

**Comment**

**Response**



Public Comment  
Lake Tahoe 208 Plan  
Deadline: 4/11/13 by 12 noon

State Water Resources Control Board  
Attn: Jeanine Townsend  
P.O. Box 100  
Sacramento, CA 95812-2000  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

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 13<sup>th</sup> 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*

**INTRODUCTION TO RESPONSES**

The Regional Water Quality Control Board for the Lahontan Region (Lahontan Water Board) and the Tahoe Regional Planning Agency (TRPA) have been working to respond to challenges to Lake Tahoe’s water quality. Millions of dollars have been spent in the watershed to assess and understand the causes of Lake Tahoe’s water quality issues and implement solutions identified through academic research, numeric modeling, and pilot projects. The Friends of West Shore (FOWS) and the Tahoe Area Sierra Club (TASC) disagree with the policies Lahontan Water Board, the State Water Resources Control Board (State Water Board) and TRPA have adopted in response to the new understanding of the Lake’s water quality challenges. The bulk of the TASC/FOWS comments regarding the proposed Clean Water Act Section 208 Water Quality Management Plan (208 Plan) certification are similar to those submitted during the development and approval of the Lake Tahoe Total Maximum Daily Load (TMDL) and the TRPA Regional Plan Update (RPU). The Lahontan Water Board, the State Water Board, and TRPA have responded to these comments in the past, yet there remain differences in perspective regarding land use and water quality policy.

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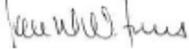
1. The staff report did not sufficiently explain changes resulting from the 208 Plan amendments;
2. The amended 208 Plan was presented to the public at the 13<sup>th</sup> hour – less than one month before the entire TRPA RPU package was approved on 12/12/12, and was not included in the draft or final 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.

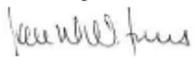
We therefore asked the Lahontan Board members to delay a decision regarding the resolution on the 208 Plan, to allow them time to study the detailed impacts of the changes to the 208 Plan. Board members questioned the staff member presenting the Resolution, Mr. Bob Larsen, regarding the issues we had 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*

**INTRODUCTION TO RESPONSES**  
**(continued)**

The Lahontan Water Board and TRPA have provided detailed, peer reviewed scientific analysis to support policy decisions, yet the TASC/FOWS contend that proposed policies are counter to water quality and environmental protection goals. The TASC/FOWS also allege that the public process for policy update has been flawed. Again, the disagreement on this point persists despite concerted efforts by the Water Board and TRPA to conduct open, transparent, and public policy improvement processes. Both the Lake Tahoe TMDL and the RPU took many years to develop. The Regional Water Board and TRPA held countless public meetings and workshops to engage interested stakeholders in the research and monitoring findings and associated proposed policy language. The Lake Tahoe TMDL was subject to independent scientific peer review, as was the TRPA Threshold Evaluation that provided context for the RPU. Thousands of pages of documentation, including the scientific studies supporting policy proposals and the peer review findings, were made available to the public. Extended review and comment periods were offered for all draft documents, and the public had ample opportunity to directly address the TRPA Governing Board, the Regional Water Board, and the State Water Board. Although the policy choices reflected in the TMDL, RPU, and 208 Plan did not conform to the TASC/FOWS’ preferences, the Water Boards and TRPA have been, and remain, committed to a robust public engagement process regarding policy issues at Lake Tahoe.

<b>Comment</b>	<b>Response</b>
<p>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;</p> <ul style="list-style-type: none"> <li>• 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;” <ul style="list-style-type: none"> <li>○ 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.<sup>1</sup></li> <li>○ 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.</li> </ul> </li> </ul> <p>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.</p> <p><b>Summary of Concerns:</b></p> <ol style="list-style-type: none"> <li>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;</li> <li>II. The proposed amendments to the 208 Plan violate the State Board’s authority.</li> <li>III. The environmental review and public process requirements for amendments to the 208 Plan are not met by TRPA’s RPU EIS;</li> <li>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.</li> </ol> <p>Please feel free to contact Jennifer Quashnick at <a href="mailto:jqtahoe@sbcglobal.net">jqtahoe@sbcglobal.net</a> or Laurel Ames at <a href="mailto:laurel@watershednetwork.org">laurel@watershednetwork.org</a> if you have any questions.</p> <p>Sincerely,</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">         Laurel Ames,  <i>Conservation Co-Chair,        Tahoe Area Sierra Club</i> </div> <div style="text-align: center;">         Susan Gearhart,  <i>President,        Friends of the West Shore</i> </div> <div style="text-align: center;">         Jennifer Quashnick  <i>Conservation Consultant,        Friends of the West Shore</i> </div> </div> <p><sup>1</sup> See attached spreadsheet created by FOWS &amp; TASC showing schedules and planned environmental review for Area Plans in progress.</p>	<p>The 208 Plan does not alter the land use and water quality policies established by the Lake Tahoe TMDL and the TRPA RPU, since these policies have independent effect. Rather, the 208 Plan provides a water quality management framework that incorporates relevant policy documents by reference. Chapter 10 of the 208 Plan describes the circumstances that would require 208 Plan amendment and recertification, which is consistent with the regulatory requirements of 40 CFR 130.6(e). It identifies types of amendments that would require recertification because of potential water quality impacts, which is consistent with the requirements that 208 plans be updated to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals. Chapter 10 does not conflict with Clean Water Act requirements, nor does it limit the regulatory authority of the Lahonton or State Water Board or the Nevada Division of Environmental Protection. In addition to those requirements in Chapter 10, the EPA may require plan updates as needed.</p> <p>The comprehensive environmental analysis provided in TRPA’s RPU Environmental Impact Statement (EIS) meets the requirements of the California Environmental Quality Act (CEQA) for 208 Plan certification pursuant to California Public Resources Code Section 21083.5.</p>

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<p>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;</p> <ul style="list-style-type: none"> <li>• 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;” <ul style="list-style-type: none"> <li>○ 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.<sup>1</sup></li> <li>○ 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.</li> </ul> </li> </ul> <p>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.</p> <p><b>Summary of Concerns:</b></p> <ol style="list-style-type: none"> <li>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;</li> <li>II. The proposed amendments to the 208 Plan violate the State Board’s authority.</li> <li>III. The environmental review and public process requirements for amendments to the 208 Plan are not met by TRPA’s RPU EIS;</li> <li>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.</li> </ol> <p>Please feel free to contact Jennifer Quashnick at <a href="mailto:jqtahoe@sbcglobal.net">jqtahoe@sbcglobal.net</a> or Laurel Ames at <a href="mailto:laurel@watershednetwork.org">laurel@watershednetwork.org</a> if you have any questions.</p> <p>Sincerely,</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">         Laurel Ames,  <i>Conservation Co-Chair,</i>        Tahoe Area Sierra Club     </div> <div style="text-align: center;">         Susan Gearhart,  <i>President,</i>        Friends of the West Shore     </div> <div style="text-align: center;">         Jennifer Quashnick  <i>Conservation Consultant,</i>        Friends of the West Shore     </div> </div> <p><sup>1</sup> See attached spreadsheet created by FOWS &amp; TASC showing schedules and planned environmental review for Area Plans in progress.</p> <p style="text-align: center;">Page 2 of 17</p>	<p>The Lahontan Water Board and State Water Board responded to the TASC’s comments regarding the adequacy of the Lake Tahoe TMDL program and the associated implementation tools, including the Lake Clarity Crediting Program (LCCP) during the TMDL approval process. A review of that decision is beyond the scope of this approval of the 208 Plan. These policies and programs have undergone peer review and thorough public engagement processes prior to adoption. It is unclear what “concerns” have not been addressed – it appears the TASC/FOWS simply desire a different policy outcome.</p>

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<p style="text-align: center;"><b><u>Detailed Comments on 208 Plan Amendments by FOWS &amp; TASC:</u></b></p> <p><b>I. <u>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:</u></b></p> <p>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.</p> <p><b>A. <u>Lack of Scientific support for claimed reductions:</u></b></p> <p>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.</p> <p><i>1) <u>Preventing particles from entering Lake Tahoe:</u></i></p> <p>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.</p> <p>However, removing the <i>fine particles</i> 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.<sup>2</sup> 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.</p> <p>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 <b>fine particles is natural infiltration</b>, which requires undeveloped land, coverage removal and restoration, functioning SEZs, including protecting and limiting incursions into floodplains. However, this fact is very inconvenient for</p> <p><small><sup>2</sup> 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.</small></p>	<p>Certification of the amended 208 Plan does not constitute an approval of any new development, and the assumption that new development would degrade water quality is speculative. (See additional response below)</p> <p>Any increase in pollutant loading would be a violation of regulations established by the Lake Tahoe TMDL and implemented by National Pollutant Discharge Elimination System permits, as well as a violation of California and federal anti-degradation policy and the TRPA Compact.</p> <p>Any activity, such as new development, re-development, or other land disturbing management actions, has the potential to increase localized (i.e. on a parcel scale) pollutant loading. To ensure that future growth does not increase pollutant loading to Lake Tahoe, the Lake Tahoe TMDL requires responsible jurisdictions to reduce pollutant loads from the established baseline condition for that jurisdiction. This means that load reductions must be net reductions from a jurisdiction that account for changes in both land use, transportation modes and uses, and stormwater treatment. A municipality must annually demonstrate on a catchment (i.e. sub-watershed) basis that no increased loading in fine sediment particle, total nitrogen, and total phosphorus will result from any land disturbing activity permitted in the catchment. Efforts to eliminate the increased loads from these land disturbing activities will not be counted towards the annual load reduction requirements.</p>

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**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;**

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**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.<sup>2</sup> 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

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The Lahontan Water Board and the Nevada Division of Environmental Protection developed the Pollutant Reduction Opportunity Analysis to identify options for reducing fine sediment particle and nutrient loading from urban storm water discharges. The analysis provides the most comprehensive assessment and quantification of urban storm water treatment options for the Lake Tahoe basin.

Despite the TASC/FOWS claim, opportunities to reduce fine sediment particle loading from urban storm water are not limited to infiltration. Furthermore, many treatment options (including infiltration) can be installed beneath the ground surface, in some instances negating the need for undeveloped land and/or impervious coverage removal. Although removing fine sediment particles from storm water flows is challenging, there are abundant source control options to control pollutants before they become entrained in runoff flows. In areas near the lake shore where infiltration and other treatment options are limited, filtering technologies have proven effective at reducing fine sediment and nutrient concentrations in effluent discharges.

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<p>development interests, because it would require a net <i>decrease</i> 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.</p> <p>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. <b>Credits are not based on actual measured reductions in pollutant loading to Lake Tahoe.</b> 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.</p> <p>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.</p>	<p>The Lahontan Water Board evaluated the water quality impact of future growth potential as part of the Lake Tahoe TMDL analysis. The analysis found that even under a "worst case" development scenario that maximized allowable impervious coverage in the Lake Tahoe watershed, the anticipated increase in average annual fine sediment particle loading was less than two percent. That analysis assumed a level of impervious coverage that greatly exceeds that allowed by the TRPA's recently updated Regional Plan.</p> <p>Similarly, Master Response 5 of the Final EIS noted that the analysis in the Draft EIS demonstrated that parcels targeted for concentrated development (i.e., non-sensitive lands in community centers) could accommodate the required infiltration BMPs under the proposed Regional Plan Update alternatives. (See Master Response 5 at p. 3-31.)</p> <p>As part of adoption process for the Tahoe TMDL and the municipal stormwater permit for the Lake Tahoe region, Lahontan Water Board staff previously responded to the TASC's comments regarding the validity of the Lake Clarity Crediting Program. The Lake Clarity Crediting Program is implemented through Municipal NPDES permits and is not part of the State Water Board's proposed 208 Plan certification. The Program includes comprehensive monitoring and on-the-ground assessment to ensure actual conditions are consistent with modeled estimates.</p>

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<p>development interests, because it would require a net <i>decrease</i> 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.</p> <p>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. <b>Credits are not based on actual measured reductions in pollutant loading to Lake Tahoe.</b> 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.</p> <p>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.</p>	<p>Neither the 208 Plan nor the Regional Plan change the regional impervious coverage standards or project-scale enforcement of the standards. TASC's assertion that overall coverage in the region will increase as a result of the Regional Plan is incorrect. TRPA responded to similar comments in the final EIS – see Master Response 3, Programmatic Coverage Assessment, beginning on Page 3-17 of the Final EIS, Volume 1.</p> <p>The Regional Plan does not allocate any additional tourist units or create additional mechanisms to convert other types of development into tourist units. The Regional Plan Update reduces the growth rate in residential units by roughly 50% from the growth rate allowed under the 1987 Plan. The Regional Plan also allocates approximately 75% less commercial floor area over the next 25 years than the 1987 Plan allocated for the previous 25 years. Furthermore, any future development proposals would be subject to all relevant environmental review and regulatory requirements. As demonstrated in the EIS, the Regional Plan Update will ultimately reduce coverage in sensitive lands, facilitate TMDL implementation, and reduce vehicle miles traveled.</p> <p>According to Zhu and Kuhns et al. (2009), vehicle miles traveled was not listed as a principle factor influencing generation of road dust emissions into the atmosphere. Since the principle factors were vehicle speed, road condition, road grade, proximity to other high emitting roads, and season, a projected change in the number of vehicle miles traveled was not directly linked with a projected increase in fine sediment load generated.</p>

<b>Comment</b>	<b>Response</b>
<p>2) <u>Nearshore Conditions:</u>  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.</p> <p>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 <i>after</i> the final EIS was released. On the former, our comments regarding the inadequate technical analysis performed by TRPA’s EIS were not sufficiently addressed.<sup>3</sup> 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.</p> <p><b>B. <u>The 13<sup>th</sup> 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.</u></b></p> <p>1) <u>Resort Recreation development approved on approximately 320 acres of undeveloped land:</u>  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.<sup>4</sup> Section 10.2.A in the amended 208 Plan incorporates the RPU Code of Ordinances, including the</p> <p><sup>3</sup> Details provided in TASC &amp; FOWS comments to TRPA (and attachments) regarding the Regional Plan Update Package and Threshold Evaluation Report (submitted 12/11/2012).  <sup>4</sup> 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 <i>environmental</i> purpose of the RPU.</p> <p style="text-align: center;">Page 5 of 17</p>	<p>The Lahontan Water Board and TRPA are working with academic institutions to better understand the factors affecting water quality and algae growth in the nearshore area of Lake Tahoe. As the TASC/FOWS point out, nutrients are a likely driver of increased algae growth. Because phosphorus concentrations are strongly correlated with fine sediment particle concentrations in stormwater, management actions that target fine sediment particles also effectively reduce nutrient loading to the nearshore area. In addition, TRPA’s updated Regional Plan includes a new standard related to attached algae in the nearshore environment and policies to reduce anthropogenic sources of phosphorus to the lake.</p> <p>The TRPA provided detailed responses to all comments submitted on the Regional Plan Update EIS. It is unclear what the TASC/FOWS are referring to regarding “changes proposed <i>after</i> the final EIS was released.” There are not any known “exemptions” included in the 208 Plan.</p> <p>Detailed responses to TASC comments regarding development potential on Recreation-designated lands were provided in Master Response 10, Development on Recreation-Designated Lands, beginning on page 3-47 of the Final EIS, Volume 1. Development may only occur after several layers of planning approval and then can only be transferred from existing development that is restored elsewhere in the basin. The Regional Plan Update itself does not give the green light for any additional development in these areas. Individual projects must still undergo additional environmental and regulatory review and approval processes.</p>

<u>Comment</u>	<u>Response</u>
<p>Bi-State Recommendations, which approved the zoning change on the two RR parcels:</p> <p>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.</p> <p>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). <b>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.</b> 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 <i>any</i> 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.</p> <p>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.</p> <p>2) <u>Expiration of Limits of Bi-State Recommendations in four years:</u> 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.</p> <p>3) <u>Approval of additional 320 acres of RR development in next four years:</u> 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:</p> <p>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.</p>	<p>TASC/FOWS assert that without the proposed 208 Plan Amendments regarding the Resort Recreation District (RRD), the 2012 Regional Plan would allow only two parcels designated as RRD. TASC/FOWS misperceive the role of the 208 Plan; it neither expands nor contracts TRPA authority under the Compact and Regional Plan. TRPA has always maintained the authority to amend its Regional Plan to designate more parcels in the RRD, and Chapter 10 of the 208 Plan does not affect that authority. The 208 Plan states that one such designation may occur without requiring a 208 Plan amendment; further designation will require a 208 Plan amendment (prior to 2017).</p> <p>Nothing in the Bi-State Agreement itself addressed its duration. In the 208 Plan negotiations, California and Nevada agreed that the Bi-State Agreement would remain in place for 4 years. Because the Bi-State Agreement itself does not limit the number of parcels that may be designated as Resort Recreation in the future, the fact that Chapter 10 of the 208 Plan limits the ability to amend the RR development for only four years does not alter the terms of the Bi-State Agreement.</p> <p>The 208 Plan does not approve any land use changes or development projects. As noted above, the 208 Plan merely states that one such designation may occur without requiring a 208 Plan amendment. Any future RRD designations must be analyzed in an environmental document and may not be approved by TRPA if it results in water quality degradation. Any additional development within a RRD would require additional planning approvals and environmental review, including review pursuant to CEQA for any development within California.</p>

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<p>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:</p> <p>“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.”</p> <p>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 3<sup>rd</sup> Resort Recreation district of roughly 320 acres to be approved without review by the states or EPA is a 3<sup>rd</sup> 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:</p> <p>“Although Northstar states that the expansion of the Northstar ski resort into the Lake Tahoe Basin is not included in the expansion,<sup>5</sup> 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:</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• <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></li> <li>• The proposed upgrades to the CalPECO electrical [transmission] lines within the Basin that will increase the capacity [to deliver] more power <i>within</i> the Lake Tahoe Basin; and</li> <li>• The request by Vail/Trimont to rezone Timber Production Zones in all of Placer County (discussed in TASC’s April 2013 comments).</li> </ul> <p>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</p> <p><sup>5</sup> <a href="http://www.northstaratahove.com/info/ski/northstar-mountain-master-plan-faqs.asp">http://www.northstaratahove.com/info/ski/northstar-mountain-master-plan-faqs.asp</a></p>	<p>As noted above, the 208 Plan does not approve any land use changes or development projects, nor does it expand ability of TRPA to designate other lands as in the RRD.</p> <p>Any new development project remains subject to applicable environmental review and regulatory approval processes. The TASC/FOWS suggestion that speculative future development needs to be included in planning level environmental analysis is unreasonable and not consistent with the requirements of CEQA.</p>

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<p>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].</p> <p>4) <u>Additional activities exempted from 208 Plan environmental review:</u>  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.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. BMPs (Goals and Policies WQ 3-11, 3-12; Code Chapter 60.4);</li> <li>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));</li> <li>3. Coverage Transfer Limits (Goals and Policies LU 2-11; Code Sections 30.4.2 - 30.4.4);</li> <li>4. Evaluation Intervals and Targets: Assessment of Effectiveness and Adequacy (Goals and Policies DP 2.1; Code Section 16.5.2);</li> <li>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.)</li> </ol> <p>In addition, the wording here is clear, and appears to conflict with statements in 10.1, which states:</p> <p>“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.”</p> <p>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,</p>	<p>Amended 208 Plan Chapter 10 does not approve any land use changes or development projects – it simply identifies when additional amendment to the 208 Plan would be required. The FOWS and TASC assertion regarding a “660 acres” of new land use designation is speculative. Any land use change in California would require applicable analysis under the CEQA. Furthermore, the 2012 Regional Plan places additional restrictions on any new uses with Resort Recreation designated lands, including requirements that new uses can only be approved as part of an Area Plan developed in accordance with Chapter 13 of the TRPA Code of Ordinances, and requirements that any development with Resort Recreation designated lands must result in the restoration of existing development within the Tahoe Basin and a net decrease in the total amount of development (see TRPA Code of Ordinances section 13.5.3.C.3).</p> <p>The TASC/FOWS are not referencing the correct version of the amended 208 Plan. The February 13, 2013 version does not include references to “automatic” amendments. Instead, the 208 Plan identifies instances when a plan amendment would and would not be needed. The portions of the 208 Plan referenced in these comments all refer to conditions under which an amendment to the 208 Plan would not be needed.</p>
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<p>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.</p> <p><b>C. <u>The 208 Plan amendments also set up a system that skirts, if not eliminates, the public process for 208 Plan amendments.</u></b></p> <p>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.</p> <p>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.<sup>6</sup> 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:</p> <p>“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.”</p> <p>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):</p> <p>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.</p> <p><sup>6</sup> As TASC &amp; 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.</p> <p style="text-align: center;">Page 9 of 17</p>	<p>As noted above, the TASC/FOWS are not referencing the correct version of the amended 208 Plan. The February 13, 2013 version does not include references to “automatic” amendments. Instead, the 208 Plan identifies instances when a plan amendment would and would not be needed. The portions of the 208 Plan referenced in these comments all refer to conditions under which an amendment to the 208 Plan would not be needed.</p> <p>As noted above, nothing in the Bi-State Agreement itself addresses the length of time the agreements would hold. The two states, in negotiating the 208 Plan amendments, agreed to the “sunset” provisions described in Chapter 10.</p>

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<p>3) <u>Subdivision limits can easily be removed in January 2017, allowing virtually any change to be automatically made:</u>  “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.</p> <p>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 <i>without public and environmental review</i>. 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. <u>These decisions were not made to benefit the Lake, but rather, to relax regulations to allow more development.</u></p> <p>4) <u>The amendments change the burden of proof requirements that apply when a member of the public objects to one of these ‘automatic updates.’</u></p> <p>“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.”</p> <p>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.”</p> <p>Section 10.2.E.2.b (below) increases the difficulty for the public by requiring the States to determine <i>unanimously</i> 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.</p>	<p>TASC/FOWS concerns about limits on land subdivisions seem to stem from changes in the scope and direction of the 208 Plan. In 1988, the two states incorporated much of the previous TRPA Regional Plan directly into the 208 Plan, enabling the states to have direct influence on land use decisions that may affect water quality. This, however, also resulted in a cumbersome document that unintentionally acted as a deterrent to updating regulatory language to reflect the latest knowledge and approaches to addressing water quality impacts. Since that time, the states adopted the Lake Tahoe TMDL as a more direct and robust mechanism to regulate water quality in the Lake Tahoe region. The TMDL provides a science-based approach that directly addresses the causes of Lake Tahoe’s water quality impairment, eliminating the need for the States to try to directly influence land use decisions.</p> <p>TASC/FOWS is concerned that because the 208 Plan amendments revise the tight link between TRPA’s Regional Plan and the 208 Plan, there will be less public participation because there will be fewer 208 Plan amendments. Although there is a shift away from incorporating express Regional Plan language into the 208 Plan, and so there will arguably be fewer 208 Plan amendments than if the language from the Regional Plan were directly incorporated, any changes to the Regional Plan itself will be subject to public review processes as required by the TRPA Compact. TASC/FOWS will still be able to participate and comment on Regional Plan changes during the TRPA processes.</p>

<u>Comment</u>	<u>Response</u>
<p>other agencies made significant compromises which reduced environmental protection for <i>political reasons</i>.</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. Does a State object to the sunset of the subdivision amendment procedures of the WQMP? <ol style="list-style-type: none"> <li>a. If no, then the subdivision amendment procedures of the WQMP automatically sunset;</li> <li>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.</li> <li>c. Do the States, within 60 days of the objection to the sunset of the subdivisions section of the WQMP: <ol style="list-style-type: none"> <li>i. Agree that the objecting State has not met its burden? If so, then the subdivision amendment procedures of the WQMP do automatically sunset;</li> <li>ii. Agree that the objecting State has met its burden? If so, then the subdivision amendment procedures of the WQMP do not sunset;</li> <li>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.</li> </ol> </li> </ol> </li> </ol> <p>Section 10.2.G.1.b further truncates the public process, and the Water Board's authority, by including the statement that "<i>The States may consider any information they deem relevant.</i>" This provision is completely open-ended and includes no requirement that decisions be based on environmental objectives and proper science (or actually, <i>any science</i>). 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.</p>	<p>As noted above, any change to the Regional Plan will involve opportunities for public review and comment. After 2017, the TRPA and the States will follow the requirements in section 130.6(e) of Title 40 of the Code of Federal Regulations, which set out when 208 Plans must be amended. That section requires that the water quality management plans be updated "as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals." US EPA can also require the states to update the 208 Plan as needed.</p>

<u>Comment</u>	<u>Response</u>
<p data-bbox="237 224 1201 248"><b>II. <u>The Proposed Amendments to the 208 Plan violate the State Board's Authority</u></b></p> <p data-bbox="304 272 1220 391"><b>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.</b></p> <p data-bbox="304 418 1220 683">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.</p> <p data-bbox="304 711 1220 1040">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.</p> <p data-bbox="304 1068 1220 1333">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 <i>all</i> RPU amendments are automatically made to the 208 Plan (with subdivisions being the only noted possible exception). <u>If</u></p> <p data-bbox="667 1393 821 1417">Page 13 of 17</p>	<p data-bbox="1339 235 1902 443">Although the comment heading indicates TASC/FOWS contend the proposed 208 Plan "violate[s] the State Board's authority", nowhere in the body of the comment is this contention supported with fact or law. TASC/FOWS present no argument that the 208 Plan as proposed violates any applicable law.</p> <p data-bbox="1339 480 1902 1084">Certifying the amended 208 Plan in no way limits the State Water Board's authority as established by the Porter-Cologne Water Quality Act. The State and Regional Water Boards do not regulate regional land use policy in the Lake Tahoe region. The Lahontan Water Board, through implementation of the Lake Tahoe TMDL, maintains the authority to ensure that land use changes do not increase pollutant loading to Lake Tahoe. Furthermore, the Regional Water Board has set requirements for pollutant load <u>reductions</u> from developed areas through implementation of the municipal stormwater permits for the Counties of El Dorado and Placer and the City of South Lake Tahoe. As a responsible agency under CEQA, the Lahontan Water Board also reviews all projects subject to CEQA and maintains the authority to issue (or decline) applicable permitting approvals.</p> <p data-bbox="1339 1122 1902 1390">As noted above, the FOWS/TASC's assertions regarding future development projects are speculative. In addition, requirements in the TMDL prohibit pollutant load increases in individual catchments (sub-watershed basins) and requirements for over-all reductions of loads within jurisdictions will ensure that development proposed in Area Plans will not result in additional pollutant loads.</p>

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<p><u>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.</u></p> <p>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.</p> <p><b>III. <u>The environmental review and public process requirements for amendments to the 208 Plan are not met by TRPA’s RPU EIS</u></b></p> <p><b>A. <u>Environmental Review Process not met:</u></b>  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).”</p> <p>Page 2 of the Revised Notice of Opportunity to Comment states the following:</p> <p>“...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 <u>robust alternatives analysis, detailed mitigation measures, greenhouse gas emission analysis, and assessments of growth-inducing and cumulative impacts.</u>” [Emphasis added].</p> <p>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:</p> <p><i>1) <u>EIS does not perform a robust Alternatives Analysis:</u></i></p> <ol style="list-style-type: none"> <li>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.”<sup>7</sup></li> <li>b. The EIS does not analyze the on-the-ground impacts of the proposed areawide coverage management system.<sup>8</sup></li> </ol> <p><sup>7</sup> Repeated throughout Final EIS, Volume 1, and in Introduction Chapter to EIS.  <sup>8</sup> “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)</p>	<p>The Lahontan Water Board participates in the TRPA Advisory Planning Commission and has the opportunity to review proposed Area Plans to determine if such plans are consistent with the Lake Tahoe TMDL and other applicable Water Board policies. The Lahontan Water Board would act as a responsible agency under CEQA, and would be able to comment on any environmental review that local governments prepared before adoptions of the Area Plans.</p> <p>Pursuant to CEQA Guidelines section 15225, the State Water Board did not provide an additional comment period on the EIS, finding that the EIS had been circulated as broadly as state law required and gave notice meeting the requirements of 15087(a). In fact, these comments reiterate comments that TASC submitted on the Draft EIS, and which were addressed in detail in the Final EIS.</p> <p>Nonetheless, responses to these comments are being provided, and more detailed responses to these comments can be found in Chapter 3 of the RPU Final EIS, Volume 1.</p>

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<p><u>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.</u></p> <p>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.</p> <p><b>III. <u>The environmental review and public process requirements for amendments to the 208 Plan are not met by TRPA's RPU EIS</u></b></p> <p><b>A. <u>Environmental Review Process not met:</u></b></p> <p>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)."</p> <p>Page 2 of the Revised Notice of Opportunity to Comment states the following:</p> <p style="padding-left: 40px;">"...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].</p> <p>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:</p> <p>1) <u>EIS does not perform a robust Alternatives Analysis:</u></p> <ol style="list-style-type: none"> <li>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;"<sup>7</sup></li> <li>b. The EIS does not analyze the on-the-ground impacts of the proposed areawide coverage management system;<sup>8</sup></li> </ol> <p><sup>7</sup> Repeated throughout Final EIS, Volume 1, and in Introduction Chapter to EIS.</p> <p><sup>8</sup> "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)</p> <p style="text-align: center;">Page 14 of 17</p>	<p>The EIS provides a comprehensive analysis of five alternatives that represent a range of strategies to achieve the Regional Plan's goals. Each alternative is evaluated at an equal level of detail. The analysis in the EIS includes a level of detail commensurate with regional-scale policy nature of the plan itself. The EIS is not intended to replace site-specific or project-scale environmental review that will be required before any project can be approved. Additional detail on the role of the EIS is provided in the Section titled "Purpose of this EIS" beginning on page 1-5 of the Draft EIS.</p> <p>Final EIS Master Responses 3 and 5 directly address the FOWS and TASC concern regarding the programmatic coverage assessment and the effect of concentrated development on water quality. The site specific impacts of any future area-wide coverage management system can only be analyzed when a specific proposal exists and site characteristics are known.</p>

<b>Comment</b>	<b>Response</b>
<p>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 NO<sub>x</sub> 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;"<sup>9</sup></p> <ul style="list-style-type: none"> <li>- 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.</li> </ul> <p>2) <u>Deferred Mitigation Measures lack sufficient detail to meet CEQA:</u></p> <p>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.<sup>10</sup></p> <p>3) <u>Inadequate Greenhouse Gas (GHG) Emission analysis:</u></p> <p>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.</p> <p>b. Further, the assumptions related to vehicle trips that were used for the transportation modeling are not supported by the evidence in the Plan.</p> <p>4) <u>Fails to Adequately Analyze Growth-Inducing Impacts:</u></p> <p>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).</p> <p>5) <u>Fails to Evaluate Cumulative Impacts:</u></p> <p>a. The RPU EIS did not evaluate the cumulative impacts of the RPU's growth on the Basin.</p> <p>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.</p> <p><sup>9</sup> "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)  <sup>10</sup> TRPA FEIS, Vol. 1, p. 3-65, Master Response 13: "Programmatic Mitigation Measures and Proper Deferral of Mitigation Details"</p> <p style="text-align: center;">Page 15 of 17</p>	<p>The EIS adequately analyzes potential impacts associated with VMT and atmospheric deposition. Final EIS Master Response 11 addresses the FOWS and TASC concerns regarding the effectiveness of community centers and transportation improvement in reducing vehicle miles traveled. Additional responses to this comment are provided in response to comments O16-129, O16-132, O16-136, and O16-139 in Chapter 3 of the Final EIS, Volume 1.</p> <p>All mitigation measures included in the EIS are consistent with CEQA requirements. Where it was not possible to determine the specific details of a mitigation measure, the EIS establishes a performance standard and programmatic mitigation measure consistent with the CEQA guidelines. Additional detail on the mitigation measures consistency with CEQA requirements is provided in Master Response 3, Programmatic Mitigation Measures and Proper Deferral of Mitigation Details, in Chapter 3 of the Final EIS, Volume 1.</p> <p>The EIS adequately analyzes GHG emissions that could be affected by the Regional Plan amendments and amended 208 Plan, including emissions from both residents and visitors in Chapter 3.5, Greenhouse Gas Emissions and Climate Change in the Draft EIS. Additional detailed responses on this topic are provided in response to comments O16-141 and O26-2 in Chapter 3 of the Final EIS, Volume 1.</p> <p>Moreover, the California Air Resources Control Board recently certified the adequacy of TRPA's GHG analysis and its finding of per capita GHG reductions exceeding SB 375 targets.</p>

Comment	Response
<p>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 NO<sub>x</sub> 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;"<sup>9</sup></p> <ul style="list-style-type: none"> <li>- 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.</li> </ul> <p>2) <u>Deferred Mitigation Measures lack sufficient detail to meet CEQA:</u></p> <ul style="list-style-type: none"> <li>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.<sup>10</sup></li> </ul> <p>3) <u>Inadequate Greenhouse Gas (GHG) Emission analysis:</u></p> <ul style="list-style-type: none"> <li>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.</li> <li>b. Further, the assumptions related to vehicle trips that were used for the transportation modeling are not supported by the evidence in the Plan.</li> </ul> <p>4) <u>Fails to Adequately Analyze Growth-Inducing Impacts:</u></p> <ul style="list-style-type: none"> <li>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).</li> </ul> <p>5) <u>Fails to Evaluate Cumulative Impacts:</u></p> <ul style="list-style-type: none"> <li>a. The RPU EIS did not evaluate the cumulative impacts of the RPU's growth on the Basin.</li> <li>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.</li> </ul> <p><sup>9</sup> "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)  <sup>10</sup> TRPA FEIS, Vol. 1, p. 3-65, Master Response 13: "Programmatic Mitigation Measures and Proper Deferral of Mitigation Details"</p>	<p>The analysis of vehicle trips in the EIS is supported by substantial evidence. The methods and assumptions used in the analysis of transportation-related impacts are described in Chapter 3.3, Transportation, beginning on page 3.3-28 of the Draft EIS. Additional detail on the analysis of transportation-related impacts is provided in the Draft EIS in Appendix E, Traffic and Transportation Model Outputs. The comment provides no rationale for the assertion that the analytical approach was inadequate.</p> <p>The EIS analyzes future population levels based on the maximum amount of development that could be allowed under the Regional Plan in Chapter 3.12, Population, Employment, and Housing of the Draft EIS. Growth inducing impacts are analyzed in Chapter 5 of the Draft EIS under the heading "Growth-Inducing Impacts". All future population projections are based on the best available information and are supported by substantial evidence. The comment is correct that visitors are not accounted for in population estimates because population is defined as permanent residents. However, the effects of changes in the number of visitors or seasonal residents are evaluated under each resource topic that could be affected by those changes. All future development requires the allocation of a development commodity under TRPA's growth control system as described in Chapter 50, Allocation of Development, in the TRPA Code of Ordinances. Additional detail on projected changes in population, visitor numbers, and seasonal residents is provided in the Draft EIS in Appendix E, Traffic and Transportation Model Outputs. Detailed responses to this comment have been provided in response to comment O26-2 in Chapter 3 of the Final EIS, Volume 1.</p>

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<p>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 NO<sub>x</sub> 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;"<sup>9</sup></p> <ul style="list-style-type: none"> <li>- 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.</li> </ul> <p>2) <u>Deferred Mitigation Measures lack sufficient detail to meet CEQA:</u></p> <ul style="list-style-type: none"> <li>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.<sup>10</sup></li> </ul> <p>3) <u>Inadequate Greenhouse Gas (GHG) Emission analysis:</u></p> <ul style="list-style-type: none"> <li>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.</li> <li>b. Further, the assumptions related to vehicle trips that were used for the transportation modeling are not supported by the evidence in the Plan.</li> </ul> <p>4) <u>Fails to Adequately Analyze Growth-Inducing Impacts:</u></p> <ul style="list-style-type: none"> <li>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).</li> </ul> <p>5) <u>Fails to Evaluate Cumulative Impacts:</u></p> <ul style="list-style-type: none"> <li>a. The RPU EIS did not evaluate the cumulative impacts of the RPU's growth on the Basin.</li> <li>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.</li> </ul> <p><sup>9</sup> "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)</p> <p><sup>10</sup> TRPA FEIS, Vol. 1, p. 3-65, Master Response 13: "Programmatic Mitigation Measures and Proper Deferral of Mitigation Details"</p>	<p>The EIS adequately analyzed the cumulative impacts of the maximum amount of growth that could occur under the Regional Plan on 14 resource areas in Chapter 3, Effected Environment and Environmental Consequences of the Alternatives; and in Chapter 4, Cumulative Impacts, in the Draft EIS. The FOWS/TASC provide no rationale or evidence that the analysis was inadequate.</p> <p>The EIS adequately analyzed cumulative impacts of the Regional Plan in Chapter 3, Effected Environment and Environmental Consequences of the Alternatives; and in Chapter 4, Cumulative Impacts, in the Draft EIS. The analysis considered the maximum amount of development that could occur under the Regional Plan, VMT from all user types, and all reasonably foreseeable projects.</p>

<u>Comment</u>	<u>Response</u>
<p data-bbox="367 240 1218 289">c. The RPU EIS does not evaluate the cumulative impacts of the proposed areawide coverage management system.</p> <p data-bbox="325 318 1176 391">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.</p> <p data-bbox="283 414 793 438"><b>B. Public Process Requirements not met:</b></p> <p data-bbox="325 443 835 467">Page 2 in the Water Board Notice also states:</p> <p data-bbox="367 487 1245 565">"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..."</p> <p data-bbox="325 589 1251 732">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. <u>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!</u></p> <p data-bbox="205 756 1239 852"><b>IV. <u>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:</u></b></p> <p data-bbox="283 876 1241 997">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.</p> <p data-bbox="283 1021 1255 1235">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. <i>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.</i></p> <p data-bbox="283 1260 1251 1356">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</p> <p data-bbox="667 1401 827 1425">Page 16 of 17</p>	<p data-bbox="1339 233 1900 383">As noted above, Final EIS Master Responses 3 and 5 directly address the FOWS and TASC concern regarding the programmatic coverage assessment and the effect of concentrated development on water quality.</p> <p data-bbox="1339 444 1906 686">Changes to Chapter 10 were not required to be analyzed by the EIS. The provisions in Chapter 10 relate to the process by which the 208 Plan will be amended. It does not result in any actual amendments, and any amendments would undergo additional environmental assessment, as necessary under CEQA, before they are certified by the State Board.</p> <p data-bbox="1339 781 1906 1023">The Lake Tahoe TMDL has been approved by the State of California, the State of Nevada, and the United States Environmental Protection Agency. During TMDL development and adoption, the State and Lahontan Water Boards responded to all submitted comments, including those provided by the TASC and the League To Save Lake Tahoe.</p> <p data-bbox="1339 1179 1902 1356">Lahontan Water Board staff worked closely with the TRPA to ensure that the RPU was aligned with the Lake Tahoe TMDL analysis and associated policies. The approved Regional Plan is consistent with, and supportive of, the Lake Tahoe TMDL.</p>

<u>Comment</u>	<u>Response</u>
<p>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.</p> <p>Page 17 of 17</p>	

**Comment**

**Response**



T 510.836.4200 | 410 12th Street, Suite 250 | www.lozeaudrury.com  
F 510.836.4205 | Oakland, Ca 94607 | michael@lozeaudrury.com

Public Com  
Lake Tahoe 208 I  
Deadline: 4/11/13 by 12 n

April 11, 2013

Via E-mail



Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000  
1001 "I" Street, 24th Floor, Sacramento, CA 95814  
commentletters@waterboards.ca.gov

Re: Comment Letter—Lake Tahoe 208 Plan

Dear Chair Marcus and members of the State Board,

Thank you for the opportunity to comment on the proposed update to the Lake Tahoe 208 Plan. Our office has been retained by the Tahoe Area Sierra Club ("TASC") and Friends of the West Shore ("FOWS") to review and comment on the proposed plan. Both TASC and FOWS appeared before the California Regional Water Quality Control Board, Lahontan Region and provided comments on the proposed 208 Plan. Those comments included in particular concerns regarding the proposed amendments procedures in Section 10 and concerns that the 208 Plan further destines Lake Tahoe's water quality to continued degradation long into the future. The following provides further details regarding those important concerns.

Initially, TASC and FOWS do not believe that the State Board's reference in the public notice to 40 C.C.R. § 3779(f) is appropriate. That provision only applies to the State Board's consideration of amendments to basin plans or guidelines *adopted* by a regional board. 23 CCR § 3779(f) provides that "[t]he state board, *when considering approval of a regional board's adoption of an amendment to its water quality control plan or guideline*, shall prescribe a comment period of not less than 30 days..." The provision then provides that such comments can be refused if late or were not presented to the Regional Board. Here, as the Lahontan Region's resolution specifies, the 208 Plan amendments have been adopted by the Tahoe Regional Planning Agency ("TRPA"), the designated agency to prepare 208 Plans for Lake Tahoe. See Resolution R6T-2013-0010, ¶ 7. See also State Board Resolution No. 81-63. Here, although the Regional Board did consider and adopt a resolution supporting the State Board's approval of the TRPA's updated 208 Plan, the Regional Board did not and could not itself *adopt* the Plan. Hence, the comments and procedures referenced by 23 CCR § 3779(f) are inapplicable to the State Board's review of the 208 Plan.

**A. The Proposed "Automatic" Amendment Procedures are Contrary to EPA Regulations Requiring State Board and EPA Approval of 208 Plan Updates.**

"WQM plans consist of initial plans produced in accordance with sections 208 and 303(e) of the Act and certified and approved updates to those plans." 40 C.F.R. § 130.6(a). All 208 plan

The reference to 23 CCR § 3779(f) was mistakenly included. Please note, however, that pursuant to section 15225 of the Guidelines for California Environmental Quality Act (Cal. Code Regs., tit. 14, §15225), no additional comment period on the FEIS was being provided.

<u>Comment</u>	<u>Response</u>
<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 2 of 7</p> <p>amendments have to be reviewed and certified by the State Board and approved by EPA. 40 C.F.R. § 130.6(f) (“The Governor or the Governor’s designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan”). See also Resolution R6T-2013-0010, ¶ 8 (“TRPA’s amended 208 Plan requires certification by the State Water Resources Control Board, the Nevada Division of Environmental Protection, and the United States Environmental Protection Agency to take effect”). Likewise, EPA’s regulations reserve for the EPA Regional Administrator the authority to require updates to a 208 Plan whenever necessary. 40 C.F.R. § 130.6(f) (“Regional Administrators may require that State WQM plans be updated as needed”).</p> <p>Despite these clear approval requirements, the proposed 208 Plan includes provisions that would first limit and then eliminate review by the State Board and EPA of updates to the Plan. Chapter 10.2 first limits any potential amendments through January 1, 2017, to revisions of five specified portions of TRPA’s Regional Plan. Any Regional Plan changes outside of the five designated sections would automatically amend the 208 Plan unless an objecting person can meet “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.” 208 Plan, pp. 37-38. And both California and Nevada must unanimously determine that the objecting person has met the burden of proof. <i>Id.</i> After January 1, 2017, all changes to the Regional Plan are automatically deemed amendments to the 208 Plan without any further process: “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.” 208 Plan, ¶ 10.2(E)(4).</p> <p>In addition to those automatic updates based on changes to TRPA’s Regional Plan, the 208 Plan also provides that any updates or revisions to the long-list of incorporated planning and regulatory documents also will be deemed automatic updates to the 208 Plan. These automatic updates are not restricted by date but apply immediately. The 208 Plan states that:</p> <p style="padding-left: 40px;">To ensure timely implementation and, where necessary, timely revision of these components and to improve the functionality and relevance of the WQMP, in lieu of re-adoption of individual components, this WQMP incorporates by reference those documents listed in Table 2. The following components and their subsequent duly adopted and approved revisions and amendments are integral parts of this WQMP. As an example, periodic updates and improvements of the TRPA Best Management Practices Handbook to reflect latest thinking and approaches are automatically incorporated as part of this WQMP and subject to implementation.</p> <p>208 Plan, p. 5. These incorporated plans include not only the Lahontan Region Board’s Basin Plan and TMDLs, but also local plans prepared by cities, counties, the Forest Service and Caltrans, as well as other TRPA regulations. 208 Plan, p. 7, Table 2. To the extent TRPA intends to include these in the 208 plan, they all must be provided to the State Board and EPA as part of this review process. And, the notion that future changes of any of those plans or policies will automatically amend the 208 Plan improperly attempts to sidestep the State Board’s and EPA’s approval authority.</p>	<p>In Chapter 10, the States intended that, rather than duplicating regulatory language from the Regional Plan directly into the 208 Plan, sections deemed important will be simply referenced. The intention was to create a “living and relevant framework,” consisting of the individual programs occurring at the various government levels that affect water quality in Lake Tahoe. The relevant programs are identified in Table 2 of the 208 Plan on p. 7. Each of the identified programs may be amended in accordance with the required processes associated with that program. Under this process, and consistent with US EPA regulations, the State Board would not need to certify every change to one of these programs, which would delay timely implementation of revisions that improve the functionality and relevance of the 208 Plan. Under Chapter 10, if TRPA amends sections of the Regional Plan specifically identified in Chapter 10, and the amendment adversely affects water quality, a 208 Plan amendment will be required for the change to be effective.</p>

<u>Comment</u>	<u>Response</u>
<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 2 of 7</p> <p>amendments have to be reviewed and certified by the State Board and approved by EPA. 40 C.F.R. § 130.6(f) (“The Governor or the Governor’s designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan”). <i>See also</i> Resolution R6T-2013-0010, ¶ 8 (“TRPA’s amended 208 Plan requires certification by the State Water Resources Control Board, the Nevada Division of Environmental Protection, and the United States Environmental Protection Agency to take effect”). Likewise, EPA’s regulations reserve for the EPA Regional Administrator the authority to require updates to a 208 Plan whenever necessary. 40 C.F.R. § 130.6(f) (“Regional Administrators may require that State WQM plans be updated as needed”).</p> <p>Despite these clear approval requirements, the proposed 208 Plan includes provisions that would first limit and then eliminate review by the State Board and EPA of updates to the Plan. Chapter 10.2 first limits any potential amendments through January 1, 2017, to revisions of five specified portions of TRPA’s Regional Plan. Any Regional Plan changes outside of the five designated sections would automatically amend the 208 Plan unless an objecting person can meet “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.” 208 Plan, pp. 37-38. And both California and Nevada must unanimously determine that the objecting person has met the burden of proof. <i>Id.</i> After January 1, 2017, all changes to the Regional Plan are automatically deemed amendments to the 208 Plan without any further process: “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.” 208 Plan, ¶ 10.2(E)(4).</p> <p>In addition to those automatic updates based on changes to TRPA’s Regional Plan, the 208 Plan also provides that any updates or revisions to the long-list of incorporated planning and regulatory documents also will be deemed automatic updates to the 208 Plan. These automatic updates are not restricted by date but apply immediately. The 208 Plan states that:</p> <p style="padding-left: 40px;">To ensure timely implementation and, where necessary, timely revision of these components and to improve the functionality and relevance of the WQMP, in lieu of re-adoption of individual components, this WQMP incorporates by reference those documents listed in Table 2. The following components and their subsequent duly adopted and approved revisions and amendments are integral parts of this WQMP. As an example, periodic updates and improvements of the TRPA Best Management Practices Handbook to reflect latest thinking and approaches are automatically incorporated as part of this WQMP and subject to implementation.</p> <p>208 Plan, p. 5. These incorporated plans include not only the Lahontan Region Board’s Basin Plan and TMDLs, but also local plans prepared by cities, counties, the Forest Service and Caltrans, as well as other TRPA regulations. 208 Plan, p. 7, Table 2. To the extent TRPA intends to include these in the 208 plan, they all must be provided to the State Board and EPA as part of this review process. And, the notion that future changes of any of those plans or policies will automatically amend the 208 Plan improperly attempts to sidestep the State Board’s and EPA’s approval authority.</p>	<p>The commenter is not referencing the correct version of the amended 208 Plan. The February 13, 2013 version does not include references to “automatic” amendments. Instead, the 208 Plan identifies instances when a plan amendment would and would not be needed. The portions of the 208 Plan referenced in these comments all refer to conditions under which an amendment to the 208 Plan would not be needed. As such, the comments on this page regarding “automatic” amendments are not applicable to the 208 Plan that is proposed for certification.</p> <p>The requirement to consider amending the 208 Plan whenever there is a Regional Plan change to the referenced section expires in 2017. After 2017, the TRPA and the States will follow the requirements in section 130.6(e) of Title 40 of the Code of Federal Regulations, which set out when 208 Plans must be amended. That section requires that the water quality management plans be updates “as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals.”</p>

<u>Comment</u>	<u>Response</u>
<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 3 of 7</p> <p>By purporting to eliminate the State Board’s duty to certify and EPA’s authority to approve or order updates to the 208 Plan, the 208 Plan is inconsistent with Section 208, 33 U.S.C. § 1288 and EPA’s implementing regulations. The 208 Plan cannot, by its terms, attempt to by-pass the requirement that any updates must be approved by the State Board and EPA.</p> <p>Relatedly, the 208 Plan also proposes to insulate three “Resort Recreation” (RR) areas from any water quality review through the 208 Plan amendment process. Two of the areas are identified, including about 315-acres of land and a third area of comparable size is unidentified but purportedly included in the 208 Plan provisions. Chapter 10 of the Plan then proceeds to exclude whatever new development takes shape in these three very large areas from any need to amend the 208 Plan and hence, any formal review by the State Board and EPA. 208 Plan, § 10.2.B. Like the other 208 Plan provisions discussed above, this effort to exclude significant changes to the Lake Tahoe water-quality landscape from the 208 planning procedures – particularly formal review of amendments addressing those substantial changes to the Lake’s watershed – is inconsistent with both the State Board’s and EPA’s Section 208 approval authority.</p> <p>It also must be noted that the 208 Plan includes a substantial, apparently typographical, error on page 36 where it states that:</p> <p>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.</p> <p>208 Plan, p. 36. This would appear to state the opposite of the subsequent provisions which provide that, for the five topics, amendments to the 208 Plan arising from changes to the Regional Plan will occur and only changes to other topics will be automatic unless successfully challenged by any person.</p> <p><b>B. The 208 Plan Misstates or Omits Key Provisions of the TRPA Regional Plan and the Basin Plan and is Inconsistent with the California and Federal Antidegradation Policies.</b></p> <p>The State Board cannot certify the 208 Plan’s consistency with either the Lahontan Basin Plan or the State and federal Antidegradation Policies.</p> <p>First, the 208 Plan misstates several key provisions of the recent TMDL and its effect on TRPA’s Regional Plan. Of particular concern is the 208 Plan’s reconstruction of the Lake Tahoe TMDL for the deep water clarity standard to presumably eliminate the Regional Plan’s numeric effluent limitations for storm water discharges to the Lake. The 208 Plan claims that:</p> <p>TRPA’s concentration-based standards are not directly comparable with the more contemporary particle number- and mass-based standards used to assess water quality compliance with the TMDL. They are based on two different approaches to measuring water quality. Hence, when a TMDL load reduction plan and program is</p>	<p>The 208 Plan does not approve any land use changes or development. The commenters concerns about changes to land use seem to stem from changes in the scope and direction of the 208 Plan. In 1988, the two states incorporated much of the previous TRPA Regional Plan directly into the 208 Plan, enabling the states to have direct influence on land use decisions that may affect water quality. This, however, also resulted in a cumbersome document that unintentionally acted as a deterrent to updating regulatory language to reflect the latest knowledge and approaches to addressing water quality impacts. Since that time, the states adopted the Lake Tahoe TMDL as a more direct and robust mechanism to regulate water quality in the Lake Tahoe region. The TMDL provides a science-based approach that directly addresses the causes of Lake Tahoe’s water quality impairment, eliminating the need for the States to try to directly influence land use decisions.</p> <p>The commenter’s assertion regarding new land use designations is speculative. Any land use change in Lake Tahoe region would require environmental analysis by TRPA under the Tahoe Regional Planning Compact, and also potentially by the local jurisdiction under the California Environmental Quality Act. Furthermore, the 2012 Regional Plan places additional restrictions on any new uses with Resort Recreation designated lands, including requirements that new uses can only be approved as part of an Area Plan developed in accordance with Chapter 13 of the TRPA Code of Ordinances, and requirements that any development with Resort Recreation designated lands must result in the restoration of existing development within the Tahoe Basin and a net decrease in the total amount of development (see TRPA Code of Ordinances section 13.5.3.C.3).</p>

Comment	Response
<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 3 of 7</p> <p>By purporting to eliminate the State Board’s duty to certify and EPA’s authority to approve or order updates to the 208 Plan, the 208 Plan is inconsistent with Section 208, 33 U.S.C. § 1288 and EPA’s implementing regulations. The 208 Plan cannot, by its terms, attempt to by-pass the requirement that any updates must be approved by the State Board and EPA.</p> <p>Relatedly, the 208 Plan also proposes to insulate three “Resort Recreation” (RR) areas from any water quality review through the 208 Plan amendment process. Two of the areas are identified, including about 315-acres of land and a third area of comparable size is unidentified but purportedly included in the 208 Plan provisions. Chapter 10 of the Plan then proceeds to exclude whatever new development takes shape in these three very large areas from any need to amend the 208 Plan and hence, any formal review by the State Board and EPA. 208 Plan, § 10.2.B. Like the other 208 Plan provisions discussed above, this effort to exclude significant changes to the Lake Tahoe water-quality landscape from the 208 planning procedures – particularly formal review of amendments addressing those substantial changes to the Lake’s watershed – is inconsistent with both the State Board’s and EPA’s Section 208 approval authority.</p> <p>It also must be noted that the 208 Plan includes a substantial, apparently typographical, error on page 36 where it states that:</p> <p>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.</p> <p>208 Plan, p. 36. This would appear to state the opposite of the subsequent provisions which provide that, for the five topics, amendments to the 208 Plan arising from changes to the Regional Plan will occur and only changes to other topics will be automatic unless successfully challenged by any person.</p> <p><b>B. The 208 Plan Misstates or Omits Key Provisions of the TRPA Regional Plan and the Basin Plan and is Inconsistent with the California and Federal Antidegradation Policies.</b></p> <p>The State Board cannot certify the 208 Plan’s consistency with either the Lahontan Basin Plan or the State and federal Antidegradation Policies.</p> <p>First, the 208 Plan misstates several key provisions of the recent TMDL and its effect on TRPA’s Regional Plan. Of particular concern is the 208 Plan’s reconstruction of the Lake Tahoe TMDL for the deep water clarity standard to presumably eliminate the Regional Plan’s numeric effluent limitations for storm water discharges to the Lake. The 208 Plan claims that:</p> <p>TRPA’s concentration-based standards are not directly comparable with the more contemporary particle number- and mass-based standards used to assess water quality compliance with the TMDL. They are based on two different approaches to measuring water quality. Hence, when a TMDL load reduction plan and program is</p>	<p>In addition, requirements in the TMDL, prohibiting additional loads in individual catchments (sub-watershed basins) and requiring over-all reductions of loads within jurisdictions will ensure that development proposed in Area Plans will not result in additional pollutant loads.</p> <p>The language on page 36 of the 208 Plan that the commenter identified as potentially being in error has been changed to state that “No amendment of the WQMP before January 1, 2017 is needed upon amendment of the Regional Plan for five topics as noted above, 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...”</p> <p>The amended 208 Plan is consistent with both the TRPA Regional Plan and the Water Quality Control Plan for the Lahontan Region (Basin Plan). The referenced language reflects the Basin Plan and Regional Plan requirements that clarify the application of established concentration-based storm water effluent limits. Specifically, the Basin Plan and the Regional Plan defer to the Lake Tahoe TMDL pollutant load allocations as the primary water quality standard in areas managed by a local government load reduction plan.</p>

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<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 4 of 7</p> <p>in place for a catchment, the TMDL plan and program supersede the TRPA requirements. Where a TMDL load reduction plan and program are not in place, the TRPA concentration-based standards remain in effect. For project review and conformance review of area plans, TRPA will utilize the pollutant load reduction plan standards for TMDL registered catchments or TRPA default standards for projects and activities outside of registered catchments.</p> <p>208 Plan, p. 14. Contrary to the 208 Plan, the approved TMDL does not supersede the Regional Plan's numeric limitations. Basin Plan, Ch. 5.18. The Regional Plan's numeric limitations apply to stormwater discharges to the near shore waters of Lake Tahoe. Code of Ordinances, § 60.1.3(A), Table 60.1.3-1. As the TMDL documentation makes clear, the deep water clarity TMDL is not designed to address pollution concerns that currently are growing in Lake Tahoe's near-shore waters. The only standard applicable to the Lake's listing as an impaired water is the deep water transparency standard. As a result, the fact that the numeric stormwater limits are not comparable to the clarity TMDL measures is of no moment given that the limitations also serve to protect the Lake's near shore waters. In the response to comments on the TMDL, the Regional Board emphasized that the deep water transparency standard TMDL does not address compliance with standards on the Lake's near-shore zone:</p> <p>The draft Lake Tahoe TMDL was developed to meet federal requirements under section 303(d) of the federal Clean Water Act, by addressing Lake Tahoe's deep water transparency. Because the Lake is not meeting the deep water transparency standard, it was listed as impaired on the federal 303(d) list. <i>The TMDL was developed to specifically address that impairment.</i> Because Lake Tahoe's nearshore environment is not yet listed as impaired on the State Water Board's 303(d) list, <i>the draft Lake Tahoe TMDL does not specifically address issues in the nearshore.</i> However, actions taken to reduce pollutant loads from the four source categories are expected to result in improved conditions in the nearshore because of the reductions in amount of pollutants entering the lake through stormwater in the nearshore.</p> <p>Response to Lozeau Drury Comments on TMDL, p. 26 (emphasis added) (<a href="http://www.waterboards.ca.gov/lahontan/water_issues/programs/tmdl/lake_tahoe/docs/comments/responses/letter_6.pdf">http://www.waterboards.ca.gov/lahontan/water_issues/programs/tmdl/lake_tahoe/docs/comments/responses/letter_6.pdf</a>). Importantly, even assuming the expected "reductions" to near shore pollutants eventually occur, that expectation says nothing about whether the water quality standards or uses applicable to near-shore waters will be achieved by those tangential reductions. Because the clarity TMDL does not supersede the Regional Plan's numeric effluent limitations, those limitations are available to enforce to protect near-shore waters.</p> <p>Similarly, the 208 Plan also is inconsistent with the Basin Plan because it fails to identify or discuss the Basin Plan's long-standing numeric effluent limitations that apply to storm water discharges to the Lake's near shore waters. Basin Plan, p. 5.6-5, Table 5.6-1. The Basin Plan plainly requires that "These limits shall apply in addition to any more stringent effluent limitations for the constituents below, or to limitations for additional constituents, which are necessary to achieve all applicable water quality objectives for specific receiving waters." <i>Id.</i> See also Basin Plan, p. 5.6-1 "The effluent limitations at the top of Table 5.6-1 apply to stormwater discharges to</p>	<p>Storm water requirements can be found in TRPA Code Section 60.4.8.B and Basin Plan Section 5.6. In addition, TRPA Code section 13.6.5.B requires that, in the conformance review of Area Plans, TRPA shall utilize the load reduction plans for all registered catchments or TRPA default standards when there are no registered catchments.</p> <p>The thrust of many of the commenter's concerns are how the changes to the Regional Plan, and to a lesser extent the 208 Plan, will impact nearshore water quality. The State and Regional Board share concerns about water quality at the nearshore, and the Regional Board, in partnership with TRPA, is working with academic institutions to better understand the factors affecting water quality and algae growth in the nearshore area of Lake Tahoe. Initial findings suggest nutrients are a likely driver of increased algae growth. Because phosphorus concentrations are strongly correlated with fine sediment particle concentrations in stormwater, management actions that target fine sediment particles also effectively reduce nutrient loading to the nearshore area. As part of the Regional Plan update process, the TRPA has adopted a new management standard for attached algae that requires the agency to "Implement policy and management actions to reduce the areal extent and density of periphyton (attached) algae from Lake Tahoe's nearshore." To further reduce nutrient loading to nearshore waters, the Regional Plan update also includes a policy to phase out chemical fertilizer containing phosphorus. In the near future, the TRPA and the Water Board will establish more applicable indicators of nearshore water quality condition to help determine whether additional management practices are warranted.</p>

<b>Comment</b>	<b>Response</b>
<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 5 of 7</p> <p>surface waters, and generally to surface runoff leaving a specific project site.” Hence, these limitations regulate discharges to the Lake’s near-shore waters. Despite the clear applicability of these core limits, the 208 Plan makes no mention of them. Indeed, to the extent the 208 Plan’s effort to claim that the TMDL trumps the Regional Plan’s numerical limitations also extends to the Regional Plan’s stormwater effluent limitations (indeed, 4 out of 5 of the numeric limits are the same), the omission of any discussion of the stormwater limitations appears designed to shunt the numeric limits aside rather than implement them as the Regional Board and State Board are duty-bound to do. <i>See</i> Water Code §§ 13247, 13146. This omission renders the 208 Plan inconsistent with the Basin Plan and the State Board should require the Plan to include a clear description of the Basin Plan’s numeric limitations and their ongoing role in protecting near-shore waters.</p> <p>As the Regional Board and Tahoe Regional Planning Agency already have recognized for several years, the near-shore zone of Lake Tahoe is currently not protecting beneficial uses. <i>See, e.g.</i> Taylor, K., <i>Investigation of Near Shore Turbidity At Lake Tahoe</i> (March 2002) (<a href="http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf">http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf</a>); SNPLMA Proposal for Theme 2c (Near-Shore Water Quality) (2007) (<a href="http://www.fs.fed.us/psw/partnerships/tahoescience/documents/SchladowNearShoreProposal.pdf">http://www.fs.fed.us/psw/partnerships/tahoescience/documents/SchladowNearShoreProposal.pdf</a>) ; McConnell, Joe; Kendrick Taylor, <i>Spatial Variability of Near Shore Turbidity at Lake Tahoe</i> (2001) (synopsis) (<a href="http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf">http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf</a>). <i>See also</i> Basin Plan, pp. 5.7-8 (“Human activities in and near the littoral zone can physically alter fish habitat and contribute nutrients leading to eutrophication and the alteration of food webs . . . ; erosion and sedimentation can degrade habitat quality”); <i>Id.</i> (“Increased growth of attached algae and rooted plants in the shorezone is the most visible sign of eutrophication to human recreational users of lakes”). Readily available evidence indicates that “[t]here is a strong correlation between elevated turbidity near the shore and development on the shore.” Taylor 2002. <i>See also</i> McConnell &amp; Taylor (2004) (“Perimeter surveys (Taylor et al., 2004) quantified turbidity on a basin-wide scale, finding a distinct association between elevated near-shore turbidity and several developed areas”). “The near shore zone is the portion of the lake first impacted by disturbances on shore because the material causing the adverse impact will have the greatest concentration near the source on shore.” <i>Id.</i> As Geoffrey Schladow of the Tahoe Environmental Research Center explains:</p> <p style="padding-left: 40px;">Conditions in the near-shore zone have degraded over time. Elements of this degradation include elevated turbidity (Taylor et al. 2004)...and increasing concentrations of periphyton (attached algae) on rocks, piers and other hard substrate (Hackley et al. 2004, 2005, 2006).</p> <p><a href="http://www.fs.fed.us/psw/partnerships/tahoescience/documents/SchladowNearShoreProposal.pdf">http://www.fs.fed.us/psw/partnerships/tahoescience/documents/SchladowNearShoreProposal.pdf</a> Dr. Schladow also emphasizes that, even assuming any benefits accrue from pollution control measures attempting to address clarity issues in the deep waters of the Lake, those measures cannot be assumed to benefit the near-shore:</p> <p style="padding-left: 40px;">Recent optical modeling (Swift et al. 2006) suggests that mid-lake clarity is predominantly controlled by the concentration and size distribution of fine, inorganic particles (&lt; 20 microns). The near-shore zone, by contrast, is more biologically productive suggesting that nutrient fluxes and other factors may play a</p>	<p>The commenter has misinterpreted the Basin Plan regarding the application of the referenced concentration based storm water effluent limits. Basin Plan page 5.6-1 states “The Lahontan Regional Board applies the numbers in Table 5.6-1 on a site- or project specific basis in response to identified erosion or runoff problems.” Basin Plan Page 5.6-2 goes on to describe the storm water treatment requirements related to municipal and public roadway storm water treatment – explicitly deferring to the Lake Tahoe TMDL waste load allocations as the applicable standard of compliance. There is no reference regarding the applicability of the concentration based effluent limits as the commenter states.</p>

<u>Comment</u>	<u>Response</u>
<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 6 of 7</p> <p>much larger role in that zone. It therefore cannot be assumed that the same management strategies will work for both the near-shore and mid-lake.</p> <p><i>Id.</i> Kendrick Taylor, in her 2002 study, linked degradation of the near-shore from turbidity to development:</p> <p>The highest turbidity values were in the lake adjacent to Tahoe Keys and exceeded the TRPA littoral zone turbidity threshold. Areas with persistently high turbidity occurred off South Lake Tahoe and Tahoe City. Areas with occasional high turbidity occurred off Incline Village and Kings Beach.</p> <p><a href="http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf">http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf</a>. See also <a href="http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf">http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf</a>. Thus, where the Regional Plan, and the 208 Plan by extension, allows for a concentration of new development, the near shore zone would be the portion of the Lake that realizes pollution increases, including potentially excessive discharges of sediment, turbidity, and nutrients that could impair and further degrade recreational uses and other beneficial uses as well as exceed the applicable standards.</p> <p>By failing to address the near shore pollution that has long been evident in Lake Tahoe, the 208 Plan fails to achieve the goals and intent of Section 208 and violates the California and federal antidegradation policies. Although the clarity of Lake Tahoe in its deep waters is of course critical, the overwhelmingly vast majority of residents and visitors only experience the water quality of the near shore. By ignoring and misrepresenting the numeric limitations that, if enforced, might be able to restore those near-shore waters to their 1968 and 1975 conditions, as is required by the state and federal antidegradation requirements, the 208 Plan is inconsistent with those critical water quality standard components.</p> <p>Relatedly, the amendment exemption set forth in Chapter 10 of the 208 Plan also includes language that appears inconsistent with the Antidegradation Policies. Prior to January 1, 2017, for a person to show that an amendment to the 208 Plan is required for Regional Plan changes outside the five listed topics, the person “has the burden of providing substantial evidence to the States that the Regional Plan change may reasonably be expected to lead to the <i>degradation of water quality</i>...” 208 Plan, pp. 37-38 (emphasis added). This vague language appears to require that, in order to trigger a 208 Plan amendment, a person must show that a Regional Plan change degrade water quality from current conditions. However, California’s Antidegradation Policy requires no degradation from the Lake’s best water quality since 1968. The federal Antidegradation Policy requires the Board to prevent any degradation beyond the Lake’s best water quality since 1975. To the extent the 208 Plan anticipates maintaining currently impaired water quality and does not allow updates to the 208 Plan even where Regional Plan changes will maintain current impairment of the Lake’s Outstanding National Resource Waters, the 208 Plan is inconsistent with the Antidegradation Policies because it allows for measures that, although improving water quality, still fall far short of restoring the Lake’s high quality waters.</p> <p>/// /// ///</p>	<p>As noted above, the Regional Board, in partnership with TRPA, is working with academic institutions to better understand the factors affecting water quality and algae growth in the nearshore area of Lake Tahoe. Initial findings suggest nutrients are a likely driver of increased algae growth. Because phosphorus concentrations are strongly correlated with fine sediment particle concentrations in stormwater, management actions that target fine sediment particles also effectively reduce nutrient loading to the nearshore area. As part of the Regional Plan update process, the TRPA has adopted a new management standard for attached algae that requires the agency to “Implement policy and management actions to reduce the areal extent and density of periphyton (attached) algae from Lake Tahoe’s nearshore.” To further reduce nutrient loading to nearshore waters, the Regional Plan update also includes a policy to phase out chemical fertilizer containing phosphorus. In the near future, the TRPA and the Water Board will establish more applicable indicators of nearshore water quality condition to help determine whether additional management practices are warranted.</p>

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<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 6 of 7</p> <p>much larger role in that zone. It therefore cannot be assumed that the same management strategies will work for both the near-shore and mid-lake.</p> <p><i>Id.</i> Kendrick Taylor, in her 2002 study, linked degradation of the near-shore from turbidity to development:</p> <p>The highest turbidity values were in the lake adjacent to Tahoe Keys and exceeded the TRPA littoral zone turbidity threshold. Areas with persistently high turbidity occurred off South Lake Tahoe and Tahoe City. Areas with occasional high turbidity occurred off Incline Village and Kings Beach.</p> <p><a href="http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf">http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf</a>. See also <a href="http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf">http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf</a>. Thus, where the Regional Plan, and the 208 Plan by extension, allows for a concentration of new development, the near shore zone would be the portion of the Lake that realizes pollution increases, including potentially excessive discharges of sediment, turbidity, and nutrients that could impair and further degrade recreational uses and other beneficial uses as well as exceed the applicable standards.</p> <p>By failing to address the near shore pollution that has long been evident in Lake Tahoe, the 208 Plan fails to achieve the goals and intent of Section 208 and violates the California and federal antidegradation policies. Although the clarity of Lake Tahoe in its deep waters is of course critical, the overwhelmingly vast majority of residents and visitors only experience the water quality of the near shore. By ignoring and misrepresenting the numeric limitations that, if enforced, might be able to restore those near-shore waters to their 1968 and 1975 conditions, as is required by the state and federal antidegradation requirements, the 208 Plan is inconsistent with those critical water quality standard components.</p> <p>Relatedly, the amendment exemption set forth in Chapter 10 of the 208 Plan also includes language that appears inconsistent with the Antidegradation Policies. Prior to January 1, 2017, for a person to show that an amendment to the 208 Plan is required for Regional Plan changes outside the five listed topics, the person “has the burden of providing substantial evidence to the States that the Regional Plan change may reasonably be expected to lead to the <i>degradation of water quality</i>...” 208 Plan, pp. 37-38 (emphasis added). This vague language appears to require that, in order to trigger a 208 Plan amendment, a person must show that a Regional Plan change degrade water quality from current conditions. However, California’s Antidegradation Policy requires no degradation from the Lake’s best water quality since 1968. The federal Antidegradation Policy requires the Board to prevent any degradation beyond the Lake’s best water quality since 1975. To the extent the 208 Plan anticipates maintaining currently impaired water quality and does not allow updates to the 208 Plan even where Regional Plan changes will maintain current impairment of the Lake’s Outstanding National Resource Waters, the 208 Plan is inconsistent with the Antidegradation Policies because it allows for measures that, although improving water quality, still fall far short of restoring the Lake’s high quality waters.</p> <p>/// /// ///</p>	<p>There is no evidence that the 208 Plan, and more specifically the Regional Plan, will result in degradation of water quality. The commenter’s claim that “numeric limitations ... if enforced, might be able to restore near shore waters to their 1968 and 1975 conditions,” is not substantiated with any evidence. The Final EIS for the Regional Plan demonstrates that incentivized concentrated redevelopment consistent with current environmental standards that is situated outside of sensitive lands will help to reduce pollutant loading to Lake Tahoe. This strategy, along with the Tahoe TMDL, which requires local jurisdictions to complete load reduction plans for sub-watershed catchments in order to reduce their load of fine sediment, nitrogen, and phosphorous to the lake, will help to improve Lake Tahoe water quality. Improving Lake Tahoe water quality is consistent with federal and state anti-degradation requirements.</p>

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<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 6 of 7</p> <p>much larger role in that zone. It therefore cannot be assumed that the same management strategies will work for both the near-shore and mid-lake.</p> <p><i>Id.</i> Kendrick Taylor, in her 2002 study, linked degradation of the near-shore from turbidity to development:</p> <p>The highest turbidity values were in the lake adjacent to Tahoe Keys and exceeded the TRPA littoral zone turbidity threshold. Areas with persistently high turbidity occurred off South Lake Tahoe and Tahoe City. Areas with occasional high turbidity occurred off Incline Village and Kings Beach.</p> <p><a href="http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf">http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf</a>. See also <a href="http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf">http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf</a>. Thus, where the Regional Plan, and the 208 Plan by extension, allows for a concentration of new development, the near shore zone would be the portion of the Lake that realizes pollution increases, including potentially excessive discharges of sediment, turbidity, and nutrients that could impair and further degrade recreational uses and other beneficial uses as well as exceed the applicable standards.</p> <p>By failing to address the near shore pollution that has long been evident in Lake Tahoe, the 208 Plan fails to achieve the goals and intent of Section 208 and violates the California and federal antidegradation policies. Although the clarity of Lake Tahoe in its deep waters is of course critical, the overwhelmingly vast majority of residents and visitors only experience the water quality of the near shore. By ignoring and misrepresenting the numeric limitations that, if enforced, might be able to restore those near-shore waters to their 1968 and 1975 conditions, as is required by the state and federal antidegradation requirements, the 208 Plan is inconsistent with those critical water quality standard components.</p> <p>Relatedly, the amendment exemption set forth in Chapter 10 of the 208 Plan also includes language that appears inconsistent with the Antidegradation Policies. Prior to January 1, 2017, for a person to show that an amendment to the 208 Plan is required for Regional Plan changes outside the five listed topics, the person “has the burden of providing substantial evidence to the States that the Regional Plan change may reasonably be expected to lead to the <i>degradation of water quality</i>....” 208 Plan, pp. 37-38 (emphasis added). This vague language appears to require that, in order to trigger a 208 Plan amendment, a person must show that a Regional Plan change degrade water quality from current conditions. However, California’s Antidegradation Policy requires no degradation from the Lake’s best water quality since 1968. The federal Antidegradation Policy requires the Board to prevent any degradation beyond the Lake’s best water quality since 1975. To the extent the 208 Plan anticipates maintaining currently impaired water quality and does not allow updates to the 208 Plan even where Regional Plan changes will maintain current impairment of the Lake’s Outstanding National Resource Waters, the 208 Plan is inconsistent with the Antidegradation Policies because it allows for measures that, although improving water quality, still fall far short of restoring the Lake’s high quality waters.</p> <p>/// /// ///</p>	<p>The commenter notes that federal anti-degradation requirements do not allow any degradation for Lake Tahoe because of its status as an Outstanding National Resource Water (ONRW). He argues that the requirements of Chapter 10 of the 208 Plan, that require any Regional Plan amendment that involves one of six topics to also require an amendment to the 208 Plan if it “may be reasonably be expected to lead to the degradation of water quality, is inconsistent with the requirement of the federal anti-degradation requirements for no degradation to an ONWR. The commenter misperceives the function of Chapter 10. In the first instance, TRPA’s Compact precludes it from adopting any plan change that result in a water quality degradation in violation of the OWNR anti-degradation policy. The States recognized that differences of opinion may arise as to the effect of a policy change. Therefore, Chapter 10 provides a mechanism for the States for specified Regional Plan provisions to air any disagreements on the water quality impacts associated with a change in these policies. Chapter 10 does not state that any such amendment that may lead to degradation of Lake Tahoe water quality may become an amendment to the 208 Plan. Rather, it requires that any such amendment be remanded to TRPA for further action. Further action may be required for TRPA to propose changes to the amendment so that it does not result in degradation. If, however, an amendment to the 208 Plan came before the State Board that would cause water quality degradation to Lake Tahoe, such an amendment would not be able to be certified, consistent with the requirements of the federal antidegradation requirements.</p>

<b><u>Comment</u></b>	<b><u>Response</u></b>
<p>Comments re: Lake Tahoe 208 plan April 11, 2013 Page 7 of 7</p> <p>FOWS and TASC appreciate the State Board's consideration of these comments and look forward to participating at any upcoming public hearing on the Lake Tahoe 208 Plan.</p> <p>Sincerely,</p>  <p>Michael R. Lozeau Lozeau Drury LLP On behalf of Friends of the West Shore and Tahoe Area Sierra Club</p>	<p>Finally, during and after the operative effect of Chapter 10, whether the 208 Plan requires amendment is controlled by 40 C.F.R. §130.6(e), which states "... WQM plans shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals."</p>