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7  
8 UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
9 SACRAMENTO DIVISION

10  
11 SIERRA CLUB and FRIENDS OF THE WEST ) Civ. No. 2:13-CV-00267-JAM-EFB  
SHORE, )  
12 )  
Plaintiffs, ) **PLAINTIFFS’ RESPONSE TO TAHOE**  
13 ) **REGIONAL PLANNING AGENCY’S**  
vs. ) **STATEMENT OF UNDISPUTED FACTS**  
14 )  
TAHOE REGIONAL PLANNING AGENCY, ) Date: March 5, 2014  
15 ) Time: 9:30 a.m.  
Defendant. ) Place: Courtroom 6  
16 ) Judge: Hon. John A. Mendez  
17 )

18 **Statement No. 1**

19 On December 12, 2012, the Tahoe Regional Planning Agency (“TRPA”) Governing Board  
20 (“Board”) certified the Final Environmental Impact Statement (“EIS”) for its Regional Plan  
21 Update (“RPU”) and approved the RPU by a 12-1 vote. (AR27299-302.)  
22

23 **Response to Statement No. 1**

24 Plaintiffs do not dispute this statement, but note that one Board member abstained from the  
25 vote. AR27293-94, 27228-44.

26 **Statement No. 2**

27 The RPU is part of a comprehensive, integrated approach to accelerate attainment of all  
28 TRPA’s adopted threshold standards, while also achieving other goals, such as greenhouse gas

1 (“GHG”) emissions reduction targets required by California Senate Bill 375 (2008). (AR11473-76  
2 [Draft EIS]; 26774-75 [Findings].) Other, key components include TRPA’s adoption of a Regional  
3 Transportation Plan (“RTP”) and incorporation of Lake Tahoe’s Total Maximum Daily Load  
4 (“TMDL”). (Id., see also AR 11549-51, 5067.) The Governing Board determined these plans are  
5 expected to provide a wide array of environmental benefits. (AR26666-72.)

6 **Response to Statement No. 2**

7 Plaintiffs do not dispute this statement, but dispute that the RPU will accelerate attainment of  
8 all TRPA’s adopted threshold standards or provide environmental benefits, as explained in plaintiffs’  
9 briefs.

10 **Statement No. 3**

11 The RPU maintains the growth control system from the Regional Plan adopted by TRPA  
12 in 1987, as amended (“1987 Plan”), and sets limits on the amount of new development that may be  
13 allocated over the next twenty years. (AR11546.) The RPU cuts the rate of growth by approximately  
14 half when compared with the rate of development that occurred under the 1987 Plan. (AR992, 8528.)  
15 The RPU includes the remaining allocations from the 1987 Regional Plan plus 2,600 new residential  
16 allocations, 600 new residential bonus units (to provide incentives for transfers of residential  
17 development out of sensitive land), and 200,000 new square feet of commercial floor area (“CFA”),  
18 all with various limits on use and other restrictions. The RPU cuts the maximum number of  
19 residential allocations released each year under the 1987 Plan from 294 to 130. (AR8528.)

20 **Response to Statement No. 3**

21 Plaintiffs dispute the first sentence, because it is unclear what “growth control system” refers  
22 to, and because the RPU significantly relaxes development restrictions, by allowing increased  
23 concentrated coverage in certain areas, increased height, increased density, and larger tourist  
24 accommodation units, as well as exemptions from coverage restrictions. AR 5106, 11672, 11891,  
25 11895-97. Plaintiffs dispute the second and fourth sentences to the extent that they misleadingly  
26 suggest that the RPU reduces the total amount of development that was allowed under the 1987  
27 Regional Plan; the RPU authorizes new development that would otherwise not have been allowed, as  
28 described in the third sentence of Statement No. 3. *See* AR11671. Plaintiffs do not dispute the third

1 sentence.

2 **Statement No. 4**

3 The RPU is expected to reduce GHG emissions by over seven percent per capita. (AR11832.)  
4 The EIS determined that the RPU provided the most GHG-efficient combination of land use and  
5 transportation strategies, so its adoption would provide the maximum feasible extent of GHG  
6 emission reduction for the region's transportation sector. The RPU results in a net reduction in total  
7 mobile-source GHG emissions associated with light-duty vehicles in the California-portion of the  
8 Basin in both 2020 and 2035 compared to 2005 levels, despite an increase in population. The RPU  
9 meets and exceeds the GHG per capita reduction targets of 7 percent below 2005 levels by 2020 and  
10 5 percent below 2005 levels by 2035 required by SB 375. Because the RPU exceeds both of the  
11 applicable SB 375 targets, TRPA's RTP qualifies as a Sustainable Communities Strategy ("SCS").  
12 The RPU results in the greatest reduction in GHG per capita of the five alternatives considered in the  
13 EIS. In addition, the RPU will fulfill the 2020 component of the AB 32 Scoping Plan as it relates to  
14 local government and land use planning. (AR11831-32.)

15 **Response to Statement No. 4**

16 Plaintiffs dispute this statement to the extent it suggests that the RPU reduces greenhouse gas  
17 emissions. RPU results in an overall increase in greenhouse gas emissions by allowing increased  
18 development and a larger resident and visitor population. AR11819, 11823.

19 **Statement No. 5**

20 The RPU reduces vehicle miles traveled ("VMT"), traffic, noise and associated air  
21 pollution more than any other RPU alternative and results in 10,000 fewer VMT than the no action  
22 alternative (which would include no additional new development allocations), and ties new  
23 development to measured VMT levels. (AR 992, 11751, 3343-47, 5130, 26684, 26639-41, 26662,  
24 26692.)

25 **Response to Statement No. 5**

26 Plaintiffs do not dispute this statement.

27 **Statement No. 6**

28 The RPU reduces pollutant loading by including TMDL requirements in Area Plans,

1 accelerates compliance with “Best Management Practices” (“BMP”) requirements, and promotes  
2 redevelopment that will meet strict water quality standards. (AR26251-57.)

3 **Response to Statement No. 6**

4 Plaintiffs dispute this statement. The citation does not support the statement that TMDL  
5 requirements will be included in Area Plans; it states that TRPA will “[u]pdat[e] language  
6 throughout the Regional Plan *to support the TMDL, require ongoing coordination between TRPA  
7 and TMDL programs, and align older TRPA reporting requirements with newer TMDL reporting  
8 requirements.*” AR26255 (emphasis added). TRPA is not responsible for TMDL implementation –  
9 California and Nevada are. *See* Statement No. 56; AR11919. As explained in plaintiffs’ briefs, new  
10 development will not meet water quality standards or reduce pollution, because the RPU does not  
11 require TMDL implementation and does not adequately assure that new and existing development  
12 will comply with BMP maintenance requirements.

13 **Statement No. 7**

14 The RPU is expected to improve scenic quality and community character by promoting  
15 redevelopment consistent with strict standards for pre-TRPA non-conforming structures.  
16 (AR11983.)

17 **Response to Statement No. 7**

18 Plaintiffs do not dispute this statement.

19 **Statement No. 8**

20 The RPU will permanently restore or protect over 1,200 privately owned parcels in  
21 sensitive land or outlying areas. (AR12878-81.) New incentives for the transfer of development  
22 rights (“TDR”) are projected to permanently protect or restore over 1,200 private sensitive/outlying  
23 parcels without relying on limited public funding. (*Id.*)

24 **Response to Statement No. 8**

25 Plaintiffs dispute this statement, because many of these parcels are undeveloped and  
26 protected from development by pre-RPU restrictions on development. AR5190 (“Alternative 3  
27 assumes that, because of transfer incentives, a relatively high proportion of development rights  
28 associated with undevelopable parcels would be available for transfer to Town Centers.”); AR663-

1 64 (TRPA Regional maps representing transfer ratios from properties without road access); AR608  
2 (development can only occur on parcel “served by a paved road, water service, sewer service, and an  
3 electrical service”). Thus, the purported benefits of “protecting” these parcels are illusory. Indeed, by  
4 incentivizing the transfer of these development rights to urban centers, the RPU allows new  
5 development that would otherwise not have occurred. AR3870 (Cal. Attorney General noting  
6 concerns with “provisions that allow the building of a significant number of new residential units  
7 based upon the “retirement” of other units that could never be developed”).

8 **Statement No. 9**

9 The RPU will result in less coverage than the 1987 Plan, particularly by removing  
10 coverage in sensitive lands. (AR11879.) The RPU will significantly increase coverage removal in  
11 sensitive lands (23 – 35 acres projected from transfers alone), accelerate excess coverage mitigation  
12 programs, and results in less new coverage than all other RPU alternatives except the no-action  
13 alternative. (*Id.*; AR11894-95.)

14 **Response to Statement No. 9**

15 Plaintiffs do not dispute this statement.

16 **Statement No. 10**

17 The RPU process included hundreds of meetings and hearings, and input from thousands  
18 of stakeholders, including local, state and federal agencies. (AR5087-88; 26559-60, 26592, 26718;  
19 see also SUF Nos. 93-103.)

20 **Response to Statement No. 10**

21 Plaintiffs do not dispute this statement.

22 **Statement No. 11**

23 Plaintiffs, including Friends of the West Shore, suggested the Board consider an Alternative  
24 [] in the RPU process for an “environmental conservation alternative.” (AR21438, 22090- 92  
25 [discussion of conservation community input to alternatives assessed in EIS]; 22272-24 [RPU  
26 scheduling memo].) TRPA also delayed the RPU process close to a year to accept additional  
27 comments at the request of the Plaintiffs and associated groups, and added a new alternative based  
28 almost entirely on their comments. (AR11573, 11580-89.)

1           **Response to Statement No. 11**

2           Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because the  
3 citations do not support that TRPA delayed the RPU process for the reasons noted. No evidence in  
4 the record supports this claim. Plaintiffs also dispute the second sentence insofar as it suggests that  
5 Alternative 2 in the EIS is the alternative proposed by the plaintiffs. TRPA made extensive  
6 modifications to plaintiffs' submitted alternative. *Compare* AR11580-89 (Alternative 2) with  
7 AR126164-77 (describing plaintiffs' alternative, including table comparing it with Alternative 2  
8 [formerly numbered Alternative 4, *see* AR 155381]).

9           **Statement No. 12**

10           In order to address divisive issues surrounding the RPU, TRPA created a Regional Plan  
11 Update Committee ("RPUC") of the Governing Board, and the states created a Bi-State Consultation  
12 Group, to make recommendations to the full Governing Board. (AR5088.) The RPUC held at least  
13 15 lengthy meetings at which business, governmental and environmental stakeholders participated,  
14 including Plaintiffs in this case. (Id. ["...the formation of a Regional Plan Update Committee to  
15 solicit additional public and agency input on the alternatives under consideration. The Regional Plan  
16 Update Committee held 15 full day public meetings in late 2011 and early 2012, where they  
17 reviewed and accepted public input on every Policy in the Regional Plan, along with the  
18 implementing ordinances."].)

19           **Response to Statement No. 12**

20           Plaintiffs do not dispute this statement.

21           **Statement No. 13**

22           TRPA developed the RPU based on public input and incorporated the recommendations  
23 of the RPUC and Bi-State Consultation Group for additional water quality protections, among other  
24 environmental improvements. (AR5085, 26635, 26645, 26657; *see also* SUF No.96-100, 151.)

25           **Response to Statement No. 13**

26           Plaintiffs do not dispute this statement.

27           **Statement No. 14**

28           Ultimately, both States, every local government entity in the region, and virtually all

1 stakeholders save Plaintiffs endorsed the final RPU. (AR2, 26661, 27247-87, see also Joint Amicus  
2 Curiae Brief of the California Resources Agency and the Nevada Department of Conservation and  
3 Natural Resources (ECF No. 30); Amicus Brief of City of South Lake Tahoe, California, El Dorado  
4 County, California, Placer County, California, Douglas County, Nevada, Washoe County, Nevada,  
5 and Carson City, Nevada, a Consolidated Municipality (ECF No. 32); Joint Amicus Curiae Brief of  
6 the Lake Tahoe Community College, South Shore Chamber of Commerce, North Lake Tahoe  
7 Chamber of Commerce, Sierra Nevada Association of Realtors, Incline Village Board of Realtors,  
8 Lake Tahoe Visitors Authority, Tahoe Douglas Visitors Authority, South Tahoe Alliance of Resorts,  
9 and Barton Health in Support of Tahoe Regional Planning Agency (ECF No. 34).)

10 **Response to Statement No. 14**

11 Plaintiffs dispute this statement. Numerous environmental organizations opposed the RPU,  
12 including Friends of Tahoe Vista, North Tahoe Preservation Alliance, North Tahoe Citizens Action  
13 Council, Mountain Area Preservation Foundation, and Friends of Lake Tahoe. AR4585, 26472-73  
14 26476-80, 27268-69, 27271-74, 133210, 135564.

15 **Statement No. 15**

16 The Lake Tahoe Region is located on the California-Nevada border between the Sierra  
17 Nevada Crest and the Carson Range. The region encompasses the Lake Tahoe Basin along with  
18 additional areas near the Lake's outlet at Tahoe City. Approximately two-thirds of the region is in  
19 California and one-third in Nevada. In total, the region comprises about 501 square miles  
20 (approximately 325,000 acres) including the waters of Lake Tahoe, which measures 191 square  
21 miles (123,000 acres). Located within the California portion of the region is the incorporated City of  
22 South Lake Tahoe and portions of El Dorado County and Placer County. The Nevada portion of the  
23 region includes parts of Washoe County, Douglas County, and the rural area of Carson City. Lake  
24 Tahoe is the dominant natural feature of the region and is the primary focus of local environmental  
25 regulation to protect and restore its exceptional water clarity. (AR496-97, 11471.)

26 **Response to Statement No. 15**

27 Plaintiffs do not dispute this statement.  
28

1           **Statement No. 16**

2           Lake Tahoe and its surrounding natural landscapes are cherished because they provide for  
3 extraordinary recreation and scenic experiences. The Lake itself is one of the largest and deepest in  
4 the world and the unique water clarity and stunning natural landscape has drawn people to its shores  
5 for centuries. (AR15.) Lake Tahoe and its surroundings were several times considered for  
6 designation as a national park, but rejected because of the mosaic of private land uses within the  
7 region and the history of land disturbances dating back to the 1800's including logging, grazing, and  
8 mining. (AR32829, 32823-46.)

9           **Response to Statement No. 16**

10          Plaintiffs do not dispute this statement.

11          **Statement No. 17**

12          Private development in the region started in the late 1800s by wealthy vacationers seeking  
13 respite from the nearby cities. (AR32804.) Between 1900 and 1960, Lake Tahoe became a recreation  
14 destination. Following World War II and improvements in automobile transportation infrastructure,  
15 Nevada casinos and small recreation retreats were developed to better accommodate a  
16 more mobile and affluent society. (AR15.) The economic momentum of the 1960 Winter Olympics  
17 at Squaw Valley spawned a significant uncontrolled expansion of development at Tahoe; including  
18 the completion of the Tahoe Keys subdivision that was responsible for the fragmentation of a  
19 significant freshwater marsh system critical for filtering sediment and nutrients from entering Lake  
20 Tahoe. (AR15, 32809.) Legalized gaming in Nevada brought more development pressure.  
21 (AR32805.) This development directed stormwater runoff into Lake Tahoe and adversely effected  
22 water quality, including Tahoe's clarity. (AR134.)

23          **Response to Statement No. 17**

24          Plaintiffs do not dispute this statement.

25          **Statement No. 18**

26          By the mid-1900s, development pressures built to the point where there were plans to expand  
27 the population of the region to 750,000 (more than ten times the current population) with a 4- lane  
28 highway ringing the Lake and a bridge spanning Emerald Bay. (AR32821, 53716.) Early scientific



1 inquiry warned that unless protective measures were taken, the famed clarity of the second largest  
2 lake in the world at or above this elevation (6225 feet above sea level), the eleventh deepest in  
3 world, and one of the purest clearest large lakes on the planet with 39 trillion gallons (enough to  
4 cover California with 14.5 inches of water), would be lost and the Lake would be unable to recover.  
5 (AR46, 106448.)

6 **Response to Statement No. 18**

7 Plaintiffs do not dispute this statement.

8 **Statement No. 19**

9 Late in the 1960s, rapid development and a lack of regulatory standards spurred the  
10 governors of California and Nevada to enter into the first bi-state, federally ratified agreement, the  
11 Tahoe Regional Planning Compact (“Compact”), resulting in the creation of the Tahoe Regional  
12 Planning Agency (“TRPA”) in 1969. (AR15, 32811.)

13 **Response to Statement No. 19**

14 Plaintiffs do not dispute this statement.

15 **Statement No. 20**

16 TRPA was created as the nation’s first bi-state regional environmental authority, a one of a  
17 kind organization working at the crossroad of private and public interests that lie at the heart of  
18 caring for Lake Tahoe and the region. (AR15, 32811.) This represented a significant shift in  
19 planning because it recognized the need to look at planning at a regional scale to address emerging  
20 land use, transportation, and conservation problems in the region. (AR32822.)

21 **Response to Statement No. 20**

22 Plaintiffs do not dispute this statement.

23 **Statement No. 21**

24 The 1969 Compact directives were later found to be insufficient in protecting Lake Tahoe’s  
25 ecosystem. Therefore, in 1980, the Compact was revised and charged TRPA with leading the  
26 cooperative effort to preserve, restore, and enhance the unique natural and human environment of the  
27 Lake Tahoe Region. (AR15.)

1           **Response to Statement No. 21**

2           Plaintiffs do not dispute this statement.

3           **Statement No. 22**

4           The revised Compact directed TRPA to adopt environmental quality standards known as  
5 Environmental Threshold Carrying Capacities (or “Threshold Standards”) to focus environmental  
6 quality objectives and to address the impacts resulting from urban development and different land  
7 uses through the implementation of a regional land use plan. (AR16.) It also directed TRPA to adopt  
8 and enforce a regional plan that will “achieve and maintain” the Threshold Standards while  
9 “providing opportunities for orderly growth and development” consistent with the thresholds.  
10 (Compact, art. II(b), AR498, 504, 11471.)

11           **Response to Statement No. 22**

12           Plaintiffs do not dispute this statement.

13           **Statement No. 23**

14           TRPA adopted the Environmental Threshold Carrying Capacities in 1982. (AR32823,  
15 15432-37.) The Threshold Standards set environmental quality targets to protect and maintain the  
16 unique natural values of the Tahoe Region while still providing for orderly growth and development  
17 consistent with those standards. (AR16.) The adopting Resolution, 82-11, acknowledged that  
18 attaining thresholds would be achieved only over time. (AR15432-37.)

19           **Response to Statement No. 23**

20           Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because it  
21 purports to characterize legal conclusions as statements of facts, and the referenced citation does not  
22 accurately define “threshold standards.” The Compact defines threshold standards as “an  
23 environmental standard necessary to maintain a significant scenic, recreational, educational,  
24 scientific or natural value of the region or to maintain public health and safety within the region.”  
25 Compact art. II(i). There is no requirement that the *thresholds* “still provid[e] for orderly growth and  
26 development consistent with those standards.” *See generally* Compact. Plaintiffs do not dispute the  
27 third sentence.

1           **Statement No. 24**

2           Threshold Standards are hierarchically organized. (AR50.) At the top of the hierarchy, are the  
3 nine Threshold Categories: water quality, soil conservation, air quality, vegetation preservation,  
4 wildlife, fisheries, noise, recreation, and scenic resources. Each threshold category includes multiple  
5 Indicator Reporting Categories or indicator themes as reflected in TRPA Resolution 82-11. Each  
6 Indicator Reporting Category includes one to several standards. For each standard there is an  
7 associated indicator because, according to the Code of Ordinances (TRPA 1987, as amended in  
8 2012), Section 16.4, “TRPA shall adopt sufficient indicators for each threshold and [local, state, and  
9 federal air and water quality] standard so that, evaluated separately or in combination, the indicators  
10 will accurately measure, on a continuing basis, the status of attainment or maintenance of the  
11 threshold [standard] or [local, state, and federal air and water quality] standard.” Each type of  
12 standard has different implications for how standard “attainment” is assessed. (AR50-51)

13           **Response to Statement No. 24**

14           Plaintiffs do not dispute this statement.

15           **Statement No. 25**

16           While the established Threshold Standards define the capacity of the natural environment and  
17 set specific environmental performance standards related to land, they do not define the maximum  
18 buildout, densities, permitted uses, or other land use criteria for the manmade environment; this is  
19 the function of the Regional Plan. (AR508.)

20           **Response to Statement No. 25**

21           Plaintiffs do not dispute this statement.

22           **Statement No. 26**

23           As required by the 1980 Compact, TRPA adopted the Tahoe Area Regional Plan in  
24 1987. The 1987 Plan implemented a broad suite of policies, ordinances, and land use zoning  
25 requirements and controls designed to guide the region toward achievement and maintenance of  
26 adopted Threshold Standards. (AR16 [TER], 11544 [DEIS].)

27           **Response to Statement No. 26**

28           Plaintiffs do not dispute this statement.

1           **Statement No. 27**

2           The Governing Board findings explain that the 1987 Plan was adopted to address  
3 circumstances in the Tahoe Region that differ from today’s most pressing needs. By the 1980s, the  
4 region had experienced decades of rapid development and was threatened by continuing, largely  
5 uncontrolled growth. The economy was thriving, but the environment was suffering. More than half  
6 of the region’s marshes and wetlands had been developed and the region had not fully coalesced  
7 around the fact that the 1960’s plans for a population of 750,000 people would never be realized.  
8 Lake Tahoe’s water clarity was declining by about one foot per year. In response, the 1980 TRPA  
9 Compact was adopted to stop threats of uncontrolled growth and to address looming environmental  
10 threats, requiring that development be managed in accordance with updated environmental standards  
11 while allowing orderly development consistent with those new standards. A top priority for the  
12 initial Regional Plan in the 1980s was therefore both limiting and controlling the rate of new  
13 development that would be allowed at Lake Tahoe. (AR26779-80.) The RPU EIS explained that  
14 TRPA adopted the 1987 Plan based on the premise that “By protecting environmental quality, it was  
15 thought that socioeconomic conditions would be improved and sustained because the region’s  
16 economy and community were highly dependent on visitor and resident outdoor experience and  
17 quality of life.” (AR16 [TER], 11544[DEIS].)

18           **Response to Statement No. 27**

19           Plaintiffs do not dispute this statement.

20           **Statement No. 28**

21           The 1987 Regional Plan achieved and maintained environmental thresholds primarily  
22 through growth control, development regulations, and voluntary private property acquisition by  
23 public land conservancies. (AR501.) Growth control measures in the 1987 Plan were extensively  
24 litigated and ultimately upheld as lawful. The 1987 Plan established a “carrying capacity” for  
25 development in the region that was dramatically lower than what previous plans had envisioned,  
26 premised on growth caps for all types of land uses. A system of transferrable development rights and  
27 land coverage regulations was adopted within constraints of the region’s carrying capacity. (AR501.)  
28 Concurrently, aggressive but voluntary property acquisition programs were instituted. State and

1 federal land management agencies acquired over 8,500 private parcels and retired the associated  
2 development rights between 1987 and 2011. The 1987 Regional Plan and the programs it established  
3 substantially reduced the rate of environment decline. (AR502.)

4 **Response to Statement No. 28**

5 Plaintiffs dispute the first sentence insofar as it suggests that the 1987 Regional Plan actually  
6 achieved and maintained the threshold standards, which it has not; the status of many thresholds is  
7 unknown. *See* AR25-28 (TER noting non-attainment of various standards). Plaintiffs do not dispute  
8 the second and third sentences. Plaintiffs dispute the fourth sentence, because the citation contains  
9 no facts to support the claim that regulations were “adopted within constraints of the region’s  
10 carrying capacity.” Plaintiffs do not dispute the fifth through seventh sentences.

11 **Statement No. 29**

12 The 1987 Plan also mapped out a matrix of the regulatory, restoration, programmatic,  
13 and monitoring elements necessary to achieve and maintain Water Quality Threshold Standards over  
14 time, including:

- 15 • Limiting new development allowed in the region;
- 16 • Limiting the amount of impervious land coverage allowed in the region;
- 17 • Setting discharge standards and infiltration requirements for stormwater treatment to  
control water quality impacts associated with new development;
- 18 • Requiring all new development to reduce erosion and stormwater runoff through the  
installation of Best Management Practices (BMPs);
- 19 • Regulating preservation and restoration of stream environment zones (“SEZs”);
- 20 • Prohibiting the discharge of wastewater, toxic waste, and solid waste; and
- Managing the use of fertilizer in SEZs.

21 (AR26678-26679 [Findings].) The 1987 also mandated the review of Threshold Standards every five  
22 years. (AR15.)

23 **Response to Statement No. 29**

24 Plaintiffs do not dispute this statement.

25 **Statement No. 30**

26 Through its Regional Plan, TRPA established a wide ranging growth control system with all  
27 development capacity capped, prohibition of new subdivisions of land, metering the rate of  
28 allocation of residential development rights, and maintenance of an urban growth boundary.

1 (AR12866, 22571.) Development was further constrained by coverage limits, land capability classes  
2 for different soil types, and prohibitions of development on sensitive lands. (AR22571; *see also* SUF  
3 Nos. 31-34.)

4 **Response to Statement No. 30**

5 Plaintiffs do not dispute this statement.

6 **Statement No. 31**

7 The 1987 Plan addressed water quality primarily through regulating coverage and parcel-  
8 scale BMPs. The 1987 Plan thus placed strict coverage limits on each parcel in the Basin, depending  
9 on its Bailey classification (see SUF No. 32), while allowing most “excess” coverage from legacy  
10 development to remain in place, regardless of its classification. The theory was that coverage limits,  
11 applied on a parcel-by-parcel basis throughout the region, would, taken as a whole, achieve water  
12 quality threshold standards. (AR11861-62.)

13 **Response to Statement No. 31**

14 Plaintiffs do not dispute the first and second sentences. Plaintiffs dispute the third sentence,  
15 because the citation does not support the claim.

16 **Statement No. 32**

17 The Coverage Threshold Standard for Lake Tahoe is based on Robert Bailey’s 1974 land  
18 capability classification system for the Lake Tahoe Basin (“Bailey System”) and is used to guide  
19 land use planning, policy formulation related to the impacts of development on soil erosion, and  
20 permitting of development. (AR11861.) The Bailey System, developed shortly after the Compact  
21 was adopted, assigned units of land throughout the Basin to one of nine land capability classes (1a,  
22 1b, 1c, 2, 3, 4, 5, 6, and 7), that reflect the amount of development sites can support without  
23 experiencing soil or water quality degradation. (AR186, 11861-62.) Factors used in the Bailey  
24 System for determining land capability classes included tolerance for developed use, slope percent,  
25 relative erosion potential, runoff potential, and disturbance hazards. (*Id.*) Each land capability class  
26 was assigned an allowable percentage of impervious cover, ranging from 1 percent for sensitive  
27 lands in classes 1a, 1b, 1c, and 2, to 30 percent for higher tolerance lands in classes 6 and 7. The  
28

1 Coverage Standard requires compliance with Bailey’s allowable impervious cover limits set for each  
2 land capability class. (*Id.*)

3 **Response to Statement No. 32**

4 Plaintiffs do not dispute this statement.

5 **Statement No. 33**

6 Under the 1987 Plan, coverage was regulated as a proxy for water quality protection because  
7 it was easy to measure on a parcel and there is an indirect relationship between land coverage and  
8 water quality. (AR27441, 27444-45, 11891.) Coverage was based on a 1974 mapping and soil  
9 classification system using the best scientific data available at the time. While impervious surface is  
10 used as a proxy for water quality protection under Bailey, there is no specific scientific link between  
11 the percentages of impervious surface on a parcel to clarity gains in the Lake. (*See* AR128158-  
12 128161,5091.) Not until the TMDL were specific incremental water quality gains scientifically  
13 linked to an environmental cause, fine sediment particle reductions rather than coverage alone,  
14 which had been used until the TMDL as the best available indirect regulatory control.

15 **Response to Statement No. 33**

16 Plaintiffs dispute the first sentence, insofar as it suggests that coverage regulations only  
17 protect water quality; they also prevent soil erosion, prevent flooding, and preserve environmental  
18 balance. *See* AR27444-45. Plaintiffs also dispute this sentence, because the citations do not support  
19 the statement that “there is an indirect relationship between land coverage and water quality.” *See*,  
20 *e.g.*, AR27445 (land coverage “most critical element in the land disturbance that has created the  
21 basic environmental problems facing the Tahoe basin,” including “water quality degradation”);  
22 AR11891 (“Major factors affecting water quality impacts and erosion resulting from coverage are  
23 the capability of the land where the coverage occurs (Bailey 1974) and the total amount of coverage  
24 within a watershed (Center for Watershed Protection 2003).”). Plaintiffs dispute the third sentence  
25 for the same reasons, and because the citations do not support this claim. *See, e.g.*, AR128158 (bare  
26 assertion that coverage “only indirectly linked” to environmental issues derived from what  
27 “stakeholders” “believed”); AR128160 (“Impervious surface coverage reduces the ability of water to  
28 infiltrate and increases the volume of runoff reaching streams during storms, which leads to unstable

1 stream channels and impacts water quality.”). Plaintiffs dispute the last sentence, because it is  
2 unsupported by any citation, and because TMDL had not targeted “coverage alone,” to improve  
3 water quality. *See* Statement Nos. 29, 36 (noting other measures).

4 **Statement No. 34**

5 In addition, to complement the Bailey system, the Individual Parcel Evaluation System  
6 (“IPES”) was developed for vacant single-family lots. (AR11565; *see* AR1036-65 [Code, § 53].)  
7 The IPES system is similar to the Bailey system, except that it permits additional development in  
8 some sensitive areas in conjunction with retirement of sensitive parcels and other water quality  
9 improvements in the vicinity. (AR11565; *see also* AR1036-65, 11631.)

10 **Response to Statement No. 34**

11 Plaintiffs do not dispute this statement.

12 **Statement No. 35**

13 The Clean Water Act (CWA) passed in 1972. (AR32822.) The CWA dictated environmental  
14 initiatives to improve water quality nationwide, with emphasis starting in the years immediately after  
15 its passage on sewage treatment and treatment of hazardous and toxic waste. (AR149736.) The  
16 CWA required Wastewater Treatment Plants (WWPTs) be brought up to CWA standards. (33  
17 U.S.C. § 1314(d)(1); *see also* AR35631.)

18 **Response to Statement No. 35**

19 Plaintiffs do not dispute this statement.

20 **Statement No. 36**

21 Starting in the 1970s, TRPA responded to the initial CWA initiatives. The primary concern  
22 then was uncontrolled algae and nutrient discharges to Lake. (AR32812.) Thus, TRPA banned septic  
23 systems, and decided to regulate sewage treatment and discharges by requiring sewage treatment  
24 system upgrades and export of treated sewage out of the Basin. (*See* AR32809, 11543-44.) In the  
25 1980s, the CWA emphasis began to shift toward stormwater regulation and focused on preventing  
26 pollutant runoff into water bodies from stormwater flows. In recognition of the shifting federal  
27 policies, in the late 1980s TRPA followed suit and began to focus on regulating BMPs. TRPA  
28



1 prioritized erosion control for water quality purposes in the 1987 Regional Plan by making BMPs a  
2 condition of project approval. (AR55402, 55407.)

3 **Response to Statement No. 36**

4 Plaintiffs do not dispute this statement.

5 **Statement No. 37**

6 Starting in the early 1990s, “Threshold Evaluation Reports” (“TERs”) and other studies made  
7 it clear that the strategy of regulation and land acquisition alone would not be enough to successfully  
8 achieve and maintain Threshold Standards. In 1991, TRPA issued the first TER. The 1991 TER  
9 indicated that the Basin showed little movement toward improving the Lake’s water quality.  
10 (AR143729 [declining water quality, but rate of decline slowing].) The environmental impact of  
11 legacy development that was constructed prior to the initial Regional Plan continued to adversely  
12 impact the region and the basin showed little movement toward improving the Lake’s water quality.  
13 (AR502, 16.)

14 **Response to Statement No. 37**

15 Plaintiffs do not dispute this statement.

16 **Statement No. 38**

17 The 1991 TER concluded that, in addition to regulation, TRPA also had to address aging  
18 public infrastructure (e.g., roads) and legacy development. (AR11544-45, 143758 [“Threshold  
19 standards and applicable state standards for Lake Tahoe’s water clarity and algal productivity are not  
20 being attained, and will not be attained for many years...To attain and maintain the threshold  
21 standards for Lake Tahoe, TRPA should: strengthen its program of application of Best Management  
22 Practices (BMPs); update, expand, and implement the Capital Improvements Program for erosion  
23 and runoff control and the Stream Environment Zone Restoration Program...”]; 143784 [“The Tahoe  
24 Region does not attain the threshold standard for ozone...To attain and maintain the threshold  
25 standard, TRPA should implement the control measures of the draft Regional Transportation Plan –  
26 Air Quality Plan...”]; 143790 [“The Tahoe Region has not attained the threshold management  
27 standard calling for a seven percent reduction in winter evening traffic volumes on the U.S. 50  
28 corridor. However, traffic modeling conducted for the update of the integrated Regional

1 Transportation Plan – Air Quality Plan indicates that, in the vicinity of the Stateline-California air  
2 quality monitor, traffic volumes will be reduced by 62 percent upon completion of the Loop Road  
3 system...TRPA should implement the provisions of the Regional Transportation Plan, specifically  
4 the improvements to the Loop Road system.”]; AR143836 [“The Region is in the stability phase of  
5 market growth in a destination resort. Future economic expansion will require a better Tahoe  
6 ‘product.’ Dampeners on visitation include a lack of high quality visitor accommodations, strip  
7 development, sprawl, uncoordinated recreation opportunities, and traffic congestion.”].)

8 **Response to Statement No. 38**

9 Plaintiffs do not dispute this statement, but clarify that the “Regional Transportation Plan”  
10 referenced in the 1991 TER does not refer to the Regional Transportation Plan that TRPA approved  
11 with the RPU.

12 **Statement No. 39**

13 Capital investment of large sums was required to show real water quality improvement.  
14 (AR55403.)

15 **Response to Statement No. 39**

16 Plaintiffs dispute this statement to the extent that the citation does not support it. The citation  
17 does not refer to the need for “capital investments.”

18 **Statement No. 40**

19 Under the 1987 Plan, BMPs were initially only required as a condition of permits for new  
20 construction, and in so doing, TRPA began implementation of its “Low Impact Development”  
21 program when it coupled BMPs with Bailey and IPES coverage limits. In response to the 1991 TER,  
22 TRPA enacted a mandatory BMP retrofit program in 1992. (AR55402, 55407.)

23 **Response to Statement No. 40**

24 Plaintiffs do not dispute this statement.

25 **Statement No. 41**

26 The assumption at the time the BMP Retrofit Program was implemented (driven by the  
27 CWA stormwater mandate, as opposed to science) was that every drop of water on every parcel  
28 needed to be treated to the infiltration standard of the 20-year/1-hour design storm event in order to

1 protect the Lake against stormwater pollution. (AR55402.) Parcel-by-parcel BMP implementation  
2 became the early regulatory solution and assumed each of the approximately 47,000 parcels was an  
3 independent stormwater management system. (AR55402-03.) With experience, TRPA soon realized  
4 weaknesses and inefficiencies in the parcel-by-parcel approach. For example, on some parcels BMP  
5 implementation was infeasible due to technical constraints such as high groundwater or lack of  
6 connectivity. Also, with over 43,000 parcels in the region, the sheer scope of parcels was a  
7 substantial barrier to success. In the early years, TRPA struggled with early resistance to public  
8 awareness, the lack of public acceptance, or the high cost of compliance. (AR55403.) As described  
9 in the EIS, “The task of educating and then moving nearly 44,000 property owners to action was a  
10 significant challenge for TRPA as it contemplated the best path forward in the early 1990s. Budget  
11 constraints made the task even more daunting. The absence of funding plagued the viability of the  
12 Stormwater Management Program throughout the 1990s, until the advent of the Environmental  
13 Improvement Program and until TRPA secured additional grant funds.” (AR9084.)

14 **Response to Statement No. 41**

15 Plaintiffs dispute the first sentence, because the citation does not support it. Plaintiffs also  
16 dispute the first and second sentences insofar as they suggest that parcel-by-parcel BMP  
17 implementation is no longer needed. BMP implementation is necessary for TMDL implementation,  
18 as explained in plaintiffs’ briefs. *See also* Response to Statement No. 154; AR55402 (“While the  
19 cutting-edge research conducted for the Total Maximum Daily Load program is being used to evolve  
20 water quality strategies, *the fundamentals* [including BMP programs] have been in place for  
21 decades.” (emphasis added)). Plaintiffs dispute the third, fourth, and fifth sentences, because they  
22 are not supported by any citations. Plaintiffs do not dispute the sixth and seventh sentences.

23 **Statement No. 42**

24 To address legacy impacts, TRPA also launched the Environmental Improvement  
25 Program (“EIP”), following a Presidential Summit, in 1997. The EIP secured public and private  
26 funding for on-the-ground implementation of erosion control measures, riparian area restoration,  
27 transportation, forest health, and other environmentally beneficial programs and projects.  
28 (AR16,502.)

1           **Response to Statement No. 42**

2           Plaintiffs do not dispute this statement.

3           **Statement No. 43**

4           The BMP program is included in the EIP, but the EIP for water quality is not limited to the  
5 Stormwater Program and BMP implementation. (AR49974-50073, 49992.) The EIP includes  
6 environmental restoration programs ranging across all threshold categories. (AR26665.) The EIP  
7 identifies over 700 projects needed to meet and maintain the environmental thresholds, including  
8 program to retire land coverage and improve public infrastructure. (*Id.*)

9           **Response to Statement No. 43**

10          Plaintiffs do not dispute this statement.

11          **Statement No. 44**

12          Water Quality has long been a point of emphasis and priority for funding of the EIP.  
13 The Stormwater (or BMP) Program is the largest program within the water quality focus area of the  
14 EIP. It has received more than half of the EIP funding through Southern Nevada Public Land  
15 Management Act (“SNPLMA”). (AR94291, 49982, 49980 [SNPLMA funding].) Water quality  
16 focus areas for the partnership are not just stormwater management, but also Watershed Restoration,  
17 Sensitive Species protection, aquatic invasive species (“AIS”) prevention and control, and overlaps  
18 into air quality protection. (AR94289-92.) For example, when TRPA implements activities for fine  
19 sediment reduction, like street sweepers and bike trails to reduce the reliance on the auto, the  
20 activities have multiple benefits. (AR49982.)

21          **Response to Statement No. 44**

22          Plaintiffs do not dispute this statement.

23          **Statement No. 45**

24          Since its launch in 1997, the EIP has been one of the most comprehensive, large-scale  
25 environmental restoration efforts in the nation, with broad bipartisan, multi-sector support and  
26 diverse public-private partnerships for Lake Tahoe’s conservation. (AR16, 502, 94289-92.) More  
27 than 50 EIP partner agencies coordinate through TRPA to implement the programs and projects of  
28 the EIP. The EIP has produced a massive 1.7 billion dollar investment in stormwater management

1 infrastructure, wetland restorations, and other beneficial projects. In 2000, the Lake Tahoe  
2 Restoration Act authorized \$300 million for EIP implementation. (AR49980.) Resource  
3 Conservation Districts (“RCDs”) is an EIP partner agency implementing, among other water quality  
4 programs, private parcel-scale BMPs focused on residential dwellings. TRPA has taken the lead to  
5 focus on BMP implementation for multifamily dwellings and commercial areas. (AR55404-55405.)  
6 The EIP remains a key program under the RPU to achieve and maintain Threshold Standards.  
7 (AR94289-92, 49974-50073.)

8 **Response to Statement No. 45**

9 Plaintiffs do not dispute this statement.

10 **Statement No. 46**

11 The 1987 Regional Plan has largely achieved its intended purpose. With nearly 18,000  
12 vacant private parcels with development rights at the time, the 1987 Plan tightly controlled what  
13 could be built on vacant land. In response, growth has been managed and decidedly slowed, new  
14 development has been designed to be more environmentally compatible, sensitive lands have been  
15 protected and over 8,000 development rights have been retired. The Tahoe Region is now virtually at  
16 full build-out, with less than 10 percent of the region’s development rights remaining. (AR11544  
17 [DEIS].)

18 **Response to Statement No. 46**

19 Plaintiffs do not dispute this statement.

20 **Statement No. 47**

21 While the 1987 Regional Plan was successful at controlling and limiting new development,  
22 most of the development within the region was constructed prior to the 1987 Plan. Much of this  
23 earlier “legacy” development was not designed in a manner that considered environmental impacts,  
24 and this has been shown to be a major factor limiting the attainment of multiple threshold standards.  
25 For example, older development is known to be a major source of pollutants that degrade water  
26 quality. Many of the regulations under which new development was constructed also provided a  
27 strong disincentive for property owners to make significant upgrades or redevelop existing older  
28 developments in a more environmentally compatible way. (AR11544-11545 [DEIS].)

1           **Response to Statement No. 47**

2           Plaintiffs do not dispute the first, second, and third sentences, but dispute the last sentence,  
3 because it is conclusory and unsupported by facts.

4           **Statement No. 48**

5           Through the EIP and other programs, trends towards threshold attainment improved  
6 measurably, but thresholds for water quality and other resources were still not being attained.  
7 (AR502.) Between 1987 and 2010, TRPA adopted amendments to the 1987 Regional Plan to  
8 incorporate best available science and to promote environmentally beneficial projects and programs.  
9 (AR16 [TER],11544 [DEIS].) Recently, this Court found that the 1987 Regional Plan as amended  
10 will achieve and maintain the adopted environmental thresholds. *See Sierra Club v. Tahoe Reg'l*  
11 *Planning Agency*, 916F. Supp. 2d 1098, 1144-1146 (E.D. Cal. 2013).

12           **Response to Statement No. 48**

13           Plaintiffs do not dispute the first and second sentences. Plaintiffs dispute the third sentence,  
14 to the extent it purports to characterize legal conclusions as statements of fact, and insofar as it  
15 suggests that the Court found that the 1987 Regional Plan as amended will achieve and maintain *all*  
16 of the thresholds. The Court's ruling only applied to TRPA's findings with respect to air quality.

17           **Statement No. 50<sup>1</sup>**

18           Since the 1987 Plan was adopted, the water quality framework has changed and coverage  
19 restrictions and parcel-scale BMPs are no longer the primary water quality controls.  
20 (AR26251-57.)

21           **Response to Statement No. 50**

22           Plaintiffs dispute this statement insofar as it suggests that parcel-scale BMPs are no longer  
23 necessary for water quality control. BMPs implementation is a "key strategy" for meeting water  
24 quality standards, as explained in plaintiffs' briefs. AR55404. *See also* Responses to Statement Nos.  
25 41 & 154.

26  
27  
28           

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<sup>1</sup> TRPA's Statement of Undisputed Facts omits number 49.

1           **Statement No. 51**

2           In the 2000s, extensive studies for the Lake Tahoe Total Maximum Daily Load (TMDL)  
3 provided more detailed information related to water quality. (AR502.) The States of California and  
4 Nevada, the designated authorities for developing and administering the Lake Tahoe TMDL, worked  
5 collaboratively and closely with public agencies and other stakeholders to produce a plan to reduce  
6 the amount of fine sediment and nutrients entering the Lake. After ten years and ten million dollars  
7 of study, the Lake Tahoe TMDL was approved by California, Nevada, and the Federal  
8 Environmental Protection Agency (“EPA”) in 2011. (AR5097, 26673.)

9           **Response to Statement No. 51**

10          Plaintiffs do not dispute this statement.

11          **Statement No. 52**

12          A TMDL is, in essence, a water quality restoration plan required by the CWA to ensure the  
13 achievement of water quality standards in impaired water bodies. (AR108052, 106437.) The Lake  
14 Tahoe Watershed Assessment explains that “The federal Clean Water Act requires states to develop  
15 TMDLs for impaired waterbodies. In concept, TMDLs are best viewed as watershed attainment  
16 strategies to ensure that water quality standards are attained. It is most likely that TMDLs, along  
17 with the state mandated TMDL implementation program will be critical in water quality plans,  
18 regulatory programs, and remedial plans and monitoring at Lake Tahoe.” (AR33075; *see also*  
19 AR53023 [BMP Handbook: The Lake Tahoe TMDL quantifies the source and amount of fine  
20 sediment and nutrient loading from various land-uses and outlines an implementation plan to achieve  
21 an annual average Secchi depth of 29.7 meters as required by existing water quality standards.”];  
22 26789.)

23          **Response to Statement No. 52**

24          Plaintiffs do not dispute this statement.

25          **Statement No. 53**

26          TMDL requirements are found in CWA Section 303(d). Through five steps, the pollution  
27 sources and loads are determined for the specific water body at issue, their overall effect on the  
28 water body is assessed, pollutant loads are allocated for each source so that the water body will attain

1 the applicable water quality standards, and implementation plans are developed that describe the  
2 approach and activities required to ensure that the allocations are met. (AR26788.)

3 **Response to Statement No. 53**

4 Plaintiffs do not dispute this statement.

5 **Statement No. 54**

6 The Tahoe TMDL identifies major pollution sources for Lake Tahoe—fine sediment,  
7 phosphorus, and nitrogen—and establishes a 65-year plan to attain the adopted Threshold Standard  
8 for Lake clarity. (AR3311, 5097, 107884 [focus of Lake Tahoe TMDL is on “controlling both  
9 inorganic particles and nutrients to Lake Tahoe.”].) The Lake Tahoe TMDL identified options for  
10 reducing pollutant inputs of fine sediment particles and nitrogen and phosphorus to Lake Tahoe from  
11 the four largest pollutant sources: urban upland runoff, atmospheric deposition, forested upland  
12 runoff, and stream channel erosion. The Lake Tahoe TMDL identifies the amount of each pollutant  
13 entering the lake from these sources, the reductions needed, the reduction opportunities that are  
14 available, and the implementation plan to achieve these reductions. The Lake Tahoe TMDL  
15 modeling data recognizes opportunities to achieve water quality gain in four pollutant source  
16 categories – urban upland (72 percent), atmosphere (16 percent), forest upland (9 percent), and  
17 stream channel (3 percent) – with the greatest gain available through improvements in the urban  
18 upland source category. The Lake Tahoe TMDL concludes that by reducing fine sediment, nitrogen,  
19 and phosphorus loads in these four categories, it will take approximately 65 years to meet the deep  
20 water transparency standard (annual average Secchi depth of 29.7 meters). (AR26673-75.)

21 **Response to Statement No. 54**

22 Plaintiffs do not dispute this statement, but clarify that the percentages in the fourth sentence  
23 refer to each source category’s percent contribution of fine sediment to the Lake. Each of the source  
24 categories also contributes different percentages of nitrogen and phosphorus to the Lake. *See*  
25 AR106473-74.

26 **Statement No. 55**

27 Based on the pollution source analysis, the TMDL outlines a strategy to restore water quality  
28 in a cost effective manner focusing on comprehensive catchment-based (i.e., small watershed or sub-



1 watershed) load reduction plans that address fine sediments, phosphorus and nitrogen. The TMDL  
2 prohibits increased pollutant loading at the watershed scale. (AR5102, 5098 [“The TMDL  
3 implementation strategy focuses on comprehensive load reduction plans, to be implemented by each  
4 of seven jurisdictions that address fine sediments, phosphorus, and nitrogen at the catchment or sub-  
5 watershed scale.”].)

6 **Response to Statement No. 55**

7 Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because the  
8 citations do not support the claim that the TMDL “prohibits increased pollutant loading at the  
9 watershed scale.” NPDES permits implementing the California TMDL require local governments to  
10 “annually demonstrate on a catchment (i.e., subwatershed) basis that no increased loading in fine  
11 sediment particle, total nitrogen, and total phosphorus will result from any land-disturbing activity  
12 permitted in the catchment.” AR5102. As explained in plaintiffs’ briefs, no similar requirement  
13 exists under the Nevada TMDL.

14 **Statement No. 56**

15 The Lake Tahoe TMDL includes five-year targets to achieve water quality thresholds.  
16 (AR11926; *see also* AR106425-804.) TMDL monitoring, inspection and reporting requirements  
17 create an intensive program for monitoring and implementation of stormwater/BMP controls, public  
18 private. (*See* AR107423-40.) It requires steady documented pollutant reduction and includes  
19 enforcement mechanisms to ensure that goals are met. (*Id.*, AR11697-98.) While the two states have  
20 primary responsibility for the enforcement of the TMDL, TRPA coordinates with and supports this  
21 enforcement. For example, Code Section 13.8.2 provides: “In addition, TMDL regulatory agencies  
22 shall, through the TMDL adaptive management system, provide TRPA annual progress reports and  
23 analysis, copies of all MOAs and [National Pollutant Discharge Elimination System (NPDES)]  
24 permits, and notifications of all breaches or violations of MOAs and NPDES permits.” (AR 801.)

25 **Response to Statement No. 56**

26 Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because it is  
27 argumentative and expresses an opinion and not statements of fact. Plaintiffs also dispute this  
28 sentence insofar as it suggests that the cited NPDES permit ensures long-term maintenance of

1 private-parcel BMPs; the NPDES permit only addresses maintenance of public stormwater  
2 collection systems. *See* AR107413, 107419. Further, the citation only refers to the NPDES permit  
3 implementing the California TMDL, so the citation does not support that these requirements apply in  
4 Nevada. Plaintiffs dispute the third sentence because the citation does not support it. Plaintiffs do not  
5 dispute the fourth and fifth sentences.

6 **Statement No. 57**

7 TMDL is regulated by the two states and is implemented primarily through local government  
8 jurisdictions and state transportation agencies under CWA NPDES permits or Memoranda of  
9 Agreement (“MOAs”) with state regulatory agencies. (AR3312, 5098.) The TMDL requires  
10 implementing jurisdictions to complete load reduction plans, which for local governments are called  
11 Stormwater Load Reduction Plans (“SLRPs”) and Pollution Load Reduction Plans (“PLRPs”).  
12 PLRPs and SLRPs must identify catchments (i.e., sub-watersheds) and their respective pollutant  
13 loading to Lake Tahoe. Overall, the TMDL focuses on the quality of stormwater entering Lake  
14 Tahoe rather than the quality of stormwater leaving each parcel. The TMDL also utilizes a load-  
15 based standard applied at the catchment or sub-watershed level, which can be monitored and  
16 measured. (AR3312.)

17 **Response to Statement No. 57**

18 Plaintiffs do not dispute the first, second, and third sentences, but dispute the fourth sentence  
19 insofar as it suggests that the TMDL relies on monitoring and measuring of actual water quality  
20 conditions to confirm that load reductions have been met and to award load reduction credits to local  
21 governments. As noted in plaintiffs’ reply brief, the TMDL relies on visual inspections and records  
22 inventories to confirm implementation of load reduction plans, and awards load reduction credits  
23 based on modeled estimates of how much load reduction is expected from each implemented action.  
24 *See* AR107691, 107719, 107726.

25 **Statement No. 58**

26 The TMDL includes PLRPs and SLRPs to accelerate BMP implementation and require  
27 additional measures, beyond erosion controls, through all programs of the EIP to meet Water Quality  
28 Threshold Standards through a variety of measures (e.g., erosion control, SEZ restoration, wood

1 stove replacement, decommissioning forest roads, street sweeping). (AR106506 [“The [LRWQCB]  
2 and [Nevada Division of Environmental Protection (“NDEP”) will require municipal jurisdictions  
3 and both state highway departments to prepare, submit, and implement pollutant load reduction  
4 plans (or equivalent) to describe how load reduction milestones will be met. Load reduction plans  
5 will provide the [LRWQCB] and NDEP reasonable assurance that planned implementation actions  
6 and strategies will reduce sediment particle, total nitrogen, and total phosphorus loads consistent  
7 with the TMDL allocation schedule.”]; 548 [TRPA RPU states that “Areas targeted for accelerated  
8 BMP implementation should occur in coordination with [] government Pollution/Stormwater Load  
9 Reduction Plans.”].)

10 **Response to Statement No. 58**

11 Plaintiffs do not dispute this statement.

12 **Statement No. 59**

13 The Lahontan Regional Water Quality Control Board (“LRWQCB”) has issued NPDES  
14 permits to each California jurisdiction. The NDEP is implementing the TMDL through Memoranda  
15 of Agreement (“MOAs”) with agencies in Nevada. (AR3312.)

16 **Response to Statement No. 59**

17 Plaintiffs do not dispute this statement.

18 **Statement No. 60**

19 The California NPDES permit requires that: “In accordance with the Basin Plan, Permittees  
20 must ensure that changes in land use, impervious coverage, or operations and maintenance practices  
21 do not increase a catchment’s average annual baseline pollutant load.” (AR107419.) The permit also  
22 requires that: “Permittees shall operate and maintain storm water collection, conveyance, and  
23 treatment facilities to ensure, at a minimum, that the baseline pollutant loading specified in Table  
24 IV.B.1 does not increase.” (AR107419.)

25 **Response to Statement No. 60**

26 Plaintiffs do not dispute this statement, but clarify that the latter referenced NPDES permit  
27 condition refers to the local government permittee’s operations and maintenance of its public  
28 stormwater facilities and does not refer to private parcel BMPs.

1           **Statement No. 61**

2           The TMDL is regulated and administered differently than the early BMP program. Where  
3 the early BMP program was a product of top-down regulation by one regulatory agency, TRPA, the  
4 TMDL uses a different model for implementation. The TMDL is regulated by and administered by  
5 Nevada and California and their respective water quality agencies, as opposed to being primarily  
6 regulated by TRPA. (AR26674.)

7           **Response to Statement No. 61**

8           Plaintiffs dispute this statement to the extent it suggests that TRPA is no longer responsible  
9 for enforcing BMP requirements. *See* AR8616-20 (TRPA Code BMP requirements).

10          **Statement No. 62**

11          TRPA is not the lead regulator under the TMDL program and has therefore been careful not  
12 to duplicate the state's role. (AR3313-14, 5067.) Rather, TRPA's role is to incentivize TMDL  
13 implementation using land use incentives such as release of building allocations, increasing building  
14 height limits, and commercial floor area (CFA) bonuses. (AR106500)

15          **Response to Statement No. 62**

16          Plaintiffs do not dispute this statement.

17          **Statement No. 63**

18          Both the LRWQCB and NDEP will provide TRPA with data on load reduction plans, clarity  
19 crediting programs, and progress toward meeting load reduction targets on an annual basis.  
20 (AR26674.)

21          **Response to Statement No. 63**

22          Plaintiffs do not dispute this statement.

23          **Statement No. 64**

24          The TMDL is not a one-size-fits-all program like the BMP program. (AR5098, 11697.)  
25 Under the TMDL, each local jurisdiction has the flexibility to set its own strategies in its own local  
26 plans to achieve the state's load reduction targets. (AR5104 ["In practice, the Lake Tahoe TMDL  
27 requires local jurisdictions to complete load reduction plans that identify catchments (i.e., sub-  
28

1 watersheds) and their respective pollutant loading to Lake Tahoe.”], 5098 [“Local jurisdictions  
2 would have flexibility in designing the system that applies to each sub-watershed.”].)

3 **Response to Statement No. 64**

4 Plaintiffs dispute this statement insofar as it suggests that BMP implementation is not  
5 necessary for TMDL implementation, as explained in plaintiffs’ briefs and Responses to Statement  
6 Nos. 41 & 154.

7 **Statement No. 65**

8 Areas of concentrated impervious land coverage, such as commercial land uses with  
9 extensive streets, parking areas, and rooftops, may need intensive application of advanced pollutant  
10 control measures, while land uses with dispersed impervious land coverage will likely need less  
11 advanced treatments. Enhanced operations and maintenance of roadways and associated pollutant  
12 controls are important elements in the implementation strategies to reduce pollutants from urban  
13 runoff discharges. A representative list of practices and treatment options that responsible parties  
14 might use to achieve the Lake Tahoe TMDL in 65 years includes:

- 15 • Stabilize and re-vegetate road shoulders
- 16 • Vacuum-sweep streets (in heavily sanded areas)
- 17 • Upgrade/enhance fertilizer / turf management practices to reduce nutrient application
- 18 • Remove impervious land coverage (increase infiltration)
- 19 • Redirect runoff for additional treatment
- 20 • Install and maintain infiltration trenches
- 21 • Install and maintain prefabricated infiltration systems
- 22 • Install and maintain detention basins
- 23 • Install and maintain sand filters
- 24 • Apply advanced deicing strategies (to reduce or eliminate abrasive application)
- 25 • Upgrade/increase/enhance infrastructure operation and maintenance
- 26 • Control retail fertilizer sales within the Basin
- 27 • Recommend landscaping practices that reduce nutrient mobilization
- 28 • Install and maintain wet basins / infiltration basins
- Install and maintain constructed wetlands
- Install and maintain media filters in stormwater vaults
- Pump stormwater to more suitable treatment locations

(AR26676.)

1           **Response to Statement No. 65**

2           Plaintiffs do not dispute this statement, but note that the above list largely contains various  
3 BMPs listed in the BMP Handbook. *Compare* above (“install and maintain”) list *with* AR 126816-  
4 18.

5           **Statement No. 66**

6           The science developed through the TMDL represented both a substantive and procedural  
7 shift whereby TRPA’s top-down regulatory prescription on each parcel shifted to a performance  
8 standard approach with more flexible implementation strategies where local jurisdictions, as  
9 implementers, work with an array of partners to achieve the targets. (AR5097-98 [“Overall, the  
10 TMDL focuses on the quality of stormwater entering Lake Tahoe rather than the quality of  
11 stormwater leaving each parcel.”]; see also AR47 [2011 TER: “The design, implementation, and  
12 maintenance of area-wide (subdivision scale and larger) stormwater treatment facilities and  
13 infrastructure would achieve treatment of private property runoff more comprehensively, quickly,  
14 and efficiently, than the past parcel-by-parcel approach has allowed.”].)

15           **Response to Statement No. 66**

16           Plaintiffs do not dispute the first sentence, but dispute the last parenthetical citing to the 2011  
17 TER, because the record does not support this claim, as explained in Response to Statement No. 179.

18           **Statement No. 67**

19           Based on the TMDL studies, TRPA’s practice of requiring water quality improvements at the  
20 parcel-level could be refined to prioritize BMP implementation in areas that achieve the greatest load  
21 reduction, thereby restoring Lake Tahoe’s water quality more rapidly and in a more cost effective  
22 manner. (AR26253.) In addition to requiring local jurisdictions to implement Load Reduction Plans,  
23 the TMDL also utilizes a load based standard applied at the catchment level, which can be monitored  
24 and measured effectively. (*Id.*)

25           **Response to Statement No. 67**

26           Plaintiffs dispute the first sentence insofar as it suggests that the RPU will restore Lake  
27 Tahoe’s water quality more rapidly and in a more cost effective manner, because the RPU will result  
28

1 in unmitigated significant impacts as explained in plaintiffs' briefs. Plaintiffs do not dispute the  
2 second sentence.

3 **Statement No. 68**

4 These reductions are scientifically linked to incremental gains in the water clarity threshold  
5 standard and the scientific basis for improving Lake Tahoe clarity by an additional 10 feet over the  
6 next 20 years. (AR106471.) The studies that formed the basis for the TMDL found that fine  
7 sediments, rather than suspended algae, were the largest contributor (70 percent) to clarity loss and  
8 that the majority of fine sediments came from the developed urban uplands (72 percent).  
9 (AR106473, *see also* AR11920.)

10 **Response to Statement No. 68**

11 Plaintiffs dispute the first sentence insofar as it suggests that the TMDL is scientifically  
12 proven to meet clarity standards. The TMDL is based on a model that determined pollution loads as  
13 of baseline year 2004, modeled load reductions needed to meet clarity standards for each pollutant  
14 and source category, and estimated the expected cost and effectiveness of various pollution control  
15 options. AR106482-91. The actual effectiveness of load reduction plans is unproven. *See* AR26003-  
16 04 (public comment). Plaintiffs also dispute this sentence insofar as it suggests that the TMDL  
17 addresses local water quality standards for streams and the nearshore. As explained in Response to  
18 Statement No. 149 and plaintiffs' reply brief, the TMDL only addresses mid-lake clarity. Plaintiffs  
19 do not dispute the second sentence.

20 **Statement No. 69**

21 The adoption of the TMDL called into question the assumed necessity to treat every drop of  
22 water on every parcel with uniform parcel-based treatment prescription under the BMP Retrofit  
23 Program. (AR5098 [“The updated Regional Plan would broaden the current focus on parcel-level  
24 regulations to reflect the TMDL strategy of comprehensive catchment-based load reduction plans for  
25 fine sediments, phosphorus, and nitrogen.”].) Parcel owners must still contribute to BMP solutions,  
26 but the prescription may differ under more flexible area-wide solutions that could be developed to  
27 achieve TMDL load reductions for each catchment. Local jurisdictions would have flexibility in  
28 designing the system that applies to each sub-watershed. (AR5098.)

1           **Response to Statement No. 69**

2           Plaintiffs dispute the first sentence insofar as it suggests that parcel-by-parcel BMP  
3 implementation is no longer needed. BMP implementation is necessary for TMDL implementation,  
4 as explained in plaintiffs' briefs and Responses to Statement No. 41 & 154. Plaintiffs do not dispute  
5 the remainder of the statement.

6           **Statement No. 70**

7           TMDL and other implementation strategies assure maintenance of BMPs, either on a parcel  
8 or areas-wide scale consistent with both the TMDL and TRPA regulatory approaches. (AR55408  
9 [Accelerated BMP Implementation Strategy].) "Lake Tahoe Region jurisdictions use Lake Tahoe  
10 TMDL tools including a BMP Rapid Assessment Methodology ("RAM") and a Road RAM to assess  
11 relative conditions of BMPs and roadways within the public right-of-way. These tools assist local  
12 jurisdiction staff to prioritize and target maintenance activities on a regular basis to maintain  
13 pollutant load reduction targets set forth in the Lake Tahoe TMDL." (AR126934.)

14           **Response to Statement No. 70**

15           Plaintiffs dispute the first sentence because it is conclusory, and the citation does not support  
16 the claim. The citation does not describe programs to assure long-term maintenance or discuss their  
17 effectiveness. Plaintiffs do not dispute that the remainder of this statement accurately quotes the  
18 cited document, but dispute it insofar as it suggests that local governments are actually using these  
19 tools and using them properly, when no specific evidence supports this claim. Plaintiffs also dispute  
20 this sentence insofar as it suggests that these tools are adequate to ensure maintenance of BMPs. The  
21 Rapid Assessment Methodology relies on a visual inspection, rather than monitoring actual BMP  
22 effectiveness and water quality conditions. AR105182-83.

23           **Statement No. 71**

24           The vast majority of the built environment and infrastructure existing today was built before  
25 TRPA came into existence and before there were strong environmental standards established to  
26 protect the Lake. The effects of that legacy of human impacts in the late 1800s and early 1900s and  
27 of development before TRPA existed are still being addressed today. (AR11543-11544.) TRPA was  
28 successful at addressing impacts from new development, redevelopment, roadways, and other public



1 lands, but private redevelopment (especially non-conforming private development built before  
2 TRPA or Regional Plan existed) lagged. (AR11544-11546, 7119.)

3 **Response to Statement No. 71**

4 Plaintiffs do not dispute this statement.

5 **Statement No. 72**

6 TRPA's land acquisition policies were also successful. Ninety percent of the Basin  
7 (watershed) is now in public ownership and generally foreclosed from development, up from 70  
8 percent 30 years ago as a result of hundreds of millions in federal and state public monies dedicated  
9 to land acquisition and conservation programs. (AR377 ["In 1983, less than 70 percent of the Tahoe  
10 Basin was in public ownership"], 206 ["Today, approximately 85 percent of the land in the Basin is  
11 managed by the U.S. Forest Service, Nevada Division of State Lands, the California Department of  
12 Parks and Recreation, and the California Tahoe Conservancy."].) On the other hand, only about 10  
13 percent of the land base is privately held (AR46, 377), reflected in almost 47,000 private parcels  
14 with development capacity as limited by growth constraints (AR11631-11634), and is held across six  
15 local government jurisdictions, two states, the federal government and a wide range of local General  
16 Improvement Districts and Public Utility Districts. The complexities of the governance mosaic alone  
17 create challenges in implementation.

18 **Response to Statement No. 72**

19 Plaintiffs do not dispute this statement.

20 **Statement No. 73**

21 Socio-economic conditions have deteriorated. (AR26226.) Today, the permanent population  
22 at Tahoe is 7 percent, or 54,000, of the 1960s development plans, and less than the permanent  
23 population in 2000. (AR8811-8812.)

24 **Response to Statement No. 73**

25 Plaintiffs do not dispute this statement.

26 **Statement No. 74**

27 The region endures above-average unemployment rates, a shortage of affordable housing,  
28 high poverty levels, lower housing occupancy, and public school closings. The region has seen a 35

1 percent decrease in enrollment over previous decade and three schools have closed. (AR8813,  
2 12090-91, 8811-17, 20636 [“School enrollment has declined in every Basin community since  
3 2000.”].) Gaming in the region is also declining. (AR53719-20.)

4 **Response to Statement No. 74**

5 Plaintiffs do not dispute this statement.

6 **Statement No. 75**

7 This has had a negative impact on the environment because people are forced to drive more  
8 with 87 percent of workers on north shore and 62 percent on south shore commuting from outside  
9 the region, including 49 percent of all workers commuting more than 50 miles. (AR26226, 12090,  
10 80896-935.)

11 **Response to Statement No. 75**

12 Plaintiffs dispute this statement because the citations provide no evidentiary support for the  
13 claim that the socio-economic conditions referred to in Statement No. 74 have caused “a negative  
14 impact on the environment.”

15 **Statement No. 76**

16 Public funding for the region plummeted, which further highlighted the need to leverage  
17 private investment to continue environmental gains. (AR20665-66 [“Business related tax revenues  
18 are flat or declining, even without the impact of the current recession.”], 20665 [“Business retention  
19 is low and gaming is shrinking as an economic driver.”]; AR99233 [additional \$2.45 billion in  
20 public/private funding for EIP--\$700 million of which has been committed. Federal government has  
21 committed \$131 million of its \$654 million share.]

22 **Response to Statement No. 76**

23 Plaintiffs do not dispute that public funding for the region has decreased but dispute the  
24 claim that this “further highlighted the need to leverage private investment to continue  
25 environmental gains,” because it expresses an opinion, and not a statement of fact.

26 **Statement No. 77**

27 These trends impact the environment – largely by making the system unsustainable for  
28 people to invest in environmental improvements or to live, work and enjoy recreation and tourism in

1 the region. As workers and residents abandon the region, as land use policies continue to favor the  
2 separation of uses, and as visitors continue to lack transportation choices that could reduce auto use,  
3 negative environmental impacts result. (AR26666.)

4 **Response to Statement No. 77**

5 Plaintiffs dispute the statement, because it is conclusory and unsupported by the citation or  
6 any evidence.

7 **Statement No. 78**

8 TRPA's preparation of the 2011 TER informed the RPU. (AR26903, 5288.) The 2011 TER  
9 represented the most rigorous, objective and transparent evaluation of the status and trends of  
10 Threshold Standards ever completed. For the first time the TER was reviewed by an independent  
11 panel of scientific experts who found that the 2011 TER was technically sound and a significant  
12 improvement over previous TERs. (AR14, 16.)

13 **Response to Statement No. 78**

14 Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because it  
15 purports to characterize an opinion as a statement of fact. Plaintiffs dispute the third sentence insofar  
16 as it suggests that the panel of scientific experts reviewed the Final 2011 TER. The panel only  
17 reviewed the draft TER. *See generally* 8839-8948 (peer review of draft TER).

18 **Statement No. 79**

19 TRPA addressed 151 environmental standards and found that 62 percent of measured  
20 indicators were in attainment, with others trending towards improvement. (AR16-18.)

21 **Response to Statement No. 79**

22 Plaintiffs dispute this statement to the extent it suggests that the TER found that all threshold  
23 indicators were either in attainment or "trending towards improvement." The status of various  
24 threshold indicators is unknown or in decline. *See* AR18-19, 26-29.

25 **Statement No. 80**

26 Notably, the peer review urges a landscape perspective, stepping back to consider and apply  
27 the results on a larger scale. (AR14.) The 2011 TER is a vast assemblage of data that offers a  
28 snapshot of the environmental health of Tahoe Region and evaluates the implementation and

1 effectiveness of the 1987 Regional Plan. This fifth Report in a series since 1991 is produced by  
2 TRPA in collaboration with partner agencies and research institutions every five years. (AR14, 16.)

3 **Response to Statement No. 80**

4 Plaintiffs dispute the second sentence to the extent that it suggests that the 2011 TER  
5 accurately evaluates the implementation and effectiveness of the 1987 Plan with respect to all  
6 threshold standards, as discussed in their briefs. Plaintiffs do not dispute the remainder of this  
7 statement.

8 **Statement No. 81**

9 Thresholds establish the environmental standards for the region and, as such, indirectly  
10 define the capacity of the region to accommodate additional development. The TER provides the  
11 basis and rationale for the establishment and assessment of progress on thresholds while the  
12 Regional Plan and implementing ordinances define the actual threshold attainment strategies and  
13 potential for new development consistent with the constraints imposed by the thresholds. (AR500.)

14 **Response to Statement No. 81**

15 Plaintiffs do not dispute this statement except to the extent that it suggests that the 2011 TER  
16 is accurate in all respects regarding progress, or lack of progress, on all thresholds.

17 **Statement No. 82**

18 Overall, the Report found the Regional Plan, through the partnerships of many federal, state,  
19 local and private organizations, has made progress on improving environmental quality. (AR17.)  
20 Regarding water quality, the 2011 TER indicated that the rate of Lake Tahoe annual clarity decline  
21 has slowed over the last decade. The winter clarity threshold indicator met the interim target of 78.7  
22 feet (2011 measured 84.9 feet) and is trending toward attainment of 109.5 feet. Trends in stream  
23 water quality indicated that conditions have not declined over time. However, summer lake clarity  
24 and nearshore conditions are highlighted as major areas of concern. (AR17, 385-86, 132.) Although  
25 summer clarity is an area of concern, the threshold standard considers average annual mid-lake  
26 clarity, not just during the summer. (AR149-54.) The average measure fluctuates widely from year  
27 to year, but the trend over time is that the standard is improving significantly and loss of clarity has  
28 flattened. (AR149-54.)

1           **Response to Statement No. 82**

2           Plaintiffs do not dispute the first through third sentences. Plaintiffs dispute the fourth  
3 sentence insofar as it suggests that the Region is in compliance with stream water quality standards.  
4 Nutrient concentrations annually exceed tributary water quality standards. AR163, 168, 171. *See*  
5 Dkt. 36-3 No. 8. Plaintiffs do not dispute the fifth and sixth sentences. Plaintiffs dispute the seventh  
6 sentence, because the citation does not support it, and it is unclear what “flattened” means. At most  
7 the data show a “reduction” or “slowing in the rate of decline in *winter* transparency,” not “no  
8 decline,” which “flattened” suggests. AR 150-51 (emphasis added). *See also* AR150 (cautioning  
9 against “placing too much importance” on “year-over-year change” between 2010 and 2011);  
10 AR107884 (UC Davis Lake clarity report noting “large year-to-year fluctuations are not unusual in  
11 the long term record, and are part of the reason we advocate focusing on the long term changes  
12 rather than annual or even shorter term changes when trying to evaluate effectiveness of  
13 management programs”). The same conclusions do not apply to summer clarity, which has  
14 experienced a “near-continuous decline.” AR107947.

15           **Statement No. 83**

16           There are numerous causes that contribute to summer clarity declines including chemical  
17 changes due to invasive species and ambient temperature increases due to climate change.  
18 (AR107884.) Development may have an effect on summer clarity, but there is not enough evidence  
19 to conclude that summer clarity declines are directly caused or correlated to development.  
20 (AR107884.) Although scientists have identified potential factors that contribute to nearshore  
21 conditions including nitrogen deposition and tributary runoff, none of the factors have been  
22 scientifically attributed to causation of nearshore conditions. (AR20, 224-25.) Indeed, scientists have  
23 stated that more targeted monitoring is necessary to understand nearshore condition causation and to  
24 target additional management actions if any, which at this time are unknown or uncertain.  
25 (AR155019, 280, 431.) Scientists have, however, concluded that all actions taken to implement the  
26 TMDL are expected to benefit nearshore conditions because all water must flow through the  
27 nearshore before reaching midlake. (AR386.)

1           **Response to Statement No. 83**

2           Plaintiffs dispute the first and second sentences, insofar as they suggest that development is  
3 not a concern with respect to summer clarity decline. The citation explains that summertime algae  
4 growth is causing summer clarity declines (it does not attribute clarity decline to “chemical changes  
5 due to invasive species”). AR107884. Algae growth is caused by nutrient pollution (phosphorus and  
6 nitrogen), AR107943, 106454, and development (including urban stormwater runoff) is a major  
7 source of nutrient pollution. AR106473-74. The referenced citation emphasizes “the importance of  
8 controlling both inorganic particles and nutrients to Lake Tahoe.” AR107884. For the same reasons,  
9 plaintiffs dispute the third sentence’s claim that nitrogen deposition and tributary runoff “have [not]  
10 been scientifically attributed to causation of nearshore conditions.” *See also* AR106458, 107138,  
11 107898 (noting correlation between algae growth and development); AR102277 (mineral particles  
12 from urban areas reduce nearshore clarity). Plaintiffs do not dispute the fourth sentence’s claim that  
13 further studies are needed, but dispute the claim that management actions to address nearshore  
14 conditions are “unknown and uncertain.” The citation to the 2011 TER states that TRPA should  
15 “implement policy and management actions to control factors known to contribute to the distribution  
16 and abundance of periphyton algae (e.g., nutrient enrichment).” AR431. Plaintiffs dispute the last  
17 sentence, because it is not supported by the citation and because actions taken under the TMDL will  
18 not *necessarily* benefit nearshore conditions, as explained in plaintiffs’ reply brief.

19           **Statement No. 84**

20           The year leading up to the RPU adoption had the best results in a decade for water quality,  
21 with the loss of lake clarity flattening after some 400 environmental restoration projects within  
22 TRPA’s EIP have been implemented using the combined commitments and investments in  
23 conservation by the federal government, two states (California and Nevada), 6 local jurisdictions that  
24 border the Lake, and the private sector that owns 10 percent of the land area within the Lake Tahoe  
25 Watershed. (AR107878-955.)

26           **Response to Statement No. 84**

27           Plaintiffs dispute the statement’s claim that “loss of lake clarity” has “flatten[ed]” and its  
28 suggestion that average *winter* Secchi depths for “the year leading up to the RPU” (2011) are

1 representative of the long-term trend, as explained in Response to Statement No. 82. *See also*  
2 AR107947 (“Summer clarity in Lake Tahoe in 2008 and 2011 were the lowest values ever recorded  
3 (50.4 feet and 51.4 feet respectively); *id.* (noting “summer trend is dominated by a consistent long-  
4 term decline”).

5 **Statement No. 85**

6 Regarding soil conservation, an analysis of impervious cover (land coverage) showed that  
7 seven of nine indicators were in attainment with threshold targets, however, sensitive wetlands and  
8 very steep lands are “over-covered” which can negatively affect water quality and other resources.  
9 (AR17, 184-204.) Coverage was monitored on the basin-scale and implemented on the parcel-scale  
10 as required by the Threshold Standard and the TMDL measures loading at the watershed/catchment  
11 level. Detailed tracking of coverage at the watershed/catchment level is no longer necessary as a  
12 result of the TMDL and is not required by the thresholds. (AR5091, 27445 [Bailey], 107419 [CA  
13 TMDL NPDES Permit].)

14 **Response to Statement No. 85**

15 Plaintiffs do not dispute the first and second sentences. Plaintiffs dispute the third sentence’s  
16 claim that “[d]etailed tracking of coverage at the watershed/catchment level is no longer necessary as  
17 a result of the TMDL,” because it is argumentative and conclusory and the citations do not support  
18 it.

19 **Statement No. 86**

20 Regarding SEZs (also land capability class 1b under the Bailey System), the TER determined  
21 50 percent of the target had been achieved and designated the Threshold Standard status as  
22 “considerably worse than target.” (AR 202.) The TER noted that an additional 554 acres is needed to  
23 achieve the SEZ Threshold Standard. (*Id.*) The TER recommended that TRPA continue to support  
24 the restoration of degraded SEZ lands, and review policies to further incentivize the transfer of  
25 coverage from SEZ to higher capability lands. (AR204.)

26 **Response to Statement No. 86**

27 Plaintiffs do not dispute this statement.  
28

1           **Statement No. 87**

2           Regarding air quality, the 2011 TER indicated that the Tahoe Basin has made air quality  
3 gains over the last five years. The majority of air quality indicators in the Lake Tahoe Basin were at  
4 or better than attainment with adopted standards. The Report shows that indicators for carbon  
5 monoxide and vehicle-miles-traveled moved from non-attainment into attainment. (AR17, 74-131.)

6           **Response to Statement No. 87**

7           Plaintiffs do not dispute this statement.

8           **Statement No. 88**

9           8-hour ozone monitoring is one of the 151 environmental standards and is 1 of 4 ozone  
10 measures, which is reported with air quality monitoring results across the Basin. (AR16, 18, 92.) Air  
11 quality monitoring sites vary and change with time due to budgets, land use permissions expiring,  
12 and recommendations from scientists to change in order to optimize locations. Factors outside the  
13 Basin heavily influence air quality in the Basin. Improving emission standards for motor vehicles,  
14 boats, etc. are generally improving air quality notwithstanding any in-basin activities. (AR17, 30.)

15           **Response to Statement No. 88**

16           Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because it is  
17 unsupported by any citation to the record and suggests that monitoring problems in the Tahoe Basin  
18 are due to the listed factors, when no evidence supports this. Plaintiffs dispute the third sentence,  
19 because extensive evidence indicates that air quality in the Basin is mostly influenced by local  
20 emissions sources. AR 148537 (“three studies have shown that the local generation of [ozone] and  
21 other pollutants in the Basin is more important than the long-range transport when it comes to  
22 exceedances of the state and national [ozone] standards and elevated levels of other pollutants within  
23 the Basin”). Plaintiffs dispute the last sentence, because at most, the citation supports that improving  
24 emissions standards “likely have contributed to improvement in air quality at Lake Tahoe.” As  
25 explained in Responses to Statement No. 208 & 188, various other factors affect air quality and the  
26 effectiveness of existing management programs is unknown.



1           **Statement No. 89**

2           Ozone standards are in attainment and improving nationally and regionally. (AR155772  
3 [National].) TRPA measures ozone with four standards and monitoring indicates that the Tahoe Air  
4 Basin is in or near attainment with Federal, State and TRPA Standards for ozone. (AR94-101)  
5 Moreover, RPU programs will further reduce ozone precursors. (AR26683-26685, 11788-89.)

6           **Response to Statement No. 89**

7           Plaintiffs dispute the first and second sentence as explained in plaintiffs' briefs. Plaintiffs  
8 dispute the third sentence, as explained in Response to Statement Nos. 197 & 208.

9           **Statement No. 90**

10           Regarding scenic resources, the Tahoe Basin made gains in scenic quality over the last five  
11 years. Overall, compliance with scenic quality standards is at 93 percent with an improving trend in  
12 scenic quality for the built environment. Developed areas along roadways and Lake Tahoe's  
13 shoreline (i.e. legacy pre-TRPA development) continue to be the locations where scenic  
14 improvements are needed. (AR17, 318-341.)

15           **Response to Statement No. 90**

16           Plaintiffs do not dispute this statement.

17           **Statement No. 91**

18           Other threshold areas including wildlife, vegetation, recreation, fisheries and noise were  
19 generally in attainment, had specific areas where improvement was needed, or included standards  
20 where TRPA has little practical ability to enforce, which were recommended for revision. (*See*  
21 AR17- 18, 205, 274, 291, 342, 372.)

22           **Response to Statement No. 91**

23           Plaintiffs do not dispute this statement.

24           **Statement No. 92**

25           The TER was peer-reviewed by an independent panel of scientific experts coordinated by the  
26 Tahoe Science Consortium; the peer-review panel concluded that the report was "technically sound  
27 and provides a credible basis to support ongoing TRPA policy-making. (AR16.) The Governing  
28 Board issued the TER in December 2012, by a vote of 13-1, after multiple public hearings and after

1 adopting findings that the TER was supported by substantial evidence, including the peer-review  
2 panel's recommendations. (AR26574 [Resolution 2012-17]; 26576-79 [TER Findings]; 27298-99  
3 [Minutes].)

4 **Response to Statement No. 92**

5 Plaintiffs dispute the first sentence insofar as it suggests that the peer review panel reviewed  
6 the final TER adopted by TRPA's Governing Board, as explained in Response to Statement No. 195.  
7 Plaintiffs dispute the second sentence's description of the Governing Board's actions, insofar as it  
8 mischaracterizes the nature of TRPA's findings regarding the sufficiency of the TER. The findings  
9 only relate to whether the TER included all elements of a "progress report" required under Code  
10 Chapter 16, amounting to a check-list; the findings did not relate to the scientific adequacy of the  
11 report's methodology and conclusions. *See* AR26575-79.

12 **Statement No. 93**

13 The RPU process was an unprecedented inclusive and transparent process. TRPA devoted  
14 nearly 10 years to the RPU process and input has been received from numerous state and federal  
15 agencies and thousands of people. (AR5087.)

16 **Response to Statement No. 93**

17 Plaintiffs dispute the first sentence, because it purports to characterize opinions as statements  
18 of fact. Plaintiffs do not dispute the second sentence.

19 **Statement No. 94**

20 TRPA initiated the "Pathway Forum" in 2005. The Pathway forum was an inclusive public  
21 and stakeholder process to facilitate discussions on a wide range of topics related to the Regional  
22 Plan and to coordinate the Regional Plan with the LRWQCB Basin Plan and the USFS Forest Plan.  
23 (AR11553, 115974-77.) From 2006 to 2008 TRPA undertook a place-based planning initiative to  
24 include additional public and stakeholder input on RPU. Approximately 2,500 individuals provided  
25 direct input through Pathway and Place-based Planning. (AR11553, 115975.) TRPA also conducted  
26 additional polls and outreach to solicit additional public input, with a total of more than 5,000 people  
27 providing input. (AR155836.) In July 2007, TRPA adopted a Regional Vision summary to help  
28 guide the process. (AR114990-5321.)

1           **Response to Statement No. 94**

2           Plaintiffs do not dispute this statement.

3           **Statement No. 95**

4           From 2009 to 2011 the TRPA Governing Board initiated a priority setting process where the  
5           Governing Board reviewed topic by topic fact sheets, received hundreds of written comments, and  
6           TRPA staff conducted over 180 individual meetings with individual stakeholders. (AR11553.)

7           **Response to Statement No. 95**

8           Plaintiffs do not dispute this statement.

9           **Statement No. 96**

10           In January 2011, the Governing Board directed TRPA staff to focus the RPU on the region's  
11           most pressing issues: accelerated attainment of threshold standards; protection against emerging  
12           threats, such as wildfire and invasive species; and responses to statutory requirements with which the  
13           region or portions of the region must comply. By focusing on these high-priority issues, a reasonable  
14           range of feasible alternatives could be developed and evaluated in the EIS, and the Governing Board  
15           could render a decision and implement the updated Regional Plan within a reasonable timeframe.  
16           (AR11473, 22272-74, 22292, 11554.) Between July 2011 and April 2012 TRPA prepared the Draft  
17           RPU through a public process at RPUC meetings. The RPUC conducted 15 full-day public meetings  
18           to review proposed amendments line by line, with revisions and compromise language developed  
19           with public input during meetings and 89 percent of topics endorsed unanimously. (AR155837,  
20           11554, 5088.)

21           **Response to Statement No. 96**

22           Plaintiffs do not dispute this statement.

23           **Statement No. 97**

24           RPUC and the Governing Board reviewed and endorsed the Bi-State recommendations  
25           (AR26064, 25927, 22686-718.) and incorporated bi-state recommendations into final draft plan.  
26           (AR7103 [list of technical working group members].)

27           **Response to Statement No. 97**

28           Plaintiffs do not dispute this statement.

1           **Statement No. 98**

2           TRPA also began the process of preparing the draft Environmental Impact Statement (EIS)  
3 for the RPU. The EIS was prepared in accordance with Article VII of the Tahoe Regional Planning  
4 Compact, Chapter 3 of the Code, and Article VI of the TRPA Rules of Procedure. The  
5 environmental review process for the RPU EIS began with efforts to gather information to establish  
6 the breadth, or scope, of environmental review. (AR11472.)

7           **Response to Statement No. 98**

8           Plaintiffs do not dispute the first and last sentences. Plaintiffs dispute the second sentence  
9 insofar it purports to characterize legal conclusions as statements of fact.

10           **Statement No. 99**

11           A notice of preparation was issued on September 5, 2007, to inform agencies and the public  
12 that an EIS would be prepared for the RPU and to solicit views of agencies and the public regarding  
13 the scope and content of the EIS. (AR11472.) TRPA also facilitated a variety of public outreach  
14 efforts to develop the RPU alternatives and the EIS scope. Between 2005 and 2008, some 2,500  
15 individuals and organizations participated in the Pathway Forum and Place-based Planning, two  
16 comprehensive public participation efforts, providing valuable input to the TRPA Governing Board  
17 and staff. TRPA also engaged stakeholders and the public through additional meetings of the  
18 Governing Board in 2009 and 2010. In addition, throughout 2010, TRPA received hundreds of  
19 written comments and conducted more than 180 meetings with interested parties to identify  
20 additional issues and specific amendments that could be considered in the RPU alternatives.  
21 (AR11472.)

22           **Response to Statement No. 99**

23           Plaintiffs do not dispute this statement.

24           **Statement No. 100**

25           On April 25, 2012, TRPA distributed a Draft Regional Plan and Draft Environmental Impact  
26 Statement (Draft EIS) to public agencies and the general public. The Draft EIS evaluated five  
27 alternatives, each representing different approaches to and/or combinations of land use planning  
28 framework, development potential, and environmental regulations and incentives. The Draft

1 Regional Plan was proposed and analyzed as Alternative 3. The objective of the environmental  
2 process was to identify and assess the anticipated environmental effects of implementing each of the  
3 Regional Plan Update alternatives, with a focus on significant and potentially significant  
4 environmental impacts. (AR11547.) The Draft EIS analyzed the environmental effects of RPU  
5 alternatives, each representing different approaches to and/or combinations of land use planning  
6 framework, development potential and environmental regulations and incentives. The Final Draft  
7 Plan is a modified version of Alternative 3 (Draft Plan) that was developed by the RPUC of the  
8 TRPA Governing Board. In preparing the Draft Plan, the RPUC conducted a page-by-page review of  
9 the existing Regional Plan and various amendment proposals at a series of 15 full-day public  
10 meetings between October 2011 and March 2012. The RPUC endorsed 89 percent of the provisions  
11 in the Draft Plan by a unanimous vote. The other 11 percent were advanced by a non-unanimous  
12 vote of the RPUC. (AR5057.)

13 **Response to Statement No. 100**

14 Plaintiffs do not dispute the first, second, third, and fourth sentences. Plaintiffs dispute the  
15 fifth sentence insofar as it purports to characterize legal conclusions as statements of fact. Plaintiffs  
16 do not dispute the remainder of the statement.

17 **Statement No. 101**

18 The Draft EIS was distributed for a 60-day public comment period. During the review period  
19 written comments were received from public agencies, organizations, and individuals. Also, oral  
20 comments were received at a series of public meetings and hearings. (AR3783.)

21 **Response to Statement No. 101**

22 Plaintiffs do not dispute this statement.

23 **Statement No. 102**

24 The Final EIS and Final Draft RPU were released on October 24, 2012. The Final Draft Plan  
25 and FEIS were subsequently considered at three separate Board and Advisory Planning Commission  
26 (“APC”) meetings. (AR26168, 26219, 26529-30.) Additional RPUC meetings were conducted to  
27 refine plan in response to additional comments (AR26458, 26892, *see also* 26463-526.) Staff  
28 responded to Tahoe Area Sierra Club and other comments until the day of adoption. (AR26898.)

1           **Response to Statement No. 102**

2           Plaintiffs do not dispute the first three sentences. Plaintiffs dispute the last sentence, insofar it  
3 purports to characterize legal conclusions as statements of fact and suggests TRPA adequately  
4 responded to the public's comments and questions. TRPA did not adequately respond to plaintiffs'  
5 concerns as explained in plaintiffs' briefs.

6           **Statement No. 103**

7           The Governing Board certified the Final EIS, by a vote of 12-1, after multiple public  
8 hearings and after adopting findings that the EIS was supported by substantial evidence. (26584-95  
9 [FEIS Findings]; 27299-27300 [Minutes].)

10           **Response to Statement No. 103**

11           Plaintiffs do not dispute this statement. *See* Response to Statement No. 1.

12           **Statement No. 104**

13           Article V(c) of the Compact directs TRPA to “continuously review and maintain the regional  
14 plan.”

15           **Response to Statement No. 104**

16           Plaintiffs do not dispute this statement.

17           **Statement No. 105**

18           The 2012 RPU was the first major update since the adoption of 1987 Plan. The RPU is a  
19 suite of proposed new and revised policies addressing the most critical planning and environmental  
20 issues facing the region. The RPU maintains both regulatory and implementation programs that have  
21 proven effective in protecting Lake Tahoe's environment; thus, TRPA's regional growth control  
22 regulatory system, strict environmental development standards, and inter-agency partnerships for  
23 capital investment and implementation (such as the EIP) remain in place. (AR11589-603, 5053.)

24           **Response to Statement No. 105**

25           Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence to the  
26 extent that it suggests that the RPU adequately addresses “the most critical planning and  
27 environmental issues facing the region.” Plaintiffs dispute the third sentence, because it is  
28

1 argumentative and conclusory, and because the RPU has revised development limits and standards,  
2 resulting in unmitigated significant impacts, as explained in plaintiffs' briefs.

3 **Statement No. 106**

4 The RPU uses multiple strategies targeting environmental improvements to accelerate  
5 achieving and maintaining threshold standards in the region. (AR5053, 26664-72.) The RPU  
6 includes targeted amendments to promote sensitive land restoration, to support redevelopment, and  
7 to increase the availability of multi-modal transportation facilities. The amendments facilitate  
8 transferring existing development from outlying, fragile areas into walkable Centers ("Centers" is a  
9 collective term for Community Centers, Town Centers, Regional Centers, and the High Density  
10 Tourist District [AR5103], where redevelopment can occur in an environmentally sensitive manner.  
11 The plan provides incentives so that private capital can be harnessed to speed this transformation.  
12 (*Id.*, 26234.) The RPU was, therefore, designed to achieve a broad scope of objectives. (AR26664-  
13 72; 5053.)

14 **Response to Statement No. 106**

15 Plaintiffs dispute the first sentence to the extent that it suggests that the RPU will achieve and  
16 maintain threshold standards in the region. Plaintiffs do not dispute the remainder of this statement  
17 as a description of TRPA's views of what it sought to accomplish with the RPU, but do dispute that  
18 the RPU will actually accomplish these aims, as discussed in plaintiff's briefs.

19 **Statement No. 107**

20 The RPU also modernizes TRPA's procedures based on contemporary planning principles,  
21 current science, and the latest federal, state, and local standards with which applicable areas of the  
22 region must comply. (AR26665.)

23 **Response to Statement No. 107**

24 Plaintiffs dispute this statement insofar as it is argumentative and conclusory and expresses  
25 opinions rather than statements of fact.

26 **Statement No. 108**

27 In adopting the RPU, the Governing Board explained the "focus of the RPU is therefore to  
28 adopt updated strategies needed to achieve TRPA's Threshold Standards by further reducing existing

1 sources of pollution and encouraging beneficial changes in the historic land use patterns and  
2 preexisting legacy development that are contributing to continuing environmental detriments – and  
3 to do so in a way that supports a healthy economy and social fabric. Adding to the challenge,  
4 governments and public agencies at all levels are facing budget shortfalls and the rate of public  
5 funding for environmental investment and restoration faces serious declines. The RPU continues to  
6 include a variety of both public and private strategies to improve environmental conditions - but with  
7 increased emphasis on privately funded efforts and public-private partnerships. These additional and  
8 updated strategies focus on redevelopment incentives to convert the most environmentally impactful  
9 legacy development into modern, environmentally beneficial, visually attractive, walkable and  
10 bikeable communities.” (AR26666; *see also* 11545, 11670-82.)

11 **Response to Statement No. 108**

12 Plaintiffs do not dispute that the Governing Board made this statement.

13 **Statement No. 109**

14 Growth controls from the 1987 Regional Plan remain in place. Under the RPU, very limited  
15 new growth is authorized and water quality restoration and protection strategies are strengthened.  
16 (AR26234-40.) The RPU maintains a system that has been successful at reducing the rate of urban  
17 development and halted additional urban development on sensitive wetlands. (AR387- 388, 406-407,  
18 44310 [“...from 1987 to 2002 the annualized rate of land converted to development decreased to  
19 82% of the 1969-1987 annualized rates. This rate decrease is likely strongly related to the pursuit of  
20 threshold attainment as well as other regulatory limits on development.”], 423.)

21 **Response to Statement No. 109**

22 Plaintiffs dispute this statement, as explained in Response to Statement No. 3 and plaintiffs’  
23 briefs.

24 **Statement No. 110**

25 Under the RPU, no new development rights or tourist units are created and no new  
26 subdivisions are allowed. There are no significant changes to IPES and other fundamental growth  
27 controls. (AR26234-40.) There are also no changes in total allowable coverage, only refinements to  
28 transfer provisions to direct coverage away from sensitive lands to attain thresholds. (AR26246-49.)



1 The rate of allocations is reduced from 294 per year to 130 per year under the updated plan.  
2 (AR8528.) Although 600 bonus units are created, they can only be used for one of the environmental  
3 improvement incentive programs referenced in chapter 52 and only in Centers. (AR26237.) The  
4 possibility of additional CFA only exists if existing supplies are used. Added CFA allows in-basin  
5 support facilities for residences (groceries, restaurants, etc.) and should reduce the high levels of  
6 commuting outside the basin for everyday commercial services. (AR26237.) The RPU also created  
7 resort recreation areas to reduce vehicle trips by placing visitors near recreation facilities, and act as  
8 a sink for transfer of existing development (the only kind possible for use in these areas). (AR2644-  
9 5.) The RPU also updates Land Use maps to revise recreation and conservation district boundaries  
10 resulting in an approximately 100:1 increase in Conservation Areas compared to Recreation.  
11 (AR11591 [map showing management designations throughout the basin].)

12 **Response to Statement No. 110**

13 Plaintiffs dispute the first sentence, insofar as it suggests no new development is allowed. *See*  
14 *Response to Statement No. 3*. Plaintiffs dispute the second sentence, as explained in *Response to*  
15 *Statement No. 3*. The sentence is also conclusory and expresses an opinion rather than a statement of  
16 fact. Plaintiffs dispute the third sentence, insofar as it suggests that parcel-level coverage restrictions  
17 remain the same. Those limits will increase in areas designated as centers, and certain projects are  
18 exempt from coverage restrictions under the RPU. *See Responses to Statement Nos. 113 & 135*.  
19 Plaintiffs dispute the fourth sentence insofar as it misleadingly suggests that the RPU reduces the  
20 total amount of development that was allowed under the 1987 Regional Plan; the RPU authorizes  
21 new development that would otherwise not have been allowed. *See Response to Statement No. 3*;  
22 AR11671. Plaintiffs do not dispute the fifth and sixth sentences. Plaintiffs dispute the seventh  
23 sentence because it is conclusory, not supported by the citation, and expresses an opinion rather than  
24 statements of fact. Plaintiffs do not dispute the remainder of the statement.

25 **Statement No. 111**

26 The RPU will also reduce sprawl, vehicle miles traveled, air pollution, and new coverage by  
27 directing a much higher proportion of new development to already developed Centers. (AR11734.)  
28 For example, the Transfer of Development Rights (“TDR”) program (a cap and trade system for

1 units of use) keeps growth caps and redirects new development away from sensitive and outlying  
2 areas. (AR11672-73.) It reduces total coverage by directing existing and new development to already  
3 developed and covered areas and therefore reduces vehicle miles traveled, GHG, other air pollution  
4 by directing new future and existing development away from outlying areas. (AR11672-73.)

5 **Response to Statement No. 111**

6 Plaintiffs dispute the first sentence insofar because it is unsupported by the citation. Plaintiffs  
7 do not dispute the second sentence. Plaintiffs dispute the third sentence because it is unsupported by  
8 the citation.

9 **Statement No. 112**

10 Under the RPU, coverage is governed by a separate and additive transfer system. (AR11564-  
11 11567.) This system maintains existing coverage caps region-wide and by Bailey Land Capability  
12 District. (AR26246-49.) It revises transfer ratios to promote transfers out of sensitive land (1:1 ratio  
13 when transferring from sensitive land, up to 2:1 ratio if transferring from non-sensitive). (AR880.)

14 **Response to Statement No. 112**

15 Plaintiffs dispute the first sentence, because the meaning of “separate and additive transfer  
16 system” is vague and undefined. Plaintiffs do not dispute the second and third sentences.

17 **Statement No. 113**

18 The RPU also revises maximum transferred coverage limits (from 50 percent to 70 percent)  
19 only for already developed parcels, on non-sensitive land, in a small number of designated Centers.  
20 (AR880, 878-879.) This new limit makes transferred coverage limits the same as existing limits for  
21 undeveloped parcels and removes the unintended incentive favoring raw land development that was  
22 in the 1987 Plan. (AR880.). The policy also provides capacity for transfers of existing grandfathered  
23 pre-TRPA coverage off of sensitive lands and onto high capability lands with BMPs (AR882.) The  
24 August 2012 Tahoe Basin Impervious Surface Coverage Study found that: “Concentrating  
25 development and limiting the development footprint has the potential to reduce per capita and basin-  
26 wide environmental impact.” (AR128193.)

1           **Response to Statement No. 113**

2           Plaintiffs do not dispute the first and second sentences. Plaintiffs dispute the third sentence  
3 insofar as it suggests that “capacity” for transfers from sensitive lands did not exist before the RPU;  
4 the citation does not support this. Plaintiffs dispute the last sentence to the extent it misleadingly  
5 suggests that concentrating development will reduce absolute water quality impacts (not on a per  
6 capita basis) or will reduce impacts at the local site in which development is concentrated, as  
7 explained in Response to Statement No. 155.

8           **Statement No. 114**

9           The coverage limitations in the 1987 Plan (and to a lesser extent the height and density  
10 limits) rendered the majority of existing, legacy non-residential development non-conforming.  
11 Because TRPA has no “closer conformance” clause for non-conforming development, these  
12 regulations effectively prevented environmentally-beneficial improvements to existing development.  
13 The RPU includes targeted changes to these regulations in local areas in order to accelerate  
14 necessary improvements via redevelopment. (AR25719-61; *see also* AR128158 [“[c]omplexity and  
15 subjectivity related to coverage policies results in inconsistent determinations from planners, which  
16 creates uncertainty and contributes to project delays and additional costs.”].)

17           **Response to Statement No. 114**

18           Plaintiffs dispute the first and second sentences because they are unsupported by citations.  
19 Plaintiffs do not dispute the third sentence.

20           **Statement No. 115**

21           The RPU promotes redevelopment of pre-TRPA non-conforming development to bring it  
22 into conformance with water quality, scenic, coverage, energy efficiency, and other requirements  
23 which has socioeconomic benefits in addition to environmental benefits. (AR2640-44.) The RPU  
24 revises coverage limits to allow redevelopment of pre-TRPA properties in select non-sensitive lands  
25 in the most intensively developed areas. (AR128193, AR25795-25829.) The RPU allows limited  
26 height and density increases in most intensively developed Centers to allow for transfer of  
27 development and allow existing non-conforming developments to redevelop. (AR128193.) Evidence  
28 from existing projects demonstrate that environmental conditions improve significantly after

1 redevelopment, even when increased development allowances (e.g., redevelopment plans,  
2 Community Enhancement Projects) are permitted. (*Id.*; AR20)

3 **Response to Statement No. 115**

4 Plaintiffs dispute the first sentence insofar as it is argumentative and conclusory and because  
5 it is unsupported by the citation. Plaintiffs dispute the second and third sentences insofar as they  
6 suggest that redevelopment could not occur without these changes. Plaintiffs dispute the fourth  
7 sentence, because it is conclusory and the citations do not provide evidence from “existing projects.”

8 **Statement No. 116**

9 The RPU authorizes the creation of a streamlined Area Planning system (“Area Plans”) for  
10 communities and land management agencies in the Lake Tahoe region. (AR788-804 [Code § 13.0 et  
11 seq.].) Throughout the RPU process, TRPA received many comments that the permitting process  
12 was duplicative, unpredictable, and deterred improvement projects. TRPA amended its Regional  
13 Plan to introduce Area Plans, an option to simplify the existing, overlaid complex system by  
14 creating one flexible regulatory plan containing both regional and local land use policy. (AR26230.)

15 **Response to Statement No. 116**

16 Plaintiffs dispute the statement insofar as it is argumentative and expresses opinions rather  
17 than statements of fact.

18 **Statement No. 117**

19 Area Plans, created through Chapter 13 of TRPA’s Code, also allow TRPA and local  
20 government to expand the types of projects for which TRPA delegates permitting authority to local,  
21 state, federal and tribal governments in the Tahoe region. (AR788-804 [Code § 13.0 et seq.].)  
22 Before such a delegation can occur, however, TRPA must review the Area Plans, complete the  
23 necessary environmental documentation under Compact Article VII, provide opportunities for public  
24 comment, and make specific findings that the Area Plan is consistent with TRPA’s Regional Plan  
25 and will “achieve and maintain” thresholds. (*Id.*; *see also* AR11478.) If these findings can be made,  
26 TRPA may then delegate to the government agency an increased range of projects for review and  
27 approval. (AR796-99 [Code § 13.6].) A project approved under such delegated authority can  
28 nonetheless be appealed directly to TRPA’s Governing Board. (AR803-804 [Code § 13.9].)

1 Furthermore, the Code imposes constant and rigorous monitoring by TRPA of the delegated  
2 permitting authority, including annual reporting and re-certification and thorough reevaluations of  
3 the Area Plans every four years. (AR801-803 [Code, § 13.8]; *see also* AR11590.) Through this  
4 system, TRPA assures local plans meet and are implemented according to TRPA's regional  
5 standards as conditions of local delegation. This process eliminates unnecessary bureaucracy and  
6 waste by allowing a single local review and approval of the type of environmentally sensitive  
7 redevelopment necessary to achieve and maintain thresholds. (*Id.*; *see also* 26230-40.)

8 **Response to Statement No. 117**

9 Plaintiffs do not dispute the first through fourth sentences. Plaintiffs dispute the fifth through  
10 seventh sentences insofar as they are argumentative and express opinions rather than statements of  
11 fact.

12 **Statement No. 118**

13 The RPU needed to be consistent with and support the 2011 Lake Tahoe TMDL and TMDL  
14 science established a heightened need to focus on urban uplands. (AR26251-57, 5098 [“The States  
15 prioritized load reduction plans for urban upland areas because urban stormwater runoff is the largest  
16 source of pollution and urban uplands (pre-existing development and roads) provide the largest  
17 opportunity for improvement.”].) TRPA looked to the TMDL Final Report in defining its role to  
18 ensure that it would complement the state program, rather than duplicate it. (AR106499-106504,  
19 5067.)

20 **Response to Statement No. 118**

21 Plaintiffs do not dispute this statement.

22 **Statement No. 119**

23 The RPU, therefore, integrates the TMDL to incorporate new science and a new science –  
24 based regulatory approach to achieve water quality thresholds using regulatory enforcement and  
25 monitoring components. (AR5098-5100.) Under this approach, every parcel in the region is no  
26 longer treated the same. Rather, the RPU incorporates direct measures of pollutant loading instead of  
27 solely relying on indirect approaches like coverage regulation and regulating the number of parcels  
28 with BMPs. (AR5098-99.)

1           **Response to Statement No. 119**

2           Plaintiffs do not dispute the first and second sentences. Plaintiffs dispute the third sentence,  
3 because it is conclusory and the citation does not support it. Plaintiffs also dispute that coverage and  
4 BMP regulations are “indirect approaches” to regulating water quality. *See* Response to Statement  
5 No. 155. In fact, the TMDL’s success depends on BMP regulation, as explained in plaintiffs’ reply  
6 brief.

7           **Statement No. 120**

8           The Final EIS explains “The updated Regional Plan broadens the current focus on parcel-  
9 level regulations to reflect the TMDL strategy of comprehensive catchment-based load reduction  
10 plans for fine sediments, phosphorus, and nitrogen. Parcel owners must still contribute to BMP  
11 solutions, but the prescription may differ under more flexible area-wide solutions that could be  
12 developed to achieve TMDL load reductions for each catchment. Local jurisdictions have greater  
13 flexibility in designing the system that applies to each sub-watershed.” (AR3312.)

14           **Response to Statement No. 120**

15           Plaintiffs do not dispute that the EIS makes this statement.

16           **Statement No. 121**

17           The RPU updates Regional Plan strategies, consistent with the TMDL, to accelerate  
18 achievement of TRPA’s Threshold Standards by further reducing existing sources of pollution and  
19 encouraging beneficial changes in the historic land use patterns and pre-existing legacy development  
20 that are contributing to continuing environmental detriments. (AR26666.)

21           **Response to Statement No. 121**

22           Plaintiffs dispute this statement insofar as it suggests that the RPU will result in pollution  
23 reductions and “beneficial changes.” The statement is argumentative and conclusory.

24           **Statement No. 122**

25           In particular, the RPU incorporates the TMDL’s science-based regulatory approach and  
26 requirements to achieve Water Quality Threshold Standards. The Board found the following RPU  
27 amendments would reduce pollutant loads consistent with the TMDL and other regulatory  
28 requirements by:

- 1 • Expedite redevelopment of non-conforming properties and accelerate transfers of development out of sensitive areas.
- 2 • Tighten land coverage limitations within 300 feet of Lake Tahoe.
- 3 • Reform the land coverage program to accelerate land coverage reduction and land coverage transfers from sensitive lands.
- 4 • Award residential bonus units in Centers for removing and retiring excess land coverage.
- 5 • Designate two stream restoration plan areas in the Upper Truckee River watershed
- 6 • Other Transportation Goals and Policies: walkable mixed-use Centers, enhanced pedestrian and bicycle network, and transit enhancements to reduce dependency on the automobile, which in turn reduces atmospheric deposition of nitrogen and entrained road dust.
- 7
- 8 • Area-wide water quality treatment facilities and funding mechanisms may be implemented in lieu of certain site specific BMPs.
- 9 • Phase out the sale and use of chemical phosphorus fertilizer for lawns by 2017.
- 10

11 (AR 26667 [Findings].)

12 **Response to Statement No. 122**

13 Plaintiffs dispute the first sentence, because it is conclusory and not supported by any  
14 evidence. Plaintiffs do not dispute that TRPA made the findings noted in the second sentence.

15 **Statement No. 123**

16 The RPU also includes modifications that require additional coordination between  
17 TRPA and the TMDL regulatory agencies, including:

- 18 • New provisions for Area Plan recertification every four years;
- 19 • Clarify and modify water quality policy language, water quality reporting requirements and criteria for BMPs on constrained sites to improve consistency with the TMDL; and
- 20 • Initiate a Governing Board-stakeholder workgroup to review BMP compliance options.
- 21

22 (AR26257.)

23 **Response to Statement No. 123**

24 Plaintiffs do not dispute this statement.

25 **Statement No. 124**

26 The RPU supports pollutant load reductions from each Lake Tahoe TMDL source category.

27 (AR26679-80 [Threshold Findings].)

28 **Response to Statement No. 124**

Plaintiffs do not dispute this statement.

1           **Statement No. 125**

2           The RPU leverages each state’s enforcement programs to increase compliance. (*Id.*)

3           **Response to Statement No. 125**

4           Plaintiffs dispute this statement, because it is conclusory and unsupported by the citation or  
5 evidence.

6           **Statement No. 126**

7           The policies also include additional allocations in order to allow development where  
8 environmentally appropriate. (AR11545 [DEIS])

9           **Response to Statement No. 126**

10           Plaintiffs dispute this statement, insofar as it suggests that RPU policies will result in  
11 development where it is environmentally appropriate, because it is conclusory and unsupported by  
12 evidence.

13           **Statement No. 127**

14           The RPU was also required to address California SB 375 (2008) and establishes a required a  
15 Sustainable Communities Strategy (“SCS”) linking land use and transportation policies to reduce  
16 GHG emissions per capita by 7 percent by 2020 and 5 percent by 2035 (AR11809). California SB  
17 575 (2009) requires that the TRPA Regional Plan serve as the SCS for the region. (AR11548-9,  
18 11805-09, 11698-11699, 11709.)

19           **Response to Statement No. 127**

20           Plaintiffs do not dispute this statement.

21           **Statement No. 128**

22           The RPU includes a robust monitoring and adaptive management system to assess the  
23 effectiveness of RP programs at multiple scales, and to adjust policies and programs if needed to  
24 attain and maintain thresholds. After adoption of the 2012 Regional Plan, a regular four-year cycle  
25 of plan evaluations and updates will occur. Regular four year updates will maintain consistency with  
26 the federally mandated transportation planning cycle for the Tahoe Metropolitan Planning  
27 Organization (“TMPO”) and will facilitate amendments based on the status of plan implementation,  
28



1 progress towards attainment and maintenance of thresholds, updated science and other new  
2 information. (AR502.)

3 **Response to Statement No. 128**

4 Plaintiffs dispute the first sentence, because it is argumentative and expresses an opinion  
5 rather than statements of fact. Plaintiffs dispute the second and third sentences to the extent that  
6 these assert that certain planned activities will actually occur as planned and will have the effects  
7 that the statement speculates they will.

8 **Statement No. 129**

9 TRPA oversees multi-Agency, multi-sector monitoring program for thresholds, 151  
10 standards in 9 resource categories at annual cost of approximately 3 million dollars. (AR429.)

11 **Response to Statement No. 129**

12 Plaintiffs do not dispute this statement.

13 **Statement No. 130**

14 Status and trends are required to be reported every 4 years with adaptive management  
15 requirements. (AR26233.) Starting with 2011 this includes an independent scientific peer-review.  
16 (AR16.) For any thresholds not in attainment, each Threshold Evaluation Report recommends  
17 compliance measures where existing TRPA and external approaches do not ensure attainment and  
18 maintenance of thresholds. (*See* AR815-21 [Code, § 16,].) The TER was driver for proposed policy  
19 changes in the RPU, and each TER is the basis for adjusting policy approaches or specific programs  
20 over time in response to current data and effectiveness of existing policies and programs. The RPU  
21 also added an additional adaptive management process that limits allocations of new commodities  
22 based on VMT and traffic level of service (“LOS”) monitoring to ensure continued attainment of  
23 transportation and air quality standards. (AR992 [Code, § 50.4.3], 5140.) Further adaptive  
24 management is possible through annual review all local jurisdiction Area Plans for conformance  
25 with adopted TMDL load reduction plans (which provide a science-based strategy and timeline to  
26 achieve water quality standards). (AR802-803 [Code, § 13.8.5;].) If Area Plans are not meeting  
27 TMDL targets, TRPA can revoke permit delegation, and take other steps necessary to achieve  
28 targets. (AR802 [Code, § 13.8.4.C].)

1           **Response to Statement No. 130**

2           Plaintiffs do not dispute this statement.

3           **Statement No. 131**

4           TRPA also requires annual reporting on EIP Performance Measures, tracking of RPU  
5 development commodities used and retired such as coverage, and other annual reports (BMP  
6 Compliance, etc.). (AR099300 [“To effectively manage and implement the EIP, these groups will  
7 focus on: ...Developing a comprehensive set of performance measures to evaluation progress toward  
8 meeting EIP goals.” and “EIP Annual Report – This report will include...an evaluation of progress  
9 in meeting performance standards for all elements of the program.”]; 7480 [new requirement for  
10 preliminary list of work priorities based on various documents, including annual EIP program  
11 report]; AR820-21 (reports on attainment and maintenance of thresholds and standards); 998-1001  
12 [“[i]nitiate a Governing Boardstakeholder workgroup to review BMP compliance options.” New  
13 residential allocations authorized by RPU are distributed to local jurisdictions annually based on the  
14 results of annual monitoring and reporting.”].) This ensures that new development only occurs in  
15 concert with environmental improvements.

16           **Response to Statement No. 131**

17           Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because it is  
18 argumentative and conclusory and unsupported by the record, as explained in plaintiffs’ briefs.

19           **Statement No. 132**

20           TRPA also provides project-scale compliance monitoring and enforcement. Each permitted  
21 project is inspected generally three or more times during construction to ensure compliance with  
22 environmental requirements. (Code, § 5.3; AR735-40.) TRPA has a variety of ways to enforce  
23 compliance, including cease and desist orders, monetary fines, required remedial action plans, or  
24 judicial relief (Code, §§ 5.4 - 5.12; AR736-740.)

25           **Response to Statement No. 132**

26           Plaintiffs do not dispute this statement.

1           **Statement No. 133**

2           The Governing Board adopted Ordinance 2012-04 approving the RPU after multiple public  
3 hearings and after adopting extensive findings supporting its determination that “the Regional Plan,  
4 as amended, and as implemented by the Code of Ordinances, as amended, achieves and maintains  
5 the adopted thresholds.” (AR26630-26704 [RPU Amendments Adoption Findings]; 27301-27302  
6 [Minutes].)

7           **Response to Statement No. 133**

8           Plaintiffs dispute this statement to the extent that it suggests that the RPU achieves and  
9 maintains the environmental threshold requirements.

10          **Statement No. 134**

11          Coverage policy changes are part of an integrated approach to achieve water quality  
12 standards as well as achieve other required Thresholds and compliance with SB 375. (AR542.) The  
13 Regional Plan includes two Indicator Reporting Categories in the Soil Conservation Thresholds,  
14 impervious cover (or Coverage) and stream environment zones (SEZ). (AR184, 11859.) The RPU  
15 includes numerous incentives to accelerate attainment of both Soil Conservation Thresholds, but  
16 specifically targets the SEZ Threshold Standard due to its current status and importance in meeting  
17 numerous other thresholds. (AR26801.)

18          **Response to Statement No. 134**

19          Plaintiffs dispute the first sentence to the extent it is not supported by the citation provided.  
20 Plaintiffs do not dispute the remainder of this statement.

21          **Statement No. 135**

22          While the RPU retains the established land capability system, as recommended by the  
23 TER, several targeted amendments accelerate attainment of the soils, water quality and other  
24 thresholds by encouraging the use of less impactful types of land coverage, incentivizing the  
25 installation of water quality BMPs, promoting land coverage reductions and relocation of land  
26 coverage to less sensitive lands, and facilitating environmentally beneficial redevelopment.  
27 (AR26801; 204 [TER].) The EIS analyzed these targeted amendments as to each alternative and  
28 determined there would no significant adverse impacts under any of the alternatives. (AR11875-97.)

1           **Response to Statement No. 135**

2           Plaintiffs dispute the first sentence that the RPU amendments accelerate the attainment of the  
3 soils, water quality and other thresholds, as explained in plaintiffs' briefs. Plaintiffs also dispute that  
4 the "RPU retains the established land capability system." The RPU makes numerous exceptions to  
5 and exempts various types of coverage from coverage limits. AR8414-16 (e.g., exemptions for  
6 temporary events, certain ADA facilities, pervious decks up to 500 feet, and non-motorized public  
7 trails). Plaintiffs also dispute the entire statement, to the extent it purports to characterize legal  
8 conclusions as statements of fact.

9           **Statement No. 136**

10           These changes were evaluated in the EIS. The EIS evaluated the potential cumulative  
11 impacts from "reasonably foreseeable plans, programs and projects" and as to water quality  
12 determined that the PRU's policies and programs to reduce pollutant loading in surface water,  
13 groundwater, and stormwater runoff and would not contribute to significant cumulative impacts to  
14 water quality. (AR12177-82; *see also* AR11589-603 [RPU description], 11670-82 [description of  
15 expected development under RPU], 5059-72, 12161-62 [EIS assumes full build-out].)

16           **Response to Statement No. 136**

17           Plaintiffs dispute this statement to the extent it purports to characterize legal conclusions as  
18 statements of fact.

19           **Statement No. 137**

20           The EIS (and TER) determined the location and extent of existing coverage from aerial  
21 data and satellite images and included detailed information based on coverage estimate methods and  
22 assumptions. (AR11875; *see also* 12975-89.) The EIS describes the changes to existing coverage  
23 requirements that would occur based on the RPU amendments. (AR11891.) The EIS explains that  
24 the RPU amendments' incentives for coverage transfers and redevelopment on high-capability  
25 developed parcels in Centers would increase coverage in these target areas, as compared to 1987  
26 Regional Plan. (AR11897.) The EIS further explains that additional coverage allowed on higher  
27 capability lands within Centers would be directly offset by coverage transferred, resulting in an  
28

1 overall reduction of coverage in the region and, importantly, a reduction of coverage from SEZs and  
2 other sensitive lands. (*Id.*)

3 **Response to Statement No. 137**

4 Plaintiffs do not dispute this statement, except Plaintiffs dispute the last sentence to the  
5 extent it suggests that in all cases, coverage transfers will necessarily involve the removal of  
6 coverage from SEZs or sensitive lands and a reduction of coverage on these lands. Banked coverage  
7 may be obtained from land banks, would be significantly easier than renting equipment or  
8 contracting for removing the coverage which has to be transported out of the basin. Code §§ 6.9,  
9 30.4.3(H) (AR749, 884). Also, “potential coverage” – that coverage not actually existing on a  
10 parcel, but which could hypothetically be added under coverage regulations, *i.e.*, “unused allowable  
11 base coverage” – may also be transferred between parcels. Code § 30.4.3(B)(3), (F) (AR882, 883).  
12 Coverage may also be transferred from higher capability lands. AR11891.

13 **Statement No. 138**

14 The EIS noted that the RPU provides incentives to transfer coverage, existing  
15 development, and development rights from sensitive lands into Centers. (AR11944-48, 11953-55.)  
16 While this transfer will result in increased coverage on non-sensitive lands within Centers, it will  
17 also result in corresponding decrease in coverage (with associated beneficial effects of increased  
18 natural filtration on restored sensitive lands) elsewhere in that same area. (AR11953.) The EIS  
19 concluded that this shift of coverage from “low capability” to “high capability” lands (that is, from  
20 areas that are more sensitive to those that are less so) was a “beneficial impact” because, as is  
21 relevant to the TMDL, it would decrease the volume of stormwater runoff and the “load” of  
22 pollutants discharged in stormwater runoff. (AR11945.)

23 **Response to Statement No. 138**

24 Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because the  
25 citation does not support the claim that transfer of coverage into Centers will result in a  
26 corresponding decrease in coverage “elsewhere in that same area,” and because the record  
27 contradicts the claim. According to the “Tahoe Basin Land Coverage and Marketable Rights Final  
28

1 Report,” commissioned by the California Tahoe Conservancy, it will be extremely difficult to  
2 transfer or remove coverage from sensitive lands in or near Centers under the RPU:

3 Several of the primary commercial and transportation hubs in the basin have  
4 significant impervious coverage on 1B lands as presented in Table 6 below. Many  
5 of the proposed Regional Plan Update changes are intended to incentivize  
6 redevelopment and further concentration of development in these existing  
7 commercial areas. There are many transit, community and economic benefits of  
8 dense development in existing commercial areas. However, redevelopment in  
9 these commercial areas will increase the commercial viability of and community  
reliance on the coverage in these areas, *creating a greater impediment to  
removing a significant amount of coverage from these areas in the relevant  
future*. While some incremental reduction in coverage is expected as over covered  
parcels in existing commercial areas are redeveloped, the reduction in coverage is  
not expected to approach the 931 acres of coverage removal needed to achieve the  
1B Threshold standard.

10 AR128180 (emphasis added). *See also* AR155940 (Tahoe City map showing developed SEZ lands  
11 within center boundaries); AR128181 (“Achievement of the 1B Threshold would require restoring  
12 coverage in the majority of the primary commercial nodes, high and low density residential areas on  
13 1B soils, and roads on 1B soils. However, restoring all of these covered areas is unlikely, so  
14 achieving the 1B Threshold standard is unattainable from a practical perspective.”); AR195 (noting  
15 1b Threshold will not be attained in “foreseeable future”). Plaintiffs dispute the third sentence,  
16 insofar as it is inconsistent with the EIS. The EIS actually states: “Therefore, the analysis views the  
17 transfer of coverage out of low capability lands (where it is more difficult to mitigate impacts) to  
18 high capability lands (where it is easier to mitigate impacts) as a beneficial action for decreasing  
19 stormwater runoff and pollutant loading *when transferred coverage meets all other existing water  
20 quality requirements.*”) AR11945 (emphasis added[?]).

21 **Statement No. 139**

22 The EIS concluded based on the RPU land coverage policies that any future  
23 development that would result in additional coverage would be limited such that total coverage in  
24 the region as established by the Bailey System is not exceeded or that existing excess coverage is  
25 reduced. (AR11897.) The EIS further concluded that the RPU policies and implementation measures  
26 to reduce coverage from sensitive lands and incentivize redevelopment within Centers would  
27 provide the greatest incentives for the concentration of coverage within targeted community areas  
28 and would also result in the greatest reduction in SEZ coverage. (*Id.*)

1           **Response to Statement No. 139**

2           Plaintiffs do not dispute that the EIS makes these conclusions.

3           **Statement No. 140**

4           The Final EIS provides additional analysis of changes in pollutant loading that could  
5 result from additional concentrated development. (AR5103-5104.) The Final EIS explained that “in  
6 response to concerns regarding the localized water quality impacts of further concentrating  
7 development within ... [C]enters, TRPA [] prepared an additional analysis to estimate the relative  
8 changes in pollutant loading that could occur within ... [C]enters as a result of proposed policies.”  
9 (AR5104.)

10           **Response to Statement No. 140**

11           Plaintiffs do not dispute this statement.

12           **Statement No. 141**

13           “A stormwater modeling simulation was prepared using the Pollutant Load Reduction  
14 Model (PLRM). The PLRM is a publicly available, long-term, continuous simulation model  
15 developed for use with the TMDL to evaluate and compare alternatives for stormwater quality  
16 improvement projects in the Tahoe Region. The PLRM is the primary tool used by jurisdictions in  
17 the region to support Lake Tahoe TMDL estimates of baseline pollutant loading and pollutant load  
18 reduction planning. The model incorporates data on land use types, impervious coverage, and BMP  
19 implementation to generate estimates of fine sediment, nitrogen, and phosphorus loading and  
20 stormwater runoff.” (AR5103.)

21           **Response to Statement No. 141**

22           Plaintiffs do not dispute this statement.

23           **Statement No. 142**

24           The PLRM “provided estimates of existing and future pollutant loading from areas  
25 designated as “Centers” in the Final Draft Plan. The analysis incorporated parcel-level data on land  
26 use, existing coverage, and current BMP compliance to generate estimates of existing loading from  
27 Centers. To evaluate a worst-case scenario, the model assumed that all parcels within Centers with  
28 commercial, tourist accommodation, and residential land uses would maximize their allowable



1 coverage as a result of policies that incentivize additional concentrated development. The model  
2 assumed that all parcels that added coverage would comply with BMP requirements.” (AR5103; *see*  
3 *also* AR6479-6490 [Appendix C describing detailed methods and assumptions used in the PLRM  
4 simulation].)

5 **Response to Statement No. 142**

6 Plaintiffs do not dispute this statement.

7 **Statement No. 143**

8 The EIS summarized the results of PLRM modeling. (*Id.*; *see also* AR6479-89  
9 [appendix].) As explained in the Final EIS, “The modeling results show that even if policies that  
10 incentivize concentrated development achieved the maximum allowable coverage in all Centers, the  
11 result would be a decrease in pollutant loading from Centers as a result of implementing required  
12 water quality regulations. These estimates of changes in pollutant loading from land use policies that  
13 concentrate development provide additional evidence affirming that the analysis and significance  
14 determination presented in the Draft EIS is appropriate and most likely conservative.” (AR5103.)

15 **Response to Statement No. 143**

16 Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second and third sentences,  
17 because the modeling results rely on the unsupported assumption that “all parcels that added  
18 coverage would comply with BMP requirements.” *See* Statement No. 142 above. Plaintiffs also  
19 dispute the statement, to the extent it purports to characterize legal conclusions as statements of fact.

20 **Statement No. 144**

21 The PLRM confirms that localized adverse water quality impacts from concentrating  
22 coverage at Centers will not occur. (AR6479-6490; *see also* 5103-04.) The PLRM analysis of  
23 coverage impacts is doubly conservative. At the same time it looked at the maximum potential for  
24 increased development at the “receiving site,” it’s omission of the benefits of transferring  
25 development from more “sensitive sending” sites vastly understated the beneficial effect of likely  
26 future decreases in coverage from other elements of the RPU. In addition, the analysis did not  
27 incorporate coverage reductions that would occur through the excess coverage mitigation program  
28 and continued coverage reductions resulting from the EIP. (AR5103.)



1           **Response to Statement No. 144**

2           Plaintiffs dispute the first through third sentences, because the PLRM modeling results rely  
3 on the unsupported assumption that “all parcels that added coverage would comply with BMP  
4 requirements,” as explained in plaintiffs’ briefs. *See also* Responses to Statement No. 142-143  
5 above; Pls.’ SUF, Statement No. 44. Plaintiffs do not dispute the final sentence.

6           **Statement No. 145**

7           The Final EIS concludes “This additional analysis provides further evidence affirming  
8 that the analysis presented in the Draft EIS is accurate and is most likely conservative; actual  
9 changes in pollutant loading may be beneficial rather than less than significant as presented in the  
10 Draft EIS. This information also substantiates the broader Regional Plan strategy to attain and  
11 maintain water quality thresholds through transferring development from sensitive lands,  
12 concentrating it in Centers, and incentivizing redevelopment consistent with environmental  
13 standards. As demonstrated in the EIS, these policies would have beneficial effects on water quality  
14 at the sites restored or protected through transfers of development, as well as at the sites where  
15 concentration of development and associated redevelopment occur.” (AR5104.)

16           **Response to Statement No. 145**

17           Plaintiffs do not dispute that the EIS makes this statement, but plaintiffs dispute the EIS’s  
18 claims, because they rely on the unsupported assumption that all BMPs will be properly installed and  
19 maintained for all time, as explained in plaintiffs’ briefs. Plaintiffs further dispute this statement to  
20 the extent it purports to characterize legal conclusions as statements of fact.

21           **Statement No. 146**

22           The EIS explained parcel-by-parcel analysis was neither feasible nor necessary; such  
23 analysis will instead occur in the context of specific Area Plans and development proposals.  
24 (AR5089-96 [parcel-level analysis infeasible because of the many assumptions that it would  
25 require]; *see also* AR 11550 [EIS “does not address impacts at the level of proposed land use  
26 development or public works projects....”].) “Such environmental analyses would occur after the  
27 RPU process concludes and in response to proposals for implementing programs or specific  
28 development or public works projects.” (AR11550.)

1           **Response to Statement No. 146**

2           Plaintiffs do not dispute that the EIS makes this statement, but plaintiffs dispute this  
3 statement to the extent it purports to characterize legal conclusions as statements of fact. Plaintiffs  
4 also dispute this statement, because, as shown by Dkt. No. 26-2 (Pls.’ RJN, Park Decl., Ex. A),  
5 TRPA’s “Initial Environmental Checklist” for the Douglas County Area Plan did not conduct any  
6 localized analysis of the impacts of increased concentrated coverage. TRPA’s approval of the Area  
7 Plan for Douglas County was based on this checklist. Park Decl. ISO Pls.’ 2d RJN, Ex. A at 25-27  
8 (noting approval of Douglas County Area Plan and findings of “no significant impact”) & Ex. B at  
9 90 (findings of “no significant impact” based on Initial Environmental Checklist).

10           **Statement No. 147**

11           Under TRPA’s Code, maximum coverage limits on already developed non-sensitive lands in  
12 Centers can be increased only if TRPA approves an Area Plan. (AR790-91 [Code, § 30.4.2.B.1  
13 [allowing increased transferred coverage limits in Centers only with a conforming Area Plan].)  
14 TRPA can approve an Area Plan only after local-scale analysis has been performed, and the analysis  
15 shows the plan reduces pollutant loading from the area. (AR5090, 5096.)

16           **Response to Statement No. 147**

17           Plaintiffs do not dispute the first sentence, to the extent it is consistent with the Code.  
18 Plaintiffs dispute the second sentence, because TRPA has approved an Area Plan without the  
19 preparation of a local-scale analysis of the impacts of increased coverage.” *See* Dkt. No. 26-2 (Pls.’  
20 RJN, Park Decl., Ex. A). *See also* Ex. 1 to Park Decl. ISO Pls.’ 2d Req. for Judicial Notice (noting  
21 approval of Douglas County area plan). No express requirement for such an analysis exists in the  
22 Code. *See generally* AR789-799 (Code Chapter 13 area plan content requirements and conformity  
23 review procedures). Plaintiffs also dispute the second sentence, because the citations do not support  
24 the claim that TRPA can only approve an area plan after the “analysis shows the plan reduces  
25 pollutant loading from the area.” No such requirements exist under the Code. *See id.*

26           **Statement No. 148**

27           The RPU does not rely solely on coverage limits to protect water quality. The RPU also  
28 incorporates TMDL load reduction projects, parcel-scale BMP implementation, and associated

1 maintenance requirements. (AR11953-55, 5101-04.) In particular, “[t]he Lake Tahoe TMDL  
2 requires local jurisdictions to complete load reduction plans that identify catchments (i.e., sub-  
3 watersheds) and their respective pollutant loading to Lake Tahoe and achieve specific reductions in  
4 pollutant loading from each catchment.” (AR 5102.) Local agencies must then reduce and maintain  
5 pollutant loads within each sub-watershed. (AR106507; *see also* AR106506 [Lake Clarity Crediting  
6 program adopted as part of TMDL “provides a system of tools and methods to consistently estimate,  
7 track and report pollutant load reductions at a catchment, or subwatershed, scale.”], 106534-37  
8 [TMDL requires tributary stream and in-lake monitoring to measure cumulative effects], 107419.)

9 **Response to Statement No. 148**

10 Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence’s claim that  
11 the RPU “incorporates” TMDL load reduction projects, parcel-scale BMP implementation, and  
12 associated maintenance requirements. The EIS for the RPU simply relies on existing regulations and  
13 plans to conclude that the RPU’s impacts are less than significant or “beneficial.” *See* AR 5101-  
14 5104. Plaintiffs do not dispute the third and fourth sentences. Plaintiffs do not dispute the first  
15 parenthetical after the fourth sentence. Plaintiffs dispute the second parenthetical, because the  
16 citation does not support the claim, but only notes the existence of current monitoring efforts that  
17 may inform TMDL implementation efforts. Plaintiffs also dispute this statement to the extent that it  
18 suggests that the TMDL requires monitoring in Nevada. Nevada will rely on voluntary compliance  
19 through Memoranda of Agreement (“MOA”) with local governments. AR136266-Att. 1, p. 10-5  
20 (Nevada TMDL replacing load reduction “requirements” with “goals”); AR136269 (“MOAs are a  
21 collaborative, legally nonbinding approach to implementing a TMDL.”); AR 136268 (“[T]he  
22 *aspirational goal* of the Nevada Lake Tahoe TMDL is also to set forth a *recommended* plan and  
23 strategy to restore Lake Tahoe’s historic deep water transparency to 29.7 meters annual average  
24 Secchi depth at a feasible pace *consistent with available funding.*” (emphasis added)).

25 **Statement No. 149**

26 The TMDL Report also concludes that actions taken to improve mid-lake clarity under  
27 the TMDL will also benefit nearshore conditions (AR106457 [“The nearshore is affected by surface  
28 loading either as direct discharge, tributary inflow, and groundwater loading. Watershed runoff must

1 first pass through the nearshore area on route to the deeper waters.”]; 106459 [“[LRWQCB] and  
2 NDEP staff believe that actions to improve the transparency may have positive effects on the  
3 nearshore conditions.”].)

4 **Response to Statement No. 149**

5 Plaintiffs dispute this statement, because it is not supported by the citations. *See* AR106459.  
6 (“actions to improve the transparency *may* have positive effects” on nearshore (emphasis added);  
7 noting “additional research” needed to better understand nearshore conditions and management  
8 action’s effects). In addition, plaintiffs dispute this statement, because it is unsupported by the  
9 record. The EIS failed to study the impacts of increased concentrated coverage on nearshore  
10 conditions, as explained in plaintiffs’ briefs. *See also* AR106457, 106459 (TMDL only requires load  
11 reductions to improve mid-lake clarity, not nearshore or stream conditions).

12 **Statement No. 150**

13 The EIS also makes clear the TMDL plays a pivotal role in ensuring that encouraging  
14 density in Centers will not have a significant impact on soil or water quality. (See, e.g., AR 11906,  
15 11918-19, 11924-27, 11919, 11942-43, 11953, 5097-5104.) The TMDL will “prevent [] local  
16 jurisdictions from permitting projects that would result in the type of local-scale water quality  
17 impacts.” (AR5102.)

18 **Response to Statement No. 150**

19 Plaintiffs dispute this statement, as explained in their briefs.

20 **Statement No. 151**

21 In response to comments from the California Attorney General and others, TRPA also  
22 substantially modified the proposed RPU amendments in ways that narrowed the scope of proposed  
23 changes to coverage policies, including: (1) Maintaining 1987 Plan’s prohibition of coverage  
24 transfer between Hydrologically Related Areas (“HRAs”); (2) Restricting direct off-site excess  
25 coverage mitigation across HRA boundaries to more sensitive land; (3) Reducing allowable  
26 coverage on parcels within 300 feet of Lake Tahoe high watermark; and (4) Reducing maximum  
27 allowable coverage within 300 feet of Lake Tahoe high watermark under comprehensive coverage  
28 management plans. (AR5089, 5306.) As the Final EIS explained, these modifications provided

1 additional environmental protections and would result in reduced potential for environmental  
2 impacts compared to analysis in the Draft EIS. (*Id.*; *see also* AR5057-72.) These changes were  
3 recommended by a cabinet-level bi-State working group, consisting of stakeholders from state and  
4 local government, environmental organizations and business members, to address the concerns of the  
5 States of California and Nevada. (*See* California Nevada Amicus brief, ECF No. 30-1 at p. 4.)  
6 Collectively, these revisions served to ensure that local water quality impacts would not occur.  
7 (AR5057.)

8 **Response to Statement No. 151**

9 Plaintiffs do not dispute the first sentence, except to the extent that it suggests that these  
10 changes to coverage policies proposed in the final EIS tightened coverage restrictions compared to  
11 the existing regional plan at the time they were proposed. Except with respect to one change (alluded  
12 to in (3)), the changes only limited the applicability of new RPU policies, or proposed retaining  
13 existing policies. *See* AR5065-67. Plaintiffs therefore dispute the second sentence to the extent it  
14 suggests that all of the modifications provide “additional environmental protections” compared to  
15 the 1987 Plan. Plaintiffs do not dispute the third sentence. Plaintiffs dispute the fourth sentence,  
16 because the citation does not support the claim, and local water quality impacts have not been  
17 adequately accounted for as explained in plaintiffs’ briefs.

18 **Statement No. 152**

19 TRPA adopted an additional water quality threshold to address nearshore conditions as  
20 part of the RPU, and adopted specific policies, such as the phase out of phosphorous fertilizer,  
21 specifically to address nearshore conditions. (AR26670, 26672.)

22 **Response to Statement No. 152**

23 Plaintiffs do not dispute this statement, except that, insofar as it suggests that the RPU  
24 adequately addresses nearshore conditions, plaintiffs dispute such claim. The TER noted current  
25 water quality standards do not adequately protect nearshore conditions and recommended updated  
26 standards, but TRPA has not yet adopted them. *See* AR38.

27 **Statement No. 153**

28 TRPA concluded the additional incremental coverage allowed by the RPU (less than one

1 percent increase over existing coverage) would not adversely affect water quality after adoption of  
2 unrelated mitigation measures. (AR26654.)

3 **Response to Statement No. 153**

4 Plaintiffs dispute this statement to the extent it purports to characterize legal conclusions as  
5 statements of fact.

6 **Statement No. 154**

7 The TMDL EIS analyzed implementation of TMDL under buildout scenarios much  
8 more significant than what is allowed under the Regional Plan. (AR11953, 106543-44.) This showed  
9 that implementation of the TMDL would achieve water quality thresholds even if substantially more  
10 coverage was allowed and RPU policies to reduce coverage in sensitive lands and increase BMP  
11 compliance were not implemented. (*Id.*)

12 **Response to Statement No. 154**

13 Plaintiffs dispute the first sentence, because the TMDL did not analyze buildout scenarios  
14 with increased concentrated coverage in centers authorized under the RPU. The TMDL assumed  
15 maximum coverage levels of 30% in centers, rather than 70% (or 50% for parcels within centers and  
16 within 300 feet of Lake Tahoe). *Compare* AR106543 *with* Code §§ 30.4.2(B). Plaintiffs dispute the  
17 second sentence, because the reasoning is flawed. Regardless of how much coverage the TMDL  
18 assumed, the TMDL sets load reduction targets that local jurisdictions must meet, but local  
19 jurisdictions cannot achieve those load reductions without increasing BMP compliance. BMP  
20 compliance is critical to the TMDL's success. The "Recommended Strategy" for implementation of  
21 the TMDL relies heavily on BMPs. AR103790-91. This strategy "provides the basis for the load  
22 reduction allocation schedule of fine sediment particles and nutrients to Lake Tahoe for the first  
23 fifteen year TMDL implementation phase." AR106488, 103796. The TMDL notes that "continued  
24 application of existing stormwater management practices would be insufficient to meet needed fine  
25 sediment particle, nitrogen, and phosphorus load reductions. Enhanced operations and maintenance  
26 coupled with more intensive application of treatment measures with a demonstrated ability to reduce  
27 fine sediment particle loads will be needed to achieve TMDL requirements." AR106505. *See also*  
28 AR137775 (Placer County strategy will rely on BMP implementation); AR55404 (TRPA noting

1 TMDL “identifies BMPs as a key strategy to attain pollutant load reduction goals”; AR55406  
2 (TRPA noting “BMP maintenance is critical to sustain the reduction of nonpoint source pollution  
3 needed to reach [TMDL 15-year milestone]); AR137757 (Placer County TMDL Technical Report  
4 noting “[i]f a significant number of private property BMPs installed are not maintained over the long  
5 term, the average load reduction for private property BMPs estimated by the PLRM may not be  
6 accurate”).

7 **Statement No. 155**

8 The 2012 Tahoe Basin Impervious Surface Coverage Study found that “Concentrating  
9 development and limiting the development footprint has the potential to reduce per capita and  
10 basinwide environmental impact. (AR128193.) This study’s findings determined that: “Stormwater  
11 treatment, coverage removal and private property BMP implementation are complimentary and  
12 needed to achieve policy objectives. Needs for change: Stormwater treatment technology is less  
13 expensive and replaces the need for coverage restrictions.” (AR128154.) Therefore, the RPU no  
14 longer relies on the 1970s approach to water quality or treats every parcel the same. Instead, it  
15 incorporates direct measures of pollutant loading rather than solely relying on indirect approaches  
16 like coverage regulation and the number of parcels with BMPs. (AR5098, 11697-11698.) Moreover,  
17 consistent with the TMDL program, the RPU highlights the ability to leverage State enforcement  
18 programs to increase compliance with water quality requirements. (AR5012.) Scientific review of  
19 soil conservation revealed the need to focus on reducing coverage in Bailey land capability 1b  
20 (SEZs) because other land capability districts are doing much better. (AR31, 42, 190.)

21 **Response to Statement No. 155**

22 Plaintiffs dispute the first sentence to the extent it misleadingly suggests that concentrating  
23 development will reduce absolute water quality impacts (not on a per capita basis), or will reduce  
24 impacts at the local site in which development is concentrated. The cited study shows that  
25 concentrating development has the potential to increase sediment loading from the redeveloped site,  
26 increasing localized water pollution impacts. *See* AR128193 (coverage transfer from single family  
27 residential with no BMPs to commercial with BMPs “can result in a... significant relative increase  
28 in FSP loading [of 180 pounds per year].”); AR128194 (noting “concentrating development may



1 increase the loading from a single developed site”); *id.* (noting increase in loading from one acre of  
2 multi-family housing v. one acre of single-family). Plaintiffs dispute the second sentence, because  
3 the conclusion that stormwater treatment technology “replaces the need for coverage restrictions” is  
4 unsupported by any evidence. *See* AR128191-92. At most, the cited study supports the statement  
5 that these measures are complementary. *See* AR128192 (“On-site BMPs *and infiltration resulting*  
6 *from routing stormwater to vegetated areas* reduces both the volume of stormwater and the  
7 concentration of pollutants in runoff that must be treated by stormwater treatment systems. Thus, the  
8 stormwater treatment systems can be smaller and require less frequent maintenance to maintain  
9 functionality. Both factors reduce the costs of stormwater treatment.” (emphasis added)). Plaintiffs  
10 dispute the third and fourth sentences because they misleadingly suggest that “coverage regulation”  
11 is an “indirect” and outdated approach to regulating water pollution. Coverage is the primary cause  
12 of Lake Tahoe’s clarity loss. AR134 (coverage “directly affects runoff dynamics and inhibits  
13 stormwater infiltration” and development in the Basin “now thought to be responsible for many of  
14 the primary and secondary drivers of water quality”); AR106497 (urban runoff “primary source of  
15 pollutants affecting Lake Tahoe’s transparency”). As a result, the TMDL targets reducing  
16 stormwater runoff pollution from urban areas. AR106489. Plaintiffs dispute the fifth sentence,  
17 because the citation provided does not support the claim (AR5012 is blank). Plaintiffs do not dispute  
18 the last sentence’s claim that TRPA needs to reduce coverage on SEZ lands, but dispute this  
19 sentence to the extent it suggests that (1) the quality of lands within the same land capability class  
20 are properly considered in the aggregate, although separated by many miles (“other land capability  
21 *districts* are doing much better” (emphasis added)), and (2) the local impacts of concentrated  
22 coverage has no bearing on their condition. *See* POB at 11-12 & n.5; AR11956 (EIS) (“[C]overage  
23 limits under the Bailey land capability system... are considered *necessary* in the Region to protect  
24 water quality *and preserve environmental balance at the individual parcel scale.*” (emphasis  
25 added)).

#### 26 **Statement No. 156**

27 TRPA found that the Regional Plan as amended by the RPU will achieve and maintain  
28 Water Quality Thresholds Standards over time. (AR 26673-83.)



1           **Response to Statement No. 156**

2           Plaintiffs do not dispute that TRPA made these findings, but dispute this statement to the  
3 extent it purports to characterize legal conclusions as statements of fact.

4           **Statement No. 157**

5           BMPs are one part of the Regional Plan’s comprehensive water quality protection and  
6 restoration regulatory program, which includes the EIP’s water quality programs that facilitate  
7 implementation of BMPs. (AR26678-80.)

8           **Response to Statement No. 157**

9           Plaintiffs do not dispute this statement.

10          **Statement No. 158**

11          Chapter 60 of the Code sets forth requirements for implementation of the Regional  
12 Plan’s Water Quality Goals and Policies. (AR1073-89.) These requirements include, among other  
13 things, the installation of temporary and permanent BMPs for the protection or restoration of water  
14 quality and attainment of minimum discharge standards. (*Id.*) The Code requires installing BMPs as  
15 described in TRPA’s BMP Handbook (AR126808-7540), or equivalent practices approved by  
16 TRPA, on all public and privately owned lands within the Basin. (AR1085 [Code, § 60.4.2].) The  
17 RPU amendments do not alter these requirements, except to require installing and maintaining water  
18 quality BMPs consistent with the “defensible space” requirements of fire agencies. (AR1089, 14489-  
19 92; *see also* 5205-06.) The EIS addressed this change and concluded it would not result in any  
20 significant impacts. (AR11936.)

21          **Response to Statement No. 158**

22          Plaintiffs do not dispute this statement.

23          **Statement No. 159**

24          BMPs are defined as “alternative structural and non-structural practices proven effective in  
25 erosion control and management of surface runoff.” (AR127521 [TRPA 2012 BMP Handbook].)  
26 “BMPs manage waste and hazardous material and are effective at preventing oil, fertilizers, and  
27 other hazardous wastes from entering public storm drains, native soil, surface water, and  
28 groundwater” (AR126841 [BMP Handbook].). In its BMP Handbook, TRPA identifies BMPs that

1 combat pollution created by at least 10 different sources—sediment, fine sediment, nutrients  
2 (nitrogen and phosphorus), pH acidity, micro-organisms, pesticides and herbicides, heavy metals,  
3 gross pollutants (litter and debris), surfactants (grease, oils, detergents, and shampoos), and  
4 increased water temperature. (AR126838-40 [chart].). “Infiltrating runoff allows rain or snowmelt to  
5 flow into permeable areas and enter the soil profile. Infiltration allows much of the runoff to return  
6 to the soil, which reduces runoff volumes, treats light pollutant concentrations, and replenishes  
7 groundwater. Infiltration allows light pollutants to settle into the soil where they are naturally  
8 mitigated. Even when runoff continues after infiltration of a design storm, the overall pollutant load  
9 into the nearest water body is still reduced.” (AR126841 [BMP Handbook].)

10 **Response to Statement No. 159**

11 Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, to the  
12 extent that it suggests that each of the BMPs recommended by the BMP Handbook is effective at  
13 reducing stormwater pollution. BMP effectiveness for stormwater infiltration and treatment are  
14 unknown and in some cases not effective in removing certain pollutants, particularly dissolved  
15 nutrients. *See e.g.*, AR127182 (noting “questionable” effectiveness of dry basins to remove fine  
16 sediments, “not analyzed” in any study); AR127206 (“media filter demonstrated variable (typically  
17 poor) ability to remove dissolved nutrients”); AR126959 (“Very few” studies conducted “to assess  
18 ... performance of infiltration basins, as well as the potential impacts of infiltrated stormwater on  
19 groundwater quality” but nitrate impacts to groundwater found in one study). *See also* AR091713  
20 (“Due to an urgency to reduce pollutant loading in [Lake Tahoe’s] urban areas, the efforts have not  
21 always been investigated or monitored for effectiveness.”). Plaintiffs do not dispute the remainder of  
22 Statement No. 159.

23 **Statement No. 160**

24 BMPs are existing “management controls” under the Code for the protection or  
25 restoration of water quality for attainment of minimum discharge standards; they are not “mitigation  
26 measures.” (AR11915, 11929.) BMPs, unlike mitigation measures, must be installed regardless of  
27 any potential water quality impacts. (AR1085.)  
28

1           **Response to Statement No. 159**

2           Plaintiffs do not dispute this statement, except plaintiffs dispute that BMPs are not  
3 “mitigation measures.” The EIS for the RPU relies on BMPs to mitigate the “potential increases in  
4 stormwater runoff and pollutant loading” of increased concentrated coverage. (“While coverage in  
5 Town Centers, the Regional Center, and the High Density Tourist District would increase relative to  
6 that estimated for Alternative 1, the additional coverage would still be limited to high capability  
7 lands and would be required to meet existing BMP standards to control potential increases in  
8 stormwater runoff and pollutant loading from the additional coverage, including maintenance  
9 requirements, and therefore this impact would be less than significant.”) AR011953.

10           **Statement No. 161**

11           BMPs are required of all properties to reduce the impacts of development on water  
12 quality. Properties must capture and infiltrate the equivalent volume of runoff of a 20 year, 1-hour  
13 storm and stabilize sediment sources on site. TRPA’s BMP requirements are outline in Chapter 60 of  
14 the TRPA Code of Ordinances (§60.4, page 60-13 to 60-17 [AR1085-89]). The public can also find  
15 BMP information on the Stormwater Management Program Website ([www.tahoebmp.org](http://www.tahoebmp.org)) and in the  
16 BMP Handbook (<http://www.tahoebmp.org/bmphandbook.aspx>).

17           **Response to Statement No. 161**

18           Plaintiffs do not dispute Statement No. 161, except to the extent that it implies that BMP  
19 requirements are enforced and effective, which is not the case, as discussed in plaintiffs’ briefs.

20           **Statement No. 162**

21           As one of many of restoration programs implemented through the EIP, the BMP Retrofit  
22 Program is a unique and innovative strategy that protects Lake Tahoe’s water quality from the  
23 impacts of stormwater pollution. (AR9084.) The BMP Retrofit Program is a rigorous nonpoint  
24 source pollution control program designed to advance water quality Threshold Standards. (AR9084.)  
25 The BMP Retrofit Program is codified in the TRPA Code or Ordinances. (AR1086-1087 [Code, §  
26 60.4.4.].) The BMP Retrofit Program requires all existing past development to retrofit the site with  
27 water quality BMPs. (*Id.*, AR 5205.) This differed notably from other locations nationwide where  
28 only BMPs on new construction were required. (AR9084)

1           **Response to Statement No. 162**

2           Plaintiffs do not dispute the first sentence. With respect to the second sentence, plaintiffs do  
3 not dispute that the BMP Retrofit Program is a nonpoint source pollution control program designed  
4 to advance water quality Threshold Standards, but dispute it to the extent that it suggests that the  
5 BMP Retrofit Program is rigorously enforced. *See* POB at 16-21. Plaintiffs do not dispute the  
6 remaining part of Statement No. 162.

7           **Statement No. 163**

8           TRPA distinguishes between BMP Retrofits and BMPs for new development or  
9 redevelopment—both of which are implemented on public and private properties. (AR126842 [BMP  
10 Handbook].) Unlike TRPA’s BMP retrofit program for existing properties, new development  
11 allowed under the RPU, including any concentrated coverage in Centers, must install and maintain  
12 BMPs as a condition of project approval. (AR1085-89 [Code, § 6.4], 5101, 5181, 5205, 11946.)  
13 These projects are also required to provide security deposits. (AR737 [Code, § 5.9.2: “a security  
14 shall be posted in an amount equal to 110 percent of the cost of the approved BMPs and other  
15 erosion control and water quality improvements required as a condition of approval”].) TRPA also  
16 inspects these properties to ensure BMPs are properly implemented. (AR738 [Code, § 5.9.4].)

17           **Response to Statement No. 163**

18           Plaintiffs do not dispute the first and second sentences. With respect to the third sentence,  
19 plaintiffs do not dispute that security deposits are required for new projects, but dispute it to the  
20 extent it suggests that new projects must provide security deposits for the entire project area’s BMP  
21 requirements. The Code exempts from the security deposit “BMP retrofitting of the project area  
22 outside the construction site boundary which is to be accomplished following the completion of the  
23 project.” Code § 5.9.3(D). Thus, nothing assures the retrofitting of the portion of a project area that  
24 will not be developed or redeveloped. Plaintiffs also dispute the third sentence to the extent it  
25 suggests that a security deposit is required to ensure ongoing maintenance requirements over the life  
26 of the project. Code section 5.9.4(C) authorizes release of security deposit “after a final inspection of  
27 the project,” which is completed “[p]rior to issuance of a local certificate of occupancy, the  
28 scheduled date of project completion, or project completion, whichever is earliest.” See 5.3.1(C).

1 Finally, plaintiffs dispute the fourth sentence to the extent that TRPA suggests Code section 5.9.4  
2 requires inspections to ensure compliance with maintenance requirements. This only states that  
3 “TRPA shall monitor compliance with secured conditions of approval pursuant to Section 5.3.”  
4 Section 5.3, however, indicates that “[f]or all projects, TRPA *may* conduct inspections as necessary  
5 to assure that the permittee has complied with the project approval and provisions of law.” Code §  
6 5.3.1(B). The only required inspections under 5.3 are an inspection prior to grading (before the  
7 project is constructed) and a final inspection “[p]rior to issuance of a local certificate of occupancy,  
8 the scheduled date of project completion, or project completion, whichever is earliest”—none of  
9 which ensure maintenance conditions are continuously complied with. Code § 5.3.1(A), (C).

10 **Statement No. 164**

11 In addition to the erosion control and stormwater runoff benefits from implementing  
12 required BMPs, under the Code all new development is required to offset the impact of additional  
13 coverage by (1) paying water quality mitigation fees, or (2) implementing an offsite water quality  
14 control project. (*See* AR1080-82 [Code, § 60.2].)

15 **Response to Statement No. 164**

16 Plaintiffs dispute this statement, because the above-described mitigation does not apply to  
17 “all new development.” The Code exempts various projects from such mitigation, including  
18 “[i]mpervious coverage permitted as a result of transfer.” *See* AR1080 [Code §60.22]. The RPU  
19 incentivizes the transfer of coverage into community centers. *See* AR011479, 11954. In addition, the  
20 RPU exempts non-motorized public trails from

21 **Statement No. 165**

22 The EIS concluded that providing incentives to redevelop properties that lack BMPs will  
23 likely result in water quality benefits, but under no circumstances would such redevelopment be  
24 permitted to increase sediment loading. (AR11950-51 [impacts completely offset], 11953 [RPU  
25 same as Alternatives 2].)

26 **Response to Statement No. 165**

27 Plaintiffs dispute this statement, because the citations do not support the claim that the EIS  
28 concluded that under no circumstances would redevelopment be permitted to increase sediment

1 loading. To the extent the citations to the EIS can be read in this manner, they are conclusory. In  
2 addition, plaintiffs dispute that existing BMP retrofit and maintenance requirements are adequate to  
3 ensure no increase in sediment loading, as explained in plaintiffs' briefs.

4 **Statement No. 166**

5 Studies in the record demonstrate there is a significant difference between properties that  
6 have installed BMPs compared to those that have not. Data shows, for example, that commercial  
7 properties without BMPs discharge pollutant loads that are five times higher than those from similar  
8 properties with structural BMPs — that is, structural BMPs reduce pollutant loads by 80 percent.  
9 (AR128167-68.) Data shows that a commercial property without BMPs discharges pollutant loads  
10 that are 5 times higher than those from similar commercial property with structural BMPs.  
11 (AR128167-68.)

12 **Response to Statement No. 166**

13 Plaintiffs dispute this statement to the extent that it suggests that compliance with  
14 maintenance requirements are inconsequential. The appendices discussing these results note that the  
15 presence of “*functional* BMPs” strongly influence the runoff and loading from a developed parcel  
16 AR128047, 128049 (emphasis added).

17 **Statement No. 167**

18 As stated in the EIS, “New science associated with the TMDL had revealed that high  
19 pollutant loads are generated from older developments without adequate BMPs and that  
20 environmentally-beneficial redevelopment and associated improvements in the quality of urban  
21 runoff could be facilitated with adoption of a new Regional Plan.” (AR5087.)

22 **Response to Statement No. 167**

23 Plaintiffs do not dispute that the EIS makes this statement, but dispute the substance of the  
24 quoted statement to the extent it suggests that the RPU is adequate to facilitate “environmentally-  
25 beneficial redevelopment and associated improvements in the quality of urban runoff,” as argued in  
26 plaintiffs' briefs.

27 **Statement No. 168**

28 TMDL studies conclude additional BMP implementation will improve water quality.

1 (AR106508 [TMDL Final Report lists implementation actions in forested uplands that will help meet  
2 Clarity Challenge load reductions by year 15 and TMDL in 65 years; includes “install and maintain  
3 (annually) full unpaved roadway BMPs,” “implement forest treatments with low pressure and other  
4 innovative ground-based equipment and standard BMPs,” “Install and maintain advanced BMP  
5 measures to increase infiltration and reduce runoff from landings, ski runs, trails, and paved and  
6 unpaved roads in forested areas.”].)

7 **Response to Statement No. 168**

8 Plaintiffs do not dispute that the TMDL makes this conclusion, but dispute the conclusion  
9 that BMP implementation will improve water quality, as argued in plaintiffs’ briefs.

10 **Statement No. 169**

11 Implementation and enforcement of BMPs are currently being pursued and  
12 accomplished at an accelerated rate. (AR9085.) As of December 2011, 14,714 of 43,470 parcels in  
13 the Tahoe Region have received a BMP Certificate. This equates to 56 percent compliance in  
14 Nevada, 25 percent compliance in California, and total region-wide compliance of 34 percent.  
15 Notably, TRPA has issued approximately half of all 14,714 certificates over the last four years as a  
16 result of an accelerated implementation program. (*Id.*)

17 **Response to Statement No. 169**

18 Plaintiffs do not dispute that installation of BMPs has increased, but dispute the first sentence  
19 to the extent it suggests that compliance with routine BMP maintenance requirements has increased.  
20 The citation does not support the first sentence’s statement that “enforcement” of BMP installation  
21 and maintenance requirements are currently being pursued and accomplished at an accelerated rate,  
22 and plaintiffs dispute the statement to the extent it suggests that TRPA has increased enforcement of  
23 maintenance requirements, because such enforcement efforts are inadequate. *See* AR9088 (“TRPA is  
24 initiating a BMP Maintenance Program that contacts properties *with BMP Certificates more than*  
25 *five years old to remind them of maintenance requirements* and will follow up with compliance on a  
26 *subset* of properties annually.” [emphasis added]). Plaintiffs do not dispute the second and third  
27 sentences.



1           **Statement No. 170**

2           TRPA uses grant funding to focus compliance efforts on the most sensitive areas, which has  
3 resulted in significantly higher compliance rates. (AR5189, 55403-04.)

4           **Response to Statement No. 170**

5           Plaintiffs do not dispute that TRPA has used grant funding for increasing BMP compliance  
6 efforts but dispute the remaining part of this statement to the extent it is not supported by the  
7 citations.

8           **Statement No. 171**

9           As described in the EIS, “as of December 2011, the TRPA Stormwater Management  
10 Program has initiated accelerated implementation starting with nearly 350 commercial and large  
11 multifamily properties and 1,000 single family properties within the Tahoe Region. Overall, this  
12 enforcement program has been successful in increasing BMP compliance rates, with approximately  
13 30 percent of targeted properties achieving BMP compliance, typically within one to three years  
14 after receiving an official notice from TRPA. In addition, 40 percent of targeted single family  
15 properties and 63 percent of commercial and multi-family parcels are actively working with TRPA  
16 and Resource Conservation District partners to achieve BMP compliance. The high rate of  
17 cooperation from commercial and multi-family property owners is attributed to an extensive  
18 outreach campaign to educate property owners along with TRPA’s policy to work with property  
19 owners to set realistic implementation goals which include project phasing. TRPA staff members  
20 have prioritized compliance of commercial properties over residential because of the more  
21 significant water quality impacts from commercial sites. When a property owner fails to meet  
22 interim project deadlines and/or fails to communicate with Stormwater Management Team staff,  
23 they are no longer considered to be diligently pursuing compliance and may be subject to monetary  
24 penalties or other enforcement actions pursuant to TRPA Rules of Procedure.” (AR9087, 55409.)

25           **Response to Statement No. 171**

26           Plaintiffs do not dispute that TRPA Stormwater Management Program has resulted in  
27 increased compliance with BMP installation requirements but dispute this statement to the extent it  
28



1 suggests that these efforts have increased compliance with BMP maintenance requirements. *See* AR  
2 9087 (clarifying that “BMP compliance” refers to becoming “BMP certified”).

3 **Statement No. 172**

4 TMDL and other implementation strategies assure maintenance of BMPs, either on a parcel  
5 or areas-wide scale consistent with both the TMDL and TRPA regulatory approaches. (AR55408,  
6 55402-09.)

7 **Response to Statement No. 172**

8 Plaintiffs dispute this statement, because it is conclusory, not supported by any facts, and not  
9 supported by the citations provided. In particular, AR55406 notes TRPA’s strategy of “initiating a  
10 BMP Maintenance Program that contacts properties with BMP Certificates *more than five years old*  
11 *to remind them of maintenance requirements* and will follow up with compliance on *a subset* of  
12 properties annually.” (emphasis added). This cursory and incomplete approach of simply reminding  
13 property owners of maintenance requirements and focusing only on property owners with BMP  
14 certificates more than five years old does not assure long-term or consistent compliance with BMP  
15 maintenance requirements.

16 **Statement No. 173**

17 The TMDL identifies BMPs as one of several key strategies to attain pollutant load reduction  
18 goals on a catchment scale. (AR9086.) BMP implementation results in the following annual  
19 reduction of pollutant loads identified by the TMDL: over 232,000 tons of total suspended solids;  
20 over 4,900 tons of nitrogen; and over 1,300 tons of phosphorus. (AR55403.)

21 **Response to Statement No. 173**

22 Plaintiffs dispute the first sentence, because the citation does not support the statement that  
23 BMPs are a key strategy for attaining pollutant reduction loads “on a catchment scale.” The TMDL  
24 simply identifies load reduction goals which must be met basin-wide, and requires local  
25 governments to identify load reductions necessary on a jurisdiction-basis. AR106496 (TMDL  
26 noting: “To be consistent with the scale of the Lake Tahoe TMDL source and load reduction  
27 analyses, all pollutant loads are allocated at a basin-wide scale for each of the four major pollutant  
28 sources. Waste load and load allocations must be specified at a jurisdiction level so that the

1 [California] Water Board and [Nevada Division of Environmental Protection] can incorporate load  
2 reduction requirements into relevant regulatory measures. Jurisdiction-specific waste load  
3 allocations shall be developed and incorporated into existing NPDES [permits].”) Plaintiffs dispute  
4 the second sentence, because pollutant load reductions depend on compliance with maintenance  
5 requirements, which is not assured, as explained in plaintiffs’ briefs. As Placer County recognized  
6 in its Final Technical Report for its TMDL Strategy: “[i]f a significant number of private property  
7 BMPs installed are not maintained over the long term, the average load reduction for private  
8 property BMPs estimated by the PLRM may not be accurate. AR137757.

9 **Statement No. 174**

10 While the TMDL identifies BMPs as an important method for achieving pollutant load  
11 reduction goals, additional measures are provided to ensure required load reductions are met.  
12 (AR106505-06.)

13 **Response to Statement No. 174**

14 Plaintiffs do not dispute that the TMDL identifies BMPs as an important method for  
15 achieving pollutant load reduction goals, but plaintiffs dispute the remaining part of the statement,  
16 because the citation does not support that “additional measures” are provided for, or required, but  
17 simply notes various “options” that local governments have in meeting the TMDL requirement. *See*  
18 AR106505 (“The following is a representative list of practices and treatment options that responsible  
19 parties might use to meet the Clarity Challenge load reductions by year 15, and achieve the TMDL  
20 in 65 years.... This list is not intended to be exclusive; implementing agencies may select other  
21 actions to achieve required load reductions.”)

22 **Statement No. 175**

23 The RPU commits TRPA to continue to implement its BMP compliance programs for both  
24 existing and new development. (AR11960, 5205-06, 5659.) In fact, the RPU amended its Code to  
25 make maintenance of BMPs a mandatory condition of approval. (AR5659.) As a result, TRPA  
26 expects that over time all 43,470 parcels in the Basin will receive BMP certificates. (*See generally*  
27 AR1073-89.)

1           **Response to Statement No. 175**

2           Plaintiffs dispute the first sentence because the RPU contains no commitments for TRPA to  
3 continue implementing BMP compliance programs, as explained in plaintiffs’ briefs, and the  
4 citations to BMP requirements and existing programs do not support this statement. Plaintiffs do not  
5 dispute the second sentence. Plaintiffs dispute the third sentence because it is not supported by the  
6 citation to the Chapter 60 BMP requirements, which have failed in garnering compliance. *See* POB.  
7 at 16-21.

8           **Statement No. 176**

9           BMP maintenance is mandatory. (AR1089 [Code, § 60.4.9 (“BMPs shall be maintained to  
10 ensure their continued effectiveness.”)], 127376 (“Owners of developed properties must ensure  
11 BMPs remain functional and effective to retain their BMP Certificate and comply with the TRPA  
12 Code of Ordinances.”)].) TRPA also audits local agencies to make sure that required BMP  
13 inspections occur. (AR 801-02 [Code, §§ 13.8.2, 13.8.3].)

14           **Response to Statement No. 176**

15           Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because the  
16 citations do not show that TRPA will audit local agencies to make sure that BMP inspections occur.  
17 Plaintiffs also dispute this sentence insofar as it suggests that local agencies are responsible for  
18 enforcement of BMP requirements, including maintenance requirements, which is unsupported by  
19 the record. *See* AR137757 (“Placer County has no regulatory authority for private property BMP  
20 implementation.”); AR126492 (“TRPA is the only agency that can issue or revoke a BMP  
21 Certificate of Completion.”).

22           **Statement No. 177**

23           Under the RPU, TRPA will incorporate inspection and maintenance logs for commercial and  
24 large residential properties. (AR 126934 [“When a project is permitted, a BMP inspection and  
25 maintenance plan will be required under the Special Conditions of the permit.”]; *see also* AR35204-  
26 11[TRPA Contractors’ Manual for performing maintenance].)

1           **Response to Statement No. 177**

2           Plaintiffs dispute the first sentence, because the citation does not support it. The citation is to  
3 the BMP Handbook, which does not set forth any permitting requirements, but “provides technical  
4 and planning guidance to landowners, private businesses, agencies, and jurisdictions for water  
5 quality improvement projects.” AR126812; AR126827 (“The primary purpose of this BMP  
6 Handbook is to provide guidance for selecting and implementing water quality [BMPs]...”) Nor  
7 does the citation mention “commercial and large residential properties.” TRPA’s Code Chapter 60  
8 does not reference this as a requirement. *See generally* AR8616-20.

9           **Statement No. 178**

10           The RPU allows and encourages area-wide water quality treatment programs that, when  
11 combined with parcel-scale BMPs, make construction, maintenance, and reporting more efficient.  
12 (AR5189-90.) The EIS explains area-wide treatment solutions, together with parcel-scale BMPs,  
13 have been implemented successfully under current TRPA policy. (AR11960.)

14           **Response to Statement No. 178**

15           Plaintiffs dispute the first sentence insofar as it suggests that area-wide water quality  
16 treatment programs are likely to be implemented, as the record lacks evidence that such programs  
17 are feasible, and the RPU has failed to set forth any plan to feasibly implement such programs. In  
18 addition, plaintiffs dispute the claim in the first sentence that area-wide water quality treatment  
19 programs, when combined with parcel-scale BMPs, make construction, maintenance, and reporting  
20 more efficient, because the citation does not support this claim. Plaintiffs dispute the second  
21 sentence, because the citation does not support the claim that area-wide treatment solutions have  
22 been implemented “successfully.”

23           **Statement No. 179**

24           The RPU expands the authority to install area-wide treatment facilities if that approach is  
25 shown to “meet or exceed existing water quality requirements.” (AR5188-90.) For larger projects  
26 in... [C]enters, area-wide water quality treatment facilities are expected to be more cost effective  
27 because they allow for greater flexibility in siting and designing treatment systems. (*Id.*) The policy  
28

1 is also expected to lead to more efficient maintenance practices, as compared to maintaining BMPs  
2 on many smaller, scattered individual parcels. (*Id.*)

3 **Response to Statement No. 179**

4 Plaintiffs do not dispute the first sentence. With respect to the second sentence, plaintiffs  
5 dispute this claim, as the citation provides no evidence for the assertion. The record indicates area-  
6 wide treatment systems require significant capital investments that can be costlier than individual  
7 parcel BMPs, as well as sustained funding for operations and maintenance. AR137743 (high capital  
8 costs); AR128192 (costs borne by public entities, with higher cost per acre compared to private  
9 parcel BMPs); AR128191 (“ongoing maintenance... of stormwater treatment systems is costly, and  
10 has historically been neglected or inconsistent”). The TMDL notes their uncertain cost and  
11 effectiveness. AR103791 (study results “are sensitive enough to the assumptions made that sediment  
12 removal rates or costs [of centralized treatment systems] could be adjusted up or down  
13 significantly”). With respect to the third sentence, the citation does not support this claim.

14 **Statement No. 180**

15 The BMP Handbook, updated with and made part of the RPU, incorporates new information  
16 from the TMDL and other studies, and provides guidance for the effective implementation and  
17 maintenance of BMPs for new and existing development. (See, e.g., AR126832.)

18 **Response to Statement No. 180**

19 Plaintiffs do not dispute this statement.

20 **Statement No. 181**

21 The BMP Handbook now recognizes that parcels are heterogeneous in terms of stormwater  
22 management, and that the 1987 Plan’s uniform approach will not work on every parcel. (AR126808-  
23 127540.) For this reason, the RPU prioritizes stormwater pollutant load reductions in areas with the  
24 greatest potential for reductions, thereby accelerating improvements in water quality in a more cost-  
25 effective manner. (AR26253.)

26 **Response to Statement No. 181**

27 Plaintiffs dispute the first sentence, because it cites to the entire BMP Handbook and fails to  
28 provide any pinpoint citation that would allow plaintiffs to confirm its accuracy. Plaintiffs dispute

1 the second sentence, as the citation does not support it. Plaintiffs also dispute the claim that  
2 “prioritiz[ing] stormwater pollutant load reductions in areas with the greatest potential for  
3 reductions” will accelerate improvements in water quality, given the lack of adequate assurances that  
4 BMPs will be properly maintained throughout the region, as explained in plaintiffs’ briefs.

5 **Statement No. 182**

6 The TMDL includes provisions that mandate water quality improvements (including the  
7 installation of BMPS) and provide safeguards to ensure that projects will not result in localized  
8 water quality impacts. (AR5101-02; *see also* 107428-29 [California NPDES Permit].)

9 **Response to Statement No. 181**

10 Plaintiffs disputes this statement, insofar as it suggests that the TMDL mandates water  
11 quality improvements in Nevada. Those water quality improvements are only mandated in  
12 California. *See* AR136266-Att. 1 [email with non-Bates-stamped, clickable attachment of “track  
13 changes” version of NDEP TMDL report showing differences from California report]; AR136127-  
14 29 (comparing California’s “top-down regulatory approach” with Nevada’s “collaborative approach”  
15 to TMDL implementation); AR136268 (“[T]he *aspirational goal* of the Nevada Lake Tahoe TMDL  
16 Report is also to set forth a *recommended strategy* to restore Lake Tahoe’s historic deep water  
17 transparency to 29.7 meters annual average Secchi depth at a feasible pace consistent with available  
18 funding.” (emphasis added)); AR136269 (“NDEP has retained its independent authority to amend  
19 the Nevada Lake Tahoe TMDL Report in the exercise of its discretion to extend the TMDL  
20 implementation schedule for feasibly achieving these load reductions.”); *id.* (noting Nevada’s  
21 implementation of TMDL is “legally non-binding”). Plaintiffs do not dispute that the TMDL must  
22 entail BMP installation to achieve load reductions set forth by the TMDL, but plaintiffs dispute that  
23 the TMDL provides adequate safeguards to ensure that projects will not result in localized water  
24 quality impacts, as explained in plaintiffs’ briefs. TRPA provides no authority showing that any of  
25 the purported safeguards required in California will be required or implemented in Nevada. Indeed,  
26 in Nevada, the TMDL will be implemented through Memoranda of Agreement between the Nevada  
27 Department of Environmental Protection and local governments, which are non-binding. *See*  
28 AR136129 (“MOAs are a collaborative, legally non-binding approach to implementing a TMDL.”)

1           **Statement No. 183**

2           By imposing a load reduction target on each local agency, the TMDL provides each agency  
3 with the incentive to prioritize maintenance to meet its target. (AR126934-35.)

4           **Response to Statement No. 183**

5           Plaintiffs dispute this statement, because the citation provided does not support it. To the  
6 extent this statement suggests that local agencies other than TRPA are responsible for BMP  
7 maintenance activities for BMPs on private property, including enforcement of maintenance  
8 requirements, the record does not support this claim. *See* Response to Statement No. 176.

9           **Statement No. 184**

10          The RPU will increase installation and maintenance of BMPs, and thus improve current  
11 conditions. (AR5188-90, 11894.) As the EIS explained: “Existing regulations would still apply to  
12 transferred coverage, requiring a verification of land capability to ensure that transferred coverage  
13 does not exceed the maximum allowable coverage at the project level (TRPA Code Chapter 30).  
14 Water quality BMPs are also required to be installed on any transferred coverage. As of 2011, only  
15 35 percent of existing developed parcels had Water Quality BMP certifications (TRPA 2011). It  
16 would be reasonable to assume that at least 65 percent of transfers of existing coverage would result  
17 in the removal of coverage without BMPs and the placement of coverage with BMPs. As such, an  
18 increase in the rate and volume of coverage transferred would likely result in an increase in the rate  
19 of water quality BMP implementation and an increase in the total amount and proportion of  
20 coverage with BMPs.” (AR11888; *see also* AR5181.)

21          **Response to Statement No. 184**

22          Plaintiffs do not dispute the first sentence’s claim that BMP installation will increase under  
23 the RPU, but dispute the claim that the RPU will increase BMP maintenance and thus will improve  
24 current conditions. The RPU does not adequately ensure maintenance of BMPs, as explained in  
25 plaintiffs’ briefs. Plaintiffs do not dispute the remaining part of Statement No. 184, except to the  
26 extent the last sentence suggests that an increase in transfers of coverage would result in increased  
27 compliance with BMP maintenance requirements.



1           **Statement No. 185**

2           RPU policies would also reduce fine sediment loading by increasing the potential for  
3 funding water quality operations and maintenance. (AR11936)

4           **Response to Statement No. 185**

5           Plaintiffs dispute this statement, because it is conclusory and no facts support this claim. To  
6 the extent that this statement suggests that increased funding for BMP operations and maintenance  
7 would become available, plaintiffs dispute this claim, because the citation pertains to increased  
8 available funding for roadway operations and maintenance.

9           **Statement No. 186**

10           The EIS explains that it was “reasonable for TRPA (and the two States in the TMDL) to rely  
11 upon the implementation and maintenance of BMPs to address water quality impacts.” (AR5190.)  
12 As stated in TRPA’s Findings, “The Lake Tahoe TMDL represents a centerpiece of the joint effort  
13 to achieve and maintain water quality standards applicable in the Region.” (AR26673.) “The Lake  
14 Tahoe TMDL effort represents a common and consistent plan between the States of Nevada and  
15 California to address the transparency and clarity decline within Lake Tahoe.” (AR26674.)

16           **Response to Statement No. 186**

17           Plaintiffs do not dispute that the EIS makes the quoted statement in the first sentence but  
18 dispute the substance of the quotation, which is a legal conclusion and not a statement of fact.  
19 Plaintiffs do not dispute that TRPA’s Findings makes the quoted statement in the second sentence,  
20 but plaintiffs dispute the substance of the quotation, because the TMDL is only targeted at achieving  
21 the mid-lake clarity standard, not all water quality standards applicable in the Region, as  
22 acknowledged in the third sentence. *See e.g.*, AR106457, 106459 (TMDL does not address nearshore  
23 conditions). Plaintiffs do not dispute that the TMDL sets water quality standards that apply to both  
24 states, but dispute that the states’ plans for achieving those standards are “common and consistent.”  
25 In the source document, the quoted language is directly followed by the statement: “Each state  
26 submitted and approved distinct reports to clarify *regulatory and implementation differences*  
27 between the two states.” AR26674 (emphasis added). *See also* AR26253 (“The Lahontan Regional  
28 Water Quality Control Board issued National Pollutant Discharge Elimination System (NPDES)



1 permits to each California jurisdiction. The Nevada Division of Environmental Protection is  
2 implementing the TMDL through Memoranda of Agreement (MOA) with agencies in Nevada.  
3 Specific TMDL Load Reduction Plans are currently being prepared as required by each  
4 implementing jurisdiction.”); AR136266 (containing clickable links to attachments showing  
5 differences between the two states TMDL plans).

6 **Statement No. 187**

7 Governing Board found that the Regional Plan, as amended by the RPU, includes multiple  
8 requirements that, along with TRPA’s own programs (e.g., the EIP Program) and existing  
9 regulations (e.g., the TMDL), will achieve and maintain TRPA’s Water Quality Threshold  
10 Standards. (AR26673-83, 26704.)

11 **Response to Statement No. 187**

12 Plaintiffs do not dispute that the Governing Board made such findings.

13 **Statement No. 188**

14 Air quality in the Lake Tahoe Air Basin is improving. (AR74-128; *see also* AR91832  
15 [CARB report stating, as of 2006, air quality in Lake Tahoe Air Basin (“LTAB”) had improved over  
16 previous 20 years].)

17 **Response to Statement No. 188**

18 Plaintiffs dispute this statement. As explained in plaintiffs’ briefs, TRPA does not have  
19 sufficient monitoring data to analyze the most recent air quality trends. The 2011 TER notes:

20 Three factors affect the ability to comprehensively evaluate the status and trends  
21 of air quality indicators in the Lake Tahoe Basin: 1) lack of spatial coverage of  
22 monitoring sites, 2) lack of long-term operations of monitors at a given site, and  
23 3) the nature of existing indicators used to evaluate air quality in the Region. *In*  
24 *general, the spacing and density of monitoring sites is insufficient to know the*  
*extent of how maximum and minimum pollutant concentrations are distributed*  
*throughout the basin. This is particularly true for ozone and PM2.5 for which it is*  
*unknown if the current network has tracked maximum (and minimum) pollutant*  
*concentrations in the Region.*

25 Many monitoring sites have been operated only intermittently or have been shut  
26 down after a few years (except for the Stateline, NV carbon monoxide monitoring  
27 site and the Bliss visibility monitoring site). Locations of monitoring sites have  
28 also been changed, making it more difficult to determine with a high degree of  
certainty whether a trend was due to a real change in the atmosphere or more a  
result of the site change. This situation is accounted for by reducing the

1 confidence rating for a given status and trend determination as noted in Indicator  
2 Summaries.

3 AR82 (emphasis added). The referenced CARB report does not take into account data from 2006-  
4 2008, showing increasing violations of California's 8-hour ozone standard. AR147119 (2 violations  
5 at South Lake Tahoe site in 2006, 5 violations in 2007 and 2008); AR11774 (1 violation in 2009,  
6 after which monitoring did not occur at South Lake Tahoe site, *see* AR11774). In addition, the 2011  
7 TER notes that for the highest ozone concentrations over an 8-hour period, a possible trend of "long-  
8 term" improvement is "not statistically significant," and that "it is uncertain if existing programs are  
9 effective at improving conditions due to high inter-annual variability of indicator values." AR97. *See*  
10 *also* AR95 (noting high inter-annual variability and uncertain effectiveness of existing programs  
11 with respect to highest ozone concentrations over a 1-hour period); AR14797, 14800 (noting trend of  
12 increasing 1-hour and 8-hour ozone levels from 2005-2009).

13 **Statement No. 189**

14 The "Air Quality Index" (AQI) developed by the U.S. EPA synthesizes data for various  
15 pollutants to determine whether overall air quality on a given day is healthy. EPA calculates the AQI  
16 for five pollutants: ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and  
17 nitrogen dioxide. The AQI uses pollutant-specific equations based on maximum recorded daily  
18 concentrations to determine the level of health concern. (75.)

19 **Response to Statement No. 189**

20 Plaintiffs do not dispute this statement.

21 **Statement No. 190**

22 Ozone, or O<sub>3</sub>, is one of the pollutants used to calculate the AQI. (AR75.) Ozone forms  
23 when precursor gases, such as NO<sub>x</sub>, react in sunlight. (AR11772.) The main source of NO<sub>x</sub> emissions  
24 is vehicle exhaust. (AR11773-74, 5239.) The Federal government, California and Nevada have all  
25 adopted ozone standards. (AR11762-63.)

26 **Response to Statement No. 190**

27 Plaintiffs do not dispute this statement.

28

1           **Statement No. 191**

2           From 2007 to 2011 (the most recent review period), the number of days rated “good”  
3 increased from 319 to 361 days, and the number of days rated “moderate” correspondingly  
4 decreased from 46 to 4 days. (AR75.) None has been rated “Unhealthy” or “Hazardous” and, since  
5 2008, none has been rated “Unhealthy for Sensitive Groups.” (*Id.*)

6           **Response to Statement No. 191**

7           Plaintiffs do not dispute that the referenced report makes these claims but dispute the  
8 statement insofar as it suggests that air quality has improved in the Tahoe Basin. *See* Response to  
9 Statement No. 188.

10          **Statement No. 192**

11          The Compact states that the Regional Plan shall provide for attaining and maintaining  
12 federal, state, or local air quality standards, whichever are strictest, in the respective portions of the  
13 region for which the standards are applicable. (AR11757.) The TER and RPU reflect this  
14 commitment. (AR 77-78, 11757, 17777.) EPA, ARB, and TRPA use monitoring data (presented in  
15 Section 3.4.3, Affected Environment) to designate areas according to attainment status for criteria air  
16 pollutants established by the agencies. The purpose of these designations is to identify those areas  
17 with air quality problems and thereby initiate planning efforts for improvement. The three basic  
18 designation categories are “nonattainment,” “attainment,” and “unclassified.” “Unclassified” is used  
19 in areas that cannot be classified on the basis of available information as meeting or not meeting the  
20 standards. (AR11759.)

21          **Response to Statement No. 192**

22          Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, because it  
23 purports to characterize legal conclusions as statements of fact. Plaintiffs do not dispute the  
24 remainder of the statement.

25          **Statement No. 193**

26          TRPA threshold standards address carbon monoxide (CO), ozone, regional and subregional  
27 visibility, and nitrate deposition. Numerical standards have been established for each of these  
28 parameters, and management standards have been developed that are intended to assist in attaining

1 the threshold standards. The management standards include reducing particulate matter, maintaining  
2 levels of oxides of nitrogen (NO<sub>x</sub>), reducing traffic volumes on U.S. Highway 50 (US 50), and  
3 reducing VMT. (AR11757.)

4 **Response to Statement No. 193**

5 Plaintiffs do not dispute this statement.

6 **Statement No. 194**

7 TRPA relies on four data sets – “Threshold Indicators” – to determine whether air  
8 quality meets Threshold Standards and state/federal standards included in the ozone indicator  
9 reporting category: (1) the highest 1-hour average concentration, (2) the highest 8-hour average  
10 concentration, (3) the 3-year average of the fourth highest average concentration, and (4) oxides of  
11 nitrogen (NO<sub>x</sub>) emissions in tons per day. TRPA looks at each of the four indicators to determine  
12 whether the LTAB is in attainment with individual ozone standards (threshold or state/federal  
13 standards), and at the indicators in the aggregate to characterize overall conditions. Data dates back  
14 to at least the early 1980s. (AR92-102.)

15 **Response to Statement No. 194**

16 Plaintiffs do not dispute this statement.

17 **Statement No. 195**

18 The 2011 TER analyzed the Tahoe basin’s attainment with TRPA’s Air Quality Thresholds,  
19 including the threshold for Ozone pollution. (AR74-131.) Data shows the LTAB is in attainment for  
20 all ozone standards. (AR94-101.) The 2011 TER concluded the region is “at or somewhat better than  
21 the adopted Threshold Standards.” (*Id.*) A team of expert scientists peer reviewed, and endorsed, the  
22 2011 TER. (AR8839-948.)

23 **Response to Statement No. 195**

24 Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence, as  
25 explained in plaintiffs’ briefs. Plaintiffs do not dispute that the 2011 TER made this conclusion, but  
26 dispute its substance, as explained in plaintiffs’ briefs. Plaintiffs dispute the final sentence to the  
27 extent it suggests that peer reviewers reviewed the final TER and the conclusion that the Region is in  
28 attainment with the 8-hour ozone standard. The peer review panel only reviewed the draft TER,

1 which did not contain these conclusions. *See* AR9235-37 (track changes version of TER changing  
2 draft TER attainment determination from “somewhat worse than target” to “at or somewhat better  
3 than target”); *see also* AR8839-8948 (peer review report for draft TER).

4 **Statement No. 196**

5 Ozone was monitored at a number of locations around the Lake Tahoe Basin over the TER  
6 review period: South Lake Tahoe- Tahoe Blvd.; South Lake Tahoe-Sandy Way; South Lake Tahoe-  
7 Airport Rd.; Incline Village; and Cave Rock. In 2009, O<sub>3</sub> was monitored at the site in Incline Village  
8 by the Washoe County Air Quality Management Division, and in South Lake Tahoe on Airport Road  
9 by the California Air Resources Board. Data is collected, analyzed, and reported by the respective  
10 agency. The TER includes a graph that represents the highest monitored concentration at all sites for  
11 each year. (AR96-97.)

12 **Response to Statement No. 196**

13 Plaintiffs dispute the first sentence insofar as it suggests that monitoring data was  
14 continuously collected from all of the listed sites during the TER review period. *See* AR75 (TER  
15 noting daily ozone data available only from Incline Village and South Lake Tahoe Airport sites, but  
16 Incline Village site “not operational in 2007 and part of 2008,” and South Lake Tahoe Airport data  
17 “only collected from May through October”); AR11774 (noting monitoring data from South Lake  
18 Tahoe Airport site “not available after 2009”). No ozone data has been collected from the sites at  
19 South Lake Tahoe Blvd., South Lake Tahoe – Sandy Way, and Cave Rock, Nevada for the last  
20 threshold evaluation period of 2006-2011. AR75. (These sites stopped monitoring ozone after 1992,  
21 2004, and 2004, respectively. AR147415-16.) Plaintiffs do not dispute the remainder of the  
22 statement.

23 **Statement No. 197**

24 The Draft EIS included the results of modeling to determine the RPU’s impact on ozone  
25 levels in the LTAB. (AR11782-92, 12909-56.) The EIS estimated ozone-related emissions compared  
26 to existing conditions (2010) and in the future (2035), and concluded that regional emissions will  
27 decrease. (AR5069, 11785-92.) The EIS explained, tailpipe standards will continue to become  
28 increasingly stringent; the RPU will allow only limited development beyond what 1987 Plan

1 authorized; any additional emissions due to growth will be more than offset by stricter tailpipe  
2 standards; and TRPA's programs and policies will further reduce emissions by promoting forms of  
3 transit other than cars. (*Id.*)

4 **Response to Statement No. 197**

5 Plaintiffs do not dispute that the EIS conducted this analysis and made these conclusions.  
6 However, plaintiffs dispute these conclusions, because no evidence supports that stricter tailpipe  
7 standards will offset increased ozone precursor emissions resulting from new development *before*  
8 that development occurs.

9 **Statement No. 198**

10 Under the RPU, both Reactive Organic Gases and NO<sub>x</sub> are projected to dramatically  
11 decrease, by 341.27 and 600.53 Tons Per Year (TPY), respectively. (AR11788, 12911.)

12 **Response to Statement No. 198**

13 Plaintiffs do not dispute that TRPA made these projections.

14 **Statement No. 199**

15 The Draft EIS included a table summarizing the attainment status for various pollutants  
16 and standards. (AR11759.) The table stated that the LTAB was "nonattainment- transitional" for the  
17 8-hour standard, and that in 2011 the basin "somewhat worse than target." (*Id.*) The Draft TER, also  
18 released in April 2012 (AR14684), included a table stating the "ozone" standard was "non-  
19 attainment" in 2011. (AR14696.)

20 **Response to Statement No. 199**

21 Plaintiffs do not dispute this statement.

22 **Statement No. 200**

23 Additional ozone monitoring data became available after TRPA published the Draft TER and  
24 Draft EIS in April 2012. (AR11450.) In response to comment on the Draft EIS regarding additional  
25 ozone air quality monitoring data that is available for 2010, TRPA added that information as well as  
26 more recent monitoring data that became available after the Draft EIS was published for year 2011.  
27 Pages 3.4-17 – 18 of the Draft EIS were be revised to note that concentrations of criteria air  
28

1 pollutants are measured at three (rather than two) monitoring stations in the Basin: the South Lake  
2 Tahoe–Sandy Way station, the South Lake Tahoe–1901 Airport Road station, and the Incline  
3 Village–Crystal Bay station. The Final EIS noted that in general, the measurements of ambient air  
4 quality from these monitoring stations are representative of the air quality in the Basin. Table 3.4-6  
5 in the EIS was updated to summarize the air quality data from these stations for 2008–2011. (AR  
6 5238.)

7 **Response to Statement No. 200**

8 Plaintiffs do not dispute the first, second, and third sentences. Plaintiffs do not dispute that  
9 the fourth sentence accurately reflects the final EIS’s conclusion but dispute the conclusion as  
10 explained in plaintiffs’ briefs. Plaintiffs dispute the last sentence insofar as it suggests that the final  
11 EIS appropriately made the noted corrections. TRPA made corrections, because Placer County Air  
12 Pollution Control District (“PCAPCD”) noted that the draft EIS incorrectly stated that the Basin only  
13 contained two air quality monitoring stations (one for ozone and one for particulate matter), when a  
14 third station monitoring ozone in Incline Village, Nevada exists. AR5238, 3976. PCACD also  
15 recommended including 2011 “ozone measurements” from Incline Village (to describe baseline  
16 conditions) given the lack of any other ozone data from other monitoring stations. *Id.* However, the  
17 final EIS not only included the ozone data, but also noted that based on such data, zero violations of  
18 California’s 8-hour standard occurred in 2010 and 2011. *See* AR5238. Nothing indicates that  
19 PCAPCD intended this conclusion, or intended that TRPA could determine the Region’s attainment  
20 with California’s 8-hour standard on the basis of Incline Village, Nevada data.

21 **Statement No. 201**

22 TRPA updated the draft TER to reflect new data. (AR96-97.) The new data, included in the  
23 Final TER showed the highest concentration was 0.067 ppm in 2010 and 0.068 ppm in 2011, both  
24 below the California standard. The Final TER stated that confidence in this conclusion was  
25 “moderate,” acknowledging that, although data was limited, it was consistent with the long-term  
26 downward trend. (*Id.*) James Mahoney, PhD, the chair of the peer-review panel, testified the TER  
27 was technically sound, and provided a solid basis to support TRPA’s ongoing policy making.  
28 (AR25448-49.)



1           **Response to Statement No. 201**

2           Plaintiffs do not dispute the first sentence. Plaintiffs dispute the second sentence. As  
3 explained in plaintiffs' briefs, the "new data" does not reflect conditions in California (where the  
4 California 8-hour ozone standard applies), but in Nevada. Plaintiffs do not dispute that the third  
5 sentence accurately reflects the Final TER's conclusion, but dispute that the TER appropriately made  
6 conclusions about ozone trends, as explained in plaintiffs' brief. AR82. Plaintiffs dispute the last  
7 sentence, insofar as it suggests that the final TER was technically sound, as explained in Response to  
8 Statement No. 195. The referenced testimony concerns only the draft TER.

9           **Statement No. 202**

10           The Lake Tahoe Region met the California Ozone standard for highest 8-hour average  
11 concentration in 2010 and 2011. (AR96.) As stated in the TER, "The 2011 measurement of 0.068  
12 ppm is 3% below the CA standard of 0.070 ppm. A status determination of "at or somewhat better  
13 than target" is designated for 2011. The region was in attainment with the California standard in  
14 1984, 2004, 2005, 2010 and 2011." (*Id.*)

15           **Response to Statement No. 202**

16           Plaintiffs do not dispute that the TER made these conclusions but dispute their substance as  
17 explained in plaintiffs' briefs.

18           **Statement No. 203**

19           The 2011 Final TER states "The status and trends of four indicators were evaluated to  
20 characterize the overall status and trends of the Ozone Indicator Reporting Category, including  
21 highest 1-hour and 8-hour average O<sub>3</sub> indicators, the 3-year 4th highest 8-hour average O<sub>3</sub> indicator,  
22 and modeled oxide on nitrogen (NO<sub>x</sub>) indicator. Based on these indicators and as detailed in the  
23 Indicator Summaries below, the region overall is at or somewhat better than the adopted Threshold  
24 Standards. Overall, the Basin can be characterized as "at or somewhat better than the standard," with  
25 "little or no change" in trend, with "moderate" confidence in the status and trend determination."  
26 (AR92.)



1           **Response to Statement No. 203**

2           Plaintiffs do not dispute that the final TER made this statement but dispute that the TER  
3 appropriately made these conclusions and that the analysis is meaningful. The statement amounts to  
4 a determination that ozone standards *in the aggregate* are generally being met. The analysis suggests  
5 that as long as most of the ozone standards are being attained “overall,” the Region is in attainment  
6 with the “Ozone Indicator Reporting Category.” (The same conclusion was made in the draft TER,  
7 even though it also concluded that the 8-hour ozone standard had not been attained. AR14696,  
8 14799.) This misleadingly suggests that no corrective actions are needed with respect to ozone. But  
9 “[t]he regional plan shall provide for attaining and maintaining Federal, State, or local air... quality  
10 standards, whichever are strictest, in the respective portions of the region for which the standards are  
11 applicable.” *See* Compact art. V(d). *See also* AR11777 n.1 (“In the case of [carbon monoxide],  
12 ozone, and particulate matter, the TRPA threshold standards would be identical to the most stringent  
13 applicable ambient air quality standards.”).

14           **Statement No. 204**

15           The 2011 Final TER found “The long-term trend shows a gradual reduction in highest 8-hour  
16 ozone concentrations between 1984 and 2011.” (AR96.)

17           **Response to Statement No. 204**

18           Plaintiffs do not dispute that the Final TER made this statement but dispute the claim. As  
19 explained in plaintiffs’ briefs, the TER also concluded that the spacing and distribution of ozone  
20 monitors is insufficient to reliably detect maximum concentrations of ozone. *See* Response to  
21 Statement No. 188. Thus, TRPA cannot reliably determine ozone trends.

22           **Statement No. 205**

23           The Final EIS reported the 8-hour ozone standard to be in attainment. (AR5238.) The data  
24 shows a continuation of the long-term trend of declining ozone concentrations, and attainment of  
25 California’s 8-hour standard. (AR5238.)

26           **Response to Statement No. 205**

27           Plaintiffs dispute the first sentence, because the Final EIS did not make this determination; in  
28 in fact, it maintained that the status of California’s 8-hour standard was “nonattainment-transitional.”

1 AR5356 (O16-131); *compare* AR11759 (draft EIS) *with* 5547-5550 (final EIS not revising this).  
2 Plaintiffs dispute the second sentence, as explained in Response to Statement No. 204.

3 **Statement No. 206**

4 Ozone concentrations in the Lake Tahoe Air Basin are declining. (AR96; *see also* 46151,  
5 [2009 Report noting that, while 2009 peak ozone concentrations in the Lake Tahoe Air Basin were at  
6 levels that approach or slightly exceed various ambient air quality standards applicable to the Basin,  
7 “with on-going reductions in NO<sub>x</sub> emissions from the motor vehicle control programs, the ozone  
8 concentrations in the Tahoe Basin are likely to decline in response to reduced transport into the air  
9 basin and reduced generation of ozone from local sources of precursors.”].) Ozone pollution is  
10 attributable largely to motor vehicle exhaust (ozone precursors). Vehicle emission standards have  
11 become increasingly stringent over time. As precursor emissions decline, ozone concentrations go  
12 down. This trend is expected to continue. (AR11772, 11788-89; *see also* AR11800-01 [modeling  
13 indicates 78% decline in NO<sub>x</sub> emissions].)

14 **Response to Statement No. 206**

15 Plaintiffs dispute the first sentence, as explained in Response to Statement No. 188. Plaintiffs  
16 do not dispute the second sentence but clarify that ozone pollution in the Tahoe Basin is largely  
17 attributable to both on-road and off-road motor vehicle exhaust, including motorized boats. *See*  
18 AR92, 147448, 43763. Plaintiffs do not dispute the third sentence. Plaintiffs dispute the last two  
19 sentences to the extent that they suggest that there is a direct linear relationship between ozone  
20 concentrations and vehicle emissions. But between 2005 and 2009 ozone concentrations *increased*,  
21 although “vehicle miles traveled” (and, correspondingly, on-road vehicle emissions) in the Basin  
22 *declined*. AR14828, 14797, 147800, 14828.

23 **Statement No. 207**

24 Ozone pollution is trending downward throughout much of California. (AR70380-449.) By  
25 encouraging redevelopment in smaller, denser Centers, the RPU will accelerate this trend by  
26 encouraging people to get out of their cars and walk, bike, or use transit. (AR11670-82 [RPU  
27 provides incentives to focus development in “more compact, walkable, mixed-use communities,  
28 supported by greater density and increased height, which would facilitate maintenance of the

1 existing ... [C]enters' character, improve access to services, and reduce automobile dependency”];  
2 AR26683-85 [RPU programs aimed at reducing ozone].)

3 **Response to Statement No. 207**

4 Plaintiffs dispute the first sentence insofar as it suggests that “[o]zone pollution is trending  
5 downward” in the Tahoe Basin. The citation does not support this claim, because it does not study  
6 the Tahoe Air Basin. *See also* AR155805 (Desert Research Institute scientist quoted in 2012 that  
7 Tahoe “one of the few areas in California where ozone is getting worse”). Plaintiffs dispute the  
8 second sentence, insofar as it relies on the assumption that ozone pollution is trending downward in  
9 the Tahoe Basin.

10 **Statement No. 208**

11 Ozone precursors are expected to decrease under the RPU. The Draft EIS concluded: “Based  
12 on the results of the emissions modeling presented in Table 3.4-16, emissions of ozone precursors  
13 and CO in the Basin would be expected to decrease substantially by 2035 under Alternative 3  
14 compared to existing conditions. This can be explained by the fact that (as described in “Toxic Air  
15 Contaminants” in Section 3.4.2, Regulatory Background) vehicle emissions standards would be  
16 improved substantially over the next 20 years (ARB 2012b), and limited development would be  
17 allocated beyond what was authorized in the 1987 Regional Plan under Alternative 3. Any additional  
18 population growth and associated increase in operational ozone precursor emissions in the Basin  
19 would be more than offset by more stringent vehicle emissions standards. As discussed under  
20 Alternative 2, the emissions model used in this analysis (EMFAC 2011) accounts for vehicle  
21 emissions control measures contained in State Implementation Plans submitted to EPA, smog check  
22 programs, truck and bus emissions rules, and fuel economy standards (ARB 2012b). These  
23 regulatory programs are already in place or approved and will result in foreseeable emissions  
24 reductions in mobile-source emissions in the plan area.” (AR11788-89, *see also* 5069 [Final EIS “a  
25 net reduction in emissions of ozone precursors would occur under [the RPU].”].)

26 **Response to Statement No. 208**

27 Plaintiffs dispute this statement insofar as it suggests that *ozone concentrations* are certain to  
28 decline. Ozone formation can be influenced by factors other than local sources of ozone precursor

1 emissions, such as weather, climate change, and transport of ozone precursors from outside the  
2 Basin, and the effectiveness of existing programs is still not well understood in the Basin.  
3 AR155795, 97 (TRPA “uncertain if existing programs are effective at improving [ozone] conditions  
4 due to high inter-annual variability of indicator values”).

5 **Statement No. 209**

6 As stated in the Final EIS, “[c]oncentrations of criteria air pollutants are measured at three  
7 monitoring stations in the LTAB: the South Lake Tahoe–Sandy Way station, the South Lake Tahoe–  
8 1901 Airport Road station, and the Incline Village–Crystal Bay station. In general, the measurements  
9 of ambient air quality from these monitoring stations are representative of the air quality in the  
10 vicinity of the study area.” (AR5238, 5247.) During years when data was available from monitoring  
11 stations located in both states, “little variation” was seen; the EIS explained that “[b]oth stations  
12 showed similar concentrations and number of exceedance days during 2008-2010.” (AR5352; *see*  
13 *also* AR3461, 90472, 102786-92, 147415.)

14 **Response to Statement No. 209**

15 Plaintiffs dispute the first sentence because it misleadingly suggests that the South Lake  
16 Tahoe Airport Road station is currently operating, and that the South Lake Tahoe—Sandy Way  
17 station is an ozone monitoring station. *See* AR11774 (noting monitoring data from South Lake  
18 Tahoe Airport site “not available after 2009” and Sandy Way station monitors particulate matter).  
19 Plaintiffs also dispute this sentence for reasons set forth in plaintiffs’ briefs and Response to  
20 Statement No. 188. Plaintiffs dispute the second sentence as explained in Response to Statement No.  
21 188 and plaintiffs’ briefs. Plaintiffs dispute the third sentence, because TRPA’s reasoning arbitrarily  
22 focuses on comparing peak levels between the two monitoring sites. However, studies analyzing the  
23 variation in ozone levels throughout the Region as recently as 2010 have compared the average two-  
24 week concentrations, not peak values. This includes two studies cited above by TRPA. *See*  
25 AR90472, 102608. One of the studies shows that average ozone levels vary throughout the Region,  
26 both in location and time, including between the South and North shores (South Lake Tahoe City  
27 and Incline Village). *See* AR90473-76, 148539 (maps showing varying 2-week average  
28

1 concentrations over time). Another study cited by TRPA is based on ozone values from 2003  
2 (roughly a decade ago). *See* AR102786-92.

3 **Statement No. 210**

4 The TER peer review panel did not conclude that existing data was insufficient to draw  
5 conclusions on ozone attainment. (AR8857 [noting “high quality” of report].)

6 **Response to Statement No. 210**

7 Plaintiffs do not dispute that the TER peer review panel did not conclude that existing data  
8 was insufficient to support the draft TER’s conclusion that the Region is *not in attainment*  
9 (“somewhat worse than target”) with California’s 8-hour ozone standard. *See* AR8904. Plaintiffs  
10 dispute this statement, insofar as it suggests that the peer review panel concluded that existing data  
11 was sufficient to support the final TER’s conclusion that the standard was attained. The panel did not  
12 review this conclusion. *See* Response to Statement No. 195.

13 **Statement No. 211**

14 The TER peer panel recommended adopting more aggressive policies to reduce dependency  
15 on automobiles, stating a “more aggressive posture is appropriate for addressing ozone attainment  
16 moving forward.” (AR8903.)

17 **Response to Statement No. 211**

18 Plaintiffs do not dispute this statement.

19 **Statement No. 212**

20 TRPA based the attainment finding on “the best available information,” while  
21 acknowledging the “specialized equipment” and high operating costs of such monitoring.  
22 (AR155884; *see also* AR92968, 92970.)

23 **Response to Statement No. 212**

24 Plaintiffs dispute this statement to the extent that it suggests that the ozone “attainment”  
25 determination was properly supported by the limited data available, as explained in plaintiffs’ briefs.  
26 *See also* Dkt. 26, Ex. C (noting CARB’s designation of the Tahoe Basin as “nonattainment-  
27 transitional”).

1           **Statement No. 213**

2           The record shows ongoing efforts by TRPA and other agencies to expand the monitoring  
3 network. (AR155884 [monitoring stations installed at Stateline, Nevada and Bliss State Park by  
4 2012], 99 [new monitoring station established at Tahoe City, California in summer 2011].) The  
5 record includes data from these new stations. The data, while preliminary, shows no ozone  
6 exceedances. (AR147415; *see also* AR2190 [PCAPCD letter noting data].)

7           **Response to Statement No. 213**

8           Plaintiffs dispute the first sentence insofar as it suggests that TRPA has any specific, concrete  
9 plans to establish a permanent ozone monitoring network with stable funding that adequately  
10 addresses the deficiencies identified in the 2006 and 2011 TERs. *See* AR82, 92968, 92970. Plaintiffs  
11 also dispute this sentence to the extent it suggests that the Bliss State Park site will monitor  
12 maximum ozone concentrations in the Tahoe Basin. The site is located in a remote, unpopulated  
13 area, and thus appears to be for measuring background or baseline levels. *See* AR2561, 128337,  
14 92011, 92026, 92162. Plaintiffs dispute the second and third sentences insofar as they suggest that  
15 the data from the “new stations” is adequate. The referenced document notes that the Tahoe City  
16 data does not come from an official, quality-controlled monitoring station and that data from the  
17 Stateline site contains “many errors.” AR147416. The referenced documents also do not contain  
18 ozone data from the Bliss State Park site. The record does not contain any ozone data from that site,  
19 despite plaintiffs’ request for the monitoring data. *See* AR4451.

20           **Statement No. 214**

21           In a December 12, 2012 report to the Board, staff summarized the expansion of the  
22 monitoring network: “TRPA and partner agencies are currently monitoring air quality at six different  
23 sites in the region. TRPA’s Air Quality Threshold Standards are generally in attainment and the  
24 existing array of monitoring sites represents significantly more monitoring sites per capita than  
25 surrounding areas. TRPA commissioned an independent review of the region’s air quality  
26 monitoring network. The review recommended a total of five monitoring sites, with some  
27 consolidation and reconfiguring of monitoring equipment to more completely and efficiently  
28 monitor all relevant parameters. The Governing Board was informed of this recommendation at the

1 November Governing Board meeting, and will consider it in future priority setting and resource  
2 allocation decisions.” (AR128337.)

3 **Response to Statement No. 214**

4 Plaintiffs do not dispute that the quoted statement was presented in a December 12, 2012  
5 report to the Board but dispute this statement insofar as it suggests that TRPA has an adequate  
6 monitoring plan, as noted in Response to Statement No. 213. The statement does not indicate what  
7 pollutant each of the monitors is currently monitoring, whether monitors are permanent, whether  
8 their spacing and distribution is adequate to detect maximum ozone concentrations in the Region,  
9 whether adequate and stable funding is available, and whether monitoring will operate continuously  
10 or seasonally. The statement does not reveal any specifics about the recommendations in the  
11 “independent review of the region’s air quality monitoring network” and whether TRPA intends to  
12 follow those recommendations but defers consideration of this until a future time. The referenced  
13 report is not public, nor part of the record.

14 **Statement No. 215**

15 The Echo Summit station recorded 8-hour ozone levels higher than those at the South Lake  
16 Tahoe Airport and Incline Village stations. (AR147415.) This station is not in the LTAB. (*Id.*) Echo  
17 Summit ozone monitoring data shows that readings at this station in 2000 were virtually identical to  
18 those recorded in 2012 (with higher levels in between). (AR147415.)

19 **Response to Statement No. 215**

20 Plaintiffs do not dispute this statement.

21 **Statement No. 216**

22 The Board found that the Regional Plan, as amended by the RPU, will achieve and maintain  
23 thresholds, including the thresholds for ozone. (AR26664-704.) The Board did not base its ozone  
24 threshold findings solely on the premise that the LTAB had attained the ozone threshold. The Board  
25 found that, based on increasingly stringent tail-pipe emission standards and other air pollution  
26 control measures, air quality in the LTAB had improved, and would continue to improve.  
27 (AR26683.) The Board further found that the existing Regional Plan and Code, the EIP, and other  
28



1 TRPA programs would attain and maintain the threshold. (AR26684.) The cited programs and  
2 policies included:

- 3 • Land Use policies providing incentives to promote mixed-use Centers as a means of  
4 reducing VMT and associated emissions.
- 5 • Provisions exempting non-motorized trail land coverage and requiring the dedication of  
6 easements for non-motorized trails.
- 7 • Policies providing incentives for removing non-compliant emission sources, and  
8 replacing them with sources that meet current standards.
- 9 • Policies requiring the development and implementation of best practices for  
10 construction-related emissions.
- 11 • Policies requiring the development of standards to reduce construction and operational  
12 GHG emissions, which will, in turn, also increase building efficiency and reduce other  
13 air pollutant emissions.
- 14 • Phased release of allocations tied to traffic monitoring to ensure that VMT will not  
15 exceed the threshold standard. (*See* AR26638.) Policies concerning the allocation of air  
16 quality mitigation fees.
- 17 • Policies requiring Area Plans to enhance pedestrian, bicycling, and transit opportunities.
- 18 • Water quality and transportation policies targeting NO<sub>x</sub> emissions.

17 (AR26684-85.) The Board found these policies and programs advanced the objective of “reduc[ing]  
18 dependency on the automobile by making more effective use of existing transportation modes and of  
19 public transit,” as directed by the Compact. (*Id.*)

20 **Response to Statement No. 216**

21 Plaintiffs do not dispute that the Board made these findings but dispute this statement insofar  
22 as it attempts to characterize legal conclusions as statements of facts.

23  
24 DATED: January 10, 2014

Respectfully submitted,

25  
26 /s/ Wendy S. Park  
TRENT W. ORR  
WENDY S. PARK

27  
28 *Counsel for Plaintiffs*