

BI-STATE SCIENCE COUNCIL FUNDING

Summary: Staff recommends authorization to transfer \$150,000 to the California Natural Resources Agency to establish a bi-state, science-based advisory council in the Lake Tahoe Basin.

Location: Bi-State

Fiscal Summary: The sum of \$150,000 is available for expenditure through appropriation under the 2014 Budget Act payable from the Lake Tahoe Science and Lake Improvement Account (3125-101-1018).

Recommended Action: Adopt Resolution 15-04-02 (Attachment 1) authorizing staff to transfer \$150,000 to the California Natural Resources Agency for purposes consistent with Section 6217.6.1 of the Public Resources Code to establish a bi-state, science-based advisory council in the Lake Tahoe Basin.

Background

Public Resources Code section 6217 controls the disposition of revenue generated from land within the jurisdiction of the State Lands Commission state wide. In general, revenue received by the State Lands Commission, generated from leases allowing surface uses of State land, is deposited in the State Treasury for General Fund purposes.

Public Resources Code section 6217.6 provides certain exceptions to the above general rule. In 2013, through the passage of SB-630 (Sen. Pavley & Sen. Gaines) Section 6217.6 was broadened to include an exception for rental income from surface uses of State lands at Lake Tahoe. Under Public Resources Code section 6217.6(c)(2) the rental income from surface uses (e.g. piers and buoys) is deposited into the Lake Tahoe Science and Lake Improvement Account for expenditure upon appropriation by the Legislature for the purposes set forth in Public Resources Code section 6217.6.1 as follows: (1) the costs associated with establishing the bi-state science-based advisory

council; and (2) funding near-shore aquatic invasive species projects and projects that provide public access to State (sovereign) land or near-shore water quality monitoring.

The funds appropriated by the Legislature for deposit into the Lake Tahoe Science and Lake Improvement Account are administered by the Secretary for Resources (“the Secretary”). The 2014 Budget Act contains a \$300,000 appropriation from the Lake Tahoe Science and Lake Improvement Account of which \$150,000 is payable to the Conservancy for establishment of a bi-state, science based advisory council (“Science Advisory Council”). The balance is available for expenditure by the Conservancy for capital outlay or local assistance consistent with the purposes of the Public Resources Code section 6217.6.1 (i.e. funding near-shore aquatic invasive species projects, projects that provide public access, or near-shore water quality monitoring).

The near-shore projects and monitoring mentioned above have various process and funding match requirements not relevant for the purposes of this staff recommendation which is specific to the creation of the bi-state science advisory council.

Project Description

For the purposes of establishing the Science Advisory Council, the Secretary has entered into a memorandum of agreement (Attachment 2) with the Nevada Department of Conservation and Natural Resources (“Nevada Department of Conservation”) to establish the Science Advisory Council. Per the memorandum of agreement (“MOU”), the purposes of the Science Advisory Council are to “promote and enhance the use of the best available scientific information on matters of interest to both states.” The Science Advisory Council is required by law to be “non-regulatory” and focus on activities that will “advance attainment of regulatory thresholds” as provided by the Tahoe Regional Planning Compact (“the Compact”). A majority of the governing body of the Science Advisory Council will be comprised of scientists with expertise in disciplines pertinent to achieving and maintaining the goals of the Compact.

The MOU provides that the Science Advisory Council will be organized as a non-profit public benefit corporation under Internal Revenue Service Code section 501(c)(3). Once formed, the Science Advisory Council shall act as an independent, advisory and non-regulatory body focusing on objective research and scientific analysis supporting decision-makers’ efforts to advance attainment of environmental thresholds as provided by the Compact and to promote awareness of sound science.

The MOU also establishes a Bi-State Executive Committee (“the Executive Committee”). The purpose of the Executive Committee is to meet at least once annually to review

reports, and recommendations from the Science Advisory Council and to provide advice, support and direction to the Science Advisory Council.

Thus, under the above scenario, the Executive Committee is likely to function as an unincorporated association of public agency executives providing advice, support and direction the non-profit corporation Science Advisory Council. Both the Executive Committee and the Science Advisory Council operate under the umbrella of the MOU consistent with Public Resources Code section 6217.6.1.

Project Implementation/Tasks/Budget

Staff seeks authorization to transfer \$150,000 to implement the activities identified below. Please note that the individual task items may vary from those shown.

1. **Designation and Charter:** Prepare draft scope, mission statement, bylaws and articles of incorporation and charter for the Science Advisory Council to function as a new nonprofit entity per the MOU's scope of authorized activity.
2. **Membership:** Make recommendations on formation and recruitment strategy for Executive Committee and Science Advisory Council membership and duties based on MOU directives.
3. **Non-profit Designation:** Obtain tax exempt non-profit status for the Science Advisory Council to function as a non-profit IRS 501(c)3 entity as required by the MOU's purpose and goals.
4. **Coordination and Collaboration:** Support and advance collaboration with the Tahoe Interagency Environmental (TIE) Steering Committee and the Environmental Improvement program (EIP) working groups. Support and advance the work related to the process of seeking additional funding consistent with the MOU.
5. **Staff Support and Administration:** Secure and provide staff support adequate to ensure that the Executive Committee and component bodies comply with scope and objectives of MOU as required to receive appropriated funding.

Project Schedule

Spring 2015	Draft Articles of Incorporation and Bylaws
Summer 2015	Submit exemption applications (Form 1023) to IRS
Fall 2015	Complete Membership Formation
Winter 2015	Project Completion and Final Invoicing

Project Evaluation

Authorization to transfer funds for the identified tasks is consistent with the requirements of 2014 Budget Act, the MOU and the requirements of Public Resources Code section 6217.6.1 in the following respects:

- 1) Designation and Charter. This task involves the development of Articles of Incorporation and Bylaws sufficient to form a working corporate entity organized under the laws of the State of California or Nevada. The formation of such an entity is relatively straight forward in terms of document preparation and filing with the appropriate control agency (i.e. the Secretary of State).

The Articles of Incorporation identify the specific purposes of the organization (i.e. funding or research), govern the mechanics of operating the non-profit corporation such as dates and times for meetings, whether the directors will be compensated, provisions for hiring staff and what kinds of transactions the directors can carry out between themselves and the corporation.

The services needed to perform the document drafting and incorporation could be obtained through interagency agreement using existing State legal resources. Alternatively the services could be obtained from private legal counsel.

- 2) Non-Profit Designation. This task involves completing and submitting the IRS exemption application (Form 1023) to the IRS. The application is submitted to the IRS along with the certified Articles of Incorporation and Bylaws. To qualify for tax exempt charitable non-profit status the corporation must be formed for "exempt purposes" such as scientific, educational, and charitable endeavors. Other purposes, as in the case of Conservancy grant-funded non-profits, include the preservation of land for recreational, scenic or open-space purposes. The non-profit may qualify as a public charity if it meets the public charity support test by receiving at least one-third of its support from government or public

contributions. Typically a tax attorney would review the IRS application before it is submitted.

- 3) Membership. This task involves developing the board of directors after initial formation. The names of at least three board members are typically listed in the original Articles of Incorporation. Additional board members are subsequently added by the Incorporators. In the case of the Science Advisory Council, the membership includes two voting members appointed by each of six public organizations, including the University of California, the University of Nevada, the U.S Geological Survey and the United States Forest Service.

This task also involves formation of the Executive Committee. The MOU calls for an eleven member Executive Committee determined by position (i.e. the Secretary or designee) or through an appointment by a public official (i.e. the Regional Forester of the United States Forest Service). These appointments may involve multiple levels of review, and a chain of command or authority; therefore this process will likely require some sort of staff support in the form of coordination and direct contact with members.

- 4) Coordination and Collaboration. This task involves operation of the corporation following incorporation, and more specifically pending IRS tax exempt designation. Until such time as the corporation receives its tax exempt status, which could take up to one year, it may not qualify for most public grant funding. Accordingly, this item is intended to address the costs associated with developing the organization to full membership capacity, assisting the Executive Committee and Science Advisory Council board members, reviewing the Science Advisory Council's work and coordinating the work related to the process of seeking additional sources of project funding consistent with the MOU.
- 5) Staff Support, Administration and Operation. This task involves the costs of orderly administration during or upon formal organization as a non-profit entity. For example, failure of the Executive Committee or any of its component bodies to be confined by or act consistently with the terms of the MOU would result in that body being ineligible to receive funds appropriated pursuant to the authority provided in Public Resources Code Section 6217.6.1. In addition, the expenditure of funds must be reported in a publicly accessible location (website).

All of the above mentioned tasks and activities will lead to the legal formation and initial activation of the Executive Committee and the Science Advisory Council

sufficient to act as a unified location for the attainment of expertise in a broad range of scientific disciplines relevant to Tahoe basin decision-making.

Consistency with the Conservancy's Enabling Legislation and Other Statutory Provisions

Implementation of this project/program is consistent with the Conservancy's enabling legislation. Specifically, Government Code section 66908 authorizes the Conservancy to receive reimbursements and other funds from other public agencies. Government Code section 66906.8 authorizes the Conservancy to work with independent contractors and consultants provide services necessary to achieve the purposes of the Conservancy, including protection of the natural environment at Lake Tahoe. Public Resources Code section 6217.6.1(b) authorizes the use of funds in the Lake Tahoe Science and Lake Improvement Account for the purpose of establishing the Science Advisory Council.

Compliance with the California Environmental Quality Act (CEQA)

The proposed action is not an activity which has the potential of causing either a direct physical change in the environment or a reasonable foreseeable indirect physical change in the environment. Accordingly, the action is not a "project" within the meaning of CEQA, and thus does not fall within the purview of CEQA. No CEQA analysis is required. Should the planning activity related to the proposed action lead to a future project, future environmental analysis would occur.

List of Attachments:

Attachment 1 – Resolution 15-04-02

Attachment 2 – Memorandum of Understanding

Conservancy Staff Contact:

Ryan Davis

Phone: (530) 543-6022

ATTACHMENT 1

California Tahoe Conservancy
Resolution
15-04-02
Adopted: April 30, 2015

Staff recommends that the California Tahoe Conservancy adopt the following resolution pursuant to Government Code sections 66905.2 and 66906.8:

"The California Tahoe Conservancy hereby authorizes the transfer of \$150,000 to the California Natural Resources Agency for purposes consistent with Section 6217.6.1 of the Public Resources Code to establish a bi-state, science-based advisory council in the Lake Tahoe Basin and authorizes staff to take all other necessary steps consistent with the accompanying staff report necessary to implement the project."

I hereby certify that the forgoing is a true and correct copy of the resolution duly and regularly adopted by the California Tahoe Conservancy at a meeting thereof held on the 30th day of April, 2015.

In WITNESS THEREOF, I have hereunto set my hand this 30th day of April, 2015.

Patrick Wright
Executive Director



NEVADA DEPARTMENT OF
**CONSERVATION &
NATURAL RESOURCES**

**MEMORANDUM OF UNDERSTANDING
FOR ESTABLISHMENT AND OPERATION OF THE
TAHOE BI-STATE EXECUTIVE COMMITTEE AND THE CREATION OF THE
NON-REGULATORY TAHOE SCIENCE ADVISORY COUNCIL
FEBRUARY 12, 2015**

1. PURPOSE AND GOALS

By this Memorandum of Understanding (MOU), the California Natural Resources Agency and the Nevada Department of Conservation and Natural Resources, in coordination with the Tahoe Regional Planning Agency, seek to establish the parameters and scope of a bi-state scientific advisory council to promote and enhance the use of best available scientific information on matters of interest to both states, consistent with the allowances provided in California's SB 630 (2013). This includes the establishment and operation of a Bi-State Executive Committee (Committee), which shall be a non-profit public benefit corporation (501(c)(3)), whose purpose shall be to seek the use of the best available science to support restoration and conservation management decisions of interest to both the states of California and Nevada and the Lake Tahoe region consistent with this MOU. This MOU shall govern the scope of the Bi-State Executive Committee's authority to organize as a non-profit entity, in addition to California Public Resources Code section 6717.6.1.

The purpose of this MOU also includes creation and establishment of the Tahoe Science Advisory Council (Council), which shall be independent, advisory, and non-regulatory. The Council shall focus on providing objective research and scientific analysis that will help support decision-makers of both states meet their obligations to advance attainment of environmental thresholds, as provided in the Bi-State Compact (Attached as Exhibit A), and take any other action to promote awareness of sound science consistent with existing law of both the states and the Compact.¹

Finally, the purpose of this MOU includes an agreement to collaborate with the existing Tahoe Interagency Executives (TIE) Steering Committee to include representation and collaboration with members from the newly formed Science Advisory Council so as to provide a forum for interaction between scientists and the agencies, stakeholders and participants in working groups.

2. PARTIES AND AUTHORITIES

The California Natural Resources Agency (CNRA): CNRA is a cabinet level entity whose mission is to restore, protect and manage California's natural, historical and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration and respect for all the communities and interests involved. The CNRA is authorized pursuant to California Public Resources Code section 6717.6.1 to enter into and implement this Agreement.

The Nevada Department of Conservation and Natural Resources (NDCNR): NDCNR is a cabinet level entity whose mission is to conserve, protect, manage, and enhance Nevada's natural resources in order to provide the highest quality of life for Nevada's citizens and visitors. NDCNR is authorized by Nevada Revised Statutes 232.070 to enter into and implement this Agreement.

¹ A diagram of the function of the Council is attached and incorporated by reference as Exhibit B.

3. DESIGNATION AND CHARTER

There shall be created, upon appropriate organization under the non-profit laws of the State of California or Nevada, the Bi-State Tahoe Executive Committee under which shall be authorized the establishment of the Tahoe Science Advisory Council. (See, California Public Resources Code section 6717.6.1.)

4. MEMBERSHIP AND DUTIES

a. The Bi-State Executive Committee

The Bi-State Executive Committee shall be comprised of an eleven (11) member body that includes the following:

- The Secretary of the California Natural Resources Agency, or his or her designee, to serve as co-chair;
- One member appointed by the Secretary of the California Natural Resources Agency who is employed by one of the resource management entities in the state of California;
- The Director of Nevada Department of Conservation and Natural Resources, or his or her designee, who would also serve as co-chair;
- One member appointed by the Director of the Nevada Department of Conservation and Natural Resources who is employed by one of the resource management entities in the state of Nevada;
- The Executive Director of the Tahoe Regional Planning Agency;
- Two members appointed by the University of California at the Vice Chancellor or equivalent level;
- Two members appointed by the Nevada System of Higher Education (including the University of Nevada, Reno and the Desert Research Institute) at the Vice President or equivalent level;
- One member appointed by the Regional Director of the United States Geological Survey; and
- One member appointed by the Regional Forester of the United States Forest Service.

Duties: The Bi-State Executive Committee shall meet at least once annually to review reports, updates, and recommendations from the Tahoe Science Advisory Council and the TIE Steering Committee, and to provide advice, support, and direction.

b. The Tahoe Science Advisory Council

The Tahoe Science Advisory Council (Council) shall include one (1) non-voting member appointed by the Secretary of the California Natural Resources Agency and one (1) non-voting member appointed by the Director of the Nevada Department of Conservation and Natural Resources. The Council shall also include two (2) voting members appointed from each of the following organizations:

- University of California, Davis;
- The University of California system;
- The University of Nevada, Reno;
- Desert Research Institute;
- The US Geological Survey; and
- The Pacific Southwest Research Station of the United States Forest Service.

The Council, in its discretion, may seek outside input to provide stakeholder perspective and expertise as is necessary.

The Council shall have a self-selected, rotating chair (or co-chairs). All Council recommendations shall be made to the State agencies through the Bi-State Executive Committee and/or the TIE Steering Committee, as those entities agree to agendaize and hear such recommendations. The Council should meet at least quarterly, in coordination with TIE Steering Committee, and may send representatives, as appropriate, to the TIE Steering Committee and any other interagency meetings or working groups as appropriate. The Council may also meet more than quarterly at its own discretion or at the request of the Bi-State Executive Committee or the TIE Steering Committee, if it is necessary to develop briefing materials, scientific analysis or synthesis, or formal recommendations.

The Council shall not replace or interfere with individual state, regional, or local agencies' ability or decision to contract directly with individual scientists (or research teams) to conduct specific research, nor shall it authorize work that would duplicate work already being performed by any local, regional, or state agency without prior authorization of the Bi-State Executive Committee.

Duties: The primary duties of the Council shall be to:

- provide independent advice to environmental managers based on the best available scientific information to inform decision-making;
- Identify emerging issues and their significance to the natural and human environments of the Tahoe Basin;
- Communicate the results of scientific research and investigations to inform policy;
- Promote independent peer reviews, workshops, and panels on programs; and
- Strengthen and maintain a partnership between the Tahoe Basin's key research institutions and resource management agencies.

The Council's initial tasks shall be determined by its members, in consultation with the Bi-State Executive Committee and the TIE Steering Committee, but may include activities such as providing advice, review, oversight, or scientific-based recommendations on the adequacy of TRPA's 151 thresholds, efforts to control and/or eradicate aquatic invasive species, and input on the development of a comprehensive monitoring plan for the Tahoe Basin, among other science-based projects.

c. Coordination with the Tahoe Interagency Environmental (TIE) Steering Committee

The TIE Steering Committee is a pre-existing body that includes membership appointed from key executive entities within the Tahoe Basin. Membership currently includes the following:

- Federal Government (USFS)
- State of California (California Tahoe Conservancy)
- State of Nevada (Nevada State Lands)
- Tahoe Regional Planning Agency (TRPA)
- Native American Tribal Governments (Washoe Tribe)
- Local Government (county government within the Tahoe Basin)
- Scientific Community (Tahoe Science Consortium)

- Local Stakeholders (Lake Tahoe Federal Advisory Committee)

The Parties anticipate that the TIE Steering Committee will continue to be chaired by the Tahoe Regional Planning Agency's Executive Director. The Parties agree to work together to help coordinate agenda development with the chair of the TIE Steering Committee. The Parties also agree to work collaboratively with the TIE Steering Committee so that it will consider including two voting members from the Tahoe Science Advisory Council.

Duties: The TIE Steering Committee shall continue to coordinate agency programs in the Tahoe Basin, improve coordination among Tahoe Basin resource managers and research scientists, prioritize projects within the Environmental Improvement Program, and identify priority issues for review by the Council. The Committee should meet at least quarterly.

d. Environmental Improvement Program (EIP) Working Groups

Either the Council or the TIE Steering Committee may, in its discretion, decide to form EIP Working Groups, as necessary. Such groups should be established at the direction of the Council or the TIE Steering Committee, and should be comprised of each agency involved in their respective EIP programs, members of the Council, as appropriate, and can include involvement of other non-government organizations, stakeholders and interested persons within the Tahoe Basin. The EIP Working Groups would develop work plans, coordinate implementation of EIP programs and recommend project priorities to the TIE Steering Committee.

5. SCOPE OF AUTHORIZED ACTIVITY

Any charter, bylaws or other rules or procedures duly adopted by the Tahoe Bi-State Executive Committee for its orderly administration during or upon its organization as a non-profit entity shall be consistent with and limited by the scope and objectives of this MOU. Failure of the Committee or any of its component bodies to be confined by or act consistently with the terms of this MOU shall result in that body being ineligible to receive funds appropriated pursuant to the authority provided in Senate Bill SB 630, 2013 (Pavley); California Public Resources Code section 6717.6.1.

The Council's primary goal is to engage in scientific analysis and scientific review that can inform decision-making and land use policies in the Tahoe Basin in a cohesive, objective, and non-partisan manner. To this end, the Council shall be advisory, non-regulatory, and shall not duplicate any scientific effort already being undertaken by public entities in the Tahoe Basin without the express authorization of the Bi-State Executive Committee.

The Council should not be designed or organized to pursue matters unrelated to immediate or identified public management needs. Rather, the Parties seek to promote the development of a body that will act as a unified location for the attainment of expertise in a broad range of scientific disciplines that implicate Tahoe Basin decision-making.

6. FUNDING

The Parties envision that this MOU shall provide the scope, criteria and requirements for the subsequent charter of the Bi-State Executive Committee as a non-profit entity, consistent with existing law, and the establishment of the Science Advisory Council. No funds are authorized or shall be

expended in pursuit of the objectives outlined in this MOU by any Party absent appropriation, and all such expenditures shall be discretionary. The Bi-State Executive Committee shall further be permitted to seek additional sources of project funding consistent with this MOU, its charter, and existing law.

7. COPYRIGHTS

Council Members who develop original works for the Council shall retain a non-exclusive copyright in that work, however, the Bi-State Executive Committee and the states of California and Nevada shall be deemed to automatically retain an irrevocable and unlimited license to publish, use, reproduce, and modify that work at no cost to itself or subsequent users so long as appropriate attribution is made relative to the original work. All Council Members shall be deemed to have reviewed this MOU and shall acknowledge in writing their acceptance of this requirement and its other terms prior to appointment to the Council.

8. CONFLICTS OF INTEREST

The Bi-State Executive Committee shall develop reasonable guidelines for reporting and disclosing gifts and other sources of income, and make those reporting guidelines publically available. These guidelines may permit members to rely on their State conflict of interest reporting forms and requirements, as applicable.

The Council shall file and disclose on the forms attached hereto as Exhibit C and these forms shall be kept on file by the California Natural Resources Agency and the Nevada Department of Conservation and Natural Resources for the Bi-State Executive Committee, and made available to the public upon request.

9. OPEN MEETING REQUIREMENTS

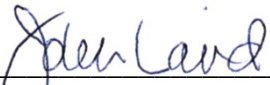
The Bi-State Executive Committee shall develop bylaws and determine when its operational meetings shall be open to the public, consistent with existing law. All other bodies shall comply with existing laws as applicable.

10. INDEMNIFICATION

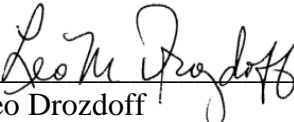
The Parties agree to hold each other harmless and bear their own costs relative to any claims or damages arising from this MOU.

11. TERMINATION

This MOU may be terminated at any time by any Party with 60 days written notice to the other Parties, and with upon a showing of good cause may be terminated with 14 days written notice to the other Parties that provides the basis for such expedited termination.



John Laird
Secretary for Natural Resources
State of California



Leo Drozdoff
Director of Conservation and Natural Resources
State of Nevada

