

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2009-0054

**ADMINISTRATIVE CIVIL LIABILITY ORDER
AGAINST MOHAMMAD AHMAD AND THE THOMAS E. ERICKSON TRUST
FOR VIOLATIONS OF (1) CALIFORNIA WATER CODE SECTION 13267 AND
(2) CALIFORNIA WATER CODE SECTION 13304 -
TAHOE TOM'S GAS STATION**

_____ El Dorado County _____

The California Regional Water Quality Control Board – Lahontan Region (Lahontan Water Board) finds that Mohammad Ahmad and the Thomas E. Erickson Trust 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-2007-0038.
- B. Water Code section 13304 by failing to implement cleanup and abatement measures as required by CAO No. R6T-2007-0038.

A hearing on Complaint No. R6T-2009-0047 was held before the Lahontan Water Board on October 14, 2009. Based upon evidence and testimony received at the hearing, the Lahontan Water Board makes the following findings:

1. Dischargers

The Thomas E. Erickson Trust was the legal owner of El Dorado County Assessor Parcel Number (APN) 029-065-07-100 (Property) in 2007. The Tahoe Tom's Gas Station is located on the Property. As the legal owner of the Property at that time, the Thomas E. Erickson Trust is responsible for activities that took place on the Property. The Thomas E. Erickson Trust is a discharger identified in CAO No. R6T-2007-0038, and is responsible for complying with the requirements specified by that CAO.

Mohammad Ahmad is identified as the operator of the underground storage tanks on the operating permit for the Tahoe Tom's Gas Station, according to the El Dorado County Department of Environmental Management (County). Mohammad Ahmad is a discharger identified in CAO No. R6T-2007-0038, and is responsible for complying with the requirements specified by that CAO.

The Thomas E. Erickson Trust and Mr. Mohammad Ahmad are hereinafter referred to as the "Dischargers."

2. Property

The Property (APN 029-065-07-100) is located at 4029 Lake Tahoe Boulevard in South Lake Tahoe, El Dorado County (See Attachment A – Vicinity Map.)

3. Facility

Tahoe Tom's 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. Two dispenser islands are used to dispense gasoline.

4. Discharge

The source of pollution to groundwater beneath the Property was verified by the Dischargers during an August 2007 tracer test investigation required by the Lahontan Water Board.

5. Enforcement History

Prior to CAO No. R6T-2007-0038, Mr. Erickson and Mr. Ahmad's wife, Samina Naz (the former operator), had been issued four cleanup and abatement orders and amendments for previous petroleum releases at the site affecting water quality. Non-compliance by the parties of one of the orders resulted in issuance of an administrative civil liability in 2000 by the Water Board. When neither party complied with the last amended order issued in 2002, the Attorney General's office, at the request of the Water Board, secured a Stipulated Order in El Dorado County Superior Court. The Order required specific clean up and abatement actions be completed by the parties by certain deadlines. The parties came into compliance with the amended CAO and the Stipulated Order in 2003.

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-2007-0038 on December 24, 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) report actions to stop the source of the release, (2) conduct groundwater monitoring and submit technical reports, (3) operate the on-site pump and treat system to contain plume migration, (4) investigate the extent of the discharge, and (5) propose clean up of contamination in soil and groundwater.

On February 26, 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-2007-0038.

Then on April 8, 2008, the Water Board Executive Officer issued a Notice of Non-Compliance to the Thomas E. Erickson Trust for violation of the CAO, amended CAO No. 6-98-42A2 and the 2002 Stipulated Order. The letter was issued in response to a letter received from Mr. Erickson stating he lacked funds to continue complying with the CAO and to look to Mr. Ahmad for compliance.

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 seven of nine 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 describing actions taken to stop the release, as required, until May 23, 2008, **141 days** past the deadline of January 3, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 5.2. – Dischargers failed to submit quarterly monitoring reports by their respective deadlines on two occasions. The First Quarter 2008 monitoring report was not received until May 23, 2008, **38 days** past the deadline of April 15, 2008. The Second Quarter 2008 monitoring report, due by July 15, 2008, was never received. The violation continued until the Third Quarter 2008 monitoring report was received on September 30, 2008. There were **77 days** of violation between July 15 and September 30, 2008. The total number of days of violation pursuant to Directive 5.2 is **115**. These violations subject the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.1. – Dischargers failed to submit a workplan proposing a site investigation to define the extent of soil and groundwater contamination from the new release until September 16, 2008, **228 days** past the deadline of February 1, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.2. – Dischargers failed to implement the site investigation workplan, as required pursuant to Directive 6.2, until October 21, 2008, **242 days** past the deadline of February 22, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 6.3. – Dischargers failed to submit the site investigation technical report required pursuant to Directive 6.3 until November 24, 2008, **228 days** past the deadline of April 10, 2008. This violation subjects the Dischargers to civil liability pursuant to Water Code section 13268.

Directive No. 7. – Dischargers failed to submit a CAP to abate impacts to soil and groundwater from discharges at the Facility until January 6, 2009, **245 days** past the deadline of May 6, 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”

Directive No 4.3. – Dischargers failed to continually operate the existing remediation systems until October 16, 2008, **257 days** after ceasing operations on February 2, 2008. 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 under directive No. 4 in CAO No. R6T-2007-0038.
 - i. 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 \$141,000 for 141 days of violation. This maximum administrative liability is based upon:

 $(141 \text{ days of violation of directive No. 4.2}) \times (\$1,000/\text{day of violation}) =$
\$141,000
 - ii. The maximum amount of civil liability for violation of directive No. 4.3 of the CAO under Water Code section 13350, subdivision (e)(1) is \$1,285,000 for 257 days of violation. This maximum administrative civil liability is based upon:

 $(257 \text{ days of violation of directive No. 4.3}) \times (\$5,000/\text{day of violation}) =$
\$1,285,000
- b. The Dischargers violated the requirements under directive No. 5 in CAO No. R6T-2007-0038.
 - i. 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 \$115,000 for total of 115 days of violation. This maximum administrative liability is based upon:

 $(115 \text{ days of violation of directive No. 5.2}) \times (\$1,000/\text{day of violation}) =$
\$115,000
- c. The Dischargers violated three requirements under directive No. 6 in CAO No. R6T-2007-0038.
 - 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 \$228,000 for 228 days of violation. This maximum administrative liability is based upon:

(228 days of violation of directive No. 6.1) x (\$1,000/day of violation) =
\$228,000

- ii. The maximum amount of civil liability for violation of directive No. 6.2 of the CAO under Water Code section 13268, subdivision (b)(1) is \$242,000 for 242 days of violation. This maximum administrative civil liability is based upon:

(242 days of violation of directive No. 6.2) x (\$1,000/day of violation) =
\$242,000

- iii. The maximum amount of civil liability for violation of directive No. 6.3 of the CAO under Water Code section 13268, subdivision (b)(1) is \$228,000 for 228 days of violation. This maximum administrative liability is based upon:

(228 days of violation of directive No. 6.3) x (\$1,000/day of violation) =
\$228,000

- d. The Dischargers violated one requirement under Directive No. 7 in CAO No. R6T-2007-0038.

- ii. The maximum amount of civil liability for violation of directive No. 7 of the CAO under Water Code section 13268, subdivision (b)(1) is \$245,000 for 245 days of violation. This maximum administrative liability is based upon:

(245 days of violation of directive No. 7) x (\$1,000/day of violation) =
\$245,000

The cumulative maximum administrative civil liability for violations of directive Nos. 4 – 7 of CAO No. R6T-2007-0038 is **\$2,484,000**.

9. Factors Affecting the Amount of Civil Liability

Water Code section 13327 requires the Water Board to consider enumerated factors when it determines the amount of civil liability imposed pursuant to sections 13268 and 13350. Water Board staff 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-2007-0038 prevented Water Board staff from finding out actions taken to stop the source or cause of the petroleum release adversely affecting water quality. Late submittal of the First Quarter 2008 Groundwater Monitoring Report in violation of directive No. 5 prevented Water Board staff from knowing the status of contamination at the site and threat to beneficial uses. The Dischargers' violation of directive No. 6 prevents knowledge of the extent and degree of petroleum hydrocarbons contamination beneath the Facility. As a result of failing to comply with these three categories of directives by their respective deadlines, Water Board staff was without necessary information concerning contamination at the Facility for a combined total of 484 days. Finally, violation of directive No. 7 prevented abatement and containment of hydrocarbons in groundwater beneath the Facility for 245 days.

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, Mr. Erickson installed and operated a pump and treat system and soil vapor extraction system. These remediation systems were effectively containing plume migration and abating hydrocarbons in groundwater until the systems ceased operating on February 2, 2008.

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 exceed the one-in-a-million risk level for cancer. Since the Dischargers ceased corrective actions for eight months, the fate and migration of the petroleum constituents in groundwater is not fully unknown.

d. Ability to pay;

On April 15, 2008, the Thomas E. Erickson Trust sold the Facility located at 4029 Lake Tahoe Blvd, South Lake Tahoe, CA to Stateline Gasoline, Inc. for \$450,000. Mr. Ahmad was President of Stateline Gasoline, Inc. Then in September 2008, the property was gifted to Lake Tahoe Investments, LLC. This action allowed the new property owner to avoid paying a property transfer tax.

Mr. Ahmad is the President of V-R Property Management, an active Nevada Corporation (Corp. No C12489-1992). V-R Property Management currently owns property zoned for use as service stations at:

- * 1360 S. Carson Street, Carson City, NV (APN 003-063-06)
- * 2152 N. Carson Street, Carson City, NV (APN 001-032-05)
- * 1395 Highway 395, Gardnerville, NV (APN 1320-33-402-075)
- * 275 W. Williams Avenue, Fallon, NV (APN 001-532-07)

V-R Property Management also owns a property at:

- * 190 US Highway 395, Carson City, NV (APN 050-220-37)

Given the assets and income described above, it appears the Dischargers are able to pay the liability.

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

Water Board staff is not aware of any reason that the Dischargers' ability to continue their business would be affected by the proposed liability.

- 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 Water Board in CAO No. R6T-2007-0038 and Water Code section 13267 investigative orders.

- g. Prior history of violations;

Thomas E. Erickson has a history of violations in complying with directives for clean up at the Facility. In July 1999, the Water Board accessed approximately \$100,000 in state funds to conduct corrective actions at the site for one year when Mr. Erickson and other parties ceased to comply with directives in Amended CAO 6-98-42A1. In June 2000, the Water Board issued Administrative Civil Liability Order No. 6-00-60 to Mr. Erickson and Ms. Naz in the amount of \$131,000. The civil liability was assessed at the rate of \$500 per day of violation. The only known history of violation from Mr. Ahmad was belated compliance with the deadline for technical report submittal in Water Board's June 11, 2007 directive. The technical report was eventually submitted 65 days past the original submittal deadline of July 11, 2007.

- h. Degree of culpability;

Mohammad Ahmad and the Thomas E. Erickson Trust are identified as the "Dischargers" by CAO No. R6T-2007-0038 and, thus, are ultimately responsible for compliance with CAO No. R6T-2007-0038 and applicable state laws and regulations. Despite issuance of a Notice of Violation on February 26, 2008, Notice of Non-compliance on April 8, 2008, and repeated contacts between 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;

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 for second quarter 2008 and operating the remediation systems. Estimated avoided costs are **\$50,000**. 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 **\$22,304**.

10. Administrative Civil Liability Complaint Issued by Water Board Staff

Water Board staff issued Administrative Civil Liability Complaint No. R6T-2009-0047 to the Dischargers on July 28, 2009. The Complaint states that the Dischargers violated seven of nine directives in the CAO, even after a Notice of Violation was issued on February 26, 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 257 days of violation of Water Code section 13304 and at a rate of \$100 per day for a total of 1,199 days of violation of Water Code section 13267 for a total amount of \$248,400.

Based upon the duration of the violations and the impact of petroleum hydrocarbons to a domestic well, the administrative civil liability imposed by the Water Board was increased to a rate of \$1,000 per day for 257 days of violation of Water Code section 13304 and a rate of \$200 per day for 360 days of violation of Water Code section 13267, and stays at a rate of \$100 per day for the remaining 839 days of violation of Water Code section 13267. The modified administrative civil liability adopted by the Water Board is **\$412,900**.

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-2009-0047, which was issued by Chuck Curtis, Supervising Water Resources Control Engineer, on July 28, 2009, is modified to a higher amount.
2. The Lahontan Water Board imposes administrative civil liability against the Dischargers in the amount of \$412,900.
3. The Dischargers must provide payment with a cashier's check or money order in the amount of **\$155,900** to the State Board's Cleanup and Abatement Account by **November 13, 2009**.

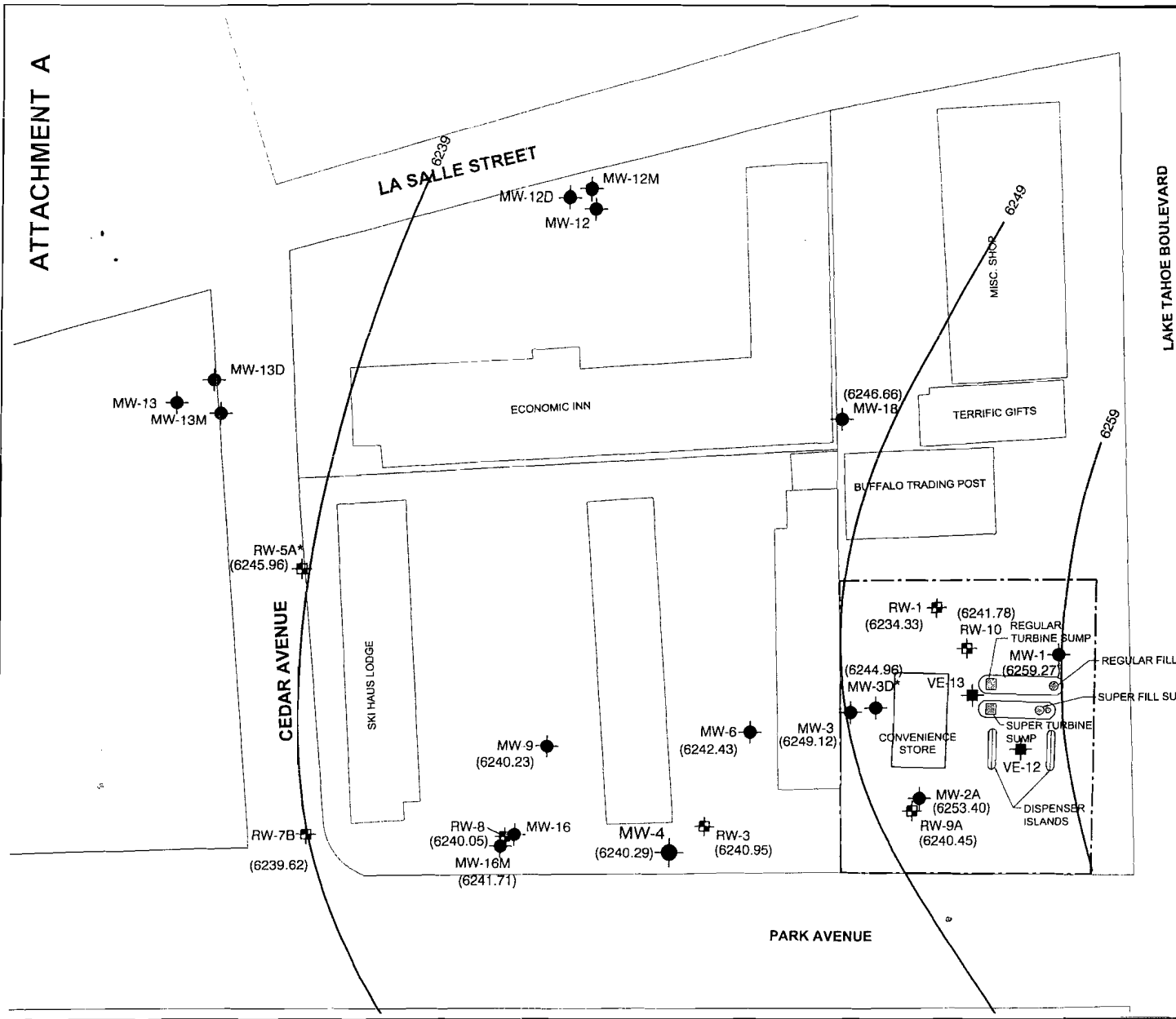
The Dischargers must provide payment with a cashier's check or money order in the amount of **\$257,000** to the State Board's Waste Discharge Permit Fund by **November 13, 2009**.

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.

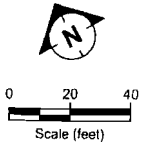
I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on October 14, 2009.


HAROLD J. SINGER
EXECUTIVE OFFICER

Attachments: Attachment A: Vicinity Map – Tahoe Tom's Gas Station
 Attachment B: Site Map – Tahoe Tom's Gas Station

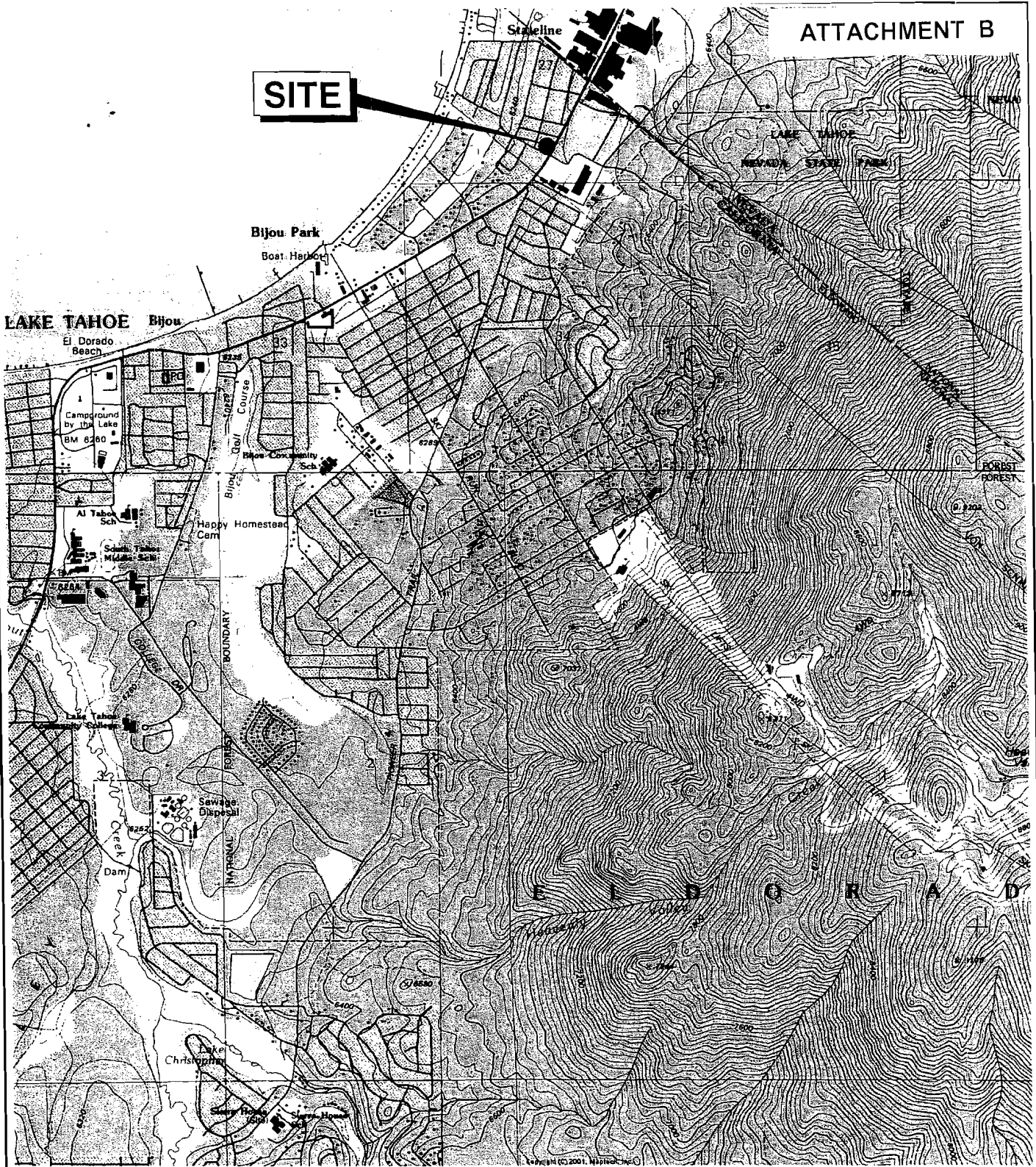


- LEGEND:**
- RW-1 Extraction wells
 - VE-12 Vapor wells
 - MW-1 Monitoring wells
 - Approximate site boundary
 - (6248.28) Groundwater elevation in feet above mean sea level (MSL)
 - Groundwater elevation contour line in feet above MSL
 - * Data not used in contouring

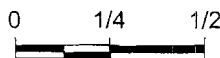


GROUNDWATER LEVEL ELEVATIONS DECEMBER 2, 2008		
TAHOE TOM'S GASOLINE STATION 4029 LAKE TAHOE BOULEVARD SOUTH LAKE TAHOE, CALIFORNIA		
 LRM consulting inc	Date: 12/14/2006	Figure: 2

SITE



Base map: Maptech Inc., 2001



Scale (miles)

SITE LOCATION MAP

TAHOE TOM'S GASOLINE STATIN
4029 LAKE TAHOE BOULEVARD
SOUTH LAKE TAHOE, CALIFORNIA



Date:
9/8/2008

Figure:
1