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California Department of Parks and Recreation
Cyndie Walck, CEQA Coordinator
P.O. Box 266
Tahoma, CA 96142
sent via certified U.S. mail

Re: Opposition to River-Golf Course PAAEA, SCH# 2006082150

Dear Ms. Walck,

Please accept these comments on behalf of our client, Washoe Meadows Community ("WMC"). As you know, WMC has been actively involved in this project for many years, and brings first-hand experience to the policy, technical, and legal issues at hand. At the same time, WMC must express its great disappointment that Parks continues to press the interests of the grandfathered and nonconforming golf course above that of Washoe Meadows State Park. Moreover, in Parks' steadfast commitment to this misguided goal, Parks has unfortunately and badly misapplied the process and protections that the California Environmental Quality Act should afford to agency decisionmakers and the public. As discussed at length, below, the resulting outcome is that Parks' present EIR/EIS/EIS/PAAEA does not fulfill CEQA's procedural or substantive mandates, and must be significantly revised and recirculated as a draft EIR, before the Parks Commission may move forward with any consideration of the proposed project.

I. The Document Circulated by Parks Fails to Comply with CEQA's Mandatory Procedures, and is So Disjointed and Biased as to Thwart Meaningful Public Participation.

A. Parks Failed to Circulate a Draft EIR.

CEQA provides that "[a] draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency." (Pub. Resources Code § 21082.1, subd. (a).) Parks has failed to circulate any of these recognized and

required CEQA documents.[1] In particular, no draft EIR has been circulated for the proposed project. The CEQA Guidelines require that "[t]he lead agency shall provide public notice of the availability of a draft EIR at the same time as it sends a notice of completion to the Office of Planning and Research." Here, Parks has published a Notice of Availability and a Notice of Completion, neither of which ever states that Parks is circulating a draft EIR for review and comment. Parks' Notice of Availability states that: "public review period for the draft PAAEA and EIR/EIS/EIS begins on June 13, 2018, and ends on July 30, 2018. The document consists of six volumes: five volumes of the EIR/EIS/EIS and the draft PAAEA as Volume 6. Comments may be provided on the entire document; however, providing new comments on the draft PAAEA would be most important, because the PAAEA contains the refined proposed project description and all updated environmental information, the aspects of the EIR/EIS/EIS deemed insufficient by the court. All comments previously received on the EIR/EIS/EIS remain part of the administrative record and do not need to be submitted again. Responses to previous comments are also contained in the EIR/EIS/EIS." Here, the NOA only describes the PAAEA as a draft, while simultaneously circulating an EIR/EIS/EIS. The NOA then expressly discourages review and comment on the EIR/EIS/EIS, stating that all prior comments on the EIR/EIS/EIS are already part of the record. In fact, the EIR/EIS/EIS itself contains a Final EIR. Thus, neither by its description or purpose in the NOA, nor on its face, does the EIR/EIS/EIS/PAAEA constitute a draft EIR.

Similarly, and consistent with this approach, Parks' Notice of Completion also does not indicate that any draft EIR is being circulated for review. The Notice of Completion leaves blank the box that would indicate a "Draft EIR" is being circulated for review, and instead states only that the "PAAEA-Preferred Alt 2B" has been completed. Thus, Parks did not complete a draft EIR for the proposed project. The Notice of Completion further and inaccurately states that "[t]he PAAEA document has been prepared in response to a California appellate court decision regarding the previous analysis for the Upper Truckee River Restoration and Golf Course Reconfiguration Project." This is misleading since the Court of Appeal did not instruct Parks to circulate a PAAEA. On the contrary, and as discussed further below, the Court of Appeal expressly ordered the prior EIR/EIS/EIS to be invalidated in its entirety: not for Parks to recirculate the exact same document.

[1] CEQA recognizes no document entitled "PAAEA." Several different types of EIRs can be prepared in different situations. Most are "project EIRs" covering a particular project. A "master EIR" may be prepared for a planning action or multiphased project. A "program EIR" or "staged EIR" may be prepared in some similar situations. A "focused EIR" may be prepared for an approval following a master EIR (and in certain other situations), and a "subsequent" or "supplemental EIR" may be prepared for later approvals when some change in circumstance or new information requires it. Parks, however, has failed to avail itself of any of these options. And, indeed, none fit the present situation, where a new draft EIR must be prepared.

Instead, Parks now attempts to solely comply with CEQA by and through issuance of its PAAEA. The documents being circulated make clear that Parks neither updated its prior EIR to analyze the newly-proposed project, nor that Parks intends to. For example, the PAAEA states that "The final EIR/EIS/EIS included responses to comments on the draft EIR/EIS/EIS received from agencies, organizations, and members of the public. That document presented corrections, revisions, and other clarifications of and amplifications to the draft EIR/EIS/EIS, including project modifications made in response to these comments and as a result of State Parks' ongoing planning efforts. State Parks will focus its response to comments on this draft PAAEA specifically on information presented herein, including Preferred Alternative 2B (i.e., the proposed project) and on impacts and mitigation measures for biological resources (fen and vegetation) and cultural resources." (PAAEA 1-6.) "The proposed project, Alternative 2B, has been preliminarily planned to comply with the Superior Court's judgment." (PAAEA 2-1, fn. 1.) As discussed further, below, this fundamentally misapprehends the letter and spirit of the Court of Appeal and Superior Courts that ruled on the prior EIR/EIS/EIS, and expressly required that any new or modified project proposal must be based on a new EIR. In short, Parks can cite no authority under CEQA allowing a project to proceed based upon a cobbling together of a previously invalidated draft EIR, previously invalidated final EIR, and a new and very narrowly focused PAAEA. (See *Russian Hill Improvement Ass'n v. Board of Permit Appeals* (1974) 44 Cal.App.3d 158 [compilation of documents does not equate an EIR].)

Indeed, Parks' departure from CEQA's normal and mandatory procedures appears to be expressly intended to limit the broad public participation that would normally accompany a draft EIR. The Notice of Availability for the proposed project states, "[Parks] is pleased to announce an extended public review period for the Preferred Alternative 2B and Additional Environmental Analysis (PAAEA) and previously completed environmental impact report/environmental impact statement/environmental impact statement (EIR/EIS/EIS) for the Upper Truckee River Restoration and Golf Course Reconfiguration Project." The plain language of this NOA indicates that Parks is seeking public review of the PAAEA, while separately describing the EIR/S as "previously completed." To this end, Parks discourages any review and comment of the EIR/S, stating that "[a]ll comments previously received on the EIR/EIS/EIS remain part of the administrative record and do not need to be submitted again." This is, in fact, not entirely accurate, since prior comments received upon the FEIR were not responded to in writing, and were not made a part of the record presently circulated. Nevertheless, Parks' attempt to limit comments to the PAAEA is contrary to law, and clearly indicates that Parks did not intend to, and did not in fact, circulate a draft EIR for the proposed project.

B. The Documents Presented are Disorganized, Confusing, and Thwart Public Participation.

The nature of Parks' procedural violation, above, thwarts CEQA's purpose of meaningful public participation to improve informed environmental decision-making. CEQA requires that EIRs should be organized and written in a manner that will make them "meaningful and useful to

decision-makers and to the public." (Pub Res Code § 21003(b).) The information in an EIR must be presented in a manner that is designed to adequately inform the public and decision-makers. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.) An EIR should be written in a way that readers are not forced "to sift through" to find important components of the analysis. (*San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 659; see also *California Oak Found. v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239.) Accordingly, an EIR is usually prepared as a stand-alone document. CEQA provides that EIRs should be prepared in a "standard format" when feasible. (Pub. Resources Code § 21100(a).) It is inappropriate, however, to use a group of documents collected together to serve the function of an EIR, as Parks appears to be attempting here. (See *Russian Hill Improvement Ass'n v. Board of Permit Appeals* (1974) 44 Cal.App.3d 158.) Parks' EIR/EIS/EIS/PAAEA clearly fails all of these tests. Presumably, Parks intended a reader to discern its environmental impact analysis by reading the PAAEA, then determining which parts of the prior draft EIR remain applicable, and then revising those as described in the final EIR with responses to comments, and strikethrough and underline revisions. This is a virtually impossible exercise for a reader to undertake, not only due to the time-consuming and unwieldly nature of the process, but also to somehow divine Parks' intent as a reader might try to piece together these disparate documents. (*See*, *e.g.*, PAAEA at 1-5, "The final layout of both will be refined during final design. Any modifications to the final design would be within the scope of work covered by the analysis in the EIR/EIS/EIS.")

As discussed, above, an objective reader of the NOA may easily conclude that only the PAAEA should be reviewed and assessed, thus forgoing any draft EIR for the proposed project. On the other hand, were a curious reader to take the initiative to move beyond Parks' attempt to limit review to the PAAEA, the reader would then find an extremely outdated EIR and Final EIR, including responses to DEIR comments, but not FEIR comments. Did Parks' really intend that readers manually incorporate the prior final EIR responses to comments <u>as part of a draft EIR</u>? Must a reader somehow piece together new information in the PAAEA, together with the information in the 2010 draft EIR, as revised by the strikethrough and underline and responses to comments in the 2011 final EIR? It is for these reasons that an EIR may not be comprised of a group of independent documents sewn together (*Russian Hill*, *supra*, 44 Cal.App.3d 158) and that a reader must not be forced to "to sift through" disparate documents to piece together a project's environmental analysis. (*San Joaquin Raptor*, 149 Cal.App.4th at 659; *California Oak Found.*, 133 Cal.App.4th at 1239; *Vineyard Area Citizens*, 40 Cal.4th at 442.)

A reader opening the 2010 and 2011 EIR documents for review would immediately be presented with outdated, inaccurate, and conflicting information, that would stultify public participation. For example, early on, the 2010 draft EIR/EIS states:

> "Reclamation is a lead agency for the project, pursuant to NEPA. The project has received Federal funding through Reclamation for the planning phase and may receive funding for implementation. As part of its environmental review process, a Notice of

> Intent (NOI) was published in the Federal Register on September 5, 2006, informing federal agencies and the public that the project could have a significant effect on the environment, and soliciting their comments. A copy of the NOI is included in Appendix A of this draft EIR/EIS/EIS. Pursuant to Reclamation procedures, this draft EIR/EIS/EIS is being circulated for public comment for at least 60 days. After the 60-day comment period, a final EIR/EIS/EIS will be prepared as described above under Section ES.2.1."
> [¶] . . . [¶]
> "Pursuant to TRPA Code Section 5.8.A(4), this draft EIR/EIS/EIS is being circulated for public comment for at least 60 days. After the 60-day comment period, a final EIR/EIS/EIS will be prepared as described above under Section ES.2.1."

(ES-2.) This is all simply untrue and severely misleading. The EIR/EIS/EIS/PAAEA circulated for review was not noticed or authorized in any way by the Bureau of Reclamation, and the present review period is not 60-days.

Next, a reviewer of the EIR/EIS/EIS is told:

> "Five alternatives are being considered and are analyzed at a comparable level of detail in the environmental document. A preferred or proposed alternative has not yet been defined. Following receipt and evaluation of public comments on the draft EIR/EIS/EIS, the lead agencies will determine which alternative or combinations of features from multiple alternatives will become the preferred alternative. A discussion of the decision will be included in the final EIR/EIS/EIS."

(ES-3.) This precise language was the basis of the Superior Court and the Court of Appeal invalidating Parks' prior CEQA process and documents, yet the language remains in Parks' currently circulated documents fully intact. (*Cf.* PAAEA at 1-5, "The final layout of both will be refined during final design. Any modifications to the final design would be within the scope of work covered by the analysis in the EIR/EIS/EIS.") Thus, the PAAEA continues to take the approach that the final project will be somewhere in the range of alternatives analyzed in the EIR/EIS/EIS.

Indeed, so disorganized is Parks' attempt to cobble together several variations of Parks' CEQA documents over the last decade that a reader is not even provided a comprehensive index or table of contents to a single EIR, as the law requires. (Pub. Resources Code, § 21061; CEQA Guidelines § 15122 ["An EIR shall contain at least a table of contents or an index to assist readers in finding the analysis of different subjects and issues"].) For all of these reasons, the EIR/EIS/EIS/PAAEA circulating for review is so disorganized, confusing, and internally inconsistent, as to stifle meaningful public participation.

C. Parks' Continued Reliance on the Invalidated EIR Constitutes Abuse of Discretion.

The NOA and PAAEA misleadingly and inaccurately state that the PAAEA is provided to bring Parks into compliance with the law following decisions of the Superior Court and Court of Appeal to invalidate the prior EIR and project approvals. Parks has clearly not met this burden.

The Superior Court's Order granting Petitioner's Writ of Mandate plainly states that "[i]f Parks were to re-start the EIR process, then new information may be available that was not available in the previous administrative process. Parks might reach a different decision given new information and the benefit of informed public participation. Parks must, therefore vacate the resolution dated January 23, 2012, approving the FEIR. . . . After vacating the resolution dated January 23, 2012, Parks may re-start the CEQA process, ..." While the Order does state the general rule that the Court will not bind Parks' discretion in any particular manner, Parks has no discretion not to comply with CEQA's mandatory procedures, and the Order is clear that all prior approvals must be set aside before Parks may re-start the CEQA process.

First, Parks has not vacated the January 23, 2012 resolution approving the prior-project and Final EIR. Because the Project remains approved, it defies CEQA's purpose to circulate any environmental document for public review and comment. "[P]ublic participation is an essential part of the CEQA process." (Guidelines § 15201.) Therefore, CEQA review is required *before* an agency issues project approvals. The "chronology of the environmental review process under CEQA" requires agencies to "certify the completion of an EIR on any project they propose to carry out or approve.'" (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 401, quoting Pub. Resources Code, § 21100.) "As a matter of logic, the EIR must be prepared before the decision to approve the project." (*Ibid* [emphasis added].) Parks now puts the cart before the horse and solicits public and agency comment on a project that remains already approved. Where an environmental review document has been prepared after a project has been and remains approved, it clearly biases and undermines the independent judgment required by law, and instead simply seeks to bring an existing project into compliance with CEQA.

Second, and relatedly, Parks also continues to rely on the expressly invalidated prior EIR/EIS/EIS. For example, the PAAEA states that "[a] proposed project has been identified in this draft PAAEA based on the impact analysis presented in the EIR/EIS/EIS and public and agency comments received during the comment period." (PAAEA at 1-5, emphasis added.) Similarly, the present NOA circulates for review the "(PAAEA) and previously completed environmental impact report/environmental impact statement/environmental impact statement (EIR/EIS/EIS) for the Upper Truckee River Restoration and Golf Course Reconfiguration Project." Parks' description of the "previously completed" EIR/S strongly implies that it is, in fact, complete; when in reality, this document was deemed noncompliant with CEQA in its entirety. Nevertheless, the present NOA circulates a document that is on its face entitled "Final

Environmental Impact Report," and urges readers not to comment on it at all, stating that the comments and responses to comments on the prior EIR are already "part of the administrative record" that "do not need to be submitted again." The NOA additionally states that "providing new comments on the draft PAAEA would be most important, because the PAAEA contains the refined proposed project description and all updated environmental information, the aspects of the EIR/EIS/EIS deemed insufficient by the court." These instructions gravely misapprehend the ruling and rationale of the Court, which expressly deemed the entire prior EIR and its public participation process completely invalid by virtue of its failure to identify a stable and finite proposed project. For Parks to now recirculate that same EIR and discourage public review and comment on it thwarts meaningful public participation on the project. Parks' reliance on an invalidated EIR/EIS/EIS is an abuse of discretion.

Parks presented to the Court a proposed remedy that would have provided for a new environmental review process along the lines of what Parks now undertakes, to recirculate only those portions of the EIR previously deemed invalid, instead of vacating the invalidated EIR in its entirety and starting any new CEQA process anew. (*Cf.* Pub. Resources Code, § 21168.9 ["the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division."]) Consistent with this approach, and before the Court ruled on the scope of the final writ, Parks circulated its PAAEA for public review. However, the Court then expressly rejected Parks' proposal to cure its defective CEQA process by severing only those portions the court found deficient, instead ruling that "[i]t is immaterial that if there has been a stable project and if there had been adequate disclosure and if there had been informed decisionmaking and informed public participation, then some of Pars' challenged determinations, findings, and decisions would have been lawful." (Order on Writ at 3.) Parks has ignored this instruction, opting to keep the January 23, 2012 Commission resolution approving the project in place, and attempting to reapprove the project based only on a limited PAAEA, instead of re-starting the CEQA process. Parks' attempt to comply with the Court's dictates by simply slapping the invalid EIR onto the PAAEA is procedurally and substantively fatally flawed.

In short, Parks may not approve the proposed project by expressly and extensively relying upon the invalidated EIR. As discussed throughout this comment in various contexts, Parks must circulate a current and valid draft EIR at this stage of the CEQA process.

D. Parks' Presentation and Consideration of Proposed Alternative 2B Appears Biased, Predetermined, and Lacks Independent Judgment.

The text and context of the documents being circulated seriously call into question Parks' independent judgment, and strongly evince a predetermination of proposed Alternative 2B before

conducting adequate environmental review, considering input from the affected public and governmental agencies, and making an environmentally informed decision. As noted, at its most basic level, the proposed project largely already remains approved by virtue of the fact that Parks' has failed to set aside the Commission's 2012 approval. Next, Parks has simply recirculated the EIR/EIS/EIS that was prepared for to the 2012 approval. Thus, any objective review of the present procedures would conclude that Parks is continuing to move forward with the project and environmental review already invalidated by the court. (*See*, *e.g.*, PAAEA at 1-5, "The final layout . . . would be within the scope of work covered by the analysis in the EIR/EIS/EIS.")

Second, the text of the PAAEA repeatedly skews its environmental review towards approval of Alternative 2B. For example, as discussed below, the PAAEA discusses its impacts not in terms of the existing environmental conditions, but rather, as compared to other proposed projects that Parks is not pursuing. The document then repeatedly refers to the "reconfigured, *reduced footprint* 18-hole regulation golf course" proposed as a component of alternative 2B (PAAEA 1-4, 2-1 [emphasis added].) This is misleading. The footprint of the golf course proposed under 2B will actually be *larger* than the existing course by 3 acres (137 vs 134 acres). It is "reduced" only with respect to prior proposals that would have increased the golf course acreage more. While this clarification is made elsewhere in the PAAEA, the term "reduced footprint" is repeatedly used in the PAAEA, and certain to mislead some readers into thinking that the golf course proposed under the preferred alternative 2B is reduced from the existing golf course, not "reduced" from a golf course that never existed. Similarly, the EIR/EIS/EIS presents a shifting proposed objective regarding economic viability of the project, in order to justify exclusion of other alternatives; but neither the EIR/EIS/EIS nor the PAAEA actually presents current or complete economic analysis to support this determination.

The lead agency must independently review and analyze the draft EIR, however, before releasing it to the public. (Pub Res C §21082.1(c)(1).) The draft EIR must reflect the lead agency's independent judgment, and the lead agency is responsible for its adequacy and objectivity. (14 Cal Code Regs § 15084(e); *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446.) Perhaps the fact that Parks did not release a draft EIR at all is indicative of it not releasing an independent review of its proposed project. Instead of providing a full environmental review of the proposed project, Parks instead is attempting to approve a project based on an extremely narrow PAAEA.

Equally if not more troubling have been public remarks made by Parks' staff. Parks staff is not only freely disclosing information regarding the confidential mediation sessions conducted between Parks and WMC during the course of its litigation, but, worse still, is egregiously misrepresenting what that mediation entailed. WMC continues to respect the agreed-upon confidentiality of its mediation with Parks, and therefore has not publicly corrected the otherwise demonstrably false misrepresentations Parks now makes regarding the information exchanged during the mediation. In addition, Parks' recent, disparaging, and inaccurate remarks from staff

to members of the public seriously call into question whether Parks can fairly consider the well-established environmental and public participation rights WMC has under state law. The California courts have consistently held that "[t]he right to a fair procedure includes the right to impartial adjudicators" (*Rosenblit v. Superior Court*, (1991) 231 Cal.App.3d 1434, 1448), and that a "writ of administrative mandate ensures right to 'impartial tribunal'" (*Delta Dental Plan v. Banasky* (1994) 27 Cal. App. 4th 1598, 1607-1609; *see also*, *Clark v. City of Hermosa Beach* (1996), 48 Cal. App. 4th 1152, 1170, 1173.) The PAAEA, for example, describes a meeting between Parks, employees of the U.S. Forest Service, and the Washoe Tribe, where Parks disparaged and discounted the legitimate concerns of WMC as mere NIMBYism and private property owners seeking to maximize their own private interests. This trope has been advanced by Parks for years, including in such representations to the Superior Court and Court of Appeal (see First Dist. Court of Appeal, Case No. A145576: Parks' Opening Brief at 8, Parks' Reply Brief at 7, and Oral Argument; Alameda County Superior Court, Case No. RG12619137: Parks' Opposition Brief at 2, and Oral Argument), despite the fact that the courts have consistently ruled in favor of WMC's legitimate environmental and public participation concerns. Given the repetitious and inaccurate characterizations Parks has maintained and continues to maintain regarding WMC, Parks appears to be fundamentally unwilling and unable to fairly consider issues legitimate raised by WMC. (*Cf.* Guidelines § 15201 ["public participation is an essential part of the CEQA process"].) Similarly, Parks has discounted WMC's participation to such a degree that Parks appears to have predetermined to approve the proposed project, before CEQA's public participation requirements have been fulfilled. (See, *Save Tara v. City of West Hollywood*, (2008) 45 Cal.4th 116, 132; Code Regs., tit. 14, § 15352, subd. (a) [prohibiting project approval prior to completion of final EIR].)

In this context, the text of the PAAEA and its accompanying NOA and NOC clearly advance Parks' unwavering goal to approve a project substantially consistent with proposed alternative 2B, while failing to conduct meaningful environmental review of the proposed project, and unfairly discounting and shunting active public environmental advocates. The proposed project has not only already been approved, prior to full environmental review, but the environmental review process is clearly skewed in favor of approving proposed alternative 2B.

II. The Proposed Project's Project Objectives Are Ill-defined, and Contrary to Parks' Statutory Mandates.

Because Parks has failed to circulate a DEIR for the proposed project, basic fundamental information like a discrete list of project objectives is missing from the PAAEA. Nonetheless, with no discussion or evidence whatsoever, the PAAEA asserts that "[o]f the alternatives evaluated, Preferred Alternative 2B would be best at meeting the project's basic objectives, minimizing environmental effects, and lessening the concerns of the general public." (PAAEA 2-1.) Because Parks has failed to provide any information or analysis supporting this bare conclusion, it is equally unclear whether any alternative could better meet the project objectives with less environmental harm. Similarly, WMC commented previously that the DEIR economic

report (Appendix E) employed the wrong project objective and therefore did not support the EIR's conclusions regarding which alternatives could meet any economic project objectives. (EIR Volume 4, page 4-275, response AOB31-35.)[2] The FEIR shifted this objective again, stating that the project must, "generates revenue at a level similar to current levels."

Project objectives should not be so narrowly defined that they preclude consideration of reasonable alternatives for achieving the project's underlying purpose. *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 668; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1299.) The CEQA Guidelines assume that the alternatives described in an EIR will not necessarily attain all of the project's objectives. *Watsonville Pilots Ass'n v City of Watsonville* (2010) 183 CA4th 1059, 1087. There is no requirement that the alternatives included in an EIR satisfy every basic objective of the project. *California Native Plant Soc'y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 991. Contravening these requirements, Parks' collected environmental documents reject all alternatives that cannot meet its vaguely defined and unsupported goal of revenue generation for the golf course. Where numerous alternatives can achieve the proposed project's primary goals of creek and water quality restoration, it contradicts CEQA's purpose of environmental protection to reject all such alternatives for the continued maintenance and growth of a golf course.

Again, however, the evidence does not support that Alternative 2B would meet Parks' revenue goals for the golf course. Based on the data provided in the EIR, the golf course relocation is estimated to cost $7M - $8M dollars. This money is expected to come from the golf course concessionaire, who would then be paid back in reduced revenue over "several" years. Assuming a mid-point of $7.5M, 6% interest and a 20-year loan period, that would be nearly $644.8K dollars per year of State Park revenue reduction, assuming no golf fee surcharge, which is more than the entire revenue of $ 581.59K paid to State Parks in 2017. Therefore, Alternative 2B will result in providing absolutely no revenue for 20 years to State Parks. How does no revenue meet the revenue goal of maintaining "adequate revenue generation"? During this same period of time the golf course concessionaire is expected to receive over $ 37 M in revenue. Failure to include the cost of paying back the golf course concessionaire in the economic analysis is a major flaw in the EIR leading to a false conclusion. It appears that State Parks plan was to make sure that the concessionaire maintained its revenue stream over those 20 years, instead of exercising its fiduciary responsibly to the citizens of this state.

The PAAEA's fixation on the apparent project objective (but no project objectives are stated) to create a "championship" golf course is equally troubling and conflicts with CEQA, state law, and regional policy. The term "championship course" has no definition which has been

[2] Indeed, the old economic analysis stated: "This study does not attempt to quantify potential other sources of revenue that may be generated if the clubhouse is no longer operated by a concessionaire." (EIR Volume 3, Appendix E, page 53).

published or agreed upon by the golf industry. It is really a marketing term.[3] The goal of river restoration should not require a related public subsidy to maintain a championship golf course. This apparent and ill-defined project objective is unduly narrow and unnecessarily restricts the viable alternatives that could meet the proposed project's water quality improvement objections.

Indeed, under state law, it appears that maintenance and expansion of a golf course is inconsistent with Parks' requirements to maintain a state recreation area. Parks concedes that a golf course is a nonpermitted, and grandfathered, use for the LVSRA. The Public Resources Code provides that:

> *(a) State recreation areas, consisting of areas selected and developed to provide multiple recreational opportunities to meet other than purely local needs. The areas shall be selected for their having terrain capable of withstanding extensive human impact and for their proximity to large population centers, major routes of travel, or proven recreational resources such as manmade or natural bodies of water. Areas containing ecological, geological, scenic, or cultural resources of significant value shall be preserved within state wildernesses, state reserves, state parks, or natural or cultural preserves, or, for those areas situated seaward of the mean high tide line, shall be designated state marine reserves, state marine parks, state marine conservation areas, or state marine cultural preservation areas.*
>
> *Improvements may be undertaken to provide for recreational activities, including, but not limited to, camping, picnicking, swimming, hiking, bicycling, horseback riding, boating, waterskiing, diving, winter sports, fishing, and hunting.*
>
> *Improvements to provide for urban or indoor formalized recreational activities **shall not** be undertaken within state recreation areas.*

(§ 5019.59 [emphasis added].) Similarly, TRPA's Recreation Element of the Goals and Policies of the Lake Tahoe Regional Plan clearly states:

> *Urban recreation includes such facilities as day use areas, recreation centers, and golf courses, participant sports facilities and sport assembly.*

We recognize that Parks inherited a golf course as an existing facility, but these regulations clearly preclude development of any new golf holes in the area.

In sum, the project objectives of the PAAEA are not clearly stated. To the extent they include revenue generation associated with maintaining golf recreation, these objectives are unduly narrow, not supported by substantial evidence for Alternative 2B, and conflict with state and regional requirements.

[3] https://www.thoughtco.com/what-is-championship-course-in-golf-1564102

III. The Environmental Documents Fail to Consider a Reasonable Range of Potentially Feasible Alternatives to the Proposed Project.

Flowing from Parks' failure to revise, and to continue to rely upon, its prior EIR expressly deemed invalid by the Court, Parks has failed to describe and evaluate a reasonable range of potentially feasible alternatives to the proposed project. The purpose of identifying and evaluating "a reasonable range of potentially feasible alternatives" is to "foster informed decisionmaking and public participation." (Pub Res. Code § 21002; 14 CCR § 15126.6(a) and (f).) "What CEQA requires is "enough of a variation to allow informed decision-making." ... [The court] judge[s] the range of project alternatives in the EIR against "a rule of reason."" (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 988.)

In a prior legal challenge to the project, petitioner raised the concern that Parks had submitted evidence and statements before the release of the draft EIR that the proposed alternatives 3, 4, and 5, would be economically infeasible. The Superior Court acknowledged that evidence, but nevertheless held that Parks' draft EIR could still evaluate those alternatives and arrive at a final and ultimate conclusion as to whether any would be feasible, stating: "Parks ultimately found that Alternatives 3, 4, and 5 were infeasible, but an agency's decision to reject each of the plausible alternatives and to adopt the project as proposed or modified by itself does not demonstrate that the agency erred in it selection of alternatives." The present circumstances, however, have fundamentally changed. While the court previously afforded Parks the full extent of the CEQA process to determine whether the proposed alternatives would or would not be feasible; now, Parks has unequivocally determined that alternatives 3,4, and 5 would be infeasible (though lacking current substantial evidence to support this conclusion). Now, after having *formally rejected* Alternatives 3, 4, and 5 as infeasible, it would in no way serve CEQA's purpose of informed environmental decision-making to continue to propose only infeasible alternatives to the proposed project.

Instead of continuing to rely on an already-rejected range of alternatives, Parks is required to re-start the EIR process and consider a reasonable range of alternatives anew. As the Superior Court stated: "The court notes, however, that this conclusion presumes that Parks was permitted to present a range of alternatives in the DEIR and propose a stable proposed project only in the FEIR. Because the DEIR did not identify a stable proposed project, the alternatives reflected broad policy choices. If the DEIR had identified a stable preferred proposal, then a reasonable range of alternatives arguably would have been both more narrowly focused as alternatives to the preferred proposal and addressed variations on the proposed project." Parks has simply ignored the Court's ruling and failed to revise its range of alternatives at all.

Parks could and should take this opportunity to redesign prior Alternatives 3 and 5 to include additional revenue producing options, such as increase events at the club house, or other recreational uses. In addition, an option for a truly reduced size golf course such as an 18 hold

executive course with an expanded use of the SRA could meet most if not all project objectives. Also, water features are a primary attraction for State Park users, and beaches and reservoirs make some of the highest income. Parks could remove the golf course altogether, repurposing the land for camping and water recreation. However, Parks has offered no alternatives analysis at all.

In addition, Parks fails to justify the exclusion of certain alternatives rejected from review by the prior EIR. The prior EIR rejects some alternatives as infeasible due to their inability to meet the revenue generation project objective, but Parks offers no substantial evidence to support this conclusion at present, since the prior EIR is based on 2006 data. (See *Kings County Farm Bureau v City of Hanford* (1990) 221 Cal.App.3d 692, 737; *Center for Biological Diversity v County of San Bernardino* (2010) 185 Cal.App.4th 866, 884 [claim of economic infeasibility must be based on "meaningful comparative data" coupled with supporting evidence]; *City of Fremont v San Francisco Bay Area Rapid Transit Dist.* (1995) 34 Cal.App.4th 1780, 1787.) Parks has failed to present such "meaningful comparative data" to support rejection of any alternatives based on economic feasibility.

IV. The Environmental Documents Fail to Describe Existing Environmental Conditions.

Because Parks has failed to update and circulate for public review a current and complete DEIR, and instead continues to rely on an outdated and invalidated EIR/EIS/EIS, most if not all of the information presently circulated for public review makes no effort to describe the existing environmental conditions that would be affected by the proposed project. The general rule under CEQA is that the environmental setting, as it exists when the EIR is being prepared, and according to the lead agency's "Notice of Preparation," should ordinarily constitute the baseline conditions against which project changes to the environment will be measured. (CEQA Guidelines, §§ 15125(a), 15126.2(a). *See Save Our Peninsula Comm. v Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125.) An agency that elects not to provide an analysis based on conditions existing at the time of the environmental analysis must provide an adequate justification for doing so, supported by substantial evidence. (*Poet, LLC v State Air Resources Bd.* (2017) 12 CA5th 52, 80.)

Here, however, Parks failed to issue any Notice of Preparation for the draft PAAEA, or for the compilation of environmental documents presently circulating. Instead, Parks continues to rely on an invalidated and outdated EIR to support its environmental review. Parks has failed to provide any substantial evidence or rational explanation as to why the 10-plus year old data in the prior EIR should constitute the present environmental conditions for CEQA review. As a result, the documents being circulated do not support meaningful environmental analysis, and are often so confusing as to thwart effective public participation. In five volumes of prior invalid CEQA documents, the precise examples are too many to cover, but include:

> "The examination of geomorphology and water quality is based on information obtained through review of academic research and available information published by Federal, State, and local agencies, primarily the Final Report: Upper Truckee River Upper Reach Environmental Assessment (SH&G 2004a), the Amendment Report: Upper Truckee River Upper Reach Reclamation Project (SH&G 2004b), and the Riparian Ecosystem Restoration Feasibility Report associated with the Upper Truckee River Restoration Project (River Run Consulting 2006)."

(EIR/S at 3.4-1.) This information describing the existing environmental conditions against which the project impacts must be evaluated appears to be significantly out of date.

Similarly, the EIR/S states that "Every 5 years, TRPA conducts a comprehensive evaluation that identifies whether each threshold is being achieved or maintained, provides specific recommendations to address problem areas, and directs general planning efforts for the next 5-year period. The most recent threshold evaluation was completed and adopted by the TRPA Governing Board in 2007 (TRPA 2007b)." (EIR/S at 3.4-10.) However, in 2015, TRPA issued a newly revised Threshold Evaluation report – the second ever to be peer reviewed – containing considerable new data that must be considered to understand the environmental context and possible effects of the proposed project.[4]

The EIR/S compares the proposed project to standards under the El Dorado County General Plan in 2010, but the General Plan has been amended over a dozen times since.[5]

The EIR/S further states:

> "Over the last decade or so, a few studies have looked at potential climate change effects on surface and groundwater hydrology, water resource issues, or forest response for the Sierra Nevada or Lake Tahoe region, or both (Jeton, Dettinger, and Smith 1996; Knowles and Cayan 2004; Millar et al. 2004). These provide information about possible changes in water inputs to the project's study area (e.g., snowpack, rainfall, streamflow). Some studies have focused on the response of Lake Tahoe to climate change (e.g., Jassby, Reuter, and Goldman 2003; Coats et al. 2006), but have not commented directly on expected changes in tributary rivers. The most useful data are those recently compiled and generated by Tetra Tech (2007). Tetra Tech (2007) explored the effects of climate change on overall watershed hydrologic response in relation to the total maximum daily load (TMDL) watershed model of pollutant loadings to Lake Tahoe. Tetra Tech (2007) used regional (within California) climate change projections by Dettinger (2005) and Cayan et al. (2006). Those studies used somewhat different modeling, downscaling, and meta-analysis approaches, but for the Tahoe Basin, they had close agreement on

[4] http://www.trpa.org/wp-content/uploads/3_POST_9_23_RELEASE_EDITS_ExecSumm.pdf
[5] https://www.edcgov.us/Government/planning/pages/adopted_general_plan_amendments.aspx

modeled, representative changes. Further, Dettinger (2005) provided predictions for the near future (c. 2050). The central estimate for temperature and precipitation changes from the Cayan et al. (2006) paper and the Dettinger (2005) paper formed the basis of Tetra Tech's Central Projection model scenario: a 2°C warming and a 10 percent decrease in total precipitation by mid-century. Additional modeling scenarios were formulated by Tetra Tech (2007) using temperature increases of one standard deviation on either side of that central estimate (1°C and 3°C increases above current temperatures) and precipitation changes of one standard deviation above and below the central estimate (-25 percent and +15 percent of today's total precipitation, as well as a no change from today's precipitation). Tetra Tech simulated baseline (existing) and the various climate change scenarios for a 15-year model evaluation period (1990 through 2004) by applying the percent changes in temperature and precipitation uniformly to the historic weather data sets. Simulations with the spatially discrete (with 184 subwatersheds and 20 land uses) and temporally detailed (i.e., hourly time steps for the 15-year period) Tetra Tech model provide information on the range of conditions that could occur throughout Lake Tahoe watersheds in terms of total precipitation, air temperature and snow pack, and water yield from snow, as well as total outflow to streams (surface runoff and baseflow). An analysis of annualized daily snowpack from the model results is also provided by Tetra Tech (2007), which indicates the range of likely changes in snowpack depth, snow accumulation/snowmelt season, and timing shifts (Exhibit 3.3-6)."

Parks should update this baseline information with the present state of science regarding climate change, water resources, and Sierra snowpack.

The EIS/R states:

"Between November 2006 and November 2007, State Parks installed 40 groundwater monitoring wells, arranged in several transects, across the study area (Exhibit 3.3-7). The first year of monitoring provides indicators of the range of seasonal groundwater conditions within the study area (Exhibits 3.3-10A to 3.10-G). The 2007 groundwater monitoring data indicate typical alluvial surface water–groundwater relationships. Groundwater generally follows the river down-valley (i.e., north and northeast), parallel to the river, as seen by comparing groundwater elevations at each transect in a down-valley order. Groundwater elevations along the east side of the river from Transects 2–8 show a down valley groundwater gradient in the range of 6–26 ft/mi, slightly less than that reported by Rowe and Allander (Rowe and Allander 2000:31). The down-valley gradient becomes gentler in the main meadow, with relatively consistent and small decreases in water levels between Transects 6, 7, and 8. The north side of Transects 5-8 is influenced by the previously restored Angora Creek, which has since experienced higher groundwater elevations." (EIR 3.3-15 to 3.3-16; see also EIR exhibits 3.3-8 through 3.3-10G.)

These data precede one of the most severe droughts in California history, which recent information (plus actual existing conditions) should necessarily be included in any baseline condition to enable a better understanding of potential project effects.

Even the PAAEA itself, in which Parks for the first time identifies a proposed project on which to focus its CEQA review, fails to provide any information describing existing environmental conditions more recent than year 2011. (PAAEA 4-1 to 4-3.) This fails to comply with CEQA's procedural and informational requirement that the lead agency compare the effects of a proposed project to existing conditions, and Parks has failed to provide any rationale or substantial evidence supporting its decision to rely exclusively on environmental conditions that existed over seven years ago. The lead agency has a duty to investigate the environmental conditions that may be impacted by a project, and Parks has not done that here. For example, the PAAEA states that "The water is fairly clear in most of the ponds; however, because the ponds catch irrigation water that may contain herbicides, pesticides, and fertilizers from the golf course, the quality of the water is questionable (State Parks 1988, cited in Hartman 2011 [Appendix C])." Surely since 2011 Parks has had ample opportunity to answer this question.

Indeed, rather than consider the proposed project's impacts to the existing environment, the PAAEA is misleading to the public by instead comparing the PAAEA's preferred Alternative 2B to Parks' previously release Alternatives 2 and 2A. This is severely misleading and presents the proposed project in terms as though it would provide net benefits that it does not, e.g.:

> Tree removal under the proposed project would be approximately half that proposed under Alternatives 2 and 2A. An additional historic meander north of proposed holes 13 and 14 was incorporated into the design to increase the restored river length and provide a larger buffer between those holes and the river. Alternatives 2 and 2A provided one bridge for shared golf and recreation use for the set of holes that cross the river. In the proposed project, the shared golf cart bridge would connect holes 6 and 12, and a second bridge was added to provide for non-golf related recreation access. Both bridge sites were previously analyzed under Alternative 4 in the EIR/EIS/EIS. These changes resulted in revisions to the quantities for backfilling and bank protection. Although slightly less restoration of floodplain area would occur under the proposed project, this would be offset by retention of habitat and avoidance of the doughnut hole around the spring. The proposed project would also provide improved trail connectivity by providing a bridge for pedestrian access and avoid impacts on cultural resources.

(PAAEA 2-1.) The High Court rejected a similar approach to defining a project's baseline for environmental analysis in *Communities for a Better Env't v South Coast Air Quality Mgmt.*, reasoning that a description of project impacts to what *could happen*, rather than comparing project impacts to what was actually occurring, constituted reliance on an impermissible hypothetical baseline that would mask the proposed project's true impacts. (2010) 48 Cal.4th 310, 322. The project description and impact analysis in the PAAEA is equally misleading, as

the PAAEA touts the environmental benefits of Alternative 2B *as compared to other alternatives* previously considered by Parks. (See also, PAAEA 2-2 to 2-5.) So pervasive is the PAAEA's comparison of Alternative 2B to prior alternatives considered that it becomes unclear exactly when the PAAEA is comparing Alternative 2B to the existing environment versus other possible alternatives. (See, e.g., 1-5 "The proposed project consists of a reconfigured, reduced-footprint 18-hole regulation golf course and full ecosystem restoration" [reduced compared to what?])

Parks should also ensure that all biological surveys are up to date prior to evaluating the proposed project. We are aware that in 2013 West Ecosystems Analysis, Inc. prepared a report for Parks entitled, "Washoe Meadows State Park 2013 Bat Survey and Ecological Status Assessment," but this updated survey information is not included in the PAAEA.

V. Parks Has Failed to Discharge its Public Trust Doctrine Duties.

None of the various documents Parks is presently circulating contain any assessment of Parks' procedural or substantive duties under the Public Trust Doctrine. The Supreme Court held that state agencies have an affirmative duty to take the public trust into account in planning and allocating trust resources and to protect public trust uses whenever feasible. (*Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419, 446 ["*Audubon*"].) The State of California "can no more abdicate its trust over property in which the whole people are interested, . . . than it can abdicate its police powers in the administration of government and the preservation of the peace." (33 Cal.3d at 437, quoting *Ill. C. R. Co. v. Ill.* (1892) 146 U.S. 387, 453.) This means that State Parks – as agency of the State of California – has a mandatory duty to protect public trust resources to the same extent as the State's police power. Moreover, State Parks cannot engage in activities that amount to an abdication of its public trust responsibilities.

The First District Court of Appeal has recently summarized case law expounding upon these principles:

> 'the public rights of commerce, navigation, fishery, and recreation are so intrinsically important and vital to free citizens that their unfettered availability to all is essential in a democratic society. An allied principle holds that certain interests are so particularly the gifts of nature's bounty that they ought to be reserved for the whole of the populace.' [¶] . . . [¶] [T]his doctrine functions 'largely as a public property right of access to certain public trust natural resources for various public purposes.' [¶] . . . [¶] For example, an increasingly important public use is the preservation of trust lands 'in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.'

(*San Francisco Baykeeper v. State Lands Commission,* (2015) 242 Cal.App.4th 202, 233.) The court went further and held that state agencies have an affirmative duty to perform a public trust consistency analysis, based on substantial evidence in the administrative record, as a part of their CEQA review. (*Id.*)

In commenting specifically on Lake Tahoe's shorezone, the California Supreme Court has observed that "[t]he recreational use of these areas for picnicking, hunting, fishing, hiking, birdwatching and nature study does not require elaboration to any Californian." (*State v. Superior Court of Placer County* (1981) 29 Cal.3d 240, 245.) State Parks does assert in their Statement of Policy that the state parks system "*shall be held in trust as irreplaceable portions of California's natural, cultural, and historic heritage*." Neither the Supreme Court nor State Parks has articulated any similar policy promoting the protection or expansion of golf courses or the degradation of public lands in the name of revenue generation. On the contrary, in *Feduniak v. California Coastal Com*. (2007) 148 Cal.App.4th 1346, 1378, the Court of Appeal overturned a trial court ruling that would have protected a golf course. The Court of Appeal applied principles related to the public trust doctrine in agreeing with the California Coastal Commission that a golf course "represented ongoing developmental damage to the coast that continued to frustrate the public interest in having the parcel restored to its natural state . . . ." (*Id*. at 1378.) Like the California Coastal Commission in *Feduniak*, State Parks should be focusing its energies on preventing resource damage caused by golf courses instead of making plans that will inflict such damage.

These principles are provided as background and guidance directly pertinent to the proposed project. Parks, however, has failed to provide any evidence it has evaluated its duties under the Public Trust Doctrine, evaluated the responsibilities it possesses to maintain public trust resources for the benefit of the people of the state, and to ensure that by and through its actions and management, trust resources and trust uses will be protected.

VI. The Environmental Documents Do Not Comply with NEPA.

The PAAEA states that "Preferred Alternative 2B serves as the "proposed action" under NEPA and the "proposed project" under CEQA and the TRPA Code of Ordinances. The EIR/EIS/EIS and the PAAEA will be used to support TRPA's decision whether to approve the project and Reclamation's decision to issue a record of decision." (PAAEA at 1-6.)

On August 25, 2010, the Bureau of Reclamation (Reclamation) published a Notice of Availability as National Environmental Policy Act (NEPA) Lead Agency for a Draft EIS in the Federal Register for Document Number 2010-21141, the Upper Truckee River Restoration and Golf Course Reconfiguration Project (Project). The original document was a joint NEPA, California Environmental Quality Act (CEQA), and Tahoe Regional Planning Agency (TRPA) environmental compliance document. The recirculated documents from Parks leave entirely unclear what role Reclamation or TRPA have played in the release of the PAAEA and the

previously completed EIR/EIS/EIS. The PAAEA and its NOA still refer to this as a joint CEQA/NEPA document, but Reclamation has not published any NEPA notices in the Federal Register since 2010, and no guidance for federal notice and comment requirements is provided.

Parks' NOA indicates that in addition to its CEQA role, the PAAEA is intended to serve as the "proposed action" under NEPA. But the PAAEA fails to provide any additional information regarding NEPA compliance. What was Reclamation's role and process for reevaluating whether the original environmental document/determination was still valid and in determining that new Alternative 2B was appropriate as the NEPA Proposed Action? Is this PAAEA and its recirculation/comment period also applicable to NEPA given that the Council on Environmental Quality (CEQ) regulations specify that a federal agency must prepare a supplemental EIS if there are substantial changes to the project or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts? Is the PAAEA intended to constitute a Supplemental EIS? If this is indeed a Supplemental EIS, would requirements for a new Federal Register Notice be triggered by this action consistent with CEQ Regulations 1502.9 ("Shall prepare, circulate, and file a supplement to a statement in the same fashion [exclusive of scoping] as a draft and final statement")? If this process step was necessary, the Washoe Meadows Community respectfully requests that it be met and that any noticing be accompanied by a fresh comment period after Reclamation, itself, reviews the document. We further ask that the requirements of CEQ Regulations Sec. 1502.11 (Cover sheet) be met such that all reviewers can understand the type of NEPA document that is being circulated for review.

Numerous changed circumstances, new information, and changes to the Project, its setting, impacts, and new issues that have arisen since the circulation of the document eight years ago that the PAAEA did not address and which would be directly applicable to any NEPA reevaluation and requirements for document supplementation. If a written determination, recommendation, or memorandum was already prepared documenting an assessment of whether the 2011 EIR/EIS/EIS document remains valid, should be supplemented in order to remain valid, or if it recommends preparation of a new DEIS, we would respectfully request a copy of that analysis. If needed, we could separately submit our request more formally under the Freedom of Information Act. If this is indeed the case for this Project, please clarify the PAAEA's applicability to NEPA, citing Reclamation's applicable regulatory sections, including any sections related to noticing requirements.

NEPA has undergone numerous regulatory developments since the EIR/EIS/EIS was circulated in 2010 and 2010, including but not limited to:

- Revised Draft Guidance on Consideration of Greenhouse Gas Emissions and Climate Change in NEPA Reviews (2014)
- NEPA and CEQA: Integrating State and Federal Environmental Reviews (2014)

- OMB and CEQ Joint Memorandum on Environmental Collaboration and Conflict Resolution (2012)

Given the litigious nature of this proposed project, special consideration should be given to the guidance in the latter Memorandum to engage in appropriate, effective use of third-party assisted environmental collaboration an-d conflict resolution to work towards resolution of the many problems and conflicts related to this project to avoid subsequent CEQA, NEPA, or TRPA litigation. Given that all parties seek restoration of the Upper Truckee and that the primary area of conflict is the size and location of the golf course to portions of Washoe Meadow State Park, a neutral third party may be able to lead to a successful, collaborative solution instead of continued, protracted litigation.

We request a clearer explanation of the agencies' consideration of the circumstances that trigger the need for consultation and reevaluation of NEPA documentation and the reporting and processing requirements for any supplemental environmental analysis, especially given the Project's changes and the fact that the document now well-exceeds the 5 years that the Council on Environmental Quality ("CEQ") guidance suggests requires reevaluation.

In addition, the EIR/s fails to meaningful assess impacts associated with ongoing climate change. In particular, the EIR merely describes climate change conditions without actually incorporating climate change factors into the Project impact analysis. This contravenes NEPA, which requires an evaluation of the impact of climate change on a project under certain circumstances. (*See High Country Conservation Advocates v. U.S. Forest Service* 52 F.Supp.3d 1174, 1192 (D. Col. 2014) (EIS invalid where EIS "do[es] not explain why these agencies believed the protocol was inaccurate or not useful" to assess climate impacts). For example, in *South Yuba River Citizens League v. National Marine Fisheries Service*, the court held that the National Marine Fisheries Service ("NMFS") did not adequately analyze project changes associated with ongoing climate change where NMFS simply analyzed impacts related to increased stream temperatures, without a broader analysis of other climate change related project effects. (723 F.Supp.2d 1247, 1274 (E.D. Cal. 2010); *see also Friends of the Wild Swan v. Jewell*, 2014 U.S. Dist. LEXIS 116788, 31-32 (D. Mont. Aug. 21, 2014) (upholding an EIS that discussed "causes of climate change, its effects on forest management, projections for future temperatures, the environmental impacts of increased temperatures, current approaches to the issue, and a comparison of the effects of climate change across the alternatives"); *Idaho Rivers United v. United States Army Corps of Eng'rs*, 2016 U.S. Dist. LEXIS 15803, 52-56 (W.D. Wash. Feb. 9, 2016**)** [determining that an agency had adequately accounted for climate change where it reviewed studies on climate change impacts to sedimentation, and summarized its analysis in the EIS].)

VII. Alternative 2B Could Result in Worsened Water Quality Impacts.

As noted earlier, the PAAEA fails to update its baseline condition assessment with recent water quality monitoring data, and fails to consider the effects of the restoration proposal given new knowledge and understanding gained from the "Reach 5" project. In this context, the potentially significant effects, and the extent to which the proposed project could attain the basic objectives to "minimize and mitigate short-term water quality and other environmental impacts during construction" must be examined. Water quality protection during construction is complex and risky. The extensive construction activities involved in Alternative 2B include large amounts of soil movement, tree removal and other actions to construct the numerous golf course acres in the park. There is additional construction involved in the river restoration. Alternative 2B will create significant adverse water quality impacts that could be avoided by choosing another alternative; however, the PAAEA fails to assess these impacts against the existing baseline, or the impacts of a reasonable range of alternatives, at all.

VIII. The PAAEA Impermissibly Proposes Project Changes In Lieu of Mitigation Measures.

The PAAEA states that "Mitigation Measure 3.5-3C is no longer necessary for this resource because the project has been redesigned to avoid the spring and the fen. The golf course use would no longer be upstream of those areas." (PAAEA 3-16.) While these changes are positive and do seek to avoid impacts to critical natural resources, the conversion of a mitigation measure into a project component has been ruled to impermissibly sidestep CEQA's mandatory procedures for assessing impacts and mitigation measures. (*See Lotus v. Department of Transportation*, (2014) 223 Cal.App.4th 645, 655-656.) *Lotus* concerned an EIR issued under CEQA for a highway construction project through old growth redwood forest. *Id*. at 647-48. The project called for the removal of six trees; the placement of fill within the structural root zone of 41 others; and excavation within the structural root zone of still another 58 trees. *Id*. at 649. Certain "avoidance minimization and/or mitigation measures" were incorporated into the project to "avoid and minimize impacts as well as to mitigate expected impacts," including, among other things, increased invasive plant removal, ensuring an arborist is present to monitor any ground disturbing construction activities, the use of specified tools/machinery to minimize disturbance, the implementation of certain procedures whenever roots need to be cut, the use of certain types of construction materials to minimize impacts to roots, and the provision of watering to impacted trees for the entire summer following construction. *Id*. at 650-51. Ultimately, in part because of the above-described avoidance minimization and/or mitigation measures, the EIR concluded there would be no significant environmental effects caused by the project. *Id*. at 651. The EIR was also defective because it incorporated the proposed mitigation measures into its description of the project before concluding that any potential impacts from the project were less than significant. *Id*. at 655-56. The "avoidance, minimization and/or mitigation measures," as they were characterized in the *Lotus* EIR, were not "part of the project," but, rather, were "mitigation measures designed to reduce or eliminate the damage to the redwoods anticipated from

disturbing the structural root zone of the trees by excavation and placement of impermeable materials over the root zone." *Id*. at 656. In this way, the EIR improperly "compress[ed] the analysis of impacts and mitigation measures into a single issue," thereby "disregard[ing] the requirements of CEQA." *Id*. *Lotus* explains that it this type of failure is dangerous because, among other things, the lack of analysis and findings about the extent of impacts makes it impossible to determine if the mitigation measures are sufficient:

> The EIR fails to indicate which or even how many protected redwoods will be impacted beyond the tolerances specified in the handbook and, by failing to indicate any significant impacts, fails to make the necessary evaluation and findings concerning the mitigation measures that are proposed. Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered. Should Caltrans determine that a specific tree or group of trees will be significantly impacted by proposed roadwork, that finding would trigger the need to consider a range of specifically targeted mitigation measures, including analysis of whether the project itself could be modified to lessen the impact.

Id. By converting previously proposed mitigation measures into the project design itself, this PAAEA suffers from the same defects identified by the *Lotus* court.

IX. The PAAEA Fails to Include Thresholds of Significance.

The PAAEA offers a new "Impact Analysis" regarding "removing riparian and meadow vegetation along the Upper Truckee River and placing fill into the active channel for geomorphic restoration of the river." (PAAEA 3-13.) The PAAEA then discusses project impacts, and concludes that they would be potentially significant necessitating consideration of mitigation measures, but the PAAEA never actually explains what threshold(s) of significance these impacts are being compared to, and therefore, also fails to provide adequate information to determine whether or to what extent the newly-proposed mitigation measures would be able to reduce project impacts to below any level of significance. For these reasons, the PAAEA is procedurally and substantively deficient, and fails to include substantial evidence to support its conclusions that "implementation of Mitigation Measures 3.5-3A (Pref Alt. 2B) and 3.5-3B (Pref Alt. 2B) would reduce Impact 3.5-3 (Pref Alt. 2B) to a less-than-significant level." (PAAEA 3-16.)

X. PAAEA Mitigation Measures 3.5-3B and 3.5-3 Appear Inadequate.

There are some uncertainties present in the mitigation measures as currently proposed which make them not fully enforceable and/or fully effective at mitigating the project's impacts. For instance, the mitigation measures proposed to mitigate impacts to documented cultural

resources are not entirely clear. Mitigation Measure 3.9-1A states that "visual screening, barriers, or other design directives" will be used "as appropriate to minimize erosion, visibility, and access that could otherwise lead to damage or destruction of sites CA-Eld-2160, CA-Eld-2156, and CA-Eld-2158," yet the measure does not define the "as appropriate" conditions to clarify and ensure mitigation. (See PAAEA at 3-20.) Similarly, Measure 3.19-1B states that "data recovery will be necessary at these sites if complete protection is not feasible," but does not define what circumstances would make complete protection not feasible. (See *id.* at 3-21; see also *id.* at 3-22 [Performance Criteria 2 and 3 describe measures to protect resources "[i]f avoidance is not feasible" without defining such conditions.].) And in Measure 3.9-1C, Parks explains plans for "[i]f data recovery is necessary," but fails to explain the threshold for determining if data recovery is necessary, what "historic property treatment plans" and "data recovery report[s]" consist of, or how these measures will mitigate impacts. (See *ibid.*)

Additionally, some of the proposed measures are not fully enforceable. Measure 3.9-1C states that measures recommended by a quality archaeologist "may include . . . archival research, subsurface testing, and excavation of contiguous block units," and that potential treatment methods "may include . . . taking no action . . .; avoiding the resource . . .; and implementing a program of testing and data recovery . . ." (*Id.* at 3-21; see also *id.* at 3-22 [Performance Criterium 2 states that "[a]dditional resource potential measures amy include visual screening . . ." and other measures.].) Including "may" instead of "shall" leaves unnecessary leeway. We recommend either make these measures requirements or defining the conditions under which each measure would be used.

These same problems exist in the mitigation measures for sensitive habitats such as fens and wetlands. For example, Measure 3.5-3b states: "riparian vegetation within the SEZ would be avoided to greatest extent feasible. . . If avoidance is not possible, trees will be shielded and shrubs will be pruned, while protecting soil and root structures. In areas where existing streambank vegetation must be removed, plant materials will be salvaged, stored, and reused as possible." (*Id.* at 3-16.) Parks fails to explain the circumstances where avoidance would not be "feasible" or "possible," which could result in no avoidance at all. Parks also does not explain how "salvaged, stored, and reused" are defined, nor how or where they would be implemented, and therefore fail to explain how such actions might mitigate impacts to fens, wetlands, and sensitive vegetation. Under Performance Criteria 2 and 3, Parks does not explain when "additional acreage" may be required to replace disturbed SEZ or the circumstances making "[m]inimization of loss or degradation of riparian vegetation" not feasible. (See *ibid.*) Further clarification would more clearly inform the public and decisionmakers about the effectiveness of the proposed mitigation measures.

Furthermore, the "Performance Criteria" Parks proposes for the mitigation measures more analogous to mitigation measures than specific criteria. (See *id.* at 3-16, 3-22.) The PAAEA does not make clear how these measures qualify as "specific performance criteria or standards that must be met for the project to proceed." (*Friends of Oroville v. City of Oroville*

(2013) 219 Cal.App.4th 832, 838; see also *Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4th 260, 282 [Discussing how a specific performance criterion in that case included, for instance, "80 percent of any transplanted special status plant species must be established within three years."].)

XI. Parks' Failed To Assess The Project's Cumulative Impacts.

As with the PAAEA's environmental setting, and alternative analysis, the PAAEA fails to offer any up-to-date information regarding the proposed project's potential cumulative effects. Cumulative impacts are defined in the State CEQA Guidelines (Section 15355) as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." A cumulative impact occurs from "the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor, but collectively significant, projects taking place over a period of time." The prior EIR/EIS/EIS identified a number of project with potentially significant cumulative impacts. (EIR/EIS/EIS Table 3.16-2.) Surely these projects have progress enough in the intervening eight years to have substantially altered the underlying information previously relied upon in the EIR/EIS/EIS cumulative impacts analysis. As noted earlier, the TRPA has since issued an updated Threshold Evaluation report, containing considerable new data showing worsening sediment quality in Lake Tahoe, that must be considered to understand the cumulative effects of the proposed project.[6] Given the lengthy list of cumulative projects considered by the EIR/EIS/EIS eight years ago, one would logically presume at least some new and present projects that may cumulatively contribute to environmental impacts should be considered. It is incumbent upon Parks, however, in the first instance to identify all such projects. The documents circulated by Parks fail to even attempt to do so.

XII. Parks Must Prepare a General Plan for Washoe Meadows State Park Prior to Reclassifying It.

The PAAEA presents very misleading and one-sided information in its discussion of proposed General Plan amendments, since the only General Plan under consideration is that of the Lake valley State Recreation Area (LVSRA), which states as its purpose: "To make available to the people for their enjoyment and inspiration the 18-hole golf course, and the scenic Upper Truckee River and its environs." (PAAEA A-1.) The critical other side of the coin missing from this discussion is that golf course recreation is wholly incompatible with the express purposes and restrictions afforded Washoe Meadows State Park. However, Parks has failed to adopt a General Plan for Washoe Meadows State Park articulating the goals and policies needed for effective stewardship, and therefore presents only the policies of the LVSRA as applicable to and further by the proposed project. In reality, however, the proposed project would so severely

[6] http://www.trpa.org/wp-content/uploads/3_POST_9_23_RELEASE_EDITS_ExecSumm.pdf

contradict and conflict with the purposes of Washoe Meadows State Park that a balanced discussion, compared to the goals of the LVSRA, is needed. The Legislature's express intent in acquiring the Park was to protect the unique and sensitive natural resources on the undeveloped portions of the land. The pre-existing golf course did not meet these goals, and therefore necessarily was classified as a state recreation area, because golf courses are not allowed in state parks.

Pub. Res. Code § 5002.2 states:

> (a) Following classification or reclassification of a unit by the State Park and Recreation Commission, and prior to the development of any new facilities in any previously classified unit, the department shall prepare a general plan or revise any existing plan, as the case may be, for the unit.
>
> The general plan shall consist of elements that will evaluate and define the proposed land uses, facilities, concessions, operation of the unit, any environmental impacts, and the management of resources, and shall serve as a guide for the future development, management, and operation of the unit.
>
> The general plan constitutes a report on a project for the purposes of Section 21100. The general plan for a unit shall be submitted by the department to the State Park and Recreation Commission for approval.

Here, Parks has failed to comply with these express statutory requirements, by proposing to downgrade Washoe Meadows State Park before any General Plan for the park has been adopted. The clear intent and purpose of this statute is that units of state land are managed according to their classifications, and place-specific policies adopted by Parks according to those classifications; but Parks has eschewed this duty here. Especially given that Parks has been considering various forms of the presently-proposed project for well over a decade, there has been more than ample opportunity for Parks to put the cart before the horse, and appropriately account for and regulate the existing resources in Washoe Meadows State Parks. Parks' proposals now, to further the goals of the LVSRA General Plan, specifically demonstrates how the interests of Washoe Meadows State Parks should be protected by Parks, and by law, but isn't.

XIII. Conclusion

Thank you for your careful consideration of these comments.

Sincerely,

Jason R. Flanders
Counsel for Washoe Meadows Community