

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION**

**MEETING OF APRIL 13 AND 14, 2011  
South Lake Tahoe**

**ITEM: 13**

**SUBJECT: STATUS REPORT ON THE NORTHSTAR MOUNTAIN  
PROPERTIES' WADDLE RANCH/NORTHSTAR  
WATERSHED IMPROVEMENT PROGRAM  
SUPPLEMENTAL ENVIRONMENTAL PROJECT ADOPTED  
ON MARCH 11, 2009 THROUGH ADMINISTRATIVE CIVIL  
LIABILITY ORDER NO. R6T-2009-0012**

**CHRONOLOGY:** March 11, 2009: Water Board adopts Administrative Civil Liability (ACL) Order No. R6T-2009-0012 effectuating a settlement of claims against Northstar Mountain Properties (NMP). Settlement includes \$500,000 cash payment and a \$2,250,000 Supplemental Environmental Project (SEP).

**ISSUES:** What direction does the Water Board want staff to pursue in response to the overall SEP funding being reduced to approximately 40 percent of the original SEP funding? The funding reduction is due to NMP's parent company filing for bankruptcy.

**DISCUSSION:** ACL Order No. R6T-2009-0012 requires NMP to pay an administrative civil liability of **\$2.75 million**, of which **\$500,000** is a cash payment distributed between the State Water Board's Cleanup and Abatement Account (CAA) and Waste Discharge Permit Fund (WDPF) (80/20 split). The remaining **\$2.25 million** is to be deposited through regularly scheduled (quarterly) payments into a SEP fund located in the CAA. Monies from the SEP fund are to be used to pay for the Waddle Ranch/Northstar Watershed Improvement Program SEP over a five-year implementation period.

Originally, the \$2.25 million was going to fund the SEP, which can be broken into the following four major elements.

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- **Waddle Ranch Watershed Assessment and Improvement** - This SEP element includes watershed assessment activities (e.g.; field reconnaissance, baseline water quality monitoring) for purposes of identifying and prioritizing watershed restoration/improvement projects on the Waddle Ranch property. The Waddle Ranch property is located in the East Fork Martis Creek watershed. This SEP element also includes implementing watershed restoration/improvement projects (e.g., road repair/removal, stream/wetland restoration, forest/fuels management activities) as selected by a SEP Steering Committee. The SEP Steering Committee will select projects based upon the results of the watershed assessment and recommendations from NMP's SEP consultant. The Steering Committee will use an adaptive management approach for selecting projects and methodologies, applying lessons learned during each field season to subsequent field seasons.
- **Northstar Forest and Riparian Enhancement** - This SEP element includes reducing overstocked/decadent vegetation in riparian corridors and adjacent forest areas within the Northstar community. The purpose of these activities is to (1) enhance riparian habitat conditions and (2) to reduce the risk of catastrophic fire that could significantly increase erosion due to substantial loss of soil-stabilizing vegetation. A monitoring and assessment program is also part of this SEP element. The results of the monitoring and assessment program will be used in part to develop a Forest Vegetation Treatment/Water Quality Protection Handbook. This SEP element will be managed by the Northstar Fire District.
- **Watershed Evaluation, Treatment and Monitoring Handbook** - This SEP element includes developing a handbook providing information on effective watershed assessment, treatment, and quantitative monitoring techniques. Land managers/agencies will be able to use the handbook to design and implement more effective watershed restoration projects with an emphasis on erosion control, and to support adaptive management project development/implementation with quantitative project monitoring/assessment. Results from monitoring/assessment activities at the Waddle Ranch property will be used in developing the handbook. A

Watershed Technical Group will be developed for purposes of providing high-level technical support in developing and reviewing the handbook.

- **Forest Vegetation Treatment/Water Quality Protection Handbook** - This SEP element will develop an initial adaptive management process for fuels treatment and forest management projects with a special emphasis on water quality protection and erosion control. The handbook will provide guiding principles for forestry practices and a "toolkit" of fuels reduction and forest management that quantifies water quality impacts and identifies appropriate mitigation measures to address potentially adverse impacts. This handbook is intended to be the foundation of a more substantial understanding of the impacts associated with forest vegetation treatments and development of a regional *Forest Vegetation and Erosion Management Handbook*. A Forestry Technical Group will be developed for purposes of providing high-level technical support in developing and reviewing the handbook.

The SEP Steering Committee is responsible for the overall guidance of the SEP. It is responsible for making all major decisions regarding SEP implementation such as setting general direction for SEP activities and tasks, selecting the specific construction projects, approving budget and tasks changes, and public relations regarding training, fieldwork, and disseminating information to the general public and other interested parties. The SEP Steering Committee will rely upon the technical support and advice of the two technical groups and NMP's SEP consultant.

In February 2010, NMP's parent company filed for Chapter 11 bankruptcy. In August 2010, the Water Board received its final bankruptcy-related payment for a total of \$1,035,730.23. These funds were deposited into the SEP fund established in the CAA. The bankruptcy resulted in the overall SEP funding being reduced to approximately 40 percent of the original \$2.25 million.

While there are insufficient funds to complete the SEP as originally accepted, the Water Board has options in determining the final fate of the remaining SEP funds (approximately \$1,040,000). Options include:

- Find that the SEP is non-viable and that NMP has failed to comply with payment and implementation schedules and transfer all remaining SEP funds to the State Water Board's CAA and WDPF (80/20 split).
- In addition to making the same findings as above, find that NMP's above-referenced failures were due to conditions beyond NMP's control. Then direct Water Board staff to proceed with the meet and confer process described in the ACL Order to develop an Alternative SEP for the Water Board's future consideration. This process would need to be completed within one year of determining the original SEP as being non-viable (the date this one-year period begins has yet to be established).

NMP would ultimately be responsible for submitting the Alternative SEP and an independent third party would be responsible for SEP oversight, such as Sierra Business Council was for the original SEP. The alternative SEP could include a subset of projects identified in the original SEP, at either the Waddle Ranch property or within the Northstar community, or both locations. The Alternative SEP could also be a completely new project. There are also the options of dedicating all remaining funds to the Alternative SEP or dedicating only a portion of the remaining funds to the Alternative SEP with undedicated funds going to the State Water Board's CAA and WDPF.

- Make the same findings described in the first option, above, and direct Water Board staff to begin a completely new project selection process independent of NMP. This option could involve dedicating all the remaining funds or a portion of the remaining funds to new projects, similar to the Alternative SEP option, above. It is likely that this option would involve going through the State Water Board's Request for Proposals (RPF) process to identify potential projects, and then proceeding through the State Water Board's contract process for awarding and managing each of the new projects.

The options, above, are listed in order from requiring the least to the greatest amount of Water Board time/effort/resources to implement. The first option places the majority of remaining funds in the State Water Board's CAA, where the Water Board could request funding for projects such as Leviathan Mine, or others yet to be identified. A list of projects the State Water

Board funded in 2009 and 2010 with CAA funds is included with this agenda item.

The Alternative SEP option would require Water Board staff to work with NMP to develop the Alternative SEP proposal, and a new ACL Order that would likely include a new Settlement Agreement. It is unknown what level of SEP oversight/involvement Water Board staff would have regarding implementation of the Alternative SEP. Water Board staff involvement with implementation would depend upon the nature of the projects or elements identified in the Alternative SEP. For example, would a Steering Committee and Technical Advisory Groups be included to manage the SEP and provide technical support, or would Water Board staff have such responsibilities?

The third option, while providing for the greatest flexibility, also places the greatest responsibility upon Water Board staff for identifying, selecting, and implementing new projects. Water Board staff would be solely responsible for proceeding with the State Water Board's RPF and contract processes, and would be solely responsible for ensuring satisfactory project implementation. Subsequently, the third option, above, also creates the greatest demand for Water Board resources.

**RECOMMENDATION:**

Proceed with the meet and confer process for developing an Alternative SEP that consists of a subset of original SEP projects/activities. Any undedicated funds would be transferred to the State Water Board's CAA and WDPF.

**ENCLOSURES:**

1. ACL Order No. R6T-2009-0012
2. SEP Budget
3. Projects funded with CAA funds in 2009 and 2010

# ENCLOSURE 1

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION**

**ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2009-0012**

**ADMINISTRATIVE CIVIL LIABILITY**

**NORTHSTAR MOUNTAIN PROPERTIES, LLC, FOR ALLEGED VIOLATION  
OF NPDES GENERAL PERMIT FOR STORM WATER DISCHARGES  
ASSOCIATED WITH CONSTRUCTION ACTIVITIES, STATE WATER  
RESOURCES CONTROL BOARD ORDER NO. 99-08-DWQ, ALLEGED  
VIOLATION OF WATER QUALITY CERTIFICATION ORDER DATED JUNE 9,  
2006, ALLEGED VIOLATION OF PROHIBITIONS PRESCRIBED IN THE  
*WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION*,  
AND ALLEGED VIOLATION OF CLEANUP AND ABATEMENT  
ORDER NO. R6T-2006-0049**

**FOR THE FOLLOWING PROJECTS:**

**NORTHSTAR VILLAGE, WDID NO. 6A31C325917  
NORTHSTAR INTERCEPT LOTS, WDID NO. 6A31C335494  
NORTHSTAR EMPLOYEE HOUSING, WDID NO. 6A31C335581  
NORTHSTAR DRIVE & BASQUE ROAD INTERSECTION, WDID  
NO. 6A31C329713  
NORTHSTAR HIGHLANDS DRIVE AND HWY 267 INTERCHANGE, WDID  
NO. 6A31C333755  
NORTHSTAR HIGHLANDS DRIVE, WDID NO. 6A31C333756  
NORTHSTAR DRIVE ROUNDABOUT, WDID NO. 6A31C333754  
NORTHSTAR HIGHLANDS RESORT HOTEL, WDID NO. 6A31C339910  
NORTHSTAR TRAILSIDE TOWNHOMES, WDID NO. 6A31C339949  
NORTHSTAR SCHAFFER'S CAMP RESTAURANT, WDID NO. 6A31C324687  
NORTHSTAR VILLAGE RUN FILL SITE, WDID NO. 6A31C342716**

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The California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) has been presented with a proposed settlement of claims for administrative liability against Northstar Mountain Properties, LLC (hereinafter referred to as NMP). The settlement was developed during negotiations between the Lahontan Water Board's Prosecution Team and NMP. This Administrative Civil Liability Order (ACL Order) and the attached Settlement Agreement (Attachment D) resolve the claims listed in this ACL Order through the payment of an administrative civil liability in the amount of \$2,750,000 (\$2,250,000 of which will be directed to the Supplemental Environmental Project (SEP) described herein).

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NMP has represented and warranted that the contributions to the project that would serve as a SEP under this ACL Order are not and were not previously being contemplated, in whole or in part, by NMP, for any purpose other than to partially satisfy NMP's obligations in this ACL Order, and that NMP's contributions to the project that serves as a SEP would not be made in the absence of the enforcement action.

In accepting the proposed settlement, the Lahontan Water Board has considered each of the factors prescribed in California Water Code sections 13327 and 13385, as set out more fully below. The Lahontan Water Board's consideration of these factors is based upon information obtained by the Lahontan Water Board in investigating the claims or otherwise provided to the Lahontan Water Board, including the information and comments received from the public. In addition to these factors, the administrative civil liability recovers the costs incurred by the staff of the Lahontan Water Board in investigating the claims and pursuing enforcement action.

A Notice of Proposed Settlement has been published in the *Sierra Sun* and/or the *Reno Gazette-Journal*, papers of general circulation in the Truckee, Lake Tahoe and Reno areas, notifying the public of the review period and soliciting public comments on the terms of the settlement. The proposed settlement supports the assessment of administrative civil liability in the amount of \$2,750,000 for the full and final resolution of each of the claims and alleged violations set forth herein, and is in the public interest. The settlement and assessment of administrative civil liability provides for the release and discharge of NMP for all known and unknown storm water program claims and violations for the project areas listed in Finding No. 2, below, prior to December 31, 2007, including all alleged violations set forth in the Alleged Violations and Penalty Summary Table (Attachment A), the settlement, and this ACL Order.

Having provided public notice of the proposed settlement for public comment the Lahontan Water Board finds:

1. Permit Holder

NMP is the project permit holder for all the projects listed in Finding No. 2, below. NMP is owned, in part, by NMP Holdings, LLC, East West Resort Development V, L.P., L.L.L.P., and HF Holding Corp.

NMP obtained coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction Activities, State Water Resources Control Board Order No. 99-08-DWQ (General Permit) from the State Water Resources Control Board (State Water Board) on various dates for the

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projects listed in Finding No. 2, below. NMP, as permit holder, is responsible for constructing all projects in compliance with the General Permit.

2. Projects

NMP is constructing numerous projects at Northstar, Placer County, California. The projects are intended to renovate existing mountain facilities and to develop additional residential areas within Northstar and to provide the necessary infrastructure to serve the same. Eleven specific projects are the subject of this ACL Order, and collectively the eleven facilities are hereinafter referred to as the Projects.

The Projects are all part of a planned development of approximately 325 acres within the existing Northstar resort community. The Projects are located within the central portion of the Martis Valley region, approximately six miles southeast of the Town of Truckee, and approximately five miles northwest of the northern shore of Lake Tahoe.

- A. Northstar Village, WDID No. 6A31C325917. The project consists of: (1) demolishing the previously-existing activity center, gondola building, photo shop, and clock tower buildings; (2) constructing seven mixed-use buildings, two ancillary buildings, ice skating rink, roadway and circulation improvements, off-site intersection improvements, parking facilities, trail systems, and infrastructure improvements; and (3) transporting and depositing fill material in two separate areas. The project site is located on approximately 28 acres at the base of the Northstar-at-Tahoe mountain facilities (Northstar), and south of Northstar Drive and Big Springs Drive. When permitted, the project was located on Placer County Assessor Parcel Nos. 110-080-24, -38, and -42, and 110-250-01 through -07.
- B. Northstar Intercept Lots, WDID No. 6A31C335494. The project consists of constructing a day skier parking lot with 1,200 parking spaces. The project site is on approximately 31 acres of land located west of State Route 267, north of Northstar Drive, near the entrance to Northstar, and approximately six miles from the Town of Truckee. When permitted, the project was located on Placer County Assessor Parcel Nos. 110-030-061 and 110-080-015.
- C. Northstar Employee Housing, WDID No. 6A31C335581. The project consists of constructing three employee housing apartment buildings and associated access roads and infrastructure. The project size is six acres.

- D. Northstar Drive & Basque Road Intersection, WDID No. 6A31C329713. The project consists of utility and storm water improvements located at the intersection of Northstar Drive and Basque Road. The project site is two acres.
- E. Northstar Highlands Drive and Hwy 267 Interchange, WDID No. 6A31C333755. The project consists of pavement widening on State Route 267, realignment, and pavement of an existing dirt road (Northstar Drive), and installation of a traffic signal. The project is located between mile posts 3.7 and 4.0 on State Route 267. The project site is 1.6 acres.
- F. Northstar Highlands Drive, WDID No. 6A31C333756. The project consists of constructing a new road from State Route 267 to the newly-developed Highlands Resort area. The project includes in-stream disturbances, which are subject to a Clean Water Act section 404 permit and Clean Water Act section 401 Water Quality Certification. The project site is 38.6 acres.
- G. Northstar Drive Roundabout, WDID No. 6A31C333754. The project consists of constructing a new roundabout on Northstar Drive located at the intersection with Sawmill Flat Road and the entrance to the Northstar Intercept Lots project. The project site is 1.2 acres.
- H. Northstar Highlands Resort Hotel (Ritz-Carlton Hotel), WDID No. 6A31C339910. The project consists of constructing a hotel structure, associated condominiums, and associated amenities. The project also includes relocation of ski and multipurpose trails. The project site is 24 acres.
- I. Northstar Trailside Townhomes, WDID No. 6A31C339949. The project consists of constructing eight new townhome duplexes and associated access roads and infrastructure. The project site is 4.7 acres.
- J. Northstar Schaffer's Camp Restaurant, WDID No. 6A31C324687. The project consists of constructing a restaurant facility and appurtenant utility installation at the top of a ski lift. The project size is five acres.
- K. Northstar Village Run Fill Site, WDID No. 6A31C342716. The project consists of depositing 150,000 cubic yards of material excavated from surrounding projects to regrade the Village Run ski trail. The ski trail extends from Highlands View Road down to the Northstar Village. The project size is 9.8 acres. When permitted, the project was located on Placer County Assessor Parcel Nos. 110-050-42 and -43.

3. Facts and Alleged Violations

NMP enters into the Settlement Agreement and the ACL Order without the admission or denial of any fact or the adjudication of any issue in this matter. The following represents the facts and alleged violations as they appear in the files of the Lahontan Water Board. NMP submitted Notices of Intent to comply with the terms of the General Permit for each of the listed Projects. The General Permit was adopted by the State Water Board on August 19, 1999, pursuant to Clean Water Act sections 208(b), 301, 302, 303(d), 304, 306, 307, 402, and 403. NMP was granted coverage under the General Permit on varying dates for each of the Projects, and prior to commencing construction on each of the Projects.

The General Permit requires NMP to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) for the Projects. NMP prepared separate SWPPPs for the Village, Northstar Drive and Basque Road Intersection, Northstar Highlands Drive and Hwy 267 Interchange, and Schaffer's Camp projects. NMP prepared a single SWPPP for the Northstar Intercept Lots, Northstar Employee Housing, Northstar Highlands Drive, and Northstar Drive Roundabout projects. NMP also prepared a single SWPPP for the Northstar Highlands Resort Hotel, Northstar Trailside Townhomes, and Northstar Village Run Fill Site projects.

The Lahontan Water Board issued a Clean Water Act section 401 Water Quality Certification (Water Quality Certification) to NMP for the Northstar Highlands Drive project on June 9, 2006. The Northstar Highlands Drive project is also regulated under State Water Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges that have Received State Water Quality Certification," which requires compliance with all conditions of the Water Quality Certification.

Lahontan Water Board staff inspected the Projects on June 15, 2006, July 5, 2006, August 7, 2006, October 5, 2006, and November 14, 2006. Alleged violations of the General Permit, the Water Quality Certification, and the Lahontan Water Board's *Water Quality Control Plan for the Lahontan Region* (Basin Plan) that were documented during those inspections are summarized in the Alleged Violations and Penalty Summary Table (Violation Summary) provided and incorporated herein as Attachment A to this ACL Order.

Lahontan Water Board staff (Eric Taxer and Harold Singer) also met with NMP's staff at the Projects on July 13, 2006, to discuss NMP's noncompliance. NMP was directed to immediately stabilize unauthorized drainage impacts and was directed to maintain adequate supplies and personnel to ensure compliance with the SWPPP and General Permit.

The Lahontan Water Board issued Notices of Violation (NOVs) to NMP on July 13, 2006, August 16, 2006, and August 24, 2006. The NOVs were issued for the General Permit and Basin Plan alleged violations observed during the June 15, 2006, July 5, 2006, and the August 7, 2006, inspections. The NOVs also documented alleged violations that were discovered during the records and file searches associated with each of the inspections. Each NOV required immediate correction of all observed alleged violations in addition to measures deemed appropriate to help ensure long-term compliance. The duration of alleged noncompliance for violations observed during the inspections and communicated to NMP through each NOV is noted in the Violation Summary provided as Attachment A to this ACL Order.

The Lahontan Water Board issued Cleanup and Abatement Order (CAO) No. R6T-2006-0049 on November 8, 2006, to NMP for seven of the Projects. The CAO was issued to address NMP's alleged continued failure to implement appropriate storm water controls, particularly prior to a November 2-3, 2006, storm water runoff event. The CAO required NMP to clean up the effects of the discharge resulting from the precipitation event, to comply with additional provisions intended to prevent further discharges, and to monitor the potential impacts during future storm water runoff events. CAO alleged violations are also identified in the Violation Summary provided as Attachment A to this ACL Order.

Precipitation events occurred on January 3-4, 2007 (0.65 inches of precipitation and subsequent snow), and again on February 8-10, 2007 (2.52 inches of precipitation). Alleged violations associated with these storm events are summarized in the Violation Summary provided as Attachment A to this ACL Order.

Storm water runoff and surface water monitoring conducted during storm events documented increases in sediment and nutrient concentrations in area surface waters from the disturbed and inadequately-protected construction areas. A summary of available monitoring data of storm water runoff impacts to area surface waters from the Projects is provided and incorporated herein as Attachment B to this ACL Order.

#### 4. Administrative Civil Liability Authority

The Lahontan Water Board may impose civil liability pursuant to Water Code section 13385, subdivision (a)(2) and subdivision (a)(4). Water Code section 13385, subdivision (a) states:

*Any person who violates any of the following shall be liable civilly in accordance with this section:*

\* \* \*

*(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.*

\* \* \*

*(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the activity subject to the order or prohibition is subject to regulation under this chapter.*

The Lahontan Water Board may also impose civil liability pursuant to Water

Code section 13268, subdivision (a)(1). Water Code section 13268, subdivision (a)(1) states:

*Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b).*

The Lahontan Water Board alleges that NMP violated waste discharge requirements prescribed by the General Permit, violated conditions specified by CAO No. R6T-2006-0049, violated waste discharge prohibitions contained in the Lahontan Water Board's Basin Plan adopted pursuant to Water Code section 13243, violated conditions specified in a Clean Water Act section 401 Water Quality Certification, and failed to submit complete technical reports required under Water Code section 13267 as described in Attachment A to this ACL Order. The Lahontan Water Board is, therefore, authorized to impose civil liability pursuant to Water Code section 13385, subdivision (a)(2) and subdivision (a)(4), and Water Code section 13268(a)(1).

##### 5. Civil Liability – California Water Code

For the violation of requirements specified in the General Permit, CAO No. R6T-2006-0049, Basin Plan, and Clean Water Act section 401 Water Quality Certification, the Lahontan Water Board may impose civil liability in a

maximum amount up to that specified by Water Code section 13385, subdivision (c). Water Code section 13385, subdivision (c) (emphasis added), states:

*Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 . . . of Chapter 5 in an amount **not to exceed** the sum of both of the following:*

*(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.*

*(2) Where there is a discharge, any portion of which is not susceptible to clean up or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.*

For the failure to submit technical or monitoring reports required under the authority established by Water Code section 13267, the Lahontan Water Board may impose civil liability in a maximum amount up to that specified by Water Code section 13268, subdivision (b). Water Code section 13268, subdivision (b)(1) (emphasis added), states:

*Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 . . . of Chapter 5 for a violation of subdivision (a) in an amount which **shall not exceed** one thousand dollars (\$1,000) for each day in which the violation occurs.*

In this matter, the **potential maximum** civil liability is \$12,614,000 under Water Code section 13385, subdivision (c) and Water Code section 13268, subdivision (b)(1) for all the Projects listed in Finding No. 2 above for (i) the discharges and threatened discharges of wastes to a tributary of the Truckee River, (ii) failure to comply with orders of the Lahontan Water Board, and (iii) failure to submit complete technical reports as required by the Lahontan Water Board. The maximum liability amount for each project and for each type of violation incurred by that project is documented in the Violation Summary provided as Attachment A to this ACL Order.

6. Factors Affecting the Amount of Civil Liability

Water Code sections 13327 and 13385, subdivision (e) require the Lahontan Water Board to consider enumerated factors when it determines

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the amount of civil liability pursuant to Water Code sections 13268 and 13385. The Lahontan Water Board considered those factors in determining the amount of administrative civil liability under this ACL Order.

**A. The nature, circumstances, extent, and gravity of the alleged violations.**

The liability imposed by this ACL Order addresses the alleged violations documented in the Violation Summary provided as Attachment A to this ACL Order. These alleged violations are associated with construction activities on approximately 325 acres of property under development by NMP over a period of four years. Generally, NMP's alleged violations relate to the control of storm water discharges and resulted from a failure to comply fully with applicable permits, water quality certifications, orders issued by the Lahontan Water Board, Basin Plan prohibitions, and orders for technical reports. The number and frequency of alleged storm water violations that occurred on the Projects were extensive and had the potential to cause significant adverse impacts to the Martis Creek watershed. However, significant adverse impacts as a result of the alleged violations, such as fish mortality, were not realized due to minimal precipitation events during the periods of alleged violation.

The Lahontan Water Board considers the identified beneficial uses of the waters in question when evaluating the gravity of discharges or threatened discharges. Beneficial uses of the waters that received discharges or were threatened by discharges include water contact and non-water contact recreation, commercial and sport fishing, municipal and domestic supply, cold freshwater habitat, wildlife habitat, spawning/reproduction/development, and rare/threatened/endangered species. Increased sediment discharges to surface waters in the Martis Creek watershed have the ability to adversely affect all of these beneficial uses.

Beginning in the 2004 construction season, Lahontan Water Board staff observed and documented numerous alleged SWPPP-related violations associated with the Northstar Village project as set forth in Finding 6.G. below. Lahontan Water Board staff worked closely with NMP prior to and throughout the 2005 construction season to provide education and support on means to comply with the General Permit and the SWPPP. The result was improved compliance during the 2005 construction season.

NMP significantly increased the magnitude of construction area and activity in 2006, but did not effectively implement the necessary SWPPP and General Permit compliance measures as compared to the

previous two construction seasons. Non-compliance during the 2006 construction season resulted in the alleged violations documented in the Violation Summary provided as Attachment A to this ACL Order.

The Lahontan Water Board's Executive Officer met onsite with NMP on July 13, 2006, and reiterated the findings of his staff, required immediate correction of all noted deficiencies, and required NMP to comply with all program requirements for the remainder of the construction season in order to be prepared for the onset of any possible storm water runoff events.

NMP's alleged continued ineffective performance and failure to comply with the General Permit and the CAO, including lack of proper winterization, resulted in sediment discharges into area surface waters during storm water runoff events on October 5, 2006, November 8, 2006, January 3-4, 2007, and February 8-10, 2007. These alleged unauthorized discharges also resulted in adverse in-stream impacts at several locations throughout the Projects, though no significant impacts (such as fish mortality) were realized. (See summary of monitoring data, provided as Attachment B to this ACL Order.)

The unstable site conditions also resulted in creating a condition of threatened discharges during periods of snowmelt runoff, though these alleged violations were less serious than they could have been given a light snow and precipitation year during the 2006-2007 winter. In response to Lahontan Water Board's direction to come into compliance, NMP to its credit dedicated significant financial and personnel resources to implement the necessary activities to bring the construction sites into compliance as directed. According to NMP, it realized after the fact that the personnel that it originally directed to bring the construction sites into compliance lacked the experience necessary to achieve compliance.

The violation of reporting and implementation requirements of a Water Board CAO is serious because CAOs are intended to prevent future or ongoing impacts from unauthorized discharges. However, in this case, the violation of CAO reporting and implementation requirements resulted in no measurable or documented impacts to beneficial uses due to relatively few precipitation events during the 2006-2007 winter and this mitigates against the potential maximum liability under the Water Code.

Following receipt of the CAO in November 2006, NMP reports that its management initiated an internal cultural change within the organization and engaged an expert SWPPP consulting team to assist with the design and implementation of this change. Through extensive

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training, implementation and monitoring efforts, NMP was able to achieve a zero-violation goal for 2007 and 2008. This turnaround demonstrates NMP's commitment to compliance with its water quality obligations and mitigates the extent, gravity and seriousness of the alleged 2006 violations.

**B. Whether discharge is susceptible to cleanup or abatement.**

For the most part, the alleged violations represented threatened, not actual, discharges of sediments and waste materials to surface waters. The alleged violations were not completely corrected until the beginning of the 2007 construction season.

There were instances of sediment discharge to area surface waters during the October 2006, November 2006, January 2007, and February 2007 storm water-runoff events. These discharges are not susceptible to cleanup, though some clean-up efforts were implemented by NMP prior to some of these events in response to the November 2006 CAO.

There are four instances of unauthorized flood plain disturbance (fill material, regrading, etc.): the Intercept Lot flood plain crossing, Highlands View Road Station 50+00 crossing of an unnamed drainage, Highlands View Road Station 104+00 (West Martis Creek crossing), and Highlands View Drive Station 144+00 (West Fork West Martis Creek crossing). These areas are susceptible to cleanup and to abatement through efforts designed to remove excess waste earthen materials from the drainages and/or stabilize the disturbed drainage areas. Except for the Highlands View Road Station 50+00 and the Intercept Lot, such activities have not been implemented. Abatement efforts are planned to be implemented at the West Martis Creek Crossing and at the West Fork Martis Creek crossing during summer 2009.

**C. The degree of toxicity of the discharge.**

Many of the alleged violations were permit violations that, for the most part, resulted in threatened, not actual, discharges of waste and waste earthen materials to surface waters. In situations where the threatened discharges did not occur, the toxicity analysis is not applicable.

The times when an unauthorized discharge did occur, the water samples collected during the storm water runoff events were not analyzed for toxicity. Accordingly, the toxicity of the discharge is unknown.

**D. Ability to pay.**

The liability imposed by this ACL Order represents a settlement with NMP. NMP asserts that it has the ability to pay the proposed liability.

**E. The effect on NMP's ability to continue its business.**

The liability imposed by this ACL Order represents a settlement with NMP, and the proposed liability will not prevent NMP from continuing in business.

**F. Any voluntary cleanup efforts undertaken by the violator.**

In response to extensive communications with Water Board staff, NMP dedicated substantial resources to water quality compliance in 2006. However, NMP reports that inexperienced NMP staff and poor internal NMP communication reduced the effectiveness of its cleanup efforts.

**G. Prior history of violations.**

For the Northstar Village project, 11 violations were documented in 2004 (failure to obtain a permit and permit conditions), and 13 violations were documented in 2005 (permit conditions, SWPPP/BMP violations, and Basin Plan prohibitions violations). For the Northstar Schaffer's Camp project, several additional violations were observed in 2004. Enforcement actions were issued to NMP in response to documented violations relating to soil tracking, inadequate stockpile management, breach of ESA fencing and pine needle berming, inadequate personnel training regarding water quality protection and SWPPP implementation, and failure to properly implement the SWPPP and BMPs. Initial enforcement actions consisted of verbal warnings, and subsequent enforcement actions were elevated to written notices of violation, orders for information pursuant to Water Code section 13267, and a Cleanup and Abatement Order pursuant to Water Code section 13304.

**H. Degree of culpability.**

NMP oversees all contracts for project construction and is the permit holder for the project. NMP, as permit holder, is directly responsible for project activities, including those of its contractors, and the impacts associated with such activities. NMP is responsible for its initial failures to ensure its contractors' activities protected water quality as required by the General Permit, the Water Quality Certification, and the Basin Plan. NMP is also responsible for the history of continued noncompliance in the face of escalating enforcement actions.

**I. Economic benefit or savings resulting from the alleged violations.**

There were economic savings associated with failing to implement and manage numerous measures. Savings included, but are not limited to: costs associated with purchasing the additional storm water management and erosion control materials necessary to provide adequate storm water runoff protection; costs of training contractors to properly implement the additional storm water runoff protection measures, and labor costs for implementing and maintaining those materials and structures. NMP expended extensive financial and personnel resources on BMPs and compliance during the 2006 season. However, these efforts were often after direction from the Water Board or were ineffective. As described above, far more effective measures were implemented in 2007. NMP's estimated economic savings were approximately \$250,000, which is far less than the total amount of the liability imposed by this ACL Order. The Lahontan Water Board staff evaluated NMP's economic benefit analysis and resulting estimate, and found the information to be based on credible evidence and, therefore, to be reliable.

**J. Other matters as justice may require.**

Estimated staff costs for investigation, enforcement, enforcement follow up, and preparation of this ACL Order are \$151,000.

NMP began to implement organizational changes in July 2006 to elevate the priority of its stormwater permit compliance program. The organizational changes occurred too late in the season to result in effective stormwater permit compliance prior to the onset of the 2006/2007 winter season. Additional organizational changes were implemented during the 2006/2007 winter season, and as a result NMP completed its 2007 and 2008 construction seasons without violating permit conditions and Basin Plan prohibitions. This

represents a significant turnaround from previous experience and resulting water quality impacts and is a significant factor warranting a reduction in the overall potential liability imposed in this ACL Order.

Furthermore, NMP has worked cooperatively with the Lahontan Water Board's Prosecution Team to develop a comprehensive and significant and valuable supplemental environmental project primarily for the benefit of the affected watershed in the Martis Valley.

7. Supplemental Environmental Project

NMP, as a part of the Settlement Agreement, has proposed that a portion of the liability (\$2,250,000) be directed to the development and construction of the components outlined in the "Waddle Ranch/Northstar Watershed Improvement Program" (the SEP), provided in Attachment C, which is made a part of this ACL Order. The SEP consists of implementing restoration efforts and watershed improvements within the Waddle Ranch property, and implementing riparian and forest enhancement activities within the Northstar community. The Waddle Ranch is located in the Martis Valley, Eastern Placer County, and was recently acquired by the Truckee Donner Land Trust to establish a conservation easement, with the intention of transferring ownership to the Truckee Tahoe Airport District with the Land Trust continuing to hold the conservation easement. The riparian and forest enhancement portion of the SEP that is within the Northstar community is intended to enhance riparian habitat and associated riparian species, and reduce the potential for catastrophic wildfire and associated erosion on portions of the West Fork of Martis Creek and West Martis Creek. This element of the SEP will enhance and help protect riparian and aquatic life in those creeks. The SEP also includes two products that will address two specific critical gaps in watershed and forestry management: (1) the "Watershed Evaluation, Treatment and Monitoring Handbook," and (2) the "Forest Fuels Treatment/Water Quality Protection Handbook."

The aforementioned products and every report, map, study, photograph, computer model, computer disk and other documents prepared by NMP as a component or product of the SEP and provided to the Lahontan Water Board (Deliverables or Deliverable) shall be the property of the Lahontan Water Board. NMP shall be deemed to transfer to the Lahontan Water Board all right, title and interest in the Deliverables. To the extent any Deliverable constitutes a copyrightable work; NMP agrees that the Lahontan Water Board is the owner of all right, title and interest in the Deliverable. The Lahontan Water Board shall have the nonexclusive, royalty free, worldwide, perpetual right to use, reproduce, publish, display, broadcast, transmit, exhibit, distribute and exploit any Deliverable and to prepare derivative and additional documents or works based on any Deliverable.

As a part of this settlement, NMP will provide \$2,250,000 to fund the SEP. To implement this requirement, NMP will make payments into a fund according to the schedule included herein in Order No. 3. The Parties intend that the fund will be located in and administered by the State Water Board Cleanup and Abatement Account and will be known as the Northstar Mountain Properties SEP Fund (SEP Fund). The Cleanup and Abatement Account will be asked to administer the account and to maintain the SEP Fund separate from other assets in the Cleanup and Abatement Account. Proceeds paid into the Cleanup and Abatement Account by NMP in compliance with this requirement will fulfill its obligation to fund the SEP. Disbursements from the SEP Fund must only be used for (1) the SEP as provided in Attachment C, (2) an alternative supplemental environmental project(s) (Alternative SEP) as provided for in Order No. 3.c., below, or (3) transfer to the State Water Board Cleanup and Abatement Account and Waste Discharge Permit Fund (or other fund(s) that the applicable California Water Code section(s) directs payment to at the time) in response to conditions described in Order Nos. 3.c. and 3.l., below. Disbursements from the SEP Fund cannot be used to pay for the independent third-party oversight discussed in Finding No. 9.

8. SEP Criteria

The SEP meets the criteria established by the State Water Board in its *Water Quality Enforcement Policy*, dated February 19, 2002, in that it (1) consists of measures that go above and beyond the current and future obligation of NMP; (2) will directly benefit surface water quality and associated beneficial uses by (a) identifying pollutant sources through a watershed assessment of impacts associated with past development practices and implementing measures to address those pollutant sources, (b) enhancing riparian habitat and reducing the potential for catastrophic wildfire and its associated erosion, sediment discharges, and direct impacts to aquatic life, and (c) implementing corresponding public awareness projects; (3) will not directly benefit the Water Board functions or staff; and (4) is not otherwise required of NMP. The SEP has the support of local watershed improvement advocates and the local fire agency.

The SEP also has a nexus with the alleged violations in that it (1) provides a watershed assessment and watershed improvements and restoration in an area immediately adjacent to and down gradient from NMP's Projects, and (2) provides a community educational element through the development of guidance documents that will assist other land managers to understand the technical nature of erosion potential.

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Whenever NMP, its subsidiaries, corporate parents, affiliates, successors, heirs, assigns, officers, directors, partners, employees, representative agents, subcontractors, attorneys, or any fiscal agent holding SEP funds, publicizes the SEP or an Alternative SEP, it shall state in a prominent manner that the SEP is being undertaken as part of the settlement of an enforcement action.

9. Independent Third Party Review and Financial Audit of SEP

NMP agrees to contract with an independent third party (e.g., Sierra Business Council or other entity acceptable to the Executive Officer) to audit implementation of the SEP or Alternative SEP and report to the Lahontan Water Board. The independent third party will track SEP progress, verify completion and audit expenditures from the SEP Fund, and will submit the following reports to the Lahontan Water Board:

- a. copies of approved SEP invoices as they are submitted to the Cleanup and Abatement Account for payment;
- b. quarterly SEP progress reports;
- c. annual expenditure reports;
- d. a final report certifying completion of the SEP; and
- e. a post-project accounting of all expenditures.

The costs of this third party oversight are in addition to the \$2,250,000 that NMP is required to contribute to fund the SEP and shall not be paid out of the SEP Fund or be credited toward NMP's obligation to fund the SEP.

10. NMP's Waiver of Right to Petition

As provided in paragraph 2 of the Settlement Agreement (Attachment D), NMP covenants and agrees that it will not contest or otherwise challenge this ACL Order before the State Water Board or any court if the Lahontan Water Board approves this ACL Order as specified herein, as part of the settlement (including attachments).

11. Notification of Interested Parties

The Lahontan Water Board notified NMP and interested parties of its intent to consider the proposed settlement during its meeting of **March 11-12, 2009**. The Lahontan Water Board, in a public meeting, heard and considered all comments related to the proposed settlement.

12. Other Parties' Right to Petition

Any person aggrieved by this action of the Lahontan Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this ACL Order, except that if the thirtieth day following the date of this ACL Order falls on a Saturday, Sunday, of state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

13. California Environmental Quality Act

This enforcement action is being taken by the Lahontan Water Board to enforce provisions of the Water Code and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, Title 14, section 15321.

**IT IS HEREBY ORDERED THAT:**

1. The Lahontan Water Board imposes administrative civil liability against NMP in the amount of \$2,750,000.
2. NMP must provide payment in the amount of \$500,000 to the State Water Board to be distributed between the State Water Board's Cleanup and Abatement Account (\$400,000) and the Waste Discharge Permit Fund (\$100,000). An initial installment of \$200,000 paid to the Cleanup and Abatement Account and \$50,000 paid to the Waste Discharge Permit Fund must be made **within thirty (30) calendar days** of receiving written notice from the Lahontan Water Board that the State Water Board has not received any petitions for this ACL Order within the time provided in Water Code section 13320 (30 days) and that no judicial challenge has been made within the time provided in Water Code section 13330, or that such challenges were received, but all claims contained therein have been resolved in favor of the Lahontan Water Board such that the ACL Order remains unchanged. NMP must make additional payments of \$200,000 to the Cleanup and Abatement Account and \$50,000 to the Waste Discharge Permit Fund. These additional payments are due to the Lahontan Water Board **by close of business (5:00 p.m.) on the one year anniversary of**

**the first payment set forth above.** The payments to the Cleanup and Abatement Account described in this section are separate and distinct from the SEP Fund (as described below), and may be used by the State Water Board for any purpose it deems fit and are not constrained as part of the SEP Fund described below.

The payments described in this section shall be made using either cashier's checks, money orders, or corporate checks made payable as follows:  
Payments to the Cleanup and Abatement Account – Made payable to  
**California State Water Resources Control Board, Cleanup and Abatement Account**

Payments to the Waste Discharge Permit Fund – Made payable to  
**California State Water Resources Control Board, Waste Discharge Permit Fund**

Send payments to the address below.

**Lahontan Regional Water Quality Control Board**  
Attn: Assistant Executive Officer  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150

3. The remaining \$2,250,000 will be directed to the SEP as specified below in this ACL Order.
  - a. NMP will make quarterly payments over five years in the amounts specified below by the dates set forth therein, into the SEP Fund established in the State Water Board's Cleanup and Abatement Account as described in Finding No. 7. Payments will be made by check made out to the State Water Board Cleanup and Abatement Account – Northstar Mountain Properties SEP Fund, which shall be known as and referred to herein as the SEP Fund. Except as otherwise provided herein, the SEP Fund shall be separately maintained in the Cleanup and Abatement Account and shall be restricted for use only on the SEP detailed in this ACL Order and for no other purposes whatsoever. The payments are due and payable according to the following schedule:

- i. \$250,000 total for the year 2009.
  1. \$62,500 **within thirty (30) calendar days** of receiving written notice from the Lahontan Water Board that the State Water Board has not received any petitions for this ACL Order within the time provided in Water Code section 13320 (30 days) and that no judicial challenge has been made within the time provided in Water Code section 13330, or that such challenges were received, but all claims contained therein have been resolved in favor of the Lahontan Water Board such that the ACL Order remains unchanged; and
  2. \$62,500 by June 30, 2009;
  3. \$62,500 by September 30, 2009; and
  4. \$62,500 by November 30, 2009.
  
- ii. \$250,000 total for the year 2010:
  1. \$62,500 by January 31, 2010;
  2. \$62,500 by March 31, 2010;
  3. \$62,500 by June 30, 2010; and
  4. \$62,500 by September 30, 2010.
  
- iii. \$500,000 total for the year 2011.
  1. \$125,000 by January 31, 2011;
  2. \$125,000 by March 31, 2011;
  3. \$125,000 by June 30, 2011; and
  4. \$125,000 by September 30, 2011.
  
- iv. \$600,000 total for the year 2012.
  1. \$150,000 by January 31, 2012;
  2. \$150,000 by March 31, 2012;
  3. \$150,000 by June 30, 2012; and
  4. \$150,000 by September 30, 2012.
  
- v. \$650,000 total for the year 2013.
  1. \$162,500 by January 31, 2013;
  2. \$162,500 by March 31, 2013;
  3. \$162,500 by June 30, 2013; and
  4. \$162,500 by September 30, 2013.

In the event that the due date for payments set forth in Order No. 3.a.i.1 extends past June 30, 2009, all SEP Fund payments that accrue and come due under the schedule set forth in Order No. 3 will be temporarily suspended until the payment set forth in Order No. 3.a.i.1 becomes due and payable. All such suspended SEP Fund payments shall then become due and payable in a single lump sum payment concurrently with the payment due date set forth in Order No. 3.a.i.1.

NMP agrees to make quarterly payments into the SEP Fund under the schedule set forth above. NMP may, in its sole discretion, make pre-payments into the SEP Fund provided that the total payments into the SEP Fund meet or exceed the total payment required by the dates noted above. NMP must submit to the Lahontan Water Board's South Lake Tahoe office, written documentation that the above-referenced payments have been made by **October 15th** for the payments for the current calendar year (provided that documentation of the payments noted in Order No. 3.a.i. shall be submitted by December 15, 2009, unless the payments are suspended as provided above). The Lahontan Water Board acknowledges that NMP has spent money allocated towards the SEP in the Spring of 2008 to capture peak stream flows at the top and the bottom of the proposed Waddle Ranch SEP site in the Martis Valley, which was necessary to set a baseline water quality measurement for 2008. The Lahontan Water Board recognizes that this early 2008 peak flow monitoring was essential to the SEP because it establishes a means to measure the effectiveness of the SEP. These monitoring activities were not required by the Lahontan Water Board or any other agency. The Lahontan Water Board agrees that NMP shall be reimbursed from the SEP Fund for this work, pursuant to the reimbursement procedures described below, in an amount not to exceed \$15,000, upon submission of invoices for said work, once NMP makes its initial 2009 payment to the SEP Fund. NMP shall also have the right, exercisable within its sole discretion, to contract for services due under the SEP on a time and materials basis or a fixed fee.

- b. NMP shall provide the Assistant Executive Officer with assurance that it will meet its financial responsibility for paying the liability proposed herein by providing a suitable assurance instrument satisfactory to the Assistant Executive Officer within **thirty (30) days** of receiving written notice from the Lahontan Water Board that the State Water Board has not received any petitions for the ACL Order within the time provided in Water Code section 13320 and that no judicial challenge has been made within the time provided in Water Code section 13330, or that such challenges were received, but all claims contained therein have been resolved in favor of the Lahontan Water Board such that the ACL Order remains unchanged and effective. The assurance instrument may be in the form of a bond, guarantee, assignment of funds, letter of credit, or similar assurance instrument that is acceptable to the Assistant Executive Officer, which acceptance shall not be unreasonably or untimely withheld. The assurance instrument (i) shall be greater than or equal to the outstanding amount owing by NMP to the SEP Fund under Order No. 3.a, (ii) may be reduced at NMP's discretion as payments are made by NMP to the SEP Fund to cover only the remaining payment NMP owes to the SEP Fund under Order No. 3.a, and (iii) shall not

expire until a suitable replacement assurance instrument is established for the outstanding amount that NMP owes toward the SEP Fund.

- c. If the Lahontan Water Board's Executive Officer, or his delegee, and NMP agree that the SEP will not proceed for reasons beyond NMP's control, they shall meet and confer to agree upon an alternative supplemental environmental project(s) for recommendation to the Lahontan Water Board for acceptance. Funds deposited into the SEP Fund per the schedule above will be devoted to the Alternative SEP. In the event that no Alternative SEP can be agreed upon by the parties and/or accepted by the Lahontan Water Board within one (1) year of the parties agreeing that the SEP is not viable, then funds in the SEP Fund and any remaining amount required to bring the total ACL payment to \$2,750,000 will be deposited into the State Water Board Cleanup and Abatement Account (80%) and the State Water Board Waste Discharge Permit Fund (20%) according to the schedule set forth in Order No. 3.a., above. In the event of impasse regarding the SEP, all payments pursuant to the payment schedule will remain due according to the schedule in Order No. 3.a., above. In the event that this provision becomes effective due to impasse, the restrictions on use of monies in the SEP Fund are terminated effective thirty (30) days from written notice by the Executive Officer to the Cleanup and Abatement Account. For monies remaining in the SEP Fund and future payments to the SEP Fund pursuant to Order No. 3.a. above, the Cleanup and Abatement Account shall transfer twenty (20) percent to the State Water Board Waste Discharge Permit Fund. The Cleanup and Abatement Account is free to use the remaining eighty (80) percent of monies for any purposes that it deems fit.
- d. All payments made under the ACL Order<sup>1</sup>, including payments to the SEP Fund and cash payments to the Cleanup and Abatement Account and the Waste Discharge Permit Fund, shall be considered a credit towards the total \$2,750,000 obligation. In no event shall NMP's total payments exceed \$2,750,000 with no more than \$2,250,000 allocated towards the SEP Fund, and no more than \$500,000 to the Cleanup and Abatement Account and the Waste Discharge Permit Fund, except as provided in Order No. 3.c. above.
- e. If NMP fails to perform the SEP in accordance with the specific terms and conditions, including the time schedule, detailed in Attachment C for any reason, except for those matters beyond the reasonable control of NMP or its agents, then the remaining balance due under the Administrative Civil Liability amount of \$2,750,000 will become immediately due and payable by NMP to the State Water Board Cleanup and Abatement Account (80%) and the State Water Board Waste

<sup>1</sup> Payment requirements are identified in Order Nos. 2, 3, and 5.

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Discharge Permit Fund (20%) (or other accounts to which the applicable California Water Code section(s) directs payment at the time) within 30 days of the relevant compliance date, unless the Lahontan Water Board Executive Officer finds that NMP's failure to comply within SEP compliance dates was for good cause. The Lahontan Water Board shall provide notice to NMP and a reasonable opportunity to cure (no less than sixty (60) days) any perceived violation of this ACL Order or the Settlement, other than for failure to make payments required by Order Nos. 2 and 3.a., above. Upon written request from NMP, the Executive Officer may approve a reasonable extension of time to comply with the specific terms and conditions of the SEP, which approval shall not be unreasonably withheld.

- f. After consultation with the Executive Officer, NMP will select an independent third party (e.g., Sierra Business Council or other entity acceptable to the Executive Officer), consistent with the *Water Quality Enforcement Policy*, to review, verify and approve all invoices for authorized SEP work. NMP shall provide the Executive Officer an opportunity to review and accept NMP's contract with the independent third party, which acceptance shall not be unreasonably withheld. NMP shall pay for the independent third party's work, but the independent third party will report to the Lahontan Water Board regarding the third party's tracking of SEP progress, verification of SEP task and project completion, and auditing of expenditures from the SEP Fund, consistent with the *Water Quality Enforcement Policy*, section IX.B. As soon as practicable, but in no event later than the date the first payment from NMP to the SEP Fund under Order No. 3.a. is due, the Executive Officer will issue a letter to the Cleanup and Abatement Account or alternative private escrow account manager authorizing the third party to review, verify and approve invoices. The authorization letter will include a copy of this ACL Order.
- g. Within five (5) days of approval of this ACL Order by the Lahontan Water Board, the Executive Officer will send a letter to the manager of the Cleanup and Abatement Account requesting that it initiate steps to implement the SEP Fund as provided in this ACL Order. Specifically, the Executive Officer will send the manager of the Cleanup and Abatement Account a request that (1) a fund be established within the Cleanup and Abatement Account to hold and administer the SEP Fund as provided herein; (2) that assurance be provided that the proceeds placed into the SEP Fund of the Cleanup and Abatement Account in conformance with this ACL Order will not be subject to any uses other than the SEP implementation; (3) that the Cleanup and Abatement Account manager agrees to make timely payments from the SEP Fund for SEP implementation in accordance with the provisions of this ACL Order as approved by the independent third party; and (4) that the

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Cleanup and Abatement Account manager obtain and provide a written statement agreeing to satisfy Request Nos. 1 – 3 above. The written statement shall be subject to the approval of NMP, which approval shall not be unreasonably or untimely withheld. Provided, however, that if the Cleanup and Abatement Account manager obtains and provides a written and signed statement or a State Water Board Order that, in light of the totality of the written statement or State Water Board Order, constitutes the agreement of the Cleanup and Abatement Account to satisfy Request Nos. 1-3 above, then NMP shall be deemed to have approved the written statement. If such a written statement is received by the forty-fifth (45th) calendar day following Lahontan Water Board approval of this ACL Order and the written statement is approved by NMP, the SEP will be implemented through the Cleanup and Abatement Account SEP Fund as set forth herein. If the written statement is not timely received or is not approved by NMP, Order No. 3.h. below will become effective. Further, until the written statement is received and approved by NMP, NMP may in its discretion place its payments due under Order No. 3.a. into an escrow account to be held pending resolution of an alternative escrow account as set forth in Order 3.h. below or until the Cleanup and Abatement Account manager provides an acceptable written statement, as applicable. Those funds held in escrow shall then be distributed to the account when and as agreed upon by the parties hereunder. If, for whatever reason, the Cleanup and Abatement Account distributes SEP Funds for purposes other than SEP implementation and said distributions are not otherwise approved by the independent third party and the Executive Officer, then NMP shall have the right to establish a private escrow account to hold future payments to the SEP Fund in lieu of further payments to the Cleanup and Abatement Account under the procedures set forth in Order No. 3.h. below.

- h. In the event that the Cleanup and Abatement Account manager does not provide the requested written statement described above in Order No. 3.g. by the forty-fifth (45th) calendar day following Lahontan Water Board approval of this ACL Order or for the other reasons enumerated in Order 3.g. above, the Executive Officer and NMP will meet and confer for the purpose of establishing a private escrow account to fund the SEP. The private escrow account will be established within sixty (60) days of the lapse of the deadline for the Cleanup and Abatement Account manager to provide the written statement in Order No. 3.g., above, unless the Executive Officer finds good cause to allow up to thirty (30) more days to receive the requested information from the Cleanup and Abatement Account manager. In the event that the Executive Officer and NMP decide to establish a private escrow account, all provisions in this ACL Order for payment to and disbursement from the SEP Fund for SEP

implementation will apply to the private escrow account rather than the SEP Fund within the Cleanup and Abatement Account.

- i. Payments for authorized SEP activities shall be made in accordance with the following provision. First, the authorized contractor or vendor shall submit monthly invoices to the independent third party named (as provided in Order No. 3.f., above) by the tenth (10th) of each month for the work in the preceding month. The independent third party will either return the invoice for further action or submit the approved invoice to the Cleanup and Abatement Account contact named in the authorization letter from the Executive Officer within ten (10) calendar days of receipt. Upon submission of invoices documenting authorized work performed for the SEP, the Cleanup and Abatement Account will disburse SEP Fund monies to pay those invoices directly to the authorized contractor or vendor, with a courtesy copy of the payment to the independent third party, within twenty (20) calendar days of receipt. Cleanup and Abatement Account monies other than those existing in the SEP Fund will not be used for this purpose.
- j. The independent third party shall submit quarterly reports to the Executive Officer, or his delegee, that must include, without limitation, a complete description of actions/activities completed for each budget item in the SEP during the relevant quarter, a complete accounting of costs associated with such actions/activities, invoices supporting such costs, and a signed certification that the descriptions and accounting provided in the report are true and accurate to the best of the independent third party's knowledge. The quarterly reports are due from the independent third party to the Lahontan Water Board according to the following schedule:

<u>Quarterly Report Period</u>	<u>Report Due Date</u>
January – March	April 30 <sup>th</sup>
April – June	July 31 <sup>st</sup>
July – September	October 31 <sup>st</sup>
October – December	January 31 <sup>st</sup>

There shall be no quarterly report due for the January to March, 2009, quarterly report period. The purpose of these reports is to provide the Lahontan Water Board with information necessary to appropriately oversee implementation of the SEP by NMP, as the Lahontan Water Board does not control SEP implementation or funds used for the SEP. The Executive Officer, or his delegee, shall have fifteen (15) business days following receipt of each quarterly report to review and object to the quarterly report by submitting a signed writing to the independent third party identifying deficiencies in the quarterly report and/or requesting

further documentation or clarification. Failure of the Executive Officer or his delegee to object to the quarterly report in a signed writing within fifteen (15) business days shall be deemed an approval of the quarterly report. In the event of any disagreement over the Executive Officer's disapproval of the quarterly report, the Executive Officer or his delegee shall meet and confer with the independent third party within fifteen (15) business days of the independent third party receiving the Executive Officer's disapproval, to resolve such issues. Other entities, including NMP and SEP contractors or vendors, may be included in such conference(s) if appropriate to the issue at hand. If it is determined by the Executive Officer after consultation with and concurrence of the independent third party that prior invoice payments were inappropriate, those payments will be credited against the next invoice submitted by the independent third party to the Cleanup and Abatement Account for payment.

k. If, in the judgment of the Executive Officer after consultation with NMP, the independent third party has failed to adequately perform the required functions of the independent third party, the Executive Officer may notify the third party and NMP that the third party's services are unacceptable, and NMP shall, after consultation with the Executive Officer, select another independent third party pursuant to Order No. 3.f., above. Provided, however, that NMP shall have the right to request that the independent third party be provided with written notice describing the deficient performance and a reasonable opportunity (not less than one quarterly review period) to cure any noted deficiencies prior to termination of the independent third party or selection of an alternative independent third party.

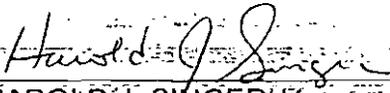
l. All SEP Fund monies shall be distributed before June 30, 2014 and the SEP Fund terminated, unless the schedule for the SEP is extended as provided below. Any funds remaining in the SEP Fund as of June 30, 2014, or the time for completion of the SEP as extended below, will be paid to the State Water Board's Cleanup and Abatement Account (80%) and the State Water Board's Waste Discharge Permit Fund (20%) (or other fund(s) that the applicable California Water Code section(s) directs payment to at the time) within sixty (60) days. NMP may make a written request to the Executive Officer to extend any SEP deadline by up to one (1) year for good cause. The Executive Officer may approve extensions of the SEP of up to one (1) year, which approval shall not be unreasonably withheld. The Lahontan Water Board may in its discretion approve an extension of more than one year for implementation of the SEP, if requested in writing by NMP.

4. This ACL Order settles all claims and liability for the alleged violations documented in the Violation Summary provided as Attachment A to this ACL Order and all unsuspected or unknown storm water program claims or violations for the project sites listed in Finding No. 2 of this ACL Order that exist or may exist as of December 31, 2007. This ACL Order does not settle any claims that the Lahontan Water Board may have for unknown non-storm water program violations prior to December 31, 2007, and the Lahontan Water Board retains authority to enforce any and all prospective violations.
  
5. If NMP fails to provide timely liability or SEP payments within ten (10) business days after the dates specified in Order Nos. 2 and/or 3.a., or if NMP fails to timely provide the assurance required in Order No. 3.b. within thirty (30) business days after the date specified, or if NMP fails to provide timely payment of undisputed amounts owed to the independent third party selected in accordance with Order No. 3.f. within thirty (30) days of the invoice due date unless said due date is otherwise extended for good cause by the Executive Officer (e.g., for disputed invoices or other appropriate reason); then any remaining amount required to bring the total Administrative Civil Liability amount to \$2,750,000 will become immediately due and payable by NMP to the State Water Board Cleanup and Abatement Account (80%) and the State Water Board Waste Discharge Permit Fund (20%) (or other fund(s) that the applicable California Water Code section(s) directs payment to at the time) within thirty (30) days of the relevant compliance date specified above and in Order Nos. 2, 3.a., and/or 3.b. plus any applicable grace period referenced above, unless NMP is relieved from the relevant compliance dates specified above and in Order Nos. 2, 3.a., and/or 3.b. in writing by the Lahontan Water Board Executive Officer based on a finding that NMP's failure to comply within the prescribed timeframe was for good cause. NMP may make a written request to the Executive Officer to extend any SEP deadline by up to one (1) year to accommodate minor changes or good cause for delay, which request shall not be unreasonably withheld. The Lahontan Water Board may in its discretion approve an extension of more than one year for a SEP deadline or major changes to the SEP, if requested in writing by NMP. The Lahontan Water Board shall provide notice to NMP and a reasonable opportunity to cure (no less than sixty (60) days) any perceived violation of this ACL Order or the Settlement including failure to make timely payment to the independent third party, but excluding any failure to make payments as required by Order Nos. 2 and 3.a., above. NMP shall receive credit for any payments made to the SEP Fund or otherwise in payment of the liability hereunder towards the Cleanup and Abatement Account or the Waste Discharge Permit Fund. In no event shall NMP's total payment exceed \$2,750,000 with no more than \$2,250,000 allocated towards the SEP Fund and no more than \$500,000

allocated towards the Cleanup and Abatement Account and the Waste Discharge Permit Fund, except as provided in Order No. 3.c. above.

6. If NMP fails to make the specified payments to the State Water Board Cleanup and Abatement Account, the State Water Board Waste Discharge Permit Fund, or to the approved SEP Fund within the time limits specified in this ACL Order, the Lahontan Water Board may enforce this ACL Order as it sees fit, including application for a judgment pursuant to Water Code section 13328.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on March 11, 2009.

  
HAROLD J. SINGER  
EXECUTIVE OFFICER

Attachment A: Alleged Violations and Penalty Summary Table

Attachment B: Monitoring Data of Projects' Storm Water Runoff Impacts to Area Surface Waters

Attachment C: Supplemental Environmental Project Proposal

Attachment D: Settlement Agreement

Attachment E: Amendment No. 1 to Settlement Agreement

## **ENCLOSURE 2**

130034

**WADDLE RANCH/NORTHSTAR WATERSHED IMPROVEMENT PROGRAM  
SUPPLEMENTAL ENVIRONMENTAL PROJECT BUDGET**

<b>Project Element</b>	<b>Budget</b>	<b>Spent</b>	<b>Balance</b>
Administration/Coordination	\$200,300	\$57,780	\$142,520
Waddle Ranch Restoration	\$1,385,000	\$101,891	\$1,283,109
Watershed Handbook	\$102,000	\$22,777	\$79,223
Forestry Handbook	\$123,100	\$17,778	\$105,322
Northstar Riparian/ Vegetation Enhancement	\$397,500	\$64,313	\$333,187
<b>TOTAL</b>	<b>\$2,250,000</b>	<b>\$264,539</b>	<b>\$1,985,461</b>

130035

# **ENCLOSURE 3**

130036

**2009 Cleanup and Abatement Projects**

SWRCB Division or Region	TITLE	DESCRIPTION	AMOUNT APPROVED	START DATE
DFA	County of Placer, Special Districts	Improvements to the Wastewater Treatment Plant (WWTP) for the Community of Sheridan.	\$ 1,937,571	1/6/2009
DFA	City of Marysville	Waste Discharge Feasibility Study and Master Plan Project.	\$ 476,208	1/6/2009
DFA	Richgrove Community Services District	Upgrade and expansion of wastewater treatment and disposal facility.	\$ 43,846	1/6/2009
DFA	Mettler County Water District	Planning of construction of a wastewater treatment and disposal facility.	\$ 52,039	1/6/2009
DFA	North Shafter Wastewater Project	Installation of a wastewater collection system for North Park and North Shafter to convey wastewater to regional Wastewater Treatment Plant.	\$ 2,000,000	2/3/2009
DFA	Home Garden CSD	Construction of water treatment system for arsenic removal and pipeline to connect additional well to treatment system.	450,255.37	4/21/2009
DFA	City of Live Oak	Arsenic Remediation Project to add new arsenic treatment systems at wells, facilities future expansion and upgrades.	200,000.00	4/21/2009
DFA	Clear Lake	Emergency algae removal and dispersion at Clear Lake in Lake County.	100,000.00	9/28/2009
DWQ	EIR for Suction Dredge Regulations	To augment the Department of Fish and Game's environmental impact report for suction dredge regulations.	\$ 500,000	1/6/2009
DWQ	LID/TAC Hydromodification	To fund the Central Coast Low Impact Development Center work on addressing statewide water quality impacts associated with hydromodification.	\$ 120,000	6/16/2009
DWQ	Environmental Health Hazard Assessment	Human health risk assessment to determine if there is potential risk to humans from contaminants in sediment that become bound in edible fish tissue.	\$ 16,000	7/8/2009
DWR	Support of Water Quality Planning Efforts Related to Salinity	Provide technical planning support to both DWR and Central Regional Water Board for the evaluation/development and implementation of salinity objectives in the southern Delta and the San Joaquin River upstream of Vernalis.	\$ 1,765,000	2/3/2009
Region 1	Town of Hopland	To abate the threatened uncontrolled discharge of raw sewage to the Russian River as events unfolded following the dismissal of the Hopland plant operator.	\$ 10,000	3/23/2009
Region 2	Wetlands Fill Enforcement	Expert witness and technical support for a pending enforcement action	\$ 40,000	10/30/2009
Region 2	Aramburu Island	Cleanup and Restoration of an Island in San Francisco Bay that was created in the 1950s from dredge spoils and construction debris. Goal of the project is to create high quality wildlife refuge habitat in the Bay.	\$ 959,856	11/17/2009
Region 2	Undaria Removal	Investigation and rapid removal of Asian seaweed (Undaria) recently discovered in San Francisco Bay and Pacifica Ocean at Half Moon Bay (San Mateo County).	\$ 100,000	11/17/2009
Region 3	Toro Canyon Oil Facility	Funds for Santa Barbara County to operate and maintain the oil/water separator located at Toro Creek Canyon in Santa Barbara County for 10 years. The County's maintenance actions prevent crude oil from directly discharging to Toro Creek and the Pacific Ocean.	\$ 96,500	1/23/2009
Region 3	Hydromodification Methodology Development	Develop a methodology for local municipalities to use to create hydromodification control criteria, based on local conditions, for new and redevelopment, and implement the initial steps of the methodology within the Central Coast Region.	\$ 600,000	8/4/2009
Region 5	City of Turlock	Funds were used to support of the City's investigation and remediation of the PCE plumes in downtown Turlock. The City has identified the extent of the PCE plume, concluded that there is no significant source of PCE remaining in soils, and determined that, although the PCE plume is naturally attenuating over time, enhancement of the natural attenuation process may be necessary.	\$ 650,000	1/6/2009
Region 5	Central Valley Salinity Work Group	Salinity and nitrates are an existing and growing groundwater problem in the Central Valley Region. The funds are used to develop control programs to reduce or abate discharges of salt and nitrates to surface and groundwaters, and eventually cleanup impacted groundwaters to restore beneficial uses where appropriate.	\$1,200,000.00	3/17/2009
Region 6	Asian Clam Removal Pilot Project	A lakewide survey to determine the extent of Asian clam infestation in Lake Tahoe and a small scale project to verify efficacy of several non-chemical eradication methods.	\$ 200,000	2/19/2009
Region 9	A-8 Anchorage San Diego Bay	Marine debris removal at the A-8 anchorage that will remove significant amount of pollutants from the San Diego Bay.	\$ 200,000	3/17/2009
Region 9	TJ River Trash	Investigation and characterization of past solid waste discharges into the Tijuana River Valley.	\$ 700,000	6/2/2009
Region 9	Aquatic Science Center	This project consists of a study and a report on the development of statistical methods to link potential pollutants to impaired benthic community conditions in San Diego Bay using existing data. The statistical methods are expected to be used at to implement the pollutant identification part of the implementation plan for sediment quality objectives for aquatic life-benthic community protection in the Water Quality Control Plan for Enclosed Bays and Estuaries.	\$ 31,394	2/11/2009
<b>TOTAL</b>			<b>\$ 12,448,669</b>	

130037

2010 Cleanup and Abatement Projects

SWRCB DIVISION OR REGION	TITLE	DESCRIPTION	AMOUNT APPROVED	START DATE
3	San Jerado Wastewater Improvement Project	Temporary drinking water treatment system for the small disadvantage community of San Jerardo. Monterey County is installing a new drinking water well and decommissioning the older well and treatment system. CAA is paying for the operation and maintenance for the treatment system to continue until the new well is operational.	\$222,600.00	3/16/2010
4	Colorado Lagoon Dredging and Restoration	The Lagoon is listed as an impaired water body as a result of multiple contaminants in the sediment resulting in sediment toxicity, and also elevated contaminants in fish and mussel tissue. Bacterial contamination is also a continuing problem. The project will dredge and dispose of the contaminated sediments, re-contour, and replant the banks with native vegetation.	\$1,799,803.00	3/16/2010
5	The Bonzi Landfill Groundwater Corrective Action Emergency Fund	Hire a consultant to oversee the groundwater treatment system at Bonzi Landfill	\$100,000.00	2/25/2010
5	Gelnville Shopping Center	To construct a community water supply system to replace individual private water wells	\$98,000.00	4/17/2010
5	Barstow Street/El Monte Triangle	Investigation & cleanup of contaminated soil and groundwater impacted by VOCs (primarily TCE) in a blighted area of Sacramento County	\$794,324.00	5/4/2010,
5	Walker Mine Acid Mine Drainage Abatement Project	To continue the inspection, maintenance, and repairs to the 700-Level Adit in Walker Mine; the mine seal, stainless steel piping, and valves were installed in 1987 and these need to be inspected and physically tested.	\$600,000.00	5/18/2010
5	ERMAC -Emergency Coordination Staff Oversight	ERMAC -Emergency Coordination Staff Oversight	\$27,000.00	6/21/2010
5	Central Valley Salt and Nutrient Plan - Additional Funds	The Development of a Salinity and Nutrient Management Plan	\$3,800,000.00	9/7/2010
6	Asian Clam Pilot Program Expansion (Additional Funding)	To implement three Asian Clam control projects to be conducted in the 2010, 2011, and 2012 field seasons	\$588,720.00	6/15/2010
6	Barstow Well Contamination Project	Barstow Well Contamination Cleanup	\$11,000.00	11/22/2010
8	Illegal Dumping at Vander Eyk Dairy (Heifer Ranch)	Illegal dumping activities were taking place at the Heifer Ranch. The funds are being used to pay for lab costs associated with analyzing soil, sludge and/or water samples collected during the execution of a search warrant at the facility.	\$10,000.00	10/5/2010
DFA	New River Improvement Project	Conduct a study to fill data gaps regarding current and projected New River water quality and further identify parties in Imperial County with legal responsibility for New River cleanup. Collection and analyses of data will be part of a Strategic Plan to guide implementation of the New River Improvement Project required under AB 1079.	\$400,000.00	4/20/2010
DFA	Calexico WWTP Emergency Repair Project	Repair of the 36-inch gravity sewer trunk line that was damaged in the April 4, 2010 earthquake.	\$100,000.00	6/1/2010
DFA	Abandoned Vessel Cleanup Project	Removal of abandoned vessels, trash, and various items on old docks that are leaking contamination into the Sacramento-San Joaquin Delta.	\$100,000.00	2/24/2010
DWQ	Mercury Listing and Cleanup Tool Development and Demonstration Cleanup Project	Develop a tool for evaluating mercury cleanups and identifying mercury-impaired water bodies; evaluate effectiveness of the tool with a cleanup demonstration project to stabilize mercury-contaminated hydraulic mining debris.	\$702,000.00	7/6/2010
<b>TOTAL \$</b>			<b>9,353,447</b>	

130038