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

**MEETING OF FEBRUARY 12-13, 2014**
**SOUTH LAKE TAHOE**

**ITEM:** **11**

**SUBJECT:** **RESOLUTION AUTHORIZING THE LAHONTAN WATER BOARD SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) ENDOWMENT FUND PILOT PROGRAM AGREEMENT WITH THE TRUCKEE RIVER WATERSHED COUNCIL**

**CHRONOLOGY:** None

**DISCUSSION:** The Lahontan Water Board will consider, prior to hearing this item, a region-specific policy for identifying, approving, and implementing supplemental environmental projects (SEPs) when they are included as a part of administrative civil liability settlements. This item may not be heard if the Lahontan Water Board does not approve the SEP Policy.

The Lahontan Water Board SEP Policy supports establishing partnerships with independent third parties (partner organizations) to (1) identify projects that may qualify for SEPs, (2) manage SEP escrow accounts, and (3) implement SEPs consistent with Lahontan Water Board's expressed priorities. The resolution adopting the Lahontan SEP Policy directs Lahontan Water Board staff to delay full implementation of the Policy until a pilot program with the Truckee River Watershed Council is completed and evaluated.

The enclosed proposed Resolution approves an agreement that establishes a pilot program with the Truckee River Watershed Council. The proposed Resolution allocates the remaining funds from the Northstar Mountain Properties SEP Escrow Account (currently estimated to be $704,790) to fund the pilot program.

The pilot program will be evaluated by Lahontan Water Board staff throughout the duration of the agreement. Staff will identify and propose to the Lahontan Water Board any changes staff believes are necessary prior to fully implementing the Lahontan SEP Policy.

**RECOMMENDATION:** Adopt the Resolution as proposed.

| **ENCLOSURE** | Item | Bates Number |
|---|---|---|
| 1 | Proposed Lahontan Water Board SEP Endowment Fund Pilot Program Agreement With the Truckee River Watershed Council | **11-5** |

# ENCLOSURE 1

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

**RESOLUTION NO. R6T-2014-(PROPOSED)**

**LAHONTAN WATER BOARD**
**SUPPLEMENTAL ENVIRONMENTAL PROGRAM**
**ENDOWMENT FUND PILOT PROJECT**
**WITH THE**
**TRUCKEE RIVER WATERSHED COUNCIL**

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**WHEREAS**, the California Regional Water Quality Control Board, Lahontan Region (Water Board) finds:

1. The Water Board adopted the "Lahontan Water Board Supplemental Environmental Project (SEP) Policy" (Lahontan SEP Policy) at its February 12-13, 2014 meeting in South Lake Tahoe, California.

2. The Lahontan SEP Policy supports establishing partnerships with independent third parties (partner organizations) to (1) identify projects that may qualify for SEPs, (2) manage SEP escrow accounts, and (3) implement SEPs consistent with the Water Board's expressed priorities.

3. The Water Board has delayed full implementation of the Lahontan SEP Policy until a pilot program is completed and evaluated. Information from the pilot program will be used to refine the attributes sought in potential partner organizations, refine the template partnership agreements, refine SEP evaluation criteria and processes, and refine processes for developing SEP escrow accounts.

4. At its October 10, 2013 meeting, the Water Board identified the remaining Northstar Mountain Properties settlement monies to fund the pilot program. Water Board Order No. R6T-2009-0012, issued to Northstar Mountain Properties, required full implementation of a SEP as a part of a negotiated settlement. The Order established an escrow account within the State Water Resources Control Board's Cleanup and Abatement Account Program, SEP Project Number SEP-001, in order for Northstar Mountain Properties to remit quarterly payments. However, Northstar Mountain Properties filed bankruptcy prior to remitting the full liability amount, and the required SEP was not completed in its entirety. An estimated $704,790.12 (but no more than $741,790.12) remained in the State Water Resources Control Board Cleanup and Abatement Account SEP Project Number SEP-001 at the end of the 2013 fiscal year.

PROPOSED

5. At its October 10, 2013 meeting, the Water Board identified the Truckee River Watershed Council (TRWC) as an appropriate entity for implementing the pilot program. The TRWC was selected because of its extensive history for successfully completing water quality projects, its transparent stakeholder process for identifying and selecting projects, and its financial accountability. Furthermore, the TRWC manages projects within the same hydrologic unit (Truckee River) where the Northstar Mountain Properties violations occurred, thereby providing an appropriate geographic nexus for the use of the remaining Northstar Mountain Properties settlement monies.

6. The TRWC has identified three restoration projects that will be completed as a part of the pilot program – the Elizabethtown Meadows Restoration, Middle Martis Creek Wetlands Restoration, and Dry Creek Restoration projects. All three projects are separate and complete actions, and are unrelated and have independent utility from one another. The proposed agreement with the TRWC, attached to this Resolution, provides additional project details and funding levels for these projects.

7. Compliance with the California Environmental Quality Act (CEQA) has not yet been completed for the three projects. Placer County will be the lead agency for CEQA compliance for both the Elizabethtown Meadows Restoration and Middle Martis Creek Wetlands Restoration projects. The Water Board will be a responsible agency for those projects. The Dry Creek Restoration project will need compliance with both the National Environmental Policy Act (NEPA) and CEQA, and the United States Forest Service will be the NEPA lead agency and the Water Board will likely be the lead agency for CEQA.

8. The TRWC has requested that an initial $2,000 of the funding be used to complete CEQA for the Elizabethtown Meadows Restoration project. Funding for a planning study, including information gathering purposes, is determined to be exempt from CEQA provisions pursuant to Public Resources Codes 21102; 21150 and California Code of Regulations, Title 14 Sections 15262; 15306.

9. The Water Board cannot release funding for the construction of the Elizabethtown Meadows Restoration and Middle Martis Creek Restoration projects until Placer County, as lead agency, completes the appropriate CEQA documentation, approves the project, and files the appropriate notice of project approval; submits this information to the Water Board for review; and the Water Board or its delegee reviews and considers the CEQA documentation and issues findings in compliance with its role as a responsible agency under CEQA. Similarly, the Water Board cannot release funding for the construction of the Dry Creek Restoration project until the Water Board complies with CEQA and determines project approval is appropriate based on the administrative record, including CEQA documentation.

10. The Water Board has notified interested parties throughout the Lahontan Region of its intent to adopt this Resolution by posting to a list server and on the Water Board's web site.

11. The Water Board, in a public meeting, heard and considered all comments regarding the Resolution.

PROPOSED

**THEREFORE, BE IT RESOLVED THAT:**

1. The Water Board authorizes the Water Board Executive Officer to request the transfer of all remaining funds within State Water Resources Control Board's Cleanup and Abatement Account Program, SEP Project Number SEP-001, to fund the pilot program.

2. The Water Board approves the agreement with the TRWC (Attachment A) to proceed with planning for implementation of the pilot program. Two-thousand dollars of the funds can be released immediately for funding the completion of CEQA compliance for the Elizabethtown Meadows Restoration project. All remaining funds for the projects cannot be released until the Water Board has completed CEQA, makes appropriate findings in compliance with its role as either a lead or responsible agency under CEQA, and determines in light of the entire record if project approval is appropriate.

3. The Water Board delegates the authority to its Executive Officer to review or prepare CEQA documentation, issue any findings required by CEQA, and approve or reject the release of funds necessary for project construction. Nothing in this Resolution removes from the Executive Officer's discretion the ability to require mitigation measures or alternatives, including the no project alternative, after review of the environmental documents. If after the completion of the environmental review the Executive Officer concludes that a project should not go forward because of its potentially significant environmental impacts, she may issue a statement of override, if appropriate, and approve the project or work with TRWC to identify an alternative project for consideration.

4. The Water Board directs staff to post the agreement with the TRWC in a prominent location on the Water Board's web site.

5. The Water Board authorizes the Water Board Executive Officer to approve any change orders in the agreement that do not involve an increase in funding level.

6. The Water Board directs staff to provide an evaluation of the pilot project upon its completion and prior to full implementation of the Lahontan SEP Policy.

I, Patty Z. Kouyoumdjian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on February XX, 2014.

_____

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Attachment: Memorandum of Understanding: Lahontan Water Board Supplemental Environmental Project Endowment Fund Pilot Program With The Truckee River Watershed Council

PROPOSED

# MEMORANDUM OF UNDERSTANDING

## LAHONTAN WATER BOARD
## SUPPLEMENTAL ENVIRONMENTAL PROJECT
## ENDOWMENT FUND PILOT PROGRAM
## WITH THE
## TRUCKEE RIVER WATERSHED COUNCIL

This document shall serve as a Memorandum of Understanding by and between the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) and the Truckee River Watershed Council (TRWC) for the Supplemental Environmental Project (SEP) pilot project authorized by Lahontan Water Board Resolution No. R6T-2014-XXXX (the Resolution). The terms and conditions of this Memorandum of Understanding (MOU) govern TRWC's use of the funds transferred to it for use in implementing the SEP pilot program pursuant to the Resolution. This MOU is effective upon its execution by TRWC and the Executive Officer of the Lahontan Water Board.

1. Pursuant to the Resolution, the Lahontan Water Board transferred $704,790 to TRWC to implement the Elizabethtown, Dry Creek Restoration and Middle Martis Wetlands Restoration projects. The Elizabethtown Meadows Restoration project addresses erosion sources, wetland protection, and recreation access in the Middle Martis Creek watershed (immediately upstream of the Middle Martis Creek Wetland Restoration project. The Dry Creek Restoration project will restore a large meadow complex and associated streams, improving water quality and habitat. The Middle Martis Creek Wetland Restoration project will improve water quality by reducing active erosion and restoring historic wetlands. The goals, detailed plans for implementation, implementation schedules and milestones and budgets for each of these projects are set forth in detail in Exhibits A, B and C, respectively, to this MOU.

2. TRWC shall provide quarterly reports of progress on each SEP to the Designated Lahontan Water Board Representative commencing 90 days after this MOU becomes effective and continuing through submittal of the final reports described below. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

3. The TRWC may submit revisions to Exhibits A, B, and/or C for the Lahontan Water Board Executive Officer's approval. Such revisions may include modifications to budget line items, modifications in the scope of work, and adjustments to the time schedules. The Lahontan Water Board Executive Officer shall either approve or disapprove the revisions within twenty (20) days of submittal.

4. Compliance with the California Environmental Quality Act (CEQA) has not yet been completed for the three projects. Placer County will be the lead agency for CEQA compliance for both the Elizabethtown Meadows Restoration and Middle Martis Creek Wetland Restoration projects. The Water Board will be a responsible agency for those projects. The Dry Creek Restoration project will need compliance with both the National Environmental Policy Act (NEPA) and CEQA, and the United States Forest Service will be the NEPA lead agency and the Water Board will likely be the lead agency for CEQA.

5. The TRWC has requested an initial $2,000 of the funding be used to complete CEQA for the Elizabethtown Meadows Restoration project. Funding for a planning study, including information gathering purposes, is determined to be exempt from CEQA provisions pursuant to Public Resources Code 21102, 21150, and California Code of Regulations, Title 14 Sections 15262, 15306.

6. The Water Board cannot release funding for the construction of the Elizabethtown Meadows Restoration and Middle Martis Creek Restoration projects until Placer County, as lead agency, completes the appropriate CEQA documentation; approves the project and files the appropriate notice of project approval; submits this information to the Water Board for review; and the Water Board or its delegee reviews and considers the documentation and issues findings in compliance with its role as a responsible agency under CEQA. Similarly, the Water Board cannot release funding for the construction of the Dry Creek Restoration project until the Water Board complies with CEQA and determines project approval is appropriate based on the administrative record, including CEQA documentation.

7. In Resolution R6T-2014-XXXX, the Water Board delegated the authority to its Executive Officer to review or prepare CEQA documentation, issue any findings required by CEQA, and approve or reject the release of funds necessary for project construction. After review of the environmental documents, the Executive Officer retains discretion to require mitigation measures or alternatives to the proposed projects, including the no project alternative. If after the completion of the environmental review, the Executive Officer concludes that a project should not go forward because of its potentially significant impacts on the environment, the Executive Officer may issue a statement of override, if appropriate, or work with TRWC to identify an alternative project for consideration.

8. On or before the applicable SEP Completion Date, the TRWC shall submit a certified statement of completion of the SEPs ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the Designated Lahontan Water Board Representative by a responsible corporate official representing TRWC. The Certification of Completion shall include following:

a. Certification that the SEPs have been completed in accordance with the terms of this MOU. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Lahontan Water Board to evaluate the completion of the SEPs and the costs incurred by TRWC.

b. Certification documenting the expenditures by the TRWC during the completion period for the SEPs. The TRWC's expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Lahontan Water Board for oversight. The TRWC shall provide any additional information requested by the Lahontan Water Board staff which is reasonably necessary to verify SEP expenditures.

c. Certification, under penalty of perjury, that the TRWC obtained all necessary permits and followed all applicable laws and regulations in the implementation of the SEP, including but not limited to the federal Clean Water Act, the Porter-Cologne Act, and the terms of any permits issued for the projects.

9. In addition to the certification, upon completion of the SEPs and at the written request of the Lahontan Water Board Executive Officer, the TRWC, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Lahontan Water Board Executive Officer providing such party's(ies') professional opinion that the TRWC has expended money in the amounts claimed. The audit report shall be provided to the Designated Lahontan Water Board Representative within three (3) months of notice from the Lahontan Water Board Executive Officer to the TRWC of the need for an independent third party financial audit. The audit need not address any costs incurred by the Lahontan Water Board for oversight.

10. Upon the TRWC's satisfaction of its SEP obligations under this MOU and completion of the SEPs and any audit requested by the Lahontan Water Board, the Designated Lahontan Water Board Representative shall send the TRWC a letter recognizing satisfactory completion of its obligations under the MOU. This letter shall terminate any further MOU obligations of the TRWC.

11. In the event that the TRWC is not able to demonstrate to the reasonable satisfaction of the Lahontan Water Board Executive Officer that the entire amount of funds allocated under the Resolution has been spent to complete the components of the SEPs for which TRWC is financially responsible, the TRWC shall pay back to the Cleanup and Abatement Account the difference between the funds allocated under the Resolution and the amount the TRWC can demonstrate was actually spent on the SEPs. Alternatively, the Lahontan Water Board may approve the use of the

surplus funds for a different SEP consistent with its and the State Water Resources Control Board's SEP Policies.

**IT IS SO AGREED.**

California Regional Water Quality Control Board - Lahontan Region

By: _____ Date: _____
Patty Z. Kouyoumdjian
Executive Officer

Truckee River Watershed Council

By: _____ Date: _____
Lisa Wallace
Executive Director

Attachments: Exhibit A – Project Descriptions
Exhibit B – Project Schedules
Exhibit C – Project Budgets

## EXHIBIT A
## PROJECT DESCRIPTIONS

### Elizabethtown Meadows Restoration

**Project Goals and Value.** The Elizabethtown Meadows Restoration project addresses erosion sources, wetland protection, and recreation access in the Middle Martis Creek watershed (immediately upstream of the Middle Martis Creek Wetland Restoration project).

The Elizabethtown parcel was recently acquired by the Truckee Donner Land Trust (TDLT) for conservation and recreation. Prior to acquisition, access roads were constructed to enable development of the property. None of the roads were maintained. Portions of the road network now capture dispersed seasonal drainages from upslope and release the water at several concentrated points. Additionally, an active fault zone dominates the topography and hydrology of the area, creating a series of springs. These springs support wetlands and fens. The roads, combined with their inappropriate, use has caused several significant problems including:

- Channel instability, erosion, and headcutting;
- Wetland and fen degradation;
- Heavy loads of sediment directly to Middle Martis Creek;
- Impacts to recreation and access infrastructure.

Restoration actions include drainage reconnection, meadow restoration, culvert removal, and partial road decommissioning. Restoration will reduce sediment delivery to Middle Martis Creek and improve meadow, wetland, and fen habitat.

**Project Status.** The Martis Watershed Assessment (2012) identified several restoration opportunities for Elizabethtown. Restoration design is in progress and will be completed by March, 2014. We are seeking funding to complete environmental permitting, and implementation. Implementation will occur in 2014.

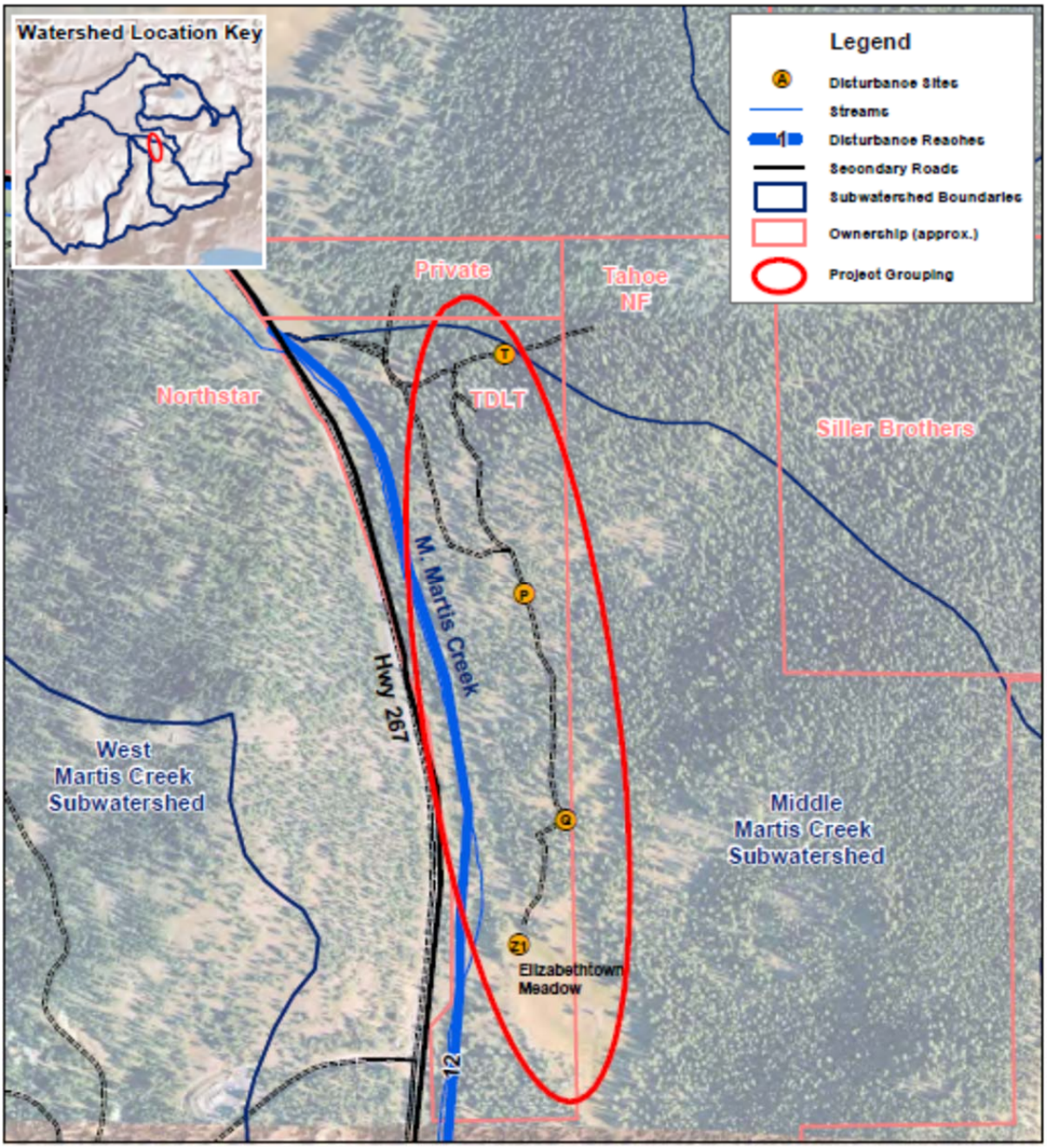


Figure 1. Location Map for Elizabethtown. The project is located along Middle Martis Creek.

## Dry Creek Restoration – Site 1

**Project Goals and Value.** The Dry Creek Restoration project will restore a large meadow complex and associated streams, improving water quality and habitat.

The Dry Creek watershed (locally known as Russel Valley) is located north of Truckee. Dry Creek flows into Boca Reservoir. The watershed includes forested uplands, Dry Creek and tributaries, and a large meadow complex in the valley bottom. In the Dry Creek watershed, the meadow is degraded from severe channel incision, headcutting, and lack of overbank flow on regular return intervals. The stream channel has been modified by past road building, historic logging roads/skid trails, construction of an earthen dam, and undersized culverts. Due to these impacts erosion has increased, and meadows are converting to sagebrush.

We have identified several restoration opportunities in the Dry Creek watershed. The first project we will undertake is the restoration of Site 1, located in “Tributary 21”. The entire south side of the Dry Creek watershed was heavily logged, starting in 1896. A system of roads and skid trails heavily impacted the existing meadows and stream channels. In Tributary 21, the middle portion of the tributary is incised, most likely due to stream diversion by historic land use. The stream and the meadow are no longer hydrologically connected and some headcuts have developed in the intermittent stream channel. The proposed restoration plan includes restoring the stream back to remnant channels on the meadow surface and plugging the existing gully. This would reduce erosion and improve the meadow habitat.

**Project Status.** The Watershed Council in partnership with the U.S. Forest Service completed a watershed assessment in March 2013. The assessment identified several restoration opportunities. NEPA will be completed in summer 2014. We have applied for funding to complete CEQA in the summer of 2014. Funding for permitting, final project layout, and construction is needed. Pre- and post-project monitoring will be completed by USFS and Watershed Council staff. Final project design will take place in 2014, and construction in 2015.

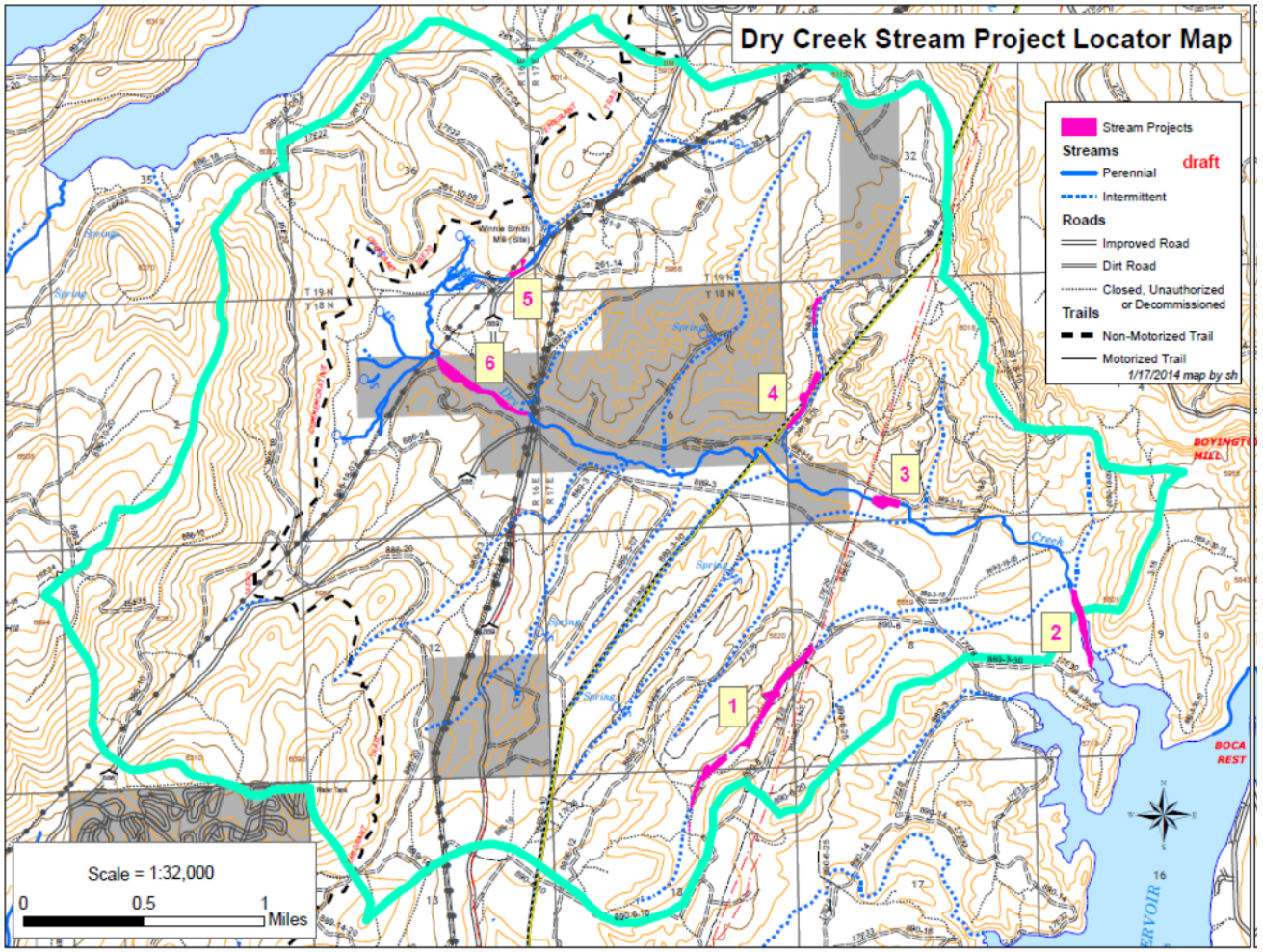


Figure 2. Project Location Map for Dry Creek Restoration. Site 1 is located in the southern portion of the watershed.

## Middle Martis Creek Wetlands Restoration

**Project Goals and Value.** The Middle Martis Wetland Restoration project (Middle Martis project) will improve water quality by reducing active erosion and restoring historic wetlands. Prior to construction of Brockway road (now Highway 267) in the 1800's, Middle Martis Creek formed an alluvial fan as it entered Martis Valley and the creek actively migrated among several stream channels on the fan. When the road was constructed, the creek was confined to a single channel. The confinement of Middle Martis Creek to a single channel has caused several significant problems including:

- Channel instability, erosion, and headcutting;
- Meadow degradation;
- Flooding of Highway 267 even in moderate flows;
- Impacts to recreation and access infrastructure.

The Middle Martis project will restore flows in Middle Martis Creek on the north side of Highway 267 while maintaining flow on the south side to sustain existing wetlands and riparian habitat. Reactivation of the historic stream channel north side of the highway will measurably increase wetland habitat, improving water quality through increased filtration.

The restoration consists of the following key elements:

- Channel realignment and reconfiguration at the Highway 267 crossing;
- Removal of abandoned road fill to restore flow paths;
- Placements of logs and willows in the actively incising channel to promote aggradation;
- Improving drainage across access roads to eliminate erosion;
- Gully repair and riffle construction to halt erosion and promote fish passage;
- Project monitoring;
- Stakeholder coordination and communication.

**Project Status.** The project was identified through the Martis Creek Watershed Assessment (2012). Concept design plans were completed in 2012. Final Restoration Design will be completed in February, 2014. Funding is in place to complete preliminary vegetation and hydrologic monitoring, and environmental compliance (NEPA/CEQA, and permitting). Construction will begin in summer 2014.

**Project Partners.** The Watershed Council has been coordinating the project partners since the inception of the Martis Watershed Assessment. All of the partners formally support the project: Cal Trans, Northstar at Tahoe, Northstar Community Services District, Truckee Donner Land Trust, Truckee Tahoe Airport District, and the U.S. Army Corps of Engineers.

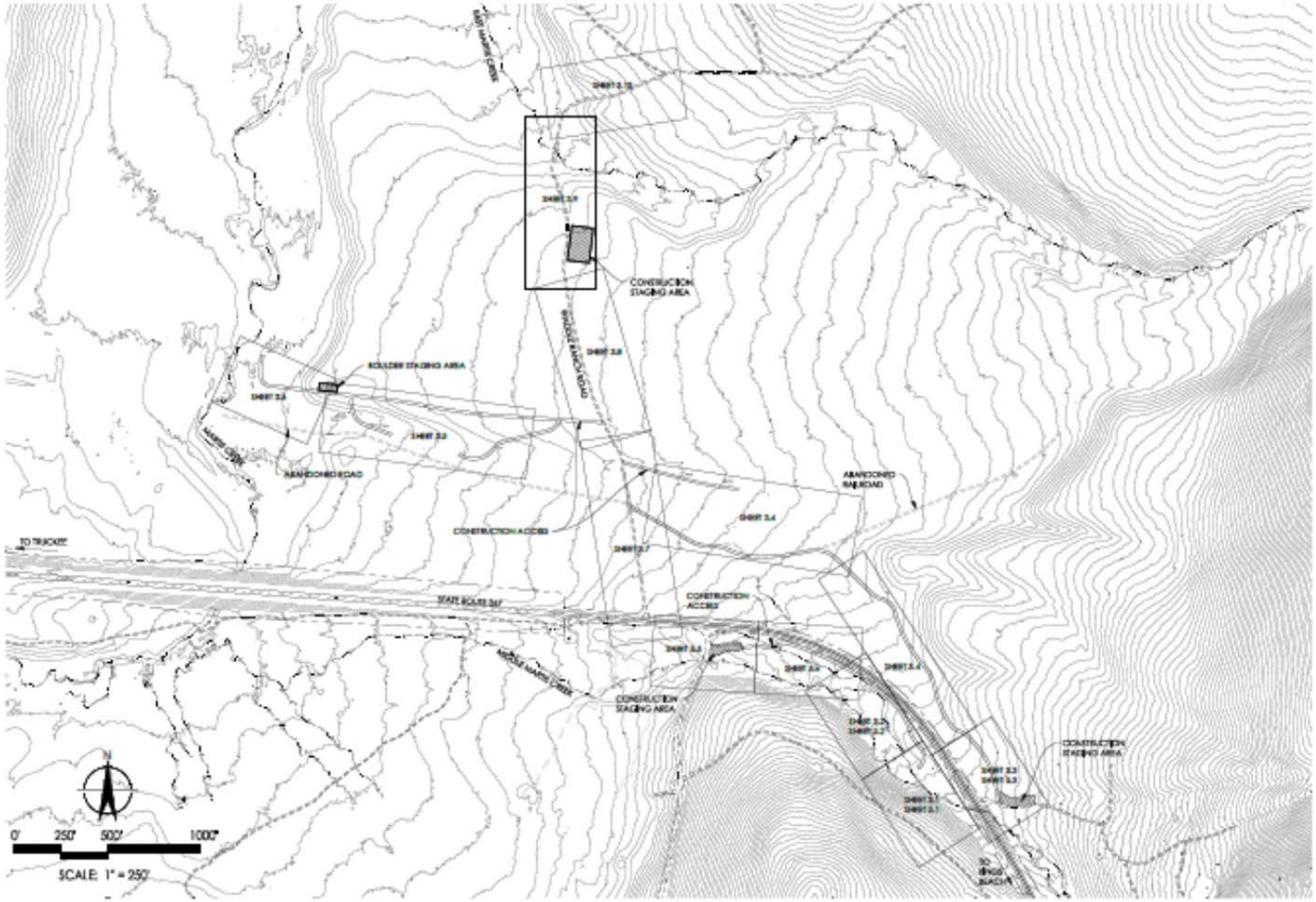


Figure 3. Project Overview map – Middle Martis Creek Wetlands Restoration.

# EXHIBIT B
# PROJECT SCHEDULES

### Elizabethtown Meadows Restoration

| Task | Completion Date |
|---|---|
| Final Design | March 2014 |
| CEQA | June 2014 |
| Permitting | June 2014 |
| Construction | October 2014 |
| Post-project monitoring | December 2017 |

### Dry Creek Restoration – Site 1

| Task | Completion Date |
|---|---|
| Project Layout | October 2014 |
| NEPA/CEQA | July 2014 |
| Permitting | March 2015 |
| Pre-project monitoring | July 2015 |
| Construction | October 2015 |
| Post-project Monitoring | December 2018 |

### Middle Martis Creek Wetlands Restoration

| Task | Completion Date |
|---|---|
| Final Design | January 2014 |
| CEQA/NEPA | June 2014 |
| Permitting | June 2014 |
| Pre-Project Studies/Monitoring | August 2014 |
| Construction | October 2014 |
| Adaptive Management/Revegetation | October 2015 |
| Post-Project Monitoring | December 2019 |

# EXHIBIT C
# PROJECT BUDGETS

**Elizabethtown Meadows Restoration**

| Task | Budget | Funds Committed | Funds Requested |
|---|---|---|---|
| Final Design | $ 50,000 | $ 50,000 | - |
| CEQA | $ 2,000 | - | $ 2,000 |
| Permitting | $ 16,000 | $ 7,500 | $ 8,500 |
| Construction | $ 124,000 | $ 58,000 | $ 66,000 |
| Post-project Monitoring (annual cost) | $ 3,000 | - | $ 3,000 |
| **TOTAL** | **$ 195,000** | **$ 115,500** | **$79,500** |

**Dry Creek Restoration – Site 1**

| Task | Budget | Funds Committed | Funding Gap |
|---|---|---|---|
| Final Design | $ 12,000 | - | $ 12,000 |
| NEPA/CEQA | $105,000 | $105,000 | - |
| Permitting | $ 8,000 | - | $ 8,000 |
| Pre-Project Monitoring | $ 10,000 | $ 10,000 | - |
| Construction | $ 204,500 | - | $ 204,500 |
| Post-project Monitoring (annual cost) | $ 10,000 | $ 10,000 | - |
| **TOTAL** | **$349,500** | **$125,000** | **$224,500** |

**Middle Martis Creek Wetlands Restoration**

| Task | Budget | Funds Committed* | Funding Gap | LRWQCB request |
|---|---|---|---|---|
| Final Design | $ 165,000 | $ 165,000 | - | - |
| NEPA/CEQA | $ 115,000 | $ 115,000 | - | - |
| Permitting | $ 20,000 | $ 20,000 | - | - |
| Pre-project monitoring | $136,000 | $136,000 | - | - |
| Construction | $ 1,287,000 | $419,000 | $868,000 | $ 400,000 |
| Post-project Monitoring (annual cost) | $ 33,000 | $28,000 | $5,000 | - |
| **TOTAL** | **$ 1,756,000** | **$883,000** | **$873,000** | **$ 400,000** |

*Includes $200,000 grant request submitted 1/6/14 to National Fish and Wildlife Foundation