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MARCH 25, 2025
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VIA COURTESY EMAIL TO **TRPA GOVERNING BOARD MEMBERS AND STAFF**: Hayley Williamson – Chair, NV At-Large Member (unelected), hayley.a.williamson@gmail.com; Vince Hoenigman – Vice Chair, Governor of CA Appointee (unelected), vhoenigman@yahoo.com; Meghan Hays – (Biden) Presidential Appointee (unelected), Meghan.hays9@gmail.com; Cindy Gustafson – Placer County Representative, cindygustafson@placer.ca.gov; James Settelmeier – NV Department of Conservation and Natural Resources Representative (unelected), jsettelmeier@dcnr.nv.gov; Brooke Laine – El Dorado County Supervisor, BOSFive@edcgov.us; Ashley Conrad-Saydah – Governor of CA Appointee (unelected), ashleyc@alumni.princeton.edu; Wesley Rice – Douglas County Commissioner, wrice@douglasnv.us; Francisco Aguilar – Office of NV Secretary of State (unelected) fvaguilar@sos.nv.gov; Shelly Aldean – Carson City Representative, shellyaldean@gmail.com; Alexandra Leumer – CA Senate Rules Committee Appointee (unelected), TRPALeumer@yahoo.com; Ben Kieckhefer – NV Governor Appointee (unelected), benontrpa@gmail.com; Belinda Faustinos – CA Assembly Speaker Appointee (unelected), belindafastinos@gmail.com; Cody Bass – City of South Lake Tahoe Council Member, cbass@cityofslt.us; Alexis Hill – Washoe County Commissioner, District 1, AHill@washoecounty.us; Julie Regan – TRPA Executive Director (unelected), jregan@trpa.gov; Graham St. Michel – TRPA General Counsel (unelected), gstmichel@trpa.gov; Marja Ambler – Clerk to the Board (unelected), mambler@trpa.gov. VIA EMAIL TO: trpa@trpa.gov; and publiccomment@trpa.gov.

NOTICE OF POTENTIAL CRIMINAL AND CIVIL LIABILITY AND OTHER LEGAL SANCTIONS

NOTICE TO PRINCIPALS IS NOTICE TO AGENTS

NOTICE TO AGENTS IS NOTICE TO PRINCIPALS

CEASE AND DESIST COMPACT VIOLATIONS FORTHWITH: Staff approvals of permits and planning matters under illegal delegations of authorities reserved to the Governing Board alone. Fraudulent project and permit exemptions. Failures to prepare Environmental Impact Statements with reliance on staff-reviewed checklists and findings of no significant effect for approvals. Illegal appeals for staff decisions.

Illegal and unconstitutional regulations are NULL AND VOID, WITHOUT FORCE, INVALID AND IRRELEVANT. TRPA shall act at all times in accordance with the provisions of the Compact and cease all illegal abuses of Compact requirements under invalid and unconstitutional TRPA regulations.

You are HEREBY NOTIFIED that as an appointee, official or agent of the Tahoe Regional Planning Agency you may be subject to potential civil liability for violations of the Tahoe Regional Planning Compact and/or other penalties and sanctions under state and federal laws, in your official capacity and/or in your capacity as an individual.

You are in violation of the Tahoe Regional Planning Act ("Compact" as amended, Public Law 96-551, 94 Stat 3233, California Government Code Section 66801, Nevada Revised Statutes 277.200.)), Article I(c): "The Tahoe Regional Planning Agency shall interpret and administer its plans, ordinances, rules and regulations in accordance with the provision of this compact." The Tahoe Regional Planning Agency (TRPA) administration, its officials, appointees, staff and agents have failed to interpret and administer its ordinances, rules and regulations in accordance with multiple provisions of the Compact, and in so doing has violated the U.S. Constitution, as discussed herein.

TRPA is a "person" for legal purposes, as are individuals employed or appointed to serve the agency. In addition to other administrative remedies and sanctions that may apply against TRPA and/or you, the following Compact provision facially confers legal standing for the United States, the states of California and Nevada, other organizations or "persons," or individuals aggrieved by TRPA action to seek appropriate remedies for the alleged willful and grossly negligent violations of the Compact and other laws. Compact Article VI(l) provides, in relevant part:

"Any person who violates any provision of this compact . . . is subject to a civil penalty not to exceed \$5,000. Any such person is subject to an additional civil penalty not to exceed \$5,000 per day, for each day on which such a violation persists. In imposing the penalties authorized by this subdivision, the court shall consider the nature of the violation and shall impose a greater penalty if it was willful or resulted from gross negligence than if it resulted from inadvertence or simple negligence."

You are in violation of 5 U.S. Code § 3331 - Oath of office, which states:

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath to support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

The above oath is not valid unless properly sworn to with signed affidavit, dated, sealed and notarized. You are also in violation of 5 U.S. Code § 3332 - Officer affidavit; no consideration paid for appointment, which states:

An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment.

Violations of these 5 U.S.C. sections are felonies and may result in criminal and/or civil liability and/or confinement in federal prison upon conviction.

Petition to Tahoe Regional Planning Agency
for
Redress of Grievances for Compact Violations
From Provisions In the
Code of Ordinances
and
Rules of Procedure;
and
Petition to Undertake
Microplastics Environmental Problem Assessment

March 25, 2025

Alan Miller, Professional Engineer

CA Civil 57473

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PETITION FOR REDRESS OF GRIEVANCES

No TRPA Appointee or Officer Serves Under a Valid Federal Loyalty Oath

I will begin this petition with the failure of any TRPA appointee or officer to subscribe to the federal loyalty oath required to serve, a declaration to faithfully support and defend the Constitution against its enemies, be they domestic or foreign. The undeniable evidence is based on public records obtained during my lawsuit, thanks to former General Counsel Marshall's clarifying input. (See Attachment 1, pdf pp 24-25 and pdf pp 48-60.) Governing Board members and executive managers are serving under fraudulent auspices, and FRAUD VITIATES ALL: All actions, all regulations, all acts taken, as far back as the fraud goes. While I will grant that TRPA has changed certain practices for the better concerning its public meeting and public records administration in the wake of my federal lawsuit *Miller v. TRPA*, on the major points the record of the TRPA is one of unrepentant recalcitrance.

The TRPA appointees and officers have committed felonious acts under color of law by operating in the absence of a loyalty oath to defend the U.S. Constitution. How long this has gone on is not known, perhaps since the beginning of the TRPA. Nonetheless, the TRPA Governing Board unanimously reaffirmed its commitment to continue the criminal oath violations on the record in January 2025 following my testimony before it. With TRPA's former lead attorney on record verifying, beyond dispute, that TRPA doesn't have anyone serving with a valid federal oath of office, the fraud is fully exposed for public awareness. The staff (employees) have stolen the rights of the people and run amuck.

For but one example, the current Governing Board Chair, Haley Williamson, is an appointed "member at large" elected by no one and subscribing to no government oath whatsoever. She thus epitomizes the appointed, "unelected bureaucrat." She is also an attorney and swears a private oath to the State Bar Assn. of NV, a sort of "secret society" in the view of many that carries on in *Latin*, a language most aren't taught; she should not be given the benefit of any doubt about her innocence. She and the rest recite the Pledge of Allegiance "to the United States of America, and to the Republic for which it stands . . ." at each meeting without any apparent realization that the "United States of America" is an incorporated "person" and legal fiction *standing in* for the Constitutional Republic of the people. The Governing Board members and staff are foxes or are duped "patsy's" and support the USA-TRPA corporations, not the legitimate government established by the Constitution. While they appear not to have any understanding of the greater subterfuge in which they play a role, or pretend not to, see the information in the public sphere in Attachment 4. These writings by Anna Von Reitz warn of what may come from this usurpation of the rights of the people by administrative bureaucrats and corporate actors appointed (not elected) to serve TRPA. Ignorance of the law is no excuse and is untenable here with plenty of lawyers at TRPA among the ranks.

TRPA has had a "safe harbor" for their felonious service and actions contrary to the Constitution in the past, in the courts and elsewhere. They've had opportunity to recite and document the simple federal oath required numerous times and they've chosen not to do so. My suggestion is they should all resign. Wouldn't it be nice to spend more time with family, perhaps before serving a prison sentence?

TRPA STANDS ON LEGAL QUICKSAND; SUMMARY OF PETITION FOR THE GENERAL PUBLIC

The comments herein will show that substantial portions of TRPA's regulations are legally invalid. The restoration of Lake Tahoe depends in no small part of restoring the rule of law at Lake Tahoe. Every word herein is aimed at protecting and preserving Lake Tahoe and the Tahoe region, protecting the people who live in and visit the region, or who depend on the purity its drinking water. I assert water quality improvements in Lake Tahoe have stagnated for decades because the TRPA has not embraced its mission under the Compact, particularly by avoiding interdisciplinary, interagency reviews of projects and planning amendments under environmental review requirements. Now science discloses extraordinary contamination in Lake Tahoe with toxic microplastics. I assert this contamination has been brought about by faulty, illegal approvals of shorezone projects by TRPA, which refuses to act to abate the problems while worsening them. It is not easy to contaminate a lake the size of Lake Tahoe with microplastics but that is TRPA's great accomplishment, with partner-agency culpability.

TRPA has enacted regulations in violation of the Compact which have empowered it to entirely subvert and avoid certain Compact requirements to prepare and consider environmental impact statements (EIS) prior to approving of projects with significant effects. TRPA seldom prepares an EIS for any project based on following the illegal regulations and procedures it has put in place, though that activity is among its primary charges under the Compact. TRPA's staff of planners and lawyers, largely lacking professional scientific credentials (e.g., physics, chemistry, biology, geology, hydrology, limnology, engineering, water quality, soil or wetland science expertise, higher math, etc.) sits in isolation completing impact checklists under a deficient review system the staff is indoctrinated into by those in charge. TRPA claims to "follow the science" but they don't and can't because they are nearly all non-scientists with (urban) planning backgrounds and credentials, paper pushers. They certainly can't lead with science. (For a brief historical perspective see my Settlement Offer, Exhibit 5 of Attachment 1, pdf pp 69-70.)

One has to wonder why a planning agency would set up a regulatory system to avoid doing the very EIS-type planning it was established for, and whether Lake Tahoe might have been restored by now had TRPA not undertaken to subvert the Compact environmental review and approval requirements fairly early in its history. My view is that TRPA traded effectiveness for efficiency to facilitate getting permits and plans completed by doing most of its work behind closed doors. They shoved the public and all others aside to avoid permitting delays and backlogs for large numbers of permits and impacts they didn't know how to address; it's best not to look too hard for impacts and avoid the costs and delays of EIS requirements, the EIS being a sort of "last resort" when all else fails to support a project or planning action. I can imagine TRPA actor justifications: "There's a lot permitting to be done. It's best not to ask others, solicit comments; we have to respond to agency comments. Don't give anyone time to really consider and comment on proposed actions. We are the experts. We've got this! Paint a rosy picture of progress toward restoration under the Environmental Improvement Program. We just need more time and funding."

The Age of the Psy-Op

In an age where very little is as it seems we should not be surprised by the subversive TRPA regulations. We live in a world controlled by the “secret societies” President Kennedy and others warned of long ago, the unseen trillionaires, the militaries and their socialized contractors, CIA, bankers, Blackrock, etc., Washington D.C. a swamp. Kennedy had a lot of secrets, too, more coming out. We’re in a corporate fiction. It’s all “hidden in plain sight” as the CIA (Capitalism’s Invisible Army) has quietly disclosed while continually running psy-ops on the American people and the world. The **Secretary** manages the secrets. They seek only control and to rob the people of their power. It’s an old game, people are sick of it and sick from it, the massive governmental corruption, all of the lies. Many are just waking up to find the world is organized as one big psy-op composed of many little ones, to the detriment of humanity. These comments will provide a glimpse into how the power structures work their hidden agendas through the laws and by co-opting willing and unsuspecting people and wage-slaves to install and maintain villains and stooges to act out their subterfuges. TRPA will be our prime regional example of corporate federal bureaucracy in action, a so-called “government service provider.” (See Attachment 4.) I will be doing my best at rooting out the veiled illegalities from bloated TRPA regulations.

From a compassionate viewpoint, we’ve all been swept up in various illusions perpetuated by these secret societies our whole lives, spell-bound to think government is our friend instead of a corporate tool organized by and for the rich. We are a nation established on high principles of law, nonetheless. Therefore, the discussion that follows is grounded in the Constitution for the United States that established our republican form of government, the Bill of Rights and a plain reading of the applicable federal and state laws. I need nothing more than that, just the facts, with some added commentary. I attempt to cut through the legal mumbo-jumbo and subterfuge to show what needs to change in my opinion. This is a time of extraordinary change, and a time when a lot of hidden secrets are being exposed, including massive government corruption and theft. I pose that TRPA will either evolve with the changes or be swept away by them, no status *quo*.

Why Has TRPA Failed In Its Mission to Restore Lake Tahoe?

There has been something that has often puzzled me here at Tahoe, a region with arguably the most regulations per capita, and \$3B in public funds so far spent for restoration: Why has environmental progress as measured by Lake clarity stagnated for three decades? I think I’ve discovered the answer in large part and I will share what I’ve discovered through my regulatory background in water quality and waste management and three decades of experience with TRPA, through my involvement as a water quality advisor in the lawsuit against TRPA/Verizon Wireless for a fake-pine macrotower approval filed by Eisenstecken/Benedict/ Environmental Health Trust, and through my lawsuit, *Miller v. TRPA*, over TRPA failures to protect ground water and TRPA’s administrative “kangaroo court” of appeals. The analysis herein is not hard to understand, could be done by many I suppose, and it has apparently been waiting over three decades, for this unique time in history, to occur. I will attempt a several-page summary here for the general public, paraphrasing the laws and regulations in some places for

comprehensibility and to point out critical elements, before taking a deep dive into the details of these matters for those who care to follow.

Subverting the Compact; Delegating Governing Board Authority to Staff Is Illegal

I'm going to make this very simple. I'm not an attorney and I can nonetheless read and comprehend, and I know what I know about the laws. I admittedly know less about the criminal law than administrative law and nonetheless assert there is a degree of criminality in play. Who am I? I am a sovereign man of the land with information to share under the First Amendment. The simple part is seeing exactly how TRPA accomplished its nearly complete and total subversion of Compact requirements with regard to approvals of projects, permits and certain planning matters. **In the regulations the Governing Board adopted, TRPA simply took the position that TRPA staff *authority* equals Governing Board *authority*,** with caveats where noted in the regulations by specific reference to the Governing Board. Project approval authority, with few exceptions, was delegated from the Governing Board to the staff under illegal, streamlined codified review procedures. I assure the reader the TRPA staff has no such authority under the Compact, only under the corrupt regulations adopted by the TRPA. The basics of that trespass are only a little bit harder to understand, as follows.

Governing Board Voting Requirements

The key requirements to grasp are in Compact Article III(g):

- (1) For adopting, amending or repealing environmental threshold carrying capacities, the regional plan, and ordinances, rules and regulations, and for granting variances from the ordinances, rules and regulations, the vote of at least four of the members of each State agreeing with the vote of at least four members of the other State shall be required to take action. If there is no vote of at least four of the members from one State agreeing with the vote of at least four members of the other State on the actions specified in this paragraph, an action of rejection shall be deemed to have been taken.
- (2) For approving a project, the affirmative vote of at least five members from the State in which the project is located and the affirmative vote of at least nine members of the governing body are required. If at least five members of the governing body from the State in which the project is located and at least nine members of the entire governing body do not vote in favor of the project, upon a motion of approval, an action of rejection shall be deemed to have been taken. A decision by the agency to approve a project shall be supported by a statement of findings, adopted by the agency, which indicates that the project complies with the regional plan and with applicable ordinances, rules and regulations of the agency.

Both (1) and (2) require voting by Governing Board members to execute an "action." By the voting requirements all authority for legally-binding "action" is only with the Governing Board, and must be within the limits of Governing Board authority *under the Compact*. That authority does not include delegating their voting requirements to staff! While TRPA does tend to implement (1) through its

regulations for planning matters, TRPA has essentially built its entire regulatory permit program, with few exceptions, on failing to implement (2), above. This is the quicksand on which TRPA has established the foundation for major parts of its regulatory program. **Remove the legally-erroneous regulatory Code definition of “Agency,” and all else in the fraudulent regulatory program associated with requirements for “project review and approval” falls with it.** Because TRPA has so badly bungled the regulations, when requirements for legitimate “exemptions” from certain or all TRPA “review and approval” requirements under Compact provisions are considered, the task of ferreting out the subversive regulations becomes much more complex. I will leave those details for later.

TRPA Must Be Stopped By Others

The writings herein expose a great FRAUD that has been perpetrated *for at least 35 years* by TRPA against the people and potential remedies that any “aggrieved” person, organization, or other entity with legal standing to initiate litigation against TRPA may undertake. (Compact Art.VI(j)(3).) All that is required for standing to sue TRPA is to provide written comments or oral testimony to TRPA about a matter under consideration (and decided) with issues ripe for adjudication in a federal court or other court of appropriate jurisdiction. This is not the first time I’ve written of these subverted voting requirements and related things. Far from it, but the comments here will augment and expand my prior writings and public testimonies on these matters into the subjects of exemptions for environmental review and other exemptions.

Like an “emperor with no clothes,” TRPA parades on the shakiest legal ground under the regulations TRPA adopted as the Code of Ordinances (COO) and the Rules of Procedure (ROP), touting to the public that they are of finest cloth. While TRPA should rightly be embarrassed by their errors, I expect they will defend their nakedness and rags to their bitter end to obscure the simple facts and its misfeasance. TRPA won’t admit an error no matter how blatant; here’s why. COO 1.6 states:

The provisions of the Code and the Goals and Policies effectuated and implemented by the Code shall be liberally construed to effect their purposes. If any section, clause, provision, or portion of the Code or of the Goals and Policies is declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Code or the Goals and Policies, as the case may be, shall not be affected. For this purpose, the provisions of the Goals and Policies are declared respectively severable and the provisions of the Code also are declared severable.

This is a legal bar set to chill public input and dissent, not to promote good governance. It supports the power structure which supports it, “in plain sight” as I see it. What TRPA is explicitly stating here is that it will not change invalid and unconstitutional regulations it adopts unless a judge decides the matter. They invite lawsuits because that has worked in the past. It’s an explicit statement of implicit underlying legal principles: “If you have a legal complaint, sue us,” and further that invalidating one provision does not invalidate all related provisions. I’ll show the COO definition of “TRPA” is invalid for the purposes of illegal delegation as applied in the COO and ROP, thus invalidating major portions of the COO and ROP; TRPA must be sued for all related provisions that violate the Compact by which someone is aggrieved.

Even though TRPA is empowered to amend its regulations, as it has many times, it will not respond to these matters unless legally compelled to do so. That's the set-up, so any "aggrieved" person may sue TRPA if you desire change, because history shows TRPA won't otherwise change these regulations. I wish it were otherwise or that I could see another way. Not seeing that, this petition is what I've put forward to save our beloved Lake Tahoe from the highly detrimental actions and failures of TRPA.

These comments will show that TRPA has adopted regulations that subvert the will of Congress and the States expressed in adopting the bi-state statute law which established the TRPA, the Tahoe Regional Planning Compact. The regulations have enabled TRPA to deprive the public of rights guaranteed under the law, caused multiple great environmental harms and propped up an enormous waste of public funds. (Certainly not all is wasted; TRPA is mainly a funnel for public funds for needed *work by others* as I see it.) TRPA has for several decades run a legal charade which I will expose here concerning the manner in which TRPA has utterly and completely abused its authority by illegally adopting regulations counter to the Compact. These abuses generally fall in the categories of environmental review procedures for project permits and planning matters, approval requirements, and projects exempt from TRPA regulations—but not only those categories. More lawsuits and other actions against TRPA may be needed to reverse this situation and I invite them in droves by those aggrieved as events may arise.

TRPA Subversions of the Compact

Before moving to litigable issues I will provide a briefing on Compact requirements and how the TRPA has purportedly implemented them. I will show the TRPA regulations do not implement the Compact provisions, they subvert them. The subversion of law by regulation is an old trick of the "administrative state" which has often imposed its tyranny on the public to deprive the people of the rights guaranteed under the U.S. Constitution and/or the State Constitutions, in this case those of California or Nevada. When one begins to understand that TRPA regulations undercut the most fundamental aspects of the environmental protection mission it is charged to uphold under the Compact, one begins to understand why Lake clarity and water quality and the environment in the Tahoe region has worsened or stagnated for decades. It has resulted from the regulatory activity subverted to essentially miss or deny impacts where they exist and subvert and encumber opportunities for public participation and input from other agencies and professional environmental managers. TRPA has sold out the public trust in environmental protection by enacting and following corrupt regulations and pursuing its own regional development goals and agendas, as dictated by their globalist psy-op managers.

It is not very difficult to understand how TRPA has accomplished its subversion of the Compact and it will nonetheless take some explaining to lay out the black and white of the arguments and the subversion of inalienable rights and why that is so very important. The record of the TRPA shows it will not readily change to correct its legal deficiencies and subterfuges; rather, the record shows that TRPA will "double-down" every time it is challenged for its corrupt misfeasance because it has worked in the past. My experience has taught that government agencies are not empowered to admit of any failings,

with everyone “doing the best we can” in a complex scenario with lots of hiding places, in plain sight, yes, but also camouflaged in *seeming* legal complexities and uncontrollable factors, and defended in their legal forum—where most fear to tread.

More Lawsuits Are Needed; Standing to Sue

The past is dead. I encourage those in government charged with TRPA oversight to act, to break with the past and more of the same based on this information. While I’ve CC’d other governmental entities with this information to empower their action the people needn’t wait for others to act. In this touted “new golden era” these comments are provided in the public interest to encourage the *public oversight* of government envisioned in the Constitution. It is up to us as individuals to bring justice to our issues of concern and to the people by taking appropriate actions, including suing TRPA if it refuses to change in response to this information, and petitioning for court reforms, too. Requirements for “standing” to sue TRPA are in Compact Article VI(j). The more lawsuits filed the better for the people. The cost to file a lawsuit against TRPA is very low and whatever it costs to legally defend the claim(s) with a few briefings. This is not a legal brief or advice, though some legal briefs are attached. I am providing information in the public interest to empower people to act if desired.

My general summary ends here.

SUMMARY OF THE PETITION

This petition to TRPA can be framed as “**fully follow the Compact**” in both letter and intent. Is that too difficult, TRPA? Not in line with your own agendas? The Constitution safeguards in law “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

(Amendment I.) This is a petition seeking from TRPA a redress of grievances and I plan to speak before the assembled at TRPA’s March 26, 2025 Governing Board meeting. The grievances are with unconstitutional errors and deficiencies in the regulations TRPA has adopted and amended over the years. For the purposes of this petition, these are portions of the 718-page Code of Ordinances, or COO, and parts of the Rules of Procedure, or ROP. (To reduce quoted references herein to the Compact, COO and ROP, the current versions are online at <https://www.trpa.gov/>; hold the mouse over the “PLANS AND PROJECTS” link, and the clickable sublinks for pdf downloads are to the left under “Regional Plan.”)

What the Compact Requires

The comments in this section focus on simple, basic Compact requirements. After I discuss or cite the relevant parts I examine whether the TRPA regulations are in accord with Compact requirements and find they are not, in large part. I look at the Compact in terms of musts and may; what shall TRPA do to fulfill its legal charges, and what is otherwise allowed. Let’s begin with the “shalls” (leaving out details).

- The TRPA Governing Board shall meet at least monthly and shall post public notice with an agenda of potential actions in advance.
- The TRPA Governing Board shall adopt ordinances (the COO) to implement the Compact, in accordance with prescribed environmental review and administrative requirements.
- TRPA shall prepare an environmental impact statement (EIS) for Governing Board consideration, in accordance with prescribed environmental review and administrative requirements, for all projects or planning matters not designated exempt, and for any COO or Regional Plan amendments; TRPA shall provide a publicly-noticed 60-day public comment period for any EIS, and shall respond to comments from government agencies.
- The TRPA Governing Board shall take action by a vote to approve or deny projects/permits or other matters (i.e., planning actions) after consideration at a public meeting, after making specific findings supported by substantial evidence, and after opportunity for public participation and testimony on the matter. TRPA Governing Board decisions voted shall be final “actions” and subject to legal action by any aggrieved person(s) under prescribed timelines to file court actions.
- TRPA shall provide public notice of adopted COO or amendments (for challenge noticing).

There are specific things TRPA may do as allowed by the Compact of relevance here:

- The TRPA Governing Board may designate classes of projects or activities which are exempt from TRPA regulations with supporting statements of evidence.
- The TRPA Governing Board may exempt certain classes of projects or activities from preparing environmental documents.
- The TRPA Governing Board can adopt rules or procedures to follow; once adopted they are binding on TRPA.

What TRPA Has Done: Subverting the Compact Under Color of Law

The TRPA Governing Board has illegally subverted Compact requirements and violated the rights of the people in a variety of ways, but mainly by illegally delegating functions specifically reserved for approval “action” by the Governing Board to the staff, including the Executive Director and others. The first thing to understand is Compact Art. I(c): “The Tahoe Regional Planning Agency shall interpret and administer its plans, ordinances, rules and regulations in accordance with the provision of this compact.” There is further support for these concepts in case law, unneeded here due to the foregoing. (See Attachment 2, pdf p 10.)

The second thing to understand is that essentially all regulatory authority is held by the Governing Board under the Compact, with staff serving in a non-authoritative support role to bring permits, EIS, COO and Regional Plan amendments and approvals of all kinds before the Governing Board in the public forum.

The Governing Board is distinct from agency staff under the provisions of the Compact. For that reason, the following provision of COO 2.2.2.G.1. is unlawful: “The Governing Board hereby delegates to the Executive Director the review and final action on all projects and matters not reserved for Hearings

Officer or Governing Board approval pursuant to subsection 2.2.2.” The Compact does not empower the Governing Board to delegate “review and final action” to staff, to delegate the voting demanded of them in the Compact, but they did it anyway and have ever since that code was adopted.

TRPA’s presumed way around this legal overreach was to adopt COO 2.2.2.G.3. providing for appeals: “The final action of the Executive Director or Hearings Officer may be appealed to the Governing Board pursuant to TRPA’s Rules of Procedure. Final action of the Governing Board may be appealed to a court of competent jurisdiction pursuant to Article VI(j) of the Compact.” The latter clause is in the Compact, and this is tom-foolery with legalese and “final action” language contrary to the Compact. We know TRPA is not a “court of competent jurisdiction” but it is further not even a competent administrative law adjudicatory body, being set up as a “kangaroo court” where TRPA acts as the prosecutor and judge. TRPA set up its “kangaroo court” as a barrier to freely addressing the Governing Board at a public meeting and to chill public participation. You can read more about the adverse consequences to the people from these violations of due process and civil rights in Attachment 2, pdf pp 22-25.

With the illegal delegation above, and through a standard legal trick, the Governing Board, enabled by staff, turned the Compact upside-down in equating the governing body with the staff by regulatory definition in the COO. Certain words and phrases are defined for TRPA purposes in COO CHAPTER 90. DEFINITIONS, including this word: “**Agency** The Tahoe Regional Planning Agency, including the Governing Board and staff.” While that is an inclusive description, using “agency” and “TRPA” interchangeably in the COO to collectively refer to staff and the governing body as one and the same with regard to project or other approval authority, together with the illegal delegation provision, was all it took to subvert the Compact. And though it occurred decades ago, that doesn’t make the definition *as applied* legal or effective. Rather, the illegal inconsistency voids all legal effect of the charade that such delegations of authority were lawful. The COO and ROP provide undeniable evidence that *in practice* this definition of “agency” is used to subvert Compact requirements.

That the illegal regulations have gone unnoticed or unchallenged to now is of historical relevance, but not relevant to the fact that the regulations are unlawful and the TRPA staff and Governing Board is illegally violating the Compact to this day. Enabled by the Governing Board’s illegal regulations, thereafter staff assumed the Governing Board’s authority to approve projects, permits and matters at the staff level, projects and other matters reserved by statute to the governing body only to approve, and without public participation or meeting other administrative requirements in many, if not most, instances. With these regulations the TRPA became opaque and disappeared behind closed doors, and the staff has done that ever since while dispensing with rigorous environmental analyses required under the Compact. Low-level planners prepare documents for rubber-stamping by the Executive Director or Governing Board, leaving other agencies and the public out. If it happens that they bring the matter falsely before the Governing Board the public and other agencies are generally given seven days to comment, not 60 days or more as required under the Compact.

TRPA line-staff must think the regulations are just great, that they are protecting the environment and that everything is legitimate. I don’t fault them; they don’t understand the Compact and are directed to

follow the faulty regulations in any event, with the errors undetected in legal subtleties. The staff serves “at will” under NV labor laws and are told what to do. No staff would dare to go against the Board or Executive Director in any case; it would be career suicide. Many Governing Board members are attorneys, some high-level. I suspect long-time poker-faced lawyer-directors at TRPA Joanne Marchetta and John Marshall were fully aware of this fraud; they didn’t enact it, but they were lie-yers who exploited it to their own ends. That pair deserves notoriety for continuing the illegal practices (or for negligently not seeing them). Sly and egregious are the regulations in their subversions of the Compact and Constitutional protections, *apparently* unnoticed for some 35 years or more—until now. Time doesn’t matter; fraud vitiates all illegal regulations despite any implications. Ignorance of the law is no excuse.

Illegal Project Approvals in the Tens of Thousands

The illegal approval activity is accomplished without notice to the public or opportunity to freely address the Governing Board on a staff decision when requirements mandate a vote by the Governing Board for such project approvals under an item on the Governing Board meeting agenda, and only after opportunity for the people to be heard is provided at a public meeting concerning the matter under consideration. The regulations then set formidable barriers to challenging a staff decision in TRPA’s quasi-adjudicative forum where they act as both prosecutor and judge in reliance on staff for illegal appeals I’ll discuss later. The current fees to appeal an Executive Director or Hearings Officer decision amount to \$1353, with 21 days to file a statement of appeal, an onerous burden on the appellant to chill public participation in decision-making (if they are somehow even aware of a decision).

Staff approves most projects and other matters behind closed doors with no public notice and, under their illegal regulations, they don’t prepare an EIS prior to approval for most projects or matters. If a matter is brought before a Hearings Officer or the Governing Board for some reason, unless an EIS is prepared and circulated for review in advance, rather than giving the public 60 days to comment on an EIS, a total of seven days is provided for public comment on staff findings not supported by an EIS (a period typically from 5 p.m. Tuesday, one week before a planned approval, to 4 p.m. the day prior to the meeting the following Wednesday for comments to be considered). TRPA’s favorite EIS substitute is called a Finding of No Significant Effect (FONZE), generally accompanied by an Initial Environmental Checklist (IEC), which is by no means functionally equivalent to an EIS.

Abuses of Exemption Authority

The TRPA has designated certain projects as exempt from its regulations, as the Compact allows with statements to support a finding of exemption. Most or all of these exempt designations were made long ago. TRPA also dreamed up a number of other *de facto* exemptions and quasi or “qualified” exemptions for activities that didn’t fit in the exempted designations, without supporting statements, which the Governing Board then illegally enacted into regulations. TRPA then proceeded to illegally subvert Compact requirements by NOT preparing and considering environmental impact statements (EIS) prior to staff approval of any project not specifically and totally exempted from the TRPA regulations. In NOT

doing what is required, and coupled with the illegal regulations and practices described in the preceding paragraphs, TRPA has all but abandoned Compact requirements for environmental review of projects. TRPA has violated the rights of the people by depriving the public of meaningful opportunities to participate in decision making by the Governing Board prior to approving of project permits and other matters that have a significant effect on the environment. This occurs under the illegal regulations TRPA has adopted I discuss in detail later on.

Rules of Procedure Can't Be Applied to the General Public or TRPA Client

TRPA has illegally adopted rules for its own procedures that are purportedly applicable to the people with no legal authority to do so. The Compact requires the TRPA to adopt "its own" rules and procedures for how it will conduct business. To the extent the ROP TRPA established does anything more than that, such rules are without a basis in law, and are invalid with regard to applicability to the people. The ROP mirrors much of the COO and as such is riddled with errors and illegalities, and merely provides additional insight into TRPA's illegal practices with exemptions, environmental review procedures and staff-level approvals of various matters.

Legal Background for the Petition

TRPA has adopted regulations usurping the rights of the people, including myself, guaranteed by the U.S. Constitution. An act against the Constitution is void, having no effect. There is ample precedent in Constitutional law that regulations adopted by an agency of the Executive branch of government under a Congressional statute establishing or otherwise legally binding on the agency that are contrary to the letter, legislative intent or construction of the statute are prohibited. (See Attachment 2 pdf pp 10-12.) Usurpation is an invasion and trespass of the natural and inalienable rights of the people and such laws thereby inevitably cause harm. The nation's founders warned the people to beware of usurpation with the greatest priority.

Below the supreme *law of the land* is statute law adopted by the Legislative branch and executed by the President's signature. The Tahoe Regional Planning Compact is such a statute. The bi-state Compact is essentially a contract agreement between the governments representing the people of the states of California and Nevada, and the United States government (which manages approximately 75% of the land in the jurisdictional area of the Lake Tahoe region), as ratified by the President. The state constitutions also enumerate specific rights of the people, whether based in natural law or otherwise, the federal government may not usurp. In entering into the Compact the states have not abrogated the rights of the people under common law and state constitutions or the duties of contractually-employed state-government agents and appointed and elected servants of the public.

The writings that follow are a commentary based on a review of the TRPA regulations with respect to the Compact. The COO is the *coup* that begins the revolution to overturn the legislated requirements of the Compact, turns them upside-down. The ROP then codifies practices and procedures that ensnare and entangle the public in its regulations, with TRPA often tripping over its own ROP in confusion and nonetheless disenfranchising the public from decision-making by following its erroneous regulations.

While TRPA has no legislative authority, once adopted its regulations are considered federal laws, with TRPA a somewhat-unique federal agency in the branch of the Executive. The law of the land prohibits appointees operating under the Executive branch from adopting unconstitutional regulations that subvert the statutory requirements of the Legislative branch. Such is against checks to balance the powers among the three (only) branches of federal government. However, that is precisely what TRPA has done in the instances that will be presented briefly below.

Court-Enabled Subversion and the End of Agency Deference

The TRPA and others in federal government agencies have been enabled in their subversive actions by a federal court system bound to act erroneously and unconstitutionally under a recently-reversed U.S. Supreme Court doctrine known as “Chevron deference,” from a case originally involving the USEPA against the oily giant. See <https://libertyjusticecenter.org/pressrelease/u-s-supreme-court-overturns-chevron-doctrine-the-liberty-justice-center-praises-supreme-courts-decision-to-roll-back-administrative-states-power/> for an overview. The ruling in support of USEPA opened a door which the agencies put their fat foot into: that with few exceptions, judicial “deference” should be given the agency, with the courts having no role in judging “substantial evidence” or whether agency actions constitute a “prejudicial abuse of discretion.” Agencies were free to impose their own interpretations of the agency’s applicable statutes and regulations. As to the courts, the statutes and regulations meant whatever the agency decided they meant if there was any ambiguity in the statute, and applied in whatever way the agency thought was best. Judges left the judging to the agencies, and thereby left rogue appointees to run amuck with court assurance. “Substantial evidence” was anything amounting to “more than a scintilla” of information put forward by the agency, an open invitation for “junk science” (which TRPA swallows whole).

Good news for the people: The situation is now reversed, insofar as the Chevron doctrine was applied to the judicial review standards under the Compact (Art. VI(I)(5)): “Prejudicial abuse of discretion is established if the agency has not proceeded in a manner required by law or if the act or decision of the agency was not supported by substantial evidence in light of the whole record.” (emphasis added). The emphasis is because violating the law is exactly what TRPA has done, and then exploited the deference doctrine numerous times to shield it from accountability for its deficiencies, only to repeat its errors, law and “substantial evidence” be damned. That deference shield now has a gaping hole and no handle to grasp.

In turn, the Legislative branch was likewise in no way accountable for agency oversight and was perhaps too happy to let that go while they passed the gigantic public hat around and thence to TRPA. The Department of Government Efficiency has recently shown Congress is little more than a pump for the money laundry, kickbacks no-doubt included. The Chevron “ruling” was a mere footnote in the case but some four decades ago unleashed the “fourth branch of government,” the so-called unelected Administrative State. It wasn’t hard to see the outcomes with appointees to the federal court unilaterally bound to overlook the legal failings of the appointees to the federal agencies. They have double-teamed against the public ever since with Congress and Executive standing idly by. The gigantic

legal brains deciding Chevron and thereafter couldn't foresee that? No; it's part of a plan. The founders established the courts to protect and serve the people, but that has been subverted so the federal judges appointed for life are little more than corporate secret-agents fleecing the public for their own purposes. More charades, no honors for those judges serving in the federal systems of government.

The Supremes overturned the "Chevron doctrine" of deference in latter 2024, too late for my case. In overturning the rulings of their predecessors all federal judges were given blanket immunity for their decisions under the Chevron doctrine, no matter the harms. Such is their way. "Oops; the prior Supremes got it wrong! We reverse!" Now President Trump is busy dismantling the Administrative State and aspects of the secret-agency Security State, the "weaponized" systems of injustice known as courts still abusing him and other people like myself, and interrupting other criminal enterprises. To quote **President Trump before a joint session Congress, March 3, 2025, "My administration will reclaim power from this unaccountable bureaucracy, and we will restore true democracy to America again. And any federal bureaucrat who resists this change will be removed from office immediately, because we are draining the swamp. It's very simple. And the days of rule by unelected bureaucrats are over."** If so, these are long-overdue actions and the Trump administration is making good progress on some important things from my limited perspective. Only time will tell, but President Trump has a specific interest in the TRPA; he is entitled to appoint a new member to the TRPA Governing Board. I'll leave it at that for now.

It has become apparent to me that TRPA, the people making up the agency, that is, and I share a fundamentally different view of government. I stand on foundational principles of Constitutional law. My views are largely informed by and in concert with the writings of the nation's founders, the signers of the Constitution and others involved, concerning federalism and government overreach. Grade-school civics teachers taught that the people were endowed with inalienable rights under the Constitution but seldom spoke of how to enforce such rights against bullies and tyrants from within. TRPA has turned out to be exactly the kind of tyrant the nation's founders warned of in their admonishments to the people that they will need to maintain a vigil against federal government intrusions and subversions that would do their worst to impose rules in their interest, and against the rights and interests of the people. Could they have ever dreamed of the TRPA abuses we'll explore? Yeah. TRPA is but a puny tyrant, the well-meaning personnel mostly ignorant of their failings. TRPA behaves as a tyrant nonetheless and the personnel involved deserve to be called out for the abuses they support until the abuses end.

The People Get the Government They Are Willing to Stand For

TRPA is an agent of the people and nothing more. Its appointees are public servants on the public payroll (our money) or serving voluntarily in so-called "positions of honor," but with NO OATHS subscribed. It is the duty of every person who supports the Republic and Constitution to resist such tyrannical governmental intrusions and usurpations against rights by any means necessary, including civil disobedience of the laws where, in the judgment of an informed person, such laws are unconstitutional. I'm just paraphrasing the nation's founders. While the founders did not expect the

violators to be talked out of power and repent of their evils based on their own self-interested views and desires, they nonetheless had to be opposed by an empowered, informed populace in order to grant the opportunity for repentance and grievance redress before resorting to other means.

The mainstream media has utterly failed the founders' ideals in its role as government watchdog so people are tuning out and turning to other sources of information such as expert opinion, literature, *uncensored* podcasts, net info, tik-tok, etc. People are able to inform their own narratives to overcome the most polluted resource, the mainstream media "news," including institutionalized, socialized, high-jacked and controlled "science" reporting. Mainstream media outlets are misinformers, real journalism is almost defunct, with an occasional notable exception with regard to Lake Tahoe, e.g., reports on microplastics. Maybe President Trump, Congress, or the States will interrupt TRPA illegalities? If not, it will be up to the people and I challenge any competent attorney seeking a cap-feather and worth their salt to step onto the field and take this sickly Goliath down using the groundwork I'll prepare. "When tyranny becomes law, rebellion becomes duty." – Thomas Jefferson

Some notes on my lawsuit, Miller v. TRPA: In late 2022 I appealed a TRPA Executive Director decision for faulty administration of ground water protection requirements in TRPA's COO, and subsequently sued TRPA (the corporate entity) for its approval and egregious actions against my civil rights during the appeal hearing. Nonetheless, the main reason I sued TRPA was to elevate issues of concern to me with microplastics in Lake Tahoe that were a result of environmental mismanagement by TRPA and other "partner agencies," with TRPA leading at the helm. I spoke of these matters at my September 22, 2022 appeal hearing before the TRPA Governing Board (and many times since), saying the deteriorating marinas and piers TRPA and its partner-agencies have negligently approved for recreational boating over the last three decades will only worsen the microplastics problems if ignored. Likewise the fake-pine cellular macrotowers TRPA is so fond of are significant industrial sources of microplastics. TRPA and the others in the administrative state have nonetheless ignored the matters and continued the destructive policies while staying silent to the issues. They simply pretend to care when they opine at all, and support wasting substantial public funding in further expensive and fruitless study of the microplastics issue—in the absence of *any* plastic control policy. TRPA is a planner without a plan, a regulator without a regulation.

I offered to settle my lawsuit if TRPA would only listen to reason and begin to address the microplastics issues through proper planning and regulation. TRPA stupidly refused to even discuss my settlement offer. I write that because had they settled then nothing printed here would have likely emerged, and I would have gone on to other things instead of figuring out major portions of the TRPA regulations are an absolute fraud. Over the course of my lawsuit in 2023 I began to unravel the regulatory subterfuges, but these were only tangentially related to complaints lodged with the court. The corrupt judges, seeing the TRPA mess before it and no easy way out were certainly not going to be the ones to call TRPA on their faulty regulations, or anything else—in response to a citizen with no attorney? So they dismissed without substantial comment, the rushed magistrate judge's findings most-likely prepared by an intern and not even proofread based on the numerous errors.

That is in keeping with their profession. While I've known and befriended some good attorneys, this is what I've heard about the federal judges: They serve a corrupt corporation and are outside of their corporate D.C. jurisdiction, running a scam. Cases are decided upon assignment and judges receive payments from citizen trust funds to offshore accounts to decide the cases as instructed. When an attorney figures out where the real money is, they go for a lifetime appointment as federal judge, where the corporate payouts are. There is nothing neutral about their judging. Cases are ultimately decided on appeal (more of the same), subject to appeal to the Supreme Court, which latter only "hears" 1% of cases brought before it, almost always political-issues cases. That is the American injustice system of stacked cards. The judges in my case should be impeached. See Attachment 3 for my critique, esp. the concluding remarks at pdf pp 24-25.

If so, why sue TRPA? There are many reasons. Federal courts are not needed; suits can be brought in other venues. There is always potential to win on the merits properly litigated and strengthen case law. My case was a practice run, my first lawsuit, and as a *pro se* unaided by attorney. I learned a lot. Exposing injustice was among my aims; I never really expected to win in the corrupt court. It was a test of sorts and the court corruption exceeded my wildest expectations. Getting TRPA to respond on the record is another; I've found that is the *only* way. Understand that if TRPA doesn't respond to a lawsuit, it loses, and it takes funding and staff time to defend itself. With major federal workforce reductions likely coming soon, TRPA can choose whether it wants to spend its limited resources that way and battle everything out in court, defending its resistance to changing its illegal regulations and practices, or take an easier route that would assist in its purported mission as charged under the Compact. TRPA can be sued in state courts as well, and those properly represented may fare better there than in my own case. Perhaps the corruption in the courts may change with the swamp drainage? I could go on . . . the main point is "jawboning" TRPA won't work. Trust me on that. I attempted to promote change that way in 2024, and long before that, which only led me to this petition. TRPA is righteous, entrenched and recalcitrant in all respects. That's the deep state of affairs.

I have attached certain of my filings from *Miller v. TRPA* here and in other comments for the TRPA record. I have not provided TRPA's court filings because they are mainly comprised of lies stating what they are *supposed* to do under the law, and claiming that's what they do, when the facts are obviously otherwise. My filings present clear refutations of their arguments and I see no point in further misinforming the public with TRPA's twisted lies. (Anyone interested may contact me to request info.) Deference was all TRPA had, their ace. TRPA could always pipe up and refute me, but they won't. TRPA personnel can't be proud of their "win" in service to the notoriously-corrupt telecoms, poisoning the public and environment with electromagnetic radiation and microplastics as it does. I will cite to certain sections of my filings and nonetheless encourage a full reading for a better understanding of the Tahoe Regional Plastics Agency.

WHAT'S WRONG WITH THE TRPA?

Referring again to the oath failures, TRPA is a brazen scofflaw based on my lawsuit and the writings here. I suppose those appointed to serve the corporation think they can't be held accountable for

criminally violating the Constitution because they haven't subscribed to the federal oath or were ignorant of the law. That may be, but serving without an oath to violate guaranteed civil rights acting "under color of law," whatever that law may be, in an effort to defraud another, is a felony act. It's Catch-22; appointees should have read closer, should have read my writings. In January 2025, following my comments in writing and testimony at the Governing Board meeting, the Governing Board unanimously reaffirmed its felonious commitment to continue to violate the federal oath requirements. It's an unwritten code of conduct for criminals TRPA follows. The facts are that many TRPA Board members are high-level attorneys and I expect claiming ignorance of the laws will rightly go hard on them if the tables turn, as indeed they appear to be turning. They want the people to think skipping the loyalty oath doesn't matter, or believe they are beyond the reach of the laws or can escape by some other subterfuge.

I assert they could not be more mistaken for failing completely and deliberately in such a simple matter as taking an oath to protect the Constitution. Oaths matter. President Trump and his Justice Department appointee Pam Bondi have sworn oaths to defend the Constitution against all enemies. Whether TRPA is an enemy of the Republic or supporting globalist enemies is not my place to judge. This information is essentially my affidavit, attesting to the facts behind violations of law to the best of my knowledge and belief, without intent to deceive, and otherwise freely expressing my views under the protection of the First Amendment.

While TRPA is not immune from prosecution, there are worse criminals being rounded up, no denying. Killers. But TRPA and its partners, namely the City of South Lake Tahoe and Verizon Wireless, wrote off the life of David Benedict to promote its EIS-exempt wireless communications agenda with the telecoms, and David is dead now—while under his heirs his case has languished for four years in federal court. Lake Tahoe drinking water has become contaminated with toxic microplastics under TRPA's watch, and due in part to TRPA's negligent, illegal actions, which continue. A lot of money has been spent with no tangible improvements in Lake water quality. New Trump administration priorities may put TRPA down the line? Maybe the oath violations, other criminal conduct, will blow over unnoticed . . . or the U.S. Justice Department will sort it out . . . or who knows what? Perhaps, a shared prison cell in a foreign country waits for TRPA's corporate actors? I'd be nervous in their place, many potential prosecutorial avenues.

IF IT'S BROKEN, FIX IT

My lawsuit presented evidence, in 2023, that TRPA has long-ago developed regulations which usurp Compact requirements with regard to the manner in which projects that are not exempt from TRPA regulations are approved. Most notably, the regulations illegally deprive the public of the opportunity to address the Governing Board at a public meeting for most projects or other matters that have an effect on the environment absent a costly appeal, as discussed also herein. The corrupt corporate judges failed to act on the matters, without comment, enabling their federal "partner." And yet it is black and white in the law and you don't need a law degree to read it: Such project/permit approvals are to be granted by a vote of the Governing Board only after a detailed EIS is prepared, considered and certified to be in

accordance with the Compact requirements. Approvals must take place at a public, noticed, meeting with opportunity for the public to freely address the Governing Board. Though the case was not initially on these above matters, my lawsuit addressed them in some detail; see Attachment 2 pdf pp 10-12. TRPA has taken no steps to date to change its illegal practices in this matter and must now undertake steps to resolve the grievances herein.

That would be a mere start on what is needed. Since the environmental review is to precede the approval I'll first show that TRPA has completely subverted the Compact through its illegal regulations for environmental review of matters that have an effect on the environment and return to the public hearing and voting/approval requirements later. I also think it's helpful to understand the Compact's environmental review framework as I do before examining how TRPA has illegally twisted the framework to serve its own ends. The illegal regulations must be jettisoned or changed to comply with the Compact; that is my demand of the public servants. Are they servants or traitors? Only actions matter and all can decide by the actions and inactions of TRPA in light of what follows.

Environmental Review Mandates; TRPA "Shall" . . .

The basics involved here are relatively simple, and have been obscured by the illegal regulations adopted by TRPA. **There are identified in the Compact two general classes of projects or other matters: those "matters that have a significant effect on the environment" and those that do not.** The latter are to be specified as "exempt" in the COO, after making appropriate findings. Wherever the word "shall" appears that is a requirement of law not subject to agency discretion. The manner or rules under which the requirement is presented to the Governing Board are in the domain of the ROP, which can't legally deviate from the Compact. Compact Article VII lays out the EIS requirements.

ARTICLE VII. – ENVIRONMENTAL IMPACT STATEMENTS

(a) The Tahoe Regional Planning Agency when acting upon matters that have a significant effect on the environment shall:

(1) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment;

(2) Prepare and consider a detailed environmental impact statement before deciding to approve or carry out any project. The detailed environmental impact statement shall include the following: .

(A) The significant environmental impacts of the proposed project;

(B) Any significant adverse environmental effects which cannot be avoided should the project be implemented;

(C) Alternatives to the proposed project;

(D) Mitigation measures which must be implemented to assure meeting standards of the region;

(E) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity;

F) Any significant irreversible and irretrievable commitments of resources which would be involved in the proposed project should it be implemented; and

(G) The growth-inducing impact of the proposed project;

(3) Study, develop and describe appropriate alternatives to recommended courses of action for any project which involves unresolved conflicts concerning alternative uses of available resources;

(4) Make available to States, counties, municipalities, institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the region's environment; and

(5) Initiate and utilize ecological information in the planning and development of resource-oriented projects.

I will draw out a few points for the reader: The Compact requires an EIS for any project not on the adopted "exempt" list in the COO. It is by that codified listing, right or wrong, the public can identify the projects or matters that TRPA asserts will not have a significant effect on the environment. All other projects or matters have a significant effect (by the agency's own determination) and must therefore have an EIS prepared *in the manner specified above* for consideration prior to approval. Authority for exemptions to the EIS requirement is provided in the Compact Article VII(f):

The agency shall adopt by ordinance a list of classes of projects which the agency has determined will not have a significant effect on the environment and therefore will be exempt from the requirement for the preparation of an environmental impact statement under this article. Prior to adopting the list, the agency shall make a written finding supported by substantial evidence in the record that each class of projects will not have a significant effect on the environment.

Note for subsequent reference the Compact says "a list," not two lists or five lists or lists sprinkled throughout the 718-page COO, or undisclosed lists in Memoranda of Understandings with other public and commercial entities. If a project is not on the "list" of exemptions, impacts are presumed significant unless and until vetted through the EIS process, after which impacts may or may not be deemed significant, with this part of Compact Article VII applicable in any case:

(d) In addition to the written findings specified by agency ordinance to implement the regional plan, the agency shall make either of the following written findings before approving a project for which an environmental impact statement was prepared:

(1) Changes or alterations have been required in or incorporated into such project which avoid or reduce the significant adverse environmental effects to a less significant level; or

(2) Specific considerations, such as economic, social or technical, make infeasible the mitigation measures or project alternatives discussed in the environmental impact statement on the project.

TRPA is empowered to amend their regulations after adoption at a public meeting and meeting other administrative requirements, as it has done many times. TRPA may devise alternative procedures that faithfully implement the Compact requirements and shall implement the Compact in the meanwhile to resolves the grievances presented here or TRPA may face potential adverse actions at any time.

Grievances with the Code of Ordinances

TRPA has operated a sham regulatory program under the COO since at least 1990, before the time I moved to the basin. I will examine the regulations TRPA has adopted to implement the EIS requirements and show that they are nothing but an illegal and illusory protection program accompanied by usurpations of the rights of the people. I'll discuss the seemingly easier part, the exemptions from EIS requirements. These are contained in COO 3.2. First note in COO 3.2 that TRPA added the word "may" to precede the wording from the Compact, "have a significant effect on the environment." Again, the purpose of environmental review and EIS approval is to reduce any significant effects that "may" occur from projects that have been identified to "have" significant effects, so that approved non-exempt projects will not have a significant effect on the environment (that is, in the absence of over-riding considerations under Compact Article VII(d)(2) cited above).

Instead of following the Compact's EIS requirements, TRPA concocted a lesser, tiered environmental review system for every project or matter that was already determined to have a significant effect on the environment (and therefore requires an EIS). This illegal review system is complete with **staff-level permit approvals under the deficient regulations and illegal delegation for projects with effects deemed less than significant only by planning staff's unchecked determination of "no significant effect" in the absence of an EIS, the absence of public notice or public or agency input, and without opportunity for a public hearing and a Governing Board vote as required.** These illegal permit approvals by staff have been given without public scrutiny for tens of thousands of projects or more over the decades. The Executive Director and Hearing Officers are included staff and have no authority to approve of projects that may have significant effects. They act only improperly "under color of law." The Governing Board never had any legal authority to delegate to subordinate staff the approvals Congress mandated of them alone, to provide a modicum of transparency and accountability—which have been long gone.

Such staff-level approvals are wholly inconsistent with the Compact and unconstitutional, null and void. Under this system TRPA staff not only does not require or prepare an EIS for consideration by the Governing Board prior to project approval at a public meeting but, under its internal reviews, gone are the requirements of Compact Art. 1(a)(2) and all the rest of Article 1. Such approvals are illegitimate under illegal delegations of authority put in the regulations by the Governing Board that disenfranchise the public with respect to participation requirements. The Governing Board has illegally delegated most of its responsibilities to the staff and thereby deliberately avoids and prevents public participation, with no notice to the public, and also thereby relieves itself from public scrutiny and accountability for their votes, which are seldom needed or taken under the illegal procedures TRPA devised.

EXEMPTIONS

Exemptions in the Code of Ordinances

Compact Art. VI(a) (paragraph 2) provides that: “The agency shall prescribe by ordinance those activities which it has determined will not have substantial effect on the land, water, air, space or any other natural resources in the region and therefore will be exempt from its review and approval.” (emphasis added to distinguish exempt from preparing an EIS, as follows.) Compact Art. VII(f) bears repeating here: “The agency shall adopt by ordinance a list of classes of projects which the agency has determined will not have a significant effect on the environmental and therefore will be exempt from the requirement for the preparation of an environmental impact statement under this article. Prior to adopting the list, the agency shall make a written finding supported by substantial evidence in the record that each class of projects will not have a significant effect on the environment.” (emphasis added) Again, the requirement is for one list (non-plural) of classes of projects exempt from EIS.

“Review and Approval” Exemptions for “Activities”

TRPA’s COO therefore includes a long list in COO 2.2 of project types and activities that are not exempt from EIS consideration and TRPA review and approval. However, these include many project types reviewed only under the illegal Hearings Officer or staff approval set-up for all projects erroneously listed as not required to be considered and approved by the Governing Board. While review is specified, these provisions for staff approvals are in direct contravention of the Compact (e.g., Art. VII(b) and Art. III(g)(2)).

Then COO 2.3 provides a long list of “exempt activities” not required to undergo “review and approval” pursuant to Compact Article VI(a). That list is clear. But then COO 2.3.6. provides another list for many “Qualified Exempt Activities,” which are activities that are exempt by applicant certification that certain requirements are met. This language is a legal artifact TRPA inserted in the regulations that is very questionable as to whether the activities are exempt from “review and approval.” What TRPA has done is to undermine and distort the conjunctive use of “and” in the Compact’s use of the phrase “review and approval,” terms that go together in normal grammar. Again, TRPA’s Governing Board must “review and approve projects” that are not exempt, with the approval of necessity following the review. The Governing Board may also decline to approve a project through its voting. I think of it this way: So-called

“QE” activities are certainly not exempt from review, a review which is not conducted before the Governing Board or public. TRPA requires an application and substantial fees for review in the TRPA Fee Schedule, \$226 for non-shorezone projects, \$385 for review of a shorezone certification. These are not simple filing fees, but are to cover review costs. This is where TRPA begins to split hairs with “and.”

Staff may review these QE applications to verify whether they meet criteria in the regulations adopted by TRPA to qualify for an exemption. Staff may disapprove a QE application based on their review but, absent a disapproval or the addition of special conditions by the staff ED, the project can proceed by operation of law—without an “approval” by staff because such “approval” was presumably granted by the Governing Board in adopting the regulations. Whatever authority has been delegated to add additional “special conditions” to a QE certification application is without basis in Compact law, underwent no Governing Board review, no public disclosure, no EIS, etc. In addition, the regulations may be faulty if TRPA didn’t adopt the regulations after Governing Board approval of an EIS to evaluate potential impacts, or at a minimum as required under the Compact, based on a written finding supported by substantial evidence in the record that each class of projects (and “special conditions”) will not have a significant effect on the environment. It would take historical research to know and given these are generally minor activities with limited, purportedly “non-substantial” impacts, is not of primary interest here in light of other issues, but the QE list is long, and I doubt they meet Compact legal requirements for exemptions.

More Exempt Activities: If you thought we were done with exemptions from review and approval, you’d be wrong. More lists: COO 2.5 and 2.6 provide for the MOUs parroted in the ROP, and these also include exemptions from TRPA review and approval which I discuss further on. See COO 82. COO 82.5.6 augments the COO 3.2 EIS exemptions I discuss next, purporting that the cited activities are exempt from environmental review requirements. The activities are not in a class of projects tied to COO 3.2. as they must be for EIS exemption, and no authority in law is cited for the EIS exemptions in COO 82.5.6 so this is another whole list of QE activities and projects (11 additional categories including structures in lake and shore areas) for which TRPA has determined, “No TRPA review and approval is necessary for the following activities if the activity fully meets one or more of the categories in this section and the applicant files a properly completed TRPA Qualified Exempt declaration form pursuant to subsection 2.3.7 with TRPA at least five working days before the activity begins.” This text is just inserted into COO 82.5.6 without citing authority in law to do so or any recognition of inconsistency with Compact EIS exemption requirements, and no cross-reference to COO 3.2.2 requirements or lists, discussed next.

EIS Preparation and Approval Exemptions for Specified “Classes of Projects”

TRPA then presents a short list of exemptions to the EIS requirements in COO 3.2.2., “Article VII(f) of the Compact requires TRPA to adopt by ordinance a list of classes of projects which TRPA has determined will not have a significant effect on the environment and therefore shall be exempt from the requirement for the preparation of an environmental impact statement.” Briefly, single-family housing, changes in use with increases less than 650 vehicle miles traveled, and transfers of development rights are excluded from preparing an EIS. These are the only COO exemptions specifically linked to Article

VII(f) authority I've located. Prior to adopting the list in COO 3.2.2, did TRPA make a written finding supported by substantial evidence in the record that each class of projects will not have a significant effect on the environment? Presumably, but that's another research project.

Everything that follows COO 3.2 in articles COO 3.3 through COO 3.6, to exempt projects from EIS requirements, is illegal. The Compact provides no provisions authorizing such stated environmental reviews and approvals by staff in back rooms or staff Hearing Officers in lieu of EIS. We have to go to the ROP to see what TRPA does procedurally with the application information under the bogus COO provisions. Besides that, one may expect that all the exemptions would only be in COO 2.3 (for "review and approval") and 3.2.2. (for EIS). Such is not the case for the latter, far from it, as I'll go on to show.

In the very next section, COO 3.3 goes awry, stating, "Except for planning matters, ordinary administrative and operational functions of TRPA, or exempt classes of projects, TRPA shall use either an initial environmental checklist or environmental assessment to determine whether an environmental impact statement shall be prepared for a project or other matter." **What's that written?!** What does the COO mean with "whether" an EIS shall be prepared? That's nonsense when, in fact, the Compact requires an EIS "shall" be prepared. The Compact trumps. There is no agency "discretion" to do these other things, except perhaps as preliminary actions to prepare and present a mandated EIS to the Governing Board for approval.

In addition to project approvals, I have also observed the TRPA IEC or environmental assessment (EA) is used routinely for approving a large variety of "planning matters," in violation of the environmental review requirements. In most cases a checklist staff assessment will be prepared for Governing Board consideration with the Governing Board deciding the matter only on the basis of staff input and giving the public (typically) seven days for review and comment or oral testimony. In some cases a hearing is held by the TRPA's Advisory Planning Commission, also typically with seven days to comment. The APC is a group of unelected appointees the TRPA established to make advisory recommendations. The APC and staff then make its recommendations to the Governing Board under the faulty review requirements. The Governing Board nearly-always adopts the staff recommendation. Again, everything works to empower TRPA while excluding or minimizing EIS burdens, and comments and testimony from others. You don't like that? TRPA will see you in court or not at all.

TRPA invented all of the illegal environmental review and staff-level approval regulations in COO 3.3 through COO 3.6 for its own convenience, and has approved tens of thousands of projects under the bogus procedures over the last several decades or more. I shall later shed light on why this approach has failed to protect and restore the environment of the region and Lake Tahoe water quality and clarity, as there is a direct connection, if you can't already see it.

I wrote above that TRPA made up the environmental review procedures it follows, but they look an awful lot like project review requirements under the California Environmental Quality Act, or CEQA, which is a tiered system of review. Without making a direct comparison of TRPA regulations with CEQA requirements and guidelines, I am simply asserting CEQA was heavily plagiarized and adopted as the

hybrid regulatory model for TRPA, without reference and despite failing to comply with either Compact requirements or CEQA requirements.

TRPA is not bound by CEQA, or any requirement for environmental review in Nevada law. Similarly, TRPA is not bound by its federal counterpart the National Environmental Policy Act, NEPA, though it is my view that NEPA case law precedents may be applicable to Compact decisions, at least in some cases. TRPA is bound by the Compact and its EIS requirements. TRPA and CEQA came into existence in the same general (1970) time period, as did NEPA. I suppose that TRPA looked around for a comprehensive environmental review model, cherry-picked and adapted the parts of CEQA and NEPA it liked, discarded the rest and cut the public out of the processes it adopted under the COO and ROP based on my analyses here.

Grievances with the Rules of Procedure

The above-cited Compact requirements are clear. TRPA was charged to develop the COO regulations to implement the statutory requirements of the Compact, and fell woefully short as described above. Compact Article II(g) specifies the following at the end of text on TRPA Governing Board voting and general business provisions, “The governing body shall adopt its own rules, regulations and procedures.” The purpose of the ROP, as I see it, is to describe the processes TRPA will use to implement the COO in a public document binding on the agency, and that provides transparency and accountability to the public for its operations.

My view of the ROP with regard to the Compact is that TRPA has acted beyond its authority under color of law in adopting the ROP. ROP 1.1. provides the “PURPOSE OF RULES These Rules supplement, interpret, and implement both the [Compact and COO]. These Rules should be read together with those documents.” In the first place, TRPA doesn’t “read together” those documents, with staff generally relying on the deficient COO and ROP to the general exclusion of actually implementing the Compact language. This is most often with vague references and meaningless assertions included that TRPA is implementing the Compact when it isn’t, under fraudulent environmental and public review requirements, as shown herein.

Further, while TRPA may “interpret” the requirements and allowances in the Compact language, it can’t change the Compact requirements in a manner contrary to the letter or intent of Congress and the two states. Nothing in the Compact, COO or ROP indicates TRPA may “interpret” the requirements in a manner inconsistent with the Compact accompanied by violations of civil rights for the sake of agency convenience or to expedite agency approvals of matters that have a significant effect on the environment. The opposite, “accordance,” is specified in the Compact. Yet this is precisely what TRPA has done for decades and that is how the court erred by applying the Chevron doctrine of deference to TRPA in my case involving TRPA’s failure to implement ground water protection requirements. This document so far shows and will further show that the COO and ROP do not faithfully “implement” the Compact, as my lawsuit also showed. TRPA went it own way with the COO and ROP without due regard

for the Compact. The ROP is not needed to *misinterpret* the Compact's crystal-clear EIS requirements. There is no ambiguity in the Compact, which is comparatively well-written and considerate of civil rights.

TRPA may adopt ordinances under the Compact provisions which are binding on the public and the agency, as for instance when one submits an application for a permit to be contractually bound, in essence, by TRPA requirements. To the extent the ROP includes requirements within "it's own rules" that are presumably binding on the public, I don't think they are valid. Examples are ROP 14 "HEARINGS OFFICER" and ROP 11 "APPEALS," with many requirements and references in the latter to "the appellant shall" There is no legal justification for either of these ROP Articles. Insofar as the 71-page ROP is *largely duplicative* of the extensive 718-page COO, it adds another layer of unneeded regulatory complexity (e.g., for the people) and invites inconsistencies with the COO. I suggest incorporating all public (e.g., permit) requirements in the COO, and revoking the ROP or redeveloping it for internal processes binding only on the agency governing body, consistent with the Compact and COO. The ROP is not required or needed. Worse than that, I have identified many other aspects of the ROP, not only ROP 11 and 14, that are illegal and which violate the rights of the people, as I'll discuss below. President Trump is calling for rolling back federal regulations 10 to 1. Here is an opportunity.

ENVIRONMENTAL REVIEW PROCESSES USED BY TRPA

Illicit EIS Exemptions in the ROP; Memoranda of Understanding

I next refer to the COO-duplicative ROP for additional purported exemptions from Compact EIS requirements and will mention here that many projects are improperly exempted from the TRPA review and approval, and therefore EIS requirements, under various interagency agreements or memoranda of understanding, as noted in ROP 5.4 ". . . Minor application procedures do not apply to permitting that has been delegated to another agency pursuant to a Memorandum of Understanding (MOU)." I will comment more on these MOU documents another time; it is another review project to ferret out all the exemptions and other regulatory failings in the many MOUs. For example, I have seen at least one MOU purporting that a signatory agency can be deputized to carry out and enforce TRPA's regulations, with no basis in law for that. Only TRPA can legally enforce TRPA requirements under the provisions of the Compact; each agency must enforce its own requirements. Anything else is bluff or coercion.

TRPA is allowed to enter into MOUs with other agencies. However, TRPA can't illegally delegate TRPA environmental review requirements to another agency by MOU or otherwise, or rely solely on environmental documents prepared by another agency. My main comment on the MOUs at this time is that many are outdated or otherwise invalid; they should expire after five years unless renewed at a public meeting with full opportunity for public participation and an EIS, appropriate because the MOU matters are not exempt under the Compact's EIS and project or planning matter approval requirements.

So-called "minor applications" (ROP 5.3) are projects for which the TRPA timelines to act are shortened, with other review requirements reportedly applicable; these are projects and activities which are not identified as "exempt" from EIS requirements and which TRPA nonetheless does not prepare EIS documents for. Then we come to this ROP article, which recites COO 3.2:

6.3. PROJECTS EXEMPT FROM ENVIRONMENTAL DOCUMENTATION

Pursuant to Article VII(f) of the Compact, the Board may determine, by ordinance, that certain classes of projects will not have a significant effect on the environment and, therefore, are exempt from preparation of environmental documentation.

6.3.1. Such exempt projects are set forth in subsection 3.2.2 of the Code.

6.3.2. TRPA need not prepare environmental documentation on a TRPA decision to reject or disapprove a project or matter.

ROP 6.3.1. supports the 3.2.2 exemptions but not the other exemptions to EIS requirements in the COO including, but not limited to, COO 82.5—which appear to have no basis in law. My reading is that EIS exemptions only apply to projects in COO 3.2.2, as tied to Compact Article VII(f). TRPA has abused the “exemption” laws in all sorts of ways, and has conflated “review and approval” and/or “activities” exemptions with “EIS” exemptions.

All the rest of the ROP concerning Hearings Officer (ROP 11) and Executive Director approvals (generally by line-staff in the absence of any hearing), language about “whether” or not to prepare an EIS, and references to “final action” by staff is all a ruse in violation of the Compact requirements and without veracity or force of law. The regulations and violations that usurp the rights of the public with regard to these parts of the ROP were fully briefed in my lawsuit (e.g., Attachment 2), with relevant filings attached and incorporated herein by reference. These writings extend the analysis therein to requirements to prepare EIS documents.

TRPA’s Illegal Environmental Review Procedures

COO 2.2 “PROJECT REVIEW” provides the illegal set-up, implemented specifically in ROP 2.2.1:

“Activities that may have a substantial effect on the land, air, water, space, or any other natural resources in the Tahoe region are projects subject to TRPA review and approval. Projects shall be reviewed by TRPA in accordance with TRPA's Rules of Procedure and pursuant to the applicable Code provisions. Projects approved by TRPA shall be issued permits in accordance with the Rules of Procedure.”

Nothing about the Compact here; the COO supersedes it by implication. The COO is like TRPA’s Holy Bible. Article 2 goes on to provide provisions for illegal approvals by a staff Hearings Officer in many instances, which are parroted in ROP 11. Thus, the staff and everyone else are misguided to follow the corrupt regulations.

As corrupt and deficient as the TRPA regulations may be, the manner in which TRPA carries out its approvals and the levels of analysis provided are even more dismal. I’m just going to give a general overview applicable to most permit projects. The action begins with a permit application to TRPA, and among the application requirements is for the Applicant to prepare and certify an IEC, for review of

potential adverse environmental effects, discuss any mitigation measures to prevent or minimize such effects, and certify the truth and accuracy of the checklist information to the best of their knowledge, under penalty of perjury. Literally anyone can prepare and submit an IEC. No expertise of any kind is required.

TRPA staff then purportedly reviews the IEC and other application information to determine if the application is complete, and may request additional information, before proceeding towards an approval of some kind, legal with an EIS before the Governing Board or otherwise. This is what ROP 6.1 says, “These Rules govern the preparation and processing of environmental documents pursuant to Article VII of the Compact and Chapter 3 of the Code. These Rules must be read and applied in conjunction with Article VII of the Compact and Chapter 3 of the Code.” However, TRPA doesn’t comply with that last sentence, because the COO and ROP are inconsistent with the Compact. In practice the Compact is ignored in favor of the regulations, with management directing line-staff to implement the COO through the ROP—despite the language above. ROP 5.3 recites the exemption requirements of COO 3.2.2; useless.

ROP 6.4 authorizes the IEC, which bears an uncanny resemblance to the CEQA Checklist:

The Executive Director shall devise and maintain an initial environmental checklist (IEC) that shall be used, in conjunction with other available information, to determine whether an environmental impact statement (EIS) shall be prepared for a project or other matter.

Based on the IEC, and other information known to TRPA, TRPA shall make one of the findings, as appropriate, set forth in subsection 3.3.2 of the Code.

Here we again have the repetition of “whether” to prepare or act on *something other than an EIS*, when an EIS is required by the superior Compact for all projects not on the EIS-exempt list. Something other than an EIS is thus erroneously provided at two levels: the staff may determine that an “Environmental Assessment,” or EA, is required (ROP 6.5), or staff may make a claim in the form of a “Finding Of No Significant Effect” or FONSE (ROP 6.6). Under the FONSE provisions,

If, based on the IEC or EA, and other available information, TRPA finds that a project or matter will not have a significant effect on the environment, a statement of such finding shall be placed in the project file maintained by TRPA and no further environmental documentation shall be required. See Section 3.5 of the Code.

COO 3.5 refers implicitly to “TRPA” staff, as above: “If TRPA finds that a project or matter will not have a significant effect, no further environmental documentation shall be required.” It is under these illegal regulations that TRPA staff has for many years illegally dispensed with the Compact’s EIS requirements. It is under these deficient auspices that TRPA staff has approved literally thousands of projects as consistent with the Compact under FONSE or EA provisions where an EIS is required, with no Governing Board involvement or notice to the public.

With regard to “the IEC, and other information known to TRPA, TRPA shall make one of the findings . . . in subsection 3.3.2.” The TRPA routinely mistakes recitation of a code with actual findings of fact presenting the substantial evidence and the “other information known to TRPA” with the underlying rationale for its decisions. Thus, TRPA “findings” generally lack “substantial evidence” to back up the claims of compliance. Beyond reciting code, they are often just bald assertions with barely more than a “scintilla” of substance to satisfy the courts, rubber-stamping the applicant-prepared IEC because staff knows no better and can’t critically assess the potential impacts due to a lack of necessary interdisciplinary expertise, time, public input, whatever. TRPA claims to have “planning expertise,” per my lawsuit, and is overall altogether lacking in the engineering and science departments.

I claim their planning expertise stinks. TRPA is a planning agency that can’t or won’t plan for anything important. I have cited in public comments many examples too numerous to mention here, but wireless communications tower radiation and high levels of toxic microplastics in Lake Tahoe are two very important matters with no planning or policies whatsoever and years of pretended ignorance as they worsen the problems and effects from both. TRPA has proven again and again there is no impact it can’t ignore with its fraudulent procedures and “findings.” Draw your own conclusions about whether TRPA is acting with negligent and criminal intent after being confronted over and over by me and others in the public forum, acting willfully in violation of the Compact with knowledge of their abuses. Besides FONZEs and EAs routinely approved in back rooms by staff I’ve seen plenty of approvals by the Governing Board of staff-prepared FONZEs and EAs, and such approvals are now ripe for lawsuit if TRPA perpetuates such actions in light of these writings.

Public Input Denied

TRPA chills public input by expecting the public to somehow know what applications TRPA has received and what they are doing with them, through their lousy database for project information. TRPA does not publicize applications received. In order to look up a project application on the TRPA website the county Assessor’s Parcel Number(s) or TRPA’s internal “ERSP_____” ID must be known. Occasionally a project emerges on an agenda for illegal consideration by a Hearing Officer or consideration by the Governing Board, but seldom with an EIS. Note under the Compact the Governing Board is *only* empowered to consider and approve of an EIS prepared as specified, nothing lesser. Nonetheless, TRPA, including its Governing Board, nearly always acts under an EA, a FONSE, or a “mitigated” FONSE: “If TRPA finds a project or matter will not have a significant effect if certain mitigation measures are incorporated into and made a part of the project, the project description shall be correspondingly modified and no further environmental documentation shall be required.” (COO 3.6, ROP 6.7). That’s akin to CEQA’s “mitigated Negative Declaration.” Just like the FONSE, the illicit EA is another avenue for illegal approvals, just a level up, skirting the public EIS preparation and approval requirements, and approval-voting requirements in many cases.

The foregoing is the antithesis of meeting the Compact’s specific EIS requirements as stated in Article VII, which bears repeating:

a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment . . . consider a detailed environmental impact statement before deciding to approve or carry out any project . . . shall include the following: . . . The significant environmental impacts of the proposed project . . . Alternatives to the proposed project . . . Mitigation measures which must be implemented to assure meeting standards . . . The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity . . . The growth-inducing impact of the proposed project . . . appropriate alternatives to recommended courses of action for any project which involves unresolved conflicts concerning alternative uses of available resources . . . Make available to States, counties, municipalities, institutions and individuals, advice and information useful in restoring, maintaining and enhancing the quality of the region's environment . . . utilize ecological information in the planning and development of resource-oriented projects. . . . Prior to completing an environmental impact statement, the agency shall consult with and obtain the comments of any Federal, State or local agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of . . . the comments and views of the appropriate Federal, State and local agencies . . . shall be made available to the public . . . The public shall be consulted during the environmental impact statement process and views shall be solicited during a public comment period not to be less than 60 days.

All of the above was dispensed with decades ago by TRPA adopting illegal regulations, mainly for its own convenience and efficiency, and without recognition of what they are actually doing. And they do get the projects out the door! 1000 per year in recent years, but with no credible assurance adverse effects are being identified or mitigated. Instead of EIS consideration by the public and the Governing Board backroom FONSE approvals that never see the light of day are filed away, or evaluations and analyses only by TRPA staff that fall far short of Compact EIS and public participation requirements are presented to the Governing Board after severely-limited comment periods. In my own case, *Miller v. TRPA*, staff didn't even require a complete IEC, and approved a major plan revision for the Ski Run Blvd. industrial cellular macrotower in S. Lake Tahoe without even a statement of such FONZE placed in the project file as required; I suspect the IEC was not even reviewed, let alone critically.

Request for Project Approval Public Records

TRPA hasn't prepared many EIS or EA documents in recent years compared to FONSE approvals. To verify this assertion, I am making the following request for public records in the public interest: I request to report all the non-exempt projects approved by TRPA since January 1, 2013, to date, following the major 2012 Regional Plan amendment. I wish to know whether they were approved by the Governing Board or by staff, and whether the approval was under a FONZE, mitigated FONZE, EA, EIS or nothing at all with regard to environmental review requirements. Also report the number of permit appeals brought before the Governing Board, the appellant(s), and whether the appeal was approved or denied. I am seeking at this time the forgoing information with the project name, project tracking identifier info

and parcel number(s) and the dates of the approvals or denials. You can report information to me at syngineer1@gmail.com.

FRAUDULENT APPEALS AND PUBLIC PARTICIPATION GRIEVANCES

I want to focus again on that last sentence quoted above from Art.VII concerning public participation. The way I see it, TRPA basically enacted a process similar to CEQA, but with one very critical difference, especially with regard to project exemptions. TRPA cut out the public noticing and participation requirements often quoted as being “the heart of CEQA,” insofar as the CEQA review process is essentially carried out to disclose information to the public so they may participate in informed decision making and legally challenge approvals, including certain exemptions. CEQA otherwise has no further bearing here.

The implication is TRPA operates as if doesn’t need public input and the public doesn’t need to know what it is doing behind closed doors. They suffer through public input when they must while mouthing the opposite, but it’s a hindrance to their perceived efficiency. TRPA is generally incompetent and unscientific even in preparing an EIS (when it does) and seldom incorporates public comment into its decision-making, preferring instead to just vote the “staff recommendation” in lock-step. My experience is that TRPA cynically distains public detractors and their input as an impediment to its own planning agendas. The arrogant TRPA and their staff planners know what is best for the region and doesn’t need the public getting in the way, even through the fraudulent appeal process; thus they made their illegal actions hard to detect and appeals onerous and costly.

There should never be an appeal of a decision made by staff: all decision authority resides with the Governing Board. TRPA made all the appeal nonsense up with NO BASIS to support their illegal staff approvals. An appeal is a quasi-judicial proceeding with TRPA acting as both the prosecutor and the adjudicator, no separation of functions. Appeals are without merit! More garbage in the COO and ROP, with no justice provided. High appeal fees are set to chill dissent. Projects or other matters should be voted on by the Governing Board, per the Compact, and proceed directly to court if a party is aggrieved. The whole appeal process in the regulations is a sham as I well know from experience. Read my attached court filings to see the illegal machinations TRPA put me through during the appeals process; for pity sake, TRPA couldn’t (or wouldn’t) even follow its own rules! Criminals.

KEEP TAHOE PURE, MICROPLASTICS ENDURE; USE WOOD, METAL AND STONE IN THE SHOREZONE

Finally, this is a petition to TRPA to begin to address the microplastics mess in Lake Tahoe. Whether or not TRPA has caused and/or greatly contributed to it as I believe, problems will only worsen with time. Evidence will only grow. TRPA has already wasted 2.5 years with no regulatory action to address microplastics in Lake Tahoe since my September 2022 testimony.

Environmental Problem Assessment Is Required

COO 5.12.3 Environmental Problem Assessment provides,

TRPA shall develop, adopt, and maintain problem assessments which identify existing situations which adversely impact attainment or maintenance of the thresholds or constitute violation of a threshold, the Goals and Policies, or the Code. The problem assessments shall identify affected property owners, abatement measures, estimated costs, and sources of funding for implementation of abatement measures In development of problem assessments, TRPA shall consult with affected local governments and state and federal agencies. (emphasis added)

I shouldn't have to tell TRPA to undertake this required action for microplastics. Again we have TRPA failing to implement its own regulations though microplastics have been identified in Lake Tahoe since circa 2019, and although Lake Tahoe is *among the most contaminated large water bodies on the planet* with microplastics.

TRPA has no source identification program for microplastics. The incompetent TRPA is a planning agency without a plastics control plan, pursuing plans to propagate persistent plastic pollutants and proposes study of the problem at great public expense. This they've done in ignorance of gross evidence of pollutant discharges to the waters of Lake Tahoe from the structures TRPA has approved for decades while eschewing environmental review requirements. If the effects are not cumulatively substantial from deteriorating shorezone structures, TRPA should prove it under COO 5.12.3—in the public sphere. Continuing to approve of plastic structures in the shorezone is subterfuge and misdirection by TRPA in service of the corporation.

TRPA Ignores Cumulative Effects Evaluation Requirements

Also, since microplastics are a “cumulative effects” issue, I will further note TRPA's failure to implement provisions in COO 4.4.2 “Findings Necessary to Approve Any Project.” This failure is accomplished under the previously-described deficient approval processes. TRPA is very fond of reciting required findings in COO 4.4.1, often with no supporting “substantial evidence,” while ignoring COO 4.4.2 requirements entirely: “As part of the findings required by subparagraph 4.4.1, TRPA shall . . .” evaluate a number of threshold-related effects, and make specific findings in subparts A – F that address cumulative effects evaluations and planning, findings supported by substantial evidence. I haven't seen any examples or evidence of a recent assessment for “any project.” I could lodge a public records request . . . to compel TRPA to search for non-existent records. No. I assert they just don't do it, disregarding their own regulations, taking fraudulent actions unsupported by evidence. That administrative failure alone ought to be enough to undermine any project approval in court.

Suggestions for microplastics abatement are outlined in my Settlement Offer, Exhibit 5 of Attachment 1, pdf pp 74-76. COO 2.3.7 provides that TRPA can terminate an exemption if it finds an exempt activity may have a substantial effect. TRPA must stop illicit exemptions for, and approving of, projects with plastic structures in the shorezone and nearshore areas, including replacements in kind. These have led to gross contamination of the waters by toxic microplastics and other substantial effects. To continue such approvals and exemptions to the detriment of Lake Tahoe in pretended or actual ignorance puts TRPA and your permit clients at legal peril. I will continue to document and expose the culpability of the

Tahoe Regional Plastics Agency in microplastics contamination as opportunities arise. Stop violating the Compact. Do your job.

CONCLUDING REMARKS

TRPA is a kind of schizophrenic agency, with sociopathic tendencies. With one hand they support important funding and work *by others* needed for environmental restoration, while with the other they carry forward with egregious planning and regulatory deficiencies that are destroying Lake Tahoe for the foreseeable future, careless, under the past and current Boards and management. The discussion above should lay bare the many inconsistencies with the Compact in the illegal TRPA regulations, and how they fail to provide environmental protection. That is why I seek redress for these grievances widely affecting the public. I didn't go into the civil rights violations herein as those are briefed in my lawsuit filing (e.g., Attachment 2, pdf pp 22-25, 31) and the implications are very important to consider, so I refer the reader there.

Is it any wonder, under the circumstances presented here, that TRPA has failed to move the clarity needle deeper for Lake Tahoe while simultaneously approving thousands of development projects out of the public view under FONZEs and EAs? Not to me. TRPA doesn't develop the information needed for an EIS and approves FONZE after FONZE (or EA) with no public or partner-agency scrutiny. Most I've seen are fatally short on facts and analysis. TRPA executive staff is questionably competent in many respects, sad to say. Thus, TRPA hides from me and other detractors, ignores criticisms, and damages the environment project after project, year after year, decade after decade, with their false exemptions from EIS requirements, their illegal delegations to staff and other agencies, and all the rest of their egregious tactics that are resulting in degrading the Tahoe region, rosy threshold evaluations by TRPA notwithstanding (their "self-report card").

This information is placed in the public record to encourage action, as appropriate, by others who have struggled to understand TRPA regulations or commented against TRPA actions for failing to do what is required under the law. While I am not providing any specific legal advice here in comparing the TRPA regulations against the Congressional statute, I am going to suggest the TRPA will continue to act in flagrant violation of the Compact unless it is opposed. I've laid out a strong legal framework that anyone can vet for themselves or with their own legal counsel to pursue redress as they may. This could be through filing *writs of mandamus* or *quo warranto*, by filing complaints in court for specific projects or abuses, by contacting the President or their Congressional or state representatives or others, Attorney General offices, and anything else they can dream up, skipping all bogus hearings and appeals and the like and proceeding directly to court if necessary. The legal basis for appeals must be challenged. I am not suggesting frivolous or "nuisance" actions in any way. If those aggrieved refuse to take action TRPA will continue its abuses, we'll have the government we allow. The environment and Lake Tahoe will degrade, perhaps irreversibly as we've seen so far, with the public paying the bills and bearing the harms from TRPA misfeasance.

A Way Out

What a mess the TRPA regulations are! It's quite a lot to digest, and thus these writings have expanded as I went along. There are probably things I missed or understand incompletely, subject to revision. It's complicated in some ways, needlessly so in my view. I don't have a need to specify how the TRPA fixes what's broken. They can figure it out with public participation. My lawsuit and other comments in the TRPA public record provide suggestions as yet ignored. TRPA could post a list of applications received by date and processing status for public review, as the judge in my case suggested in a prior case *TRPA lost*, with references to identifiers and other application information so people can know what's coming and how to get the online details from TRPA's awful project database. I will hint that the regulatory changes needed could incorporate existing augmented processes used by TRPA, to an extent, to prepare and bring multiple non-controversial EIS documents, including those of a "programmatic" nature for an identified class of projects, and proposed permits before the Governing Board for consideration of approvals with due notice in TRPA's on-line agendas. TRPA could develop General Permits for specific classes of projects.

No more fraudulent exemptions. No more failures to prepare EIS documents. No more checklist-based staff approvals of permits. No more appeals. The latter will lighten the load. Most of the permit items would perhaps land on the Consent calendar of the agendas, with the caveat that **anyone so requesting removal from consent and opportunity for a public hearing on a matter or permit decision before the Governing Board shall be afforded the right to freely address the Governing Board.** Thus, civil rights would largely be restored. Most people won't want a hearing based on my experience, and many projects won't have them. If TRPA refuses these and other viable alternatives to the illegal programs identified herein, the grievances will remain and, until it proves more useful I frankly hope TRPA is derailed by the Trump administration or others and/or sued into compliance or oblivion, even if I have to be among those who will accomplish that. I am not opposed to sharing the important work and invite collaborations if you are aggrieved by a decision or inaction of the TRPA.

Issued by:

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Attachment 1: *Miller v. TRPA*: Motion for Summary Judgment/Motion to Supplement the Administrative Record

Attachment 2: *Miller v. TRPA*: Opposition to Cross-Motion For Summary Judgment and Reply to Opposition Motion For Summary Judgment

Attachment 3: *Miller v. TRPA*: Objections to Magistrate Judge's Findings and Recommendations

Attachment 4: Anna Von Reitz's **International Public Notice: Worldwide Dependency**

CC sans Attachments (available on request):

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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 ALAN MILLER,
11 Plaintiff,
12 v.
13 TAHOE REGIONAL PLANNING
14 AGENCY,
15 Defendant.

No. 2:22-CV-02113-KJM-AC

MOTION FOR SUMMARY JUDGMENT

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I. SUMMARY OF THE CASE

Tahoe Regional Planning Agency (TRPA) approved a Permit for a *faux*-pine macrotower, 112 feet high, in the City of South Lake Tahoe, California, in March 23, 2022. On August 5, 2022, TRPA responded to an application to revise the Project plans for the macrotower by issuing an exception to a prohibition in the TRPA regulations against excavation exceeding five feet in depth, to prevent interference with a below-ground water table. The exception approval allowed deepening the excavation from 7.5 feet to 13.5 feet, and doubling the amount of material removed from 25 to 50 cubic yards to accommodate the Applicant's design. TRPA approved the revised plans shortly after issuing the exception. I and others appealed the approval of the exception and the revised plans, including a stay request (denied) for the deepened excavation. What unfolded thereafter in the lead-up to the Appeal hearing was all sorts of illegal actions and machinations by TRPA culminating in an arbitrary and capricious denial of the Appeal before the TRPA Governing Board. This litigation followed with twelve separate claims for relief from August 5, 2022 to September 28, 2022, and one ongoing violation from October 3, 2022, seeking relief to set aside the revised Permit and dismantle the tower, and to impose civil liability on the TRPA to fund a court-appointed "special master" to prevent further abuses of discretion in TRPA regulatory actions through court oversight. This case is ripe for summary judgment as sought from this court based on the evidence and argument that follows, including information to supplement the administrative record as allowed in the court's discretion.

II. STANDARDS FOR JUDICIAL REVIEW

The reviewing entity is generally charged to determine on the basis of the AR whether the action taken was supported by the whole record, or was arbitrary and capricious, or not in accordance with law. If there are claims in the Plaintiff's lawsuit—*e.g.*, the agency process was corrupt or fraudulent, then materials outside of the AR can be introduced, and there may be an entitlement to limited discovery at the court's discretion, even when the case involves only reviewing an administrative decision. The court determined bad faith actions by TRPA may constitute grounds for supplementing the AR, for consideration and debate in motions and cross-motions. I'm grateful for the court allowing me leave to file

1 a separate motion to supplement the record in this case concurrently with this motion for summary
2 judgment per Magistrate Judge Claire' minute Order dated June 11, 2023.

3 This Motion for Summary Judgment (MSJ) realleges and incorporates by reference all paragraphs
4 in the Motion to Supplement the Administrative Record (MSAR) I filed concurrently with this motion.
5 The information therein is intended to further elucidate why TRPA deserves the maximum civil liability
6 and other relief the court may impose for the claims in this MSJ.

7 The Status Report filing followed shortly after I received the certified administrative record (AR),
8 with limited time for review of its 3,429 pages. Upon review of the AR, I am not contesting what is
9 presented within it, in the sense that it contains information that comprises the public record. However, that
10 information does not tell the complete story. The MSAR is intended to provide information missing from
11 or hidden in the record to give the court a more complete history on which to judge the merits of the case
12 and TRPA's actions in bad faith.

13 With regard to the claims in my case, I am following a general rule of law concerning judicial
14 review with regard to the AR, which is that the agency must justify its actions based on the public records
15 existing at the time the decision was made, not on "extra-record" evidence and findings produced after the
16 fact and inserted into the AR, as TRPA did in the Appeal hearing. To draw from case law, an analogy can
17 be drawn here with the court's findings in *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44
18 (1985) discussing,

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20 "[T]he focal point for judicial review should be the AR already in existence, not some new record
21 made initially in the reviewing court" (*Camp v. Pitts*, 411 U.S. 138, 142 (1973)). The task of the
22 reviewing court is to apply the appropriate APA standard of review, 5 U.S.C. § 706, to the agency
23 decision based on the record the agency presents to the reviewing court (*Citizens to Preserve
Overton Park v. Volpe*, 401 U.S. 402 (1971)).

24 Judicial review standards for TRPA are only a little different than the APA,¹ and first review was
25 by the TRPA Governing Board on the Interim Executive Director's (IED) action approving a prohibition

26 ¹ Compact Art. VI(5) ("In any legal action ...the scope of the judicial inquiry shall extend only to the questions of
27 whether the act or decision has been arbitrary, capricious or lacking substantial evidentiary support or whether the
28 agency has failed to proceed in a manner required by law"). The Compact supersedes the default APA where the two
conflict (see, *Edmond v. United States*, 520 U.S. 651, 657 (1997) (where a specific provision conflicts with a general
one, the specific governs)).

1 exception on August 5, 2022 and subsequent approval of revised plans. The Governing Board's legal
2 charge: determine if the IED acted arbitrarily and capriciously or not in accordance with law.² By analogy,
3 this court should first review whether the IED's action was supported on the basis of the AR already in
4 existence at the time of the Director's decision, not on some new record created by the reviewing body.
5 The AR prior to August 5, 2022 must be used to determine whether the IED's exception decision was
6 supported by the AR. If not, that constitutes grounds to set aside the IED's exception approval and for
7 relief.

8 The court would then further review whether the claims in this case are supported by the AR
9 through the conclusion. If the Governing Board's decision on the IED's decision was arbitrary and
10 capricious, or not in accordance with law, that also constitutes grounds to set aside the approval and for
11 relief. (With respect, I am not instructing the court, but rather putting forward the information I am
12 proceeding under as a *pro se* litigant, and aiming to dispel potential confusion from processes TRPA
13 employed through conclusion.) Reference also my comments to TRPA on judicial review starting at the
14 bottom of AR1289-AR1290 and AR1293.

15 16 **III. GENERAL COMMENTS ON THE ADMINISTRATIVE RECORD**

17 With an overview to the AR in this case, my pre-Appeal writings are lengthy and substantial, on a
18 variety of telecom-related subjects (as in my hearing testimony). In my view, the Defendant's public
19 record of primary, material interest for the prohibition exception granted consists of three sentences in the
20 August 5, 2022 exception letter (AR0269),

21 The Tahoe Regional Planning Agency (TRPA) staff has reviewed the Soils/Hydrologic Scoping
22 Report Application submitted in association with a monopine cell tower and equipment shelter.
23 The proposed excavation is **13.5 feet below ground surface**. It is not expected that groundwater
24 will be encountered in this location and the excavation is allowed pursuant to TRPA Code of
Ordinances §§ 33.3.6.A.2.a (accommodation of engineering requirements for above-ground
structures) and 33.3.6.A.2.d (public health and safety). (**emphasis** in original)

25
26 The record I made is replete with information on the failings of the "Soils/Hydrologic Scoping
27 Report Application." The parenthetical shorthand references quoted above reflect the broad thinking of the

28 ² These concepts must underlie the Governing Board's quasi-adjudicative function in appeals.

1 staff unrelated to the actual language in the Code. For subsection a., excavation per the Code is allowed
2 when “required” by law, not as a staff “accommodation” to the Applicant’s desires. For subsection d., the
3 letter states the excavation is “allowed” for public health and safety, when the Code requires that it must be
4 “necessary.” This approval letter was TRPA’s opportunity to discuss and explain their findings in light of
5 the whole record and there is nothing of substance. One of the sections is sufficient for an exception but
6 neither withstands legal scrutiny, as I’ll discuss under Claims 7 and 8.

7 The Notice of Appeal (NOA) was filed with the Affidavit for stay (AR0731-AR0755), followed
8 by lengthy emails concerning the illegal Appeal hearing schedule imposed and a letter of support on my
9 behalf concerning the applicable professional standards for soils/hydrologic investigations. This letter was
10 from an extraordinary professional associate, Lori Carpenter (AR1188-AR1205), who was directly and
11 significantly involved under contract in developing the methods TRPA is to follow concerning excavation
12 that may interfere with ground water. These important methods are now forgotten with staff turnovers and
13 a TRPA managerial change from engineers to lawyers in recent decades and now a public-relations
14 manager. The Statement of Appeal (SOA)(AR1287-AR1309) was filed early under duress and objection
15 on September 13, 2022, with its seven Exhibits, including my engineering analysis of impervious land
16 “coverage,” and I provided a comment letter (AR2863-AR2873) after the Staff Report for the Appeal was
17 published, before the hearing. In response, the five-page TRPA Staff Report and multiple Exhibits therein
18 (AR1584-AR1987) provided no record support for the staff approval.

19 The Staff Report for the Appeal in the AR is primarily a post-approval effort to insert new
20 information into the record while also attempting to limit the focus of the hearing and Board consideration
21 to the excavation exception alone (AR1586); the latter was improper with regard to issues raised in my
22 Affidavit about the scope of the incomplete application provided. Most arguments in my pre-Appeal
23 record are presented several times in the AR, so references herein serve to support the entire record I
24 provided.ⁱ

25 26 **IV. PROOF OF CLAIMS FOR RELIEF**

27 Claims herein are referenced to my First Amended Complaint (FAC), with all paragraphs in the
28 FAC hereby incorporated by reference. I hold with a strict interpretation of the statutes and regulations. In

1 general, an agency decision is arbitrary and capricious³: if the agency has relied on factors which Congress
2 has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an
3 explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it
4 could not be ascribed to a difference in view or the product of agency expertise.⁴ A court should invalidate
5 agency determinations that fail to “examine the relevant data and articulate a satisfactory explanation for
6 [the] action including a ‘rational connection between the facts found and the choice made.’”⁵ Courts must
7 “consider whether the decision was based on a consideration of the relevant factors and whether there has
8 been a clear error of judgment.”⁶ An agency decision that is the product of “illogical” or inconsistent
9 reasoning,⁷ that fails to consider an important factor relevant to its action, such as the policy effects of its
10 decision or vital aspects of the problem in the issue before it;⁸ or that fails to consider “less restrictive, yet
11 easily administered” regulatory alternatives,⁹ will similarly fail the arbitrary and capricious test. An agency
12 action that departs from a prior policy without acknowledging the change, or that creates an “unexplained
13 inconsistency” with prior policy is generally viewed as arbitrary and capricious.¹⁰ Pretextual
14 rationalizations for decisions are also arbitrary and capricious.¹¹ “The reasoned explanation requirement of
15 administrative law . . . is meant to ensure that agencies offer genuine justifications for important
16 decisions,”¹² therefore, pretexts are an example of bad faith or improper behavior which illegally subvert
17 due process. I move to have the court find the TRPA acted in an arbitrary and capricious manner for the
18 under-mentioned claims.

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20
21 ³ *Id.* (The Compact adopts the APA’s arbitrary and capricious review).

22 ⁴ *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.*, 463 U.S. 29, 42-44 (1983).

23 ⁵ *Id.*

24 ⁶ *Id.*

25 ⁷ *Am. Fed’n of Gov’t Emps., Local 2924 v. Fed. Labor Relations Auth.*, 470 F.3d 375, 380 (D.C. Cir. 2006).

26 ⁸ *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 698 F.3d 1101, 1124 (9th Cir. 2012).

27 ⁹ *Cin. Bell Tel. Co. v. FCC*, 69 F.3d 752, 761 (6th Cir. 1995).

28 ¹⁰ *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005).

¹¹ *Department of Commerce v. New York*, 139 S. Ct. 2551, 28-34, 47, 71 (2019) (holding action as arbitrary and capricious, based on a pretextual rationale; under a narrow exception to the general rule against judicial inquiry into the mental processes of administrative decisionmakers, such an inquiry may be warranted and may justify extra-record discovery, on a strong showing of bad faith or improper behavior; in order to permit meaningful judicial review, an agency must “disclose the basis” of its action; [t]he reasoned explanation requirement of administrative law, after all, is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public).

¹² *Id.*

1 A. Claim 1—August 5, 2022 Exception Letter. Plaintiff realleges and incorporates by
2 reference all preceding paragraphs herein. The August 5, 2022 exception letter was issued, asserting
3 compliance with requirements in Code § 33.3.6.A.2, letters a. & d. That the letter was issued is
4 uncontested fact.

5 WHAT THE LAW REQUIRES: Code § 33.3.6.A.2. states:

- 6 2. TRPA may approve exceptions to the prohibition of groundwater interception or
7 interference if TRPA finds that:
8 a. Excavation is required by the International Building Code (IBC) or local
building code for minimum depth below natural ground for above ground structures;
9 ...
10 d. It is necessary for the public safety and health....

11 WHAT TRPA DID: The August 5, 2022 letter approved an exception to the above-cited
12 prohibition without substantial fact-finding therein that the deepened excavation would not interfere with
13 ground water. With regard to subsection a., there is no public record from TRPA that cites a requirement
14 of the IBC or local building code. In my Affidavit for the stay, I cited relevant provisions of the “IBC” (as
15 currently codified) that preclude prescriptions with regard to designs by competent designers, stating that
16 the chosen design was due to Verizon alone, not any code prescription, and that there was nothing in any
17 code to preclude another design that would eliminate potential interference with ground water (AR0738-
18 AR0740). I challenged TRPA to refute that part of the Affidavit for the record, and produce the operative
19 code they applied on August 5, 2022.

20 Verizon wrote a letter dated August 24, 2022, full of specious claims—but no IBC code citation
21 (AR0887-AR8892). With nothing to refute my assertions, the Staff Report notes (AR1589), “Staff does
22 not apply this provision as strictly as desired by Miller.” This is a clear admission that the Codes reference
23 to IBC requirements or local code requirements is and was illegally ignored by TRPA,¹³ leaving the
24 matter of lifting prohibitions to prevent ground water interference to the arbitrary and capricious¹⁴ whim of
25 the staff and Board, as here, with absolutely nothing in the AR to support the illegal decision.

26 TRPA also cited “d. It is necessary for the public safety and health” to lift the prohibition and
27 allow interference with ground water table. Again, there is nothing provided in the AR prior to August 5,

28 ¹³ *Infra* note 25.

¹⁴ *Supra* note 4.

2022 that documents how TRPA determined the deepened excavation is “necessary for public safety and health.” I refuted such necessity findings at length in my Affidavit, showing the tower design standard applied doesn’t support public safety in an emergency (AR0738-AR0743) and Exhibit “B” (AR0753-AR0755). My civil engineering assessment is that the tower was designed without consideration of snow and ice loads and therefore a potential danger to life and property from collapse due to its tremendous height (112 feet) and weight (in excess of 15,000 pounds) (AR0168), among other reasons. These potential dangers are NOT refuted in the AR. The 10,000 pounds of tower plastics were not installed prior to the epic winter of 2022-2023, with severe snow and ice loads that collapsed many long-standing structures at Lake Tahoe. Plastics began to be installed the week of July 16, 2023.

The exception letter is arbitrary and capricious as it merely cites applicable code sections, states the project meets the applicable code requirements, and grants the exception. The only finding made in the letter is that ground water was not expected be encountered based on a cursory investigation report by the Permittee’s contractor, the Geotechnical Report (AR00046) from 2019. That report was re-filed on August 2, 2022, as the Revised Geotechnical Report (RGR) with the first detailed engineering information on the specific tower design (structural calculations), and no changes to the soils/hydrology assessments and findings (AR0154-AR0227). The exception letter was issued August 5, 2022, and the plan revisions were approved and stamped on August 17, 2022 (AR0665-AR0678), with construction on the foundation well underway under the March 2022 Permit. I filed the NOA and stay request on August 22, 2022, refuting that the RGR was professionally appropriate, correct or adequate to determine that interference to a ground water table would not occur, as required, at length in the record (*e.g.*, AR0743-AR0747, and later at AR1295-AR1296, AR2865-AR2866, Ms. Carpenter’s letter (AR1188-AR1205) and Claim 8, below).

B. Claim 2—Late Response for Stay Request. Plaintiff realleges and incorporates by reference all preceding paragraphs herein. Claim 2 pertains to a late response to the stay request.

WHAT THE LAW REQUIRES:

The Chairman of the Board shall review any request for a stay of a project or matter and the evidence submitted therewith, and any evidence of the hardship on the appellee, shall balance the equities and shall determine, within two working days of the request, whether or not a stay shall be issued. (ROP § 11.3)

1 WHAT TRPA DID: TRPA responded to the stay request three days after it was filed. The Appeal
2 and stay request was filed on August 22, 2022. On the third day TRPA responded, the first show of bad
3 faith by TRPA in this matter (see AR1182 email from General Counsel Marshall providing the Board
4 Chair's decision). In "balancing the equities" the Board Chair responded illegally, in bad faith depriving
5 Appellants of our due process rights under the ROP, and putting us in extreme and unanticipated
6 hardship¹⁵ to prepare our Statement of Appeal (SOA) and our case for both the Legal Review Committee
7 hearing, and the Appeal hearing by September 28, 2022, as illegally scheduled by the Chair. The equities
8 were unbalanced to prejudicially favor Verizon and suit TRPA.¹⁶ The Board Chair's stay response (AR
9 1186) included a prejudging of the outcome of the appeal, before the SOA was even filed, stating the
10 Appeal "has not demonstrated a substantial likelihood of success on the merits of his arguments that
11 TRPA staff erred in its approval of up to 6 additional feet of excavation." See, my replies objecting at
12 AR1184-AR1186, with some confusion under the surprise circumstances.

13 C. Claim 3—Advancement of Appeal Hearing Date. Plaintiff realleges and incorporates by
14 reference all preceding paragraphs herein. Claim 3 involves TRPA's illegal advancement of the Appeal
15 hearing date.

16 WHAT THE LAW REQUIRES: The Appeal hearing date must be scheduled in accordance with
17 the SOA filing, to the next regular Board meeting date the following month if filed on or before the 15th of
18 the month, or the next regular Board meeting date two months following if filed after the 15th of the
19 month (ROP §§ 11.2 & 11.4).¹⁷ Due process also prohibits *ad hoc* changing of rules in the middle of the
20 game—especially any tilting that's offensive to the ordinary notions good faith and fair dealing.¹⁸

21 ¹⁵ "The core of due process is the right to notice and a meaningful opportunity to be heard." *Lachance v. Erickson*,
22 522 U.S. 262, 266 (1998).

23 ¹⁶ *Ward v. Village of Monroeville*, 409 U.S. 57, 62 (1972) (litigant "is entitled to a neutral and detached judge in the
24 first instance"); *Goldberg v. Kelly*, 397 U.S. 254, 241 (1970) ("impartial decision maker is essential" to due process);
25 *Mathews v. Eldridge*, 424 U.S. 319, 325 n.4, 335, 344 (1976) (Due process right includes: an "impartial"
26 decisionmaker; a decision resting "solely on the legal rules and evidence adduced at the hearing"; a statement of
27 reasons for the decision and the evidence relied on. "[P]rocedural due process rules are shaped by the risk of error
28 inherent in the truthfinding process").

¹⁷ Agencies must abide by their own rules and regulations (*Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954)). "It is
rudimentary administrative law that discretion as to the substance of the ultimate decision does not confer discretion
to ignore the required procedures of decisionmaking" (*Bennett v. Spear*, 520 U.S. 154, 172 (1997)). See also, *supra*
note 10 (an agency action that departs from a prior policy without acknowledging the change, or that creates an
"unexplained inconsistency" with prior policy is generally viewed as arbitrary and capricious).

¹⁸ "[T]he substantive component of the Due Process Clause is violated" when action "can properly be characterized
as arbitrary, or conscience shocking, in a constitutional sense" (*County of Sacramento v. Lewis*, 523 U.S. 833, 846

1 WHAT TRPA DID: Advanced the Appeal hearing date based only on the August 22, 2022
2 Notice of Appeal (NOA) and stay request (to the scheduled regular Board meeting on September 22,
3 2022), and requested the SOA in seven days (rather than the 30) for Board consideration.

4 The Chair’s response cited ROP § 11.3, but this scheduling violated § 11.3, which states in
5 relevant part, “... pending a hearing on the appeal before the Board at its next regular meeting.” The
6 “next” regular Board meeting after the filing was on August 25, 2022. The earliest hearing date under
7 ROP §§ 11.2 & 11.4 was October 26 or November 16, depending on the SOA filing date. The scheduling
8 was not in accordance with law and pushed the hearing forward to assist Verizon to complete the
9 foundation construction before TRPA’s annual Oct 15 – May 1 requirements to cease usual construction
10 (before onset of winter conditions). At AR3405-AR3406, Mr. Marshall purportedly explains the rules to
11 accelerate the hearing to September 28, 2022, vaguely.

12 D. Claim 4—Requirements for a Complete Project Application. Plaintiff realleges and
13 incorporates by reference all preceding paragraphs herein. Claim 4 is concerned with requirements for a
14 complete application, as specified in ROP § 5.2.

15 WHAT THE LAW REQUIRES: A complete application in accordance ROP § 5.2 is required to
16 inform regulatory action to approve a Project or Project plan revision.

17 WHAT TRPA DID: TRPA approved the plan revision on August 5, 2022, though all specified
18 requirements for a “Complete Application” were not met (AR0237-AR0241). The Plan Revision was
19 approved despite many missing application elements. TRPA asserts these missing elements are covered
20 by general Permit conditions imposed on the Project (Defendant’s Answer to FAC March 28, 2023), *i.e.*,
21 for vegetation protection, site access, soil stockpiling, *etc.*, despite the absence of specific information and
22 provisions by the applicant to address potentially significant impacts, as required. Whether there is a
23 general Permit condition or not in the Permit is irrelevant to the application requirements. What is highly
24 relevant is that the application was incomplete.

25 E. Claim 5—Application Signer in Perjury. Plaintiff realleges and incorporates by reference
26 all preceding paragraphs herein. Claim 5 is that there is no application signature by the applicant in
27 accordance with ROP § 5.2.4. and that any such signature, if it exists, puts the signer in perjury.

28 (1998)).

1 WHAT THE LAW REQUIRES: ROP § 5.2 states:

2
3 An application shall be on a TRPA form prescribed by the Executive Director and shall be
4 executed by a person having sufficient legal interest to make application. . . A complete
5 application consists of the following:” [with eight listed requirements. § 5.2.4 requires the
6 applicant or agent shall provide:] “A dated signature, by or on behalf of the applicant,
7 attesting under penalty of perjury to the truth, completeness, and accuracy of the contents
8 of the application. . . .

9
10 WHAT TRPA DID: TRPA accepted and processed the application as if it was complete, without
11 notice that the application was incomplete and the Agent-signer committed perjury (AR0237-AR0241).
12 Allowing that e-signatures are routinely accepted in practice, if the e-signature in the AR is deemed valid,
13 the Agent’s application declaration must therefore be in perjury. The application form indicates no
14 application will be deemed complete without an IEC and other missing elements (per Claim 4). The
15 applicant can’t declare truthfully the application is “complete to the best of my knowledge” with the
16 missing elements, and TRPA shouldn’t have approved an incomplete application submitted with
17 statements in perjury.

18 F. Claim 6—Incomplete Application: Missing Initial Environmental Checklist. Plaintiff
19 realleges and incorporates by reference all preceding paragraphs herein. Claim 6 focuses on the
20 application’s missing Initial Environmental Checklist (IEC).

21 WHAT THE LAW REQUIRES: “Appropriate environmental documentation, in accordance with
22 Art. 6 of these Rules;” and, because the project is not exempt from appropriate environmental
23 documentation, the requirements of ROP § 6.4 apply:

24
25 The Executive Director shall devise and maintain an initial environmental checklist (IEC)
26 that shall be used, in conjunction with other available information, to determine whether
27 an environmental impact statement (EIS) shall be prepared for a project or other matter.
28 Based on the IEC, and other information known to TRPA, TRPA shall make one of the
findings, as appropriate, set forth in subsection 3.3.2 of the Code.

29
30 WHAT TRPA DID: There is nothing in the AR to indicate that any environmental review for the
31 plan revision application was accomplished by TRPA with regard to the IEC requirement is at the heart of
32 the permitting action, among the most critical elements, and thus my focus on it among the various
33 missing application elements. The Checkbox for the IEC was left blank on the application, indicating no

1 IEC was filed (AR0240). The IEC form supplied by the applicant is to be reviewed and verified by staff in
2 order to make a determination about potential adverse environmental effects. Nonetheless, staff
3 overlooked the IEC omission, and issued the exception letter and Permit revision with no environmental
4 review. The Staff Report totally misinformed the Board, first saying I claimed TRPA should prepare an
5 IEC, and then stating: “TRPA rules, however, only require supplemental environmental review for a
6 project revision if that revision involves new significant environmental effects not otherwise considered”
7 (AR1587). I pointed out in my Affidavit numerous potential adverse effects of the Project plan revisions
8 TRPA staff missed due to a failure to require and evaluate the IEC, besides ground water interference,
9 including for access routes to the dig site and from excess soil to manage on a tiny staging area (AR0735-
10 0736). These resulted in Permit violations, as discussed in my MSAR. The Staff Report misstated the
11 Code and rules, citing, “*See e.g.*, Rules of Procedure 6.15.1 (Grounds for Supplemental EISs).” This rule
12 doesn’t apply because no EIS or even an Environmental Assessment (EA) had been prepared by TRPA
13 for the Project approved in March 2022.

14 G. Claim 7—No Environmental Review Determination. Plaintiff realleges and incorporates
15 by reference all preceding paragraphs herein. Claim 7 concerns violation of ROP § 6.6 requirements for
16 staff to document the environmental review determination.

17 WHAT THE LAW REQUIRES:

18
19 If, based on the IEC or EA, and other available information, TRPA finds that a project or
20 matter will not have a significant effect on the environment, a statement of such finding
21 shall be placed in the project file maintained by TRPA and no further environmental
22 documentation shall be required.

23 WHAT TRPA DID: TRPA did no environmental review for the exception granted and the plan
24 revision. There is no valid IEC (including from 2019) or EA and no statement of finding in the file for the
25 exception based on the AR (There was no environmental review determination filed).

26 H. Claim 8—Incomplete Application: Missing Necessary Reports. Plaintiff realleges and
27 incorporates by reference all preceding paragraphs herein. Claim 8 concerns receipt of all necessary
28 reports to complete the application.

1 WHAT THE LAW REQUIRES: All reports required in ROP and checklist items in the online
2 application for a major plan revision must be provided.

3 WHAT TRPA DID: TRPA treated the plan revision application as a minor, insignificant plan
4 change, for which prior project reports would suffice, except for a required soils/ hydrological report. For
5 that, TRPA accepted a revised geotechnical report (RGR), unaltered from 2019 with respect to soils and
6 hydrology, as a valid basis for asserting the project would not interfere with or affect a ground water table.
7 The RGR was prepared by an unqualified professional without the field methods approved by TRPA in
8 advance, as required (ROP § 33.3.6.B.1).

9 The TRPA abused their discretion¹⁹ in justifying agency action from the RGR because this
10 evidence is inadmissible under the *Daubert* standard as applied to soils and hydrology associated with
11 wetland deliniation science. The factors that may be considered in determining whether the methodology
12 is valid are: (1) whether the theory or technique in question can be and has been tested; (2) whether it has
13 been subjected to peer review and publication; (3) its known or potential error rate; (4) the existence and
14 maintenance of standards controlling its operation; and (5) whether it has attracted widespread acceptance
15 within a relevant scientific community (*Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579
16 (1993)).

17 The RGR fails the *Daubert* standard because: (1) they used a technique which through testing has
18 been shown to be inadequate to determine the ground water boundary; (2) peer-reviewed literature does
19 not validate their method in establishing a groundwater boundary; (3) the RGR, being riddled with errors,
20 has a high known error rate; (4) there are no standards for using the RGR's drilled soil-profile analysis
21 technique for determining seasonal ground water presence; and (5) the wetland science has been practiced
22 for decades by professional wetland scientists in the regulatory arena.

23 The court should review the agency's decision to admit "expert" testimony or reports under the
24 *Daubert* standard. The standard of review for this inquiry is consistent with the level of scrutiny against all
25 other agency actions—namely, the abuse of discretion standard.²⁰ Furthermore, it would be appropriate to
26 apply this standard even if the RGR were to somehow fall short of the definition of scientific testimony

27 ¹⁹ Reliance on inadmissible evidence is "a clear error of judgment" and results in a decision that is the product of
28 "illogical" or inconsistent reasoning, and fails to consider an important factor relevant to its action.

²⁰ See, *General Electric Co. v. Joiner*, 522 U.S. 136 (1997).

1 because these factors may apply to non-scientific testimony, meaning “the testimony of engineers and
2 other experts who are not scientists.”²¹

3 To further illustrate egregiousness abuse of discretion, there are various valid scientific ways to
4 determine water tables occurring underground—*e.g.*, the U.S. Army Corps of Engineers’ (USACE)
5 published methodology and regulatory standards for wetland identification.²² The TRPA even deviated
6 from their own established internal procedures,²³ developed to be more protective of wetlands in the
7 Tahoe Basin—*i.e.*, “stream environment zones.” Their method only requires two criteria of the three-part
8 test (hydrology, vegetation and soils) for wetlands established in the USACE regulations for applying
9 protective standards and limitations—and may have passed muster with regard to the *Daubert* standard
10 when developed by Ms. Carpenter and others for TRPA regulatory purposes.

11 The staff reviewer—Julie Roll—lacks the qualifications to assess wetland science delineation
12 reports, and approved and forwarded an unqualified recommendation to the TRPA Governing Board.²⁴
13 The TRPA’s violation of procedural due process carried the substantive effect of depriving me of time to
14 develop and present this evidence and argument into the record of the Appeal. My Affidavit goes into
15 extensive detail concerning the deficiencies of the RGR to serve as a soils/hydrological report (AR0743-
16 AR0746), as does the Statement of Appeal at AR1245-AR1296, and my testimonies before the Legal
17 Committee (AR3399-AR3400) and the Governing Board (AR3414-AR3415) .

18 I. Claim 9—Prohibition of Excavation Interference with Ground Water Table. Plaintiff
19 realleges and incorporates by reference all preceding paragraphs herein. Claim 9 concerns prohibition of
20 excavation that may interfere with ground water. Code § 33.3.6.2. includes letters A & B as independent
21 requirements. Claim 9 concerns unmet requirements and criteria for an exception to prohibitions against
22 ground water interference associated with excavation greater than five feet, and approval on the basis of
23 Code § 33.3.6.A.2., letters a. & d.

24
25 ²¹ *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

26 ²² Environmental Laboratory. (1987). “*Corps of Engineers Wetlands Delineation Manual*,” Technical Report Y-87-1,
U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

27 ²³ *Supra* note 10 (an agency action that departs from a prior policy without acknowledging the change, or that creates
an “unexplained inconsistency” with prior policy is generally viewed as arbitrary and capricious).

28 ²⁴ More generally, the TRPA often does not have the scientific subject matter expertise to mitigate and filter defective
or inchoate development applications from reaching the Governing Board for approval.

1 WHAT THE LAW REQUIRES: If excavation will interfere with or intercept a seasonal high
2 water table, the excavation is prohibited unless TRPA finds a proposed action meets at least one criterion
3 (of ten) listed for an exception to the prohibition(Code § 33.3.6.A.2).

4 WHAT TRPA DID: Issued the August 5, 2022 exception approval letter citing two subsections of
5 Code § 33.3.6.A.2, parts a. & d., as the bases for approval.

6 A Code citation does not constitute a “finding,” because it sheds no light on the considerations,
7 analyses and decisional processes that support an administrative action. What I didn’t find in the
8 documents available online prior to August 5, 2022 is the TRPA’s findings to support the exception for
9 deepened excavation. I challenged the lack of actual “findings” in the Affidavit filed (AR0734-AR0741),
10 in the SOA, and in testimony. I asked them to prove “Excavation is required by the International Building
11 Code (IBC) or local building code for minimum depth below natural ground. . . .” based on IBC
12 limitations I discussed at length in my Affidavit prohibiting such design constraints (AR0738-AR0734).
13 The SR states TRPA doesn’t “strictly” apply that part of the Code, instead granting deference to designers
14 and local building officials at its discretion (AR1589). This is a frank admission of illegality because
15 TRPA has no discretion to ignore the Code.²⁵ There were no “findings” with facts and analyses supporting
16 that the prohibited ground water interference was “necessary for public safety and health” prior to August
17 5, 2022 based on the AR.²⁶

18 J. Claim 10—Conflict of Interest Violations. Plaintiff realleges and incorporates by
19 reference all preceding paragraphs herein. Claim 10 concerns conflict of interest violations by TRPA in
20 employing staff or contract workers to bolster the deficient application by Verizon.

21 WHAT THE LAW REQUIRES: In ROP § 8.4: “Employees shall not accept . . . present
22 compensation or arrange for future compensation for services already performed or to be performed, that
23 give rise to an actual conflict of interest or that create an appearance of a conflict of interest.”
24

25 ²⁵ “If the regulation’s text is unambiguous, [the court] give[s] no deference to the agency’s interpretation: ‘[t]he
26 regulation then just means what it means’” (*Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019)). *See also*, *Attias v.*
27 *Crandall*, 968 F.3d 931, 937 (9th Cir. 2020); *Larson v. Saul*, 967 F.3d 914, 922 (9th Cir. 2020), cert. denied sub
28 nom. *Larson v. Kijakazi*, No. 20-854, 2022 WL 199379 (U.S. Jan. 24, 2022)).

²⁶ That’s the end of the story in my view. For TRPA it was the lead-in to... turning the Appeal hearing basis on its
head, illegally, to produce and insert the needed and missing findings of fact into the AR long after the defective staff
approval.

1 WHAT TRPA DID: In the absence of a soils/hydrological report by a qualified professional for
2 the exception, subordinate employees paid by TRPA investigated the site of the excavation as I described
3 long after the August 5, 2022 approval, prepared reports supporting the employer's prior determination,
4 and used these inadmissible reports in the Appeal hearings. See additional extra-record information in the
5 MSAR supporting this violation at pp. 13-14. No subordinate employee should ever be placed in such a
6 position by the employer as a matter of law and ethics.

7 K. Claim 11—Impervious Land Coverage in Excess of Limitations. Plaintiff realleges and
8 incorporates by reference all preceding paragraphs herein. Claim 11 alleges the final plan revisions
9 stamped by TRPA allowed impervious land coverage in excess of what the Board granted prior approval
10 for due to plan-checking errors.

11 WHAT THE LAW REQUIRES: Land coverage planned, approved or built shall not be in excess
12 of allowable land coverage based on a verified coverage analysis by TRPA.

13 WHAT TRPA DID: Staff, approved revised construction plans that allowed building impervious
14 surfaces in excess of coverage limitations approved by the Governing Board. The revised plans with the
15 excess coverage were subsequently approved by the Governing Board in denying the Appeal.

16 Meeting coverage requirements for any TRPA project is of critical importance to the public, as I
17 briefed in my SOA (AR1305-AR1306) and FAC at pp. 21-22. In my SOA I developed coverage
18 computations for the revised plans, showing the work for others to follow.²⁷ I measured lengths with a
19 ruled tape of printed "screenshots" taken from scaled plans online, as the revised plans (public documents)
20 provided to me electronically could not be printed! I had to convert scales and compute the true coverage
21 values. (TRPA employs non-engineers to check and approve engineering plans, reports and computations,
22 improper under the rules of the California Board for Professional Engineers and Geologists).

23 The AR shows that the plans were approved in haste to get the revised Permit out on the Verizon
24 Project by staff engaged on another pressing assignment (AR0330 & AR0329). TRPA staff was unable to
25 understand the engineering analysis I presented for the record and make a reasoned determination, and
26 wrote falsely to the Board that the underground concrete foundation was not considered coverage

27
28 ²⁷ Exhibit 6 to my SOA is found in the AR at AR1356-AR1360 and marked-up as Attachment I to the SR (AR1975-AR1979).

1 (AR1977). I pointed out TRPA’s own verification of allowed coverage indicating the foundation is
2 coverage (AR0649 & AR1975—see, “CELL TOWER FOOTING in coverage data table”). The Board
3 overlooked all this and denied the Appeal.

4 TRPA couldn’t have computed the coverage correctly because its own coverage allocation for the
5 foundation was misunderstood by staff. In the table of verified approved coverage for the Project no
6 coverage remained unused on the site, thus no room for error. That’s okay until the errors were exposed,
7 and the coverage exceeded strict limitations. Based on the AR, TRPA provided no valid refutation of my
8 coverage analysis showing coverage in excess of allowable amounts, which is illegal to approve.

9 L. Claim 12—Illegal Appeal Hearing Voting Procedure. Plaintiff realleges and incorporates
10 by reference all preceding paragraphs herein. Claim 12 alleges the voting procedure employed by the
11 Governing Board for the Appeal hearing was incorrect and not in accordance with Compact law.

12 WHAT THE LAW REQUIRES: The Appeal hearing to grant a variance, an exception, to the
13 Code of Ordinances (Code) must be conducted under Compact Art. III(g)(1) which states, in relevant part:
14 “. . . for granting variances from the ordinances, rules and regulations, the vote of at least four of the
15 members of each State agreeing with the vote of at least four members of the other State shall be required
16 to take action. . .”

17 WHAT TRPA DID: Over Appellant objections, TRPA applied Compact Art. III(g)(2) for the
18 vote. The voting procedure used is beyond dispute; see the Staff Report for the Appeal hearing (AR1584)
19 which clearly specifies the second voting procedure, five of nine. This procedure was reasserted as correct
20 by Mr. Marshall in testimony over my objections without reference to the Compact Articles, again
21 misinforming the Board and shedding no true light on the point of order I raised in testimony. The simple
22 reason the voting procedure used is incorrect is because the Appeal was filed in opposition to the August
23 5, 2022 granting of a variance (aka exemption, or exception herein) to a Code prohibition for a plan
24 revision to the Permit approved on appeal by the Governing Board on March 23, 2022.

25 The Compact is clear and specific. There is a conflict between the Compact language in Art.
26 III(g)(1) and ROP § 2.4.4, as follows in relevant parts. See, Art. III(g)(1) quoted above. The ROP § 2.4.4
27 states: “B. Four Votes from Each State...[to] 4. Act upon an Executive Director Code interpretation...”
28 then throws a confusing and illegal overlay on the statute with ROP § 2.4.4., “C. Extraordinary Project

1 Vote (5/9)...[to] 5. Approve or modify a project;” indicating five California-member votes of nine total
2 votes are needed. The arbitrary staff insertion of “or modify” into subsection C.5., makes it inconsistent
3 with the voting prescribed by Congressional statute (possibly since the early ROP adoption decades ago)
4 and was used at the Appeal hearing to illegally bolster the record. Clearly the improper TRPA rule
5 enactment fails under hierarchy-of-law considerations; the statute preempts. TRPA’s improper use of
6 Compact Art. III(g)(2) demonstrates a clearly unlawful approach to implementing the vote, which must be
7 set aside as must the addition of the words “or modify” to ROP § 2.4.4.C.5. be set aside.

8 9 IV. PRAYER FOR RELIEF

10 The theory of law applied here is a plain reading and interpretation of the statute and applying the
11 lessons learned in high school civics class. Namely, that we live in Republic under a binding Constitution
12 for the United States, established following a revolution to limit government authority and intrusions on
13 the freedoms and liberties of the people under natural law and as established in the Bill of Rights. The
14 founding fathers knew governments left unchecked by the public in the Republic could become tyrannical,
15 and thus it is the right and duty of every citizen therein to exercise their legal rights for redress of
16 grievance. This is particularly true of misconduct by public officials, which the federal law supports,
17 including civil liability.

18 Compact Art. VI(l) states:

19
20 Any person who violates any provision of this compact or of any ordinance or regulation
21 of the agency or of any condition of approval imposed by the agency is subject to a civil
22 penalty not to exceed \$5,000. Any such person is subject to an additional civil penalty not
23 to exceed \$5,000 per day, for each day on which such a violation persists. In imposing the
24 penalties authorized by this subdivision, the court shall consider the nature of the violation
25 and shall impose a greater penalty if it was willful or resulted from gross negligence than
26 if it resulted from inadvertence or simple negligence.

27 Examining the elements, that TRPA is a juridical “person”²⁸ is accepted *juris* prudence. TRPA
28 violated the provisions under claims. “[O]r of any condition of approval imposed by the agency” has a

²⁸ A “person” subject to liability can be a local governing body (*see, Waggy v. Spokane County*, 594 F.3d 707, 713 (9th Cir. 2010)). TRPA is also an “agency” within the meaning of the Administrative Procedures Act (APA) (5 U.S. Code § 551(a), and TRPA alleges to be held to portions of the APA in TRPA Rules of Procedure § 15.3.1. The Compact supersedes the APA where the two conflict (*see, Edmond v. United States*, 520 U.S. 651, 657 (1997) (where

1 dual interpretation and may be thought of here as the Code imposed by the agency on itself as a condition
2 of approval, *e.g.*, a required finding in order to approve a project. TRPA violated the latter as set forth in
3 the claims, so is subject to the cited penalties, including for each day on which the excess coverage
4 violation persists. Considering the nature of the violations, which were both willful and negligent, the court
5 “shall impose a greater penalty” The egregious nature of the violations includes knowing and willful
6 violations of law, due process rights, civil rights to free speech (blocking comments from publication),
7 prejudicial actions, and arbitrary and capricious actions in violation of law. For one example, the staff
8 wrote and testified the foundation was not coverage (AR1977). The TRPA coverage table in the plans
9 indicates it is (AR0649); the latter is correct, but the Board negligently approved the incorrect
10 interpretation. While the violation of coverage allowances by staff before the hearing may have resulted
11 from inadvertence or simple negligence, when the deficiencies and contradictions were exposed at hearing
12 and the Board simply moved past them believing the staff in light of the evidence presented, that was a
13 willful or grossly negligent violation. The record is replete with willful and grossly negligent violations, as
14 discussed herein (and in my Motion to Supplement the AR).

15 The federal Clean Water Act (CWA, 33 U.S. Code § 1365) has provisions for citizen lawsuits and
16 sets ample precedent for the interpretation of Compact civil liability that follows. The CWA was adopted
17 by Congress in 1970, shortly following the adoption of the Compact in 1969, so these ideas were in play at
18 that time in Congress, that citizens should be able to sue for redress of violations by the agency. The CWA
19 sets forth similar provisions as the Compact:

20
21 Except as provided in subsection (b) of this section and section 1319(g)(6) of this title, any
citizen may commence a civil action on his own behalf—

22 (1) against any person (including (i) the United States, and (ii) any other governmental
instrumentality or agency to the extent permitted by the eleventh amendment to the
23 Constitution) who is alleged to be in violation of (A) an effluent standard or limitation
under this chapter or (B) an order issued by the Administrator or a State with respect to
such a standard or limitation, or

24 (2) against the Administrator where there is alleged a failure of the Administrator to
perform any act or duty under this chapter which is not discretionary with the
25 Administrator.

26 The district courts shall have jurisdiction, without regard to the amount in controversy or
the citizenship of the parties, to enforce such an effluent standard or limitation, or such an
27 order, or to order the Administrator to perform such act or duty, as the case may be, and to
apply any appropriate civil penalties under section 1319(d) of this title. . . .

28 a specific provision conflicts with a general one, the specific governs)).

1 (e) Statutory or common law rights not restricted
2 Nothing in this section shall restrict any right which any person (or class of persons) may
3 have under any statute or common law to seek enforcement of any effluent standard or
4 limitation or to seek any other relief (including relief against the Administrator or a State
5 agency).

6 With adoption of the CWA Congress got more specific about the matter of empowering citizens
7 than in the Compact. However, the liability framework in the Compact is similar, a precursor that was
8 improved on in the CWA. Public officials are expressly the litigation target together with “any person.” In
9 the same way, we have federal (interstate) waters at Lake Tahoe, and a bi-state Compact, but a more
10 limited authority than under the nationwide CWA provisions (which also apply at Lake Tahoe). Congress
11 clearly intended that the federal waters would be protected in this way. There is nothing in the plain
12 language of the Compact law to shield TRPA from civil liability.

13 In my FAC’s Statement for Relief (cite pp) I set forth a proposal for the Court to consider
14 appointing a “special master” funded by the civil liability imposed to oversee TRPA approval actions. The
15 Defendant has objected to that proposal (Answer to FAC, March 29, 2023), stating the court has no
16 authority. TRPA doesn’t want to be held accountable to the court under their own laws and rules. If the
17 TRPA did not plan to continue its abuses, there would be no issue with having oversight by a special
18 master. In the alternative, if the special master is not granted or possible, the liability must be paid to me.

19 Relief is requested for the 153 standing violations tallied in the FAC, with civil liability increasing
20 by \$5,000 daily for each day the tower, with its excess coverage, persists in violation. For purposes here,
21 the tower foundation construction is deemed complete as of October 3, 2022, based on photo evidence I
22 possess and the daily violation tally begins October 3, 2022.

23 For all the foregoing reasons, I seek summary judgment in my favor, with relief granted by
24 imposing the maximum penalties on TRPA for bad faith, and dismantling the tower on the bases I’ve
25 justified. I also seek relief from cost to prepare the AR (unknown) and the \$400 court filing fee. For this
26 relief, I pray.

27 ⁱ TRPA has issued nearly 1,000 permits annually in recent years. The fraudulent AR exemplifies how Lake Tahoe
28 region’s environmental qualities are being undermined one permit at a time, with everyone from Congress down
failing to understand, some \$660 billion of public money reportedly spent on ecologic restoration and counting, and
the jury still out as to whether the restoration of Lake Tahoe will happen under TRPA and all involved.

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Alan Miller
PO Box 7526
South Lake Tahoe CA 96158
(530) 542-0243
Plaintiff, in propria persona

**ORIGINAL
FILED**

JUL 24 2023

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALAN MILLER,

Plaintiff,

v.

TAHOE REGIONAL PLANNING
AGENCY,

Defendant.

No. 2:22-CV-02113-KJM-AC

MOTION FOR SUMMARY JUDGMENT

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19 Relief is requested for the 153 standing violations tallied in the FAC, with civil liability increasing
20 by \$5,000 daily for each day the tower, with its excess coverage, persists in violation. For purposes here,
21 the tower foundation construction is deemed complete as of October 3, 2022, based on photo evidence I
22 possess and the daily violation tally begins October 3, 2022.

23 For all the foregoing reasons, I seek summary judgment in my favor, with relief granted by
24 imposing the maximum penalties on TRPA for bad faith, and dismantling the tower on the bases I've
25 justified. I also seek relief from cost to prepare the AR (unknown) and the \$400 court filing fee. For this
26 relief, I pray.

27 ⁱ TRPA has issued nearly 1,000 permits annually in recent years. The fraudulent AR exemplifies how Lake Tahoe
28 region's environmental qualities are being undermined one permit at a time, with everyone from Congress down
failing to understand, some \$660 billion of public money reportedly spent on ecologic restoration and counting, and
the jury still out as to whether the restoration of Lake Tahoe will happen under TRPA and all involved.



19 July 24, 2023

**ORIGINAL
FILED**

OCT 20 2023

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALAN MILLER,

Plaintiff,

v.

TAHOE REGIONAL PLANNING
AGENCY,

Defendant.

No. 2:22-cv-02113-KJM-AC

**OPPOSITION TO CROSS-MOTION FOR
SUMMARY JUDGMENT**

AND

**REPLY TO OPPOSITION MOTION FOR
SUMMARY JUDGMENT**

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16 Plaintiff's Reply And Opposition To Defendant TRPA's Opposition To Plaintiff's Motion To
17 Supplement The Administrative Record p.6.

I. INTRODUCTION TO THE TRPA RABBIT HOLE

Plaintiff adopts by reference all prior pleadings, motions, and exhibits (Fed. R. Civ. P. 10(c)). Pursuant to Fed. R. Civ. P.7(a)(4), Local Rule 261(d), Judge Claire’s Standing Orders, the June 8, 2023 Order, and the August 30, 2023 Stipulation and Order to Extend Summary Judgment Deadlines, Plaintiff Alan Miller submits this Reply and Opposition (REPO) motion against Defendant Tahoe Regional Planning Agency’s (TRPA) Combined Opposition to Plaintiff’s Motion for Summary Judgment and Cross-Motion for Summary Judgment (OSJ or ECF 35). See the Tahoe Regional Planning Compact (Compact) Art. I(a), esp. (1) – (7), and (10). See esp. Art.(c) from which this litigation stems based on the administrative record (AR, ECF 22, 23).

Briefly characterizing ECF 35, sophistry throwing dust in the eyes of the court, the Defendant proposes a model for judicial review which would grant it wide deference and discretion while eviscerating any court review discretion. Herein I will prove beyond dispute that TRPA has enacted illegal regulations that subvert the Compact and is running roughshod and lawlessly over the public in abandonment of its charter through TRPA *following* illegal rules it has enacted, as well as *deviating* from them in bad faith. These violations have resulted in personal injury to the liberties and legitimate interests of me and others through deprivations of rights, and injury to the environment of the Lake Tahoe region which I hold sacred. This case will take a strange turn based on additional research and findings that support summary judgment in my favor.¹ The court has the opportunity and duty to strike down the illegal regulations and restore Lake Tahoe and the region by restoring the rule of law. The future of Lake Tahoe and protection of its precious values, beyond measure, is literally in your hands.

II. VIOLATIONS OF LAW

A. AGENCY REGULATIONS THAT VIOLATE STATUTE

1. Agency Regulations Contrary to Compact Law Are Invalid

It is a settled matter of law that an agency can’t adopt and implement regulations that subvert its organic statute and the will of the enactor(s).² In view of its longstanding, ongoing implementation of illegal regulations the court should grant no deference to TRPA in this case, nor bow to its discretion. I implore the court to strike down the invalid regulations, invalidate the approval of the tower and provide remedy through special master oversight of TRPA.

¹ With my unexpected discovery of the regulations in violation of the Compact, my prior Motion for Summary Judgment (MSJ) and Motion to Supplement the Administrative Record (MSAR) must be reinterpreted somewhat by the court, granting me deference concerning such things as the serial judicial review model I discussed at MSJ p.2,7-p.3,14. The fact that TRPA doesn’t follow such a process under the illegal regulations bolsters discussions herein of concepts of violations of basic civil rights through faulty regulations.

² *Decker v. Northwest Environmental Defense Center*, 568 U.S. 597, 608 (2013) (Regulations, in order to be valid, must be consistent with the statute under which they are promulgated; Case becomes “moot” only when it is impossible for a court to grant any effectual relief whatever to the prevailing party); *U.S. v. Larionoff*, 431 U.S. 864, 873 (1977) (In order to be valid, regulations must be consistent with the statute under which they are promulgated); *Credit One Bank, N.A. v. Hestrin*, 60 F.4th 1220, 1231 (9th Cir. 2023) (Agency regulation can’t trump Supreme Court or Congress).

1 Illegal delegation is a clear abuse of discretion that disenfranchises the public in this way: While the Compact sets the
2 expectation that approving a “variance” or “project permit” requires a recorded vote from the Board members (BMs), which
3 must occur at a noticed public meeting with a published agenda, the regulations dispense with all of that for adopting *most*
4 variances and project approvals, with TRPA processing upwards of 1,000 permits annually in recent years, tens of thousands of
5 approvals over the decades. Under the regulations TRPA adopted for itself, all required public participation is precluded unless a
6 costly appeal is filed and a hearing is granted. It is under these illegal rules that TRPA claims no public noticing of the variance
7 approval was required for the variance approval (AR1587), disenfranchising the appellants and the public in general.

8 2. Regulations That Illegally Delegate Governing Board Authority To Executive Director And Hearing Officers For 9 Variance And Permit Approvals

10 At the Appeal I said I I don’t agree with the voting procedure is in accord with the Compact.”³ Art.III(g) provides voting
11 procedures that are at issue in this case. For approving “variances” from the Code, Art.III(g)(1) is specified, while Art.III(g)(2)
12 provides voting procedures for project approvals. A “vote” may only occur on an application for a variance or project by placing
13 the matter on an agenda for a public meeting of the Governing Board (GB) with a public notice as required, and opportunity to
14 comment on the variance or project application and otherwise participate in the public meeting concerning the matter, with the
15 “vote” following that.

16 Decades ago, TRPA adopted its Code of Ordinances (COO) and Rules of Procedure (ROP) (jointly, agency-adopted
17 regulations, or simply regulations herein) with provisions contrary to the Compact for issuing approvals of variances and
18 projects. These illegal regulations assign the Executive Director (ED) and the Hearings Officer (HO) the discretionary authority
19 to issue variances and project approvals in the absence of a “vote” by the BMs at a GB meeting. Any such exercise of authority
20 is contrary to Compact delegation clauses⁴ and illegal and therefore a prejudicial abuse of discretion.

21 In enacting and implementing the regulations TRPA deprived the people of all their fundamental civil rights appurtenant
22 to a BM “vote” in the absence of an Appeal hearing, which I complained of bitterly in my Notice of Appeal’s (NOA) affidavit
23 (AR0748). While the adoption of these regulations was likely done for agency efficiency⁵ undreamt of by the enactors, the result
24 is a regulatory scheme contrary to Compact law that deprives the public, myself included, of its fundamental civil rights to
25 address the BMs at a duly noticed public meeting, and eliminates prescribed BM vote recording concerning approvals of

26 ³ See AR3414. TRPA audio recording at 2 hours, 51 minutes, *available at* <https://www.trpa.gov/2022/09/?cat=9>.

27 ⁴ Art.X., (b) and SEC 4.

28 ⁵ *Stanley v. Illinois*, 405 U.S. 645, 656 (1972) (the Constitution recognizes higher values than speed and efficiency; the Bill of Rights in general, and the due process clause in particular, were designed to protect the fragile values of vulnerable citizenry from the overbearing concern for efficiency and efficacy...).

1 proposed variances and project permits, in the absence of an appeal filing and payment of a non-trivial fee (currently over
2 \$1,200) for all illegally delegated approvals not exempt from regulation. The TRPA regulations are riddled with inconsistencies
3 with the Compact in all categories of projects not exempt from permit requirements, as well as for variances from the ordinances
4 in the COO.

5 The following regulations contain illegal delegations that are contrary to the Compact’s “vote” requirements and are
6 therefore invalid.⁶ From the COO: 2.2.2., A.2 - C.2, E.2., F.2 & G. The absence of D.2. for “Public Service” facilities is highly
7 significant because the COO provides no support for the decisions from: (1) the HO Appeal hearing for the Project held in
8 October 2021; and (2) the March 2022 Governing Board (GB) Appeal hearing that followed it. The court should give these
9 decisions no deference and vacate them, together with these regulations. Also, COO 2.2.3. From the ROP: 13.9.; 5.16. (except
10 as applies to “exempt” activity); 5.17. (applicable to ED); 5.20.; 6.21.; 9.19.5. – 9.19.7.; 10.6.2.; (appeals) 11, 11.1., 11.2.; 11.5.,
11 11.6.; 12.7.2.; & 14⁷. All of these regulations inconsistent with the Compact were enacted with a prejudicial abuse of discretion
12 as defined by the Compact.

13 By its use of dual “final action” language in the regulations contrary to the intent of Congress and the states, in the absence
14 of an appeal on a variance or project approval by the ED or HO, the approval currently stands in fact and legally (improperly) as
15 a “final action” for all purposes under the regulations—but not under the Compact requirements for any project or variance.
16 TRPA chose to call its delegated approvals “final action” in the regulations because that is precisely what they are (functionally)
17 after the 21-day appeal period has passed. Then, TRPA invokes limitations that bar further appeals or litigation as untimely on
18 the delegated “final action,” thereby depriving applicants, the general public and appellants of their due process rights for redress.
19 Therefore, the delegated approval functions to constitute “final action” under the operation of law for the vast majority of
20 variances and permits.⁸

21 3. How The Regulations Disenfranchise The Public And Violate Civil Rights To Due Process And Equal Protection

22 With no cost to attend and participate in a public meeting and adjudication of a variance request or project approval,
23 TRPA charges a fee currently in excess of \$1,200 to appeal a decision of the ED or HO and request a hearing before the GB, a
24 sizeable sum meant to chill public input and exercise of due process liberties, rights and privileges. No fee paid, no appeal. If an

25 ⁶ These are the regulations I am aware of that are inconsistent with the Compact. To quote them would far exceed my brief page limit. Nearly all bear
26 directly on, or flow from, this Project or case. The following are included, as follows, for completeness. COO 2.5. & 2.6. are suspect concerning
27 interagency agreements and illegal delegations *sans* review (see ROP 13.9.2.); and all of COO 53 is suspect, esp. 53.6.4. & 53.6.5; ROP 5.14 (applicable
28 to ED).

⁷ I pointed out regulatory inconsistencies TRPA did not address in MSJ 16; 9.

⁸ The Compact does not allow that the ED or HO can approve a variance or project just because it’s not appealed. ALL such approval authority over
variances and projects was vested with the GB through voting at its public meetings, with TRPA charged to follow the law Congress established.

1 appeal is filed, TRPA can then proceed with justifications post-hoc to the staff approval and disenfranchise its detractors at a
2 subsequent appeal hearing, as in this case. The first essential of environmental review is notice and public involvement.⁹ By
3 dispensing with public notice,¹⁰ TRPA thwarts the public's opportunities to participate in decision-making processes¹¹ prior to
4 the staff's so-called "final action" when the opportunity to freely address the GB orally or in writing pre-approval is a liberty the
5 public must freely enjoy under the Compact and is deprived of by the regulations.

6 4. Regulations Omit Reference To Variance and Approval Requirements Germane To This Case

7 Art.III(g)(1) refers to "variances from the ordinances" whereas relevant TRPA regulations refer to "exceptions" and
8 "exemptions" throughout the COO and ROP, not "variances." TRPA has no means to approve a "variance" under its
9 regulations, yet does so routinely with these functionally equivalent words for TRPA (and court) purposes. The "exception"
10 approval given August 5, 2022 for the deeper excavation under COO 33.3.6. must therefore constitute a "variance" approval for
11 the Project variance to impact groundwater resources (henceforth "Variance").

12 B. AGENCY ACTIONS THAT VIOLATE STATUTE OR REGULATIONS

13 1. Violations of Mandatory Administrative Requirements are A Prejudicial Abuse of Discretion As Defined by the
14 Compact¹²

15 This entire Variance approval, Plan Revision approval, and Appeal proceeding was an illegal sham, a miscarriage of
16 justice carried out under color of law, and the approval issued by the GB in a manner contrary to law through the Appeal denial
17 must also be overturned as a matter of law and a prejudicial abuse of discretion.

18 2. Prime Examples Of Violations In The AR And My Court Filings; A Non-Exhaustive Listing

19 The actions in the header above could fill a volume in this action alone. There is little need to repeat the findings of my
20

21 ⁹ *ForestKeeper v. Elliott*, 50 F.Supp.3d 1371, 1377 (E.D. C.A. 2014) (Council on Environmental Quality (CEQ) regulations mandating public
22 involvement in preparing environmental assessment (EA) and diligent efforts to involve the public in preparing and implementing NEPA procedures are
substantive rules whose violation may invalidate an agency action).

23 ¹⁰ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 321 (1950) ("Publication may theoretically be available for all the world to see, but it is
24 too much in our day to suppose that each or any individual beneficiary does or could examine all that is published to see if something may be tucked
away in it that affects his property interests. We have before indicated in reference to notice by publication that, 'Great caution should be used not to let
fiction deny the fair play that can be secured only by a pretty close adhesion to fact.'").

25 ¹¹ It becomes the task of the public to track down unnoticed applications and staff approvals, through TRPA's complex online application tracking
26 systems; catch us if you can, and it will cost you. It does not publish lists of applications received and approved by staff in a readily-accessible online
format, preferring to do its work for the public in the dark. One must have specific Project information to look up a project or variance application.
Chilling.

27 ¹² *U.S. v. Nixon*, 418 U.S. 683, 695 (1974) (so long as regulation was extant, it had force of law, Executive Branch was bound by it, and United States as
28 sovereign composed of three branches was bound to respect and enforce it); *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (objecting to
administrative body's "failure to exercise its own discretion, contrary to existing valid regulations"); *Service v. Dulles*, 354 U.S. 363, 388 (1957)
("Secretary...could not, so long as the Regulations remained unchanged, proceed without regard to them"); *Vitarelli v. Seaton*, 359 U.S. 535, 539-40
(1959) ("Secretary...was bound by the regulations which he himself had promulgated").

MSJ and MSAR. For the sake of brevity, these are examples about which more can be written.

Complete application requirements are unmet (see ROP 5.2.1–5.2.8 concerning requirements for a complete application). The regulations are nondiscretionary as to what must be provided for a complete application. Only the *contents* of the elements may be reviewed with discretion to determine if the requirements are met. This goes for all application elements, including many TRPA did not obtain prior to “final action” by the staff (see AR2979 & AR3399-AR3400 for discussion).

Environmental review requirements are unmet (see MSJ 10:14-11:13). TRPA cites inapplicable regulations (OSJ 17:7-9; see AR2970 & MSJ 10:6-13). There was no environmental document or review of any kind in the AR and therefore nothing to “supplement”, as I discussed. The Compact’s purpose is to ensure that TRPA takes a “hard look” at environmental consequences of its proposed actions before deciding to proceed on a project,¹³ and probable environmental consequences of a project when brought to its attention by the public, and did not. Environmental law mandates public involvement and diligent efforts to involve the public in preparing implementing environmental review procedures.¹⁴ For meaningful consideration during the environmental review process, an issue need be raised using precise legal formulations, as long as enough clarity is provided that a decision maker understands the issue.¹⁵ TRPA may not defer consideration of these consequences to a later date, and the Compact requires consideration of potential impact before action takes place.¹⁶ TRPA has no programmatic environmental impact statement (EIS) or other document to satisfy its obligations under the Compact for this site-specific Project.¹⁷ TRPA cannot ignore cumulative impacts¹⁸ from multiple revisions of the same project, or multiple similar projects, and may not piecemeal a project into multiple actions, as here, to duck just below the threshold of more stringent environmental review.¹⁹ These concepts refute TRPA’s contentions on Claims 1 (OSJ I.C.1.) and 9 (OSJ 18:18), and Claims 4, 6 & 7 at OSJ 16:8, 16:22, 17:3-5 & 17:23, respectively. There is a cause of action facially created under the Compact’s judicial review provision where any aggrieved person may stand to sue with its zone of interests whenever TRPA violates its rules or does not proceed in a manner

¹³ *ForestKeeper v. La Price*, 270 F.Supp.3d 1182, 1211 (E.D. C.A., 2017) (NEPA’s purpose is to ensure that agencies take a “hard look” at the environmental consequences of their proposed actions before deciding to proceed).

¹⁴ *Id.* See also, *Andrus v. Sierra Club*, 442 U.S. 347, 358 (1979) (Interpretation of NEPA by Council on Environmental Quality is entitled to substantial deference); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 355-356 (1989) (Forest Service could rely on Council on Environmental Quality regulation).

¹⁵ *Protect Our Communities Foundation v. LaCounte*, 939 F.3d 1029, 1037 (9th Cir. 2019).

¹⁶ *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1380 (9th Cir. 1998).

¹⁷ *Supra* note 15.

¹⁸ 40 C.F.R. §§ 1501.3(b), 1501.9(e)(1), & 1508.25(a)(2) (“Cumulative impacts” are those impacts “that result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency...or person undertakes such other actions”).

¹⁹ *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 894 (9th Cir. 2002) (“connected,” “cumulative” and “similar” agency actions must be considered together in single review document to prevent agency from dividing project into multiple actions, each of which individually has insignificant environmental impact, but which collectively have substantial impact); *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1313 (9th Cir. 1990) (NEPA requires that where several actions have cumulative or synergistic environmental effect, that consequence must be considered together in environmental review).

1 required by law.

2 When new information later shows that the remaining action will affect the quality of the human environment in a
3 significant manner or to a significant extent not already considered, TRPA must supplement its environmental review to
4 document the agency's "hard look" at new information.²⁰ TRPA didn't consider the information prior to the staff approval,
5 evaluating its impact, and supporting its decision not to supplement with a statement of explanation or additional data. TRPA is
6 barred from now supplementing environmental review to analyze information the agency knew at the time it failed to conduct
7 the original environmental review.²¹ New information may alter results of its original environmental analysis, and TRPA must
8 continue to take hard look²² at environmental effects of its planned action, especially when it's sufficient to show that remaining
9 action will affect the quality of the human environment in a significant manner or to a significant extent not already considered.²³
10 The AR demonstrates that TRPA systematically failed to act under this duty as required by law, which is a prejudicial abuse of
11 discretion *per se*.

12 TRPA failed to take a hard look at Project impacts on endangered and threatened wildlife in violation of environmental
13 review procedures, which invalidates agency action. On multiple occasions throughout the approval process, the public raised
14 numerous issues with enough clarity that TRPA understood the issues raised. The information provided included peer-reviewed
15 scientific literature on specific impacts of the Project to human health, flora and wildlife.²⁴ It also included information about
16 wildlife sightings in the Project vicinity.

17 TRPA ignored multiple reports that the federally endangered Sierra Nevada Yellow-Legged Frog²⁵ may be living in the
18 nearby stream environment zones and could be affected by the Project (AR2900-AR2964 & AR2788-AR2853).²⁶ TRPA failed
19 to respond to a photographic report of this species sighted less than 500 feet from the Project (AR2954-AR2956 & AR2843-
20

21 ²⁰ *Supra* note 13.

22 ²¹ *Id.*

23 ²² *Cf., Conservation Congress v. Finley*, 774 F.3d 611, 621 (2014) (Courts employ a rule of reason to decide whether an environmental review contains a
reasonably thorough discussion of the significant aspects of probable environmental consequences, as required by NEPA; this standard is considered
essentially the same as the standard of abuse of discretion, and the court's analysis under it consists of insuring that the agency took a hard look at the
environmental impacts).

24 ²³ *Supra* note 15.

25 ²⁴ New information may combine with prior information provided by public to trigger probable harm to wildlife and fauna. Prior information is *available*
at https://tahoeregionalplanning-my.sharepoint.com/:f/g/personal/gbalkwell_trpa_org/Eq84iynlGG5MkXinedlYKAIBBqwijVBTJCJC3hqhCs5uxQ?e=X8HsS7. "Judicial notice is
appropriate for records and reports of administrative bodies" (*United States v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943, 955 (9th
Cir. 2008)).

27 ²⁵ 50 CFR § 17.11(h) ("The 'List of Endangered and Threatened Wildlife' is provided in the table in this paragraph. . . Common name[:]
Frog, Sierra Nevada yellow-legged | Scientific name[:]
Rana sierra | Where listed[:]
Wherever found | Status[:]
E[ndangered] | Listing citations and applicable rules[:]
79 FR 24255, 4/29/2014; 50 CFR § 17.95(d). CH").

28 ²⁶ I mentioned my own concern about the impact of the project, on *inter alia*, "frogs" (*E.g.*, AR0743, AR1320, AR 1604, & AR2748).

1 AR2845).²⁷ This is outrageous in light that the Tahoe region contains critical habitat for the Sierra Nevada Yellow-Legged
2 Frog²⁸ yet, for over a decade, TRPA has refused to even acknowledge this fact by including the species in its Environmental
3 Threshold Carrying Capacities²⁹ for wildlife as mandated by the Compact. Because Congress consciously decided to give
4 endangered species priority over the “primary missions” of agencies under federal law,³⁰ TRPA did not have the discretion to
5 ignore this information³¹ or proceed with the Project without appropriate environmental review³²—which may have required
6 soliciting a biological opinion.³³ This abuse alone is grounds for the court to invalidate the Project approval.³⁴ Nor can it be said
7 that a “reasonable mind might accept” this particular evidentiary record as “adequate to support a conclusion”—that the project
8 risked no significant effect on the environment—as required under the “substantial evidence” standard of review.³⁵ That would
9 be incorrect.

10 Stay response requirements are unmet. In responding to the stay request, and passing on the opportunity to schedule a
11 public hearing at the next meeting (MSJ 8:11-12), all the Chair must do is wait for the arrival of the SOA to schedule the Appeal
12 hearing (ROP 11). There is no discretion. It was this failure to follow the law and premature illegal scheduling of the hearing that
13 showed bad faith, violated due process and caused prejudicial hardships in preparing and defending the Appeal on short notice,
14 not so much the illegal day-late response as TRPA misrepresents (OSJ 14:1-2).

15 3. TRPA Has Not Taken “Final Action” on the Variance Application Or The Variance Appeal

16 TRPA points out my SOA did not object to the voting procedure used and asserts I “therefore didn’t preserve the issue”
17 (CSJ 19:22 – 20:7). I disagree that the “error was harmless” (*id.*). I didn’t know what procedure would be used as the Staff
18 Report hadn’t been published. To refute TRPA’s assertion, I refer you to my testimony on p. 2, above, and AR3414.

19 TRPA held an Appeal Hearing on a “Plan Revision” approval in response to an Appeal filing against a variance approval.
20

21 ²⁷ See also, AR2748.

22 ²⁸ 50 CFR § 17.95(d); 81 FR 59045 59119, 59076, 59096, 59099 (08/26/2016) (“Designation of Critical Habitat for the Sierra Nevada Yellow-Legged
23 Frog, the Northern DPS of the Mountain Yellow-Legged Frog, and the Yosemite Toad; Final Rule”) (Subunits 2D & 2E).

24 ²⁹ Available at <https://www.trpa.gov/regional-plan/#thresholds>.

25 ³⁰ *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978); *National Wildlife Federation v. National Marine Fisheries Service*, 524 F.3d 917 (9th Cir.
26 2008).

27 ³¹ *Supra* note 13; see also, *Credit One Bank, N.A. v. Hestrin*, 60 F.4th 1220, 1231 (9th Cir. 2023) (An agency’s regulation cannot trump the Supreme Court
28 or Congress); *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989).

29 ³² *Bennett v. Spear*, 520 U.S. 154, 172 (1997) (“It is rudimentary administrative law that discretion as to the substance of the ultimate decision does not
30 confer discretion to ignore the required procedures of decisionmaking”).

31 ³³ *United States Fish and Wildlife Service v. Sierra Club, Inc.*, 141 S.Ct. 777, 783-784 (2021). *Cf.*, 16 U.S.C. § 1536; 40 U.S.C. § 4332; 40 CFR §§
32 402.12, 402.13, 402.14, 402.16, 1502.24, & 1508.1.

33 ³⁴ *Natural Resources Defense Council v. U.S. E.P.A.*, 38 F.4th 34 (9th Cir. 2022) (When petitioners allege procedural violation, redressability prong of
34 standing is satisfied by showing that agency decision could be influenced by procedures at issue).

35 ³⁵ *Dickinson v. Zurko*, 527 U.S. 150, 162, 164 (1999) (a reviewing court reviews an agency’s reasoning to determine whether it is “arbitrary” or
36 “capricious,” or, if bound up with a record-based factual conclusion, to determine whether it is supported by “substantial evidence”)

1 See 25:8-11, where TRPA clarifies: “Moreover, the Plan Revision was not a ‘variance.’ The Compact limits a ‘variance’ to a
2 ‘variance from the ordinances or rules and regulations. . . .’ Art. III(g)(1). . . .” This shows TRPA erroneously acted on an appeal to
3 a Plan Revision when the fact is we appealed a variance. (AR0731-AR0755) TRPA’s introduction (OSJ 7:2) also misrepresents
4 the facts. The Appeal was filed on the August 5, 2022 Interim Executive Director’s (IED) approval (AR0269) of a Variance to
5 code prohibiting potential interference with a ground water table *in association with* an application for a proposed Plan Revision
6 (COO 33.3.6). The Variance approval allowed the August 17, 2022, approval of the applicant’s “Plan Revision.”³⁶

7 Another interpretation the court must consider follows from TRPA conflating the Variance and Plan Revision approvals
8 as one. The BMs were only required to vote on our Appeal application under Art.(g)(1) for the Variance. Each EID approval
9 was separately issued as stated (CSJ 5:14 (Variance) and CSJ 5:24-25 (Plan Revision)). I was charged only one fee by TRPA
10 when I filed my NOA concerning the Variance approval. Thus, TRPA charged me a filing fee under the ROP for my NOA on
11 the Variance and gave me a product with multiple defects in breach of contract,³⁷ an Appeal hearing for a Plan Revision (voted
12 accordingly). Since the BMs voted only once under Art.(g)(2), which is inapplicable to approval of a variance in any event, the
13 presumed hearing and denial of the Variance Appeal must be set aside as a matter of law and a prejudicial abuse of discretion as
14 a vote on the Plan Revision.³⁸

15 4. Public Notice Requirements Are Unmet

16 No public notice was issued for Appeal hearing in compliance with ROP 12. TRPA published an agenda on its website a
17 week prior to the Appeal hearing, but the ROP does not reference online publication of the meeting agenda as a valid means to
18 meet applicable noticing requirements for meetings and agency actions. The AR provides no evidence whatsoever that TRPA
19 provided any valid public notice for the Appeal hearing³⁹ as required by law, including to the co-appellants and other nearby
20 property owners.⁴⁰ There’s also no AR evidence of public notice for a Variance approval hearing.

21 5. Certified Administrative Record Is Incomplete: No Audio Recording

22 ROP 5.21 states: “TRPA shall maintain. . .the official tape recordings of any relevant Hearings Officer, Advisory
23 Planning Commission, or Board meetings.” This improperly omits the Legal Committee meetings (*see* ROP 10.6.1.D.) which

24 ³⁶ TRPA confusingly conflated the two as one throughout the proceedings (as here), with the latter issued without my awareness only five days prior to my
25 NOA filing. I was reviewing the revised plans and information from the Project applicant online in preparing my NOA, filed August 22, 2022 for the
26 variance approval that enabled the Plan Revision approval and the attendant unexamined adverse environmental effects I commented on in my NOA and
SOA. I didn’t cite the Plan Revision approval date in my NOA because I didn’t know of it.

27 ³⁷ *Infra* note 93.

28 ³⁸ The August 5, 2023, Variance approval was timely appealed, and no “final action” has been taken on it. Despite these facts, TRPA’s errors have
enabled construction and operation of the macrotower at 1360 Ski Run Boulevard.

³⁹ These facts hold for the Project appeals before the HO in March 2022 and the GB in March 2023.

⁴⁰ I concede that no noticing of the August 5, 2022, Variance approval was required under the illegal rules of the ROP.

1 indicates the judicial AR “may” contain “relevant” hearing audio recordings, in conflict with the mandatory “shall” of ROP 5.21
2 concerning this public record. TRPA possesses existing online audio recordings (digital format) of the Appeal and Legal Review
3 Committee hearings of September 28, 2022 which are not in the certified AR under bad-faith TRPA discretionary abuses, which
4 may entitle us to “adverse inference” over contents of hearing transcript.⁴¹ These egregious omissions further support my MSJ
5 and MSAR.⁴² Because there is no audio recording or transcript of the Legal Review Committee and GB Appeal hearings in the
6 certified AR, TRPA is unable to substantiate any of its GB decision-making process leading to its denial. The court should not
7 any give any deference to TRPA.

8 6. TRPA Staff Approved A Variance To The Prohibition Protecting Ground Water From Unnecessary Interference,
9 Contrary To TRPA Assertions

10 TRPA begins III.C. with a claim that it did not approve a Variance⁴³ under COO 33.3.6.A.2. based on TRPA’s sole
11 finding: “[i]t is not expected that groundwater will be encountered in this location...” The Defendant’s proposition here that no
12 variance was given is a litigation position change warranting no deference,⁴⁴ and contrary to the fact that TRPA issued the
13 Variance (see my discussion of the applicable regulations at AR 1646-1647). Summarizing that, COO 33.3.6.A.1. & B. set forth
14 the prohibition and the soils-hydrology report requirement if there is a “reasonable possibility” for groundwater table interference
15 (AR1605, AR1632 & AR2977). TRPA required a soils-hydrology report to cover that reasonable possibility, accepted a “soil
16 profile” report in lieu of that and found only, “[i]t is not expected that groundwater will be encountered.” “Not expected” is
17 different than no “reasonable possibility,” which the Code requires protection against. Then TRPA did a very illogical thing:
18 TRPA issued a Variance, “excavation is allowed,” citing two criteria (neither valid) to allow groundwater interference, with no
19 supporting findings. TRPA’s contention that it didn’t approve a Variance is specious and without merit.

20 TRPA granted an exemption for any potential groundwater interference to illegally “accommodate” the client’s chosen
21 design. TRPA later marshaled one-sided evidence to support its contentions that the tower serves public safety and health while
22 ignoring all science and evidence to the contrary without acknowledgment, including threat of fire (AR3058) and collapse from
23

24 ⁴¹ See, e.g., *Butler v. Department of Homeland Security*, EEOC Appeal No. 07200900010 (5/27/10) (upholding an administrative judge’s drawing of
adverse inferences against the agency due to its failure to produce work assignment logs and its records retention policy).

25 ⁴² While the court may not consider them to support TRPA, it could sanction TRPA, make adverse inference from its failure to provide them, or demand a
certified, unabridged copy of recordings by separate order to supplement the incomplete AR it improperly certified as complete. Uncertified recordings
available at: <https://www.trpa.gov/2022/09/?cat=9>.

26 ⁴³ See generally, California Government Code § 65906 on application of variances to zoning regulations.

27 ⁴⁴ No deference warranted where agency is merely advancing litigation position, not an official interpretation of its regulation (*Kisor v. Wilkie*, 139 S. Ct.
2400, 2417 (2019) (“a court should decline to defer to a merely convenient litigating position”); *United States v. Trident Seafoods Corp.*, 60 F.3d 556, 559
28 (9th Cir. 1995); see also, *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1155–56 & n.34 (9th Cir. 2010); *United States v. Able Time, Inc.*, 545 F.3d 824,
836 (9th Cir. 2008); *Alaska v. Fed. Subsistence Bd.*, 544 F.3d 1089, 1095 (9th Cir. 2008)).

1 snow loads unconsidered (see AR2872 & AR3060). That does not accord with responsible action a reasonable mind might
2 accept in light of the whole record. TRPA's cherry-picking of the available safety and health data illegally distorted the facts to
3 disenfranchise the appellants in this case (example).

4 TRPA allowed the applicant to avoid the expense and trouble of producing a *bona fide* soils-hydro report, or any
5 vegetation protection report at all, nor did TRPA make any specific findings⁴⁵ for management of excess soils pursuant to COO
6 33.3.6.B.(1. - 3.) & 33.4.2.⁴⁶ With alleviating the hardship or burden of producing all of the reports required by law for
7 excavations deeper than five feet, the IED approved the Variance application in an abuse of discretion.

8 7. TRPA Prejudicially Abused Its Discretion In Accepting And Relying On The Soil Profile To Ensure Prevention 9 Of Groundwater Interference

10 Inferences can be drawn from the supplemental soil-hydrology reports. TRPA notes (OSJ 5:7-8) the Project permit's
11 Special Condition F, and that I didn't appeal the permit. That is inaccurate and irrelevant.⁴⁸ In II.B.4 (OSJ 6: 13) TRPA states:
12 "During the excavation, TRPA contracted with a Certified Professional Soil Scientist to observe the soil conditions and look for
13 signs of groundwater. AR1269-1271, 1362." This is a really a shameful admission that TRPA lacks the in-house expertise to
14 implement its own regulations for protecting groundwater tables from interference. TRPA had to hire an outside consultant to
15 make further field investigations for a qualified determination long after its staff's approval of the Variance. Groundwater
16 delineations require special scientific expertise or it wouldn't have hired the outside consultant, and TRPA lacked a staff
17 groundwater expert to testify at the Appeal hearing. It should therefore be granted no deference with regard to its groundwater
18 determination on the basis of agency expertise it lacks in light of the whole record.⁴⁹

19 If the "soil profile" TRPA relied on was in fact "substantial evidence" upon which to base a decision concerning potential

20 ⁴⁵ *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506, 517 (1974) (An administrative grant of a variance must be
21 accompanied by administrative findings. ... Party seeking variance must shoulder burden of demonstrating ... subject property satisfies requirements ...
22 neither administrative agency nor a reviewing court may assume without evidentiary basis that the character of neighboring property is different... A
23 change in nature of region is a proper subject for legislation, not piecemeal administrative adjudication by variance boards; Absent affirmative showing,
24 variance granted amounted to kind of "special privilege" explicitly prohibited by law; "whereas the adoption of zoning regulations is a legislative function,
25 the granting of variances is a quasi-judicial, administrative one. If the judiciary were to review grants of variances superficially, administrative boards could
26 subvert this intended decision-making structure... courts must meaningfully review grants of variances in order to protect the interests of those who hold
27 rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party foregoes
28 rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such
mutual restriction can enhance total community welfare").

⁴⁶ "additional engineering, geologic... or other materials necessary to determine and evaluate project area conditions and the effect of the grading on
adjoining properties, public rights-of-way, and the public welfare."

⁴⁸ I assisted in the appeal by Eisenstecken's appeal currently in litigation as a member of co-plaintiff Tahoe for Safer Tech. TRPA's motion to join these as
related cases was denied. In the NOA and affidavit I filed I didn't contest the permit as previously approved, so the relevance here escapes me.

⁴⁹ This situation is, by specific analogy, like having the U.S. Army Corps of Engineers conduct the entire regulatory program related to discharges of
dredged or fill materials to waters of the U.S. under Clean Water Act section 404 without a single certified, qualified wetland (groundwater) delineator on
its staff. It's just absurd, as are TRPA's assertions about the soil profile constituting substantial evidence.

1 groundwater interference then all the TRPA consultant would have had to do is review the soil profile and make a determination
2 based on it. No qualified soil scientist would make such a claim. The consultant needed additional evidence not available before
3 the staff's Variance approval upon which to base a reasoned, scientific determination, and such evidence was primary, not
4 merely confirmatory of the soil profile prepared and approved by unqualified professionals. The staff's initial determination was
5 not supported by the soil profile method.⁵⁰

6 However, the defects happening at the staff level are pervasive and are capable of repetition, yet evading review.⁵¹
7 Consider: They don't follow their rules or make written determinations of fact and charge \$1,200 when challenged by an
8 appellant (me). Then they can hire outside experts and make post-hoc rationalizations to rectify defects, render prior defects
9 moot, and escape review, only to repeat the error for the next applicant. That's an abuse of discretion.

10 In refuting the inapplicability of *Daubert* (OSJ 18:9-15), to attempt to escape any review over its clearly erroneous finding
11 of fact, TRPA brazenly suggests that this court is without any power whatsoever to assess the agency's conclusory reliance on
12 junk science. However, it's well-settled that deference accorded an agency's scientific or technical expertise is not unlimited.⁵²
13 "'Junk science' has no more place in administrative proceedings than in judicial ones."⁵³ Contrary to TRPA's assertion, the spirit
14 of *Daubert* does apply to agencies acting under federal law.⁵⁴ This court may invoke the spirit of *Daubert* as a tool to assess
15 whether there was a prejudicial abuse of discretion in the use of the soil profile for determining hydrology.

16 8. TRPA Prejudicially Abused Its Discretion By Approving Land Coverage In Excess Of Limitations

17 TRPA asserts the court should give deference to its coverage determinations. However, the court must not credit arbitrary
18 and highly inaccurate calculations by TRPA and judicial deference is not warranted where the court is competent to decide the
19 issue.⁵⁵ TRPA's calculations were derived by computer magic with no work shown.⁵⁶ Calculations were unsubstantiated and

20 ⁵⁰ The fact the subsequent reports cured the defect is only afforded by illegal rules in the ROP to post-hoc substantiate that, in this case, ground water was
21 not affected.

22 ⁵¹ *Infra* note 61.

23 ⁵² *See, Brower v. Evans*, 257 F.3d 1058, 1067 (9th Cir. 2001); *Central Sierra Environmental Resource Center v. Stanislaus*, 304 F.Supp.3d 916, 928 (E.D.
24 C.A. 2018).

25 ⁵³ *Niam v. Ashcroft*, 354 F.3d 652, 660 (7th Cir. 2004) ("the spirit of *Daubert*...does apply to administrative proceedings... 'Junk science' has no more
26 place in administrative proceedings than in judicial ones").

27 ⁵⁴ *Id. See also, Rodriguez Galicia v. Gonzales*, 422 F.3d 529, 539 (7th Cir. 2005) (invoking the "spirit" of *Daubert* to reason that nothing in experts'
28 curricula vitae indicated that they were unqualified); *Pasha v. Gonzales*, 433 F.3d 530, 535 (7th Cir. 2005) (concluding expert should not have been
permitted to testify); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 469 (7th Cir. 2001) ("[a]n agency must act like an expert if it expects the judiciary to
treat it as one"); *McElmurray v. U.S. Dep't of Agric.*, 535 F. Supp. 2d 1318, 1325 (S.D. Ga. 2008) ("[w]hile *Daubert* does not apply to agency decisions in
any formal respect, the principles underlying that decision do apply" (citing *Pasha*, 433 F.3d at 535)).

⁵⁵ *National Parks Conservation Ass'n v. E.P.A.*, 788 F.3d 1134 (2015) (an agency must cogently explain why it has exercised its discretion in a given
manner); *Western Watersheds Project v. Bureau of Land Management*, 971 F.Supp.2d 957 (E.D. C.A. 2013) (Environmental review procedures require
agencies to ensure professional and scientific integrity, by setting forth the methodologies used and making explicit reference by footnote to the scientific
and other sources relied upon for conclusions); *Natural Resources Defense Council v. U.S. EPA*, 31 F.4th 1203, 1207 (9th Cir. 2022) (on review of agency
action, a court will not credit unsubstantiated or bare assumptions by an agency; A court does not credit arbitrary and highly inaccurate calculations by an

1 clearly erroneous; failure to make explicit methods used and numbers tabulated was a prejudicial abuse of discretion; the agency
2 must show its work.⁵⁷

3 TRPA's poor defense of its "cooked" coverage calculations during the Appeal hearing further erred through its entire
4 dismissal of my own expert coverage engineering analysis without support of any "specific, cogent reasons."⁵⁸ The court must
5 consider the record as a whole, weighing both the evidence that supports and the evidence that detracts from the agency's
6 decision.⁵⁹ The court is unable to do this because, with no audio recordings in the AR, the agency did not provide any reasons for
7 how it arrived at its conclusion aside from the SR and its erroneous information.

8 The Appeal decision on the excess coverage was not the outcome of a reasoned, logical thought process. I stand by MSJ
9 15:11-16:8. Summarizing: The AR shows the plans were approved in haste by a non-engineer. Electronic measurements were
10 used, computer-mouse "clicks" with no other staff verifying the plan checker didn't make errors and no AR of how the results
11 were obtained or checked. The planner couldn't understand my Exhibit 6 (AR1356) with my basic calculations shown, *e.g.*,
12 width multiplied by height and a scale conversion. She misunderstood a basic fact, writing the foundation was not coverage,
13 which was clearly erroneous. I'm a registered professional civil engineer with 25 years of plan-checking expertise. I showed all
14 the scales and views measured, all the math steps to my results.⁶⁰ TRPA didn't resolve the plan discrepancies showing excess
15 coverage. Though no Project plan with excess coverage is allowed by law, 11 of 12 BMs voted to deny the Appeal (see
16 AR2870-AR2871). Staff was prejudged as right to support a foregone conclusion without evidence: uphold the Project. The
17 illegal excess coverage decision was not a logical conclusion based on the facts such as a person of reasonable mind could
18 accept, let alone 11 of 12 minds, with no AR evidence to the contrary. The decision was a prejudicial abuse of discretion and
19 deserves no deference.

20 9. TRPA's General Stratagem for Prejudicial Abuse of Discretion Under the Illegal Rules It Devised; Repeat and
21 Evade Review

22
23 _____
agency); *Monex Int'l, Ltd. v. Commodity Futures Trading Comm'n*, 83 F.3d 1130, 1133 (9th Cir. 1996) (judicial deference not warranted where courts are
24 competent to decide the issue).

25 ⁵⁶ *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959) (the evidence used to prove the Government's case must be disclosed to the individual so that he has
an opportunity to show that it is untrue) (quoted by *Goldberg v. Kelly*, 397 U.S. 254, 270 (1970)).

26 ⁵⁷ *Supra* notes 55 & 56.

27 ⁵⁸ See, *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (agency credibility determinations may be overruled when they are "not supported by
specific, cogent reasons").

28 ⁵⁹ *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).

⁶⁰ *C.f.*, F. R. Evid. Rule 201(b) (the court may judicially notice mechanics of basic math which is not subject to reasonable dispute because it generally
known within the district court's territorial jurisdiction or can be accurately and readily determined from sources whose accuracy cannot reasonably be
questioned).

Coverage and soils-hydrology evaluation error are examples of errors that are capable of repetition, yet evading review.⁶¹ Here we see TRPA offering less than a scintilla of supporting evidence for coverage decisions in expectation of court deference. If someone lodges a costly appeal on a staff decision on a project coverage requirement, TRPA can attempt a post-decision remedy or bolster its case for the decision before the GB, right or wrong. If litigation follows, as here, TRPA stands on its judicial review requirements and, under its assertions, can often prevail in court—only to repeat the same behavior again and again.⁶² In the case of coverage for this Project, TRPA offered little if any evidence for its decision, being unnecessary under the deference it generally enjoys. The Variance approval for the Project worked similarly, but with TRPA using post-decisional studies to bolster its improper decision to rely on the soil profile. These are dirty tricks TRPA uses to cover and repeat errors and pre-textual ruses, violate civil rights, and evade review under the abuses it exploits.

C. CONSEQUENCES OF AGENCY VIOLATIONS

1. Demonstration of Injury and Standing Through Zone of Interest Violations

Residents living under TRPA jurisdiction have an expectation and interest that TRPA will fulfill its duties under the Compact, follow its own regulations, and administer the Regional and local area plans which mutually protect all residents from adverse changes to the character and scenic nature of the area,⁶³ and violation of this social contract inherently causes injury. Residents who live and or own real property under TRPA jurisdiction have property or liberty interests in the preservation of the Tahoe Region. I am such a resident and therefore am injured by violations arising under the TRPA Compact which by their very nature “degrade or degenerate” the quality of the environment which surrounds me. Any complained injury falling within the zone of interests sought to be protected by the Compact is enough to establish injury.⁶⁴ Interests conferring standing to sue may reflect aesthetic, conservational, recreational, or spiritual values as well as economic values, where Compact is concerned, trend is toward enlargement of class of people who may protest administrative action.⁶⁵

The bare fact that there are multiple routes to establish injury refutes TRPA mistaken premise that the only route is directly

⁶¹ *Federal Election Com'n v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 462 (2007) (“Capable of repetition, yet evading review” mootness exception applies where: (1) challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is reasonable expectation that same complaining party will be subject to same action again); *see also*, *Murphy v. Hunt*, 455 U.S. 478, 482 (1982); *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975); *Center For Biological Diversity v. Lohn*, 511 F.3d 960, 965 (9th Cir. 2007).

⁶² Most appellants and litigants being unaware, as I am, that TRPA operates in chronic “bad faith.”

⁶³ *Supra* note 47 at 517 (a zoning scheme is similar to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, under rationale that mutual restriction enhances total community welfare).

⁶⁴ *Supra* note 32 (to demonstrate standing... plaintiff must establish that injury complained of falls within zone of interests sought to be protected by statutory provision whose violation forms legal basis for complaint, not by reference to overall purposes of statute in question).

⁶⁵ *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153-154 (1970); *see also*, *City of Sausalito v. O'Neill*, 386 F.3d 1186 (9th Cir. 2004) (A cognizable procedural injury exists, as would give rise to Article III standing, when a plaintiff alleges that a proper environmental review has not been prepared under NEPA when the plaintiff also alleges a “concrete” interest, such as an aesthetic or recreational interest, that is threatened by the proposed action).

(OSJ 16:8, OSJ 17:3-5 & OSJ 17:23).

I’ve unequivocally alleged that proper environmental review has not been done under the Compact. This Project injures the quality of the environment sought to be protected by, *inter alia*, the Compact, the Endangered Species Act, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and the Clean Water Act.⁶⁶ More specific and concretely, the Project causes judicially cognizable injury because: (1) it disfigures the views of the Heavenly mountains, surrounding forest, and Bijou Park Creek aspen grove which injures my aesthetic enjoyment of the Lakeview Heights Plan Area and impairs its enjoyment for future generations;⁶⁷ (2) peer-reviewed scientific literature submitted under the Project’s environmental review process, demonstrates the tower design injures local populations of endangered, threatened, or sensitive wildlife and I have a passionate “[d]esire to use or observe animal species, even for purely aesthetic purposes”;⁶⁸ (3) it discharges microplastic solid waste into the environment and into Bijou Park Creek and downstream waterways;⁶⁹ (4) exceedance of allowable coverage limits contributes to human-caused sediment which lowers the aesthetic clarity of Lake Tahoe; (5) environmental harm is a type of evil which violates my spiritual values through the desecration of the region’s sacred splendor—its value as a natural holy temple to worship god while witnessing his awesome powers—disconnects me from divinity⁷⁰; (6) whereas the economic vitality of the Lake Tahoe Region is innately dependant on its outstanding environmental quality and aesthetics, degradation causes me economic harm; and (7) I am a member of the Tahoe for Safer Tech, an unincorporated environmental association

⁶⁶ Compact’s judicial review provision is appropriate mechanism to review TRPA specific actions which proceed in violation of federal laws such as ESA, MBTA, & CWA (*cf.*, *Center for Biological Diversity v. Bernhardt*, 982 F.3d 723, 733 (9th Cir. 2020) (when two claims are inextricably intertwined between two statutes, and those statutes contain conflicting jurisdictional provisions, courts follow the more specific statute; NEPA, ESA, and the Marine Mammal Protection Act all lack independent judicial review provisions; claims arising under all three are therefore reviewable under the APA); *Bennett v. Spear*, 520 U.S. 154, 175 (1997) (“The APA, by its terms, provides a right to judicial review of all ‘final agency action for which there is no other adequate remedy in a court’”). APA has analog provision in Compact which is controlling as a more specific federal law (*see*, *City of South Lake Tahoe v. Tahoe Regional Planning Agency*, 664 F.Supp. 1375, 1377 (E.D. CA. 1987)).

⁶⁷ *Sierra Club v. Morton*, 405 U.S. 727, 734 (1972) (where “development ‘would destroy or otherwise adversely affect the scenery, natural and historic objects and wildlife of the park and would impair the enjoyment of the park for future generations.’ We do not question that this type of harm may amount to an ‘injury in fact’ sufficient to lay the basis for standing. . . .Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process”); *Conservation Congress v. United States Forest Service*, 409 F.Supp.3d 861 (E.D. C.A. 2019) (A plaintiff satisfies the “injury in fact” to possess Article III standing in an environmental case where an individual shows an aesthetic or recreational interest in a particular place, or animal, or plant species and that interest is impaired by a defendant’s conduct); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562-563 (1992) (“desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing”); *Lujan v. National Wildlife Federation*, 497 U.S. 871, 872 (1990) (“‘recreational use and aesthetic enjoyment’ are among the sorts of interests that [NEPA is] designed to protect”).

⁶⁸ *Id.* (desire to use or observe animal species, even for purely aesthetic purposes, is a cognizable interest for standing purposes).

⁶⁹ *California Sportfishing Protection Alliance v. Chico Scrap Metal Inc.*, 124 F.Supp.3d 1007 (E.D. C.A. 2015) (A facility’s discharges are subject to the Clean Water Act (CWA) if bodies of water are conduits for the discharges to seep into a navigable waterway and the discharges significantly affect the physical, biological, and chemical integrity of the navigable waterways; that water containing pollutants discharged from facility flowed into ditch, then into seasonal intermittent stream which flowed miles before discharging in ravine that was tributary of navigable waterway miles from facility, was sufficient to support environmental claim, under CWA, that facility discharged pollutants into navigable waterway).

⁷⁰ *Supra* note 65 (interest conferring standing to sue may reflect spiritual values).

1 which has members who own real property adjacent or near to the Project and are thus directly threatened by it.⁷¹ I've appended
2 Exhibit 6, my affidavit declaring concrete and particularized injury falling within the Compact's zone of interests.⁷²

3 2. Demonstration Of Injury And Standing From Due Process Violations

4 *A fortiori*, laws and regulations promulgated under the Compact themselves create interests protected by the Fourteenth
5 Amendment that refute TRPA at OSJ 14:16-24 and OSJ 15:14-15. A liberty interest protected by the Due Process Clause may
6 arise from an expectation or interest created by statutes or policies, or it may arise from the Constitution itself, by reason of
7 guarantees implicit in the word "liberty."⁷³ After all, the Due Process Clause of the Fourteenth Amendment was intended to
8 prevent government from abusing its power, or employing it as instrument of oppression.⁷⁴ Whenever TRPA promulgates
9 legislative rules⁷⁵ which carry the force of federal law, the public may presume that the law will be obeyed.⁷⁶ TRPA may not
10 violate its own regulations.⁷⁷ There is a liberty interest which is deprived whenever the TRPA violates its own ROP. TRPA
11 resorts to sophistry⁷⁸ to mislead this court that an agency may violate its legislative rules—without causing to a due process
12 violation—by citing federal caselaw⁷⁹ which actually pertains to internal interpretive guidelines which do not carry the force of
13 law.⁸⁰ It's simply untrue that TRPA may violate its unambiguous regulatory ROP without causing a due process violation.

14 Whether a TRPA pronouncement is interpretive or substantive is a legal question⁸¹ so court gives no agency deference.
15 TRPA's COO are substantive regulations. Notwithstanding, any so-called TRPA "standard practice" which is inconsistent with
16 or amends an existing legislative rule, cannot be interpretive, since it would impose new rights or obligations by changing an
17 existing law and such amendment must follow the applicable notice and public comment procedure requirements.⁸²

18 ⁷¹ *E.g.*, Tahoe For Safer Tech co-founder Benjamin Lebovitz, a co-appellant who personally testified at the Appeal Hearing, lives within a block of the
19 Project. He would be directly harmed via one or more of the aforementioned judicially cognizable mechanisms of injury. Environmental group's website
20 available at <https://www.tahoeforsafertech.org>.

21 ⁷² This supplements SOA and AR materials in accordance with the manner and degree of evidence required at successive stages of litigation.

22 ⁷³ *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005).

23 ⁷⁴ *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115 (1992).

24 ⁷⁵ A "legislative rule" is issued by an agency pursuant to statutory authority and has the force and effect of law; An "interpretive rule" simply advises the
25 public of the agency's construction of the statutes and rules which it administers and lacks the force and effect of law (*PDR Network, LLC v. Carlton &*
26 *Harris Chiropractic, Inc.*, 588 U.S. —, 139 S.Ct. 2051, 2055 (2019); *see also, Azar v. Allina Health Services*, 587 U.S. —, 139 S.Ct. 1804, 1811 (2019);
27 *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96-97 (2015); *Lane v. Salazar*, 911 F.3d 942, 949 (9th Cir. 2018); *Mora-Meraz v. Thomas*, 601 F.3d 933,
28 939-940 (9th Cir. 2010); *Miller v. California Speedway Corp.*, 536 F.3d 1020, 1033 (9th Cir. 2008).

⁷⁶ California Civil Code § 3548 (a "Maxim of Jurisprudence" is presumption that "[t]he law has been obeyed"); *see e.g., People v. Golston*, 58 Cal.2d 535
(1962) (in absence of showing to contrary it will be presumed that constitutional due process provision was obeyed).

⁷⁷ *Supra* note 12.

⁷⁸ We are way beyond the point that sophisticated counsel should have known better. We are probably at the point of intentional and blatant disregard
for controlling authority and case law.

⁷⁹ *James v. U.S. Parole Com'n*, 159 F.3d 1200, 1206 (9th Cir. 1998) (holding that alleged failure to fully comply with internal guideline did not amount to
due process violation, as provision was internal interpretive provision that did not have force of law).

⁸⁰ Defendant TRPA Combined Opposition and Cross-Motion, p.14, l.16; p.15, l.4; p.17, l.3.

⁸¹ *Mora-Meraz v. Thomas*, 601 F.3d 933, 939-940 (9th Cir. 2010).

⁸² Agencies are generally required to provide the public with adequate notice of a proposed rule followed by a meaningful opportunity to comment on the

1 3. Concepts Of Property And Liberty Related To Violations Of Due Process And Equal Protection Rights

2 The concepts of equal protection of the laws and due process both stem from the American ideal of fairness, and are not
3 mutually exclusive, nor are the concepts always interchangeable, in that equal protection of the laws is a more explicit safeguard
4 of prohibited unfairness than due process of law, but a discrimination may nevertheless be so unjustifiable as to be violative of
5 due process.⁸³ The term “liberty” within the Fifth Amendment to the Federal Constitution extends to the full range of conduct
6 which the individual is free to pursue and it cannot be restricted except for a proper governmental objective.⁸⁴ There is a due
7 process right to notice and meaningful opportunity to be heard by an unbiased tribunal.⁸⁶ The ED’s impediments to hearing
8 access subvert due process. The ED acts as gatekeeper when she obstructs petition processes for appeal to the GB in the first
9 instance, and biases any granted appeal hearing when she rushes scheduling in violation of ROP regulations, as here. The lack of
10 public notice diminishes the likelihood that any aggrieved persons will appeal for redress, will testify at hearing, and further
11 deprives them of opportunity for public participation in environmental review process, and their right to be heard.

12 **III. JUDICIAL REVIEW STANDARDS IN THIS CASE**

13 A. Overview of Applicable Law

14 TRPA is an agency created by Congress under the Compact Clause of the U.S. Constitution,⁸⁷ operates “under aegis of
15 federal law,”⁸⁸ and is empowered to adopt regulations which carry the force of federal law.⁸⁹ TRPA Compact is substantially
16 consistent with that creating an independent quasi-federal agency whereas it is an agent of Congress established to carry into
17 effect the legislative policies embodied in the “Compact.”⁹⁰ Its organic act is a more than supple device for dealing with interests
18 confined within region, but is also means of safeguarding national interest⁹¹—such as to protect Tahoe Region as “National
19

20 rule’s content (e.g., 5 U.S.C. § 553(b)-(c); Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51735 (October 4, 1993) (providing for presidential review of
21 agency rulemaking states that the public’s opportunity to comment, “in most cases should include a comment period of not less than 60 days”). See also,
22 Charles H. Koch Jr., 1 ADMINISTRATIVE LAW AND PRACTICE 329-30 (2010 ed.).

23 ⁸³ *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

24 ⁸⁴ *Id.*

25 ⁸⁶ *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (due process requires notice reasonably calculated to apprise interested parties of pendency of action and
26 afford them an opportunity to present their objections and be heard at a meaningful time in a meaningful manner); *Goldberg v. Kelly*, 397 U.S. 254, 267,
27 271 (1970) (due process of law is opportunity to be heard during hearing at meaningful time and in meaningful manner by an impartial decision maker);
28 *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959) (rights of confrontation and cross-examination apply in all types of cases where administrative and
regulatory actions are under scrutiny); *Ward v. Village of Monroeville*, 409 U.S. 57, 62-63 (1972) (due process requires “a neutral and detached judge in
the first instance”). See also, *Arnett v. Kennedy*, 416 U.S. 134, 197 (1974); *Mathews v. Eldridge*, 424 U.S. 319, 325 n.4 (1976).

⁸⁷ See, *U.S. v. Morrison*, 529 U.S. 598, 607 (2000) (enacted statutes must be based on powers in Constitution).

⁸⁸ *Jacobson v. Tahoe Regional Planning Agency*, 566 F.2d 1353, 1358 (9th Cir. 1977).

⁸⁹ See, *Lake Tahoe Watercraft Recreation Ass’n v. TRPA*, 24 F.Supp.2d 1062, 1068 (E.D. CA. 1998); *City of South Lake Tahoe v. Tahoe Regional
Planning Agency*, 664 F.Supp. 1375, 1377 (E.D. CA. 1987); *Stephans v. Tahoe Regional Planning Agency*, 697 F.Supp. 1149, 1152 (D. Nev. 1988).

⁹⁰ Cf., *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 540 (2009).

⁹¹ *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 40 (1994) (compacts are means of safeguarding national interest); *West Virginia ex rel. Dyer
v. Sims*, 341 U.S. 22, 27 (1951).

Treasure.”⁹² The TRPA Compact is construed as a contract under the principles of contract law.⁹³ State sovereign power governs all contracts subject to sovereign’s jurisdiction, and will remain intact unless surrendered in unmistakable terms;⁹⁴ a State does not easily cede its sovereignty.⁹⁵

Land management interstate compacts are the constitutional cousin of the federal enclave and there is substantial overlap; states simply opt into ceding regional jurisdiction under express terms invoked through the Compact Clause inversely to the manner in which they opt out of aggregate cession under the Federal Enclave Clause.⁹⁶ Thus, TRPA preempts traditional state powers only where that result is the clear and manifest purpose of Congress.⁹⁷ Applying the “unmistakability doctrine” to the TRPA Compact means that—unlike federal agencies or enclaves administered under U.S. Const. Article II Sec. II—ambiguous, “mistakable,” statutory terms are not entitled to traditional agency deference.⁹⁸ Nor is TRPA’s interpretation of the Compact’s judicial review provisions⁹⁹—of which itself is not charged with administering¹⁰⁰—entitled to agency deference. Notwithstanding, once the TRPA Compact received approval of Congress, it was transformed into a law of the United States, preempting any state law that conflicts with the Compact.¹⁰¹

California did not in “unmistakable terms” surrender residents’ expansive rights secured under its State Constitution. California’s due process protections are, at times, broader than those imposed by the Fourteenth Amendment.¹⁰² California

⁹² Compact Art. I.

⁹³ See, *New York v. New Jersey*, 598 U.S. 218, 143 S.Ct. 918, 924 (2023) (interstate compacts are construed as contracts under the principles of contract law).

⁹⁴ *U.S. v. Winstar Corp.*, 518 U.S. 839, 871-872 (1996) (under unmistakability doctrine, sovereign power governs all contracts subject to sovereign’s jurisdiction, and will remain intact unless surrendered in unmistakable terms); see also, *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (in federal courts, except in matters governed by Federal Constitution or by acts of Congress, law to be applied in any case is law of the state).

⁹⁵ *Supra* note 93 at 925 (background notion that a State does not easily cede its sovereignty may inform the interpretation of TRPA compact).

⁹⁶ See, *Kleppe v. New Mexico*, 426 U.S. 529, 542-543 (1976); *Paul v. U.S.*, 371 U.S. 245, 268 (1963); *Collins v. Yosemite Park & Curry Co.*, 304 U.S. 518, 528 (1938); *Swords to Plowshares v. Kemp*, 423 F.Supp.2d 1031, 1034 (9th Cir. 2005) (all generally holding jurisdiction obtained by consent or cession may be qualified by agreement or through offer and acceptance or ratification).

⁹⁷ *Department of Revenue of Oregon v. ACF Industries, Inc.*, 510 U.S. 332, 345 (1994) (Supreme Court will interpret statute to preempt traditional state powers only if that result is clear and manifest purpose of Congress); *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 537, 544 (1994) (it is generally presumed that Congress acts intentionally... particularly where [it replaces] standard legal terminology with neologism; before federal statute will be construed to displace traditional state regulation in manner which radically readjusts balance of state and national authority, such a federal statutory purpose must be clear and manifest).

⁹⁸ Compare *Alabama v. North Carolina*, 560 U.S. 330, 344 (2010) (unless the text of an interstate compact directs otherwise, the Supreme Court does not review the actions of a compact commission on the deferential model of judicial review of administrative action by a federal agency) with, *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945) and *Auer v. Robbins*, 519 U.S. 452 (1997).

⁹⁹ Compact. Art. VI(j).

¹⁰⁰ See, *Hecht Co. v. Bowles*, 321 U.S. 321, 330 (1944) (in construing statute setting up administrative agency and providing for judicial review of its action, court and agency are not to be regarded as wholly independent and unrelated instrumentalities, each acting in performance of prescribed statutory duty without regard to appropriate function of other in securing plainly indicated objects of statute); see also, *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 138 n.9 (1997) (we do not defer to the Director’s interpretation here of the APA’s provision for allocating the burden of persuasion under the preponderance of the evidence standard, [because] [t]he APA is not a statute that the Director is charged with administering).

¹⁰¹ See, *Tarrant Regional Water Dist. v. Herrmann*, 569 U.S. 614, 627 n.8, 628 (2013) (citing *Virginia v. Maryland*, 540 U.S. 56, 66 (2003) (quoting *Cuyler v. Adams*, 449 U. S. 433, 438 (1981))); *Com. of Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. 518, 566 (1851) (bi-state compact, by the sanction of Congress, has become a law of the Union).

¹⁰² *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1050 (9th Cir. 2014); *Today’s Fresh Start, Inc. v. L.A. Cnty. Office of Educ.*, 57 Cal.4th

procedural due process protections require reasonable notice and an opportunity to be heard before a lead agency makes an adjudicatory land use decision that constitutes a substantial or significant deprivation of other landowners' property rights.¹⁰³

The zoning authority of local governments derives not from statutes such as the Compact, but from the state Constitution.¹⁰⁷ A conditional use permit grants an owner permission to devote a parcel to a use that the applicable zoning ordinance allows not as a matter of right, but only upon issuance of the permit.¹⁰⁸ A variance is a permit to build a structure or engage in an activity that would not otherwise be allowed under the zoning ordinance; it cannot, however, be granted to allow a use unauthorized by the zoning ordinance.¹⁰⁹ To quote the California Supreme Court¹¹⁰:

“[T]he adoption of zoning regulations is a legislative function, the granting of variances is a quasi-judicial, administrative one. If the judiciary were to review grants of variances superficially, administrative boards could subvert this intended decision-making structure. . . courts must meaningfully review grants of variances in order to protect the interests of those who hold rights in property nearby the parcel for which a variance is sought. A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare”
(*Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal.3d 506 (1974)).

TRPA administrative action may not issue variances outrageously or systemically which carry the effect of changing or rezoning regional or local area plan.¹¹¹ The ED has effectively usurped a legislative function and subverted the intended decision-making structure, by approving excavation depths in exceedance of five feet which do not meet the criteria of TRPA regulations or long-term plans. Through the Governing Board’s planning laws, the local community had been assured community welfare which prevented the adverse development of gargantuan facilities¹¹² on neighboring properties which require significant foundations and whose foundations may leach unfairly leach lime and other chemicals into the surrounding water table.

B. Applicability of Standards

This case involves mixed questions of law and fact¹¹³ whereas the content within the AR is undisputed and ultimate

¹⁰³ 197, 212-213 (2013).

¹⁰⁷ *Id.*

¹⁰⁸ *Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, 157 Cal.App.4th 997 (2007).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ See, *West v. American Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940) (the highest court of state is the final arbiter of what is state “law”, and its pronouncement is to be accepted by federal courts as defining state law).

¹¹² *Supra* note 45; *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (1990) (general plan functions as “a ‘constitution,’ or perhaps more accurately a charter for future development”).

¹¹³ This Macro-Cell Tower is 112 feet tall—approximately 12 stories—in a residential neighborhood with a two-story height limit.

¹¹⁴ See, *Google LLC v. Oracle Am., Inc.*, 593 U.S. —, 141 S. Ct. 1183, 1199 (2021) (a reviewing court should break a mixed question of law and fact into “its separate factual and legal parts, reviewing each according to the appropriate legal standard); *United States v. McConney*, 728 F.2d 1195 (9th Cir. 1984) (proposing an inquiry to determine whether *de novo* or clearly erroneous review is appropriate).

Compact and the rest of federal environmental law whereas National Environmental Policy Act ("NEPA") decisions which are authoritative¹²⁵ and are often evaluated under the arbitrary and capricious standard.¹²⁶ The "rational basis review" or "hard look review," typically applied under NEPA are just kinds of substantial evidence review. The administrative review clause of the Compact should be read under the strong presumption that Congress intended judicial review.¹²⁷

C. Deference To TRPA Is Often Unwarranted

Contrary to TRPA's assertions, court deference to purported agency expertise is not unlimited.¹²⁸ No deference is warranted to TRPA's interpretation of its unambiguous regulations, decisions which rest on misinterpretation of Court precedent, TRPA violation of statutes, or otherwise where TRPA had no authority to act. Nor is deference warranted where TRPA is merely advancing a litigation position that is not an official interpretation of its regulation, where it has radically inconsistent interpretations of law, or where courts have experience in the area and are fully competent to decide the issue.

IV. CONCLUSION

The Administrative Record has exposed but one instance of a severe and pervasive problem where democratic processes and environmental review under TRPA are closed and malfunctioning, controlled by special development interests. TRPA wants this court to make precedent that it is accountable to nobody, no matter the harms. Don't let it. I seek relief on behalf of myself and others and move for the court to uphold the MSJ and MSAR and its claims for relief and liability damages as also supported herein. I urge the court to order the tower be dismantled, put a moratorium on new towers sans an EIS and appoint a special master over TRPA if possible to ensure regulatory reform is legally proper and limits future abuses of discretion.



DATED:

October 20, 2023

Alan Miller, *Plaintiff, in propria persona*

P. O. Box 7526, South Lake Tahoe CA 96158

encompasses the agency's assessment of the evidence in the record and its application of that evidence in reaching a decision. In arbitrary and capricious review, the focus is on the agency's explanation or justification of its decision and whether that decision can be reasoned from the body of evidence).

¹²⁵ *Sierra Club v. Tahoe Regional Planning Agency*, 840 F.3d 1106, 1115 (2016). *See also*, Plaintiff's Reply And Opposition To Defendant TRPA's Opposition To Plaintiff's Motion To Supplement The Administrative Record p.6.

¹²⁶ *See, Barnes v. Fed. Aviation Admin.*, 865 F.3d 1266, 1269 (9th Cir. 2017); *Ka Makani 'O Kohala Ohana Inc. v. Water Supply*, 295 F.3d 955, 959 n.3 (9th Cir. 2002) (clarifying when standard applies). *See also, ForestKeeper v. La Price*, 270 F.Supp.3d 1182 (2017) (with respect to judicial review of agency decisions made pursuant to NEPA, summary judgment is governed by the arbitrary and capricious standard instead of the typical summary judgment standard that determines whether there are disputed issues of material fact); *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1205-06 (9th Cir. 2004).

¹²⁷ *Block v. Community Nutrition Institute*, 467 U.S. 340, 351 (1984); *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 674 (1986); *De Martinez v. Lamagno*, 515 U.S. 417, 419 (1995).

¹²⁸ *Supra* note 52.

EXHIBIT 6

Affidavit of Injury Falling within Compact's Zone of Interests

Affidavit

My name is Alan Miller and I have resided in the City of South Lake Tahoe since 1993. I came here because of my love for the natural environment, the near-pristine waters, the magnificent trees and forests, the mountains and their waterfalls and trees. I connect with nature through walks and hikes, bicycling, swimming in the natural waters, breathing the clean air and enjoying the night skies. My world is a world that is alive: not only the plants and animals, from whom I receive “messages” helpful to me in my daily life but the mineral kingdom, the sacred “four winds” and the nature spirits assisting the mother earth, the mother of us all. I know many people can’t understand the unseen, certainly not the desecraters and despoilers, how powerful it is, and how everything is connected to the sacred benevolence.

When I came to this basin there were no wireless facilities save for around the airport and a small number of community radio station antennas. Now the wireless towers are ubiquitous and increasing everywhere in the region, like an urban blight, and the 112-foot monopine macrotower Verizon Wireless installed at 1360 Ski Run in my city is just one egregious and disgusting example of how my environment is being degraded one tower at a time, with none escaping the poison.

There is a business I frequent on Ski Run Boulevard so I am frequently in the area and visiting friends in the neighborhood. The Bijou Park Creek is very unique, with its dense aspen groves, so colorful in the fall (and in the spring when the leaf-buds open). My late wife, poisoned by wireless, loved aspens for the way they sound in the wind. Me, too. I saw a bear there this summer and I’ve seen eagles over the Ski Run tower site, which stands adjacent. I question whether the aspens and all they support will be there for future generations, knowing towers are especially hard on aspen trees. It is depressing to consider they wouldn’t be.

The tower is on my route to and from the Heavenly Ski area, where I’ve spent many happy days over the years connecting with god and the nature I enjoy. I no longer patronize the ski area, so disgusted am I with its own wireless expansion for commercial profit on the public lands, with ski area employees in cahoots with the Tahoe Regional Planning Agency, which is a horrible thing for the environment, the plants, the animals, the people and the waters. I can’t connect spiritually with my god and nature in the same way there now; something intangible has been lost. Besides that, I quit going because every time I pass the Ski Run tower, with its in-your-face destruction of the mountain view, I am reminded of the unfettered wireless expansion at Lake Tahoe by the tower on my route, the toxic microplastic wastes being continually shed to the environment as I have witnessed at the Ski Run tower and other monopine macrotowers. and how my friend Monica and her family were driven to flee their beautiful home overlooking Lake Tahoe to preserve their health from continual microwave radiation after the tower was approved on the adjacent property by the feckless TRPA. I am concerned how the Ski Run tower and the tower across the street from where he lives will affect the health of my friend David, who suffers grave illness exacerbated by microwave poisoning. I am concerned that all this wireless expansion will keep . . . expanding until, with no planning or environmental review whatsoever, the environment at Lake Tahoe right to my front door has been further radically altered by powerful unseen forces that are malevolent.

The fact is the Ski Run tower could not have been built if TRPA and others had followed the laws. I feel like I live in a banana republic under TRPA and I DO NOT CONSENT. The environment I love is being destroyed by wireless microwaves with impunity by the very agency charged to protect the environment. TRPA is not the Tahoe Regional *Protection* Agency, it is more the Tahoe Regional *Political* Agency, and it distresses me greatly to see how money talks and BS walks at TRPA. It’s disgusting, reprehensible, and I have no faith in TRPA to protect the waters or environment of Lake Tahoe.

The money-changers and thieves are in the temple, with TRPA presiding over the development party as the corrupt high priests of a half-baked regulatory scientism, seemingly beyond the reach of the law. I believed in the Compact, as its purpose was to prevent damaging land development—such as this ill-placed 112-foot wireless antenna tower—and to protect Tahoe’s special and scenic areas through stringent planning standards and rigorous environmental review. I believed Tahoe’s environmental laws protected the environment by requiring public input during the environmental review process of projects—that the gathering of local knowledge, wisdom, and observations would result in better informed and higher quality environmental decisions. Now I feel betrayed and harmed by TRPA’s degradation of the environment; harm which will last for generations. For all this I grieve.

Under penalty of perjury, I attest these facts to be true and correct, without intent to deceive.



Alan Miller,

Dated: October 19, 2023

PO Box 7526, South Lake Tahoe CA 96158

1 Alan Miller
2 PO Box 7526
3 South Lake Tahoe CA 96158
4 (530) 542-0243
5 Plaintiff, in *propria persona*

**ORIGINAL
FILED**

OCT 20 2023

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA

10 ALAN MILLER,
11 Plaintiff,
12 v.
13 TAHOE REGIONAL PLANNING
14 AGENCY,
15 Defendant.

No. 2:22-cv-02113-KJM-AC

**MOTION FOR ADMINISTRATIVE
RELIEF TO EXCEED PAGE LIMITS**

Summary of Motion

18 Out of an abundance of caution not to violate Judge Claire's Standing Orders, Plaintiff
19 files this Motion to Exceed Page Limits (hereinafter "Motion") to submit a 20 page "Reply and
20 Opposition." The reasons for this motion are because: (1) there is genuine ambiguity as to
21 whether a 20 page or ten page limit applies to my "Reply and Opposition"; and (2) the complexity
22 of this administrative review case ordinarily commands at least a 20 page opposition in the
23 interest of justice. I was granted two extra pages by Judge Claire's order in response to the
24 Stipulation And Order To Extend Summary Judgment Deadlines (ECF 34) then presuming the ten
25 page requirement applied, and in the final analysis find it may not apply and that the motion can't
26 be rightfully accomplished in under 20 pages.

Ambiguity Compels Motion

Application of Judge Claire’s Standing Orders for Civil Cases (hereinafter “Standing Orders”) to the local and federal rules raised ambiguity in my instant case. The Local Rules use different words to describe pleadings than Fed. R. Civ. P. 7. In any case, Local Rule 261(d) — “Procedure In Actions For Review On An Administrative Record In Non-Social Security Cases,” promulgates:

“In actions, other than Social Security actions, which require the Court to review an administrative record, the following deadlines shall apply unless otherwise ordered...**Reply and Opposition.** Within 15 days after the filing of the defendant’s opposition and cross-motion, the plaintiff may file a reply and any opposition to the defendant’s cross-motion”

The Local Rules expressly state that the plaintiff may file “any opposition to the defendant’s cross-motion,” and imply such motion be titled Plaintiff’s “Reply and Opposition.” Pursuant to the “Standing Orders”:

“PAGE LIMITS: Initial moving papers in non-discovery matters, and oppositions to such motions, are limited to 20 pages. Replies are limited to 10 pages. Page limits do not include the index or table of contents, table of cases, or exhibits (if any). Documents exceeding these limits without advance leave of court, for good cause shown, will be stricken without further notice.”

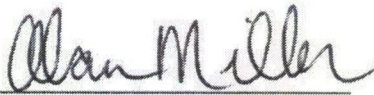
The “Standing Orders” expressly state that “oppositions” are “limited to 20 pages” and that “[r]epplies are limited to 10 pages.” A motion under Local Rule 261(d) is described as a “Reply and Opposition” making it plausibly susceptible to both page limit rules. It is a general maxim of jurisprudence that “[t]he greater should include the less” (*e.g.*, California Civil Code § 3536). Therefore when the motion contains both an opposition entitling it to 20 pages and a reply entitling it to ten pages, the applicable limit is 20 pages. It is only fair for a Plaintiff to be able to adequately oppose a defendant’s 20 page cross-motion potentially involving substantially different allegations with a 20 page opposition. After all, the Defendant also gets the last say with a ten page reply.

Complexity of Case

This case involves a 3,429 page administrative record and complex and arcane legal principles pertaining to Inter-state Compacts under the U.S. Constitution, administrative law, diversity jurisdiction, standards of review, and an extremely large body of agency regulations. It is in large part the complexity of these regulations that has obscured the astonishing facts and matters of law revealed in my Reply and Opposition, which enlarge the dimensions of the case, requiring at least 20 pages to brief adequately. It is far better and more efficient to allow the case to resolve justly at the District Court than on appeal. Based on limited research of other court practices and rules an allowance of 20 or more pages is not unusual for such a reply, especially considering the case complexities.¹

I am not seeking license to be wordy. I am a *pro se* Plaintiff and respectfully make this motion to accompany my Reply and Opposition asking for the court to advance its discretion on page limits so that nationally important matters of law and justice are served for the protection of the civil rights of the people and for the protection of Lake Tahoe, a national and global resource.

DATED: October 20, 2023



Alan Miller

P. O. Box 7526

South Lake Tahoe CA 96158

Plaintiff, in propria persona

¹ E.g., D. Nev. LCR 47-2 ("motions, and responses to motions are limited to 30 pages"); S.D. CA. LCR 7.1(h) ("Briefs or memoranda in support of or in opposition to all motions noticed for the same motion day must not exceed a total of twenty-five (25) pages in length"); N. Dist. CA. LCR. (generally promulgating that a brief or memorandum may not exceed 25 pages of text).

**ORIGINAL
FILED**

NOV 27 2023

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

1 Alan Miller
2 PO Box 7526
3 South Lake Tahoe CA 96158
4 (530) 542-0243
5 Plaintiff, in *propria persona*
6
7
8
9

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

10 ALAN MILLER,
11 Plaintiff,
12 v.
13 TAHOE REGIONAL PLANNING
14 AGENCY,
15 Defendant.

No. 2:22-cv-02113-KJM-AC PS

**OBJECTIONS TO MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

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Administrative Procedure Act, 5 U.S.C. § 3332

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STAT. 3233

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Chapman v. California, 386 U.S. 18, 23, 26 (1967)

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2011)

Mayes v. Massanari, 276 F.3d 453, 459 (9th Cir. 2001)

People ex rel. Lacey v. Robles, 44 Cal. App. 5th 804, 258 Cal. Rptr. 3d 97 (2d Dist. 2020)

Revels v. Berryhill, 874 F.3d 648, 654 (9th Cir. 2017)

1 Other Authorities and References:

2 *Nature* (Nava, V., Chandra, S., Aheme, J. et al. Plastic debris in lakes and reservoirs. (*Nature* 619, 317–322
3 (2023). <https://doi.org/10.1038/s41586-023-06168-4>)

1 For the reasons set forth below, plaintiff objects to magistrate judge’s findings and recommendations (ECF 38, hereinafter
2 “OFR” or “order”) and further pleads that his motion for summary judgment (ECF 28, “MSJ”) be GRANTED, defendant’s
3 cross-motion (ECF 35, “CMSJ”) be DENIED, and that judgment be entered for plaintiff and the case be closed. Presentation
4 follows order’s outline. Plaintiff further adopts by reference all his past pleading, motions, and exhibits. (Fed. R. Civ. P. 10(c))
5 This motion is filed timely after plaintiff contacted the Office of the Clerk, learning the court would be closed on Friday,
6 November 24, 2023 for a Thanksgiving “day-after” holiday at the discretion of the Chief Judge of the District, though the closure
7 was not announced on the court’s website, as shown in Exhibit 1. (Local Rule 121(b), Fed. R. Civ. P. 6(a)(1) and 77))

8 Contrary to what may be gleaned from the synopsis of the magistrate judge (MJ), the actual gravamen of plaintiff’s
9 complaint was that in multiple instances, defendant revised a project approval contrary to “a manner required by law.” A *fortiori*,
10 plaintiff objects to MJ’s fallacious legal premise that “the ultimate question before the court is whether the Governing Board’s
11 denial of plaintiff’s appeal was supported by substantial evidence and therefore not a ‘prejudicial abuse of discretion’ within the
12 meaning of Article VI(j)(5) of the Tahoe Regional Planning Compact (‘the Compact’).” (OFR 1:19-22) Pursuant to the express
13 language of this provision, an adjudicatory act or decision of the agency to approve or disapprove a project may be supported by
14 substantial evidence and yet amount to a “prejudicial abuse of discretion”; this occurs when or “if the agency has not proceeded
15 in a manner required by law.”

16 That fallacious premise is fatal to MJ’s findings and recommendations whereas the rhetoric in plaintiff’s “twelve separate
17 claims of violative conduct” (OFR 1:18-19) incessantly expound “what the law requires” directly followed by citations to
18 defendant’s unlawful actions—*nemo potest nisi quod de jure potest*. The defendant’s CMSJ did not rebut that it followed
19 requisite Constitutional law, statutes, and regulations, nor did it meet its heavy burden to prove “beyond a reasonable doubt” that
20 its error was harmless (*Chapman v. California*, 386 U.S. 18, 23, 26 (1967) (before a federal constitutional error can be held
21 harmless the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt; it’s not harmless
22 error where government failed to demonstrate beyond reasonable doubt that error did not contribute to adverse adjudication)).

23 Even where plaintiff’s MSJ sparsely impugns the defendant’s adjudication of the evidence, the thrust of such claim was
24 almost entirely whether or not agency deference was due to defendant’s finding, and very rarely on whether the evidence could
25 be trivially construed as “substantial.” Plaintiff is entitled that court give no or lesser agency deference to defendant where
26 deference is not or less warranted as a matter of law.

27 Plaintiff further objects to MJ’s myopic focus on defendant’s culled *de minimis* evidence as “substantial” contrary to the
28 Compact’s holistic *de integro* requirement that defendant base its decisions upon “substantial evidence in light of the whole

record.” Notwithstanding, the district court when acting as an appellate tribunal, must consider the record as a whole, weighing both the evidence that supports and the evidence that detracts from the agency’s decision (see, *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017); *Mayes v. Massanari*, 276 F.3d 453, 459 (9th Cir. 2001); see also *Int’l Union of Painter & Allied Trades, Dist. 15, Local 159 v. J & R Flooring, Inc.*, 656 F.3d 860, 865 (9th Cir. 2011); *Hawaii Stevedores, Inc. v. Ogawa*, 608 F.3d 642, 652 (9th Cir. 2010) (“The ALJ is expected to consider the record as a whole, including all witness testimony and each medical report, before entering findings”). The dual requirements that court holistically “weigh the evidence” and that it not “exercise its independent judgment on evidence” are not mutually exclusive.

I. Errors and Objections On Review Of The Order: “Complaint”

A two-pronged judicial review standard (OFR 5:27-28) is not needed for claims not pertaining to sufficiency of the soils-hydro report (Claim 9) and foundation excess impervious coverage (Claim 10), for all other claims should be reviewed to determine if the agency has not proceeded in a manner required by law, with “violations” punishable by civil liability (Compact Art(IV)(j)) and remedy also available through tower removal. Only discretionary acts taken lawfully may be reviewed to determine whether the act or decision of the agency was not supported by substantial evidence in light of the whole record, and this finding is irrelevant to the ten other claims. To omit or dismiss acts contrary to law in the analysis is a clearly erroneous and manifest error of law committed repeatedly in the order, in complete disregard of controlling law. Defendant is therefore compelled to again restate in opposition to the order much of what has already been written. 28 U. S. C. §636(b)(1)(A) specifies: “A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.” Such reconsideration of this pretrial order from the MJ, and my pretrial motions, is duly sought. MJ’s dismissal of plaintiff’s motion to supplement the administrative record (ECF 29, hereinafter “MSAR”) is over strenuous objection.

II. Legal Background

This case is about a hole drilled in the ground that gushed like an artesian spring with legal and Constitutional issues the court has failed to address, in reversible error. The issues may be briefly characterized as follows: Congress could not intrude its federal authority into the region to directly deprive plaintiff and other persons in the region with a law trespassing civil rights to participate in agency decision-making, with no public notice concerning projects or code variances of public interest and no opportunity to comment or to obtain a fair and unbiased hearing before the Governing Board without substantial cost. In any case, California did not yield its state Constitutional sovereignty under the Compact and Congress and the two states did not do that, but enacted just the opposite, procedures to freely guarantee civil rights defendant shall follow. Therefore, what the

1 Congress could not do directly, defendant can not do indirectly through its regulations and its regulatory delegations of authority
2 (*Henderson v. Mayor of the City of New York*) 92 U.S. 259, 263 (1875)), which do precisely the above, are unconstitutional and
3 must be abolished as a matter of law. (ECF 32, hereinafter “Reply,” 1:8-16) These regulatory laws were used to deprive plaintiff
4 of several important, protected civil rights in the appeal that led to this case. (Reply 2:21-25; 3:21-24 to 4:1-5, MSJ 18:5-6,
5 MSAR 18:1-11) This is a readily addressed harm and relief is available in this matter if the court will do its duty. TRPA can
6 simply put all variance and permit proposals before the public at a Governing Board meeting for approval and restore the
7 public’s civil rights, as a first step. (TRPA permits expire by law three years after adoption. (Art(VI)(p)) Only permits issued in
8 the last three years or pending legal final action are legally affected.)

9 OFR 1:21 cites to “Federal Rule of Civil Procedure 65” which is a reference to Injunctions and Restraining Orders. Since
10 this order is neither, this reference appears to be an error, possibly a clerical error, as plaintiff is not aware of why § 65 would
11 apply in this case, and the order does not reference either an injunction or restraining order or include required elements for either
12 of those to my knowledge, so it can not serve as such an order. This appears to be a harmless clerical error unless plaintiff is
13 being enjoined or restrained under the section in some way that is opaque, in which case plaintiff objects.

14 As presented in the order, the facts are not genuine. At OFR 2:10, the statement that plaintiff appealed a “Plan Revision” is
15 an error of fact, as what was appealed was a Variance, which is covered under different parts of the Compact law, as discussed in
16 the Reply at 7:16 -8:29. At OFR 2:2, the order says “he alleges his appeal was arbitrarily and capriciously denied.” What plaintiff
17 wrote was not an “allegation,” but a statement about judicial review standards: “The reviewing entity is generally charged to
18 determine on the basis of the AR whether the action taken was supported by the whole record, or was arbitrary and capricious, or
19 not in accordance with law.” Note the use of “generally,” as this was a preliminary general discussion, much augmented and
20 revised in the Reply. (1: fn1) Thus, to characterize this statement as an “allegation” is clearly erroneous and prejudicially biased.
21 The order continues at 2:19, correctly stating plaintiff submitted twelve separate claims of violative conduct, and opines “though
22 the ultimate question before the court is whether the Governing Board’s denial of plaintiff’s appeal was supported by ‘substantial
23 evidence’ and therefore not a ‘prejudicial abuse of discretion.’” This fairly summarizes defendant’s incomplete interpretation,
24 conveniently leaving out mention of the other half, when actions are “not in accordance with law,” despite numerous violations
25 of Compact law and its own regulations identified throughout the plaintiff’s MSJ, MSAR and Reply. The order then proceeds to
26 ignore every violation factually cited from the administrative record (AR), erroneously concluding no law was broken because it
27 is within defendant’s discretion to act in a manner contrary to the law. The order grants defendant wide deference to act contrary
28 to law throughout, where no deference is warranted or lawful. Plaintiff’s motions discuss ministerial acts which defendant did not

1 carry out in good faith and duty to law, and little more, concerning requirements which are non-discretionary. This court
2 deference is a major and reversible error of law riddling the order.

3 The Regional Plan “threshold” standards are cited at OFR 3:3 and plaintiff will simply note for the public record that the
4 Regional Plan, as majorly amended in 2012, does not contain the words “wireless” or “microplastics” because the defendant has
5 no standards applicable to wireless facilities emitting wireless radiation and microplastics, as it has approved here, and has no
6 applicable ordinances for wireless macrotowers. It misapplies ordinances for “linear public utility” facility exemptions for an
7 excuse to skip environmental review requirements through unexpressed, tortured interpretations. The order cites such standards
8 are “necessary” for the maintenance of the significant scenic, recreational, scientific, or natural values of the region, or to
9 maintain public health and safety in the region. (OFR 3:5-6) Nonetheless defendant doesn’t have any standards for the plastics
10 and wireless technologies it is approving, to great detriment, for in addition to the scientifically-incontrovertible damaging effects
11 of electromagnetic radiation from the tower(s) on biological organisms, defendant is risking the drinking water supply for
12 millions of residents of California and Nevada with contamination by microplastics, with no TRPA analysis beyond approving a
13 “junk science” report from a Verizon consultant. Defendant was further willing to risk potentially significant effects to ground
14 water without a hard, scientific, look for this tower. What is at stake for the future of Lake Tahoe is of no apparent consequence
15 to court’s consideration as it erroneously removes the bridle and legal bit from the incompetent defendant, which is literally
16 destroying the purity of a world-class resource with its lawlessness, here aided by the court—with a large number of errors as
17 will be discussed. Lake Tahoe is very special and among the most contaminated with microplastics of large water bodies in the
18 world thus far studied as disclosed in the science journal *Nature* (Nava, V., Chandra, S., Aheme, J. et al. Plastic debris in lakes
19 and reservoirs. (*Nature* 619, 317–322 (2023)) Plaintiff implores that the public and court must keep these facts in mind as it
20 reviews this order granting defendant wide deference to do as it will without any regard for the laws or the people it serves.

21 The order discusses that the Compact directs the agency to adopt and administer ordinances, rules and regulations, stating:
22 “In compliance with that instruction, TRPA has adopted a Code of Ordinances . . .” (OFR 3:10) Boundaries for these agency
23 actions are given by the Compact and have been broadly trespassed in this case. My Reply cited numerous regulations TRPA
24 adopted which are contrary to and inconsistent with the Compact, depriving guaranteed civil rights, so defendant has acted in a
25 number of instances that are not “[i]n compliance with that instruction.” (Reply 3:2-20) See OFR 3:14, citing Compact mandates
26 for defendant to administer its ordinances without any discretion to interpret its regulations contrary to the Compact; the court
27 must not grant defendant license to do so, in error. Court fails to comment on the illegal regulations presented, and simply
28 overlooks them as though it is proper to conduct its review under regulations adopted that gut Compact public participation

1 requirements and set the stage for defendant to repeatedly violate the law and evade judicial review, a reversible manifest
2 constitutional error. (Reply 13:1-9) Even assuming that was so, plaintiff's MSJ, MSAR, and Reply all cite numerous instances
3 where defendant did not faithfully carry out its duties under the faulty, illegal regulations. Therefore, any way one looks at it, the
4 court has committed gross reversible errors of review. The inference is clear: the case outcome has been predetermined,
5 prejudicially by court, to uphold defendant's action to approve the tower under shattered presumptions of deference, despite the
6 genuine facts and despite the laws broken, for reasons not articulated in the order. Chilling public redress of grievances while
7 depriving civil rights is the implied outcome if the prejudicial order stands.

8 OFR 3:19-20 cites that any development project must meet "applicable" regulations established by the agency. That being
9 true, it is an error for the court to opine in any way that the staff Variance and Plan Revision approvals, or the appeal, carried out
10 under illegal regulations, were in any way proper or in compliance as stated. That is frankly impossible with public input
11 systematically deprived and suppressed as it has been illegally for decades. Nonetheless, the order erroneously states, "The
12 Executive Director (ED) has authority to modify project approvals. See ROP 5.15." (OFR 3:23-24) The ED has no such
13 authority under the Compact; approval of projects and modifications is solely prescribed to the Governing Board by vote at a
14 public meeting. (Art(III)(g), MSJ 1612-17:7, Reply 2:1-15) Delegation of this approval authority is illegal, for it is improper for a
15 project to be approved by the Governing Board members (BMs) to be later modified out of the public eye by the ED, who
16 simply can not be empowered with this assumed, delegated authority—as directed by Congress. The court has simply looked
17 past all this illegality, erroneously and without comment as a manifest constitutional error of law. Presuming the court has the
18 power and duty to overturn the illegal regulations, failure to do so and to silently ignore the whole subject as if it is moot when it
19 is fundamental is a gross miscarriage of justice.

20 The finding of OFR 3:19-20 is again recited at OFR 4:2-3 with 4:4-6 adding, "some permits being issued by the ED, some
21 applications considered by a Hearings Officer, and some heard by the Governing Board, depending on the project at issue. See
22 Code § 2.2.2." Here the court is finding the whole illegal regulatory scheme plaintiff uncovered and discussed in the Reply is
23 legally proper, without comment, merely reciting from defendant's CMSJ. It is not proper and this is a gross error of law which
24 court fails to address in any way.

25 Plaintiff's Reply shows the AR contains no evidence of legal compliance with public noticing requirements (Reply 8:15-
26 20), for this project or any other in years, yet the order states, "The Board meets once per month at a noticed public meeting,"
27 citing Art(III)(d). (OFR 4:10-11) If court thinks the public noticing deficiencies of the defendant plaintiff discussed as a violation
28 of law is of no consequence, it should state why for the record. In plaintiff's view, TRPA's failures to comply with its own public
Objections to Findings & Recommendations

1 noticing rules for newspaper noticing not only violates the Compact, but deprives the general public and those without internet
2 savvy or access, or the desire or time to go hunt information down on TRPA's massive and confounding website, of public
3 notice in a deliberate attempt to disempower and disenfranchise the public. Such failure can not be considered a "harmless error"
4 as it deprives the public, in a manner contrary to law, of among its most basic rights to know the activities of its servants and to
5 participate in public decision-making, and the court excusing and bypassing this deficiency without comment is a manifest
6 constitutional error of law. Far beyond that, TRPA has deprived the public of any notice, internet or otherwise, for whole classes
7 of projects and variances under its illegal regulations. (Reply 2:1-7, 4: fn11)

8 Court cites that "TRPA's Code creates a means to appeal an Executive Director or Hearings Officer decision to the
9 Governing Board" (OFR 4:13-14) without comment on the extensive discussions in my Reply disclosing the illegality of these
10 regulations. That is an error of law compounded by the court by failing to recognize what ought to be plain error in light of my
11 Reply, with the better part of the page taken up with discussion of appeals which have no basis in law, including Legal
12 Committee hearings concerning appeals: There was never any latitude for defendant to adopt an "appeal" regulatory scheme for
13 its illegal approvals by the ED and HOs, likely improperly for its own convenience. (Reply 2:23-25) The Compact specifies that
14 all variance and project approvals are subject to a Governing Board vote, and may be redressed through litigation only.
15 Defendant corrupted the whole intent of Congress and the states with its appeal set-up, a corruption court is sanctioning in gross
16 reversible error with its mistake-ridden order, and to which plaintiff strenuously objects as affecting substantive civil rights and
17 potential case outcomes, including my own. Court's failure to address the constitutionally-invalid regulatory scheme for project
18 and variance approvals by staff, and TRPA appeals, merely postpones adequate resolution subject to court appeal and *de novo*
19 review unless reversed on review by District Judge.

20 The only statement with veracity on OFR 4 is at 27, "Failure to take such action shall be deemed a denial of the appeal.
21 ROP § 11.6.2" The appeal plaintiff lodged was denied by a failure to take action in response to his Notice of Appeal on the
22 Variance, which was not the subject or focus of defendant's appeal administration, which erroneously focused on the "Plan
23 Revision." (Reply 7:19-8:6) Despite the extensive discussion plaintiff provided the court erroneously fails to consider these
24 actions "contrary to the manner of law," and that my appeal was legally decided by inaction. It failed by default because the
25 Board members (BMs) never voted on my appeal of the Variance. They voted on a Plan Revision application. (Reply 8: 7-12)

26 **III. Legal Standard**

27 The order discusses the legal review standard, citing Compact law, and noting at 5:27-28 the statutory definition of
28 "prejudicial abuse of discretion," with that two-fold mandate showing that "the agency has not proceeded in a manner required

1 by law” is fully sufficient and of equal legal standing with “ if the act or decision of the agency was not supported by substantial
2 evidence *in light of the whole record.*” (*emphasis added*) Court ignoring the former part of the review standard is a clear error,
3 and a manifest constitutional error by ensuring that legitimate review rights are usurped and constitutional civil rights to due
4 process and equal treatment are compromised to exact maximal harm.

5 The order notes at 6:11-12 that in reviewing the AR the court must determine “whether TRPA’s *procedures* provided
6 ‘substantial evidence’ of compliance with the Compact language.” (*emphasis added*) This court has not yet done that, for it has
7 failed to comment on the discussion of Rules of Procedure (ROP) and the Code of Ordinances (COO) adopted by defendant in
8 a manner contrary to law as alleged in the Reply at pages 2-3. It is a manifest error for the court to find upon review that the
9 procedures comply with the Compact language when they do not. The remainder of the page cites various meanings for
10 “substantial evidence” concerning project-level judicial reviews in case law, which cases are wholly unenlightening concerning
11 the matter of illegal regulations the court has skipped past. The most “substantial evidence” in this case is that defendant’s
12 regulations violate the Compact, a manifest constitutional error the court has not addressed.

13 **IV. Administrative History**

14 **1. The Initiation of the Cell Tower Project**

15 Court, like defendant, notes plaintiff didn’t appeal the Project approval (in 2021). (OFR 7:20-23) That this is “inaccurate
16 and irrelevant” as a matter of law in this case is addressed in plaintiff’s Reply (10:6, fn48) and my Reply’s assertions are not
17 addressed with any specificity by court in the order.

18 **2. The Plan Revision (Variance)**

19 The “Revised: Soil Project Approval Waiver” cited (OFR 8:2-3) constitutes a Variance from the TRPA Code of
20 Ordinances (COO), as discussed in the Reply. (7:15-8:14) Defendant’s issuance of the revised permit (OFR 8:12-13) was
21 unknown to plaintiff prior to filing my NOA on the Variance. (Reply 8:7-14, fn36) It was this Variance that was the basis of the
22 appeal. The court errs as a matter of fact in stating, “On August 22, 2022, plaintiff appealed the Plan Revision . . .” There is no
23 legal evidence for that in the AR, as alleged in the Reply, and nowhere rebutted.

24 **3. Plaintiff’s Appeal of the Variance to the Governing Board and Request for Stay**

25 Plaintiff again objects to the whole of the appeal discussion in OFR 8:16-24 as having no basis in law, being a perversion
26 of the Compact’s mandates that deprives plaintiff and the public of constitutionally protected civil rights. It is factually erroneous
27 and incomplete, taking no note of the illegal scheduling of the appeal hearing by defendant that further harmed plaintiff by
28 depriving due process rights and rights to equal treatment under the laws for a fair hearing. See section VI.B.2., Claim 2, below.

1 4. Observations of the Excavation by a Certified Professional Soil Scientist

2 Plaintiff has noted that what can be said of the soil scientist's observations in response to OFR 9:2-3 is that they were post-
3 *hoc* rationalizations for examinations required prior to approval and not performed, with TRPA staff incompetent to administer
4 its regulations pre-approval, and without expertise the agency needs and does not possess, as discussed in plaintiff's Reply at
5 10:13-18. It is only defendant's illegal regulations that give it opportunity to err and escape review for its faulty acceptance of
6 ground water investigations by unqualified professionals, as adjudged by unqualified professionals on the TRPA staff.

7 At OFR 9:11 there is a parenthetical reference by the court to an "audio file" of the Legal Committee hearing on the
8 appeal. Plaintiff's Reply alleges the audio recordings of both the Legal Committee and the appeal hearings were not provided as
9 part of the certified AR, though they exist online. Plaintiff was mistaken, and now concedes that any allegations in the Reply at
10 II.B.5. and thereafter are moot concerning audio recordings absent from the AR.

11 5. Lawsuit Procedural Background

12 Court notes at OFR 9:19, the action was begun on November 23, 2022. The day after defendant's final reply was due and
13 didn't come, MJ issued her recommendation, which must be some kind of record in terms of work turnaround, making my
14 opposition reply due Thanksgiving Day. The MJ's work is at least poetic justice culminating my "Thanksgiving lawsuit" input
15 after a year. Besides that, Plaintiff must again object to the sentence ending with, "... voted to deny plaintiff's appeal" as an error
16 of fact by defendant and here at OFR 9:16-17. The Governing Board did not vote on my Variance appeal, voting instead on a
17 Plan Revision, which involves a different part of the Compact law, despite my admonitions in pre-hearing comments (AR2867)
18 and testimony at the appeal hearing. Therefore, this error by the court appears to be one of mixed law and fact. (Reply 7:15-8:6)

19 **V. Motion to Supplement the Record**

20 While plaintiff suggested that the Administrative Procedures Act or APA (5 U.S.C.) provides controlling case law
21 informative to the judicial review process (Reply 14:fn66), the order's reference to the APA is a bit disturbing at OFR 10:18-19,
22 "When considering an APA case the district court 'reviews the whole record or those parts of it cited by a party. See 5 U.S.C. §
23 702.'" This is not "an APA case" but rather a case involving judicial review under the Compact, as noted previously by the
24 order. Unless court is reasonably conceding plaintiff's assertions (without comment) there could be an error with the judicial
25 review standards being applied and court should clarify this matter. Nonetheless, the whole record is implicated by the Compact
26 review standards.

27 On the "presumption of regularity" and "concrete evidence" (OFR 10:20-28) with regard to the AR, defendant's phone
28 and email records are not in defendant's constructive possession as discussed thoroughly in plaintiff's MSAR 7:1-20; an agency

1 has constructive possession of records if it has the right to control the records, either directly or through another person.
2 Defendant does not possess this, yet certifies the record as complete, with the court implying this whole illegal set-up is wholly
3 proper without comment, despite the public record requirements put forward in the MSAR. (4:18- 7:21)

4 Here we have court's conclusion (OFR 11:16-20), reciting defendant's CMSJ, and then agreeing with defendant's
5 statement, that matters in the MSAR "are outside of the scope of the court's review in this case and that plaintiff has not
6 identified any bad-faith agency actions to warrant record supplementation. ECF No. 31 at 4-9. The undersigned [MJ] agrees with
7 defendant that the record does not require supplementation in this case." In this manner, the court is thereby dismissing any
8 findings under *Lands Council v. Powell* (OFR 12:6). Court is silently condoning and supporting illegal acts by defendant with a
9 faulty analysis, if any, of the evidence or facts in the AR, in complete and unwarranted deference to defendant, as is discussed
10 herein and in plaintiff's prior motions. Bad faith action began with the very first written communiqué from defendant to plaintiff,
11 the stay response, which tainted everything that followed with illegally scheduling an appeal hearing in the absence of a
12 Statement of Appeal (SOA), as will be discussed below in VI.C. (p.14) This court finding is without basis in law and a reversible
13 error based on plaintiff's prior motions and what follows.

14 A. Oath of Office Concern Does Not Demonstrate Bad Faith

15 The order asserts defendant's own claims concerning oaths of office without addressing the legal requirements for federal
16 appointees cited in plaintiff's FOIA letter, MSAR Exhibit 1. (OFR 11:23-27) To agree with defendant's assertions that TRPA's
17 federal appointees only owe allegiance to the entities they otherwise serve is specious and without basis in law. In the first place,
18 very few BMs are appointed by a federal authority other than TRPA, and so would not otherwise subscribe to the required
19 federal oath in accordance with the legal requirements as stated in MSAR's Exhibit 1. In the second place, certain BMs are
20 appointed as "members at large" and do not serve an appointing power prescribed by the Compact other than TRPA, and are
21 therefore required to subscribe the oath for TRPA (like the others).

22 The law is the law, and plaintiff's MSAR claims this is of grave importance as a matter of law, for it legally invalidates all
23 that the TRPA does insofar as decisions by presumed traitors lacking proper governmental authority can not be legally binding
24 on the governed, a manifest error of law to allow by the court in its dismissal. None of the individuals referenced in MSAR
25 Exhibit 1 have satisfied their Constitutional obligations or have adhered to 5 U.S. Code § 3332 thereby nullifying, or at a
26 minimum, calling into question the legitimacy of their appointments or positions. Violators shall be removed from office and
27 permanently enjoined from further governmental service. Since none of the appointees referenced have produced a compliant,
28 mandatory oath of office affidavit, it follows that plaintiff has established a *prima facie* case for remedy such as petition for

1 issuance of a *writ of quo warranto* and the burden of proof then falls on the appointees to prove to otherwise and to produce the
2 affidavits as required by law. *See e.g., Ford v. Leithead-Todd*, 139 Haw. 129, 384 P.3d 905 (Ct. App. 2016); *People ex rel. Lacey*
3 *v. Robles*, 44 Cal. App. 5th 804, 258 Cal. Rptr. 3d 97 (2d Dist. 2020). Oath failures are currently widespread at all levels of
4 government, including courts. TRPA is a case in point.

5 Court states the Compact does not contain an oath of office requirement (OFR 12:1-5) but that is irrelevant. As for most
6 agencies, the requirement is not in the organic statute but rather in the APA, to cover all in federal service. *See* ECF 32, 7:22-26.
7 It is a manifest error of law in failing to supplement the AR with this oath deficiency by ignoring all lawbreaking and acts in bad
8 faith. The failure to subscribe to a required oath can only be considered potentially treasonous, “bad faith” in the extreme.

9 B. The Administrative Record Already Contains Public Comments

10 The court cites plaintiff’s allegation of “bad faith” by defendant failing to publish public comments (OFR 12:7-8), not
11 mentioning the fact that they must be published “contemporaneously with the meeting” as required by law. (MSAR 6:12-13)
12 Court fails to note over 1200 pages of comments in the AR were not published online until many months later, long after the
13 BMs voted and public interest had waned. (MSAR 6:14-24) Court erroneously supports defendant’s censoring of public
14 comments to prevent Board consideration. Defendant’s action was done in bad faith to deprive plaintiff and others of the civil
15 rights to a fair and unbiased hearing. Here, it was clearly done to prejudice the appeal hearing outcome by limiting the comments
16 presented to those of plaintiff, the Project applicant, and a two other minor comment emails. (MSAR 8:fn4) Defendant has no
17 authority or right to cherry-pick which public comments the Board is presented with, and takes this illicit activity as their illegal
18 duty. It is a manifest error for the court to sanction this subterfuge rather than reproach it.

19 The order says plaintiff fails to identify a deficiency in the record, and there is nothing to supplement in the AR. (OFR
20 12:22-23) Plaintiff doesn’t agree, and cites the failure to *publish* public comments contemporaneously with the meeting (not just
21 list them in the AR) as information not obtainable from the AR, which court dismisses. If the court is refuting plaintiff’s
22 allegations, plaintiff would have the court explain its disposition of defendant’s own insertion of extra-record information into the
23 certified AR after the fact concerning emails in the certified AR, without motion for court leave to do so, in light of plaintiff’s
24 rebuttal and over plaintiff’s strenuous objections. *See* defendant’s opposition to the MSAR and plaintiff’s rebuttal. (ECF 32, 8:6-
25 23) Court dismisses the matter without comment, siding with defendant. Plaintiff has no indication the court has refused
26 admission of the unverifiable electronic information, which plaintiff suggests would be a plain and prejudicially-biased error to
27 admit. The implication and inference is the certified AR is deficient or defendant wouldn’t have taken such action in the
28 demonstrable disregard for rules it is so prone to, undermining court’s assertion.

1 C. There Is No Concrete Evidence of the Existence of Additional Relevant Documents

2 Court opines plaintiff has presented “no concrete evidence” of the existence of additional relevant documents and
3 dismisses the MSAR. The MSAR evidence is that defendant has set up “official channels” for email and telephone calls it can’t
4 retrieve records from for administrative record purposes. That’s the evidence, not hunches and suspicions, but official email
5 defendant has no access to. Why should BM traitors be given the benefit of the doubt that they don’t communicate among
6 themselves unbeknownst to defendant’s electronic systems? That’s why it’s just a perfect set-up for criminal activities, and why
7 it’s a manifest constitutional error for the court to overlook it. Knowing defendant and BMs, they surely exploit it. If plaintiff has
8 no proof of *specific* documents, how could he ever? The defendant’s administrative system is set up to evade review. (MSAR 9)
9 The court has nothing to say as a matter of justice about defendant’s mishandling of the public records and deliberate subterfuge
10 with electronic records to deprive plaintiff of a fair and honest hearing. The MSAR is thus summarily denied based on errors of
11 various sorts so the case “proceeds on the merits of the administrative record as filed by the defendant.” (OFR 12:24) Plaintiff
12 again objects, to MSAR dismissal, and for leaving the matter hanging as to whether the court erroneously admitted prejudicial
13 extra-record evidence in defendant’s Opposition filing (ECF 31), as it may have from the failure to include “as certified” here.

14 **VI. Summary Judgment Analysis**

15 A. Claim 1: “August 5, 2022 Exception Letter”

16 The court begins the summary judgment analysis citing plaintiff’s MSJ at pages 1 and 7. The associated court references
17 to the AR citations in the MSJ at 7 are erroneous upon examination: “ECF No. 28 at 7, citing AR 0738-0473, 0753-0755, 0168.”
18 If one examines page 7, those are not plaintiff’s citations, none of the above AR numbers appear, and it is unclear what the MJ is
19 referring to with a 265-page “reverse” citation. What plaintiff wrote, with pointed references, was: “I filed the NOA and stay
20 request on August 22, 2022, refuting that the RGR was professionally appropriate, correct or adequate to determine that
21 interference to a ground water table would not occur, as required, at length in the record (e.g., AR0743-AR0747, and later at
22 AR1295-AR1296, AR2865-AR2866, Ms. Carpenter’s letter (AR1188-AR1205) and Claim 8, below).” (MSJ 7:18-21). The
23 judge’s citations appear to be material errors of some sort, beyond mere clerical errors, and point to a failure to properly examine
24 the AR, leading to errors of fact and lending weight to other error findings demonstrated herein.

25 The MJ concludes the defendant decision on Claim 1 is “well-supported by the evidence,” (OFR 14:8-20) if not the law,
26 for only in a one-sided sense does it seemingly pass judicial review muster, as the court is not examining the specifics of the
27 laws, as in my SOA. Court can avoid technical matters in the evidence if it grants deference and all discretion to defendant, erring
28 in seeing the facts before it concerning bad faith. Plaintiff turns court back to the law, since it failed to examine the rudiments and

1 whether defendant acted here in a manner contrary to law, as alleged. The gloss-over defendant narrative recited by the court,
2 and defendant's assertions that it did not issue a Variance, do not withstand legal scrutiny (see Reply 9: 8-19) and the AR does
3 not demonstrate that the applicable code sections are met as a matter of law, as sufficiently demonstrated in MSJ 14:1-17 and
4 associated AR references therein. Defendant's claimed Code compliance was all roundly refuted and demonstrated as being
5 illegal to approve under non-discretionary, ministerial application and administrative review requirements. (Reply 9:20-10:7) As
6 ignored by defendant in its motions, here court is also ignoring all actions conducted in a manner contrary to law, and
7 erroneously giving defendant discretion it does not possess under a high-level "substantial evidence" finding when the
8 undergirding legal details render that finding untenable and void. There is no basis meeting the requirements of the regulations
9 for the staff approval of the Variance in the AR, as plaintiff has pointed out from the NOA to the present. The "whole of the
10 record" points to this and has been ignored in errors of judicial review, for it is manifestly clear error that sanctions breaking the
11 laws to any degree while stating supporting evidence overcomes.

12 The section on Claim 1 concludes with reciting Art(VI(j)(5) requirements concerning "independent judgment" on the
13 evidence noting, "the scope of review shall extend only to whether there was prejudicial abuse of discretion." Plaintiff discussed
14 the two-pronged standard on p. 1, above, and further notes the judicial review standard must be coupled with and informed by
15 the Compact's mandate to strictly follow the Compact law (Art.(c)), "The Tahoe Regional Planning Agency shall interpret and
16 administer its plans, ordinances, rules and regulations in accordance with the provision of this compact." Noting the use of
17 "shall" and that the provision does not allow that defendant can adopt or interpret its self-enacted regulations in a manner
18 inconsistent with the Compact, the court shall not grant defendant discretion it does not possess to pass and administer laws that
19 violate the statute, or to violate the regulations enacted, without committing a clear error of judicial activism and overreach
20 contrary to what Congress clearly intended. Yet that is what court has done based on "ample evidence in the record" to support
21 one prong of the test while ignoring the facts that the whole of the permitting and appeal process is fatally tainted by defendant's
22 illegal regulations, and faulty administration, with ample evidence in the record for that. The order's motion for summary
23 judgment on this claim fails as a matter of law.

24 B. Claim 2: "Late Response for Stay Request"

25 Court discusses the day-late determination in response to the stay request filed with the NOA, writing, "First, the court
26 agrees with defendant's assertion that this claim is moot because there is no available remedy with respect to TRPA's delayed
27 response." (OFR 15:2-3) The gloss echoing defendant continues, "... there is no further relief for the court to order." (OFR 15:4)
28 Plaintiff would say first that ROP 11.3 grants no discretion not to make a stay determination within two days, which must be

communicated to be of any validity unless a denial by inaction is intended. Second, plaintiff notes the fact that the response came on day three is not disputed (AR1182), and is therefore a single-day violation of the requirement. Third, this section calls into question whether the Reply was adjudged by the court in its entirety, thereby depriving plaintiff of a fair tribunal, as there is no mention of any of plaintiff's counterarguments or claims of violation and trespass of constitutionally protected interests under the ROP (Reply 7:10-14), another manifest constitutional error.

Fourth, court's finding of mootness is plainly erroneous, and ignores the fact that relief for *all* of the violations claimed in plaintiff's original Complaint and thereafter rests entirely on Art(VI)(I), "Any person who violates any provision of this compact or of any ordinance or regulation of the agency or of any condition of approval imposed by the agency is subject to a civil penalty not to exceed \$5,000 ... per day, for each day on which such a violation persists..." Here we have a willful violation by the defendant, for which plaintiff is still alleging bad faith—not only for being late, but for its illegal contents scheduling the hearing on September 28, 2022, in violation of ROP 11. Plaintiff would accept that \$5,000 is an adequate penalty, sufficient to deter such lateness in the future. The claim of mootness on the basis that no relief is available is a plain error that does not withstand legal scrutiny and plaintiff's claim must not be dismissed for lack of jurisdiction (OFR 15:6-7). If court does not believe civil liability is an available remedy, it must refute plaintiff's arguments and has not. (MSJ 17:10-19:11) Plaintiff is a person. TRPA is a person. Here the court is attempting to deprive plaintiff's right to equal treatment under the law (42 U.S.C. § 1985), namely, the right to obtain relief in the same manner as defendant does when it prosecutes violators, and thus dismissing this complaint on the stated bases is a manifest constitutional error that necessarily trespasses guaranteed civil rights.

Court errs further by not acknowledging the arguments put forward in the Reply at 13:10-16:11 identifying constitutionally protected interests created by the defendant's ROP, thus establishing factual constitutional violations. Court evidently did not fully consider the Reply before issuing the order, with a presentation clearly prejudicially biased to dismiss the case. Court repeats the error of claiming "plaintiff's appeal was heard and acted on," when as a matter of law plaintiff has explained *ad nauseam* the action taken by required BM vote was on a major Plan Revision approval, and had no legal validity to begin with under illegal regulations. (MSJ 16:12-24, Reply 2:16-25) The court goes on, without basis, to excuse the violation in plain error, with a fraudulent claim of "substantial compliance"—not with meeting the determination requirement in two days, but only for the elements of the stay determination that are within defendant's discretion, so-called interest balancing. (OFR 15:16-17)

C. Claim 3: "Advancement of the Appeal Hearing Date"

The contents of the stay determination are discussed (OFR 15:19) as court repeats defendant's blithe unsupported assertion

1 from their CMSJ, that “as explained above, there is no constitutional right arising from TRPA’s rules.” (OFR 15:22) That notion
2 was fully debunked in the Reply, as noted above, so this review begins in failure mode like the prior claim review. The order
3 continues, stating the ROP puts no limit on defendant’s appeal hearing scheduling, but does “impose certain deadlines on the
4 appellant.” This ridiculous claim was not addressed fully in the Reply only due to the limitations of space, and comes out of
5 defendant’s twisted view that the TRPA regulations are binding on the public and merely serve as advisory guidelines for what
6 defendant may do in its illicit, unbridled “discretion,” ignoring its charge under Art(I)(c). This statement evinced the minds
7 behind the tyrant to plaintiff, since that is defendant’s practice in actual fact.

8 Plaintiff completed additional analysis of ROP 11 in response to the order and will again summarize and extend the
9 findings and allegations ignored by court. There never was any legal basis in the Compact for ED or Hearings Officer (HO)
10 approval of projects or variances, and therefore no basis for appeals. (ROP 11.1) The whole section 11 is invalid, and set up to
11 deprive the public of protected civil rights and should be stricken from the regulations. The ED or HO acts beyond statutory
12 authority when taking action on projects in lieu of Board action under illegal delegations of project and variance approvals
13 defendant illegally made up. Nevertheless, defendant proceeded to violate its own illegal rules, as follows.

14 ROP 11.2 refers to notice of appeal (NOA) filing requirements, SOA filing requirements, and scheduling requirements for
15 being on the “next Governing Board agenda,” including SOA filing before the 15th of the previous month. Importantly, the
16 filing of the NOA and SOA puts the scheduling for the appeal hearing in the appellant’s hands. For defendant’s September 28,
17 2022 scheduling requirement to comply with 11.2 the SOA would have to have been filed by August 15, 2022, a week before
18 the NOA filing. Thus, defendant fatally erred in interpreting its scheduling rules in order to hold an appeal hearing timely for its
19 permittee, violating applicable regulatory requirements, nor does it have any discretion to violate the rules it enacted for itself.
20 (Art(I)(c)) The SOA was filed before September 15, 2022, under duress, as defendant had communicated its intention to
21 schedule the appeal at the September 28, 2022 meeting with repeated, unsupported, assertions of discretionary authority, as in its
22 CMSJ, thereby depriving the due process rights of the appellants.

23 ROP 11.3 concerns stay requirements, including the two-day determination I’ve previously discussed, something an
24 appellant “may request” and the Chair may issue following a determination. There is a reference to holding a hearing on the
25 appeal at its “next regular meeting.” To be consistent with 11.2’s requirement to publish the appeal in the “next Governing Board
26 agenda” the requirement to file the SOA on or before the 15th of the previous month must be recognized, with no other reference
27 to scheduling requirements in 11.3. Scheduling in any event depends on 11.2 requirements, and defendant erred fatally in
28 scheduling the appeal hearing to its “next regular meeting,” without any regard for 11.2 due process and scheduling requirements

(as reinforced by 11.4, below, including the “previous month” requirement). There is thus consistency with sections 11.2 and 11.4 which defendant and the court doubly ignored. Appeal scheduling requirements are completely independent of any stay issued, and it is an error of law to assert otherwise, as defendant’s General Counsel did repeatedly, and as court does in support. The AR contains the record of emails between plaintiff and defendant’s General Counsel demonstrating the pre-SOA, pre-appeal contentions of defendant under ROP 11.3, and duress plaintiff was arbitrarily compelled into, under strenuous objections: AR1182, AR1185-AR1205, AR1248, AR1251, AR1258, AR1259, AR1264-1267 and AR1280.

Review procedures for (illegal) decisions by the ED are in ROP 11.5, and most importantly limit appeal arguments and bases, repeating *verbatim* a sentence in 11.4. By rushing the appeal hearing from November 16 to September 28, 2022, defendant deprived plaintiff of the time needed to fully complete the SOA, and the time needed to prepare for the hearings before the Legal Review Committee and the Governing Board. Rather, critical time to prepare under the ROP’s contractually-guaranteed schedule was spent in time wasted arguing against defendant’s blatant rule-breaking and pushing back against a schedule *imposed* by defendant, first, to file “any additional information”(AR1182) on September 2, 2022 (which plaintiff refused), and then to file the SOA by September 8, 2022, with no authority or basis in law to do so!

Given the required time to file the SOA, plaintiff would have filed it after September 15, 2022, which would have put the appeal hearing on November 16, 2022. Thus, plaintiff was deprived of something on the order of ten days to prepare plaintiff’s SOA for filing, and an additional 56 days between September 12 (plaintiff’s SOA filing date) and November 16, 2022, to prepare for the appeal hearing. To add to plaintiff’s burdens in representing the co-appellants, Defendant issued its staff report for the appeal for comment one week prior to the meeting, on August 17, 2022. The appellant then has seven days to reply to the staff report (see 11.8 below) or be otherwise limited to the arguments and bases for appeal as stated in 11.5. Thus, the case for appeal was impossible to make fully in the time available, greatly trampling plaintiff’s civil rights and tainting subsequent litigation rights by severely limiting time for argument. Plaintiff sent comments on the TRPA staff report for the appeal on September 27, 2022 (AR1989-1994), in the midst of preparing for the above-cited hearings, preparation of presentations and slides for the hearings, and managing communicating with plaintiff’s associates, monitoring site activity, preparing exhibits such as plaintiff’s impervious coverage calculations and many other things. Within the limited time, introducing information to better explain the coverage analysis, introduce the *Daubert* standard, analyze the law, *etc.*, was not possible and deprived plaintiff of civil rights guaranteed under the regulations, illegal as they are.

It is patently unjust that defendant prejudicially abused discretion it does not possess in misapplying its own rules to compress the time needed for the due process requirements in ROP 11 to unfold. Instead, plaintiff was given an illegal and

arbitrary timeline, so defendant could illegally uphold its illegal project approval to advance project construction fully in 2022. All TRPA's Chair had to do was determine a stay would not be issued and let the appeal hearing process unfold. There was never any basis for a September 2022 appeal hearing as plaintiff was fully aware in lodging the appeal, nor any knowledge on plaintiff's part that defendant would attempt these illegal actions in bad faith—prior to receiving the information with the Chair's determination on the stay plaintiff received on August 25—when every day then became critical under the compressed schedule and caused great hardship in presenting plaintiff's case for the appeal. There was no “harmless error” in depriving plaintiff's due process rights as defendant claims in its narrow review of the day-late response containing the illegal scheduling requirements, which the court is supporting without justification; the agency simply has no discretion to violate the ministerial requirements, regardless of whether its staff supposes its errors are harmless.

“11.6.2. If the Board determines to hear the appeal, it may take action to modify or revoke the approval by the same affirmative vote as would have been required to approve the matter before the Board. Failure to take such action shall be deemed a denial of the appeal.” Plaintiff commented that the defendant failed to act on plaintiff's appeal of a variance by the vote required, instead substituting the vote required for a project approval. (MSJ 16:12-19, Reply 8:1-6). Therefore, the Board did not in fact act on plaintiff's appeal on the issuance of the variance. In hindsight, it was all a misguided sham, and reasonably may have turned out differently had defendant followed the rules—and not acted prejudicially in bad faith to deprive our civil rights from day three. In any case, the Variance was denied by the operation of law, setting the stage for this litigation.

“Prior to a hearing on an appeal, the Executive Director shall prepare a staff position paper on the appeal. The staff position paper and the written statement of appeal shall be mailed to the appellant and any real party-in-interest and included in the Board packet at least seven calendar days before the Board meeting that the appeal is scheduled to be heard.” (ROP 11.8) The staff position paper was only sent by limited electronic mailing in this case, which the above regulations do not support. It was not mailed to any other real-parties-in interest to plaintiff's knowledge based on the AR, which lacks any evidence of legal public noticing (Reply 8:15-20) such as to any nearby property owners, including a multi-unit condominium with private dwelling units within 300 feet of the project site. This public noticing requirement was unmet, depriving all such parties of their civil rights without them knowing. The court has committed manifest constitutional errors of law by excusing all such civil rights violations and there is no entitlement to summary judgment on Claim 3 for defendant as the court states.

D. Claim 4: “Requirements for a Complete Project Application”

Claim 4 concerns unmet, non-discretionary application requirements for a “major” project revision per fee regulations, contrary to statements in OFR 16:5-16. (See AR1294) The court opines that these are discretionary requirements and that a

1 “duplicative submission was not warranted.” Plaintiff disagrees that the required elements of ROP 5.2 for a complete application
2 are discretionary, though never implying the elements must be “duplicative” as to content. The requirement was to provide an
3 application appropriate to the Project as revised, and this defendant did not require prior to its staff approval of the Variance.
4 (Reply 5:3-5) This error of law the order supports at OFR16:18, citing defendant’s assertion that this claim constitutes a “third-
5 party cause of action” outside the court’s scope of review. Plaintiff refutes the assertion, with the defendant being in violation of
6 ROP 2.2.1 for approving a Variance in the absence of a complete application. Thus, this matter is within the scope of review as
7 addressed herein and contrary to court findings at OFR 16:19-20. Defendant is not entitled to summary judgment on this claim in
8 light of the errors of fact and law, above.

9 E. Claim 5: “Application Signer in Perjury”

10 The order cites a claim (16:23) that the application was unsigned which plaintiff ceded in the MSJ (10:8-9), and cites the
11 arguments against Claim 5 that fail for Claim 4 concerning the perjured, incomplete application, and this argument fails for the
12 reasons stated above. The order restates defendant’s admonition that “a challenge to the adequacy of the initial application is
13 outside the proper scope of the court’s review.” (16:26-28) That is precisely why the regulations (ROP 5.2) require a complete
14 project application that addresses potentially significant impacts and requirements, from the project as revised, to preserve
15 important environmental obligations and civil rights to public participation concerning those obligations. This is where defendant
16 failed, here supported by court. The AR evidence that the application was perjured is that it was incomplete in important respects,
17 which matters mainly for the reasons stated above—to ensure important civil rights under the project review processes.
18 Defendant is therefore not entitled to summary judgment on Claim 5.

19 F. Claim 6: “Incomplete Application: Missing Initial Environmental Checklist”

20 Claim 6 pertains to the missing Initial Environmental Checklist (IEC) required of all applicants for a complete application.
21 As with Claim 4 there is a false claim plaintiff is “creating a private right of action” from defendant’s ROP to “challenge the
22 contents of an application.” Again, this in error because plaintiff isn’t challenging the “contents” of any application element, only
23 that required elements were absent entirely, elements which are non-discretionary under ROP 5.2 when a project application is
24 triggered. The order’s case law cited is inapplicable (OFR 17:22-25) because there is no evidence of environmental review in the
25 AR, as discussed at AR0734-AR0736, MSJ 10:17-11:13, and Reply 5:6-7:9. Defendant violated ROP 5.2 by not requiring an
26 IEC and other missing elements. (AR2869) It gave preferred treatment for the applicant rather than equal treatment under the
27 laws. Approval of the Variance (not the “Plan Revision”) on the basis of no IEC was a prejudicial abuse of discretion and the
28 entitlement to summary judgment for the defendant recommended by the court fails for Claim 6 for the same basis as for Claim 4.

1 G. Claim 7: “No Environmental Review Determination”

2 The purpose of Claim 7 was to document the absence of environmental review by staff concerning the Variance, as
3 supported by the AR. (MSJ 10:7-11:13) The staff approval of the Variance (not the “Plan Revision”) was therefore a prejudicial
4 abuse of discretion and the entitlement to summary judgment for the defendant recommended by the court (OFR 18:12) fails for
5 this claim for the same reasons as for Claims 4 and 6.

6 H. Claim 8: “Incomplete Application: Missing Necessary Reports”

7 Claim 8 pertains to missing “necessary” reports for the Variance application for the Plan Revision, with a focus on the
8 revised geotechnical report. (OFR 18:6-9) With the court’s rejection of *Daubert* as a tool in this case, plaintiff points to additional
9 non-discretionary reports not provided at MSJ 10:4-7, and it is these violations that deprive defendant of entitlement to summary
10 judgment on this claim solely on the basis of “substantial evidence” (OFR 18:11), with the court erring by ignoring violations of
11 law and the absence of evidence of compliance.

12 I. Claim 9: “Prohibition of Excavation Interference with Ground Water Table”

13 Plaintiff’s SOA provided a detailed analysis for Claim 9 (AR1313-AR1319) to support that approving a variance to the
14 regulations was in violation of applicable requirements, as did plaintiff’s MSJ (14:1-17) and NOA (AR0737-AR0746). As for
15 Claim 1, the order cites a one-pronged judicial review standard to dismiss, without comment, defendant’s violations of law solely
16 on the basis of “substantial evidence” (OFR 18:11), with the court erring by ignoring violations of law. The defendant is not
17 entitled to summary judgment on this claim.

18 J. Claim 10: “Conflict of Interest Violations”

19 With regard to Claim 10, court cites defendant’s explanation from the CMSJ with the issue focused on the meaning of
20 “employee” stating of ROP 8.4, “this provision is designed to prevent employees from seeking supplemental employment or
21 compensation,” so defendant, “retained a third-party soils consultant (not as plaintiff asserts, a ‘subordinate employee’)...”
22 (OFR18:26-19:2) My World Book Dictionary (1983, p. 1782) indicates “retain” means “3. To employ by payment of a fee . . .
23 by payment of a retainer,” and the first meaning of “retainer” is “a person who serves someone of rank; vassal; attendant;
24 follower.” This supports plaintiff’s claim that the soil consultant is an “employee” of the defendant, and subordinate to it in
25 accordance with common understandings and therefore ROP 8.4 is applicable. Plaintiff stands on the MSAR’s analysis and
26 summary, in particular the finding that defendant does not have any person on its staff competent to carry out its ground water
27 protection regulations. (MSAR 13:23-14:8) Court errs in claiming the employee was not conflicted, and defendant is not entitled
28 to summary judgment on this claim.

1 K. Claim 11: “Impervious Coverage In Excess of Limitations”

2 Court will NOT exercise independent judgment on the coverage evidence, despite any discretion under case law or “bad
3 faith” it refuses to see, citing defendant analyses debunked in the MSJ and MSAR. The court finds, “Regardless. . .the court is
4 required to defer to TRPA’s calculations.” (OFR 19:18-19) There is court discretion under the circumstances, and the court is
5 perpetuating defendant’s coverage errors with an error of law by citing that discretion, however limited, is unavailable to the
6 court in light of the whole record. (Reply 11:16-12:19) Court here stands on maintaining strictest compliance with a review
7 standard, erring by contrast with all defendant’s violations of legal requirements court has *completely* ignored under the loosest
8 of interpretations, as discussed thus far herein. Thus, court is cherry-picking which laws to follow and how, just as does the
9 defendant, in an arbitrary and capricious denial of justice. Defendant is not entitled to summary judgment on this claim.

10 L. Claim 12: “Illegal Appeal Hearing Voting Procedure”

11 Court dismisses Claim 12 and the erroneous voting procedure as a harmless error because the outcome wouldn’t have
12 changed. (OFR 20:1) True, the outcome was predetermined under *any* voting procedure. This case took some extraordinary
13 turns in the final analysis, something likely unusual in most administrative law cases, with plaintiff’s disclosure that defendant
14 has operated under invalid regulations in its Code of Ordinances and Rules of Procedure, since 1998 as it turns out, to excuse the
15 Governing Board from voting on the vast majority of projects and variance applications before the agency in a manner contrary
16 to law. (Reply 3:5-20) This raises Constitutional issues with regard to civil rights violations because defendant has done
17 indirectly what the U.S. Congress and the two states could not do directly, by its changing the statutory requirements with faulty
18 regulatory rules that deprive the public of its protected rights to due process and public participation in agency decision-making.
19 (*Henderson v. Mayor of the City of New York*) .The vote on plaintiff’s appeal, however erroneous in process (AR2867), was a
20 foregone conclusion as plaintiff’s Reply and other motions makes plain. The illegal voting led to discovery of all the illegal
21 regulations the court is looking past throughout the order in manifest constitutional error, without a word that defendant has acted
22 contrary to law in any respect. (Reply 1-2) The defendant is not entitled to summary judgment on Claim 12.

23 **VII. Conclusion**

24 Court has in essence said the quiet part out loud. It believes defendant may facilitate rampant development in violation of
25 its mandate to protect the Tahoe region, violate its own regulations and the Compact with impunity, violate the civil rights of the
26 people, ignore science and public safety and health data, and that courts can’t hold it accountable. In defendant’s wildest fantasy,
27 nearly nobody has interest or standing to sue or is harmed by its procedural due process violations. Court makes precedent
28 establishing that defendant is accountable to nobody, even if it harms federally endangered species, introduces or micoplastic

1 pollutants into outstanding federal waters, or irradiates people, natural waters, fauna and flora with damaging effects. Defendant
2 won't take any look whatsoever, let alone a 'hard look,' at the multiple adverse consequences and viable alternatives to its
3 projects, with court assenting.

4 To these precedents add court's recommended consent to allow, without a contrary word, that defendant may change the
5 laws set forth by the U.S. Congress and the state legislatures of California and Nevada, that defendant may further ignore even
6 those inapplicable illegal requirements under presumed discretion that does not exist to violate the law, with court denying for
7 defendant that any violation of law or "bad faith" has occurred without specific reference to mountains of evidence. This order
8 abets defendant to destroy the purity of the enormous and world-class water resource that is Lake Tahoe for healthful drinking
9 water purposes, to destroy the natural environment of Lake Tahoe with toxic man-made chemicals and microwaves, and to
10 degrade Lake Tahoe for all other beneficial uses of water protected under the California Water Code in the absence of currently
11 prohibitively-expensive treatment without a scintilla of precaution, a program the MJ is in full support of. I therefore pray for
12 court's reversal of the order, findings and recommendations by the MJ, and to order summary judgment for plaintiff. Court must
13 assist to restore Lake Tahoe by restoring the rule of law.

14 

15 DATED: _____

16 November 22, 2023

17 Alan Miller, *Plaintiff, in propria persona*

18 P. O. Box 7526, South Lake Tahoe CA 96158

19 Syngineer1@gmail.com
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Exhibit 1: Court Holidays, District Court for Eastern District of California

1 John L. Marshall (#145570)
2 General Counsel
3 Tahoe Regional Planning Agency
4 P.O. Box 5310
5 Stateline NV 89449-5310
6
7

8 Executed on: November 22, 2023

Signature: 

9 Alan Miller

10 *Plaintiff, in propria persona*
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International Public Notice: Worldwide Dependency

By Anna Von Reitz



We have all gone through the experience of being dependent as children. The question is: do you want to be dependent and regulated for the rest of your life? In Europe, they have decided to be permanently dependent on their government, which is a corporation.

Corporations are by nature faceless and unaccountable and when they operate as governmental service providers, they give all the special interests everything the special interests want.

The unions, the political parties, the big business interests, the public utilities, everyone gets in on the act, and they are all bent on controlling you (they are the parents, right?) and charging you for their "services" (which they pad because they can -- what are you, their dependent, going to do about it?)

Here is where Europe is as a result of being dependent on corporate government and lapping it up like pigs at a trough:

<https://www.youtube.com/watch?v=2IOWBjoo7Ew>

Here's the kind of treatment that follows from being dependent on corporations in the business of providing "essential government services":

https://www.youtube.com/watch?v=9_umqYU0YK4

This is why we are preparing to put an end to the guilty corporations and to punish the CEOs and Boards of Directors who are responsible for the insane "policies" and activities of these "public service corporations".

<https://www.youtube.com/watch?v=2UxhZYDkyhw>

We can do this, because we are not, as it turns out, dependent upon these corporations. We are the employers of these corporations. They take their paychecks from our pockets and all the "public" employees, too.

We are determined to put these employees back in their proper boxes and hold them fast to the limitations of their role in our business and our lives. We are not going the way of the WEF. Not embracing Corporate Feudalism. Not putting up with it.

As Margaret Thatcher said, the problem with European Socialism is that sooner or later, you run out of other people's money. And Europe has run out of our money.

The Trump Administration is deep in the process of auditing the departments and agencies of the now bankrupt UNITED STATES Municipal Government Corporation. This includes all its franchises: the UK, CANADA, AUSTRALIA, FRANCE, GERMANY.... which is why all the phony "government" corporation leaders in Europe are upset and scared.

President Trump doesn't have any choice in performing this duty. The settlement of the UNITED STATES' Chapter Seven Involuntary Bankruptcy requires a full audit and accounting of all these entities.

They are all broke.

They are also incompetent, oppressive, and in the process of being dissolved.

Trump's new Department of Government Efficiency is discovering the extent of the crime, corruption, collusion, waste, and abuse that has been

perpetuated against the interests of the American people, and we are taking full stock of it.

Although the knee-jerk reaction of those most responsible for these deplorable circumstances is to blame Trump for their own bankruptcy and their own mismanagement and gross overspending:

<https://www.youtube.com/watch?v=9FCq4kbDGTc>

--- let it be fully understood, that it doesn't matter who is President, the job of settling the bankruptcy would still have to be done.

Let it also be understood that "Maryland, Incorporated" -- the entity that this "Governor" is governor of --- in the video above, is a franchise of another corporation, doing business as "the United States of America, Incorporated".

Here he is, a State-of-State franchise operator, feeling sorry for all the Federal Employees who are being let go, blissfully unaware that Maryland, Inc., has no business saying anything about the mandatory down-sizing required by the Municipal Government bankruptcy.

Indeed, he appears to be ignorant that there is a bankruptcy at all. He also doesn't appear to be aware that his own "State of Maryland, Inc." has its own problems to deal with.

We are engaged in evaluating, reorganizing, liquidating, and picking-and-choosing which assets to retain, but it all adds up to between half and two-thirds of all "federal government" and agency personnel losing their jobs.

That is a minimum of around a million and a half public employees hitting the bricks, and there is nothing anyone can do about it, because: (1) their own bad behavior and incompetence and reckless spending caused this result, and (2) the remaining federal government corporation, the USA, Inc., infrastructure cannot afford to retain all the former Municipal employees.

So all those bemoaning the consequences of running out of other people's money, will just have to suck it up; and, those "federal" judges who are so

clueless as to think that they can stop this process also need a reality check. Mr. Trump, as the President in Receivership, is already acting under the orders of a higher court.

Everyone in Europe and in The United States and all around the world needs a bucket of ice cold water thrown over their heads and someone screaming, "Wake up!" in their ears.

We've all been in La-La-Land far too long. Too many "government corporations" have allowed Britain to lead them into perdition, signing agreements they are not competent to sign, committing acts of racketeering against the people they are supposed to serve, and writing checks they can't pay.

Not only in Ukraine and in Gaza, but generally, Europe and The United States and the former Commonwealth countries have been following the Bad Faith and Bad Example of the United Kingdom Government and the British Crown Corporation. So much so, that the British PM took it for granted that we, Americans, would pay the Security Guarantee (our blood and our money) as part of their contract granting them the benefit of the Rare Earth Minerals in Ukraine.

Forget the Ukrainian people who are the actual owners of the minerals. Forget the stupid Americans acting as "the Muscle" for Britain to unjustly enrich itself at our expense.

While the so-called "western democracies" --- which aren't supposed to be functioning as "democracies" at all, and wouldn't be, if they hadn't allowed British Territorial corporations and Municipal corporations to Nanny State them to death, are blindly and stupidly groping their way toward WWII, the actual people of the countries impacted by this Great Fraud must stand up and manage their own affairs, direct their own employees, and not expect each Ship of State to steer itself.

We are not the dependents of these foreign "service" corporations; we are the employers of these run amok beehives.

We are the people of The United States, actual and factual; they, our employees, are all Legal Fictions, as unsubstantial as the paper and air that give them form.

We are people. They are persons, subject to the law of persons.

Those who are having trouble with this concept need to reference American Law and Procedure, Volume 13, page 137, 1910: "The law of persons is the law of status or condition."

Public officials, public employees, corporations, military conscripts, prisoners, indentured servants, citizens, civil servants..... are all persons.

The actions of legislatures produce a form of "law" governing the employees and officers of corporations and corporations in general, which are considered to be persons subject to this form of law. This includes corporations in the business of providing "essential government services" under contract--- that is, all the Federal Subcontractors.

We, the people of this country, the actual owners of the assets of The United States and the actual employers of these corporations, live under American Common Law --- an entirely different standard.

It's time for all our employees ---worldwide, at this point--- to realize their position as insolvent debtors and as franchise operators.

It's also important for all the corporations acting "as" governments to understand that they are incompetent, legally and lawfully, to carry on wars, commit national assets, and also that they are illegally latching onto national credit and abusing their positions of trust.

Our national government is in Session for the first time in many years; other national governments are organizing for the first time since World War II. These separate and unincorporated governments, of, for, and by the people of each country, are the sovereign entities and actual owners of all assets that these corporations are illegally, unlawfully, and immorally abusing.

These "governmental services corporations" are pretending to represent the people of each country, without however, having any explicit agreement or authorization allowing the corporations to replace the national government ---- especially when the national government is in Session.

In this country, certain misguided and misdirected Subcontractors of our Subcontractors (USA, Inc. hires the United States Government, Inc., which hires the FBI, Inc., so in fact, the FBI is a Subcontractor of our Subcontractor's Subcontractor) have attempted to mischaracterize the people of this country who are exercising their Constitutional Guarantee to their right to peaceably assemble and to exercise their republican form of government, as "domestic terrorists" and as "sovereign citizens" --- which is an oxymoron having no meaning.

Make no mistake. We are Foreign Sovereigns with respect to our British Territorial U.S. Citizens. They are the only citizens involved. The quicker they learn this lesson, the better.

We wish to make it crystalline clear to everyone in receipt of this International Public Notice, that the Federal Bureau of Investigation, Inc. is being weaponized to provide a "fourth party" lack of accountability for the U.S. Congress. We also wish to make it clear that the U.S. Congress, the Trump Administration, the USA, Inc., the USA, LLC, the Federal Bureau of Investigation, Inc., and indeed, all Federal Persons and Federal Subcontractors, are under demand to honor our Guarantees and their own contractual obligations.

The U.S. Supreme Court facing the chaos at the end of so-called American Civil War and the use of declared States of Emergency to justify the overreaches of Federal Employees against the people of this country decided a landmark case in 1866 which still stands, *Ex Parte Miliigan*, codified as U.S. Code 71 U.S. 2; and, quoting Section 98:

"Therefore, anyone who declares the suspension of constitutionally guaranteed rights (which we are heir to and which we claim via expatriation from any conferred status as federal citizens) and attempts to enforce such suspension within the 50 independent, sovereign, continental United States of

America, is making war against our constitution(s), and, therefore, we the people. They violate their constitutional oath and, thus, immediately forfeit their office and authority and their proclamations may be disregarded with impunity...."

The idea that employees of ours have any right to mischaracterize us, impersonate us, or otherwise impose their prejudices upon our good nature are self-evidently illogical and self-defeating. The long-standing nature of these misunderstandings and fraud schemes against the people of this country and the bureaucratic means used to impose unconscionable foreign citizenship contracts on them, notwithstanding, we are who we are and we are acting in our lawful capacity as living people, not creatures of statute.

Ever since World War II we have borne a disproportionate and unfair burden for the rest of the world. We have funded the reconstruction of many other countries and provided for their defense. We have provided their loan guarantees. We have underwritten their currencies and indemnified their business operations. This has all been done "in our names" by our employees, without our knowledge or consent.

We awaken to find that they have allowed our precious metals to be taken offshore and distributed in support of the Central Banks operated as a consortium by the Bank of International Settlements.

This has been done "in our names" without our knowledge or consent and is a theft-in-fact that was expedited by the British Government acting in Bad Faith and Breach of Trust, implemented by the British Territorial United States and by U.S. Citizens who were misdirected as members of the United States Navy to transport our precious metals offshore for "safekeeping" from which they have never been returned.

This has sparked concern that our only thanks for this magnanimity expressed "for" us by our British Territorial Employees may be the actual theft of our assets for which the U.S. Congress is responsible and for which the British Parliament is accountable, and for which their Principals owe us the return, unharmed.

A large number of the "European Governments" are in fact and have since WWII, been operating as franchises of the UNITED STATES Corporation and the USA Corporation. They have been supported using American resources the whole time. Part of the desperate thrust of these European "Management Organizations" to foment and promote another World War via the Mercenary Conflicts in Ukraine and Gaza has been caused by the bankruptcy of the UNITED STATES Corporation and their franchises.

The American money is drying up and the money they can racketeer off the Old Folks at home isn't sufficient for their tastes, so they've decided to go to war in hopes of making a big profit --- again.

This is how they dug themselves out before. Both World War I and World War II were Mercenary Conflicts --- wars for profit, paid for in blood and misery.

Immoral men like Macron and Starmer, who have no sense, imagine that they will come out ahead, by doing what they have done before, but time moves onward. Things are different now.

We have remembered the history and have no cause to relive it.

Issued by:
Anna Maria Riezinger -- Fiduciary
The United States of America
In care of: Box 520994
Big Lake, Alaska 99652
March 6th 2025

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