members of the Environmental Law Society. *ENVIRONS* focuses on problems that affect our California environment.

Over the last three years we have seen tremendous changes in environmental laws, regulations and natural resource management: Establishment of a federal superfund to cover costs of hazardous waste contamination and oil spills; revival of the public trust doctrine; and creation of an overall management plan for Yosemite National Park.

In the last three months, however, we have seen many of these actions reversed. Areas set aside for designation as National Wilderness Areas have been drastically reduced. Funds earmarked for purchase of National Park lands have been eliminated. Oil rich but ecologically sensitive offshore areas along the Northern California coast previously exempted from the proposed federal sale of oil leases, are now included in the Interior Department's planned sale. This shift in federal policy will cause many changes in our lives. We hope that the growth in awareness and sensitivity to environmental issues that has occurred in the past will not be lost to economic pressures.

This issue is part of a continuing effort to focus on current topics and provide diverse viewpoints on those issues. We hope that these articles will illuminate the multifaceted problems involved in management and development of the Lake Tahoe.

We appreciate everyone's past support of *ENVIRONS*. In an effort to reduce production and mailing costs we have lengthened Vol. 5, no. 2 into Vol. 5, no. 2 and 3. We are still balanced on the brink of extinction as the California Condor. We must have support from our readers to continue production. Please help ensure the vitality of *ENVIRONS* by making use of the subscription form in the back of this issue.

We encourage our readers to submit articles in their area of expertise. All articles submitted should either conform to our nonpartisan format, or be accompanied by suggestions of possible authors who could effectively present alternative views of the issues.

Lake Tahoe Water Quality Control Plan

"...at last the Lake burst upon us - a noble sheet of blue water lifted six thousand three hundred feet above the level of the sea, and walled in by a rim of snowclad mountain peaks that towered aloft full three thousand feet higher still! It was a vast oval. As it lay there with the shadows of the great mountains brilliantly photographed upon its surface, I thought that it must surely be the fairest picture the whole earth affords...".

Mark Twain in Roughing It (1872)

"...the fairest picture the whole earth affords," given present condition, will fall victim to its own allure. A recent federal assessment of Lake Tahoe concludes that development has stretched the Basin "to the breaking point."

The algal growth rate, most sensitive measure of Tahoe pollution, doubled over a twenty year period. Considering the massive size of the Lake, that signals a massive infusion of erosion-carried nutrients. Near shore algae, once rare, has increased in frequency and thickness. Close to developed areas, it shows up as a green intruder into traditionally clear blue Lake Tahoe. Measurements indicate that water clarity has, in fact, diminished over the last decade.

Under natural conditions, about 3,100 metric tons of dirt erode into the Lake annually. With current development, that figure soars to 61,000 metric tons. It's as if 22 dump trucks per day back up to the Lake and unload.

The law requires the State Water Resources Control Board to supervise development of a comprehen-

(See QUALITY CONTROL, page 18)

the lake tahoe dilemma

A Reasonable Solution Exists

(Note: Fast-breaking changes in the Lake Tahoe situation have necessitated editorial updates in the following article. Ed.)

The dilemma of Lake Tahoe is again in the public spotlight. On the one hand, use of the Lake Tahoe-High Sierra region has increased significantly during the last two decades—as a result of population shifts from urban towards rural and mountain areas; from continued population increases in California and Nevada; and due to the magnetic pull of the Tahoe-Sierra region as the West's principal mountain recreation center. On the other hand, there is increasing concern that these pressures may "ruin" the jewel of the Sierras and that Tahoe must be "saved"—for whom and how remain unclear.

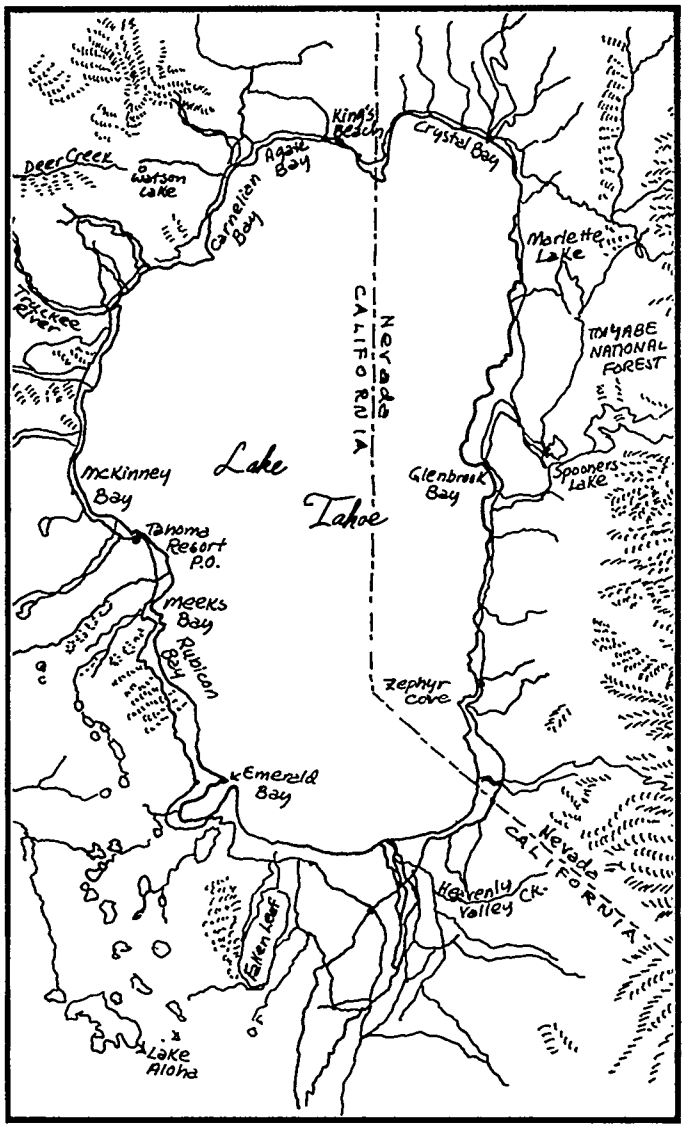
The Tahoe Sierra Preservation Council, a rapidly growing, regionwide organization, was recently formed to represent the thousands of individuals who have made a personal commitment to the Tahoe-Sierra region—homeowners, property owners, small business owners, and literally thousands of other concerned taxpayers and citizens. We share a special love for Tahoe—indeed for many of us, it is our chosen home. We are dedicated to preserving and protecting its spectacular beauty and unique character. At the same time, we believe that basic human values and constitutional private property rights must also be protected. We do not believe these goals are incompatible.

We believe the problems of Tahoe can be addressed through sound reasonable, and cost-effective approaches based upon factual and scientific bases—not simplistic, ill-conceived solutions or overreactions. We are action-oriented. It is time we got on with implementing realistic and long overdue solutions, and ended the political fingerprinting and bickering!

The purpose of this article is to advise you of our concerns with particular focus on the national scenic legislation and the Burton-Santini legislation, provide additional perspective on the problems of the Tahoe-Sierra region, and to suggest an alternative course of action.

Our Goals

In meeting the dilemma of Tahoe, we believe it is essential to constantly keep certain basic goals in mind:



- Our efforts and programs must be designed to permit continued public enjoyment and use of the spectacular Tahoe area, not public denial. Every effort must be made to maintain a balanced economy so that people of all means will be able to continue to afford the "Tahoe experience", not just the extremely wealthy.
- In permitting continued public use and enjoyment of the unique Tahoe resources, we must take every reasonable step to harmonize human activities with nature so as to avoid significant, irreparable environmental damage.
- Where privately owned property must be "taken" by government for the "greater good", the owners of that property must receive full, prompt, and fair market value compensation.
- The resolution of Tahoe's problems is possible through the development of reasonable, cost-effective approaches—through a commitment to implement solutions, not more studies and delays. To develop and implement solutions requires substantial public input and participation as well as education and consensus

building—not the exclusion of the public and local governmental representatives from the process.

•The best approach to undertaking the necessary efforts to deal with Tahoe's problems is through our local, state, and regional governments, including the Tahoe Regional Planning Agency (TRPA). We must work to make TRPA a success, not conclude after only a few years that it is a failure and refuse to give it our committed support. Isolating the decision-making process from public involvement and accountability, by vesting all decision-making authority in the Forest Service or in a few State agencies, is an approach doomed to failure.

The subject of turning Tahoe over to total Federal control deserves special comment. This idea has recently gained prominence as the "new answer" to Tahoe's problems. Indeed, a serious proposal has been introduced into Congress this year, HR 6338, by California Congressman Vic Fazio. The bill has several sponsors and is supported by the Secretary of California's Resources Agency and the California Water Resources Control Board. The Fazio bill would place total control of the Tahoe area under the Forest Service.

Upon reading the proposal, one is immediately struck by the immense powers that are vested in the Forest Service to aspects of the Tahoe Basin—powers that virtually usurp all State and local control. What is clearly intended is a benign despot to rule and control. . apparently on the premise that much more wisdom resides in Washington than locally. The reality is, nothing could be further from the truth. Neither the Forest Service, nor even the Park Service, has ever had any experience in managing such a vast, complex, semi-urbanized area. In fact, their management of 18 out of 19 smaller federal areas has recently been criticized by the Congress' General Accounting Office in an in-depth assessment released on December 14, 1979 entitled *The Federal Drive to Acquire Private Lands Should Be Reassessed.*

The bureaucratic monstrosity that would need to be created to undertake the total management of the vast Tahoe area, and to replace the existing structures of local, regional and state government, is mind boggling. Clearly, the ultimate success of such a program would depend almost exclusively upon the personality and the tone and direction set by the single Forest Service Supervisor placed in charge. Nowhere in our history have we been willing to delegate such enormous powers with so few checks and balances, nor willing to abandon our cherished system of representative government, no matter what its frailties.

It is our genuine belief that if the problems of Tahoe are in fact to be adequately addressed, it will require substantial local and state involvement, consensus building, and regional planning and commitment—not the further usurpation of control and powers by single purpose agencies, or agencies that are isolated, removed, and not accountable to the citizenry. We need to rebuild our local and regional institutions and support them, not add a whole new bureaucratic layer.

The so-called Burton-Santini Bill (HR-7306), {*which was passed by Congress on December 23, 1980 in modified form,*} was intended to raise at least $150 million from the sale of excess government lands in the Las Vegas area to in turn buy environmentally sensitive lands at Tahoe. The bill has been endorsed "in concept" by the Preservation Council as well as nearly all elected officials and agencies in the Tahoe area.

As a result of the controversy created by the sudden introduction of the Bill into the House, Congressman Santini and Congressman Burton agreed to a series of public hearings and a process by which more input would be received before the Bill was passed out of the House. As a result of that process, a number of substantial amendments have now been made to the Bill, many of which were recommended by the Preservation Council. However, several of the key criticisms raised about the earlier draft still remain unanswered.

Key Amendments

1. Land Acquisition Map. The original Land Acquisition Map that had been drafted without local input and was to have become a part of the Bill upon its adoption has now been scrapped. In lieu of the original map, the Forest Service is directed to prepare a new acquisition map {*within six months of the date of the Bill's enactment.*}

The new map, like the original map, is to depict specific environmentally sensitive lands that the Forest Service believes should be earmarked for acquisition. A detailed definition of "environmentally sensitive land" is included in the Bill. There is also a requirement that the Forest Service consult with governments in Nevada and California, both at the state and local level before preparing and adopting the final map. {*The Forest Service must now also consult with TRPA.*} There is further a requirement that public hearings be held during the preparation of the map.

2. Improved Property and Single Family Dwellings. The acquisition language contained in the original Bill, which provided one standard for Nevada and a separate standard for California, remains essentially unchanged. In the earlier version, only property that was "unimproved as of May 1, 1980" could be acquired in California. The acquisition power is broadly defined so that the power of "condemnation" can be used.

Under the amended Bill,properties in Nevada which were "unimproved as of August 26, 1980" can be acquired,including by way of condemnation. Likewise, either unimproved property or improved property may

(See **REASONABLE SOLUTION**, page 12)

The Federal Government's Role at Lake Tahoe

by Congressman Vic Fazio

At the dawn of this century, a Nevada politician proposed that Lake Tahoe be acquired as a national park. The idea was rejected as too costly.

Since then Lake Tahoe has become so many things to so many people—it has grown so much—that never again will an effort to preserve it be as simple, inexpensive, and effective as that one might have been. The more it grows, the more interests there are and the more these interests conflict. The more the interests conflict the more the multitude of jurisdictions now governing the Lake confound each other.

A persistent dream since that Nevada politician first spoke has been for the federal government to sweep in like the Calvary of old and set it all straight. The dream is that the federal government should establish a single national priority for Lake Tahoe: preserve it in the national interest. Then the federal government would implement that objective with a coherent plan.

However, the federal government has not performed according to this script. To understand the federal presence at Lake Tahoe one must understand its size—a great collection of laws, programs, and bureaucracies—and its paradoxical passivity. It has been an amorphous, indifferent, enormous collection of resources and tools simply available for use by whoever wants to use them. The development interests, which largely dominate the local politics at the Lake, have made by far the best use of the federal government, which therefor has been used to harm the Lake far more than to help it.

The federal courts have not helped much. From time to time, the League to Save Lake Tahoe would successfully seek a ruling from a federal court against development, the ruling being typically based on the clean air or water acts. But those acts are general statutes conceived on a nation-wide basis and do not always contain provisions making them particularly useful at Lake Tahoe. So the courts are of limited benefit.

Congress has from time to time allocated funds expressly for the purchases of land in Lake Tahoe, on the theory that land purchased in land preserved from development. Even these direct efforts have not been particularly effective at thwarting development where that development is really likely. Though the Forest Service has increased its ownership of Basin lands to 65 percent, the Service has pursued its purchases with willing sellers. Very frequently, sellers are willing because they see no prospect of greater profits through development. Thus the federal government has amassed huge acreages of timberland while private capital has gnawed away at the developable flat lands around the Lake shores.

Preservationists frequently get frustrated at the Forest Service's timidity. The Service is not really to blame. Congress has not given it the firm political mandate that an aggressive land acquisition program would require. Nor has Congress given it enough legal authority. The Service's condemnation power, essential to competing against development, has been limited until recently to lands largely surrounded by designated national forests.

With no focused support from the courts or Congress, therefor, the bureaucracies—22 of them having some sort of grant, financing, or permit programs with impacts on the Basin—have been left to work away according to whatever their national mission dictated.

The Federal Impact

While Congress directed $62 million into the Basin for federal land purchases between 1970 and 1980, other agencies have pumped nearly the same amount in public works grants into the Basin to underwrite growth, $50 million, 2.6 times the national per capita average. Chief among these has been the Environmental Protection Agency with its Clean Water

Act grants for sewer expansions. A recent federal study determined that such federal grants have been basic to the viability of the 78 percent urban expansion that has occurred in the Basin since 1970.

Air quality has suffered, but the principle casualities have been scenic values and water quality. According to the California Water Resources Control Board, 3000 metric tons of sedimentation naturally flow into the Lake each year. The development spree on the slopes has boosted that to an estimated 61,000 metric tons. Since Tahoe is a vast body of water with small flow-through, it takes 700 years to recycle itself. No wonder U.C. Davis scientists have found and are continuing to find rapid algal growth and rapid decreases in a clarity of water that exists in only two other lakes on the planet.

The Carter Administration

Since the arrival of the Carter Administration in 1976, however, there have been signs that the federal giant in the Basin is awakening. Between 1976 and 1980, a number of steps were taken that made Tahoe more of a federal issue. Congress passed a major piece of legislation on Tahoe, ratifying a California-Nevada agreement for a new TRPA, and President Carter signed an executive order directed exclusively at Lake Tahoe.

It may seem like much happened at once. In fact, these developments were a long time in coming. To put these developments in context, it is helpful to go back four years and trace their evolution.

When Carter took office, the original TRPA was seen by many as a failure. The TRPA had not been able to prevent local approval of five casinos containing 2786 hotel rooms. Two of these casinos are now built; three are not. Some 20,000 single family lots lay zoned but remain vacant for lack of sewage capacity. Still pending before the EPA are between $35 and $49 million worth of sewer grants which would provide capacity for the approvals TRPA could not block during growth's heyday.

The TRPA's problems were rooted largely in the famous requirement that it could not overturn a local casino or subdivision approval unless the TRPA Board voted affirmatively to to so. Thus, a failure to act constituted approval. Moreover, a majority of the TRPA board members from the state in question had to vote against a local permit before it could be overturned. Simply because the Nevada delegation tilted toward development, much got approved despite the opposition of a majority of the Board.

All during the 70's, preservationists, led by the League to Save Lake Tahoe, mounted a public relations campaign against the approved development and against the TRPA itself. Preservationists charged that the existence of the double-majority-failure-to-deny clauses in the 1969 California-Nevada compact that created TRPA was no accident. They were evidence that the Nevada gaming interests would never agree to a TRPA where they lost the upper hand. California's delegation was powerless to counteract Nevada's. Therefore, argued the League, the only solution was to go over the heads of the two states, to the federal government, by designating the Tahoe Basin a "National Scenic Area" (NSA).

An NSA is a vague concept, generally meaning that the federal government both declares the preservation of an area to be of national significance and custom-designs a political mechanism whereby the national interest takes precedence over local forces for economic development. It is the ultimate expression of an active federal government.

With the Carter Administration in 1974, the preservationists had federal leadership predisposed to be sympathetic. Specifically, in 1976, President Carter appointed then California Assemblyman Charles Warren as chairman of the Council on Environmental Quality. Thus an important Carter official was aware of the Tahoe situation and actively interested in a solution.

The Leadership of Charles Warren

Knowing he faced a number of problems before the Congress would agree to step in at Tahoe forcefully, Warren resisted urgings to sponsor NSA legislation. One concern was that Congress is loathe to involve itself in specific issues where there is disagreement between representatives from the area. Though a majority of the 43 member California delegation supports federal intervention, the House delegations from both sides of the Lake itself have been staunchly opposed to a NSA or to any other form of action which would deprive the Tahoe citizenry of the local discretion which other Americans enjoy. Thus, getting Congress involved in Lake Tahoe's problems would require convincing the Congress of more than the inability of the two states to solve the problem. It would require convincing Congress that Tahoe is a national concern important enough to make some colleagues unhappy.

Additionally, in the Senate the rules work such that any member can block consideration of a bill impacting a limited area. If pushed, the Senator can filibuster. It takes a two-thirds vote to sit the Senator down. Since three of the four Senators from California and Nevada opposed almost any active exercise of federal power at the Lake, it would take an extraordinary national push on the order of the Alaska effort to muster a closure vote over the objections of these members of the world's most exclusive club. In turn, this Everest of an obstacle makes House Members reluctant to shed blood in an evidently fruitless cause.

(See FEDERAL GOVERNMENT, page 11)

The Revised Regional Planning Compact

ONLY THE FIRST STEP

(NOTE: The views expressed in this article are those of the authors alone, and do not necessarily reflect the opinions of the Attorney General.)

When former President Jimmy Carter signed the revised Tahoe Regional Planning Compact into law on December 19, 1980, a new chapter commenced in the saga of Lake Tahoe. While some view the revised Compact as a panacea for Tahoe's considerable ills, serious problems and uncertainties remain. In large part, they result from ambiguities and gaps in the Compact itself. Lawyers, planners and landowners who are grappling with the problem of implementing the new Compact will play a major role in charting Lake Tahoe's future simply by the way in which they resolve these uncertainties.

TRPA Voting Procedures

By now, most students of Lake Tahoe have a basic understanding of the major features of the revised Compact. The Tahoe Regional Planning Agency (TRPA)—which the state of California had formally renounced and many observers had labelled a failure in its earlier incantation—has been recreated. Membership has been expanded to 14 members (seven from each state), with the voting majority having eliminated the previous dominance of local government in favor of a bare majority of members reflecting statewide interests. The original Compact featured the notorious "dual majority" rule, whereby an affirmative vote of the majority of each state's delegation was required to take

action, and a failure to act within 60 days meant that a project was approved by default. The new Compact establishes a complex, three-tiered voting system: to adopt, amend or repeal TRPA's regional plan and ordinances or to grant variances, a majority vote of each state's delegation is required. Approvals for individual projects require five votes from the state in which the project is located and nine total votes. Finally, for "routine business" and authorization of enforcement actions and litigation, a simple majority of the total TRPA membership is needed. If the requisite number of members do not vote to approve a project, it is deemed denied. If the agency fails to act within 180 days after a project application is filed and complete, the application is not "deemed approved"; rather, the applicant may sue to require TRPA to take action.

TRPA's Planning and Regulatory Role

The new TRPA is given a dual planning/regulatory responsibility that is reminiscent of the temporary Coastal Zone Conservation Commission created by the voters of California in 1972 under Proposition 20. The new Compact directs TRPA to adopt by June 1982 "environmental threshold carrying capacities" for the Tahoe basin encompassing air, water, soils and vegetation conservation standards. Within the following twelve months, TRPA must adopt an amended Regional Plan that "achieves and maintains" these carrying capacities. Implementing ordinances and regulations are also required.

During the interim period while this planning process is being carried out, TRPA is required to enforce, in the California portion of the basin, the regulations of the California Tahoe Regional Planning Agency (CTRPA). (Ironically, faced in the past with a TRPA regulatory program California deemed to be too lax, CTRPA had reacted by adopting more stringent regulations; it is these that TRPA must itself now enforce.) The new Compact adopts an interim moratorium on subdivisions, planned unit developments and condominium projects. It also features a temporary ceiling on new residences in the Tahoe Basin through April 1983—a total of 1608 per year, 530 on the California side. A similar limitation on new commercial projects is also imposed.

Finally, permanent, stringent controls on new casino construction and expansion are created.

Unresolved Questions

As with any long, complex statute, the Compact seems to raise as many questions as it resolves. Perhaps the most obvious is TRPA's questionable ability to meet the Compact's statutory deadlines. After a rocky first session. the TRPA members have demonstrated an encouraging ability to work cooperatively in a rancor-free atmosphere. However, the agency is chronically understaffed, and it is the staff that must perform the basic planning tasks that will ultimately allow TRPA members to make the decisions. (President Reagan's March 12, 1981 action abolishing the Federal Coordinating Council can be expected to have a deleterious effect on TRPA. The federal government had previously been expected to devote funds and staff to assist in TRPA's planning efforts. The nature and scope of federal participation is now uncertain, however.) Many sources are convinced that TRPA will be unable to adopt its new plan within the prescribed time limits.

This would aggravate a problem that already exists under the Compact. The subdivision moratorium and building quotas will lapse on May 1, 1983. Yet TRPA is not required to adopt its new Regional Plan until June 19, 1983. Assuming that the agency takes at least this long, a minimum 50-day "window" exists for TRPA action on projects that could conceivably leave an irretrievable mark on Tahoe's future.

A related ambiguity involves TRPA'a obligation to adopt regulations and ordinances implementing its new Regional Plan. Some portions of the Compact suggest that these must be enacted concurrently with the Plan; other sections imply that they can be adopted at an unspecified later date. If the latter interpretation is embraced, serious enforcement problems are raised. (CTRPA adopted a revised Regional Plan of its own in November, 1980; while some portions of that plan are self-enforcing, as yet no implementing Land Use Ordinance has been enacted. In the meantime, the 1975 CTRPA ordinance is enforced.)

CTRPA's own future is unclear under the Compact. In legislation adopted concurrently with its approval of the Compact, the California Legislature eliminated CTRPA, effective upon the enactment of all TRPA ordinances necessary to effectuate the latter's Regional Plan. Left unresolved is the question of what becomes of litigation involving CTRPA as of that date. Who will enforce conditions imposed by that agency in connection with previously-granted project approvals?

Approximately two-thirds of the land in the Tahoe basin is owned by the federal government, but the authority of TRPA over these lands is uncertain under the Compact. Since the demise of the Coordinating Council, TRPA's environmental carrying capacity study will presumably have to consider the federal lands. Less clear is whether the federal government must comply with the plans and ordinances ultimately adopted by TRPA. Recent federal court decisions have held that at least under certain circumstances the federal lands are not subject to local zoning ordinances. While the Congressional bill approving the Compact requires federal agency cooperation with TRPA, it also conditions ratification of theCompact on a full reservation of federal powers.

(See **FIRST STEP**, page 13)

WATER QUALITY AT LAKE TAHOE

The Perspective from Local Government

Keeping Lake Tahoe blue and clean has become much like the flag, mother hood and apple pie. It is not a quest that is debatable but one that incites zealous pursuit and each supporter of clean water wants to outchampion the other. It is like people arguing about who loves the USA most.

Given this fervor, it is not unexpected that nonresidents of Lake Tahoe would perceive their motivation to be superior to that of permanent residents. And, it follows that local government would not be considered as a viable agency to design and implement solutions to area-wide or, in this case, basin-wide problems.

However, first looks can deceive and there are some interesting facts which suggest the City has a role to play which exceeds the ratio of square miles inside the City limits to square miles within the Lake Tahoe basin. Let us highlight a few of these:

Population

Permanent year around population at Lake Tahoe approximates 75,000. Of this, 21,000 or about 30% is located within the City.

Visitors

Annual visitation at Lake Tahoe approximates 20 million visitor days. Over 60% of this visitation is at the south shore. Within the City of South Lake Tahoe, temporary population reaches 100,000 during peak weekends and vacation periods.

Government Structure

The City is the only general purpose municipal government located at Lake Tahoe. Around the Lake there are parts of four counties and part of one Nevada city (Carson City). However, Carson City has no population residing at its Lake Tahoe extension and will not have any in the future because of public land ownership. The four counties are headquartered 60 or more miles from Lake Tahoe and their locus of activity typically does not include Tahoe basin affairs. And, when they do, Tahoe needs must necessarily be balanced with County-wide needs.

Partnership

By the very definition of municipal government, the City is committed to and responsible for resolution of drainage, erosion control, water supply and distribution, and flood control problems which directly affect water quality at Lake Tahoe.

The City has been and continues to be dedicated to using the most professional approach to municipal problems. Public administration is a partnership which requires a great deal of collaborative effort to pool resources, apportion authority and unite public support. If this process accomplishes nothing else, it creates a sensitivity to practical solutions and the compelling need for participation of the public in decision making.

With this long preface to the subject, let us review water quality issues as viewed by the City. First of all, the City attaches great import to the value of clean, clear, blue water in Lake Tahoe for both residents and nonresidents.

Secondly, in the entire basin, there is no use of septic tanks and no disposal of liquid or solid wastes. Both of the latter products are transported for disposal beyond the basin and at great expense. Hence, the only practical problem left of concern to Lake Tahoe water quality is that dealing with run-off of storm water and percolation of nutrients into the fragile water system of Lake Tahoe.

Water Quality Management

It is seldom acknowledged that the South Lake Tahoe City Council recognized this sole remaining problem as far back as 1974. With a combination of Federal grants and local funds, the City financed a major engineering study of storm water drainage and erosion control. This study, which became a city general plan, concluded that a series of eight projects were needed to remedy run-off problems.

The plan which blended revegetation, ponding of water for peak flow storage and off season water enjoyment, purchase of open areas and installation of pavement, pipelines and drainage facilities.

Subsequently, the City received a Federal Clean Lakes Act grant to finance 20% of a $6 million project in the most critical of the eight target areas. The remainder of the financing was to be derived from City general funds and assessments on benefiting property. Following a traumatic series of pre-assessment property owner hearings, the City applied for project approval from the California Tahoe Regional Planning Agency (CTRPA). Although the project was seemingly approved, in fact, conditions applied to approval collapsed the project and the Federal grant had to be returned un-used. The City sought waiver of these prohibitions without success.

Therein lies one of the great lessons of public administration: To get something, something else must be given. Imagine, if you can, the impossible dilemma

faced by the City. On one hand they know there is a need to improve drainage. On the other hand, the state, which should be helping local government, blocks adoption of the only known achievable project. This dilemma creates a most perplexing situation.

Multi-Agency Efforts

Of equal frustration to the City is the apparent absence of teamwork or partnership in seeking solution of basic problems. The City knows full well its limitations, both financial and geographic. Thus it comes as no surprise that the City endeavors to collaborate with these local, state, regional and Federal agencies which share responsibility for achievement of similar programs and goals. In the case of Lake Tahoe, this network includes local special districts regional agencies, California and Nevada administrative agencies, county government and a spate of Federal agencies. Ideally, these agencies should be banded together for the common purpose they represent. However, each separate unit will engage the City staff in discussion or planning for specific projects or objectives.

The Tahoe Regional Planning Agency (TRPA) was created by the states of California and Nevada and approved by Congress. There were recognized deficiencies in the original compact which prevented unified planning efforts. Nearly all of these problems have now been corrected in a substantial revision to the bi-state compact and a complete re-organization of the agency is in process. However, prior to the compact revision, the state of California took the position that it should act separately from other agencies when problems involving the Lake Tahoe basin are confronted. Thus, air quality, transportation, and water quality planning programs took shape on one side of the lake through major commitments of staff and money by California. On the other side of the lake, TRPA was responsible for completion of the same planning program. Ironically, the state of California withdrew all financial support to the TRPA program.

Ideally, the two separately prepared planning efforts—TRPA and California—should blend together. But this result did not occur. The state of California developed plans, however,that were not tempered with realization of local problems, such as the need for acceptance by the public whose property is involved, and the financial difficulties facing local government during a time a strong populist movement to cut back on government altogether.

Years ago government agencies were considered as partners to achieve common purpose. The City would still like to see management in this fashion. Marshalling together all of the resources available would seem to offer an impressive array. However, there are strong arguments offered to counter this style of project management. For one, it is said that only the state of California has the legislative mandate to press for responsible and effective clean water programs and that banding together other agencies would lessen accomplishments. Another argument is that collectivizing efforts of all agencies results in procedural delays and confusion over assigned responsibility; that committees offer excuses for non-achievement. Another argument offered is that a collective effort weakens the vigor and enthusiasm of the California participants.

Separate Plans

The City finds itself with three separate clean water plans: one prepared by the City; one adopted by TRPA for the entire basin; and a plan adopted by the California Water Resources Board for the California side of the basin. The California Plan differs from the others by declaring large amounts of property to be ineligible for construction. Essentially, the California plan eschews technology as an effective means to reduce erosion and nutrient transportation to Lake Tahoe. Instead, an absence of construction is deemed to be the most practical and efficient way to achieve water quality goals. The financial impact of the approach is not clear for property owners or local government. While state and Federal funds may be available to purchase non-usable land, it is very difficult to measure the cost of purchase, the expense for maintenance of that property over time, the expense for services and loss of revenue to local government, and the opportunity cost which is lost when private development does not happen.

Conclusion

Local government is mandated under the state constitution to perform several functions. Planning for this work requires a participatory process. Once plans are adopted, a team work arrangement is essential to achieve results.

Yet when the state released its preliminary report on clean water management (the 208 plan) the City did not receive notice of its preparation. A copy was received after a news release announcing that the plan was completed. Later the state appointed a citizen committee to review and comment on the plan but local government was not given the opportunity to designate appointments to the group.

Special effort was undertake by the City to obtain clean lakes reports and surface water management plans from public agencies elsewhere in California and the nation. Those reports which were available suggested an approach to plan preparation and implementation which involved more collaboration than was the case at Lake Tahoe. While Lake Tahoe is considered to be a unique treasure, it is submitted that this characteristic does not justify a unique departure from tried and proven styles of project management.

Richard Milbrodt

Role of Federal Government

(continued from page 6)

Warren also had constitutional problems. The best tool for preventing mistakes at Lake Tahoe is the land use power, which the Constitution leaves to the states. The states' possession of land use authority is the best legitimate argument for leaving Tahoe in Nevada and California's hands. Similarly, the cry that the Federal exercise of land use powers is unconstitutional is the most effective political argument against direct federal intervention. Thus by favoring state land use controls and for different reasons discouraging federal land use controls, the constitutional argument makes Congress considerably more reluctant to institute a NSA.

A legal argument can be made that the interstate commerce clause justifies federal land use policies and is particularly applicable in Lake Tahoe's case since it is one body of water in two states. I would agree that the clause can certainly sustain an NSA land use program in the courts. That argument, however, works better in the courts once a law has been passed than it works in Congress in defense of a proposal members are leery about.

Lastly, Warren had some difficulties within the Administration itself. Eyeing the three vacant casino sites and, even more ominous, the 20,000 vacant single family lots with owners crying for restitution, the Office of Management and Budget sees Tahoe as a bottomless pit to cost many millions. They also see Tahoe as a precedent for other similar expenditures on scenic areas. The OMB is deaf to the argument that a good land use program under an NSA would prevent the serious mistakes that later cost millions to recoupe. Though history shows that the more land use mistakes are made, the more it costs to get out of them, the land use possibilities of federal involvement are vague to the OMB. The threat of outright outlays is very concrete.

With all these considerations, Warren decided the best course was to direct the moral pressure building against TRPA's record against the two states, to encourage them to renegotiate the 1969 compact. The states responded to the call and after about a year the two governors had worked out a new compact. It only needed ratification by the two legislatures.

Meanwhile, Warren started in motion a process which has come to be one of the greatest positive contributions the federal government has made to Lake Tahoe. The bureaucracy, led by the EPA, was directed to prepare an exhaustive environmental analysis of the Tahoe Basin, including the impacts of federal activities on the Basin. Further, the study team was to define "environmental thresholds" for each element of the Basin's ecosystems, representing the limits the Basin's ecological structures can tolerate without degeneration. Thresholds are a potent concept, though a concept still. Their potential is worth discussion.

Management by Threshold

Constant in the political rhetoric about Tahoe are pious references to its sacredness: all will concede that Tahoe is a national treasure that must not be degraded. Yet, in the next breath some people will talk about "reasonable" levels of development, or "local control" or "private property rights," all of which can be codewords signifying a willingness to allow more development, with the excuse that a little more won't hurt.

People can get away with this two-sided rhetoric simply because no one knows what "degrading Lake Tahoe" means in empirical terms. Bit by bit development pushes forward. Every time a crisis point arrives at the Lake, when it is clear that the past efforts have gone wrong, institutions to protect Tahoe are strengthened, but always at the price of grandfathering the developers' near and sometimes mid-term expectations. "Be reasonable," developers say. "Include us. Then we will agree to the new entity." Note, however, that the new, stronger, entity does not create an absolute standard. The stronger entity, too, will be forced to contend with the details of a development proposal including its quantifiable benefits put forward by strongly motivated proponents. They tend to overwhelm the vaguer and sometimes utopian notion of beauty which the preservationists must advance.

Thresholds draw an absolute line which defines what degradation means. They do so empirically and rationally. They give the environmental perspective much firmer footing. To cross a threshold is to cross the line of reasonableness.

Because they are so potent, and because they are difficult to arrive at as well, thresholds have had a hard time emerging. CEQ officials inform me that in 1977 the EPA Regional Director put off the search for thresholds and concentrated instead on releasing a general environmental assessment as a first step. Ultimately, the EPA released its assessment in January, 1980. Though the assessment itself has been of considerable importance in documenting the federal role at the Lake, and has therefore provided an empirical argument in favor of improving federal conduct, the decision to table Warren's request for thresholds has proven costly. The Reagan Administration is now in office and it is at least likely that the EPA's mandate to pursue the threshold concept is nowhere near as clear as it was under Carter.

Nonetheless, Warren's initial purpose in gearing up the federal planning capacity was to keep alive the threat of active federal involvement should the two

(See FEDERAL GOVERNMENT, page 14)

A Reasonable Solution

(continued from page 4)

be acquired in California by the Forest Service again using the power of condemnation.

However, additional restrictions have now been placed on the exercise of the power of eminent domain, particularly as it applies to improved property in California. Those restrictions provide that single-family dwellings may not be acquired "without the consent of the owner", unless the Forest Service finds that a "change of use" has occurred or is threatened to occur, and that "such change will result in detriment to the preservation of the existing air, water, or visual qualities of the Basin". {*The Bill now requires TRPA concurrence and omits mention of air and visual qualities.*}

Additionally, the bill now provides that when the TRPA revisions have taken effect and a new TRPA regional plan has been adopted, the Forest Service must also make a finding that any proposed acquisition is consistent with TRPA requirements.

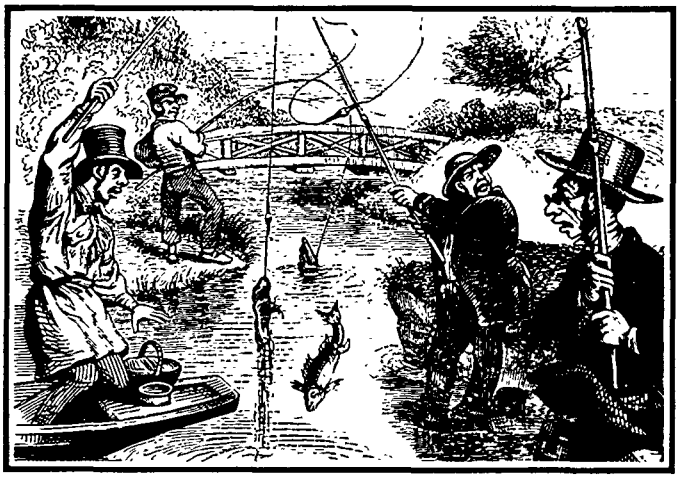
As to single family homes acquired by the Forest Service under the act, the Forest Service must give the owner the option to continue to occupy and use the home either for a term of 25 years, or for the life of the owner.

3. Fair Market Value. A new provision has been incorporated requiring that at the time of acquisition, the Forest Service must determine the fair market value of the property by an independent appraisal based on "comparable sales at the time of such acquisition". Additionally, any change after the enactment of the Act in the value of the property which is attributable to the enactment of the Bill shall not be taken into account.

4. Funding for local Government A new provision has been included in the Bill providing an additional appropriation equal to 15% of the value of the lands sold in the Las Vegas Area. Those funds are to be paid to local governments to be used for water pollution control, soil erosion measures, and acquisition by local governments of lands in the Tahoe Basin. Similarly, a new provision has been added providing funds equal to 5% of the value of the lands sold in Las Vegas to go to the Forest Service to assist in water quality control measures as well as to manage the lands acquired under the Bill.

5. Additional Funding. Additional "in lieu revenues" are to be provided to local governments to help meet the loss of property taxes incurred as lands are acquired by the federal government, consistent with the formula and provisions set forth in the Redwood National Park legislation.

6. Source of Funds. Sales of excess government lands have now been limited to Clark County (around Las Vegas), as the Washoe County Commissioners



voted not to support the legislation.

Problem Areas

While most of the amendments included in the revised version adopted by the House were intended to respond to many of the objections raised by the initial draft, nevertheless several key problem areas remain. The Preservation Council believes that there are at least three critical areas that require additional revision:

• *Condemnation Powers*: The so-called "condemnation powers" contained in the Bill need amendment. The Preservation Council believes that due to the existing regulatory restrictions in the Basin, there are more than ample "willing sellers" so that the need for "condemnation" is remote.

The pressures to insert "condemnation" have apparently come from the California administration, although the Preservation Council believes their position has been quite inconsistent. For instance, Governor Brown of California approved a ballot proposition on the California ballot in November that, if passed by the voters, would provide $85,000,000 for land acquisition in the Tahoe Basin. However, that provision provided that only purchases from "willing sellers" can be made, and specifically precludes the use of condemnation. On the other hand, it appears the California Administration is pressuring the federal government to be the "heavy" in the Basin, and to include condemnation power under its purchase program. {*Proposition 2 was defeated in November, 1980.*}

• *Cut-Off Date*: The August 26th, 1980 date included in in the Bill defining unimproved properties which may be acquired in Nevada, seems to have no legitimate purpose and will only cause unnecessary uncertainty and anxiety for property owners who proceed with construction after that date. The apparent argument for a cut-off date prior to the adoption of the Bill is to avoid a rush of building. However, given the restrictions on building permits included in the new TRPA compact, it is clear that those building permit limitations will prevent any "land rush" and do away with the need for such an arbitrary cut-off date. {*The cut-off date was*

amended to the date of the enactment of the bill.}

• *Overbreadth of Program*: Probably the most important remaining problem area is the breadth of the proposed acquisition program. Under the Bill as adopted by the House, the Forest Service is directed to prepare an acquisition map no later than {*six months after enactment*}, which may contain up to approximately 17,000 acres. The potential amount of acreage that can be earmarked for acquisition represents over 50% of the current "urbanized area" of the Tahoe Basin that is in private ownership. Because the Bill provides only a one shot opportunity for the Forest Service to prepare its acquisition map, the Preservation Council is quite concerned that the maximum possible amount of acreage will be shown on the acquisition map, thereby unduly impacting literally thousands of parcels of private property for which acquisition funds may not be available for many, many years, if ever.

The Preservation Council believes that any acquisition program and map must be based on the reasonable amount of monies that will be generated from the sales of excess lands in the Las Vegas-Clark County area. An effort must be made to estimate the reasonable value of the lands that will be sold, and only acreage of that approximate value should be shown on the map prepared for acquisition in the Tahoe area.

Further, it may be desirable to give the Forest Service the ability to update the map from time to time, either to add or delete property shown for acquisition so as not to unduly blight properties that in fact cannot be purchased. {*There is a new provision that the Forest Service shall notify the public of the approved land acquisition program annually.*}

In short, the acquisition program must be tailored to meet the amount of revenues expected to be available, not done on a broad-base, shotgun approach as if all the money were in the bank.

Conclusion

In closing, the Preservation Council, and the thousands of members we represent, is vitally concerned with the future of the Lake Tahoe-High Sierra Region. We have been accused of having "vested interests", and indeed we may—as our members are homeowners, property owners, and taxpayers who have made their own personal commitment to Tahoe. As was said at the outset, we are action oriented and want to see long-overdue solutions implemented. It is time to end the useless political bickering and finger-pointing and get on with the job of implementing reasonable, cost-effective programs that are designed to meet the real problems of the area. To that end, we have committed our full energies.

Tahoe-Sierra Preservation Council

The First Step

(continued from page 8)

The establishment of temporary ceilings on new residential and commercial development has raised a host of other problems. Do public (generally low-income) housing projects count against the residential quota? Should public works be counted against the limitations on commercial projects? The Compact establishes a quota on 1980 projects, yet by the time it was finally ratified that total had already been exceeded in several respects. How are these excesses to be accounted for?

In the face of the myriad of problems surrounding these quotas, pressure has mounted to have the numbers adjusted. This has resulted in the introduction of SB 12 by Senator John Garamendi, a bill that could become a "Christmas tree" of changes to the Compact by those dissatisfied with it in one way or another.

The Compact's total moratorium on subdivisions and related major development projects exempts those projects for which vested rights already exist. Left unanswered, however, is whether construction for which a vested right exists counts against the development quotas. A further concern is that the moratorium may arguably frustrate the efforts of TRPA, CTRPA and other governmental entities to settle longstanding litigation over such projects. In some cases, developers have indicated a willingness to compromise these disputes by agreeing to developments with less intensity than those they previously argued to be vested. Under current vested rights law, however, it could conceivably be argued that such a modified project is no longer vested.

Finally, the revised Compact requires the TRPA Regional Plan to maintain "federal, state, or local air and water quality standards, whichever are strictest, in the respective portions of the region for which the standards are applicable." If, for example, California's State Water Resources Control Board sets a stricter water quality standard for the California side of the basin than its Nevada counterpart, different standards for the same, integrated water resource (i.e., the lake) would be imposed. Curious enforcement and planning dilemmas could be expected to result.

Conclusion

This discussion has raised but a few of the many unresolved legal and policy questions contained in the newly-revised Tahoe Regional Planning Compact. How they are resolved will go far in determining TRPA's ability to cure Lake Tahoe's long-festering problems.

Richard Frank and Craig Thompson,
Deputy Attorney Generals

Role of Federal Government

(continued from page 11)

states fail. All during the governors' negotiations, the federal threat created considerable pressure. Remarkable local concessions were made. Nevada agreed to the federal purchase of one of the three still vacant casino/hotel sites. Local interests even agreed to a plan, however, vague, whereby they would cause to be purchased another of the three vacant sites. This happened even though TRPA approvals of these casinos had been the subject of protracted court battles between California and Nevada.

However, as the Nevada Legislature was winding down in 1979, a crash lobbying effort by the representatives of Tahoe casinos weakened the governors' agreement significantly. The timing of their conspicuous power play and the clarity of their motives caused the California negotiators, led by State Senator John Garamendi, to reject the Nevada-passed bill outright.

The National Scenic Area Bill

It also caused the Tahoe issue to rebound into the Congress a year and a half before the end of President Carter's term. Jim Bruner of the League to Save Lake Tahoe came back to Washington and asked me to introduce the League's National Scenic Area bill. Eventually I did, the following January, just as the EPA study team released its report (without thresholds) demonstrating clearly that federal government action had enormous, inadvertently negative, impact on the Basin.

After early drafts attempting to establish a politically salable basis for more direct land use controls, H.R. 6338 ended up relying heavily on converting the powers of the federal purse and permit into an active, positive force in the Basin. Using thresholds, a federally sponsored plan was to detail a Basin-wide effort with preservation as its final criterion, and with thresholds to anchor the plan. Local governments were to adopt the plan or risk cut off of all federal government money. Plus, even if no federal funds were related to a violation, local governments could conceivably be sued by third parties for violation of what had become their own plan. All this was to be a clear direction from the Congress, overriding any past confusions about what the federal agencies' missions were in the Tahoe Basin.

The Executive Order

In the beginning we had some hopes that the bill, or perhaps part of it, would pass the House. The upper levels of the Administration were supportive, save the Office of Management and Budget, which maintained its view that an NSA was a bottomless pit. Moving a President is very difficult if elements within an administration conflict. For this reason, and because CEQ could count votes and acknowledge Senate procedures as well as anyone, the Administration dropped attempts for an NSA and, over OMB objections, opted for Executive Order 12247, which President Carter signed October 15, 1980.

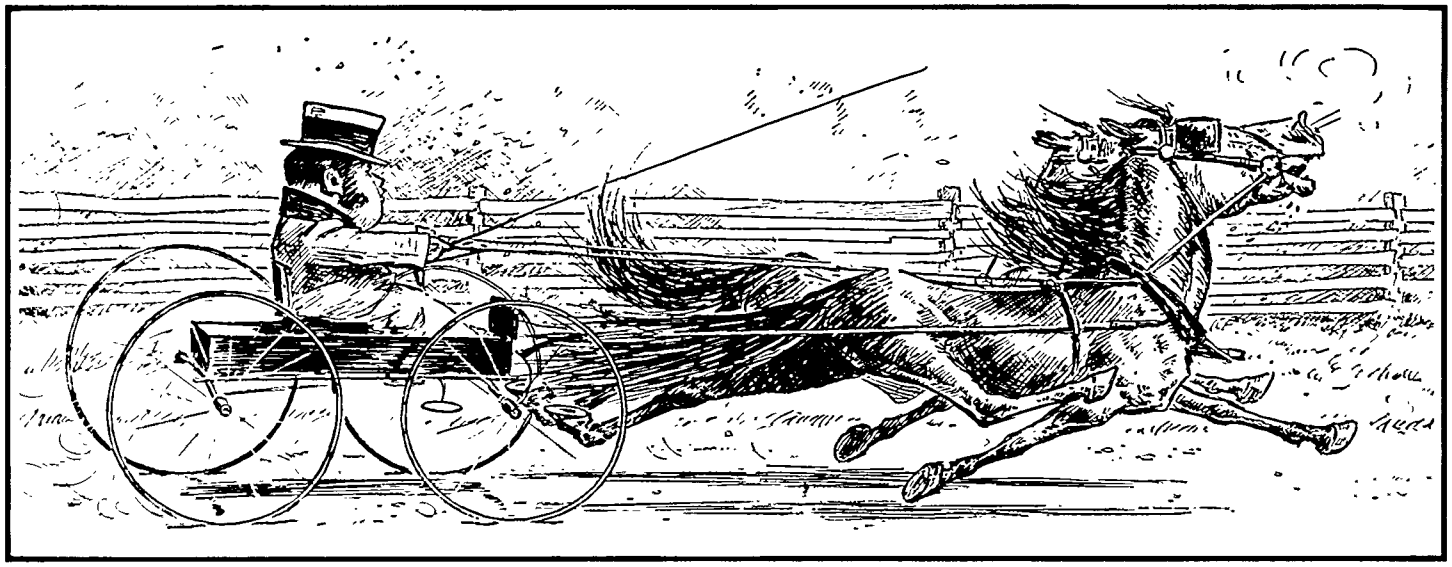
The Executive Order adopted the idea of setting one coherent federal goal for the Basin. It established an entity known as the Tahoe Federal Coordinating Council, comprised of the eight leading agencies in the Basin, to review federal permits, grants and financing programs with the protection of the Basin the paramount goal. It also directed the Council to finish the threshold work as a way of encouraging local and regional decision by standards rather than political compromise.

The Santini-Burton Bill

If destined never to pass, the scenic area bill did attract 42 co-sponsors, half of whom were not from California. It probably contributed to the pressure on all parties to make progress in the Basin. Similarly, it served the political purpose of extending the spectrum of apparent possibilities. In other words, more practical measures seemed less sweeping than they would have otherwise. Several of those who supported the Tahoe bill that succeeded in the 96th Congress, H.R. 7306, took their position noting that it was much more reasonable than the Fazio bill.

H.R. 7306 is now P.L. 96-586. Well before the introduction of the scenic area bill, it was generally known to Tahoe watchers that Congressmen Phil Burton (D-San Francisco) and James Santini (D-Nevada) were working on a measure of their own. The vagueness of what Burton was up to, coupled with his legendary reputation for legislative blitzkreig, helped establish Tahoe as a key legislative item. No one knew what Burton would do, or how hard he would pursue his initiative. In any case, it was clear that something could happen at the federal level. Santini's involvement confirmed it. Among other results, the cry that "the two states can handle this" suddenly re-erupted. Nevada legislators quickly got back together with California's. They renegotiated another regional planning agency compact, which shot through the Nevada Legislature in a special session without significant amendment, was easily approved in California, and was ratified by Congress last winter.

When the Santini-Burton bill finally emerged after months of quiet negotiations, it was to raise $150 million to be devoted towards the purchase of those vacant single family lots lying on particularly erosible, steep, or otherwise sensitive lands. The owners of those lots had been languishing for years, often caught without sewer permits, paying mortgages and taxes, yet never able to build. The genius of the Santini-Burton bill was its harnessing of opposites. By selling urban BLM lands, it



gave Nevada something the major population center in the state, Las Vegas, very badly wanted and then directed large amounts of funds towards acquiring lands at Lake Tahoe. It did so without seeming to tap the federal treasury. It placed the largely anti-environmentalist Sagebrush Rebellion in Nevada and the environmentalist effort at Lake Tahoe in tandem. Other sweeteners included a 5 per cent benefit to Nevada's schools. The price that H.R. 7306 sought to exact for these benefits was to give the Forest Service, implementor of the purchases, much greater condemnation powers at Tahoe.

These powers were the crux of the bill, because they would free the Forest Service from the old problem of buying only those lands whose owners were willing sellers. Needless to say, condemnation also became the most controversial part of the bill. Similarly complicated was the manner in which the bill designated which single family lots were on critical soils and therefore were to fall under condemnation's cloud. Designation by plan is akin to land use. After months of delay, negotiation, pressure, and effort by preservationists to mount a campaign within the Nevada electorate, months that consumed all the time available in the greatly prolonged 96th Congress, the bill finally passed the Senate.

However, some key compromises had to be made. The extended Forest Service condemnation power still exists, but greatly weakened, the new TRPA must agree before the Forest Service may condemn. The specific critical soils areas are not designated by the bill as originally proposed. Instead, by June the Forest Service is to prepare maps following general criteria.

The Outlook Under Reagan

That is how the latest chapter in Tahoe's political history has concluded. The key to Tahoe's future is held by the Reagan Administration. Rumors are rife and substantially confirmed that Senator Paul Laxalt, Reagan's national campaign manager and closest Congressional confidante, wants the President to countermand the Carter executive order. If he does, I believe the impact will go far beyond putting the bureaucracies back to business as usual at Tahoe.

Federal agencies are capable of plenty of damage on their own. The sewer grant requests are still pending, enough to provide for thousands of houses and significant casino expansion. Nevada has requested an amendment to its EPA-approved water quality plan and another amendment to its air quality plan which essentially would accommodate the third casino/hotel (546 rooms; 22 stories) and a 2100 space parking garage, respectively. One hopes the Coordinating Council would halt federal assistance to this proposed growth.

And, of course, the work on the thresholds might cease, thus returning the debate to the forum of incessant political compromise the economic realists against the aesthetics. The development interests would, perhaps, win only half the time. Nevertheless, they would steadily erode the Basin's ecological capacities, which by federal measure are already exceeded.

The implications of the Executive Order's abolition go well beyond the immediate. Abolition would signal the always nervous Forest Service to be extremely cautious in its drawing of the map of critical soils that defines the purview of the Santini-Burton bill. It would also signal to the TRPA that the federal pressure to keep a tight rein on the Basin is gone. Thus, several years hence we may again find ourselves talking about federal action to counteract another local failure, this time in order to prevent a Monte Carlo from becoming a Coney Island.

An Overview

(continued from front page)

Virtually everyone involved in the issues agrees that there is a need for some action protecting the Tahoe environment while not severely burdening property owners and business interests. The region has suffered, however, from fractured bi-state compacts and jurisdictional conflicts among competing districts, agencies, cities, and counties in both California and Nevada. New attempts are being made to resolve the conflicts. The cast of characters includes state legislators, congressmen and senators, past and present presidents, planners, property owners, casino operators, developers and environmentalists. Motives are complex and diverse, and there has been little agreement on what type of action should be taken. Some of the various proponents shift positions as the story moves along. For example, when a more drastic proposal is suggested, more moderate solutions to Tahoe's plight gain adherents among their former opponents. There are many Tahoe-saving mechanisms that are being tried and others that are being proposed. They differ greatly in their origin, method and execution. Some of the measures that have been taken or proposed during the last decade include:

Tahoe Regional Planning Agency (TRPA)

Created in 1969, this original bi-state agency was charged with responsibility for control of development of the Tahoe Basin. But built into its machinery was a sympathetic treatment for new growth. If a majority of the TPRA members did not approve a new project application within 60 days, it was converted to a default approval and construction could begin. Sympathetic treatment for growth was further promoted by the appointment of membership favoring pro growth forces in both California and Nevada.

During the last decade the TRPA approved more than 95 percent of all development proposals that it reviewed. In 1978 alone, four casinos and 1,500 additional hotel rooms were approved for Stateline. Planners estimate that those projects would add 24,000 residents to South Lake Tahoe.

In 1979, California unilaterally withdrew from the TRPA, cut off funding, refurbished its own California Tahoe Regional Planning Agency and took other steps to limit growth in its two-thirds of the Basin. In an effort to compromise, members of the California and Nevada legislatures devised a new bi-state compact. After much debate and negotiation, both legislatures approved the new compact and Congress gave its ratification in December, 1979.

The agreement prohibits most development at the lake for two and one half years, imposes strict limitations on the expansion of existing casinos, and prohibits approval of new ones. The compact also increases the membership in the agency from 10 to 14 to provide for greater state appointed representation and thereby limit the power of local representatives who consistently support growth. Voting procedures were also significantly changed. A majority of representatives from each state must approve a regional plan as well as all new ordinances and regulations. Furthermore, if a majority of the representatives do not approve a proposal, it is deemed denied.

Left unresolved is the issue of a mass transit system. California is pressing for future traffic increases to be handled by public transit to the casinos and ski areas from designated centers in the Basin. Nevada prefers improved private vehicle access coupled with high rise parking garages in the casino area.

Burton-Santini Bill

This major bill was approved by the lame duck session of the 96th Congress. It provides for federal land purchases in the Tahoe Basin using money from the sale of about 9,000 acres of federal land near Las Vegas. The land sales are expected to yield from $70 to $150 million. Twenty-five percent of the revenues from these sales will go to Nevada state and local governments for educational purposes and recreational development. The remaining seventy-five percent will go to the U.S. Treasury for the acquisition of private land around Lake Tahoe. The land purchases will be administered by the U.S. Forest Service.

On the California side of the lake, the government may purchase private land that is either undeveloped or already developed but causing environmental damage. On the Nevada side, only undeveloped land may be acquired.

A controversial element of the Burton-Santini bill is the right to condemn land in environmentally sensitive areas. Nevada Senator Paul Laxalt resisted granting condemnation powers, and he insisted on modification of the condemnation provision before agreeing to allow the bill to be considered by the Senate. Senator Alan Cranston of California concurred, hoping the bill would remain alive long enough to be passed. In the final days of the Senate's consideration, an amendment was pushed through that gave the bi-state Tahoe Regional Planning Agency a veto over land condemnation on both sides of the lake. The amendment placated Tahoe developers and property owners who had vigorously opposed any federal power of condemnation.

Proposition 2

Had this California ballot proposal passed in November, 1980, it would have provided $85 million for state purchase of environmentally sensitive property from willing property owners in the Tahoe area. It was

supported by virtually all environmental and developmental interests. The proposition offered a way out for thousands of lot owners who bought land they are not allowed to develop or sell. It did not provide condemnation powers to force any unwilling owner to sell. Proposition 2, however, failed by a narrow margin, 3.87 million to 3.69 million votes. A majority of the "no" votes came from Southern California.

Carter's Council

This presidential plan to protect Lake Tahoe will not be implemented by the Reagan Administration. In mid October, 1979, President Carter signed an executive order establishing a Federal Coordinating Council for the Tahoe Basin. The council was delegated the task of determining the extent of development the Basin can support without adverse effects on water, air, and land, and to regulate federal projects accordingly. While the council was still devising its standards, Carter advised all federal agencies, most notably those financing sewage treatment plants, highways and housing projects, to avoid actions that would stimulate development.

President Reagan has revoked the executive order, claiming that the new TRPA compact makes it unnecessary. The new compact requires the TRPA to adopt a new regional plan based on environmental standards and carrying capacities that the agency develops. Reagan advisors contend that the federal establishment of environmental thresholds would duplicate the TRPA's work.

The California Plan

While renewing coordinated efforts with Nevada, California has implemented a protective plan for its own side of the lake. About 12,000 of the 15,000 empty parcels on the California side of the lake are in environmentally sensitive areas where development would boost sediment runoff into the lake about 1,000 times over normal levels. The California Plan provides for a development ban on 8,600 of the empty parcels. Funds for reimbursement to landowners are to come from those provided for land acquisition in the Burton-Santini bill and other as yet unpassed state legislation and bond proposals. Purchase costs of the remaining lots in environmentally sensitive areas is estimated at $130 million. An additional $95 million will be needed for other projects over the next twenty years that would prevent runoff and erosion. The State Water Resources Control Board allocated another $10 million in clean water funds for erosion control projects, and the Department of Transportation expects to spend $7.8 million for erosion control on highways.

Federal Water Standards

Section 208 of the Federal Clean Water Act states that all waters of significantly unique or scenic nature must be protected. Lake Tahoe is both. The Act requires states to devise plans for protecting these resources. The clout of this requirement will be dependent on the enforcement policy of the Reagan Administration.

Federal Management

The strongest protection measure proposed is for federal management of the entire Tahoe Basin. Representative Vic Fazio of California introduced to the 96th Congress a bill which would create "The Lake Tahoe National Scenic Area." Fazio's bill would provide for federal control of the Tahoe Basin as a scenic and recreation area by the U.S. Forest Service. The Secretary of Agriculture would be vested with the authority for management, land acquisition, and planning.

Fazio's bill was stalled in the 96th Congress, but he is watching for signs, such as failure of other measures, that will motivate him to press for its revival.

Public pressure for a National Scenic Area bill is likely to increase if the Burton-Santini bill proves ineffective. The pressure to develop, however, is also likely to increase, especially if the attitude of the Reagan Administration is more favorable to private interests at the lake.

Summary

There is great disagreement over which protective measures are most appropriate and effective in protecting the environment while not having too onerous an effect on the construction industry, business, and other investment backed expectations. There is an increasing awareness of a possible ceiling on development. The disputes over how development should progress and what ceiling on development, if any, should exist, are likely to keep the Tahoe Basin in the limelight of environmental debate. It will take creative legislation and compromise to resolve the problems and smooth disagreements. The current degradation of the Tahoe environment, the great stake of environmental and developmental interests in the region, and the problems in coordinating governmental action, make the protection of the Tahoe Basin perhaps the most difficult environmental dilemma in the nation.

Brad Bening

Water Quality Control Plan

(continued from page 2)

sive water quality control plan for the Tahoe Basin. To prevent that plan from moldering on a bureaucratic shelf, the federal Clean Water Act requires it contain enforcement provisions and an implementation program. In short, a decision to adopt a water quality plan is a decision to enforce it.

That commitment was lacking in the Water Quality Control Plan developed at our request by the Tahoe Regional Planning Agency (TRPA). Although the TRPA draft plan set out a timetable for implementation of erosion projects, these were eliminated by the TRPA board. Controls on development on high erosion hazard lands were also deleted by the TRPA board. Erosion and pollution would have continued and increased.

Federal and State laws point in another direction. Because Lake Tahoe is a unique scenic and ecological resource; it must be protected.

No easy steps mark the way to protect Lake Tahoe. Fragile soils, steep terrain and a short growing season blossom into major erosion when soils are disturbed by construction. For much of the Tahoe landscape, construction means erosion. Retaining walls, reseeding, and other control measures only partially reduce erosion. Few subdivisions have taken steps to halt erosion rates.

Arrayed against the "construction equals pollution" equation are 71,000 landowners drawn to Tahoe by its beauty. Simply put, an agency seeking to protect Tahoe is forced to chose between those who own undeveloped high erosion hazard lots and the Lake. The law requires us to choose the Lake.

Few quarrel with this stance until considering the costs and restrictions of an effective program. To reduce sediments and nutrients pouring into the Lake will cost $95 million over a twenty year period for remedial erosion control programs in California and Nevada. About 7100, or just under 50 percent of subdivided vacant lots, would pose serious erosion problems if construction were allowed. Estimated worth of the unbuildable lots is $131 million.

The Water Quality Plan for the Lake Tahoe Basin was released for public comment and review in early January 1980. The State Board held public hearings and assimilated over 25 hours of testimony from 173 speakers into the final plan. The Board received an additional 186 letters. Most of the recommendations of the Tahoe Water Quality Advisory Committee, a policy advisory group representing divergent interests in the Basin, were incorporated. The final plan, published in late September 1980, outlines specific steps to save Lake Tahoe. Key provisions include:

- Erosion control projects such as reseeding and stabilization of slopes stripped of vegetation. (Reduces erosion by 28,800 metric tons per year.)
- Better management of rain and snow melt runoff from streets, parking lots, golf courses, ski resorts, and snow disposal areas. (Reduces erosion by 4,000 metric tons.)
- Watershed restoration and erosion control on forest dirt roads. (Reduces erosion by 7,100 metric tons.)
- Development controls. (Prevents addition of 19,200 metric tons of erosion.)

Undertaking erosion control programs without limiting development would only slightly reduce erosion, resulting in continued degradation of Lake Tahoe.

On high erosion hazard land, erosion from development soars to 100 to 1000 times natural levels. Most of the erosion occurs during rainstorms and the spring snowmelt. During these periods, streets frequently are awash in silt, stream beds become clogged, and silt plumes extend in Lake Tahoe itself.

Even on relatively stable soils, construction that covers too much of the surface can spark significant erosion. Most Tahoe soils lack absorption capacity. A road or house reduces surface area. Water that once soaked into the ground stays on the surface, creating what soil engineers call rill and gully erosion.

It is the nature of the terrain and the soils that make some Tahoe lots unbuildable, not a commitment to an abstract population limit for the Basin. That point

is important because the State Board's mission is to protect water quality, not limit population.

We cannot protect Lake Tahoe without development limits. Those limits, which are necessary to meet federal and State laws applicable to Tahoe, pose a stern problem for the lot owner and the regulatory agency.

We can provide the people of California with an effective erosion and water quality control program at Lake Tahoe, but the State Water Resources Control Board cannot compensate lot owners. When it released the draft plan, the State Board challenged State legislators and Congress to adopt a land purchase program. Both State and federal elected officials responded favorably.

Similarly, we are finding that funding is available for erosion control projects. The State Board committed $10 million in State Clean Water Bond funds for erosion control. The California Department of Transportation agreed to finance erosion control projects needed on state highways at an estimated cost of $7.8 million. These monies and funds spent by cities and counties will be used to qualify for federal matching grants, doubling their effect.

The California Department of Forestry designated the Tahoe Basin a high priority area and will make funds available under the California Forest Improvement Program. The U.S. Forest Service agreed to complete erosion control work needed on 405 acres of National Forest lands. The California Conservation Corps will furnish labor to complete erosion control projects.

The list of potential funding sources is far from exhausted. Federal grants, state monies such as the Energy and Resources Fund, local support and visitor fees could also contribute to the efforts to save Lake Tahoe.

It is heartening that in-Basin opposition to the draft water quality plan centered around land purchase issues. It means that there is growing awareness and support by political and community leaders in the Basin for a solution to the Tahoe problem. The debate over which comes first, the controls or the cash, has forced movement on both fronts. The State Board plan is legally required to protect water quality and control pollution sources.

The Lake Tahoe water quality plan sets out a concise road map for the protection of Tahoe. The overall goal, preservation of the clear blue waters of Lake Tahoe and a halt to water quality degradation, is embedded in State and federal law, as well as in the hearts and minds of those who recognize in Lake Tahoe a place of exceeding beauty and fragility.

Carla Bard

our **MONEYTREE**

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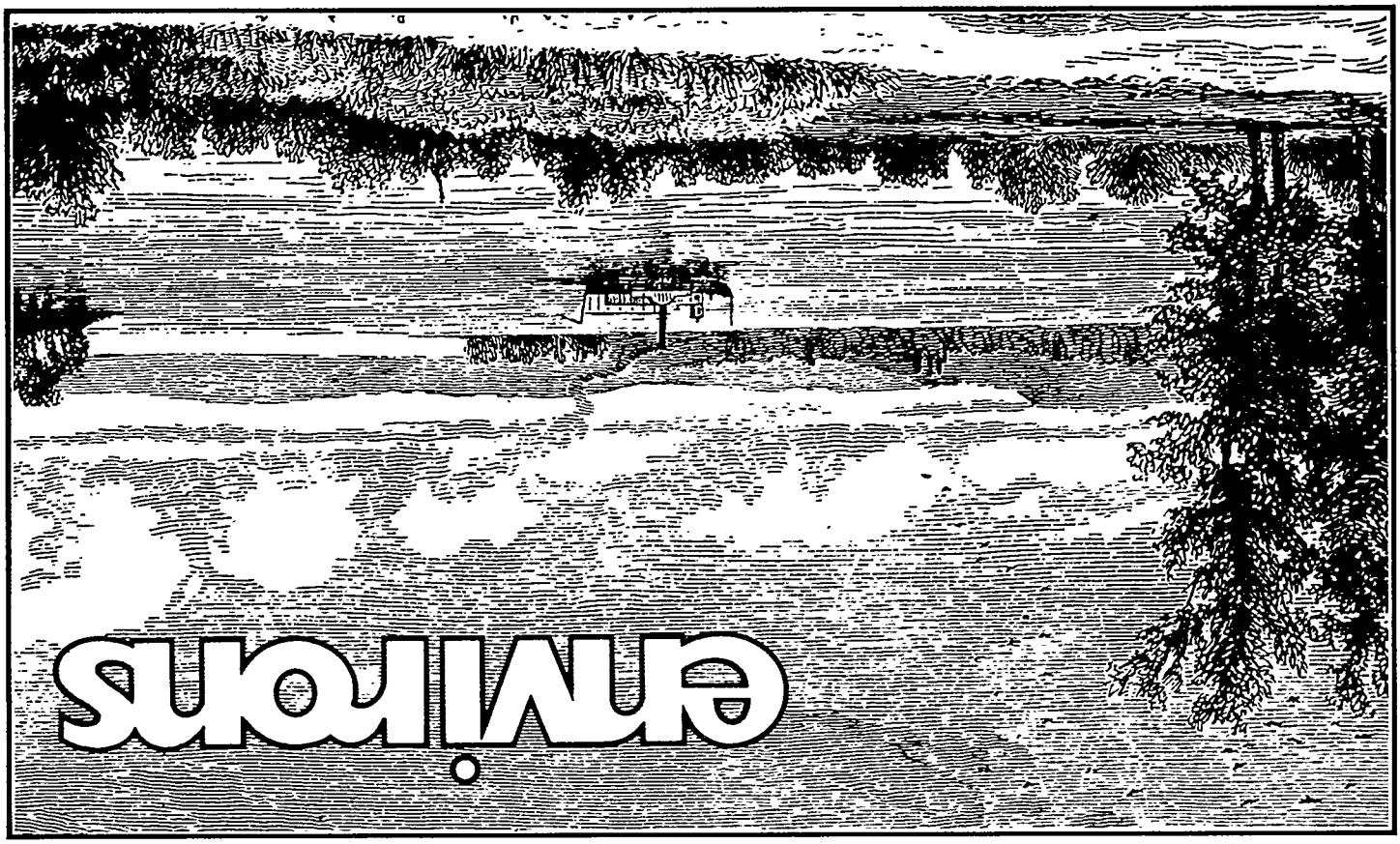

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