

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2009-0046

**ADMINISTRATIVE CIVIL LIABILITY ORDER
AGAINST SARBJIT S. KANG AND KANG PROPERTY, INCORPORATED
FOR VIOLATIONS OF (1) CALIFORNIA WATER CODE SECTION 13267 AND
(2) CALIFORNIA WATER CODE SECTION 13304 -
SWISS MART GAS STATION**

El Dorado County

The California Regional Water Quality Control Board – Lahontan Region (Lahontan Water Board) finds that Sarbjit S. Kang and Kang Property, Incorporated have violated the following:

- A. Water Code section 13267 by failing to submit required reports and documentation by their due dates, as required by Cleanup and Abatement Order (CAO) No. R6T-2007-0029.
- B. Water Code section 13304 by failing to implement cleanup and abatement measures as required by CAO No. R6T-2007-0029.

A hearing on Complaint No. R6T-2009-0015 was held before the Lahontan Water Board on July 9, 2009. Based upon evidence and testimony received at the hearing, the Lahontan Water Board makes the following findings:

1. Dischargers

Kang Property, Incorporated, a California corporation (corporate number C2472703), is the legal owner of El Dorado County Assessor Parcel Number (APN) 023-181-19-10 (Property). The Swiss Mart Gas Station is located on the Property. As the legal owner of the Property, Kang Property, Incorporated is responsible for activities that take place on the Property. Kang Property, Incorporated is a discharger identified in CAO No. R6T-2007-0029, and is responsible for complying with the requirements specified by that CAO.

Sarbjit S. Kang is identified as the operator of the underground storage tanks on the operating permit for the Swiss Mart Gas Station, according to the El Dorado County Department of Environmental Management (County). Sarbjit S. Kang is a discharger identified in CAO No. R6T-2007-0029, and is responsible for complying with the requirements specified by that CAO.

Kang Property, Incorporated and Mr. Sarbjit S. Kang are hereinafter referred to as the "Dischargers."

2. Property

The Property (APN 023-181-19-10) is located at 913 Emerald Bay Road in South Lake Tahoe, El Dorado County (See Attachment A – Vicinity Map.)

3. Facility

Swiss Mart Gas Station. The Property contains a gas station and food mart. Based on the underground storage tank operating permit issued by the County, there is one regular, unleaded tank and one super, unleaded tank on the Property. Three dispenser islands are used to dispense gasoline.

4. Discharge

Pollution of groundwater beneath the Property was verified by the Dischargers during an August 2007 groundwater investigation required by the Lahontan Water Board. The pollution was likely a result of an unauthorized vapor release of petroleum hydrocarbons from the dispensers or underground storage tank system. The pollution was also identified in a domestic well at 883 Eloise Avenue, located about 500 feet to the east of the Property.

5. Enforcement History

In response to the unauthorized discharge of petroleum hydrocarbons to groundwaters of the Lake Tahoe Hydrologic Unit and threats to beneficial uses, the Lahontan Water Board Executive Officer issued CAO No. R6T-2007-0029 on December 14, 2007, pursuant to Water Code sections 13304, subdivision (a), and 13267, subdivision (b)(1). Among other requirements, the CAO required the Dischargers to take the following cleanup and investigation actions: (1) provide alternate water supply to the affected domestic well owner; (2) identify and stop the source of the release, (3) conduct groundwater monitoring and submit technical reports, (4) conduct interim remediation to contain plume migration, (5) investigate the extent of the discharge, and (6) propose clean up of contamination in soil and groundwater.

On January 30, 2008, the Lahontan Water Board Executive Officer issued a Notice of Violation citing the Dischargers' failure to submit required technical information and implement corrective actions by deadlines listed in CAO No. R6T-2007-0029.

6. Violation – Water Code section 13267

Water Code section 13267, subdivision (b)(1) states, in part,

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging ...waste within its region... that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires.”

The Dischargers violated Water Code section 13267 subdivision (b)(1) in 11 of 14 CAO directives by failing to submit the following reports and/or documentation by specified due dates:

Directive No. 4.2 – Dischargers did not submit a technical report regarding the alternate supply of clean water. The period of non-compliance ended on March 5, 2008, **68 days** past the deadline of December 28, 2007, when groundwater no longer contained detectable levels of hydrocarbons at all sampling locations. Since groundwater was no longer affected by the discharge from the Facility, an alternate supply of clean water was no longer required and there was no longer a need for the report. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.1. – Dischargers failed to submit a letter proposing to investigate the release until August 15, 2008, **240 days** past the deadline of December 19, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.2. – Dischargers failed to implement the release investigation, as required, until August 26, 2008, **249 days** past the deadline of December 21, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.4. – Dischargers failed to submit a technical report describing the release investigation conducted at the Facility until September 11, 2008, **259 days** past the deadline of December 24, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.1. – Dischargers failed to implement groundwater monitoring at the site until March 5, 2008, **66 days** past the deadline of December 30, 2007. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the groundwater monitoring report required pursuant to Directive 6.2. The period of non-compliance ended on May 20, 2008, **89 days** past the deadline of February 20, 2008, when the next quarterly monitoring report was due. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to submit the First Quarter 2008 monitoring report required pursuant to Directive 6.2 until June 9, 2008, **20 days** past the deadline of May 20, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 7.3. – Dischargers failed to submit a technical report describing interim remediation. The period of non-compliance ended on March 5, 2008, **6 days** past the deadline of February 28, 2008, when groundwater no longer contained detectable levels of hydrocarbons at all sampling locations. Since groundwater was no longer affected by the discharge from the Facility, remediation and a report describing the remediation was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.1. – Dischargers failed to submit a workplan describing means to investigate the extent of petroleum contamination in soil and groundwater at the Facility, until August 28, 2008, **195 days** past the deadline of February 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.2. – Dischargers failed to implement a site investigation, as required pursuant to Directive 8.2, until October 6, 2008, **205 days** past the deadline of March 15, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 8.3. – Dischargers failed to submit a technical report describing results of the site investigation until November 10, 2008, **189 days** past the deadline of May 5, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

7. Violation – Water Code section 13304

Water Code section 13304, subdivision (a) states, in part,

“Any person who has discharged or discharges waste into waters of the state ... shall upon order of the regional board, clean up the waste or abate the effects of the waste A cleanup and abatement order ... may require the provision of, or payment for, uninterrupted replacement water service ...”

The Dischargers violated Water Code section 13304 in three CAO directives:

Directive No. 4.1. – Dischargers did not provide alternate supply of clean water to the occupants at 883 Eloise Avenue. The period of non-compliance ended on March 5, 2008, **77 days** past the deadline of December 19, 2007, when groundwater no longer contained detectable levels of hydrocarbons at all sampling locations. Since groundwater was no longer affected by the discharge from the Facility, an alternate supply of clean water was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

Directive No. 7.2. – Dischargers failed to implement the interim remediation workplan, as required pursuant to Directive 7.2, for **50 days** past the deadline of January 15, 2008. Compliance was achieved on March 5, 2008 when groundwater no longer contained detectable levels of hydrocarbons at all sampling locations. Since there was no longer a threat to water quality, interim remediation for containing plume migration was no longer required. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13350.

8. Authority and Maximum Potential Civil Liability

Any person who violates any cleanup and abatement order issued pursuant to section 13304 may be liable civilly in accordance with section 13350. Section 13350, subdivision (e)(1) states, in part:

“(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.

(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.

Any person failing or refusing to furnish technical or monitoring program reports as required by section 13267, is guilty of a misdemeanor and may be liable civilly in accordance with section 13268. Section 13268, subdivision (b)(1) states:

“(b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.”

For each period of violation of directives in the CAO, the Lahontan Water Board calculated the maximum civil liability as follows:

- a. The Dischargers violated two requirements in directive No. 4. in CAO No. R6T-2007-0029.
- i. The maximum amount of civil liability for violation of directive No. 4.1 of the CAO under Water Code section 13350, subdivision (e)(1) is \$385,000 for 77 days of violations. This maximum administrative civil liability is based upon:
- $(77 \text{ days of violations of directive No. 4.1}) \times (\$5,000/\text{day of violation}) =$
\$385,000.
- ii. The maximum amount of civil liability for violation of directive No. 4.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$68,000 for 68 days of violations. This maximum administrative liability is based upon:
- $(68 \text{ days of violations of directive No. 4.2}) \times (\$1,000/\text{day of violation}) =$
\$68,000.
- b. The Dischargers violated three requirements under directive No. 5 in CAO No. R6T-2007-0029.
- i. The maximum amount of civil liability for violation of directive No. 5.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$240,000 for 240 days of violations. This maximum administrative liability is based upon:
- $(240 \text{ days of violations of directive No. 5.1}) \times (\$1,000/\text{day of violation}) =$
\$240,000.
- ii. The maximum amount of civil liability for violation of directive No. 5.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$249,000 for 249 days of violations. This maximum administrative civil liability is based upon:
- $(249 \text{ days of violations of directive No. 5.2}) \times (\$1,000/\text{day of violation}) =$
\$249,000.
- iii. The maximum amount of civil liability for violation of directive No. 5.4 of the CAO under Water Code section 13268, subdivision (b)(1) is \$259,000 for 259 days of violations. This maximum administrative liability is based upon:

(259 days of violations of directive No. 5.4) x (\$1,000/day of violation) =
\$259,000.

- c. The Dischargers violated two requirements on three occasions under directive No. 6 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violation of directive No. 6.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$66,000 for 66 days of violations. This maximum administrative civil liability is based upon:

(66 days of violations of directive No. 6.1) x (\$1,000/day of violation) =
\$66,000.

- ii. The maximum amount of civil liability for the first violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$89,000 for 89 days of violations. This maximum administrative liability is based upon:

(89 days of violations of directive No. 6.2) x (\$1,000/day of violation) =
\$89,000.

- iii. The maximum amount of civil liability for the second violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$20,000 for 20 days of violations. This maximum administrative liability is based upon:

(20 days of violations of directive No. 6.2) x (\$1,000/day of violation) =
\$20,000.

- d. The Dischargers violated two requirements under directive No. 7 in CAO No. R6T-2007-0029.

- i. The maximum amount of civil liability for violations of directive No. 7.2 of the CAO under Water Code section 13350, subdivision (b)(1) is \$250,000 for 50 days of violations. This maximum administrative civil liability is based upon:

(50 days of violations of directive No. 7.2) x (\$5,000/day of violation) =
\$250,000.

- ii. The maximum amount of civil liability for violations of directive No. 7.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$6,000 for 6 days of violations. This maximum administrative liability is based upon:

(6 days of violations of directive No. 7.3) x (\$1,000/day of violation) =
\$6,000.

e. The Dischargers violated three requirements under directive No. 8 in CAO No. R6T-2007-0029.

i. The maximum amount of civil liability for violations of directive No. 8.1 of the CAO under Water Code section 13268, subdivision (b)(1) is \$195,000 for 195 days of violations. This maximum administrative liability is based upon:

(195 days of violations of directive No. 8.1) x (\$1,000/day of violation) =
\$195,000.

ii. The maximum amount of civil liability for violations of directive No. 8.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$205,000 for 205 days of violations. This maximum administrative civil liability is based upon:

(205 days of violations of directive No. 8.2) x (\$1,000/day of violation) =
\$205,000.

iii. The maximum amount of civil liability for violations of directive No. 8.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$189,000 for 189 days of violations. This maximum administrative liability is based upon:

(189 days of violations of directive No. 8.3) x (\$1,000/day of violation) =
\$189,000.

The cumulative maximum potential liability for the violations identified above is **\$2,221,000**. This is based upon the methods for calculating the maximum potential liability as defined by Water Code sections 13268 and 13350, and also described above in Finding Nos. 6 - 7.

9. Factors Affecting the Amount of Civil Liability

Water Code section 13327 require the Lahontan Water Board to consider enumerated factors when it determines the amount of civil liability for a discharge covered by sections 13268 and 13350. The Lahontan Water Board considered those factors, discussed below, in determining the amount of the administrative civil liability:

a. The nature, circumstances, extent, and gravity of the violations;

Violating a CAO, classified as a "formal" enforcement action by the Water Quality Enforcement Policy, is a serious offense. Violating directive No. 4 of CAO No. R6T-2007-0029 prevented the occupants of 883 Eloise Avenue from using and enjoying water from their domestic well. Violating directive No. 5 of the CAO prevented Lahontan Water Board staff from finding out the source or cause of the petroleum release adversely affecting water quality. The Dischargers' violation of directive No. 6 prevented knowledge of the fate and migration of petroleum hydrocarbons detected beneath the Facility for nine months following submittal of the September 27, 2007 groundwater report. Violation of directive No. 7 prevented abatement and containment of hydrocarbons in groundwater beneath the Facility and sooner enjoyment of beneficial uses located in the downgradient flow direction. Finally, the Dischargers' violation of directive No. 8 prevents Lahontan Water Board staff from knowing if petroleum products that could affect water quality in the future remain in the vadose zone at the Facility. As a result of failing to comply with these five directives, staff has needed to conduct verification well sampling at the Facility and at 883 Eloise Avenue, which diverts resources away from other Lahontan Water Board work.

b. Whether discharge is susceptible to cleanup or abatement;

The discharge of petroleum products to groundwater is susceptible to cleanup and abatement. For a past release at the Facility, the operator arranged for a carbon canister to be plumbed to the domestic well at 883 Eloise Avenue to remove petroleum hydrocarbons from the well water. A pump and treat system exists at the Facility from prior contamination and could have been re-started to contain plume migration from threatening other beneficial uses besides the affected domestic well at 883 Eloise Avenue. In addition, the Dischargers proposed implementing interim remediation by use of portable high vacuum dual-phase extraction equipment. This proposal was conditionally accepted by Lahontan Water Board staff on January 8, 2008. As of June 9, 2008, when the First Quarter 2008 Monitoring Report was received, the Dischargers had not taken corrective action to abate or contain petroleum hydrocarbons from migration in groundwater. This action is no longer needed since monitoring data shows the threat to water quality has been abated.

c. The degree of toxicity of the discharge;

Groundwater at the site contained gasoline-range petroleum hydrocarbons and known toxic volatile organic carbons, including benzene, toluene, ethylbenzene, xylenes, and trimethylbenzenes. Concentrations of these petroleum constituents in groundwater exceed drinking water standards and public health goals. Levels of benzene in groundwater at the Facility and the domestic well at 883 Eloise Avenue exceed the one-in-a-million risk level for cancer. Since no corrective

action was taken by the Dischargers, the fate and migration of the petroleum constituents in groundwater was unknown for nine months.

d. Ability to pay;

Kang Property, Incorporated currently owns property zoned for use as service stations at:

- 7920 Brentwood Boulevard, Brentwood, CA (APN 016-150-025-1)
- 425 Moraga Road, Moraga, CA (APN 256-070-001-1)
- 4480 Chiles Road, Davis, CA (APN 069-070-10-1)

Kang Property, Incorporated also owns the following property:

- 1122 Emerald Bay Road, South Lake Tahoe, CA (APN 032-141-041 [vacant lot])

Given the assets described above, the Lahontan Water Board finds that the Dischargers are able to pay the liability.

e. The effect on the Dischargers' ability to continue its business;

Lahontan Water Board staff is not aware of any reason that the Dischargers' ability to continue their business would be affected by the proposed liability. The Dischargers own and operate multiple gas stations in California.

f. Any voluntary cleanup efforts undertaken by the violator;

To date, the Dischargers have only implemented corrective actions at the site when ordered to by the Lahontan Water Board in CAO No. R6T-2007-0029 and Water Code section 13267 investigative orders.

g. Prior history of violations;

Sarbjit S. Kang has a history of violations in complying with directives for clean up at the Facility and another facility. This history is summarized in the table below. In 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-46 to Mr. Kang and other parties in the amount of \$95,000 for non-compliance with Amended CAO 6-98-78A1. The Water Board stayed \$63,750 of the total amount after Mr. Kang implemented remediation tasks at the site. Of the remaining liability still owed, \$1,993 was collected in 2008 when the Attorney General's Office initiated a till tax at one of Mr. Kang's other gas stations. Liability in the amount of \$29,257 was never paid and is still owed. Also in 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-47 to Mr. Kang and other parties in the amount of \$59,000 for

non-compliance with other directives in Amended CAO 6-98-78A1. The Water Board stayed \$33,150 of the total amount following Mr. Kang's completion of certain cleanup actions. Liability in the amount of \$25,850 was never paid and is still owed. Civil liabilities in both Orders were assessed at the rate of \$1,000 per day of violation. Furthermore, in 1999, the Lahontan Water Board issued Administrative Civil Liability Order No. 6-99-50 to Mr. Kang and another party in the amount of \$112,500 for non-compliance with a cleanup and abatement order at another gas station in which Mr. Kang was the operator. The full civil liability was paid in 2008 when the Attorney General's Office implemented a till tax upon one of Mr. Kang's other gas stations.

	Site	Amount	Status
ACL 6-99-46	Swiss Mart	\$95,000: \$63,750 stayed \$31,250 owed	\$1,993 paid in 2008 from AG office till tax; \$29,257 unpaid
ACL 6-99-47	Swiss Mart	\$59,000: \$33,150 stayed \$25,850 owed	\$25,850 unpaid
ACL 6-99-50	Meyers Beacon	\$112,500	Paid in 2008 from AG office till tax action

h. Degree of culpability;

Sarbjit S. Kang and Kang Property, Inc. are identified as the "Dischargers" by CAO No. R6T-2007-0029 and, thus, are ultimately responsible for compliance with CAO No. R6T-2007-0029 and applicable state laws and regulations. Despite issuance of a Notice of Violation on January 30, 2008 and repeated contacts between Lahontan Water Board staff and the Dischargers' consultant, during which violations were discussed, the Dischargers failed to comply with applicable requirements.

i. Economic savings resulting from the violation;

Lahontan Water Board staff has calculated the Discharger's cost savings associated with violating the CAO. The nature of such cost savings would be "avoided costs" and "delayed costs." Avoided costs include those associated with quarterly monitoring and reporting, conducting interim remediation, and providing replacement drinking water for the residence at 883 Eloise Avenue. Estimated avoided costs are **\$37,000**. Delayed cost savings would be the potential interest earned on the delayed costs, which given the short violation period addressed by this Complaint would be small and substantially less than the proposed liability.

- j. Other matters as justice may require.

Staff Costs

Staff from the State and Regional Water Boards have spent time responding to the incident and preparing the Administrative Civil Liability Complaint. Estimated staff costs for investigation and complaint preparation are **\$37,059**.

10. Administrative Civil Liability Complaint Issued by Assistant Executive Officer

The Lahontan Water Board's Assistant Executive Officer issued Administrative Civil Liability Complaint No. R6T-2009-0015 to the Dischargers on April 15, 2009. The Complaint states that the Dischargers violated 13 of 16 directives in the CAO, even after a Notice of Violation was issued on January 30, 2008. The Complaint recommends an administrative civil liability be imposed by the Water Board at a rate of \$500 per day for a total of 565 days of violation of Water Code section 13304 and at a rate of \$100 per day for a total of 1,778 days of violation of Water Code section 13267 for a total amount of \$460,300.

11. California Environmental Quality Act

This enforcement action is being taken by the Lahontan Water Board to enforce provisions of the Water Code and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 210000 et seq.) in accordance with California Code of Regulations, title 14, section 15321.

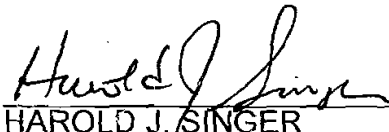
IT IS HEREBY ORDERED THAT:

1. Administrative Civil Liability recommended in Complaint No. R6T-2009-0015, which was issued by Robert S. Dodds, Assistant Executive Officer, on April 15, 2009, is hereby amended.
2. The Lahontan Water Board imposes administrative civil liability against the Dischargers in the amount of \$222,000.
3. The Dischargers must provide payment with a cashier's check or money order in the amount of **\$111,000** to the State Board's Cleanup and Abatement Account by **August 8, 2009**.

The Dischargers must provide payment with a cashier's check or money order in the amount of **\$111,000** to the State Board's Waste Discharge Permit Fund by **August 8, 2009**.

4. If the Dischargers fail to make the specified payments to the State Board's Cleanup and Abatement Account and Waste Discharge Permit Fund within the time limits specified in this Order, the Lahontan Water Board may enforce this Order by applying for a judgment pursuant to Water Code section 13328. The Lahontan Water Board's Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328 if the criterion specified in this paragraph is satisfied.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on July 9, 2009.



HAROLD J. SINGER
EXECUTIVE OFFICER

Attachments:	Attachment A:	Vicinity Map – Swiss Mart Gas Station
	Attachment B:	Site Map – Swiss Mart Gas Station

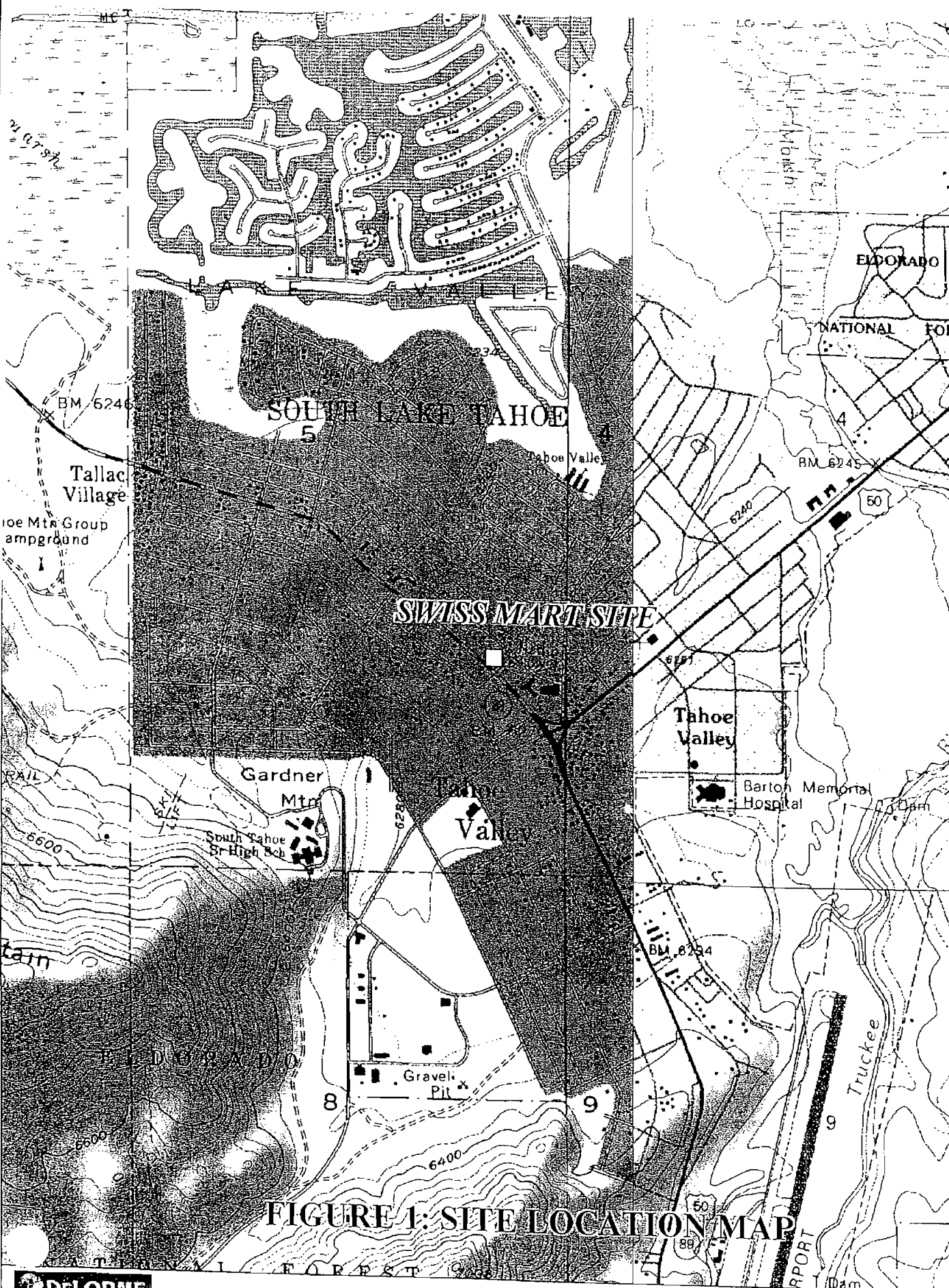


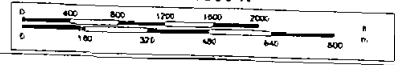
FIGURE 1: SITE LOCATION MAP

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Scale 1 : 19,200

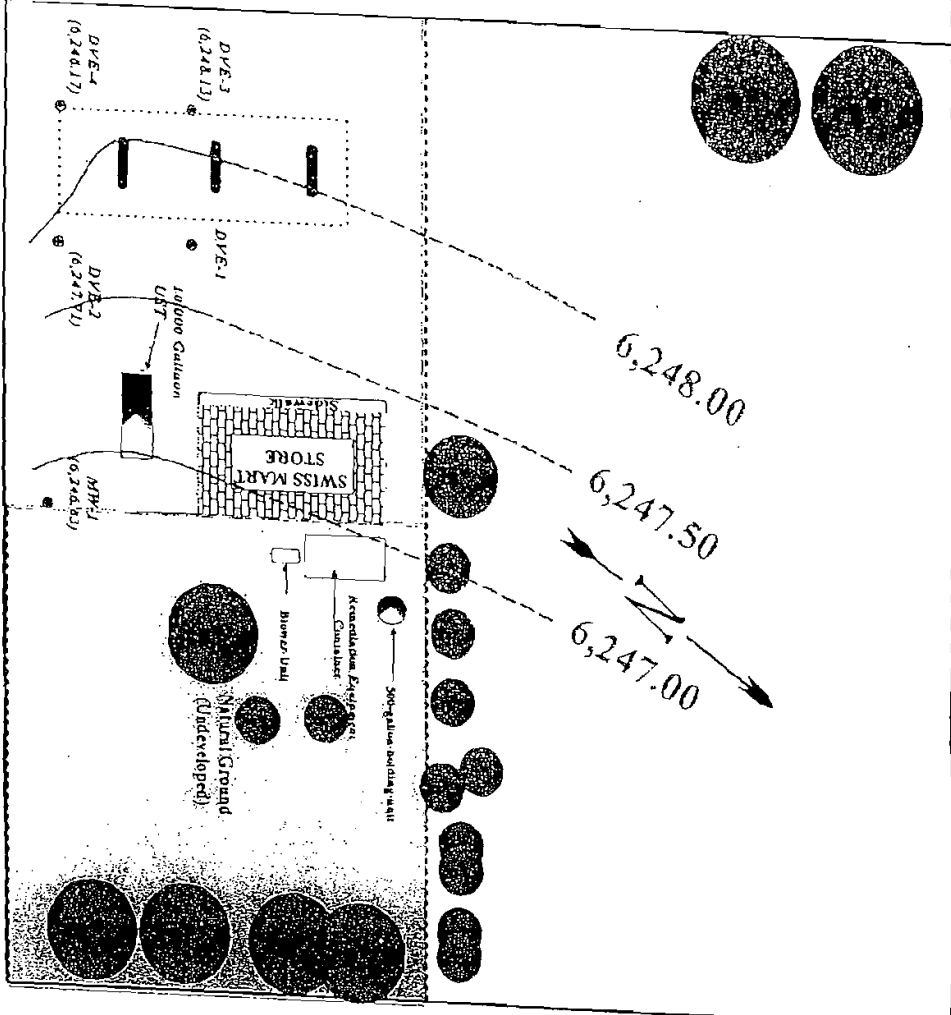
1" = 1600 ft



EMERALD BAY DRIVE

FIFTH STREET

JAMES AVENUE



Appropriate Division of
 Condominium Floor UD-0508

RDO & ASSOCIATES, INC.
 Rental and Geological Services
 WATER CONTROL
 SWISS KART SITE
 10218 South Lake Blvd., (March 5, 2009)

