CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

MEETING OF JULY 8-9, 2015
TRUCKEE AND SOUTH LAKE TAHOE

ITEM: **8**

SUBJECT: **LAHONTAN WATER BOARD SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) PROGRAM UPDATE**

CHRONOLOGY: On February 12, 2014, the Lahontan Water Board adopted Resolution No. R6T-2014-0014 authorizing a region-specific SEP program. The region-specific SEP program provides guidance to Lahontan Water Board staff and dischargers in developing SEPs that further the Lahontan Water Board's priorities consistent with the State Water Board SEP Policy.

Also on February 12, 2014, the Lahontan Water Board adopted Resolution No. R6T-2014-0015 authorizing a pilot program with the Truckee River Watershed Council. The pilot project included Lahontan Water Board providing funds to support three restoration projects proposed by the Truckee River Watershed Council.

DISCUSSION: The Lahontan Water Board approved a program for identifying, approving, and implementing SEPs when they are included as a part of administrative civil liability settlements. The program supports establishing partnerships with independent third parties (partner organizations) to identify projects that may qualify for SEPs, manage SEP escrow accounts, and implement SEPs consistent with the Lahontan Water Board's expressed priorities. The program includes criteria for identifying appropriate independent third parties and processes for developing partnership agreements. The program also establishes criteria for evaluating and identifying projects as potential SEPs. The resolution adopting the Lahontan SEP Program directs Lahontan Water Board staff to delay full implementation of the program until a pilot program with the Truckee River Watershed Council is completed and evaluated.

The Lahontan Water Board also approved an agreement establishing a pilot program with the Truckee River

Watershed Council. Remaining funds from the Northstar Mountain Properties SEP Escrow Account were used to fund the pilot program. The pilot program has been monitored by Lahontan Water Board staff, and the pilot program continues to be implemented without any problems. Two issues have been identified with respect to eventual rollout of the SEP Program.

1. Developing a mechanism to ensure Partner Organizations update their SEP list on a regular basis and/or remove withdrawn projects from our website and from consideration of potential SEP Funds.

2. Determining if a Partner Organization's overhead costs are eligible for coverage under a SEP, or are to be addressed outside of the SEP. For example, is the overhead included in the listed project cost, or must a Discharger pay an additional overhead rate above and beyond the agreed-upon SEP deferral amount?

Staff have begun outreach to potential partner organizations, and will be setting up individual meetings throughout the summer and fall, 2015, to review the program, answer any questions, and to evaluate partner organization eligibility criteria. A fact sheet has been prepared to help communicate information to potential partner organizations.

RECOMMENDATION: No action is required, but the Water Board may provide direction to staff.

ENCLOSURE	Item	Bates Number
1	Resolution No. R6T-2014-0014, Lahontan Water Board Supplemental Environmental Project (SEP) Program	**8-5**
2	Resolution No. R6T-2014-0015, Lahontan Water Board Supplemental Environmental Project Program Endowment Fund Pilot Program Agreement With the Truckee River Watershed Council	**8-21**
3	SEP Program Fact Sheet	**8-39**

ENCLOSURE 1

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. R6T-2014-0014

LAHONTAN WATER BOARD
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) PROGRAM

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

1. The Lahontan Water Board has for approximately one year been evaluating its Enforcement Program and has identified a number of actions that will improve the program's efficiency and effectiveness. One such action is the development of a region-specific program for identifying, approving, and implementing Supplemental Environmental Projects (SEPs).

2. The Lahontan Water Board supports including SEPs as a part of administrative civil liability settlements. SEPs provide a strategic mechanism to make a portion of civil liabilities available for the kinds of projects identified as priorities by the Lahontan Water Board.

3. Currently, extensive Lahontan Water Board staff resources are spent negotiating, developing, and overseeing SEPs. This process has typically been conducted in confidential settlement negotiations, and by the very nature of confidentiality does not provide public transparency in how various SEPs are proposed to the Lahontan Water Board.

4. A region-specific SEP program will provide guidance to Lahontan Water Board staff and dischargers in developing SEPs that further the Lahontan Water Board's priorities consistent with the State Water Resources Control Board's SEP Policy.

5. As a part of the region-specific SEP program, the Lahontan Water Board supports the establishment of partnerships with independent third parties (partner organizations) to manage SEP accounts and to implement SEPs consistent with the Lahontan Water Board's expressed priorities.

6. Using SEP accounts with partner organizations is expected to reduce staff's SEP oversight costs over time. The partner organizations will be responsible for the development and administration of the SEPs.

7. Using SEP accounts will direct monies toward projects that are already vetted through local stakeholder processes and increase the transparency in how SEP monies are used.

8. The Lahontan Water Board considers a pilot program to be an appropriate mechanism to explore the feasibility of implementing SEP accounts before implementing this program on a region-wide basis. Such a pilot program is the subject of a separate Resolution.

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

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

THEREFORE, BE IT RESOLVED THAT:

1. The Lahontan Water Board approves the Lahontan Water Board SEP Program (Attachment A).

2. The Lahontan Water Board directs staff to post the Lahontan Water Board SEP Program in a prominent location on the Lahontan Water Board's web site.

3. The Lahontan Water Board directs staff to delay full implementation of the Lahontan Water Board SEP Program until a pilot program with the Truckee River Watershed Council is completed.

4. The Lahontan Water Board authorizes the Lahontan Water Board Executive Officer to modify the attached Lahontan Water Board SEP Program (and its respective attachments) for minor technical changes or for consistency with updated requirements and policies.

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 12, 2014.

Patty Z. Kouyoumdjian

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Attachment A: Lahontan Water Board SEP Program

LAHONTAN WATER BOARD
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) PROGRAM

INTRODUCTION

The State Water Resources Control Board (State Water Board) adopted a policy addressing Supplemental Environmental Projects (SEPs) on February 3, 2009 (State Water Board SEP Policy). The State Water Board SEP Policy identifies criteria to ensure that selected projects have environmental value, further the enforcement goals of the State Water Board and its regions, and are subject to appropriate input and oversight by the regional water boards.

At its June 2013 meeting, the Lahontan Regional Water Quality Control Board (Lahontan Water Board) established a subcommittee to work with staff and the State Water Board's Office of Enforcement to develop a region-specific SEP program. The region-specific SEP program is intended to provide guidance to Lahontan Water Board staff and dischargers in developing SEPs that further the Lahontan Water Board's priorities consistent with the State Water Board SEP Policy.

GENERAL GUIDANCE

The Lahontan Water Board supports including SEPs as a part of administrative civil liability settlements. SEPs provide a strategic mechanism to make a portion of penalty monies available for the kinds of projects identified as priorities by the Lahontan Water Board. Such projects can help mitigate environmental degradation caused by water quality violations near the area where degradation occurred.

It is recognized that the discharger must propose, or at least agree to, a SEP as part of resolving an administrative liability action. Any proposed SEP must conform to the criteria established by the State Water Board SEP Policy. While a proposed SEP must go above and beyond what is otherwise legally required for a discharger to comply with applicable laws and regulations, a SEP may be considered for a project that is identified on the Lahontan Water Board's Triennial Review List or on any other list of priority projects the Lahontan Water Board has established.

The State Water Board SEP Policy also states there must be a nexus between the violation and the SEP. Nexus means there must be a relationship between the violation and the SEP, either in the nature of the violation (i.e., type of waste discharge) or in the geography of the violation. When evaluating the geographic nexus, the Lahontan Water Board will consider projects within the entire Lahontan, not just within the watershed where the violation(s) occurred. The Lahontan Water Board prefers SEP projects be located close to where the violation(s) occurred, but recognizes this is not always possible.

SEP ACCOUNTS

The Lahontan Water Board supports the establishment of partnerships with independent third parties (partner organizations) to manage SEP accounts and to implement SEPs consistent with the Lahontan Water Board's expressed priorities. The partner organizations will maintain a list of potential projects that are eligible to be considered for SEPs within their respective watershed areas.

In watersheds where the Lahontan Water Board has entered into a Memorandum of Understanding with partner organizations (see Attachment 1) that have agreed to create a SEP account, dischargers may choose to direct up to 50 percent of a liability to the appropriate SEP account to fund projects with a distinct environmental benefit. In areas where there are no appropriate groups with whom to partner, or where a potential group exists but does not have sufficient institutional capacity, Lahontan Water Board staff will conduct outreach and work with potential partners to bring them to a point where a partnership would be viable. Alternatively, when a penalty is assessed for violations in a geographic area with no developed partnership agreement, a programmatic nexus may be used to direct a portion of the penalty to an existing partner organization.

The partner organizations will act as a bursar of the SEP account funds, directing the funds toward projects according to an agreement established with the Lahontan Water Board. Penalty portions that are negotiated to be directed into a SEP account may be used to fund a complete project or series of projects, or they may be used to partially fund a larger project. The partner organization may also use SEP accounts to leverage other sources of funding.

The use of SEP accounts has many advantages. It directs monies toward projects that are already vetted through local stakeholder processes and thereby allows for broad-based local participation and input regarding the use of penalties to directly enhance water quality in the Lahontan Region. It increases transparency in how SEP monies are used. It helps link the Lahontan Water Board with planning by local stakeholder groups, helping to harmonize the development of plans and criteria between and among stakeholders. It strengthens relationships between the Lahontan Water Board and local stakeholders.

Further, engaging our local watershed partners to manage SEP accounts provides a high level of certainty that a watershed project selected by a discharger for a SEP will be completed as required. Partner organizations will be identified and selected based upon many factors, including their longevity, their financial stability and accountability, and their successful track record of funding and implementing watershed projects. Furthermore, potential projects will be identified and vetted based upon specific minimum criteria to be eligible for consideration as a SEP. These factors reduce the risk to dischargers considering whether to direct liability amounts to fund a SEP implemented by a third party. Some dischargers may still elect to perform SEP projects themselves, particularly public entities. However, a pre-approved list of SEPs performed by pre-vetted third parties should help non-public entities select SEPs that will be approved by the Lahontan Water Board.

Using SEP accounts is likely to reduce staff oversight costs since Lahontan Water Board staff will not need to help develop a SEP or oversee its implementation. The partner organization will be responsible for most of the administration of the SEP because it will produce and submit an annual report regarding the disposition of SEP account funds and the status of the liability-funded projects. The list of potential projects will be maintained by the partner organization instead of Lahontan Water Board staff. The project list will be updated, modified and re-prioritized as the partner organization works with its stakeholders, and the Lahontan Water Board will have the opportunity to express its priorities to the partner organization during that annual update process.

PARTNER ORGANIZATION QUALIFICATION CRITERIA AND IMPLEMENTATION

The Lahontan Water Board will develop partnerships with watershed-based groups that use stakeholder processes to identify and prioritize projects that may be eligible for funding from SEP accounts. Examples of such groups are the Truckee River Watershed Council and the Inyo Mono Integrated Regional Water Management (IRWM) Group. The Lahontan Water Board will identify potential partners throughout the Lahontan Region and develop separate partnership agreements with each one. Once a partnership agreement is developed and finalized through a Memorandum of Understanding (see Attachment 1), dischargers will be able to direct portions of liability amounts to the partner organization.

Eligible organizations include local public agencies, regional public agencies, state agencies, nonprofit organizations (501[c][3]), federally-recognized Native American Tribes[1], public colleges, and federal agencies. Eligible organizations shall demonstrate experience in project management, multi-agency collaboration, stakeholder involvement and collaboration, regional approaches to water management, water management involvement in land use decisions, and implementation of project monitoring to evaluate results of current practices. Ineligible organizations include for-profit organizations, private organizations, and 501(c)(4) organizations.

Organizations interested in developing SEP account partnerships with the Lahontan Water Board shall submit the following information.

- A mission statement for the organization's goal to address watershed-based issues.

- A description of the organization's governance structure.

- A description of how the organization's governance structure addresses and ensures the following:
    - Public outreach and involvement processes
    - Effective decision making

[1] Federally-recognized tribes must waive their sovereign immunity in order to be eligible to manage SEP accounts.

- Balanced access and opportunity for participation in selecting potential SEP projects for consideration
- Effective communication – both internal and external to the watershed(s) area(s)
- Long-term successful implementation of watershed projects
- Coordination with neighboring watershed efforts and state and federal agencies
- The collaborative process(es) used to select and prioritize potential watershed projects
- How interim changes and formal changes to watershed project lists will be performed
- Updating or amending watershed project lists

- A description of the organization's process to incorporate local stakeholder outreach and input in selecting and prioritizing potential watershed projects. Local stakeholders shall include the following, as applicable to the watershed(s):
    - Wholesale and retail water purveyors
    - Wastewater agencies
    - Flood control agencies
    - Municipal and county governments and special districts
    - Electrical corporations
    - Native American Tribes
    - Self-supplied water users
    - Environmental stewardship organizations
    - Community organizations
    - Industry organizations
    - State, federal, and regional agencies or universities
    - Any other interested group appropriate to the region, including private citizens.

- A description of the organization's experience for completing water quality projects.

- A description of the organization's accounting practices, including a description of how its annual financial statements are prepared and audited.

The Lahontan Water Board will enter into formal agreements (Memorandums of Understanding) with organizations that satisfactorily demonstrate proficiency with the above-listed criteria. A template agreement (Attachment 1) has been developed, which can be tailored to meet specific regional watershed issues. The selected partnership organization will be responsible for further refining their individual watershed project lists in order to develop a SEP-specific project list.

The agreement between the Lahontan Water Board and each partner organization will specify requirements (see SEP Qualification Criteria section, below) for using the SEP monies deposited in individual SEP accounts. Generally, these requirements will be similar throughout the region, but some variation will be allowed to meet the specific needs of a partner organization's geographical area. The requirements will include

annual reporting on projects in progress and completed with SEP monies deposited to the SEP accounts. The requirements will specify that partner organizations must provide a proposed project list to be funded with SEP monies during the upcoming biennium, along with a proposed budget for each project. The agreement will also include obligations on the partner organization to comply with certain provisions in Section H of the State Water Board SEP Policy.

The agreement between the Lahontan Water Board and each partner organization will require the partner organization to develop an individual contract with any discharger who elects to direct a portion of its liability to fund implementation of a SEP. The contract between the partner organization and the discharger shall include specific language (Attachment 2) in addition to any other terms negotiated between the partner organization and the discharger.

SEP QUALIFICATION CRITERIA

To be considered for a SEP, a proposed project must satisfy all conditions outlined in the State Water Board SEP Policy, and must directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the state. Specifically, the Lahontan Water Board generally prefers on-the-ground projects that have already completed CEQA review and that provide a direct benefit to water quality. Less weight may be given to technical studies, especially when a watershed plan already exists for a geographic area being considered for a SEP. However, if no watershed plan exists for a watershed, then studies that lead to the development of a watershed plan or IRWM Plan may have higher priority than on-the-ground projects in that watershed. For example, using funds to develop salt and nutrient management plans where none exists may have a higher priority than some on-the-ground projects.

The Lahontan Water Board encourages partner organizations to identify portions of potential SEP projects that can be funded in either Planning/Assessment phase or in an Implementation phase. Eligible implementation projects may include project-level planning, design, construction, construction management, implementation, and monitoring to implement full scale on-the-ground mitigation. Eligible planning/assessment projects may complete an assessment, study, or design identified as a high priority in a TMDL; may prepare studies, strategies, management plans, tools for management plan development, and similar items; fill recognized data gaps; consolidate previously-completed planning work in a watershed; or provide other planning efforts as identified through the partner organization's stakeholder process.

The following additional criteria will be used by partner organizations to select and prioritize potential projects for consideration as SEPs:

- Projects that address public health and safety issues or concerns.
- Projects that address environmental health and safety issues or concerns.
- Projects that offer multi-regional or statewide benefit.
- Projects in process that need additional funds to bring the effort to completion.
- Projects that address environmental justice concerns.

- Projects that improve efficiencies (databases, automation, system enhancements, etc.).
- Projects that support a Lahontan Water Board, CalEPA, Legislative, or Governor's Office priority (see State Water Board's Strategic Plan Update and the CalEPA Strategic Vision Goals).
- Leveraged projects where matching funds are being provided.
- Projects that support the Lahontan Water Board's triennial review process.

PUBLIC REPORTING

The Lahontan Water Board will post on its website by March 1 of each year a list of all SEPs completed the prior year and information on the status of SEPs in process the prior year. The Lahontan Water Board will also post each partner organization's list of projects and subsequent updates that may be considered as SEPs. Approved agreements with each partner organization will also be posted on the Lahontan Water Board's website.

Attachments: 1. Template Partner Organization/Lahontan Water Board Agreement
2. Template Language for Partner Organization/Discharger Agreements

ATTACHMENT 1

MEMORANDUM OF UNDERSTANDING

LAHONTAN WATER BOARD
SUPPLEMENTAL ENVIRONMENTAL PROJECT
ACCOUNT PROGRAM WITH
[NAME OF PARTNER ORGANIZATION]

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 PARTNER ORGANIZATION for the Supplemental Environmental Project (SEP) Account program authorized by the Lahontan Water Board's SEP Program, approved by Resolution No. R6T-2014-0014 (Lahontan Water Board SEP Program). The terms and conditions of this Memorandum of Understanding (MOU) govern PARTNER ORGANIZATION'S obligations to identify projects that may qualify as SEPs, to implement SEPs consistent with the Lahontan Water Board SEP Program, and to use the funds transferred to it by a discharger in accordance with the Lahontan Water Board's authorizing Administrative Civil Liability Order. This MOU is effective upon its execution by PARTNER ORGANIZATION and the Executive Officer of the Lahontan Water Board.

1. PARTNER ORGANIZATION shall incorporate the SEP Qualification Criteria identified in the Lahontan Water Board SEP Program to identify potential projects that may qualify as a SEP. This shall be incorporated within the PARTNER ORGANIZATION'S stakeholder process used for identifying potential projects.

2. PARTNER ORGANIZATION shall submit to the Lahontan Water Board Executive Officer on a biannual basis a list of potential projects that have been identified pursuant to Paragraph 1, above. The first such list shall be submitted by [DATE] and every two years thereafter.

3. When a discharger is under Order of the Water Board to pay a liability for violations, PARTNER ORGANIZATION shall enter into a direct contract with any Discharger who elects to direct a portion of its liability to fund implementation of a SEP identified on the PARTNER ORGANIZATION's list of potential projects noted in Paragraph 2, above. The contract between the PARTNER ORGANIZATION and the discharger shall include specific language noted within Attachment 2 to the Lahontan Water Board SEP Program.

4. PARTNER ORGANIZATION shall provide quarterly reports of progress on each SEP to the Designated Lahontan Water Board Representative commencing on the first day of the fiscal quarter after a contract with a discharger 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.

5. On or before the applicable SEP Completion Date, PARTNER ORGANIZATION 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 PARTNER ORGANIZATION. The Certification of Completion shall include following:

    a. Certification that the SEP has been completed in accordance with the terms of this MOU, the Lahontan Water Board's authorizing Order and the Lahontan Water Board's SEP Program. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Lahontan Water Board to evaluate the completion of the SEP and the costs incurred by PARTNER ORGANIZATION.

    b. Certification documenting the expenditures by PARTNER ORGANIZATION during the completion period for the SEP. PARTNER ORGANIZATION'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. PARTNER ORGANIZATION shall provide any additional information requested by the Lahontan Water Board Representative which is reasonably necessary to verify SEP expenditures.

    c. Certification, under penalty of perjury, that PARTNER ORGANIZATION 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 SEP.

6. To ensure compliance with the California Environmental Quality Act where necessary, PARTNER ORGANIZATION shall provide the Lahontan Water Board with the following documents from the lead agency prior to commencing SEP construction:

    a. Categorical or statutory exemptions relied upon by the Lead Agency;

    b. Negative Declaration if there are no potentially "significant" impacts;

    c. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or

    d. Environmental Impact Report (EIR).

7. In addition to the certification, upon completion of the SEP and at the written request of the Lahontan Water Board Executive Officer, PARTNER ORGANIZATION AND DISCHARGER, at THEIR 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 PARTNER ORGANIZATION 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 PARTNER ORGANIZATION AND DISCHARGER 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.

8. Upon PARTNER ORGANIZATION'S satisfaction of its SEP obligations under this MOU and completion of each SEP(s) and any audit requested by the Lahontan Water Board, the Designated Lahontan Water Board Representative shall send PARTNER ORGANIZATION AND DISCHARGER a letter recognizing satisfactory completion of THEIR obligations under the terms of each applicable Order authorizing the completion of a SEP. This letter shall terminate any further MOU and other applicable Order obligations of PARTNER ORGANIZATION AND DISCHARGER.

9. In the event that PARTNER ORGANIZATION and each applicable discharger are not able to demonstrate to the reasonable satisfaction of the Lahontan Water Board Executive Officer that the entire amount of funds allocated under an Order authorizing a SEP has been spent to complete the components of the SEP for which a discharger is financially responsible, the discharger shall pay to the State Water Board Cleanup and Abatement Account or Waste Discharge Permit Fund, as appropriate, the difference between the funds allocated under the Order authorizing a SEP and the amount the PARTNER ORGANIZATION and the discharger can demonstrate was actually spent on the SEP. Alternatively, the Lahontan Water Board may approve the use of the surplus funds for a different SEP consistent with the Lahontan Water Board's SEP Program and with the State Water Resources Control Board's SEP Policy.

IT IS SO AGREED.

California Regional Water Quality Control Board – Lahontan Region

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

PARTNER ORGANIZATION

By: _____ Date: _____
[NAME OF PERSON]
[TITLE OF PERSON SIGNING]

ATTACHMENT 2

TEMPLATE LANGUAGE FOR PARTNER ORGANIZATION/DISCHARGER AGREEMENTS

This document shall serve as a Memorandum of Understanding by and between PARTNER ORGANIZATION (XXX) and DISCHARGER (XXX) for the Supplemental Environmental Project (SEP) authorized by California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) Order No. R6-xxxx-xxx (the Order) and described in detail therein (the Project).

1. Pursuant to the terms of the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order entered into between the Lahontan Water Board Prosecution Team and DISCHARGER, DISCHARGER agrees to donate, and PARTNER ORGANIZATION commits to receive funding in the amount of $xxx,xxx (Funding) to be utilized for implementation of the Project.

2. As a condition to the donation, PARTNER ORGANIZATION agrees as follows:

    a. To serve as the Implementing Party for the Project, as detailed in the Order;
    b. To cooperate with DISCHARGER to meet the SEP requirements set forth in the Order, the terms of which are attached hereto as Exhibit X;
    c. To return to DISCHARGER any unexpended portion of the Funding to the extent not spent on the Project.

3. PARTNER ORGANIZATION agrees that should it publicize the Project it shall state in a prominent manner that the Project is being funded as part of a settlement of an enforcement action by the Lahontan Water Board against DISCHARGER.

4. This MOU and the parties' relations shall be construed and governed by the laws of the State of California without regard to conflict-of-laws rules or principles.

5. Nothing contained in this MOU shall at any time constitute, be deemed to constitute or be construed to create a relationship among DISCHARGER and PARTNER ORGANIZATION of partnership, joint venture, agency, or any other relationship creating fiduciary, quasi-fiduciary or similar duties and obligation, or that would otherwise subject DISCHARGER and PARTNER ORGANIZATION to joint and several or vicarious liability in favor of any third party.

6. PARTNER ORGANIZATION acknowledges that the Funding is the full extent of DISCHARGER's obligation hereunder and that PARTNER ORGANIZATION is responsible for securing sufficient other resources as may be needed to complete the Project in accordance with the Order in the event the Project cannot be completed with the amount of Funding being provided by DISCHARGER.

7. This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

(SIGNATURE BLOCKS FOR PARTNER ORGANIZATION AND DISCHARGER)

ENCLOSURE 2

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. R6T-2014-0015

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

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) Program" (Lahontan SEP Program) at its February 12-13, 2014 meeting in South Lake Tahoe, California.

2. The Lahontan SEP Program 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 Program 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.

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.

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 program upon its completion and prior to full implementation of the Lahontan SEP Program.

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 12, 2014.

Patty Z. Kouyoumdjian

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

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 program authorized by Lahontan Water Board Resolution No. R6T-2014-0015 (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-2014-0015, 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: Patty Z. Kouyoumdjian Date: February 19, 2014
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.

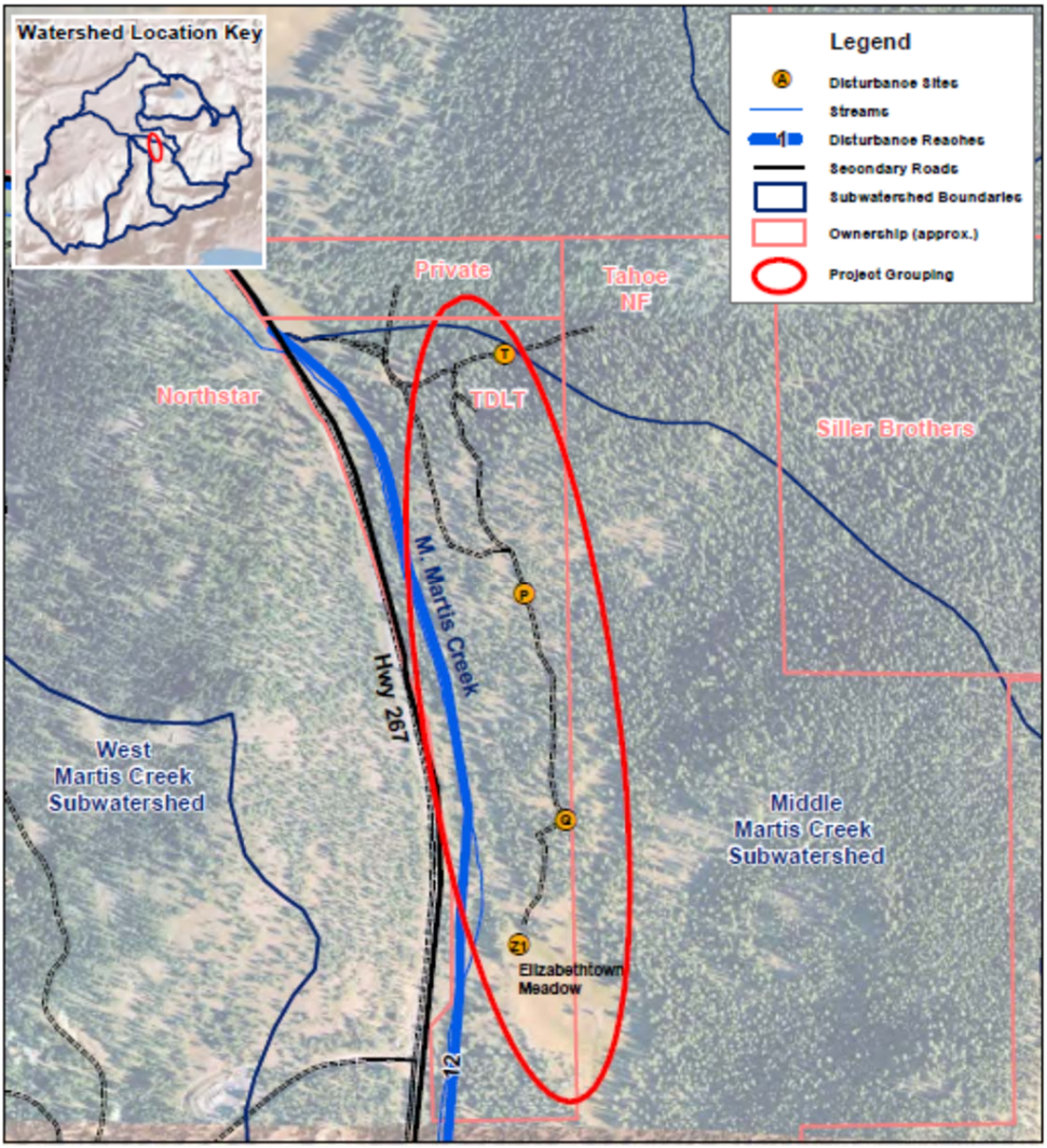

Figure 1. Location Map for Elizabethtown. The project is located along Middle Martis Creek.

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.

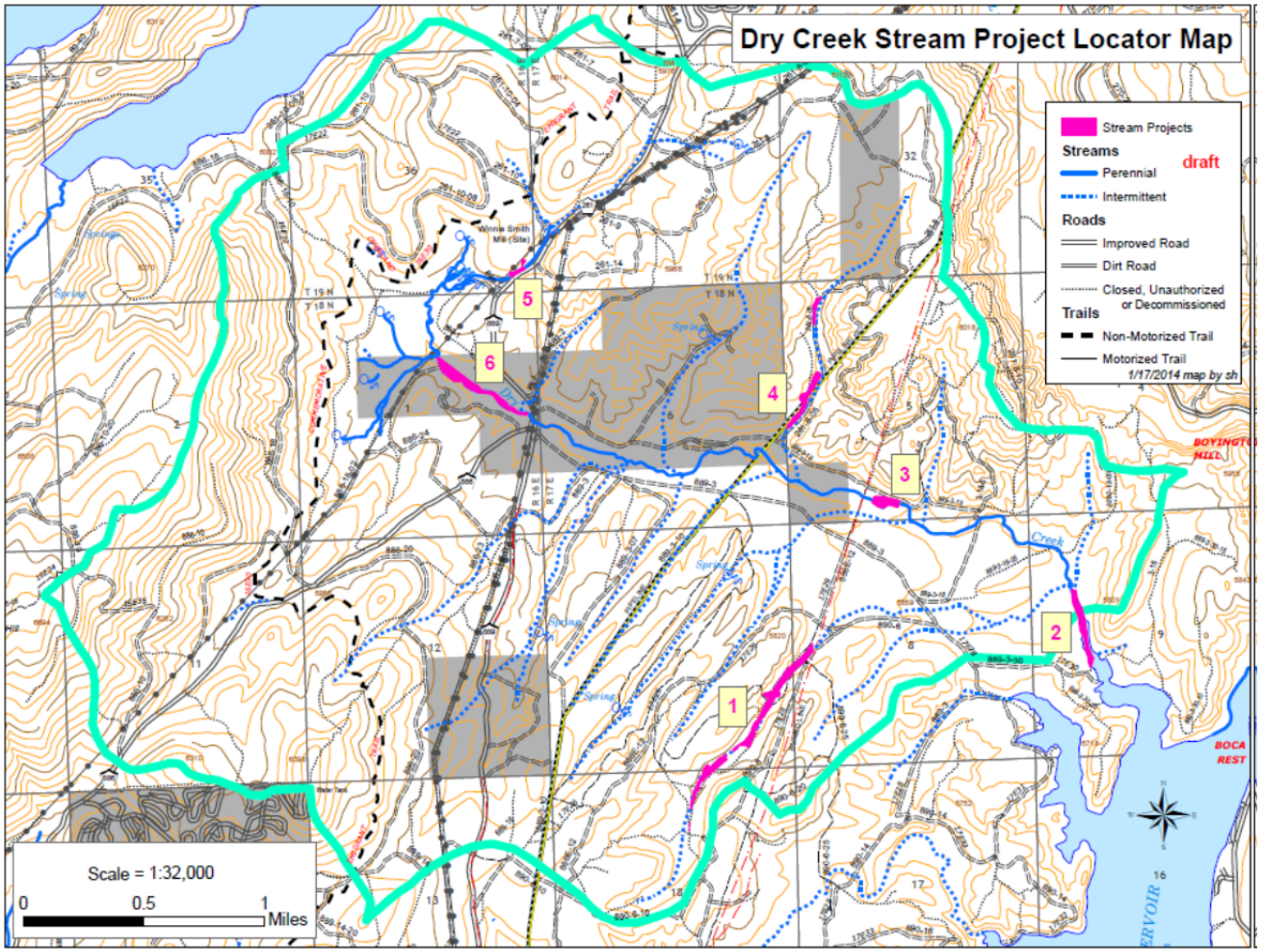

Figure 2. Project Location Map for Dry Creek Restoration. Site 1 is located in the southern portion of the watershed.

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.

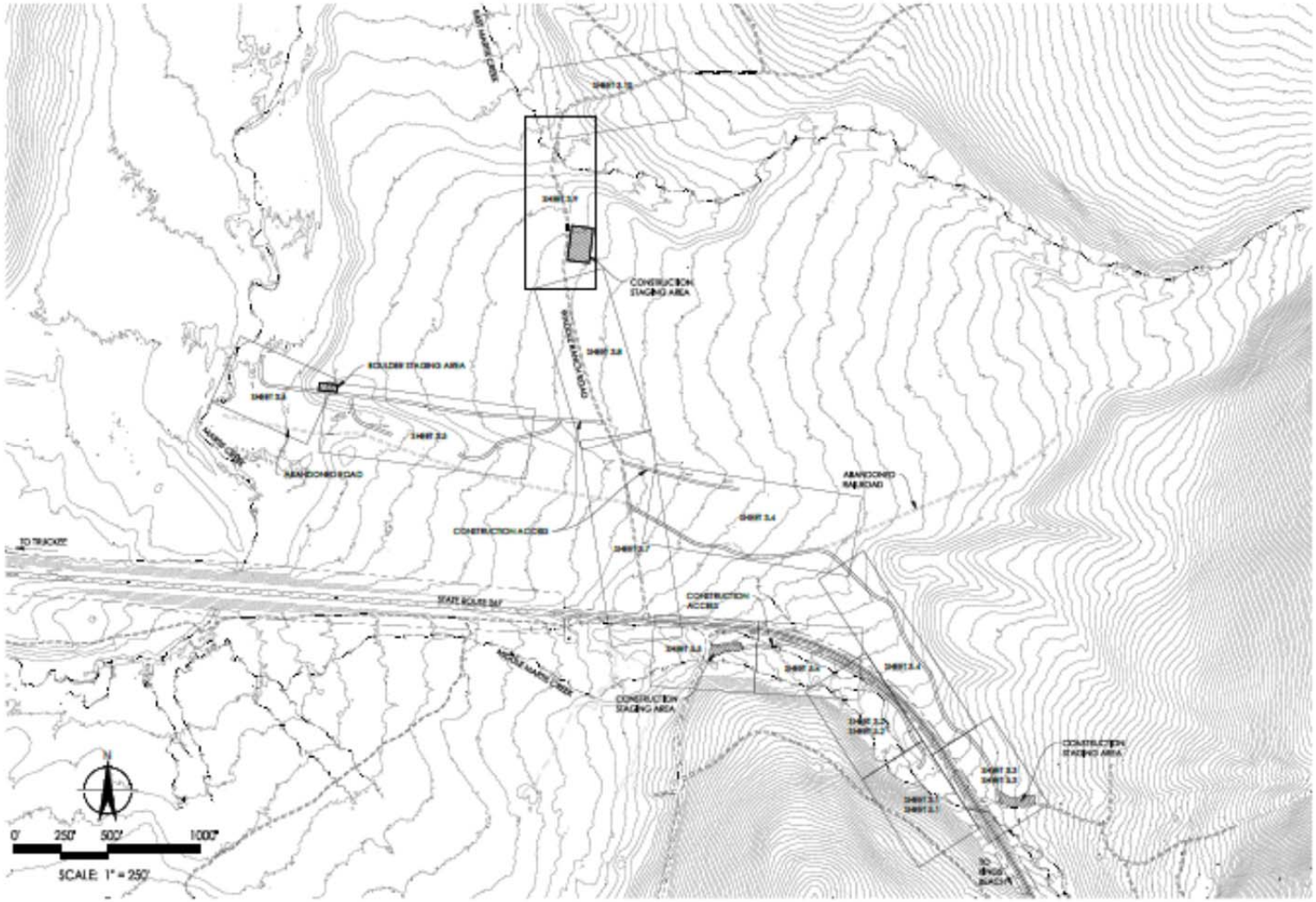

Figure 3. Project Overview map – Middle Martis Creek Wetlands Restoration.

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

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ENCLOSURE 3

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Fact Sheet

Supplemental Environmental Project (SEP) Guidelines: Lahontan Water Board Program

The State Water Resources Control Board (State Water Board) adopted a policy addressing Supplemental Environmental Projects (SEPs) on Feb. 3, 2009 (State Water Board SEP Policy). The intent of the State Water Board SEP Policy is to make a portion of penalty monies available for projects intended to help mitigate environmental degradation caused by water quality violations near the area, or with a nexus to the area, where the degradation occurred. It identifies criteria to ensure that selected projects have environmental value, further the enforcement goals of the State Water Board and its regions, and are subject to appropriate input and oversight by the regional water boards.

On Feb. 12, 2014, the Lahontan Regional Water Quality Control Board (Lahontan Water Board) adopted a region-specific SEP program. The region-specific SEP program provides guidance to Lahontan Water Board staff and dischargers in developing SEPs that further the Lahontan Water Board's priorities consistent with the State Water Board SEP Policy.

General Guidance

The Lahontan Water Board supports including SEPs as a part of administrative civil liability settlements. SEPs provide a strategic mechanism to make a portion of penalty monies available for the kinds of projects identified as priorities by the Lahontan Water Board. Such projects can help mitigate environmental degradation caused by water quality violations near the area where degradation occurred.

The discharger may propose, or agree to, an SEP as part of resolving an administrative liability action. Any SEP must conform to the criteria established by the State Water Board SEP Policy. While a SEP must go above and beyond what is otherwise legally required for a discharger to comply with applicable laws and regulations, an SEP may be considered for a project that is identified on the Lahontan Water Board's Triennial Review List, or on any other list of priority projects the Lahontan Water Board has established.

The State Water Board SEP Policy requires a nexus between the violation and the SEP. Nexus means there must be a relationship between the violation and the SEP, either in the nature of the violation (i.e., type of waste discharge) or in the geography of the violation. When evaluating the geographic nexus, the Lahontan Water Board will consider projects within the entire Lahontan region, not just within the watershed where the violation(s) occurred. The Lahontan Water Board prefers SEP projects be located close to where the violation(s) occurred, but recognizes this is not always possible.

Sep Accounts

The Lahontan Water Board supports the establishment of partnerships with independent third parties (partner organizations) to manage SEP accounts and to implement SEPs consistent with the Lahontan Water Board's

expressed priorities. The partner organizations will maintain a list of potential projects that are eligible to be considered for SEPs within their respective watershed areas.

In watersheds where the Lahontan Water Board has entered into a memorandum of understanding (MOU) with partner organizations that have agreed to create an SEP account, dischargers may choose to direct up to 50 percent of a liability to the appropriate SEP account to fund projects with a distinct environmental benefit. In areas where there are no appropriate groups with whom to partner, or where a potential group exists but does not have sufficient institutional capacity, Lahontan Water Board staff will conduct outreach and work with potential partners to bring them to a point where a partnership would be viable. Alternatively, when a penalty is assessed for violations in a geographic area with no developed partnership agreement, a programmatic nexus may be used to direct a portion of the penalty to an existing partner organization. Additionally, some dischargers may still elect to perform SEP projects themselves, particularly public entities.

The partner organizations will act as a treasurer of the SEP account funds, directing the funds toward projects according to an agreement established with the Lahontan Water Board. The partner organization will be responsible for adminstering and implementing the approved SEP. Penalty portions that are negotiated to be directed into a SEP account may be used to fund a complete project or series of projects, or they may be used to partially fund a larger project. The partner organization may also use SEP accounts to leverage other sources of funding.

The use of SEP accounts has many advantages. It directs monies toward projects that are already vetted through local stakeholder processes and thereby allows for broad-based local participation and input regarding the use of penalties to directly enhance water quality in the Lahontan Region. It increases transparency in how SEP monies are used. It helps link the Lahontan Water Board with planning by local stakeholder groups, helping to harmonize the development of plans and criteria between and among stakeholders. It also strengthens relationships between the Lahontan Water Board and local stakeholders.

Partner Organization Qualification Criteria And Implementation

The Lahontan Water Board will identify watershed-based groups throughout the Lahontan Region that use stakeholder processes to identify and prioritize projects. Separate partnership agreements will be developed with each group who elects to participate in this program and meets minimum established criteria. Once a partnership agreement is developed and finalized through an MOU, dischargers will be able to direct portions of liability amounts to the partner organization.

Partner organizations will be identified and selected based upon many factors, including their longevity, their financial stability and accountability, and their successful track record of funding and implementing watershed projects. Partner organizations shall have demonstrated experience in project management, multi-agency collaboration, stakeholder involvement and collaboration, regional approaches to water management, water management involvement in land use decisions, and implementation of project monitoring to evaluate results of current practices. Eligible organizations include local public agencies, regional public agencies, state agencies, nonprofit organizations (501[c][3]), federally-recognized Native American Tribes who waive sovereign immunity, public colleges and federal agencies. Ineligible organizations include for-profit organizations, private organizations, and 501(c)(4) organizations. Integrated Regional Water Management (IRWM) Groups are examples of potential eligible organizations.

The Lahontan Water Board will enter into formal agreements (e.g., MOUs) with organizations that satisfactorily demonstrate proficiency with established criteria. The selected partnership organization will be responsible for further refining their individual watershed project lists in order to develop an SEP-specific project list.

The MOU between the Lahontan Water Board and each partner organization will require the partner organization to develop an individual contract with any discharger who elects to direct a portion of its liability to fund implementation of a SEP. The contract between the partner organization and the discharger shall include specific language in addition to any other terms negotiated between the partner organization and the discharger.

The MOU between the Lahontan Water Board and each partner organization will specify requirements for using the SEP monies deposited in individual SEP accounts. Generally, these requirements will be similar throughout the region, but some variation will be allowed to meet the specific needs of a partner organization's geographical area. The requirements will include annual reporting on projects in progress and completed with SEP monies deposited to the SEP accounts. The MOU will also include obligations on the partner organization to comply with certain provisions in Section H of the State Water Board SEP Policy.

Sep Qualification Criteria

To be considered for an SEP a proposed project must satisfy all conditions outlined in the State Water Board SEP Policy, and must directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the state. Specifically, the Lahontan Water Board generally prefers on-the-ground projects that have already completed California Environmental Quality Act (CEQA) review and that provide a direct benefit to water quality. Less weight may be given to technical studies, especially when a watershed plan already exists for a geographic area being considered for a SEP. However, if no watershed plan exists for a watershed, then studies that lead to the development of a watershed plan or Integrated Regional Water Management (IRWM) plan may have higher priority than on-the-ground projects in that watershed. For example, using funds to develop salt and nutrient management plans where none exists may have a higher priority than some on-the-ground projects.

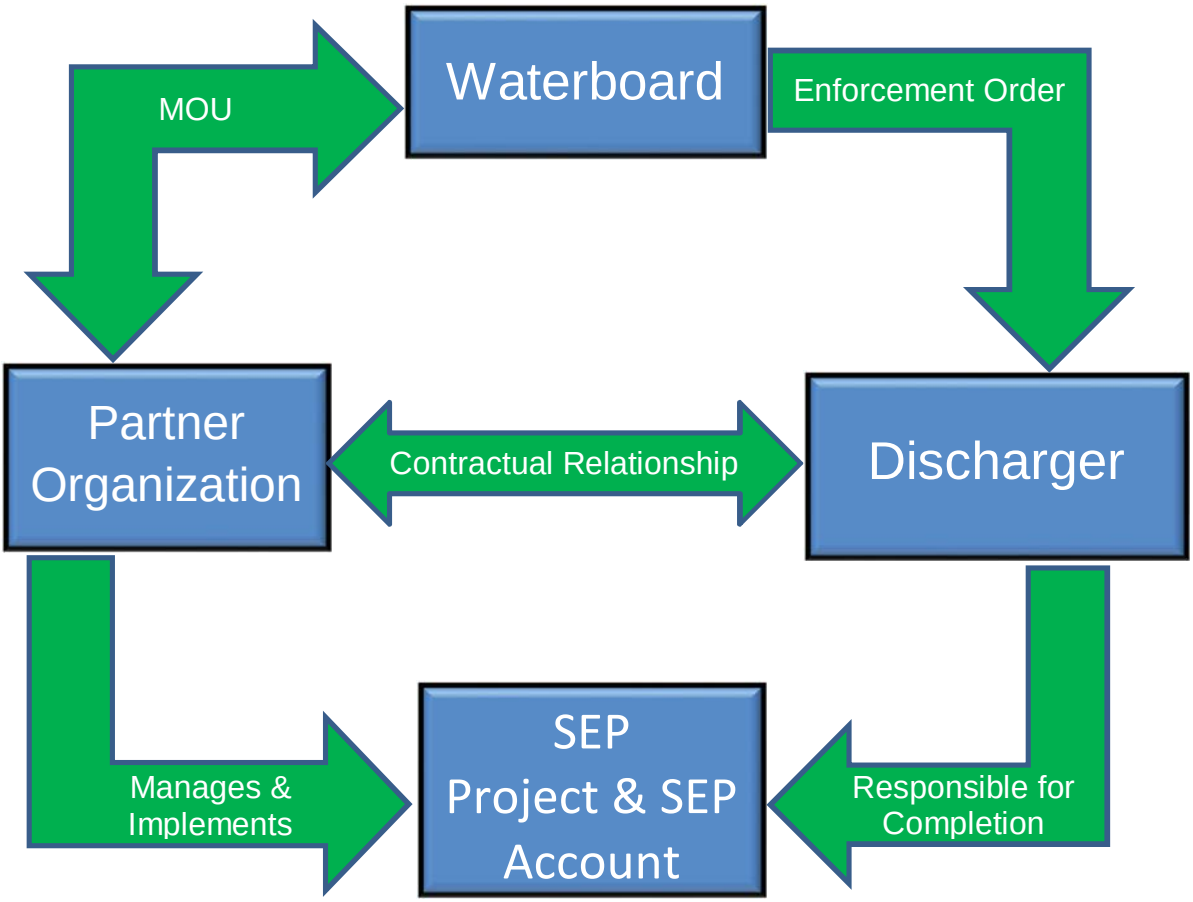
The Lahontan Water Board encourages partner organizations to identify portions of potential SEP projects that can be funded in either the planning/assessment phase, or in an Implementation phase. Eligible planning/assessment projects may complete an assessment, study, or design identified as a high priority in a Total Maxiumum Daily Load (TMDL); may prepare studies, strategies, management plans, tools for management plan development and similar items; fill recognized data gaps; consolidate previously-completed planning work in a watershed; or provide other planning efforts as identified through the partner organization's stakeholder process. Eligible implementation projects may include project-level planning, design, construction, construction management, implementation and monitoring to implement full scale on-the-ground mitigation.

The following additional criteria will be used by partner organizations to select, vet among stakelholders, and prioritize potential projects for consideration as SEPs:

- Projects that address public health and safety issues or concerns.
- Projects that address environmental health and safety issues or concerns.
- Projects that offer multi-regional or statewide benefit.
- Projects in process that need additional funds to bring the effort to completion.
- Projects that address environmental justice concerns.
- Projects that improve efficiencies (databases, automation, system enhancements, etc.).
- Projects that support a Lahontan Water Board, CalEPA, legislative, or Governor's Office priority (see State Water Board's Strategic Plan Update and the CalEPA Strategic Vision Goals).
- Leveraged projects where matching funds are being provided.
- Projects that support the Lahontan Water Board's Triennial Review process.

Reporting

The partner organization will produce and submit an annual report regarding the disposition of SEP account funds and the status of SEPs. Partner organizations will provide a list of potential projects and associated budget to be funded with SEP monies during the upcoming biennium. The project list will be updated, modified and re-prioritized as the partner organization works with its stakeholders, and the Lahontan Water Board will have the opportunity to express its priorities to the partner organization during that annual update process.

The Lahontan Water Board will post on its website by March 1 of each year a list of all SEPs completed the prior year and information on the status of SEPs in process the prior year. The Lahontan Water Board will post each partner organization's current list of projects and those may be considered as SEPs. Approved MOUs will also be posted on the its website.

Lahontan Water Board's SEP Process With Dischargers and Partnerships With Independent Third Parties