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## Lahontan Regional Water Quality Control Board

December 10, 2020

WDID 6A312009005

Interested Agencies and Parties

### **Request for Comments - Proposed Cleanup and Abatement Order Requiring North Tahoe Prop, LLC to Cleanup and Abate the Discharge and Threatened Discharge of Sediment to Surface Waters of the Truckee River Hydrologic Unit – 1615 River Road, Tahoe City, Placer County, APNs 095-130-012-000, 095-130-013-000, 095-130-014-000 and 095-140-023-000**

**Written comments due no later than 5:00 p.m., January 10, 2021.**

Enclosed is a proposed Cleanup and Abatement Order (Order) for the cleanup and abatement of discharges and threatened discharges of wastes associated with property development activities on Placer County Assessor Parcel Numbers 095-130-012-000, 095-130-013-000, 095-130-014-000 and 095-140-023-000 (the Site).

The proposed Order names North Tahoe Prop, LLC (Discharger), owner of the above-referenced parcels, as the responsible party for discharges of waste soil, rock, geotextile fabric, and permanent watercourse crossing materials associated with the modification of an unnamed spring and watercourse adjacent to the Truckee River in the Truckee River Hydrologic Area within the Truckee River Hydrologic Unit. The discharges have resulted in violations of waste discharge prohibitions contained in the Water Board's Water Quality Control Plan for the Lahontan Region.

The proposed Order requires the Discharger to submit and implement plans prevent further discharges, to stabilize disturbed soil areas on the site, restore the unnamed spring and watercourse, and provide updates on restoration work.

The Water Board is requesting your review and comments upon the proposed Order (enclosed). The proposed Order can also be viewed at the Water Board's webpage at: <http://www.waterboards.ca.gov/lahontan>.

All comments regarding the proposed Order must be received by the Water Board no later than **5:00 p.m. on January 10, 2021**. Written comments should include "North Tahoe Prop, LLC CAO Comments" in the subject line and be emailed to: [RB6enfproceed@waterboards.ca.gov](mailto:RB6enfproceed@waterboards.ca.gov).

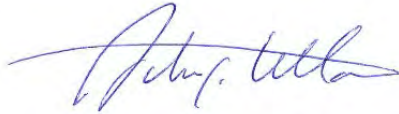
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PETER C. PUMPHREY, CHAIR | MIKE PLAZIAK, ACTING EXECUTIVE OFFICER

For those who do not have access to email, submit your written comments to:

Lahontan Regional Water Quality Control Board  
2501 Lake Tahoe Blvd  
South Lake Tahoe, CA 96150  
Attn: North Tahoe Prop, LLC CAO Comments

If you have any questions regarding this matter, please contact Jim Carolan, Engineering Geologist, at (530) 542-5477 ([jim.carolan@waterboards.ca.gov](mailto:jim.carolan@waterboards.ca.gov)), or me at (530) 542-5436 ([ben.letton@waterboards.ca.gov](mailto:ben.letton@waterboards.ca.gov)).



BEN LETTON  
SUPERVISING ENGINEERING GEOLOGIST

Enclosure: Cleanup and Abatement Order No. R6T-2020-PROPOSED

cc: Patrick Moeszinger, CDFW  
Leah Fisher, USACE  
Rachel Lopez, TRPA  
Fred Stamm, Placer County CDRA Engineering and Surveying  
Steve Sweet, TRPA  
David Boyers, State Water Board, Office of Enforcement  
Elizabeth Beryt, State Water Board, Office of Chief Council  
Michael R. Plaziak, Acting Executive Officer, Lahontan Water Board  
Scott Ferguson, Supervising WRCE, Lahontan Water Board  
Jim Carolan, Engineering Geologist, Lahontan Water Board

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

**CLEANUP AND ABATEMENT ORDER NO. R6T-2020-PROPOSED  
FOR  
NORTH TAHOE PROP, LLC  
1615 RIVER ROAD, TAHOE CITY, PLACER COUNTY  
WDID NO. 6A312009005**

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This Order is issued to North Tahoe Prop, LLC (hereinafter referred to as the Discharger) based on the provisions of Water Code section 13304, which authorizes the Lahontan Regional Water Quality Control Board (Lahontan Water Board) to issue an order requiring the cleanup and abatement of wastes, and Water Code section 13267, which authorizes the Lahontan Water Board to require the preparation and submittal of technical and monitoring reports. This Order requires the Discharger to clean up and abate the discharge and threatened discharge of waste materials to an unnamed spring and watercourse, tributary to the Truckee River, in the Truckee River Hydrologic Area within the Truckee River Hydrologic Unit. This Order also requires the Discharger to obtain all applicable permits for all clean up and abatement, property restoration, and property development activities.

**FINDINGS**

The Lahontan Water Board, with respect to the Discharger's acts, or failure to act, finds:

**Purpose and Scope**

1. This Order requires the Discharger to clean up and abate discharges and threatened discharges of waste soil, rock, geotextile fabric, and permanent watercourse crossing materials associated with the modification of an unnamed spring and watercourse adjacent to the Truckee River in the Truckee River Hydrologic Area within the Truckee River Hydrologic Unit. These discharges and threatened discharges were caused by the Discharger's development activities on approximately 11 acres of land located at 1615 River Road in Tahoe City, comprising the following four Placer County Assessor Parcel Numbers (APNs): 095-130-012-000, 095-130-013-000, 095-130-014-000 and 095-140-023-000 (Site). The Site is located along the west/south bank of the Truckee River approximately 2 miles west of Lake Tahoe. The activities conducted at the Site have discharged wastes and/or threaten future discharge of wastes to an unnamed spring and watercourse adjacent to, and tributary to, the Truckee River without authorization from applicable federal, state, and local agencies, including the Lahontan Water Board.

2. The investigation and cleanup required by this Order shall be done in compliance with the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.), the Water Quality Control Plan for the Lahontan Region (or Basin Plan), State Water Resources Control Board (State Water Board) Resolution No. 92-49, Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code section 13304 (Resolution No. 92-49), and other applicable State and Regional Water Board plans, policies, and regulations.

### **Site Specific Information**

#### **Property Owner Liability**

3. The Discharger owns the Site and is the responsible party for the purpose of complying with this Order. A Placer County Assessor's Office records search indicates the Discharger purchased the four parcels comprising the Site on June 21, 2019 and remains the current owner.

#### **Watershed Description**

4. The Site is located along the west bank of the Truckee River approximately 2 miles west of Tahoe City and the northwest shore of Lake Tahoe. Storm flows from the Site and surface water from the modified, unnamed spring and watercourse drain directly into the Truckee River in the Truckee River Hydrologic Area within the Truckee River Hydrologic Unit.

#### **Permit Status**

5. At the time of the August 5, 2020 inspection, the Discharger had not obtained any applicable grading, stormwater pollution prevention, timber harvest, or watercourse modification related permits from the Lahontan Water Board, Tahoe Regional Planning Agency (TRPA), Placer County, or any other regulatory agency.

#### **Chronology and Evidence of Discharge**

6. On June 23, 2020, Lahontan Water Board staff received a complaint (Complaint 48187) submitted to the California Environmental Protection Agency's (CalEPA) Environmental Complaint system. The complaint indicated that large-scale vegetation removal and other construction activities were occurring on the Site without implementation of appropriate management practices designed to prevent wastes from discharging to the adjacent Truckee River.
7. Permission to access the Site to investigate the CalEPA complaint was requested in a letter issued by Lahontan Water Board staff to the Discharger on June 30, 2020 titled Request Permission to Inspect the Property at 1615 River Road, Tahoe City, APN 095-130-012-000 in Response to a Complaint that Vegetation Clearing and Construction Activities are Being Conducted Without Appropriate Permits and/or Precautions to Prevent Sediment Being Discharged to the Truckee River (Placer County). The Discharger responded to this request, granted permission, and provided a summary of project activities via email correspondence on July 8, 2020.

8. On August 5, 2020, Lahontan Water Board staff observed the Site and the violations alleged in Complaint 48187. Lahontan Water Board staff confirmed that the Discharger had implemented dredge (excavation) and fill activity in an unnamed spring and watercourse (i.e. creek) as previously documented by the Dischargers in the email correspondence submitted to Lahontan Water Board staff on July 8, 2020. Lahontan Water Board staff also confirmed that Site development activities were being conducted without implementation of appropriate management practices designed to prevent wastes (e.g. sediment, turbid stormwater, etc.) from discharging and/or threatening to discharge to the adjacent Truckee River. A second inspection to discuss Site stabilization plans and observe Site conditions was conducted by Lahontan Water Board staff on October 1, 2020.
9. The Discharger has modified an unnamed watercourse extending from an upland, seasonal spring. The Discharger: 1) modified the natural channel morphology; 2) lined the watercourse channel with geotextile fabric; 3) partially covered the geotextile fabric with fine to coarse gravel fill, and 4) placed a cobble landscaping border along the modified watercourse channel alignment. Earthwork associated with the watercourse modification has resulted in disturbed soil areas (DSAs) within the stream environment zone (SEZ), as defined by TRPA and incorporated into the Lahontan Water Board's Timber Waiver.<sup>1</sup> These DSAs have not been stabilized with appropriate erosion and sediment control best management practices (BMPs).
10. The Discharger has constructed a permanent crossing across the watercourse described in Finding No. 9 above to facilitate equipment, vehicle, and pedestrian traffic. The permanent crossing consists of timber planks supported by pre-cast concrete footings resting on the bed of the modified watercourse channel.
11. The Discharger has removed significant areas of ground vegetation/cover, brush, and small trees on the Site. These activities have resulted in significant DSAs. These DSAs have not been stabilized with appropriate erosion and sediment control BMPs.
12. The Discharger has implemented significant unpermitted timber harvest activities on the Site. These timber harvest activities have been conducted in upland areas and in, or adjacent to, SEZs. These activities have resulted in significant DSAs. These DSAs have not been stabilized with appropriate erosion and sediment control best BMPs.

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<sup>1</sup> The Tahoe Regional Planning Agency (TRPA) Code of Ordinances defines a stream environment zone (SEZ) as, "Generally an area that owes its biological and physical characteristics to the presence of surface water or ground water." This definition includes perennial, intermittent, and ephemeral streams; wet meadows, marshes, and other wetlands; riparian areas, beaches, and other areas expressing the presence or influence of surface or ground water.

13. The Discharger has constructed/re-constructed open areas and native surface forest roads on the Site to facilitate Site access and timber harvest activities. Ground cover and duff that was stabilizing these open areas and native surface forest roads has been removed/displaced to expose mineral soil. These activities have resulted in significant DSAs. These DSAs have not been stabilized with appropriate erosion and sediment control best BMPs.
14. Small stockpiles and windrows of soil and rock associated with both previous and current construction activities were observed throughout the Site resulting in significant DSAs. Soil and rock have also been placed and spread adjacent to the native surface forest road footprints resulting in significant DSAs. These DSAs have not been stabilized with appropriate erosion and sediment control best BMPs.
15. The Discharger has constructed/re-constructed access roads/skid trails on the Site to facilitate timber harvest activities. The construction/re-construction of these access roads/skid trails has resulted in significant DSAs. These access roads/skid trails were observed in upland areas and may extend into SEZs. These access roads/skid trails, and other DSAs described above, have not been stabilized with drainage structures and/or erosion and sediment control BMPs.
16. The Discharger has created log decks and slash piles resulting from vegetation removal on the Site. A portion of these log decks are located in a SEZ.
17. The Discharger has placed wood chips generated during vegetation management and timber harvest activities as erosion control BMPs in portions of the DSAs of the re-constructed open areas and native surface forest roads described above. The application of wood chips as an erosion control BMP has not covered all bare mineral soil in these DSAs and is therefore incomplete.
18. The Discharger has partially demolished one or more of the derelict structures located on the Site. No erosion or sediment control BMPs have been placed on, or around, the partially demolished structures and associated debris piles.
19. The Discharger has installed sediment control BMPs along a portion of the downslope perimeter of the "central" construction and staging area. The lateral extent of sediment control BMPs has not been placed around all DSAs and is therefore incomplete. The sediment control BMPs have not been installed correctly (e.g. silt fence not keyed into soil surface; fiber rolls not staked and overlapped correctly) and are therefore deficient.
20. At the time of the August 5, 2020 inspection, the Discharger had not obtained any required grading-related permits from the Lahontan Water Board, TRPA, Placer County, or any other regulatory agency.
21. On August 10, 2020, TRPA staff issued a Cease and Desist Order for the following violations: 1) Unauthorized grading over 3 cubic yards without a permit; 2) Unauthorized grading in a stream environment zone, and 3) Unauthorized removal of trees and vegetation in a stream environment zone.

22. On September 14, 2020, Lahontan Water Board staff issued the Discharger a Notice of Violation (NOV) for alleged violations of the Basin Plan. The NOV, including the inspection report for the August 5, 2020 inspection, is attached hereto as Attachment 1.
23. On October 1, 2020, Lahontan Water Board and TRPA staff met with the Discharger to discuss the Discharger's proposed site stabilization plan.
  - a) No significant changes from the site stabilization conditions described in the August 5, 2020 inspection report were noted.
  - b) The Discharger obtained a tree removal permit from the TRPA.
  - c) The Discharger did not obtain any permits from the State Water Board or Lahontan Water Board.
  - d) Lahontan Water Board and TRPA staff once again advised the Discharger that the sediment control BMPs (i.e. silt fence and fiber rolls) installed at the downslope perimeter of active work areas were both incomplete (i.e. incomplete coverage downslope of active work areas) and deficient ((e.g. silt fence not keyed into soil surface; fiber rolls not staked and overlapped correctly).

The October 1, 2020 Inspection Report is attached hereto as Attachment 2.

24. On October 9, 2020, Lahontan Water Board staff received an incomplete and deficient response to the NOV from the Discharger.
25. On October 20, 2020, TRPA issued a second Cease and Desist Order for the following violations:
  - a) TRPA Code Section 2.3.1.: *"Grading of more than 3 cubic yards, landscaping on a parcel with no allowed use, modifying the natural stream environment zone, and construction of a watercourse crossing requires approval from TRPA"*.
  - b) TRPA Code Section 30.5.: *"Removal of SEZ vegetation, modifying the natural stream environment zone, and construction of a watercourse crossing requires approval from the TRPA"*.
  - c) TRPA Code Section 33.3.1.D.: *The site was not properly winterized by October 15, 2020.*
  - d) TRPA Code Section 33.3.: *Unauthorized grading for additional parking areas and disposing of material in SEZ.*
  - e) TRPA Code Section 33.3.4.: *TRPA Inspector observed soil and tree removal debris stored in the stream zone without any temporary BMPs in place.*
  - f) TRPA Code Section 53.9.2.: *Modifying the natural stream environment zone and construction of a watercourse crossing requires approval from TRPA.*
  - g) TRPA Code Section 60.4.3.A: *BMPs were not installed correctly or maintained around disturbed areas directly above SEZ.*

- h) TRPA Code Section 61.3.3.: *Removal of stream environment zone vegetation and modifying the natural stream environment zone requires approval from TRPA.*
  - i) TRPA Code Section 63.3.2.A.: *Modifying the natural stream environment zone and construction of a watercourse crossing requires approval from TRPA and can cause negative impacts on the watercourse.*
26. On November 6, 2020, Lahontan Water Board staff received site stabilization documentation via email correspondence titled “1615 River Rd Winterization-November 6<sup>th</sup>, 2020” from the Discharger’s consultant, Lumos & Associates. The site stabilization documentation, which was prepared by the Discharger, provides a description and photographs of silt fence installation, fiber roll placement, wood chip placement, and native grass wildflower and forest understory seeding. The Discharger elected to proceed without submitting a site stabilization plan to Water Board staff for review and acceptance as recommended in the NOV prior to commencement of site stabilization activities.
27. The “1615 River Rd Winterization-November 6<sup>th</sup>, 2020” site stabilization document also includes a description and photographs of the Discharger’s additional unpermitted actions in the unnamed watercourse. The Discharger has documented that he has removed the geotextile fiber fabric, fine to coarse gravel fill, and removed the cobble border landscaping. The Discharger then installed “keyed-in” fiber rolls across the watercourse at approximately 20-foot-intervals. Although intended to mitigate the potential of sediment discharge in the watercourse, the fiber roll installation has disrupted/partially blocked the natural surface water flow line of the watercourse and may result in erosion/sediment discharge related to newly established surface water flow lines. The Discharger elected to proceed with these actions 1) despite verbal notifications by Lahontan Water Board staff during the August 5, 2020 and October 1, 2020 site inspections that all applicable permits from appropriate regulatory agencies would be required before commencing with watercourse restoration activities, 2) despite written notification in the NOV recommending that a long term restoration plan be submitted to Lahontan Water Board staff for review and acceptance prior to commencement, and 3) without obtaining all applicable permits.

### **Regulatory Authority**

#### **Definitions**

28. “Waste” includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purpose of, disposal, as defined by Water Code section 13050, subdivision (d).

29. "Waters of the state" are any surface or groundwater, including saline waters, within the boundaries of the state, as defined by Water Code section 13050, subdivision (e).
30. "Pollution" is an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects the waters for beneficial uses or facilities which serve such beneficial uses, as defined by Water Code section 13050, subdivision (l)(1).

**Basin Plan Requirements**

31. The Basin Plan designates beneficial uses, establishes water quality objectives, contains implementation programs for achieving objectives, and incorporates by reference, plans and policies adopted by the State Water Board. The designated beneficial uses for the Truckee River, Minor Surface Waters, and Minor Wetlands (springs, seeps, emergent, and marshes) in the Truckee River Hydrologic Area and Unit where the Site is located include:

**Table 1 – Beneficial Uses of Surface Waters at and near the Site**

<b>Beneficial Use</b>	<b>Water Body Names</b>
Municipal and Domestic Supply	Truckee River, Minor Surface Waters, Minor Wetlands
Agricultural Supply	Truckee River, Minor Surface Waters, Minor Wetlands
Industrial Service Supply	Truckee River
Groundwater Recharge	Truckee River, Minor Surface Waters, Minor Wetlands
Freshwater Replenishment	Truckee River, Minor Surface Waters, Minor Wetlands
Hydropower Generation	Truckee River
Water Contact Recreation	Truckee River
Noncontact Water Recreation	Truckee River, Minor Surface Waters, Minor Wetlands
Commercial and Sport Fishing	Truckee River, Minor Surface Waters, Minor Wetlands
Cold Freshwater Habitat	Truckee River, Minor Surface Waters, Minor Wetlands
Wildlife Habitat	Truckee River, Minor Surface Waters, Minor Wetlands

Preservation of Biological Habitat of Special Significance	Truckee River, Minor Wetlands
Rare, Threatened or Endangered Species	Truckee River, Minor Surface Waters, Minor Wetlands
Migration of Aquatic Organisms	Truckee River, Minor Wetlands
Spawning, Reproduction and Development	Truckee River, Minor Surface Waters, Minor Wetlands
Water Quality Enhancement	Minor Wetlands
Flood Peak Attenuation/Flood Water Storage	Minor Wetlands

32. The Basin Plan contains the following prohibitions:
- a. Section 4.1-1 of the Basin Plan, Regionwide Prohibition #3 states:
  - b. *The discharge of waste that could affect the quality of waters of the state that is not authorized by the State or Regional Board through waste discharge requirements, waiver of waste discharge requirements, NPDES permit, cease and desist order, certification of water quality compliance pursuant to Clean Water Act section 401, or other appropriate regulatory mechanism is prohibited.*
  - c. Section 4.1-16 of the Basin Plan, Unit/Area-Specific Prohibition #1 for The Truckee River and Little Truckee River Hydrologic Units states:
  - d. *The discharge, attributable to human activities, of any waste or deleterious material to surface waters of the Truckee River HU or Little Truckee River is prohibited.*
  - e. Section 4.1-16 of the Basin Plan Unit/Area-Specific Prohibition #2 for The Truckee River and Little Truckee River Hydrologic Units states:
  - f. *The Discharge or threatened discharge, attributable to human activities, of waste to lands within the 100-year floodplain of the Truckee River, Little Truckee River, and their tributaries is prohibited.*
33. Lahontan Water Board staff has not received a report of waste discharge or other permit application from the Discharger, nor has the Lahontan Water Board issued waste discharge requirements, water quality certification, or other authorization for the work described in Findings 8 through 19 above.
34. The State Water Board has adopted Resolution No. 92-49, which is included in Appendix B of the Basin Plan. Resolution 92-49 sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, the Statement of Policy with Respect to Maintaining High Quality Waters in

California. Resolution No. 92-49 requires waste to be cleaned up in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution No. 92-49 directs that investigations proceed in a progressive sequence. To the extent practical, it directs the State and Regional Water Boards to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

### **Unauthorized Discharge of Waste**

35. The modified, unnamed spring and watercourse is located within the boundaries of the state; and are waters of the state, as defined by Finding No. 29, above.
36. The discharge of wastes to the unnamed spring and watercourse, as described in Findings No. 9 and 10, above, and documented in the Notice of Violation and Lahontan Water Board staff's August 5, 2020 inspection report (Attachment 1), has the potential to result in a discharge of wastes to the Truckee River Hydrologic Area in the Truckee River Hydrologic Unit, and constitutes a threatened discharge of waste to waters of the state and is in violation of the Basin Plan prohibitions described in Finding No. 28, above.
37. The waste discharges referenced in Finding Nos. 8 through 19, above, have the ability to affect the quality of waters of the state to a degree that can adversely affect the beneficial uses of the waters, and constitute an ongoing condition of threatened pollution, as defined in Finding No. 30, above.

### **Water Code section 13304**

38. Water Code section 13304 subdivision (a) states:

*A person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and causes, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts... Upon failure of a person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have*

*jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.*

39. The Discharger has caused or permitted waste to be discharged in a manner that presents a threatened discharge of wastes to waters of the state, and in doing so, has also created a condition of threatened pollution, as discussed in Finding Nos. 35 and 36, above. Such waste discharges and creation of a condition of threatened pollution satisfy the criteria under which the Lahontan Water Board is authorized to issue a Cleanup and Abatement Order to the Discharger, pursuant to Water Code section 13304.
40. Cleanup and abatement activities are necessary to ensure that threatened unauthorized discharges to the Truckee River Hydrologic Area in the Truckee River Hydrologic Unit are prevented. The current condition of threatened pollution also poses an immediate and substantial threat to beneficial uses and has the potential to individually or cumulatively cause significant detrimental impacts to human health and the environment. The issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with policies of the Lahontan Water Board.

#### **Water Code section 13267 Technical Reports**

41. Water Code section 13267, subdivision (a) provides that the Lahontan Water Board may investigate the quality of any water of the State within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b), provides that the Lahontan Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports, provided that the burden, including costs, of the reports bears a reasonable relationship to the need for the reports and the benefits to be obtained.
42. Water Board staff have prepared an "Order of Magnitude Estimate" for the Discharger's anticipated costs for compliance with Time Scheduled Requirements 1 through 8. Water Board staff's "Order of Magnitude Estimate" indicates that the preparation and submittal of technical and monitoring reports required for compliance with Time Schedule Requirements 1 through 8 may cost approximately \$22,000 in professional services and contractor costs. This "Order of Magnitude" estimate is subject to uncertainty based on unanticipated changes in the scope of work, unanticipated changes in field conditions, unanticipated work required by other regulatory agencies, unanticipated changes due to adverse weather, and geographical variations in professional services costs and contractor costs. The cost of these reports is reasonable in relation to the need for the reports and the benefits to be obtained. Specifically the reports are needed in order to adequately delineate the extent and amount of waste discharged, assess the threat of continuing discharge and to facilitate compliance with implementing cleanup activities required by this order with the ultimate goal of restoring water quality and protecting beneficial uses.

### California Environmental Quality Act

43. Issuance of this Order is an enforcement action taken by a regulatory agency to enforce the regulatory provisions of the Basin Plan, and is therefore exempt from the provisions of the California Environmental Quality Act (CEQA)(Pub. Resources Code, § 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321. This action may also be considered exempt because it is an action by a regulatory agency for the protection of natural resources (Cal. Code Regs., tit. 14, § 15307.) and an action by a regulatory agency for the protection of the environment (Cal. Code Regs., tit. 14, § 15308.)

### REQUIRED ACTIONS

**IT IS HEREBY ORDERED** that, pursuant to Water Code sections 13267 and 13304, the Discharger shall cleanup and abate the impacts to water quality associated with the discharge and threatened discharge of waste to waters of the state as follows:

#### Time Scheduled Requirements

1. **By December 31, 2020**, the Discharger shall fully stabilize all disturbed soils at the Site by properly installing an effective combination of erosion and sediment control BMPs. The Discharger shall submit a Site Stabilization Plan prepared by a Qualified Stormwater Pollution Prevention Plan (SWPPP) Developer (QSD) for Lahontan Water Board staff review and acceptance prior to implementation.
2. **By January 31, 2021**, submit a Site Stabilization Report to Lahontan Water Board staff documenting that all erosion and sediment control BMPs necessary to stabilize the Site have been implemented (including photographic evidence).
3. **By February 28, 2021**, the Discharger shall submit a comprehensive estimate of the total Disturbed Soil Area (DSA) acreage associated with all current and planned Project activities in a technical report and map. This DSA Acreage Estimate shall be documented in a property map prepared by a State of California licensed surveyor with input from qualified technical individuals and/or appropriate regulatory agencies. The surveyed property map shall include 1) the location of the spring and modified watercourse (i.e. the entire alignment from the upland spring to the watercourse's confluence with the Truckee River), 2) the delineation of the Truckee River's 100-year floodplain, 3) the verified delineation of all wetlands and SEZs located on the property, 4) the location of current DSAs, and 5) the location of proposed/planned Site development features and improvements (i.e. future DSAs). This DSA acreage estimate shall include all constructed/re-constructed clearings, all constructed/re-constructed native surface forest roads, all constructed/re-constructed access roads/skid trails, all areas that received soil and rock stockpiles and fill, all areas associated with the watercourse and wetland modification, and all areas disturbed during ground cover removal (e.g. duff, needle cast, woody debris), vegetation

removal, and timber harvesting activities. All portions of DSAs recently stabilized with wood chips and/or other stabilization methods by the Dischargers shall be included in the total DSA acreage estimate. Lahontan Water Board staff will review, and field verify, the DSA acreage estimate with the Discharger and State of California licensed engineer/surveyor prior to acceptance.

4. **By April 30, 2021**, the Discharge shall obtain the appropriate stormwater pollution protection permit for the State Water Board or Lahontan Water Board.

If it is determined that the current and planned Project construction activities involve one acre or greater of land disturbance (i.e. DSAs), a National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Construction Activity, Order 2009-0009-DWQ, as amended by 2010-0014-DWQ and 2012-006-DWQ (Construction General Permit) will be required. If it is determined that an NPDES General Permit is required, the Discharger shall submit documentation of NPDES coverage to Lahontan Water Board staff prior to the commencement of any additional construction activities that are not associated with Order No. 1 above or corrective actions required by any other regulatory agencies.

If it is determined that the completed and planned Project construction activities involve less than one acre or greater of land disturbance (i.e. DSAs), a Small Construction Waste Discharge Requirements Permit, Order R6T-2003-004, will be required for 1) discharges associated with minor streambed/lakebed alteration projects in the Lahontan Region, and 2) stormwater discharges from small construction activity that enter surface waters either directly or indirectly through drainage conveyances or municipal storm water facilities within the Truckee River Hydrologic Area. For the purpose of Order R6T-2003-004, "a small construction project" includes construction activity that results in land disturbance greater than 10,000 square feet and is not covered under the State Water Board's Statewide Construction General Permit referenced above.

The Discharger shall submit documentation of permit coverage to Lahontan Water Board staff by **April 30, 2021**.

5. **By May 31, 2021**, the Discharger shall submit a Spring/Watercourse Restoration Plan for restoring the unnamed spring and watercourse and adjacent wetland for Lahontan Water Board staff review and acceptance. The Discharger is required to obtain any applicable permits from the Lahontan Water Board and all other applicable regulatory agencies prior to commencement. The Discharger may not commence restoration activities until Lahontan Water Board staff has accepted the restoration plan in writing.
6. **By July 1, 2021**, the Discharger shall commence site activities to fully restore 1) the unnamed spring and watercourse to its original channel and flow as a tributary to the Truckee River, and 2) the adjacent wetland has been restored to its original condition.

The Discharger shall notify Lahontan Water Board staff that restoration activities have commenced by **July 8, 2021**.

7. By **August 31, 2021**, the Discharger shall complete site activities to fully restore 1) the unnamed spring and watercourse to its original channel and flow as a tributary to the Truckee River, and 2) the adjacent wetland has been restored to its original condition.

The Discharger shall notify Lahontan Water Board staff that restoration activities have been completed by **September 7, 2021**.

8. By **September 30, 2021**, submit a Spring/Watercourse Restoration Report, including photographic evidence, to Lahontan Water Board staff documenting that 1) the unnamed creek has been restored to its original channel and flow as a tributary to the Truckee River, and 2) the adjacent wetland has been restored to its original condition. Additional restoration work will be required if Lahontan Water Board staff determine that the restoration work performed by the Discharger is incomplete or inadequate.

### **General Requirements and Notices**

#### **Duty to Use Qualified Professionals**

9. All technical reports required herein that involve planning, investigation, evaluation, design, or other work requiring interpretation and proper application of engineering or geologic sciences, shall be prepared by or under the direction of persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.

#### **Signatory Requirements**

10. All technical reports submitted by the Discharger shall include a cover letter signed by the Discharger, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Discharger shall also state if they agree with any recommendations/proposals and whether they approve implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

*I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.*

### **Notice of Onsite Work**

11. The Discharger or their authorized agent(s) shall notify Lahontan Water Board staff at least 48 hours prior to any onsite work, testing, or sampling that pertains to environmental remediation and investigation and is not routine monitoring, maintenance, or inspection or that has not been fully described in the Plan.

### **Notice of Change in Ownership or Occupancy**

12. The Discharger shall file a written report on any changes in the Site's ownership or occupancy. This report shall be filed with the Lahontan Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.

### **Other Regulatory Requirements**

13. The Discharger shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning the work.

### **Cost Recovery**

14. Pursuant to Water Code section 13304, the Lahontan Water Board is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs investigating and abating the effects of the unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other remedial action, required by this Order. The Discharger shall enroll in the State Water Board's Cost Recovery Program and shall reimburse the State of California for all reasonable costs actually incurred by the Lahontan Water Board.

### **Delayed Compliance**

15. If for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein, or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may be granted by revision of this Order or by a letter from the Executive Officer. The Lahontan Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Discharger and will take all the available relevant facts into consideration when considering whether to grant an extension request.

### **Potential Liability for Failure to Comply**

16. If, in the opinion of the Executive Officer, the Discharger fails to comply with the provisions of this Order, the Executive Officer may refer or recommend that the Lahontan Water Board refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order may result in the assessment of administrative civil liability of up to \$5,000 per violation, per day, depending on the

violation, pursuant to the Water Code, including sections 13268 and 13350. The Lahontan Water Board reserves its right to take any enforcement actions authorized by law.

### **No Limitation of Water Board Authority**

17. This Order in no way limits the authority of the Lahontan Water Board to take any enforcement actions authorized by law.

### **Modifications**

18. Any modification to this Order shall be in writing and approved by the Executive Officer.

### **Requesting Review by the State Water Board**

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

### **20. Summary of Orders and Due Dates**

Order No.	Item	Due Date
1.	Fully Stabilize Disturbed Soil Areas	December 31, 2020
2.	Site Stabilization Report	January 31, 2021
3.	Disturbed Soil Area (DSA) Acreage Estimate	February 28, 2021
4.	Obtain Appropriate Water Board Stormwater Pollution Prevention Permit	April 30, 2021
5.	Spring/Watercourse Restoration Plan and Permits	May 31, 2021
6.	Commence Site Restoration Activities	July 1, 2021
7.	Complete Site Restoration Activities	August 31, 2021
8.	Spring/Watercourse Restoration Report	September 30, 2021

### **21. Submissions**

All monitoring reports, technical reports, or notices required under this Order shall be submitted to: [Lahontan@waterboards.ca.gov](mailto:Lahontan@waterboards.ca.gov) with "North Tahoe Prop, LLC CAO No. R6T-2020-(Proposed)" in the subject line.

This Order is issued under the authority delegated to the Executive Officer by the Lahontan Regional Board and is effective upon the date of signature.

Ordered by: \_\_\_\_\_ Date \_\_\_\_\_  
MIKE PLAZIAK  
ACTING EXECUTIVE OFFICER

- Attachments:
1. September 14, 2019 Notice of Violation and August 5, 2020 Inspection Report, 1615 River Road, Tahoe City, Placer County
  2. October 1, 2020 Inspection Report, 1615 River Road, Tahoe City, Placer County
  3. Water Code section 13267 Fact Sheet



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## Lahontan Regional Water Quality Control Board

September 14, 2020

North Tahoe Property, LLC  
107 Lawnview Circle  
Danville, CA 94526

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7017 1450 0001 3058 5733**

Mark Kackley  
P.O. Box 5427  
Tahoe City, CA 96145  
[markkackley@gmail.com](mailto:markkackley@gmail.com)

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7017 1450 0001 3058 5740**

### **Notice of Violation: North Tahoe Property, LLC - Mark Kackley, 1615 River Road, Tahoe City, Placer County**

The purpose of this Notice is to inform North Tahoe Property, LLC and Mark Kackley (Dischargers) of alleged violations of the Water Quality Control Plan (Basin Plan) for the Lahontan Regional Water Quality Control Board (Regional Board). The alleged violations are related to dredge (excavation) and fill activity that was identified in documentation provided by the Dischargers on July 8, 2020 for the 1615 River Road, Tahoe City Property (1615 River Road Property). Regional Board staff confirmed the alleged violations, discussed below, during its August 5, 2020 inspection. These violations are subject to enforcement, including administrative civil liability (fine) up to \$5,000 per day of violation or \$10 per gallon of discharge<sup>1</sup> pursuant to Water Code section 13350(a). The matter has been referred to the State Water Resources Control Board Office of Enforcement (Office of Enforcement) for formal enforcement. The Dischargers' response to this Notice will be taken into consideration by Regional Board staff, in consultation with the Office of Enforcement, when determining what enforcement is appropriate.

#### **VIOLATIONS**

##### **1. Discharge of waste in violation of the Regional Board Basin Plan**

The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains the following prohibitions:

- a. Section 4.1-1 of the Basin Plan, *Regionwide Prohibition #3* states:

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<sup>1</sup> For discharge of solid material, one cubic yard is roughly 202 gallons.

*“The discharge of waste that could affect the quality of waters of the state that is not authorized by the State or Regional Board through waste discharge requirements, waiver of waste discharge requirements, NPDES permit, cease and desist order, certification of water quality compliance pursuant to Clean Water Act section 401, or other appropriate regulatory mechanism is prohibited.”*

- b. Section 4.1-16 of the Basin Plan, Unit/Area-Specific Prohibition for The Truckee River and Little Truckee River Hydrologic Units #1 states:

*“The discharge, attributable to human activities, of any waste or deleterious material to surface waters of the Truckee River HU or Little Truckee River is prohibited.”*

- c. Section 4.1-16 of the Basin Plan Unit/Area-Specific Prohibition for The Truckee River and Little Truckee River Hydrologic Units #2 states:

*“The Discharge or threatened discharge, attributable to human activities, of waste to lands within the 100-year floodplain of the Truckee River, Little Truckee River, and their tributaries is Prohibited”*

Violations of Basin Plan Prohibitions are subject to enforcement under Water Code section 13350, authorizing the Regional Board to impose an administrative civil liability of up to five thousand dollars (\$5,000) per day or ten dollars (\$10) per gallon discharged.

During Regional Board staff’s site visit on August 5, 2020, staff observed the following:

- A watercourse extending from an upland, seasonal spring has been modified by the Dischargers. The watercourse channel has been 1) modified to remove any natural channel morphology (i.e. the channel has been reconstructed as a linear ditch), 2) the watercourse channel has been lined with a geotextile fabric and has been covered with fine to coarse gravel fill, and 3) the watercourse channel has been bordered with cobbles as a landscaping “accent”. Earthwork associated with the watercourse modification has resulted in disturbed soil areas within the stream environment zone.
- A permanent watercourse crossing has been constructed across the spring fed watercourse described above to facilitate equipment, vehicle, and pedestrian traffic. The watercourse crossing consists of timber planks supported by pre-cast concrete footings resting on the bed of the watercourse channel.

The Regional Board has no evidence that Dischargers obtained any permits for the discharges for the activity identified in the inspection report. Unauthorized discharge of waste affecting the quality of waters of the state was documented in a submittal provided by the Dischargers on July 8, 2020 and observed during the August 5, 2020

inspection. The direct discharge of deleterious material to the Truckee River Hydrologic Unit occurred as a result of the Dischargers' activities. This activity constitutes a violation of the above referenced Basin Plan Prohibitions.

### ***RESPONSE/ACTIONS***

Regional Board staff strongly recommend the Dischargers secure the services of a qualified stream restoration specialist, a Construction General Permit Qualified Stormwater Prevention Pollution Plan (SWPPP) Practitioner/Qualified SWPPP Developer, and State of California licensed engineer/surveyor with relevant experience in wetland delineation and restoration, the design and deployment of sediment and erosion control best management practices, and land surveying, respectively, to take the following actions in response to the alleged violations:

1. Propose in writing immediate measures to effectively stabilize all disturbed soil areas to minimize transport of sediment downstream during high flows (i.e. fall/winter precipitation) for Regional Board review and acceptance prior to commencement.
2. Provide an estimate of the total disturbed soil area (DSA) acreage. This DSA estimate should be documented in a property map prepared by State of California licensed surveyor with input from qualified technical individuals. This DSA acreage estimate shall include all re-established clearings, re-established native surface roads, recently constructed temporary access roads/skid trails, areas associated with the watercourse modification, and all areas disturbed during vegetation removal and timber harvesting activities. All areas recently stabilized with wood chips and/or other stabilization methods by the Responsible Parties will be included in the total DSA acreage estimate. Water Board staff will review, and field verify, the DSA acreage estimate with the State of California licensed engineer/surveyor to determine if a NPDES permit is required for project activities.
3. Propose in writing a long-term restoration plan for the disturbed site. The plan should include a schedule for implementation for Regional Board staff review and acceptance prior to commencement.
4. Contact the US Army Corps of Engineers (USACE) to determine if permits were required for the watercourse modification and installation of the permanent watercourse crossing. A summary of correspondence with USACE staff regarding potential or applicable permits should be submitted to Regional Board staff by October 5, 2020
5. Contact the California Department of Fish and Wildlife (CDFW) to determine if permits were required for the watercourse modification and installation of the permanent watercourse crossing. A summary of correspondence with CDFW staff regarding potential or applicable permits should be submitted to Regional Board staff by October 5, 2020.

Prior to the initiation of any restoration related earthwork in the Truckee River Hydrologic Unit, notification to Regional Board, United States Army Corps of Engineers, and California Department of Fish and Wildlife staff and attainment of all appropriate authorization/permits is required. Additionally, a surveyed map of the property

delineating the Truckee River's 100-year floodplain location on the property, and delineating any wetlands and stream environment zones boundaries located on the property must be prepared by a State of California licensed surveyor, with input from qualified technical individuals, and submitted to Regional Board staff for review and acceptance prior to commencement of any restoration work is required.

If the Dischargers believe that this Notice is in error, or that any of the information provided in this Notice is incorrect or incomplete, submit a written response explaining the position(s).

### **ENFORCEMENT**

The Regional Board takes the above-referenced violations seriously and has referred the matter for enforcement to the Office of Enforcement. Assistant Chief Counsel David Boyers is assigned to this matter and will be representing the Regional Board prosecution staff.

Please note that this violation is ongoing and additional days of violation will continue to accrue until the conditions resulting in the alleged violations are corrected. As stated, above, the Dischargers' response to this Notice will be taken into consideration when staff is contemplating what enforcement is appropriate.

Electronic document submittal is required. Please send your response to this Notice to [Lahontan@waterboards.ca.gov](mailto:Lahontan@waterboards.ca.gov), and include *1615 River Road Property* in the subject line.

To answer any questions the Dischargers may have regarding this Notice, please contact Jim Carolan, Engineering Geologist, at (530) 542-5477 ([jim.carolan@waterboards.ca.gov](mailto:jim.carolan@waterboards.ca.gov)), or me at (530) 542-5467 ([robert.tucker@waterboards.ca.gov](mailto:robert.tucker@waterboards.ca.gov)).



Rob Tucker P.E.  
Senior Water Resource Control Engineer

Enclosure: August 5, 2020 Inspection Report

cc: Patrick Moeszinger, CDFW  
Leah Fisher, USACE  
Rachel Lopez, TRPA  
Fred Stamm, Placer County CDRA Engineering and Surveying  
Steve Sweet, TRPA  
David Boyers, State Water Board, Office of Enforcement  
Scott Ferguson, Supervising WRCE, Lahontan Water Board  
Jim Carolan, Lahontan Water Board

## LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD SITE INSPECTION

DATE AND TIME: August 5, 2020; 1000 to 1145

LOCATION: 1615 River Road, Tahoe City/Rampart, Placer County, CA

WEATHER: Warm and clear.

### ATTENDEES:

- Jim Carolan (Lahontan Water Board)
- Rachel Lopez (TRPA)
- Fred Stamm (Placer County)
- Mark Kackley (Property Owner)

### BACKGROUND:

The inspection was conducted in response to a complaint (Complaint 48187) received by the California Environmental Protection's (CalEPA) Environmental Complaint System on June 23, 2020. The complaint indicated that large-scale vegetation removal and other construction activities were occurring on the subject property without implementation of appropriate management practices designed to prevent sediment from discharging to the adjacent Truckee River.

Permission to access the site to inspect the subject property was requested in a letter issued by Water Board staff to the property owner on June 30, 2020 titled *Request Permission to Inspect the Property at 1615 River Road, Tahoe City, APN 095-130-012-000 in Response to a Complaint that Vegetation Clearing and Construction Activities are Being Conducted Without Appropriate Permits and/or Precautions to Prevent Sediment Being Discharged to the Truckee River (Placer County)*. The property owner responded to this request and provided related information via email correspondence on July 8, 2020. Due to statements indicating that the property owner and site workers suffered from COVID-19 symptoms, and the property owner would be on vacation in late July, the inspection was delayed until August 5, 2020. During that time, Water Board staff coordinated with TRPA and Placer County staff to facilitate their participation in the inspection.

### INSPECTION PURPOSE:

Water Board staff acknowledge that each of the participating agencies had differing purposes in attending the inspection and only Water Board staff objectives are included in this summary. Water Board staff attended the inspection to 1) determine if vegetation removal and construction activities were being conducted as indicated in the complaint and 2) determine if any work being conducted was being implemented without benefit of the appropriate regulatory permits.

## PERMIT STATUS:

The property owner was interviewed about permit status and provided the following summary.

- The property owner had corresponded with both Placer County and TRPA about zoning, land capability, and land use questions.
- The property owner had consulted with North Tahoe Fire about tree removal.
- The property owner did not obtain any permits from the TRPA.
- The property owner did not obtain any permits from Placer County.
- The property owner did not consult with, or obtain a permit from, CalFire.
- The property owner did not obtain any permits from the State Water Board or the Lahontan Water Board.

## INSPECTION OBSERVATIONS

The current scope of work being implemented appears to be predominately "pre-construction activities". Evidence of the following activities was observed.

- Significant brush, ground vegetation, and small tree removal resulting in significant disturbed soil areas has been implemented. Many of these open areas were pre-existing but ground cover and duff that was established in the past several? decades were removed to expose mineral soil.
- Significant mature tree removal in both upland locations and stream environment zones (SEZ), as defined by TRPA and incorporated into the Lahontan Water Board's Timber Waiver, has been implemented.
- The property owner has created log decks and slash piles resulting from vegetation removal. The property owner is using a lawn sprinkler to apply water to the slash piles to mitigate fire hazard. Water Board staff are unable to determine if the actions being taken to reduce fire hazard will adequately reduce fire hazard (CalFire or the North Tahoe Fire may want to inspect the site). TRPA staff indicates that many of the trees were alive and greater than 14-inch diameter at breast height when cut. The property owner had small-scale lumber milling equipment onsite on the date of inspection. It is unknown if the timber was being sold for commercial purposes (to be determined at a future date).
- Re-construction/grading of pre-existing forest roads and open areas to facilitate site access and tree removal has been implemented. Small stockpiles and windrows of associated excess soil and rock were observed throughout the subject property resulting in significant disturbed soil areas. Excess soil and rock have also been "thin spread" adjacent to the road footprints resulting in significant disturbed soil areas. Many of these forest roads were pre-existing but stabilizing ground cover and duff that was established in the past several? decades was removed to expose mineral soil.
- Construction of temporary access roads to facilitate property access and tree removal has been implemented. These temporary access roads are observed in upland areas and may extend into SEZs (this should be evaluated at a future date). The construction methods and stormwater conveyance strategies of

these temporary access roads does not meet relevant regulatory standards (e.g. CalFire regulations or Lahontan Timber Waiver requirements). Some portions of the temporary access roads are deeply rutted due to heavy equipment driving on the road surface in saturated soil conditions.

- A watercourse extending from an upland, seasonal spring (most likely a Class II spring according to the Lahontan Water Board's Timber Waiver but will need to be confirmed by observing aquatic species habitat) has been heavily modified. No surface water was observed in the watercourse on the date of inspection. The watercourse channel has been 1) heavily modified to remove any natural channel morphology (it is a linear ditch now), 2) lined with a geotextile fabric and covered with fine to coarse gravel, 3) bordered with cobbles as a landscaping "accent". Work associated with the watercourse modification has also resulted in disturbed soil areas within the SEZ. Vegetation is growing back and stabilizing a significant portion of the disturbed soil area. The property owner indicated that he had spread "wildflower" seeds in the disturbed soils areas. He was unable to provide clarification when asked about potential invasive weed species.
- A permanent watercourse crossing has been constructed across the spring fed watercourse described above to facilitate equipment, vehicle, and pedestrian traffic. The watercourse crossing consists of timber planks supported by pre-cast concrete footings resting on the bed of the watercourse channel.
- Wood chips generated from vegetation removal activities have been placed to partially stabilize road surfaces, recently cleared open areas, and fill excavations created by stump removal.
- Silt fence and waddles have been placed as sediment control BMPs on the downslope perimeter of the active work areas. Although most of the silt fence and waddle installation is beneficial, the lateral extent is incomplete and BMP installation is often inadequate/improperly installed. When questioned about selection and installation of BMPs, the property owner indicated that he was not familiar with BMP installation and associated NPDES/SWPPP regulatory requirements. The property owner also indicated that he had not consulted with anyone knowledgeable in stormwater regulations and compliance.
- Some demolition associated with old (historical?), collapsed or partially collapsed, structures has been implemented.
- Access Bridge. The access bridge over the Truckee River appears to be very old and poorly maintained. Although not qualified to evaluate bridge safety, Water Board staff indicated to the property owner that there were both health and safety concerns (the primary concern for both site workers and the general public recreating under the bridge) as well as potential for a partial collapse resulting in the discharge of wastes to the Truckee River. The property owner indicated that he had an engineer look at the bridge but that the engineer "wouldn't sign off on it in writing".

At the conclusion of the inspection, Water Board staff walked the site to estimate the square footage of disturbed soil area. Based on an initial, crude estimate, the fragmented disturbed soil areas distributed throughout the property appear to be just

under an acre in size. If the footprint of reconstructed forest roads is included in the estimate of disturbed soil area, the disturbed soil area is greater than 1 acre. In any case, a more detailed evaluation will need to be conducted to obtain a more accurate estimate of disturbed soil area acreage.

#### POST-INSPECTION DISCUSSION TOPICS:

Each agency provided input to the property owner at the conclusion of the inspection. A summary of input from each agency is not provided below. Instead, the summary below only covers topics discussed by Water Board staff.

- Based on inspection observations, Water Board staff indicated that the following water quality related permits were likely applicable:
  - Lahontan Water Board's Timber Waiver for vegetation removal and timber harvest activities.
  - State Water Board NPDES/SWPPP or the Lahontan Water Board's Small Construction Permit for soil disturbance, soil grading, and construction related activities.
  - USACE 404 Permit for the watercourse modification and fill activities.
  - State Water Board's 401 Water Quality Certification (WQC) for the watercourse modification and fill activities.
  - Applicable Lahontan Water Board Basin Plan Prohibitions.
- Water Board staff indicated to the property owner was that it was his responsibility to determine appropriate applicable permits and coordinate with each agency to obtain the applicable permits. Besides the agencies attending the inspection, Water Board staff recommended that the property owner consult with CalFire to determine if they have any applicable permitting requirements.
- Water Board staff recommended that the property owner consult with all agencies with potentially applicable regulatory authority related to the access bridge removal and replacement. I specifically requested that the property owner submit the project drawings and a conceptual bridge removal and installation description to Lahontan Water Board staff so that staff can determine if a 401 WQC and/or small construction permit would be required.
- Water Board staff requested that the property owner not implement any "restoration/fill removal" activities in the modified watercourse until receiving future input from Water Board staff on the appropriate path forward.
- I informed the property owner that I would need to discuss my inspection observations with Lahontan Water Board management before a determination regarding potential enforcement was made.
- I requested that the property owner provide his full contact information to each inspector to facilitate any post inspection coordination and correspondence.

Although not summarized in above, the TRPA inspector issued a verbal "stop work" notice to the property owner at the conclusion of the inspection. The TRPA inspection indicated the property owner would receive a formal notice in the very near future.

Representative photos (of the 130 photos in the project files) included below were taken by Jim Carolan on 8/5/2020 using Nikon Coolpix W300 camera.



Photo 1. General site view showing recently cleared open area, windrowed soil and rock, slash pile, and small log deck.



Photo 2. Recently cleared, partially stabilized open area with wood chips, slash pile, and small log deck.



Photo 3. Recently cleared area and stockpiled soil and rock.



Photo 4. Stockpiled soil and rock.



Photo 5. Disturbed soil area partially stabilized with wood chips.



Photo 6. Recently cleared area.



Photo 7. Windrowed soil and rock, downslope perimeter BMPs



Photo 8. Temporary access road. Ruts resulting from heavy equipment driving on saturated soil.



Photo 9. Temporary access road that may extend into SEZ.



Photo 10. Downslope perimeter sediment control BMP.



Photo 11. Downslope perimeter sediment control BMPs.



Photo 12. Windrowed soil adjacent to road surface partially stabilized with wood chips.



Photo 13. Recently cleared area partially stabilized with wood chips.



Photo 14: Permanent watercourse crossing.



Photo 15. Modified watercourse extending from upland spring to Truckee River.



Photo 16. Modified watercourse: straightened, lined with geotextile, covered with gravel, bordered with cobbles.



Photo 17. Modified watercourse, permanent watercourse crossing, disturbed soil in SEZ, woody debris and logs stockpiled in SEZ.



Photo 18. Modified watercourse, permanent watercourse crossing, disturbed soil in SEZ, woody debris and logs stockpiled in SEZ

## LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD SITE INSPECTION

DATE AND TIME: October 1, 2020; 1100 to 1200

LOCATION: 1615 River Road, Tahoe City/Rampart, Placer County, CA

WEATHER: Warm and clear.

### ATTENDEES:

- Jim Carolan (Lahontan Water Board)
- Rachel Lopez (Tahoe Regional Planning Agency; TRPA)
- Steve Sweet (TRPA)
- Mark Kackley (Property Owner)

### BACKGROUND:

The inspection was conducted to discuss site stabilization/winterization plans. The initial August 5, 2020 inspection was conducted in response to a complaint (Complaint 48187) received by the California Environmental Protection's (CalEPA) Environmental Complaint System on June 23, 2020. The complaint indicated that large-scale vegetation removal and other construction activities were occurring on the subject property without implementation of appropriate management practices designed to prevent sediment from discharging to the adjacent Truckee River.

### INSPECTION PURPOSE:

Water Board staff attended the inspection to listen to the property owner's site stabilization/winterization plans. Site stabilization is required as part of the TRPA's and Water Board's enforcement actions. The Water Board issued a NOV to the property owner on September 14, 2020.

### PERMIT STATUS:

The property owner was interviewed about the current permit status and provided the following summary.

- The property owner obtained tree removal permit from the TRPA.
- The property owner did not obtain any permits from the State Water Board or the Lahontan Water Board.

### INSPECTION OBSERVATIONS

No significant changes from the site conditions described in the August 5, 2020 inspection report were noted. Water Board and TRPA staff once again advised the property owner that the downslope perimeter BMPs (silt fence and fiber rolls) were both incomplete (i.e. incomplete coverage below disturbed soil areas) and deficient (not installed correctly).

#### POST-INSPECTION DISCUSSION TOPICS:

Water Board staff once again advised the property owner that he should seek assistance from qualified professionals (as recommended during the August 5, 2020 inspection and in the September 14, 2020 NOV). To date, the property owner has not enlisted qualified professionals and continues to attempt to implement stie stabilization activities with his own crew. Based on interviews with the property owner during the August 5, 2020 and October 1, 2020 inspections, and observations of the work performed by the property owner during the August 5, 2020 and October 1, 2020 inspections, the property owner's understanding of applicable permits and regulations, understanding of appropriate stabilization and winterization requirements, and understanding of appropriate design and deployment of BMPs is deficient.

#### PHOTOS:

92 site stabilization status photos were taken by Jim Carolan on 10/1/2020 using Nikon Coolpix W300 camera. These photos have been placed in the project file.

**Fact Sheet – Requirements for Submitting Technical Reports  
Under Section 13267 of the California Water Code**

October 8, 2008

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**What does it mean when the regional water board requires a technical report?**

Section 13267<sup>1</sup> of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged...waste that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires".

**This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?**

Providing the required information in a technical report is not an admission of guilt or responsibility. However, the information provided can be used by the regional water board to clarify whether a given party has responsibility.

**Are there limits to what the regional water board can ask for?**

Yes. The information required must relate to an actual or suspected discharge of waste, and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its request.

**What if I can provide the information, but not by the date specified?**

A time extension can be given for good cause. Your request should be submitted in writing, giving reasons. A request for a time extension should be made as soon as it is apparent that additional time will be needed and preferably before the due date for the information.

**Are there penalties if I don't comply?**

Depending on the situation, the regional water board can impose a fine of up to \$1,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information is guilty of a misdemeanor and may be fined as well.

**What if I disagree with the 13267 requirement and the regional water board staff will not change the requirement and/or date to comply?**

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the date of the Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**Claim of Copyright or other Protection**

Any and all reports and other documents submitted to the Regional Board pursuant to this request will need to be copied for some or all of the following reasons: 1) normal internal use of the document, including staff copies, record copies, copies for Board members and agenda packets, 2) any further proceedings of the Regional Board and the State Water Resources Control Board, 3) any court proceeding that may involve the document, and 4) any copies requested by members of the public pursuant to the Public Records Act or other legal proceeding.

If the discharger or its contractor claims any copyright or other protection, the submittal must include a notice, and the notice will accompany all documents copied for the reasons stated above. If copyright protection for a submitted document is claimed, failure to expressly grant permission for the copying stated above will render the document unusable for the Regional Board's purposes, and will result in the document being returned to the discharger as if the task had not been completed.

**If I have more questions, who do I ask?**

Requirements for technical reports normally indicate the name, telephone number, and email address of the regional water board staff person involved at the end of the letter.

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<sup>1</sup> All code sections referenced herein can be found by going to [www.leginfo.ca.gov](http://www.leginfo.ca.gov). Copies of the regulations cited are available from the Regional Board upon request.