

✘ The Sierra Club and a local neighborhood group recently sued the bistate Tahoe Regional Planning Agency, challenging TRPA's just-adopted Regional Plan for the Lake Tahoe Basin. That development strikes me as unfortunate and counterproductive. Let me briefly explain why.

The Lake Tahoe Basin, which straddles the California-Nevada border, has since 1968 been governed under a bistate Compact negotiated between the two states and ratified by Congress. The key player under the Compact for land use planning and environmental regulatory purposes is the 15-member TRPA, composed of state and local appointees from the two states.

TRPA's principal role is to adopt, administer and enforce a comprehensive Regional Plan to control development in and preserve environmental values for the Tahoe Basin. Until last December, TRPA was operating under a Regional Plan adopted in 1987. 25 years later, the 1987 Plan—which has been instrumental in preventing ill-considered development of the Tahoe Basin—was in serious need of an overhaul and update. And TRPA's revised Regional Plan was, under the Compact's terms, five years overdue.

Part of the delay was due to the formidable and multifaceted nature of the task involved. So too was the fact that TRPA consciously engaged in a lengthy, "consensus-based" set of negotiations designed to get all of the relevant stakeholders involved in the Regional Plan update process. That process wasn't quick or pretty (it seldom is), but it ultimately produced widespread agreement on a new and improved Regional Plan. No interest group was thrilled with the new Plan, but nearly all found it both acceptable and an improvement over the status quo—i.e., the definition of a credible political compromise. Critically, the League to Save Lake Tahoe, the region's most respected and longstanding environmental organization, was part of the consensus-building process and ultimately expressed its support for the revised Plan. The TRPA Governing Board overwhelmingly approved the new Regional Plan on December 12th.

Among other things, the new Regional Plan imposes even stricter limits on new residential and commercial development than existed under the previous version; adopts water quality measures that promise to reverse the decline in Lake Tahoe's world-renown water clarity; and incentivizes replacement of ill-considered, poorly engineered and environmentally damaging existing development with more environmentally benign, energy-efficient, and compact infill development projects.

That was not enough for two local Sierra Club chapters and a local homeowners group, who filed suit in federal court challenging TRPA's new Regional Plan. According to the lawsuit,

the Plan should be even more environmentally protective than it is, and delegates too much of TRPA's land use authority to the Basin's local governments (albeit authority that under the Plan is ultimately subject to TRPA review).

Now I am the last person to argue that litigation is an inappropriate legal and policy tool when it comes to Lake Tahoe. In a previous professional life, I participated in litigation filed in 1984 by the California Attorney General, and joined by the League to Save Lake Tahoe, to enjoin a TRPA Regional Plan adopted by TRPA in 1984 that rather blatantly violated the bistate Compact's environmental mandates. (Both the district court and the Ninth Circuit agreed, and enjoined the flawed 1984 Plan; that, in turn, led to a three-year consensus process among stakeholders that culminated in the much-improved 1987 Regional Plan that guarded the Tahoe environment for the next quarter century.)

This is different, however. TRPA's new Regional Plan is by no means perfect. But it is a marked improvement over the 1987 version, is likely to continue the steady improvement of the Lake Tahoe environment, and promotes the kind of sound redevelopment and infill principles that environmental advocates should applaud.

But there's an even more important reason why the current lawsuit challenging the revised TRPA Regional Plan is ill-advised. In 2011 the Nevada Legislature, unhappy with a TRPA it believes is too green and hostile to development interests, enacted a statute directing Nevada's Governor to withdraw from the bistate Tahoe Compact by 2015 unless: 1) TRPA adopted a new Regional Plan; and 2) California agrees to changes in the TRPA Compact's voting procedures designed to give local governments greater influence on the TRPA Governing Board and to facilitate more development within the Tahoe Basin than would be possible under the existing Compact.

TRPA's December 2012 adoption of its new Regional Plan technically satisfies the first condition of the Nevada legislation—though with a far “greener” Plan than some Nevada legislators and business interests support. (In the unlikely event the Sierra Club's lawsuit is successful, however, it's back to the drawing board for TRPA, with no serious expectation that a new Plan can or will be enacted by Nevada's 2015 deadline.) The State of California should not—and likely will not—accede to Nevada's second demand for radical changes in the TRPA voting procedures; that would be a very serious step backward in ongoing efforts to preserve and protect the Tahoe environment.

The Governors of California and Nevada have for some time been quietly pursuing negotiations—parallel to those that culminated in the December 2012 TRPA Regional Plan update—designed to nudge Nevada away from the political precipice and abandon its threat

to withdraw from the TRPA bistate Compact.

The problem with the Sierra Club litigation, besides the fact that it's likely flawed in its merits, is that it seriously threatens these ongoing efforts to keep Nevada from abandoning the Tahoe Compact. A repeal of the bistate Compact would be a very bad thing indeed, leading to fractured environmental decision-making at Lake Tahoe, significantly more ill-advised development on the Nevada side of the Basin, and increased pollution of Lake Tahoe itself.

It's said that the road to purgatory is paved with good intentions. I don't doubt that the Sierra Club honestly seeks an even better environment for the Tahoe Basin than that which would occur under TRPA's new Regional Plan. But it would be both ironic and tragic if the current lawsuit contributes to the ultimate undoing of a landmark bistate Tahoe Compact that has served as a national and international model of sound environmental governance while simultaneously preserving a stellar natural resource for future generations.