Tahoe Area Sierra Club Group

FRIENDS OF THE WEST SHORE

State Water Resources Control Board
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April 11, 2013

Subject: Comment Letter – Lake Tahoe 208 Plan

The Friends of the West Shore (FOWS) and the Tahoe Area Sierra Club (TASC) appreciate the opportunity to provide comments on the proposed State Water Board Certification of the Clean Water Act Section 208, Lake Tahoe Water Quality Management Plan (208 Plan) and Notice of State Water Board's Use of an Environmental Impact Statement Prepared by the Tahoe Regional Planning Agency (TRPA EIS). Members of our organizations commented at the February 13, 2013 hearing before the Lahontan Region of the Water Quality Control Board related to staff's proposed Resolution to recommend certification of the amended 208 Plan to the State Water Board. Our comments noted the following:

1. The staff report did not sufficiently explain changes resulting from the 208 Plan amendments;
2. The amended 208 Plan was presented to the public at the 13th hour – less than one month before the entire TRPA RPU package was approved on 12/12/12, and was not included in the draft or final EIS;
3. Through an "auto-update" clause, last minute changes to the 208 Plan permitted a third area of roughly 320 acres to be rezoned to the new "Resort Recreation" district without additional review under the Clean Water Act, which would allow for the construction of resort hotels, additional ski facilities, etc., on raw land in the Basin.
4. Last minute changes to the 208 Plan place a four year 'sunset' on the "compromises" made by the Bi-State Agreement signed in July 2012;
5. The 'automatic update' provision added to Chapter 10 of the 208 Plan eliminates the authority of the Water Board and EPA to regulate activities that may impact water quality in the Basin.

We therefore asked the Lahontan Board members to delay a decision regarding the resolution on the 208 Plan, to allow them time to study the detailed impacts of the changes to the 208 Plan. Board members questioned the staff member presenting the Resolution, Mr. Bob Larsen, regarding the issues we had raised. Mr. Larsen simply reiterated that the impacts had been analyzed and that our concerns had already been addressed. However, our concerns have not been addressed. TRPA staff, as well as Lahontan staff, have not provided adequate answers to our concerns. Rather, we have been given vague responses, including but not limited to:

- Stating that TRPA's RPU EIS was sufficient - although we have thoroughly detailed the technical inadequacy of the EIS document in numerous comment letters submitted in 2012 and the responses to those concerns were inadequate;
- That TRPA's EIS did analyze the impacts of the 208 Plan amendments, yet the 208 Plan amendments were not even available for public consumption until 11/15 – months *after*

the public comment period on the draft EIS had closed (6/28), and weeks after the final EIS had been released (10/24). No additional environmental review was performed related to the amendments to the 208 Plan;

- Dismissing our concerns related to the third Resort Recreation District (up to 320 acres) that can be permitted in the next four years, without additional environmental review under the CWA, through simplistic claims that such a project would require "additional review by TRPA;"
    - TRPA stated that the approved RRD areas would have to undergo additional environmental review through the analyses that will occur for Area Plans, however, to date the information provided regarding Area Plan environmental review indicates minimal additional review.[1]
    - As a result, the impacts of construction resort hotels, increased ski facilities, and other recreation facilities, on what is currently undeveloped raw land, outside of 'walkable' community centers, have not been analyzed.

The following summarizes our concerns, which are discussed in greater detail below. Additionally, Michael Lozeau from Lozeau Drury, LLP is submitting comments on our behalf, and we incorporate those herein.

Summary of Concerns:

I. The exclusions from current and future 208 Plan amendment processes included in the proposed 208 Plan Amendments violate the federal Clean Water Act (CWA) for an Outstanding National Resource Water (ONRW) by approving development without regulations which will degrade high quality waters;
II. The proposed amendments to the 208 Plan violate the State Board's authority.
III. The environmental review and public process requirements for amendments to the 208 Plan are not met by TRPA's RPU EIS;
IV. The 208 Plan Amendments rely on the TMDL and Lake Clarity Crediting Program (LCCP), to meet water quality requirements; however, our concerns regarding the effectiveness of the TMDL and LCCP have not been addressed. Further, the RPU's baseline conditions do not comport with the assumptions used in the TMDL model.

Please feel free to contact Jennifer Quashnick at jqtahoe@sbcglobal.net or Laurel Ames at laurel@watershednetwork.org if you have any questions.

Sincerely,

Laurel Ames, *Conservation Co-Chair,* Tahoe Area Sierra Club	Susan Gearhart, *President,* Friends of the West Shore	Jennifer Quashnick *Conservation Consultant,* Friends of the West Shore

[1] See attached spreadsheet created by FOWS & TASC showing schedules and planned environmental review for Area Plans in progress.

Detailed Comments on 208 Plan Amendments by FOWS & TASC:

I. The exclusions from current and future 208 Plan amendment processes included in the proposed 208 Plan Amendments violate the federal Clean Water Act (CWA) for an Outstanding National Resource Water (ONRW) by approving development which will degrade high quality waters;

Lake Tahoe is a federally-designated ONRW, which means that activities may not degrade water quality beyond the highest water quality achieved in the Lake since 1968 (or 1975 in the case of the federal antidegradation policy). It is a well established fact that adding more development and pavement to lands around the Basin will result in additional water quality pollution. There are no foolproof land use facilities or designs that can negate these impacts. The Tahoe TMDL is aimed at achieving the mid-lake clarity standard for Lake Tahoe and the primary productivity standard, which continues to increase exponentially. This neglects the differences between nearshore pollutants and impacts, but we will first focus on mid-lake clarity.

A. Lack of Scientific support for claimed reductions:

Scientists have determined that we must significantly reduce our fine sediment load (e.g. particles less than 16 microns, although recent information suggests we must focus on particles less than 5 microns) if we are to achieve the mid-lake clarity standard.

1) *Preventing particles from entering Lake Tahoe:*

Removing the larger particles from stormwater runoff is not as difficult – there are filters which can capture the larger particles (the filters must be maintained), BMPs can help retain water and give the larger particles time to settle out, and we can prevent particles from getting into our runoff in the first place by changing practices associated with road sand, construction, etc.

However, removing the *fine particles* from stormwater is much more difficult. Many agencies are currently relying on systems which use such stormwater "filters" to remove the fine sediment particles, yet these filters have not yet proven effective at removing the sediments below 10-20 microns.[2] In addition, scientists have stated the particles with the greatest impact on clarity are typically 5 microns and below – a comment made, in fact, by peer reviewers of the TMDL technical report, as reflected in our previous comments to the Water Board.

After years of research and reviewing the results of treatment systems installed in the Basin, **the fact remains that the most effective method for removing the fine particles is natural infiltration**, which requires undeveloped land, coverage removal and restoration, functioning SEZs, including protecting and limiting incursions into floodplains. However, this fact is very inconvenient for

[2] We have submitted numerous comments to the Water Board and TRPA regarding the "test results" for these filters, which claim certain 'percent reductions' in fine sediments based on the false assumption that certain linear relationships exist between total suspended sediment removal and fine sediment removal.

development interests, because it would require a net *decrease* in coverage in the Basin, let alone it would call for no increases in coverage, especially on raw land. It would be far more convenient for those who desire significantly more development to have the option to construct a system where coverage can be added, and water runoff funneled into an engineered facility (that can be installed where it will not impede desired developments), and credit obtained for presumed reductions in stormwater pollutant loads. The TMDL Lake Clarity Crediting Program (LCCP) provides such credit, and as noted in our numerous comments on the LCCP, we remain concerned that credits are awarded based on modeled forecasts rather than actual measured water quality reductions.

This discrepancy between assumed load reductions and actual (likely) load reductions is magnified by the TRPA RPU, where the interpretation of the soil coverage standard was changed in the 2011 Threshold Evaluation (the companion 'baseline' document to the RPU EIS), resulting in a new "proclamation" that the overall coverage in the Basin can be increased and yet somehow we will still achieve threshold standards (and the CWA requirements for clarity). The new RPU also incorporates the TMDL, and LCCP, thereby providing 'credits' to local governments for modeled reductions in fine sediment. **Credits are not based on actual measured reductions in pollutant loading to Lake Tahoe.** Even without increasing coverage over existing amounts, the science simply does not support the ability to reduce the fine sediments coming from the impacts of existing development (including roadways) without removing coverage and providing for more infiltration. Rather, relying on the filters, seemingly the more popular option by agencies like Caltrans, may provide some reduction in large particles entering the Lake, but those filters will let the fine particles flow right on through, inevitably reaching Lake Tahoe.

Unfortunately, the new RPU does not correct this problem, but instead, adds to it. The new RPU adds significantly more development – more residential units, tourist units (through conversion programs), condos, commercial areas, etc., increasing coverage and VMT in the Basin. The new RPU also includes the creation of a new Land Use called "Resort Recreation" that will allow new development <u>on raw land</u>. Two areas totaling roughly 315 acres are already approved for this new zoning (details below). There is no science available to support the idea that these new areas can be developed and somehow reduce pollutants entering the Lake. Rather, the development on these areas will increase coverage, reduce land available for infiltration, and draw more residents and visitors to the Basin, resulting in more VMT (which will increase the re-entrainment of particles from roadways, increase particles in roadway water runoff, increase nitrogen emissions from tailpipes, etc.). The water quality impacts of this change were not adequately analyzed in TRPA's RPU EIS; in fact, anything more specific than a "policy-level" review was put off to review by local governments in the future.

2) *Nearshore Conditions:*

The nearshore conditions of Lake Tahoe continue to dramatically decline, and the causes are not the same as those for mid-lake clarity loss. Although nutrients and the algae growth they support contribute to clarity loss in the Lake, the impacts to mid-lake clarity are minor compared to the impacts of fine sediments. However, in the nearshore, researchers have identified algae growth – including abundance and species – as significant problems for nearshore clarity. The TMDL is based on achieving the mid-lake clarity standard. When concerns regarding the nearshore conditions were raised, Lahontan and TRPA staff responded by saying that the measures in the LCCP to reduce fine sediment will by extension improve nearshore clarity. This is not true because the causes are different. Unfortunately, although the RPU has added threshold language regarding nearshore conditions, the Plan itself takes the same approach as the TMDL. As a result, the RPU EIS failed to analyze nearshore conditions and pollutant sources and impacts.

The exemptions included in the 208 Plan amendments rely on changes that were purportedly analyzed in the TRPA RPU EIS, but also rely on changes proposed *after* the final EIS was released. On the former, our comments regarding the inadequate technical analysis performed by TRPA's EIS were not sufficiently addressed.[3] For those amendments proposed after the final TRPA EIS was released on 10/24/12, no additional environmental review was performed and comments raised by the public between the release of the draft 208 Plan amendments on 11/15, and the final approved by TRPA on 12/12 were not adequately addressed.

B. The 13th hour amendments to Chapter 10 of the 208 Plan are substantial, are based on political decisions, not environmental, and pose serious threats to water quality in the Lake Tahoe Basin.

1) *Resort Recreation development approved on approximately 320 acres of undeveloped land:*

The 208 Amendments incorporate the TRPA RPU's approval of the rezoning of roughly 320 acres to a new land use called "Resort Recreation" (RR). This new RR use allows for the development of resort hotels, the expansion of ski resorts, and other development on currently undeveloped land. Approximately 65 acres are owned by Vail Corporation/Heavenly on the California side of south stateline (CA/NV), and 250 acres owned by Edgewood Corp. on the Nevada side of stateline, and clearly developing both parcels will have a net impact on the Lake's water quality by increasing coverage on raw land, and increasing VMT. This is clearly a decision based on political reasons, not environmental.[4] Section 10.2.A in the amended 208 Plan incorporates the RPU Code of Ordinances, including the

[3] Details provided in TASC & FOWS comments to TRPA (and attachments) regarding the Regional Plan Update Package and Threshold Evaluation Report (submitted 12/11/2012).

[4] We also note that the RPU is supposedly based on the concept of concentrating development into existing more 'urban' areas and removing coverage elsewhere, yet the RR land use approves new development on raw land outside of these existing "Centers" – in conflict with the stated *environmental* purpose of the RPU.

Bi-State Recommendations, which approved the zoning change on the two RR parcels:

> A. The WQMP incorporates by reference not only the Regional Plan and Code of Ordinances, as amended by the 2012 Regional Plan Update process, but also the July 26, 2012, Bi-State Recommendations.

Section 10.2.B then acknowledges this new zoning, and specifically states that the WQMP can not be amended for four years to alter the terms of the Bi-State Recommendations (including the two newly zoned parcels) nor can the terms be used to "support or deny" future applications for RR zoning. As the zoning for the two named parcels was already changed by the new RPU, this reference relates to additional applications for RR zoning over the next four years. This is notable because the Bi-State Recommendations narrowed down the RR designation to just two parcels (around 320 acres). **Without the amendments to the 208 Plan that exempt a third RR rezoning of similar size, the RPU would only allow the RR designation *on those two parcels*.** However, by adding this statement into the 208 Plan, TRPA found a way to "work around" the 'limits' the Bi-State Recommendations placed into the Regional Plan Update – limits that did not allow for *any* new RR zoning beyond the two parcels noted. This 'work around' also removes the authority of the Water Board and EPA to enforce the CWA if and when TRPA approves another 320 acres of coverage on raw land. Because developing another 320 acres of undeveloped land will create a negative water quality impact, this is yet another decision made for political, not environmental, reasons.

> B. The WQMP shall not be amended before January 1, 2017, to alter the terms of the Bi-State Recommendations incorporated herein, with the understanding that the terms of the Bi-State Recommendations: (1) allow adoption and updating of Area Plans by local governments as appropriate, and (2) shall not be used to support or deny applications for "Resort Recreation" designation.

2) *Expiration of Limits of Bi-State Recommendations in four years:*

Another result of this amendment is that after four years (rather, after January 1, 2017), the limitations that were placed by the Bi-State Recommendations (plus this new allowance for a third RR designation on up to 320 acres) will no longer apply, and more RR development can be proposed and approved.

3) *Approval of additional 320 acres of RR development in next four years:*

As noted above, the 208 Plan amendments allow the rezoning of a third RR district to be approved by TRPA without environmental review under the 208 Plan:

> C. Prior to January 1, 2017, and absent a WQMP amendment, the "Resort Recreation" land use designation shall in addition to including the Heavenly and Edgewood parcels, allow for no more than one additional area of a comparable size to be added to that designation. If the subdivision amendment procedures of the WQMP do not sunset after January 1, 2017, pursuant to Section G below, at that time the States will caucus in a manner similar to Section G to further address the "Resort Recreation" designation.

Given that the 208 Plan amendments were not provided to the public until after release of the final RPU EIS, the public did not have the opportunity to raise comments until 11/15, when the amendments were released. Therefore, official responses to comments were not provided, however, TRPA did state the following during the December GB hearing:

> "There were a number of comments explicitly cited provisions in the 208 Plan and some of those comments were mistaken and misunderstand. The provision that concerns an additional resort recreation is an added level of safeguard in the 208 Plan because that provision is in a chapter that dictates when the 208 Plan must be amended. It is a safeguard against adding new resort recreation areas because after one more proposals would then have to be amended every time. There is no proposal for an additional resort recreation area in the Plan or the 208 Plan. That is a chapter that defines when the 208 must be amended and would require action by a local jurisdiction, the Governing Board and then additional action by the two states and EPA. In addition, that was a provision that the two agreed to and that provision is not for TRPA to deliberate or say what the two states find appropriate as the triggers for amendment to their 208 Plan. Also, we are not approving it; we are recommending advancing it to the states and EPA who have all today recommended that we do so on the terms that it has been presented."

The public was never given the chance to respond to this statement. However, we note that it is reasonable to expect that the result of establishing a 3rd Resort Recreation district of roughly 320 acres to be approved without review by the states or EPA is a 3rd Resort Recreation District of roughly 320 acres. Although there are no applications for this in to TRPA at this time (that we are aware of), there are several indications that this next area will be proposed for Northstar's boundaries in the North end of the Basin. As noted in our 4/8/13 comments to Placer County regarding Northstar's Plans:

> "Although Northstar states that the expansion of the Northstar ski resort into the Lake Tahoe Basin is not included in the expansion,[5] there are numerous indicators that this is likely to be proposed in the near future, and the impacts of this within the Lake Tahoe Basin must also be examined. For example:
>
> - The revisions to TRPA's Regional Land Use map in November 2011 revealed a new "blue" area zoned Recreation, within the Basin's borders and adjacent to the ski resort;
> - <u>The last minute changes to the 208 Water Quality Management Plan (adopted by TRPA on 12/12/12) allowed for a third area zoned "Resort Recreation," over the next four years, without further review under the 208 Plan's requirements;</u>
> - The proposed upgrades to the CalPECO electrical [transmission] lines within the Basin that will increase the capacity [to deliver] more power *within* the Lake Tahoe Basin; and
> - The request by Vail/Trimont to rezone Timber Production Zones in all of Placer County (discussed in TASC's April 2013 comments).
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> As CEQA requires all reasonably foreseeable impacts to be included in the environmental analysis, the rezone and expansion of Northstar into the Tahoe Basin must be fully analyzed, along with the cumulative impacts of other

[5] http://www.northstarattahoe.com/info/ski/northstar-mountain-master-plan-faqs.asp

proposed or approved but not-yet-built projects, including Homewood Mountain Resort and Squaw Valley's proposed ski area expansions. Further, as these resorts aim to draw visitors year-round, the impacts from increased populations and VMT **during the entire year** must be analyzed. The impacts to the TRPA environmental thresholds must also be analyzed." [Emphasis added].

4) *Additional activities exempted from 208 Plan environmental review:*

The amendments allow the new RR designations to be approved on approximately 660 acres in the Basin under the 208 Plan *without additional environmental review.* Further, section 10.2.D, by outlining some amendments that would not be automatically incorporated into the 208 Plan, approves the automatic update of all of those activities not listed below. In other words, with these limited exceptions, TRPA's RPU can be amended to allow substantial new growth and the 208 Plan will be "automatically updated" with those changes, requiring no additional environmental review and removing the authority of the Water Board and EPA from reviewing changes.

D. Except for amendments concerning subdivisions, which are addressed in Section F below, prior to January 1, 2017, the WQMP need only be amended if an amendment to the Regional Plan involves one of the Regional Plan or Code of Ordinance sections or chapters listed below:

1. BMPs (Goals and Policies WQ 3-11, 3-12; Code Chapter 60.4);
2. Land Use Planning and Control (Goals and Policies LU 1 - 4.4 (excluding LU 2.2 (Subdivision) and any reference to or definition of Resort Recreation); Code Chapters 20 - 22 (excluding any reference to or definition of Resort Recreation));
3. Coverage Transfer Limits (Goals and Policies LU 2-11; Code Sections 30.4.2 - 30.4.4);
4. Evaluation Intervals and Targets: Assessment of Effectiveness and Adequacy (Goals and Policies DP 2.1; Code Section 16.5.2);
5. Development Limits (Goals and Policies, DP 1-4; Code Chapter 50 (excluding those provisions of Section 50.5.1.C.1 regarding the distribution of the up to 130 residential annual allocation among jurisdictions and Section 50.6.4.E regarding the distribution of commercial floor area among jurisdictions.)

In addition, the wording here is clear, and appears to conflict with statements in 10.1, which states:

> "Amendment of the WQMP before January 1, 2017, is automatic upon amendment of the Regional Plan for five topics as noted below, unless the person objecting to amendment proves based on substantial evidence to the States that the amendment to the Regional Plan is reasonably expected to lead to the degradation of water quality. There is no special amendment provision for subdivisions."

This appears to suggest that the 208 Plan will be automatically amended for the topics listed in 10.2.D (1-5) before January 1, 2017. It also may be read to suggest that the five sections listed simply represent when amendments would be needed,

rather than whether they are automatic or not. However, the collection of the language in Chapter 10 may also leave a reader thinking that amendments will be automatic for all except those five categories, and subdivisions, until January 1, 2017. All amendments to the 208 Plan need to be clear and understandable for the public and regulatory agencies, and the language proposed is confusing and potentially contradictory.

C. <u>The 208 Plan amendments also set up a system that skirts, if not eliminates, the public process for 208 Plan amendments.</u>

1) <u>Automatic Updates to 208 Plan:</u>

The amendments set up a system of "automatic updates" to the 208 Plan, thus skirting environmental review that would be required by the 208 Plan for the proposed and future amendments. The updates include some 'restrictions' over the next four years, however, as shown below, these restrictions can all be removed on January 1, 2017, setting up a system which allows TRPA to amend the RPU, the 208 Plan to be automatically updated to reflect that amendment, and where those objecting to such amendments are required to meet undefined "burdens of proof" for their objections to be considered.

2) <u>Four-year provision on Bi-State Agreement:</u>

The amendments place a four year 'sunset' on the provisions of the Bi-State Recommendations, which purportedly include compromises to reduce the amount of development that could have been proposed.[6] Yet this concept of any 'sunset' on the Bi-State Agreement recommendations was not heard of until 11/15, at least not by the public. The introduction to Chapter 10 includes the following statement:

> "As more fully set forth below, until January 1, 2017, the WQMP limits the circumstances under which the WQMP must be amended to occasions when Regional Plan changes relate to six specific topics listed below. On January 1, 2017, the above limitation automatically sunsets for five of those six topics, excluding subdivisions. For subdivisions, the State will caucus after January 1, 2017, to determine whether the referenced subdivisions sections will sunset based on progress toward attaining improved water quality in Lake Tahoe, and any other factors the States deem relevant."

Section 10.2.E.4 provides for automatic updates to the 208 Plan for any amendments made to the TRPA Regional Plan, with minor exceptions for subdivisions (although as noted below, even these exceptions can easily be reversed in January 2017):

> 4. After January 1, 2017, except for amendments concerning subdivisions, relevant amendments made to TRPA's Regional Plan and/or Code are automatically made to the WQMP.

[6] As TASC & FOWS have noted several times, we do not agree with the Bi-State Recommendations as they do not provide adequate environmental protection of the Basin.

3) *Subdivision limits can easily be removed in January 2017, allowing virtually any change to be automatically made:*

"Progress toward attaining improved water quality" (Section 10.1, excerpt above) can be interpreted numerous ways, and does not necessarily mean that progress must be measured or even seen yet. The 208 Plan does not explain how this "progress" will be assessed.

It is also unclear what is meant by "any other factors the States deem relevant." This allows the States to make decisions for yet-unknown reasons regarding development that will impact water quality. For example, if the States were to deem "economy" relevant, this would allow them to change the subdivision-related review requirements *without public and environmental review*. Further, through Nevada's SB 271 and all that has transpired, we have seen one state (NV) exert enormous influence over the other (CA) in order to obtain the additional development desired by powerful individuals in NV. These decisions were not made to benefit the Lake, but rather, to relax regulations to allow more development.

4) *The amendments change the burden of proof requirements that apply when a member of the public objects to one of these 'automatic updates:'*

> "Amendment of the WQMP before January 1, 2017, is automatic upon amendment of the Regional Plan for five topics as noted below, unless the person objecting to amendment proves based on substantial evidence to the States that the amendment to the Regional Plan is reasonably expected to lead to the degradation of water quality. There is no special amendment provision for subdivisions."

This is a significant legal change that has not been analyzed, and is contrary to existing state and federal laws, which place the burden of presenting substantial evidence on the agencies, not the public. Such a change will cripple the ability of the public to be able to truly participate and object to changes made through these 'automatic updates' by requiring the public to bear significant costs to object to a decision. Further, there is no description of what criteria will be used to assess that an amendment to the Regional Plan is "reasonably expected to lead to the degradation of water quality" or what is defined as "substantial evidence."

Section 10.2.E.2.b (below) increases the difficulty for the public by requiring the States to determine *unanimously* whether the person objecting has met the burden of proof. Plus the states may consider whatever information they choose to consider. First, what defines a unanimous determination? It appears that if a member of the public objects to an amendment to the 208 Plan, and the States unanimously state that the burden of proof has not been met, then the objection is simply dismissed and the 208 Plan is amended. Again, public process is thwarted.

Second, does this mean that if one state representative agrees that the burden of proof has been met, but other representatives do not, then the amendment is remanded back to TRPA – the very agency that approved the amendment in the first place? Again, this essentially eliminates any fair and balanced approach to public process!

2. Does a person object to amending the WQMP to be consistent with the Regional Plan change?

    a. If no, then the WQMP is automatically amended;

    b. If yes, then the objecting person has the burden of providing substantial evidence to the States that the Regional Plan change may reasonably be expected to lead to the degradation of water quality. The States must determine unanimously whether the objecting person has met the burden of proof. The States may consider evidence from any person, including themselves, that they collectively or individually deem appropriate.

3. Do the States, within 60 days of the objection to the WQMP amendment, unanimously determine that the objecting person met the burden?

    a. If no, then the WQMP is automatically amended;

    b. If yes, then the WQMP is not amended and the decision is remanded to TRPA for further action;

    c. If the States do not agree and cannot resolve the disagreement within 60 days of the objection to the WQMP amendment, absent agreement between the States to extend for a reasonable period the time in which to attempt to reach agreement, the WQMP is not amended and the proposed WQMP amendment is remanded to TRPA for further action. At this point, either State may give notice that it intends to pursue revocation of the designation of TRPA as its WQMP planning agency for the Lake Tahoe Basin.

Section 10.2.G (below) identifies a situation where after January 1, 2017, when the exemption for the automatic update of subdivision-related provisions is set to be up for "discussion" by the States, if the States disagree on their determination, *the States* will decide whether the objecting State has met the burden of proof. This certainly baffles public process. Further, if one State is objecting, and the other State is not objecting, how unbiased will the other State be in evaluating whether the objecting State has met the burden of proof? Again, the amendments appear to establish a major impediment to public participation in the planning process. We also remind the Water Board of the political threat that pushed for the pro-development RPU in the first place (the threat made by Nevada's SB 271). Under this threat, TRPA and

other agencies made significant compromises which reduced environmental protection for *political reasons.*

G. After January 1, 2017, the States will caucus to determine whether changes made to TRPA's Regional Plan and/or Code concerning the subdivision provisions set forth above are automatically made to the WQMP. The States shall base their determination to sunset the subdivision amendment procedures of the WQMP on whether progress is being made toward attaining improved water quality and any other factors the States deem relevant. The States shall conduct their caucus process as follows:

1. Does a State object to the sunset of the subdivision amendment procedures of the WQMP?

a. If no, then the subdivision amendment procedures of the WQMP automatically sunset;

b. If yes, then the objecting State has the burden of proving to the other State that progress is not being made toward attaining improved water quality. The States must agree whether the objecting State has met the burden of proof. The States may consider any information they deem relevant.

c. Do the States, within 60 days of the objection to the sunset of the subdivisions section of the WQMP:

i. Agree that the objecting State has not met its burden? If so, then the subdivision amendment procedures of the WQMP do automatically sunset;

ii. Agree that the objecting State has met its burden? If so, then the subdivision amendment procedures of the WQMP do not sunset;

iii. Cannot agree whether the objecting State has met its burden? If so, then the subdivision amendment procedures of the WQMP do not sunset. Either State may then give notice that it intends to pursue revocation of the designation of TRPA as its CWA Section 208 water quality planning agency.

Section 10.2.G.1.b further truncates the public process, and the Water Board's authority, by including the statement that "*The States may consider any information they deem relevant."* This provision is completely open-ended and includes no requirement that decisions be based on environmental objectives and proper science (or actually, *any* science). Who determines what is "deemed relevant?" What if the other State disagrees? There appear to be no limits and no requirements that protect the State's ability to determine whether the State will even have the authority in the future to prevent 'automatic updates' of the 208 Water Plan by TRPA.

II. The Proposed Amendments to the 208 Plan violate the State Board's Authority

The 208 Plan Amendments were certified by Nevada on January 9, 2013. As a result, Nevada has already given away its own authority to make decisions about future activities that may violate the CWA (see discussion of Chapter 10 impacts below). The current question before the Water Board is whether California will also choose to vote away its own authority in the same manner.

By certifying the 208 Plan amendments in January, Nevada has already agreed to limit its own authority over regulatory decisions regarding water quality in the future. Since the approval of Nevada's SB 271 in 2011, we have witnessed the resultant impacts of that political influence, which resulted in a weakening of environmental protections in the Lake Tahoe Basin in order to appease political interests. Clearly, this flies in the face of proper decision-making for environmental protection. Therefore, while Nevada has agreed to reduce, and eventually potentially eliminate, its authority to have a say in future development in the Basin that may harm water quality, we are naturally very concerned that in the future, decisions to approve more development will again come out of political pressure, and not be made with the CWA requirements in mind.

California has not yet relinquished its own authority to make decisions that affect the Lake's health. Without these proposed 208 Plan amendments, the State Board will still be able to participate in the regulatory process. Thus, if the RPU is amended by TRPA as a result of political pressure from Nevada or other interests (which again, we have just witnessed with SB 271 and the hasty adoption of the new, pro-development RPU to meet Nevada's requirements), the State Water Board will still have a say in the approval of that development. If a project is proposed in Nevada that will harm Lake Tahoe, through the 208 Plan, California and the EPA will still have authority to prevent the damage (because water quality does not recognize state lines, and the ONWR designation applies to the entire lake). However, if the proposed 208 Water Plan amendments are approved by California, the State Water Board will have very little say in RPU amendments, and projects that may be approved by either TRPA or local governments (via Area Plans), through 12/31/2016, and after that, possibly no say in any changes whatsoever.

Further, the TRPA RPU delegates significant permitting authority to local governments through the approval of "Area Plans." These Area Plans may propose amendments that require a RPU amendment. In other words, the Area Plans may propose additional development, changes to Plan boundaries, and other regulations that may result in additional water quality impacts. For example, the RPU specifically requires that RR districts be adopted through Area Plans. Therefore, the unnamed third RR district that can be approved in the next four years would be proposed as part of an Area Plan. TRPA would then have to amend the RP to approve that RR district. After 1/1/2017, more RR districts can be proposed, and yet that same date is when the 208 Plan amendments propose that *all* RPU amendments are automatically made to the 208 Plan (with subdivisions being the only noted possible exception). If

the State Board approves the proposed 208 Amendments now, the State Board will not be able to review and decide whether to approve or deny changes that are proposed by local governments through an Area Plan once that change is approved by TRPA.

The TRPA is clearly not immune to political pressure exerted by pro-development interests. The new Resort Recreation districts, approved for the benefit of large corporations (Edgewood and Vail), are an example of that vulnerability. However, the information provided with the Notice (Notice) of Opportunity to Comment does not explain what these changes actually mean, and just as we asked the Lahontan Board to delay a decision in February, we now ask the State Board to take the time to carefully consider this decision.

III. The environmental review and public process requirements for amendments to the 208 Plan are not met by TRPA's RPU EIS

A. Environmental Review Process not met:

The Notice states that pursuant to CEQA Section 21083.5, the Water Board proposes to submit TRPA's RPU EIS as the CEQA-required environmental review for the 208 Plan amendments in lieu of a separate EIR. This provision is also subject to complying with "the requirements of CEQA and CEQA Guidelines (See also CEQA Guidelines Section 15221)."

Page 2 of the Revised Notice of Opportunity to Comment states the following:

> "…Lahontan Water Board staff has concluded that the Regional Plan Update EIS prepared by the TRPA complies with the requirements and provisions of CEQA and its Guidelines, including a robust alternatives analysis, detailed mitigation measures, greenhouse gas emission analysis, and assessments of growth-inducing and cumulative impacts." [Emphasis added].

However, the RPU EIS document falls far short of meeting CEQA requirements for environmental impact reports. The facts simply do not support the conclusion that the RPU EIS can be relied on to meet CEQA guidelines:

1) *EIS does not perform a robust Alternatives Analysis:*
   a. TRPA's RPU EIS does not provide a robust alternatives analysis – in fact, the EIS clearly states that impacts are only analyzed at the "geographically broad, policy-level;" [7]
   b. The EIS does not analyze the on-the-ground impacts of the proposed areawide coverage management system;[8]

[7] Repeated throughout Final EIS, Volume 1, and in Introduction Chapter to EIS.

[8] *"Any site-specific impacts of a specific comprehensive coverage management system would be addressed through the environmental review and conformance review of an Area Plan that would authorize a comprehensive coverage management system, and through environmental review of specific projects that would relocate or place coverage."* (TRPA RPU FEIS, Vol. 1, p. 3-339)

c. The EIS does not adequately analyze the impacts of additional VMT generated by the RPU, which affects water quality by increasing nitrogen deposition from tailpipe emissions of NOx, and increasing the roadway resuspension and runoff of fine particles. The EIS also fails to analyze the localized and cumulative impacts of VMT generated by individual "Centers;"[9]
   - Further, the EIS does not analyze the impacts of the Basin's frequent, year-round inversions, which trap pollutants at the surface, increasing the amount of atmospheric deposition.

2) *Deferred Mitigation Measures lack sufficient detail to meet CEQA:*

a. The EIS does not include detailed mitigation measures; rather, the EIS states that due to the policy-level review of the EIS, detailed mitigation measures are not required - rather, a mere promise to do them by TRPA is deemed sufficient;[10]

3) *Inadequate Greenhouse Gas (GHG) Emission analysis:*

a. As explained in numerous comments submitted to TRPA throughout the RPU process, the GHG emissions analysis is inadequate. The analysis does not include all emissions associated with visitors in the Lake Tahoe Basin.

b. Further, the assumptions related to vehicle trips that were used for the transportation modeling are not supported by the evidence in the Plan.

4) *Fails to Adequately Analyze Growth-Inducing Impacts:*

a. The RPU EIS did not analyze the future increases in population associated with visitors to the Basin, nor did the EIS assess the potential future population levels that would result from occupancy of presently recession-caused vacant properties, in addition to the new development added by the new TRPA RP, as well as the potential increases associated with the many loopholes in the RP (including the approval of development that does not require an allocation).

5) *Fails to Evaluate Cumulative Impacts:*

a. The RPU EIS did not evaluate the cumulative impacts of the RPU's growth on the Basin.

b. The RPU EIS also failed to account for the cumulative impacts of growth around the Basin (e.g. ski resort expansions proposed just outside of the Basin's boundaries), especially the combined impacts of residential and visitor VMT.

[9] *"Due to the policy-level environmental analysis, VMT effects associated with individual Town Centers were not analyzed."* (TRPA RPU FEIS, Volume 1, p. 3-119)

[10] TRPA FEIS, Vol. 1, p. 3-65, Master Response 13: "Programmatic Mitigation Measures and Proper Deferral of Mitigation Details"

c. The RPU EIS does not evaluate the cumulative impacts of the proposed areawide coverage management system.

We also reiterate that the 208 Plan amendments implement the TRPA RPU, which is subject to a lawsuit. Therefore, if the lawsuit were successful, the amended 208 Plan would, by necessity, also be changed.

B. Public Process Requirements not met:

Page 2 in the Water Board Notice also states:

> "Because the EIS was circulated as broadly as state law required and notice met the standards of section 15087(a), pursuant to section 15225 of the CEQA Guidelines, the State Water Board will use the Regional Plan Update EIS without recirculating the EIS for public review…"

However, the draft and final EIS did not include the amendments proposed to Chapter 10 of the 208 Plan. These were not provided to the public until November 15, 2012, and no additional environmental analysis was performed. The Water Board can not rely on TRPA's RPU EIS as meeting the environmental review requirements for amendments that weren't even included in the EIS in the first place!

IV. The 208 Plan Amendments, which implement TRPA's RPU, rely on the TMDL and Lake Clarity Crediting Program (LCCP), to meet water quality requirements; however, our concerns regarding the TMDL and LCCP have not been adequately addressed;

On September 13, 2010, the TASC and the League to Save Lake Tahoe (LTSLT) submitted extensive comments on the Regional Board's proposed TMDL and Basin Plan Amendment. On November 10, 2010, the TASC and LTSLT filed additional comments, responding to Lahontan staff's responses to the September comments and explaining why many of those responses were inadequate.

On March 18, 2011, the TASC and LTSLT submitted another letter to the State Water Quality Resources Control Board, again explaining that "In general, the Regional Board's responses and refusal to amend the TMDL proposal do not adequately address almost all of the League's and TASC's concerns regarding the deep water transparency standard TMDL and its implementation." The concerns we stated in the previous letters have not been addressed, therefore we incorporate those comment letters herein. *Additional concerns regarding the TMDL, LCCP, fine sediment removal mechanisms (or lack thereof), nutrient impacts, and the failure of the TMDL to properly address nearshore conditions, are discussed previously in this letter.*

Further, since the adoption of the TMDL and LCCP by the Water Board, the direction of TRPA's RPU process shifted to the more pro-development, pro-growth Plan that was approved on 12/12/12. As detailed in our comments regarding scoping for the proposed Basin Plan Amendments (submitted on 3/13/2013 to the Water Board), the

assumptions used in the TMDL analysis do not comport with the baseline assumptions and increased development approved in the RPU "package." As a result, the TMDL assumptions must be revised to address the changes made through adoption of the TRPA RPU.

Area Plan Schedule

Schedule prepared by Friends of the West Shore and the Tahoe Area Sierra Club, 4/8/2013

Area Plan Jurisdiction: Area Plan Name	Area	April	May	June	July	August	Sept.	Oct.	Nov.	Dec.	Environmental Review[1]	*2014*
Douglas County: **South Shore AP**	County excluding parts of Stateline	PC	BOS	**TRPA**							**No**	
Douglas County: **SS Area Plan II**	Entire portion of Douglas County within the LTB						PC	BOS	**TRPA**		**No**	
El Dorado County: **Meyers**	Meyers Town Center						PC	BOS & **TRPA**			**Neg Dec[2]**	
El Dorado County: **Full Area Plan for unincorporated parts of County[5]**	Entire Unincorporated portion of County, inc. Meyers, Meeks Bay, & Tahoma (ED side).[6]	unknown										
City of SLT: **Tourist Core AP**	Ski Run to Stateline		PC		City	**TRPA**					**Neg Dec**	
City of SLT: **SLT Wye/Tahoe Valley**	SLT Y - Tahoe Valley CP									**TRPA[3]**	**Neg Dec**	
Placer County: **Tahoe Basin Area Plan**	Placer County portion of Tahoe Basin; divided into 4 'sub-areas.'										**n/a[4]**	*X*

Unknown:

Washoe County

PC: Planning Commission
BOS: Board of Supervisors
City: City Council
TRPA: Tahoe Regional Planning Agency

1. Information related to schedules and level of environmental review is based on our best understanding from attendance and materials at the following meetings: Douglas County SS AP (3/12); Meyers Area Plan (3/13 & 3/27); City of SLT Tourist Core AP (3/20); and Placer County (3/21, website). An IEC (TRPA's Initial Environmental Checklist) would be required for each Area Plan; this column lists any *additional* environmental review beyond the checklist.

2. Neg Dec = Negative Declaration. This is a short document intended to meet the California Environmental Quality Act (CEQA) requirements, however this document concludes there are no significant or cumulative impacts from a project (or in this case, adoption of an Area Plan).

3. City staff stated during the 3/20 meeting that they hoped to complete this portion by end of the year.

4. Placer County's information states only "environmental analysis" from Spring to Fall 2014.

5. The entire Area Plan has not been discussed or provided via maps for the public; the Meyers section has been the focus of public meetings. We learned of the Area Plan's entire boundary on 3/27. Therefore we are uncertain of the "name" that would be assigned to the County's Area Plan.

6. After the 3/27 Meyers community meeting, TRPA staff advised us that the ED County Area Plans would also occur in phases; the first phase is based on the Meyers Town Center. The second phase will address the rest of the unincorporated portions of the County. No schedule was provided.