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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

| | | |
|---------------------------------|---|---------------------------------|
| LEAGUE TO SAVE LAKE TAHOE, a |) | |
| California non-profit |) | 2:11-cv-01648-GEB-GGH |
| corporation, |) | |
| |) | |
| Plaintiff, |) | <u>ORDER GRANTING MOTION TO</u> |
| |) | <u>DISMISS</u> |
| v. |) | |
| |) | |
| THE CITY OF SOUTH LAKE TAHOE, a |) | |
| municipality; and the CITY |) | |
| COUNCIL OF THE CITY OF SOUTH |) | |
| LAKE TAHOE, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

Defendants City of South Lake Tahoe and the City Council of the City of South Lake Tahoe (collectively, "the City") move for dismissal of the first, second, and fourth claims in Plaintiff League to Save Lake Tahoe's ("the League's") First Amended Complaint ("FAC"), arguing under Federal Rule of Civil Procedure 12(b)(1) that the League lacks standing and its claims are not ripe for judicial review. The claims involved in this motion are the federal claims on which subject matter jurisdiction is based, and the City also argues that if the motion is granted, the remaining state claims should be decided in state court. The City also moves for dismissal of these claims under Rule 12(b)(6), arguing that the League fails to state claims upon which relief can be granted. The League opposes the motion.

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I. LEGAL STANDARD

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2 "A Rule 12(b)(1) jurisdictional attack may be facial or
3 factual." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir.
4 2004). "In a facial attack, the challenger asserts that the allegations
5 contained in a complaint are insufficient on their face to invoke
6 federal jurisdiction. By contrast, in a factual attack, the challenger
7 disputes the truth of the allegations that, by themselves, would
8 otherwise invoke federal jurisdiction." Id. "[T]he moving party converts
9 the motion to dismiss into a factual motion by presenting affidavits or
10 other evidence properly brought before the court," and once the moving
11 party does so, "the party opposing the motion must furnish affidavits or
12 other evidence necessary to satisfy its burden of establishing subject
13 matter jurisdiction." Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir.
14 2004) (internal quotations and citation omitted).

15 Here, the gravamen of the City's jurisdictional attack is its
16 argument that "[the League] has neither sustained, nor is in imminent
17 threat of sustaining injury-in-fact from the alleged misconduct arising
18 out of [its] claims," and the City presents evidence supporting this
19 argument. (Defs.' Mot. to Dismiss ("Mot.") 1:16-17; Defs.' Request for
20 Judicial Notice ("Defs.' RJN") Exs. A-G.) Since the motion attacks the
21 truth of the League's injury allegations rather than their facial
22 sufficiency, and the City supports its motion with evidence, the City's
23 jurisdictional attack is factual.

24 When "[f]aced with a factual attack on subject matter
25 jurisdiction,

26 "the trial court may proceed as it never could
27 under Rule 12(b)(6) [N]o presumptive
28 truthfulness attaches to plaintiff's allegations,
and the existence of disputed material facts will
not preclude the trial court from evaluating for
itself the merits of jurisdictional claims.

1 governs development surrounding Lake Tahoe. League to Save Lake Tahoe v.
2 Tahoe Reg'l Planning Agency, 105 Cal. App. 3d 394, 396 (1980). The TRP
3 Compact establishes a bistate agency, the Tahoe Regional Planning Agency
4 ("TRPA"), with "jurisdiction over the entire region." People ex rel.
5 Younger v. Cnty. of El Dorado, 5 Cal. 3d 480, 487 (1971). Pursuant to
6 the TRP Compact, the TRPA maintains and enforces a regional plan, which
7 plans for land-use, transportation, conservation, recreation, and public
8 services and facilities. TRP Compact Art. V (c), (d). TRPA's regional
9 plan "establish[es] minimum [environmental] standard[s] applicable
10 throughout the region," but "leav[es] to the jurisdiction of the
11 respective States, counties and cities the enactment of specific and
12 local ordinances, and rules, regulations and policies which conform to
13 the regional plan." TRP Compact Art. VI(a).

14 The TRP Compact proscribes the development of any "project" in
15 the region which is not a TRPA approved project. TRP Compact Art. VI(a)
16 ("No project . . . may be developed in the region without obtaining the
17 review and approval of the [TRPA]"). Furthermore, the TRPA must
18 "[p]repare and consider a detailed environmental impact statement before
19 deciding to approve or carry out any project," and "no project may be
20 approved unless it is found to comply with [TRPA's] regional plan and
21 with the ordinances, rules and regulations enacted . . . to effectuate
22 that plan." TRP Compact Art. VII(a) (2) & VI(b). The TRP Compact requires
23 that "[t]he public . . . be consulted during the environmental impact
24 statement process" through the solicitation of "views . . . during a
25 public comment period not to be less than 60 days." TRP Compact Art.
26 VII(b), (c).

27 The TRPA has been in the process of updating the current
28 operative regional plan (the "1987 Regional Plan") "[s]ince 2002." (City

1 of South Lake Tahoe Final Environmental Impact Report ("Final EIR") 4.1-
 2 3, attached as Ex. E to Defs.' RJN.) The City alleges that "TRPA is
 3 scheduled to update its [1987] Regional Plan in 2012." (Mot. 3:19.)

4 **B. The City's General Plan Update¹**

5 On May 17, 2011, the City, through its City Council, adopted
 6 the City of South Lake Tahoe General Plan Update ("GPU"). (First Am.
 7 Compl. ("FAC") ¶ 1.) The City promulgated the GPU pursuant to the "State
 8 Planning & Zoning Law, (Gov. Code, § 6500[0], et seq.)[,]. . . [which]
 9 require[s] that cities and counties adopt a general plan for the future
 10 development, configuration and character of the city or county and
 11 require[s] that future land use decisions be made in harmony with that
 12 general plan." Bownds v. City of Glendale, 113 Cal. App. 3d 875, 880
 13 (1980) ("A general plan . . . serves to provide a standing consistent
 14 answer to recurring questions and to act as a guide for specific plans
 15 or programs."); EIR 3.0-70. An Environmental Impact Report ("EIR") was
 16 completed in connection with the GPU, and the City certified the Final
 17 EIR on the same date that it adopted the GPU. (FAC ¶ 1.)

18 "The [GPU] is . . . inconsistent with TRPA's [1987] Regional
 19 Plan," meaning that portions of the GPU allow development in the City of
 20 South Lake Tahoe that, if implemented, could cause the minimum
 21 environmental standards set forth in the 1987 Regional Plan to be
 22 exceeded. (FAC ¶ 4; City of South Lake Tahoe Draft Environmental Report
 23 ("Draft EIR") 1.0-4, attached as Ex. D to Defs.' RJN.) "[Environmental]
 24 Impact 4.1.2" in the EIR specifically states: "Implementation of the
 25 [GPU] would conflict with the 1987 Regional Plan for the Lake Tahoe
 26

27 ¹ The following facts are undisputed and appear in Plaintiff's
 28 First Amended Complaint, documents of which judicial notice has been
 taken, or the Hodges declaration, which is properly considered under
 Rule 12(b)(1).

1 Basin and Associated plans and regulations.” (Draft EIR 1.0-4.)
2 According to the EIR, “[t]he [GPU] has been closely coordinated with the
3 overall approach and intent of the TRPA Regional Plan Update to ensure
4 that the new General Plan policies and standards do not create conflict
5 with the eventual updated Regional Plan.” (Draft EIR 4.1-26.) Therefore,
6 the inconsistencies in the GPU are caused by the City’s attempt to
7 anticipate the TRPA’s update of the 1987 Regional Plan.

8 In order to mitigate the potential impact of the
9 inconsistencies until the TRPA promulgates a new regional plan, the City
10 added the following language to the GPU:

11 The City shall not implement any provision or
12 standard of the proposed General Plan Update that
13 is in conflict with the 1987 Regional Plan until
14 such time as the Regional Plan has been updated and
the General Plan is determined by the City and TRPA
to be consistent with the new Regional Plan and
TRPA Environmental Carrying Capacities.

15 (City of South Lake Tahoe General Plan, Final Draft (“GPU”) LU-7, May
16 17, 2011, attached as Ex. C to Defs.’ RJN; Draft EIR 1.0-4.) The Final
17 EIR states that the City “anticipate[s] that the [GPU] will be
18 incorporated into the updated Regional Plan, thereby eliminating any
19 such conflicts.” (Final EIR 3.0-3.4.) The Final EIR also states: “It
20 should also be noted that implementation of [this] mitigation measure
21 after eventual adoption of the Regional Plan Update may require
22 modifications to the . . . [GPU].” (Final EIR 3.0-74.)

23 **C. Declaration of Hilary Hodges**

24 The City buttressed its position that it will not implement
25 any provision or standard of the [GPU] that is in conflict with the 1987
26 Regional Plan by citing the following averments in the declaration of
27 Hilary Hodges, Development Services Director for the City of South Lake
28 Tahoe:

1 2. At the present time, no development projects
2 have been implemented pursuant to the [GPU].

3 3. At the present time, it is entirely unknown
4 which projects, if any, will be implemented
5 pursuant to the [GPU].

6 4. At the present time, the City has neither
7 implemented nor contemplated any development
8 projects which conflict with the Regional Plan.

9 5. At the present time, the City has neither
10 implemented, pursuant to the [GPU], any development
11 projects which would change the environment of
12 South Lake Tahoe with respect to building heights,
13 commercial floor area, . . . transect zoning, or
14 increased urbanization.

15 6. Implementation of development projects depends
16 on any number of factors including availability of
17 funding, acquisition of necessary interests in
18 land, and the approval of both TRPA and the City
19 Council when such projects are proposed, amongst
20 others.

21 (Hodges Decl. ¶¶ 2-6, attached as Ex. G to Defs.' RNJ.)

22 **D. The League's Allegations**

23 The League filed this action against the City following the
24 City's adoption of the GPU, "challenging . . . the City['s] . . . (1)
25 certification of the [EIR], (2) adoption of the [GPU], and (3) . . .
26 failure . . . to submit the [GPU] to the [TRPA] for review and approval
27 pursuant to the [TRP Compact]." (FAC ¶ 1.) The League alleges in its
28 first claim for relief that "the [GPU] is preempted by [the TRP
Compact]" because "[t]he [GPU] actually conflicts with the [TRP
Compact's requirements." (FAC ¶¶ 99-101.) The League alleges in its
second claim that "[t]he [GPU] is a 'project' as defined by the Compact"
and that "[b]y unilaterally adopting the [GPU], the City violated its
mandatory duty pursuant to TRPA's regulations to submit the [GPU] to the
TRPA for [the TRPA's] review and approval" in violation of the TRP
Compact, TRPA's regional plan, and TRPA's ordinances and rules of

1 procedure. (FAC ¶¶ 5, 106-115.) The League alleges in its fourth claim
2 that the City's challenged actions "have deprived [the League] and its
3 members of procedural, informational, and environmental protection
4 rights secured . . . by the Compact under federal law" "in violation of
5 42 U.S.C. § 1983." (FAC ¶ 119.) The League seeks a writ of mandate under
6 state law in its third claim and challenges the adequacy and legality of
7 the EIR under the California Environmental Quality Act ("CEQA") in its
8 fifth and sixth claims. (FAC ¶¶ 116-17, 120-33.)

9 The League alleges that "[t]he recreational activities of the
10 League's members will be directly affected by traffic, air pollution,
11 water pollution, aesthetic impacts, and other imminent impacts resulting
12 from the City's approval and implementation of the [GPU]." (FAC ¶ 31.)
13 The League also alleges that its members' "[p]roperty values and their
14 use and enjoyment of those properties will be reduced because of
15 increased traffic, aesthetic impacts, increased pollution in Lake
16 Tahoe's shore zone, increased air pollution, and increased urbanization
17 and building heights." (FAC ¶ 32.) Further, the League alleges that
18 "[t]he [City's] failure to submit the [GPU] to TRPA for review and
19 approval has denied the League and its members their procedural rights
20 and adversely affects their informational and conservational interests."
21 (FAC ¶ 33.)

22 The League "seeks an order vacating the [EIR] and its
23 accompanying findings and certification, setting aside the [GPU], and
24 mandating that the City apply to TRPA for review and approval of the
25 [GPU]" so that the League's alleged injuries could be redressed. (FAC ¶
26 3; FAC ¶¶ A-E.)

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IV. DISCUSSION

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2 The City argues that “[the League] does not have standing to
3 bring its first, second, or fourth [claims for relief] because [the
4 League] has not suffered any ‘injury in fact.’” (Mot. 6:12-14.) The City
5 specifically argues that the League “has . . . failed to establish that
6 its alleged injury is ‘actual or imminent,’” because “[t]he very injury
7 that [the League] complains *may* happen, *cannot* in fact happen because
8 [the TRP] Compact, the [GPU], and the . . . EIR all require that any
9 provision, standard, or project of the [GPU] which is inconsistent with
10 [TRPA’s] Regional Plan *cannot and will not* be implemented.” (Mot. 5:23-
11 26 (emphasis in original); 9:26.) The City also argues that “these
12 claims are not ripe for adjudication” “for similar reasons” and that
13 “[t]hese [claims] would only be ripe after a provision, standard,
14 project, or activity is actually proposed pursuant to the [GPU].” (Mot.
15 5:27, 13:12-14.)

16 The League counters that it has standing to bring its first
17 claim in which it challenges the inconsistent portions of the GPU,
18 because “the League and its members are harmed by any rules, such as
19 those adopted by the City in its GPU, that authorize any new buildings
20 or increased land coverage whether in conflict with the [1987] Regional
21 Plan or not.” (Opp’n 11:20-22.) The League further rejoins that the
22 “[s]econd [claim] seeks to remedy a procedural injury resulting from the
23 City’s failure to submit its GPU to TRPA for review and approval[,]
24 . . . [and] [t]he procedural harm to the League has already occurred.”
25 (Opp’n 5:18-27.) The League also argues that “[b]ecause . . . the
26 injuries alleged by [the League] are concrete and imminent for both the
27 [f]irst and [s]econd [c]laims, those claims . . . are [also] ripe for
28 review.” (Opp’n 13:11-12.) Finally, the League argues its fourth claim,

1 in which it alleges violations under 42 U.S.C. § 1983, is based upon the
2 same violations of federal rights alleged in its first and second
3 claims. (Opp'n 19:15-18.)

4 Article III of the Constitution "restricts federal court[]
5 [jurisdiction] to the resolution of cases and controversies." Davis v.
6 Fed. Election Comm'n, 554 U.S. 724, 732 (2008). "Federal courts are
7 presumed to lack jurisdiction, unless the contrary appears affirmatively
8 from the record." San Diego Cnty. Gun Rights Comm. v. Reno, 98 F.3d
9 1121, 1126 (9th Cir. 1996) (internal quotation marks and citation
10 omitted). "Two components of the Article III case or controversy
11 requirement are [the closely related concepts of] standing and
12 ripeness." Bova v. City of Medford, 564 F.3d 1093, 1095-96 (2009). "To
13 allege a justiciable [claim for relief], a plaintiff must plead facts
14 that are sufficient to confer standing and demonstrate that the claim is
15 ripe for determination." Dermer v. Miami-Dade Cnty., 599 F.3d 1217, 1220
16 (11th Cir. 2010).

17 "As the part[y] invoking federal jurisdiction, [the]
18 plaintiff[] bear[s] the burden of establishing . . . standing to [seek
19 the relief it requests]." San Diego Cnty., 98 F.3d at 1126 (citing Lujan
20 v. Defenders of Wildlife, 504 U.S. 555, 561 (1992)). "To do so, [it]
21 must demonstrate three elements which constitute the 'irreducible
22 constitutional minimum' of Article III standing." Id. (quoting Lujan,
23 504 U.S. at 560).

24 First, [it] must have suffered an "injury-in-fact"
25 to a legally protected interest that is both
26 "concrete and particularized" and "actual or
27 imminent," as opposed to "'conjectural' or
28 'hypothetical.'" Second, there must be a causal
connection between [its] injury and the conduct
complained of. Third, it must be "likely" - not
merely "speculative" - that [its] injury will be
"redressed by a favorable decision."

1 Id. (quoting Lujan, 504 U.S. at 560-61).

2 In comparison, “[r]ipeness is peculiarly a question of
3 timing.” Thomas v. Union Carbide Agr. Prods. Co., 473 U.S. 568, 580
4 (1985). “For a suit to be ripe within the meaning of Article III, it
5 must present concrete legal issues, presented in actual cases, not
6 abstractions.” Colwell v. Dep’t of Health & Human Servs., 558 F.3d 1112,
7 1123 (9th Cir. 2009). “A claim is not ripe for adjudication if it rests
8 upon contingent future events that may not occur as anticipated, or
9 indeed may not occur at all.” Texas v. United States, 523 U.S. 296, 300
10 (1998) (internal quotation marks and citation omitted).

11 In many cases, “the constitutional component of the ripeness
12 inquiry” “coincides squarely with standing’s injury in fact prong.”
13 Sacks v. Office of Foreign Assets Control, 466 F.3d 764, 773 (9th Cir.
14 2006).

15 For example, a claim is not ripe for
16 adjudication if it rests upon contingent future
17 events That is so because, if the
18 contingent events do not occur, the plaintiff
19 likely will not have suffered an injury that is
20 concrete and particularized enough to establish the
21 first element of standing. In this way, ripeness
22 and standing are intertwined.

23 Id.

24 Here, the crux of the City’s standing and ripeness arguments
25 is that the League neither has suffered nor will suffer an “injury in
26 fact” for the following reasons, which are supported by evidence in the
27 record: the GPU itself does not implement development; “no development
28 projects have been implemented” to date “pursuant to the [GPU]”; the
City has not “contemplated any development projects which conflict with
the [1987] Regional Plan”; and the TRP Compact, the GPU, and the
accompanying EIR “make abundantly clear that no projects which violate
[1987] Regional Plan or eventual Regional Plan Update can or will be

1 implemented" in the future. (Mot. 5:23-26, 8:2-22, 9:28-10:7; Hodges
2 Decl. ¶ 2, 4; City of South Lake Tahoe General Plan, Final Draft, LU-7,
3 May 17, 2011, attached as Ex. C to Defs.' RJN; Final EIR 3.0-3.4; TRP
4 Compact Art. VI(b).)

5 The League counters that the City's "delayed implementation of
6 . . . GPU provisions that conflict with . . . the [1987] Regional Plan
7 does not defeat the League's standing [to bring its first claim],"
8 because "[e]ven if TRPA adopts a Regional Plan . . . that cures the
9 City's inconsistent GPU requirements, the League will continue to be
10 harmed--even more imminently--by the City's authorizations of increases
11 in development on the southern shore of Lake Tahoe." (Opp'n 11:7-26.)
12 However, this argument and the allegations in the League's FAC fail to
13 identify "a causal connection between the [harm to the League members'
14 property values or environmental, aesthetic, and recreational interests]
15 and [the mere existence of inconsistent provisions in the GPU]," for
16 which the League seeks redress in its first claim for relief. Lujan, 504
17 U.S. at 560. The League's FAC specifically alleges that its future
18 injuries will be caused by the "approval and *implementation* of the
19 [GPU]." (FAC ¶¶ 31-32 (emphasis added.)) The League also fails to
20 demonstrate that "it [is] 'likely,' as opposed to merely 'speculative,'
21 that [its alleged] injury will be 'redressed by a favorable decision,'"
22 Lujan, 504 U.S. at 560; the League has not demonstrated that declaratory
23 or injunctive relief that cures the inconsistent portions of the GPU,
24 which is the alleged source of the League's alleged injuries, will
25 prevent the "increases in development on the southern shore of Lake
26 Tahoe." (Opp'n 11:25.)

27 In addition, "[t]he [League] . . . will have ample opportunity
28 later to bring its legal challenge at a time when harm is more imminent

1 and more certain," since the League will have the opportunity to
2 challenge specific development projects when those projects undergo the
3 environmental review required under the TRP Compact and before those
4 projects receive the approval of both the TRPA and the City Council.
5 Ohio Forestry Ass'n, 523 U.S. at 734; TRP Compact VI(a) & VII(a)-(c);
6 Hodges Decl. ¶ 6. Therefore, the League has not shown that it has
7 standing to bring its first claim for relief, or that what prompts it to
8 seek relief in its first claim is ripe for judicial decision, since the
9 League's alleged injury "rests upon contingent future events that may
10 not occur" and is not "fairly traceable to the [City's] [adoption of the
11 GPU which contains provisions inconsistent with the 1987 Regional
12 Plan]." Texas, 523 U.S. at 300; Lujan, 504 U.S. at 560.

13 The League argues that its "[s]econd [claim] seeks to remedy
14 a procedural injury resulting from the City's failure to submit its GPU
15 to TRPA for review and approval." (Opp'n 5:18-20.) The League
16 specifically argues that "[t]he procedural harm to the League has
17 already occurred, the City having refused to submit the GPU to TRPA,"
18 and that "[t]he City's failure has prevented any proceeding before TRPA
19 from occurring at which the League would have a right to air its
20 concerns about the GPU's inconsistency with [the 1987] Regional Plan and
21 ordinances and the resulting environmental harms." (Opp'n 6:2-4.)

22 To support its arguments, the League attempts to analogize its
23 alleged procedural injury to procedural injuries alleged under the
24 National Environmental Policy Act ("NEPA").² (Opp'n 4:9-9:15.) "[T]o show
25

26 ² The League does not argue that the TRPA's review of the GPU
27 would be governed by NEPA. See Glenbrook Homeowners Ass'n v. Tahoe
28 Regional Planning Agency, 425 F.3d 611, 615-16 (9th Cir. 2005) (holding
that regulations promulgated pursuant to NEPA did not apply to the
TRPA).

1 a cognizable injury in fact [for an alleged procedural injury], [the
2 League] must . . . show[] that (1) the [City] violated certain
3 procedural rules; (2) these rules protect [the League's and its
4 members'] concrete interests; and (3) it is reasonably probable that the
5 challenged action will threaten [the League's and its members'] concrete
6 interests." *Citizens for Better Forestry v. U.S. Dep't of Agric.*, 341
7 F.3d 961, 969-70 (9th Cir. 2003).

8 However, the League has not demonstrated how a fundamental
9 principle of constitutional injury in the Article III jurisprudence
10 concerning NEPA cases is applicable here; specifically, that "the
11 creation of a risk that serious environmental impacts will be overlooked
12 . . . is itself a sufficient 'injury in fact' to support standing
13" *City of Davis v. Coleman*, 521 F.2d 661, 671 (9th Cir. 1975)
14 (internal quotation marks omitted); *Citizens for Better Forestry*, 341
15 F.3d at 970 ("[T]he harm [at issue for an alleged procedural injury
16 under NEPA] consists of added risk to the environment that takes place
17 when governmental decisionmakers make up their minds without having
18 before them an analysis (with public comment) of the likely effects of
19 their decision on the environment.").

20 Here, the League has failed to demonstrate any such "risk that
21 serious environmental impacts will be overlooked." *City of Davis*, 521 at
22 671. The record demonstrates that the GPU has already undergone
23 environmental review under CEQA and that before specific development
24 projects can be implemented under the GPU, they must undergo additional
25 environmental review and receive approval from both the TRPA and the
26 City before they are implemented. TRP Compact VI(a) & VII(a) (2); Hodges
27 Decl. ¶ 6; Final EIR. The League has also failed to demonstrate "actual"
28 harm to its or its members' procedural rights, since the evidence

1 demonstrates that the League has already expressed its concerns about
2 the inconsistencies and environmental impacts of the GPU during the
3 public comment period under CEQA for the City's environmental review.
4 (Final EIR (describing public comments and the City's responses); FAC ¶
5 33 ("The League and its members have been involved in the administrative
6 proceedings that have been provided to date for the [GPU], including
7 attending meetings and providing written and oral comments.").)

8 The League's argument that its procedural injury is analogous
9 to the procedural injury alleged in NEPA cases is unpersuasive, since
10 the League has failed to demonstrate that the rationale on which the
11 procedural injury in NEPA cases is based supports the finding of an
12 "injury-in-fact" in this case. Here, the League has failed to
13 demonstrate that "it is reasonably probable that [the City's failure to
14 submit the GPU to TRPA for approval] will threaten [the League's and its
15 members'] concrete interests [in ensuring that serious environmental
16 impacts will not be overlooked, and in exercising their right to air
17 their concerns about the GPU's inconsistency with TRPA's 1987 Regional
18 Plan and ordinances and the resulting environmental harms]." *Citizens
19 for Better Forestry*, 341 F.3d at 970. Therefore, the League has not
20 shown that it has standing to bring its second claim, and the Court
21 lacks subject matter jurisdiction over that claim.


22 Subject matter jurisdiction is lacking over the League's
23 fourth claim for the same reasons the Court lacks jurisdiction over the
24 first and second claims, since the fourth claim is based on the same
25 alleged injuries asserted in the first and second claims. Therefore, the
26 League's first, second, and fourth claims are dismissed without
27 prejudice. *Frigard v. United States*, 862 F.2d 201, 204 (9th Cir. 1988)
28 ("Ordinarily, a case dismissed for lack of subject matter jurisdiction

1 should be dismissed without prejudice so that a plaintiff may reassert
2 [its] claims in a competent court.”).

3 **V. CONCLUSION**

4 Since the Court lacks subject matter jurisdiction over the
5 League’s first, second, and fourth claims, those claims are dismissed
6 without prejudice, and the state law claims are dismissed without
7 prejudice since the federal claims have been dismissed.

8 Dated: January 18, 2012

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12 GARLAND E. BURRELL, JR.
13 United States District Judge
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