From: Al Miller <syngineer1@gmail.com>
Sent: 9/23/2024 7:03:23 PM
To: Public Comment <PublicComment@trpa.gov>; John Marshall <jmarshall@trpa.gov>; Julie Regan <jregan@trpa.gov>; Cindy.Gustafson <cindygustafson@placer.ca.gov>; TRPA <trpa@trpa.gov>
Cc: Tobi Tyler <tylertahoe1@gmail.com>;
Subject: TRPA Negligence and Dereliction of Legal Duty Concerning Lake Tahoe Dam Deterioration

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Comments on September 25, 2024 TRPA Governing Board Meeting Agenda Item VIII. PLANNING MATTERS, B. Lake Tahoe Dam Investigatory work by the Bureau of Reclamation, Region 10, Tahoe City, Placer County, California, Assessor's Parcel Numbers 094-290-033, 094-540-008, & 094-540-017 (Staff: Tiffany Good) Informational Only Page 127

To the General Public, the Governing Board of the Tahoe Regional Planning Agency and all Affected State and Federal Agencies,

I once again greet you in all gravity and candor concerning a matter of utmost planning and regulatory urgency with regard to the Staff Report for the above-cited agenda item as TRPA is, once again, proposing to IGNORE ITS OWN STATUTES AND REGULATIONS in ignorant and illegal abandonment of the Public Trust. I am a CA-Registered Civil Engineer with a 25-year regulatory background with the CA Regional Water Quality Control Board—Lahontan Region (LWB or Lahontan RWQCB), including as a former Supervisor for many years over the Truckee River Hydrologic Unit (TRHU) encompassing the entire CA watershed tributary to the Truckee River below the Lake Tahoe Dam (and thence to Reno/Sparks and Pyramid Lake in NV). I know quite a bit about what I'm discussing below.

The Temporary Nature of Dams

All dams are "temporary" in the long scheme, and if they are under-designed for now-foreseeable conditions or lack necessary maintenance they can become a tremendous threat and liability. It is my experience that the federal and state government agencies and politicians responsible for the safety of the nation's dams don't much make their work something that the public is aware of, if they can avoid it. The Staff Report furthers this as a "case in point," as I'll discuss below, as the TRPA raises not one word of concern or urgency.

The unmet threats

The public is generally unaware that the federal Bureau of Reclamation and the U.S. Army Corps of Engineers have long lists of dangerously-unsafe dams they own or operate, that they either built or assumed management of (i.e., Lake Tahoe Dam), many of which now have tremendous unmet investigation, maintenance and repair backlogs. My work at LWB involved threat mitigation projects and/or planning on three of the nation's most dangerous dams—all in the TRHU (Boca, Stampede and Martis Creek Dams), all of which have mitigated specific threats to the degree for-now desired by the government entities. The agencies are substantially underfunded to address the work because the project magnitudes are large, the planning horizons years and even decades, with costs in the tens of millions or more. They therefore "prioritize" a small number of these critical dam safety repairs through their planning and threat assessments to address a small number each decade. While there is much that could be said about this Staff Report, I will attempt to keep my comments limited and focused for the benefit of the lay public (including many TRPA Board members) and leave it to the agencies to assess the potential implications.

Potential for Failure of Lake Tahoe Dam

Few would like to contemplate the disaster that would accompany a substantial failure of the Lake Tahoe Dam, built in 1913 when the population in Reno was very low. Attaining approximately 50,000 souls in the 1950s, when other above-mentioned dams were built, largely to supply desert agriculture, the Reno Metropolitan Area has now swelled to over 500,000. A failure of the Lake Tahoe Dam could deliver a cascade of water to the RMA in less than hours, with flooding potentially tens of feet deep. The Bureau therefore has some concerns and has proposed minor investigative work, work that will only lead to a much larger dam-safety repair project, if justified in their view, based on risk assessments and available, limited funding—and on their timeline. I have not studied this matter in detail, but the proposed work follows investigative repair work to the critical dam abutments and more, as noted in the Staff Report, with more major work likely to follow.

The Lake Tahoe Dam has never really been tested against the potential forces of nature. Lest you think the possibility of a partial or total dam failure is "very remote," it is now understood that the CA dams were ALL built to withstand "statistically probable" rainfall and flooding based on a limited and partial data set, dating only to circa 1862. That was the year of the first great "flood of record" in CA, the first recorded instance of a historic "atmospheric-river" flooding event that turned the Great Central Valley of CA into a lake, with devastating consequences to Sacramento and bankrupting CA at the time. The U.S. Geological Survey has, since circa 2010 if memory serves, determined from sufficient sediment examinations that these "MEGAFLOOD" events occur regularly in CA without warning, every 150 to 300 years or so, at least in the last 2000 years. Everyone just hopes it won't happen again to affect dams and levees during their term of office and downplays or ignores the threat. TRPA, LWB and other agency personnel and "science partners" have been fully briefed on all this at one time or another.

The Role of TRPA, The Legal Framework

TRPA is charged under the Compact to undertake planning and regulatory action for any potential activity or project that may have significant effect on the environment, unless TRPA determines the Project or activity is exempt under its statutes and regulations. The Compact ALSO authorizes TRPA to enact into regulatory law various memoranda of understanding (MOUs) with other persons (agencies) which are binding on all concerned, to the extent supported by law anyway. I will leave a well-deserved general critique of the TRPA MOUs for another day and focus on the MOU of interest with regard to this matter, as quoted from the Staff Report:

> **TRPA's Role and Coordination with Lahontan Regional Water Quality Control Board**
>
> To complete the concrete borings, Reclamation has submitted a Notice of Intent to the Lahontan Regional Water Quality Control Board (Lahontan RWQCB) for authorization of work under Order Number WQ 2021-0048-DWQ. Reclamation will not be making application with TRPA for the concrete borings, as Lahontan RWQCB will be issuing a Notice of Applicability under the Order, consistent with the Memorandum of Understanding (MOU) between TRPA and the Lahontan RWQCB. Reclamation will be submitting a Pre-Construction Notification to the US Army Corps of Engineers for the concrete work around September 14.

TRPA is here asserting it has NO ROLE to play in the planning of this minor project, and presumably will have no role for the larger project for needed repairs, when and if it ever comes, under the same erroneous basis: reliance on an MOU with Lahontan RWQCB under which LWB will here turn the "general permit" crank. There is no basis in law for the proposed reliance and delegation of authority to LWB for the project, which involves staging and activity only in the TRHU, but potentially affecting in-Basin regional traffic, river access, a bridge and potential floodplain modifications . . . a whole host of "Checklist Items" TRPA is required to examine for non-exempt projects like this one proposing activities and discharges affecting the 100-year floodplain of the Truckee River in its jurisdiction. I can simply cite TRPA's "Delegation MOU" with LWB, see https://www.trpa.gov/where-to-apply-for-a-permit/. I quote:

"8. This MOU does not affect projects or activities in the mutual jurisdiction of the Lahontan RWQCB and TRPA in the Truckee River watershed downstream of Lake Tahoe."

"Does not affect" means does not apply in the TRHU, as designated in LWB regulations, which is where the proposed investigatory Project is planned. Therefore, TRPA must exercise the full extent of its planning and regulatory authority for this proposed activity under the Compact, and ANY OTHER SUBSEQUENT ACTIVITY, such as a dam

augmentation or replacement, or retrofit, in the TRHU below Lake Tahoe Dam. TRPA has not done so.

This senior Staff Report, guided by outgoing (thankfully) Chief Counsel Marshall, shows that TRPA doesn't understand or follow the Compact or its own regulations, including on projects with major implications for the region and beyond. TRPA is content to let its federal and state agency "partners" do the work it is charged to do by law, and can't be bothered with. I personally think that TRPA is asserting it has nothing of value to add to this Project, and that it can somehow rely on so-called "partners" to implement the Project in a manner that will uphold the Compact, which it is TRPA's sole legal duty to determine in the public forum.I disagree, mainly for lack of confidence in "the partners."

Whatever the case may be for TRPA planning and regulatory review adding no value, this is not an isolated example of TRPA failing to follow the Compact and the regulations it enacts for itself, as my lawsuit *Miller v. TRPA* and water quality petitions before the LWB and State Water Resources Control Board disclosed publicly in 2022-2023. TRPA leaders are well aware of these water quality petitions. These lawbreakers have no shame and continue their illegal regulatory abuses under color of law with this MOU, jointly colluding in silence, thus making litigation necessary to effect any change. They nonetheless expect all others to follow their laws, the little people anyway, not the other agencies. While there are other significant problems with this and other TRPA MOUs, the main point here is the TRPA MOU with LWB has ZERO validity in law with regard to this Lake Tahoe Dam Project. Clearly, TRPA does not consider itself to be "the driver" to abate the potential dam-safety threat to Lake Tahoe, let alone downstream interests, and has delegated the planning and Project regulation to others. That is a big mistake.

Potential Implications of TRPA Negligence

I see this letter getting long, while barely scratching the surface, so I'll make a few more points briefly in summary on the way out.

The Lake Tahoe Dam is a historic property located in a designated critical resource water. TRPA must require a permit application from the U.S. Bureau of Reclamation, for this and any subsequent Lake Tahoe Dam project in the TRHU, and consider all potentially significant environmental effects associated with the Project, make findings concerning environmental impacts and mitigation requirements, and regulate the proposed activities—unless it can provide a legitimate basis in law for not doing so. It is TRPA's unique role under the Compact to coordinate planning among the many federal, state and local agencies, and such other agencies can't be relied on to fulfill TRPA's Compact mandates in this important coming Project, with TRPA a mere bystander providing occasional staff reports.

The Bureau of Reclamation won't be able to certify compliance with all applicable federal statutes, regulations and requirements for its Project(s) for Lake Tahoe Dam. Their lawyers can't accept TRPA's words at face value, or rather do so at their peril when litigation would show the facts are otherwise. My recommendation is for the Bureau to tender a Project application to TRPA with all due haste, and it is TRPA's duty to so inform the Bureau, not mine.

It is not my wish to delay progress on important work needed on Lake Tahoe Dam to prevent a failure, with this little investigation or the larger Project likely to follow—as I believe the work is urgently needed. I am nonetheless out of forbearance with my public servants, TRPA and others, flagrantly failing to follow the law in important matters of life and death, as they do like omnipotent but incompetent rulers. Litigation against TRPA in this matter of Lake Tahoe Dam projects will only be necessitated by TRPA continuing to violate the law in light of these comments. While I do not take such matters lightly, TRPA is well-aware that I am both willing and able to litigate my concerns in court, since that is the only thing TRPA feels compelled to respond to concerning its ongoing illegal activities. *Miller v. TRPA* exposed a great variety of TRPA corruption, and I expect another lawsuit would provide similar "fruits from the poisoned tree."

TRPA Must Cease Violating the Public Trust

I assert there is a Public Trust duty TRPA is negligently ignoring concerning the Lake Tahoe Dam and outlet works. TRPA must fulfill its requirements under the Compact and subordinate law or face the consequences. I'm not really "making a case" here with regard to the specifics of the law, or the case for a Project injunction to prevent significant potential harm to the Lake Tahoe region due to TRPA's lack of planning and regulatory involvement, e.g., for the larger Project in days to come. That is for another time, or hopefully never, if TRPA will only fulfill its requirements under the law.

Sincerely,

Alan Miller

Professional Engineer

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