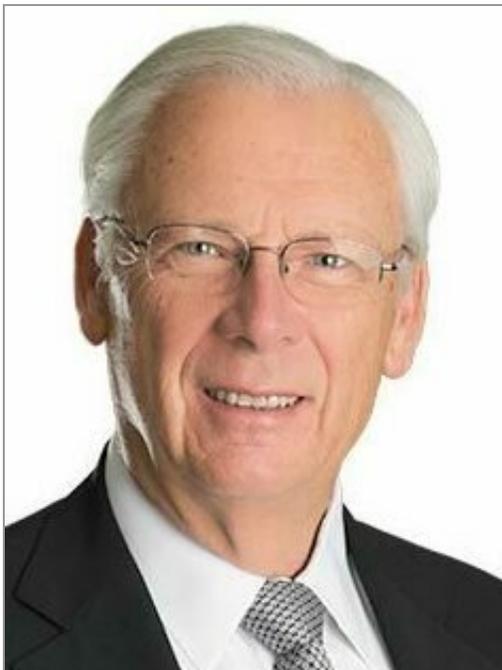


Tahoe Regional Agency Appointee Sees More Wildfire Hurdles

By **Andrew McIntyre**

Law360 (September 24, 2021, 3:11 PM EDT) -- The current Caldor fire has not caused the level of devastation in South Lake Tahoe as the Angora fire did 14 years ago thanks to new rules and regulations, but hurdles remain as agencies balance clearing underbrush with protecting property rights, the presidential appointee to the Tahoe Regional Planning Agency recently told Law360.



Bud Hicks

Bud Hicks, the United States representative to the TRPA and senior counsel at McDonald Carano LLP in Reno, said the agency, the states of California and Nevada, and various cities have been working tirelessly to revise old rules and clear brush and trees, but in the process have had to walk a fine line between that initiative and the question of property rights.

While the Caldor fire so far has proven much less devastating to the Tahoe Basin than the Angora fire of 2007, the blaze is a sharp reminder of all that still needs to be done to better protect land and buildings in the broader region.

When not working on wildfire matters, Hicks works on a variety of real estate issues for various gambling industry clients, including lending and licensing deals.

This interview has been edited for length and clarity.

I understand you've been at the Tahoe Regional Planning

Agency since May 2018. Tell me how that came about.

It's the only bi-state entity of its type in the country, and it was formed [in 1968] specifically to protect Lake Tahoe. ... I am the presidential appointee, one of 15 members on the governing board of the TRPA. The other members are appointed basically by the states of California and Nevada. The governors have two appointments each, and then the different environmental agencies and/or legislatures have appointments. So I'm one of 15. I'm the only one that represents the United States.

The reason I got appointed goes back to 2007. We had a terrible fire in the Tahoe Basin in 2007, which we call the Angora fire, and the fire burned 3,100 acres, destroyed 254 residences and a number of commercial buildings. And it was a real wakeup call to everybody in the Tahoe Basin about the threat of wildfire.

As a result of that, the governors of the two states, California and Nevada, appointed a bi-state fire commission to study it and make recommendations. And it was a very serious undertaking, and it wasn't just a typical blue-ribbon study. It involved all the fire agencies, all the environmental groups, the state governments. Lake Tahoe is unique. It's divided by the state lines in California and Nevada, so you have two states involved, five different counties, two different cities, seven different fire districts.

TRPA has jurisdiction over the whole lake, so it's sort of a super-agency over all of these different groups. So another thing that was done following the Angora fire was the recognition that some of these rules and requirements actually contributed to the threat of wildfire. For example, there were rules and requirements that you could not remove pine needles on your property. This goes back to pre-2017.

The pine trees would drop their needles on people's homes. ... Technically, you could have been cited for removing pine needles. Some people did. Some people didn't. ... Well, guess what? Pine needles are flammable, and when the Angora fire came, these pine needles were a contributing factor to a number of the structures that burned, because the fires burned right up to the structures, ignited the structures and burned them down.

The Angora residents were irate over that, and rightfully so. Another rule that was in place — you could not remove trees off of your property without going through a lengthy permit process, and certain trees, above a 12-inch diameter at chest height, you couldn't remove at all. ... And this is in a time when we've had millions and millions of trees in the Nevada Sierras die from bark beetles and the effects of drought.

So these trees were in their yards, and it was such a hassle to get them removed. You couldn't, and if you just did it on your own, you could be fined thousands of dollars. TRPA, working with the different counties and government agencies, was able to get those rules changed, so now people can clean it up. I'm sure you've heard the term "defensible space" around homes.

Yes, I wanted to ask you about that.

The fire agencies have been preaching defensible space for years. Well, Angora showed the wisdom of that, unfortunately. It was a bad example that showed the wonderful wisdom of defensible space, and so all the agencies and the [Tahoe Fire and Fuels Team] and TRPA have fully endorsed this concept of defensible space — that is, the clearing of underbrush and debris: forest debris from around homes and properties, including the removal of some trees. Not every tree, but larger trees. The process has been greatly simplified. That has been done.

It's very rewarding to see what has been done in the past and how that made a difference here in the Caldor fire, but it's also sometimes frustrating. There are things to be done.

Can you give me a sense of what the process was like, establishing or creating this defensible space, and what sort of role you took in doing that?

It was very clear to everybody on that [bi-state fire] commission that, look, these rules and regulations had to be modified to facilitate defensible space by property owners. Our commission very clearly got into that issue, went down to the weeds in it, literally, and came up with the recommendation that got rid of these rules. ... You have to recognize that [owners] are there, they have property and they're entitled to protect their property.

So that's the tension ... And I would have to say that the 2018 bi-state fire commission really was a catalyst to build consensus among all these different groups. So today, that's one of the ongoing functions of the TRPA: to maintain that consensus, to give all voices an opportunity to be heard and to try to bring them to a common mind on these issues.

One thing that became very clear in the earlier fire, and this is true in other fires in other parts of the country: The streams that feed into Lake Tahoe, the streams typically are in the gullies between the sloped areas. ... They're critical, you have to have them, and they also give life to not only the vegetation, but also the wildlife in the area and all of that.

One of the factors in a fire is that unfortunately, in stream zone areas, these gullies, vegetation that grow and die ... they serve like candle wicks to a fire. In other words, the fire will race down the gully because the wind is funneled down the gully, and there's also material to be burned.

Unfortunately, we found back in 2007... that basically those stream environment zones can be literally like wicks on a candle and bring the fire into the basin or into the habitable areas.

And so one of the things that has been done, and it took us a number of years — in fact we just completed it at the TRPA within the last six months — was to ... increase the amount of mechanical clearing that could be done in stream zone environments.

I wanted to ask you what you're seeing now with the Caldor fire and the path forward in terms of what additional work the TRPA is doing or might do.

TRPA is working with the agencies working with and through the [Tahoe Fire and Fuels Team] to enhance and improve, greatly expand the pace and scale of forest treatments. In the last 13 years, TFFT has overseen and completed 55,000 acres of forest treatments, where they go in and they thin the forest. They remove the debris. They do controlled burns. ... There's easily another 100,000 acres that needs to be done.

The 60,000 acre Lake Tahoe West project, an amazing project, is moving along. As you can imagine, a big part of that is, number one, the permitting and citing and getting everyone working, because you have multiple jurisdictions involved. And then also the cost. That's going to be a \$150 million project.

So finding that money, planning it and getting it actually started is being worked on. They're at the point now where they're doing the final environmental reports. And once they do that, they should be able to start work on this, hopefully next year. The problem is those forest management projects have delays because manpower is all dedicated to the fires.

The other thing they're working on in addition to the forest treatments in specifically the Lake Tahoe West project is the power-line resilience corridors. They're working with the power companies to prevent ignitions and improve forest health under the power lines that come into the basin. The basin is just a small little dock in the universe. ... It's the same issue that you have throughout the U.S Forest Service land: power-line resistance.

We're now modifying the rule to allow mechanical equipment on steeper slopes, that's slopes steeper than 30 degrees. So there's a lot of work to be done. People haven't been sitting on their hands. All these things have been moving along. And now our agency and the Forest Service, forest services of the two states, fire departments — everybody is pushing to get these additional forest treatments done.

I also wanted to ask you about state laws. Since this is a bistate agency, if there are conflicts between California and Nevada state law on environmental and other issues, how has that impacted actions the TRPA has taken?

Historically, there definitely were conflicts. Back when the TRPA was being formed in the '60s ... Nevada was much more pro-development than California was. And there were very serious conflicts between the two states at that time. There was a very serious question as to whether they could come together and agree on what to do with Lake Tahoe.

Now, fast-forward to today. There are still conflicts, because there are different ways of doing things. Of course, California is a big, big, big-brother neighbor. California actually controls about two-thirds of the lake. ... But the biggest brother of all is the U.S. Forest Service. So there are conflicts between the agencies.

But again, they learned in the 2008, 2009 period ... they have to work together to accomplish things. ... I grew up in this area and spent my summers in Tahoe, and there's been a tremendous awakening of the need for these agencies to collaborate. They aren't just little islands of their own. Like I said, there are seven fire districts within the Tahoe Basin.

The states and the agencies have come to a point where they all collaborate much, much better. The TRPA is sort of a big-brother agency over everything in the basin, although it owns no land, but it controls all regulations and requirements. But with that said, you still have the regulations and requirements of the U.S. Forest Service, but there is cooperation.

--Editing by Philip Shea and Kelly Duncan.