

Lahontan Regional Water Quality Control Board

In the Matter of:

**Stonebridge Properties LLC
and Teichert Construction
Coldstream Planned Community
Nevada County**

ORDER R6-2025-0009

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board), on behalf of the Lahontan Water Board Prosecution Team (Prosecution Team), and Stonebridge Properties LLC and Teichert Construction (Dischargers) (collectively known as the Parties) and is presented to the Lahontan Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. On August 24, 2018, Stonebridge Properties LLC submitted a Notice of Intent for coverage under the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, as amended by 2010-0014-DWQ* (Construction General Permit or Permit) for what is now known as the Coldstream Planned Community construction project. Stonebridge Properties, LLC, the Legally Responsible Party (LRP), hired Teichert Construction as the contractor for the project (referred to collectively herein as Dischargers).
3. The Coldstream Planned Community construction project encompasses 182 acres, and is a large mixed-use development, including about 10 acres of commercial use, 61 acres of residential use, 109 acres of open space and recreational uses, and a recreational trail along Cold Stream Creek. Initial work began in 2018 and construction is expected to continue through 2024 or later. After horizontal work is completed on each phase of the project, Stonebridge Properties LLC sells the lots to other developers. These developers then obtain their own coverage under the Construction General Permit and complete vertical construction. The project is

ESSRA MOSTAFAVI, CHAIR | BEN LETTON, ACTING EXECUTIVE OFFICER

located south of Highway 80 and the Donner Pass Road offramp. Storm water from the site flows to Cold Stream Creek, a tributary of the Truckee River.

4. **Violation 1:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section G of the Construction General Permit by failing to perform weekly inspections from January 6 through April 27, 2020 (17 inspections) and from November 23, 2020 through June 27, 2022 (84 weeks) for a total of 101 days of alleged violation.
5. **Violation 2:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section B.1 of the Construction General Permit by failing to implement good housekeeping best management practices (BMPs) for construction materials on at least 31 instances found during 16 inspections, for a total of 16 days of alleged violation.
6. **Violation 3:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section B.2 of the Construction General Permit by failing to implement good housekeeping BMPs for waste management on at least 25 instances found during 24 inspections, for a total of 24 days of alleged violation.
7. **Violation 4:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section B.3 of the Construction General Permit by failing to implement good housekeeping BMPs for vehicle storage, fueling and maintenance on at least 28 instances found during 28 inspections, for a total of 28 days of alleged violation.
8. **Violation 5:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section D of the Construction General Permit by failing to implement erosion control measures on at least 3 instances found during three inspections, for a total of 3 days of alleged violation.
9. **Violation 6:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section E of the Construction General Permit by failing to implement sediment control measures on at least 124 instances found during 49 inspections, for a total of 49 days of alleged violation.
10. These allegations constitute violations of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c). The Prosecution Team could have alleged separate sub-category violations, but has elected to consolidate the violations via days of violations as described above for purposes of settlement.
11. On April 4, 2017, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2017-0020, which adopted the 2017 *Water Quality Enforcement Policy* (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5,

2017. On December 5, 2023, the State Water Board adopted Resolution No. 2023-0043, which adopted the *Water Quality Enforcement Policy* (2024 Enforcement Policy); on September 5, 2024, changes were made to Attachment D through the adoption of Resolution No. 2024-0027. The 2024 Enforcement Policy was approved by the Office of Administrative Law and became effective on November 7, 2024. The 2024 Enforcement Policy confirms that the Lahontan Water Board should use the version of the policy in effect on the date of the violation(s) at issue, which in this case is the 2017 Enforcement Policy. Amendments in the 2024 Enforcement Policy that are identified as clarifications or procedural changes may be applied to new or pending enforcement matters once the policy is approved by the Office of Administrative Law, which was November 7, 2024. Substantive changes in the 2024 Enforcement Policy can only be applied prospectively to *violations* which occur on or after the Policy's effective date unless a discharger consents to their retroactive application; all alleged violations in this matter occurred before November 7, 2024 and no consent to retroactive application has been given. As such, for purposes of this Settlement Agreement, the Enforcement Policy referenced below is the 2017 Enforcement Policy with any applicable or relevant clarifications or procedural changes from the 2024 Enforcement Policy.

12. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology incorporates Water Code sections 13327 and 13385(e) that require the Lahontan Water Board to consider specific factors when determining the amount of civil liability to impose, including "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue its business, any voluntary cleanup efforts undertake, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require." The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the Enforcement Policy as discussed in Attachment A, the terms of which are incorporated herein by reference.
13. Pursuant to the Enforcement Policy, section VI.B. (Settlement Considerations), the Prosecution Team agreed during settlement negotiations to reduce the administrative civil liability amount contained in the penalty calculation methodology included as Attachment A in consideration of hearing and/or litigation risks.
14. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations alleged in this Stipulated Order and Attachment A, without administrative or civil litigation and by presenting this Stipulated Order to the Lahontan Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

15. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against the Dischargers in the amount of **\$917,199 (nine hundred seventeen thousand one hundred ninety-nine dollars)**. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

1. **Jurisdiction:** The Parties agree that the Lahontan Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
2. **Administrative Civil Liability:** The Dischargers hereby agree to the imposition of an administrative civil liability in the amount of **nine hundred seventeen thousand one hundred ninety-nine dollars (\$917,199)** to resolve the violations specifically alleged in this Stipulated Order as follows:

- a. No later than thirty (30) days after the effective date of this Order, the Dischargers shall submit a check for **four hundred seventy-two thousand one hundred and ninety-nine dollars (\$472,199)** to the State Water Board. The check shall be made payable to the "State Water Pollution Cleanup and Abatement Account," shall reference Order No. R6-2025-0009, and shall be mailed to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Dischargers shall provide a copy of the check via email to the State Water Board, Office of Enforcement (Julie.Macedo@waterboards.ca.gov) and to the Lahontan Water Board (Shelby.Barker@waterboards.ca.gov).

- b. The Parties agree that the remaining **four hundred forty-five thousand dollars (\$445,000)** (SEP Amount) of the administrative civil liability shall be paid to the Truckee River Watershed Council (TRWC or SEP Implementing Party) for implementation of the Donner Creek Restoration Supplemental Environmental Project (SEP), as described herein and in Attachment B, which is hereby incorporated by reference. The Donner Creek Restoration SEP will improve instream and riparian habitat, restore natural functions to promote ecosystem recovery and increase resilience against climate change, and is designed to improve water quality in Donner Creek and the downstream

Truckee River. No later than thirty (30) days after the effective date of this Order, the Discharger shall submit a check for \$445,000 to the TRWC. The check shall be made payable to the TRWC, reference the Order number on page one of this Order, and be mailed to:

Truckee River Watershed Council
10418 Donner Pass Road
Truckee, California 96161

The Dischargers shall provide a copy of the check via email to the State Water Board, Office of Enforcement (Julie.Macedo@waterboards.ca.gov) and to the Lahontan Water Board (Shelby.Barker@waterboards.ca.gov).

3. **SEP Requirements:** The Parties agree that the SEP Amount specified in Section III, paragraph 2.b. is for the Donner Creek Restoration SEP as identified in Attachment B, and that SEP Amount shall be treated as a suspended administrative civil liability. For purposes of this Stipulated Order, the Parties agree that both Stonebridge Properties LLC and Teichert Construction shall remain liable for the suspended administrative civil liability until completion of the Donner Creek Restoration SEP in accordance with Attachment B and this Stipulated Order (expected by December 1, 2025). At that time, and once the Satisfaction of Order is issued by the Lahontan Water Board in accordance with paragraph 17 of this Stipulated Order, the SEP Amount shall be permanently suspended. The Lahontan Water Board is entitled to recover any Donner Creek Restoration SEP funds that are not expended in accordance with this Stipulated Order. A detailed project description, including milestones, budgets, and performance measures are attached hereto as Attachment B.
4. **Nexus to the Violation:** The State Water Board's SEP Policy requires that a SEP have a nexus to the alleged violation. (SEP Policy, section VIII.F.) The violations alleged in this Stipulated Order relate to storm water management at the Coldstream Planned Community construction site, which is within the Truckee River Watershed. The Donner Creek Restoration SEP has a geographic nexus to the alleged violations as it is also within the Truckee River Watershed.
5. **SEP Categories:** The SEP Policy provides for seven categories of SEPs. (SEP Policy, section V.) The Donner Creek Restoration SEP falls under the Environmental Restoration and Protection category.
6. **SEP Oversight:** TRWC will oversee and implement the Donner Creek Restoration SEP on behalf of the Dischargers. The Lahontan Water Board will provide additional oversight of the Donner Creek Restoration SEP which includes, but is not limited to, updating regulatory and records databases, reviewing and evaluating progress, conducting site inspections, reviewing the final completion report, and verifying appropriate expenditure of the SEP Amount. The Dischargers

are responsible for any charged costs for any reasonable and necessary Lahontan Water Board staff oversight, which is not included in the SEP Amount.

7. **SEP Completion Date:** As shown in Attachment B, the SEP is expected to be completed by December 1, 2025.
8. **Reporting Requirements for the SEP:** The Dischargers will coordinate with the TRWC to provide the following reports to the Lahontan Water Board:
 - a. **Status Reports:** Status Reports must be submitted in accordance with the schedule provided in Attachment B (i.e., by July 15, 2025; October 15, 2025; and December 15, 2025). The Status Reports must describe the tasks completed and funds expended to date, and remaining work to complete. In addition, the Status Reports must describe whether the TRWC has complied with the milestones contained in Attachment B, and if not, the cause(s) of the delay(s) and the anticipated date of compliance with this Stipulated Order. The Status Reports may also include descriptions and photos of activities completed and an analysis of the Donner Creek Restoration SEP's progress. Status reports shall be submitted to Shelby Barker at Shelby.Barker@waterboards.ca.gov. If there is any delay in the submission of a report and/or completion of the Donner Creek Restoration SEP, the Dischargers will notify the Lahontan Water Board as soon as possible.
 - b. **Certification of SEP Completion:** No later than **four months** after the SEP Completion Date, the Dischargers will coordinate with the TRWC and submit a final report that documents completion of the SEP and provides a certified statement (Certification of SEP Completion), signed under penalty of perjury, that documents the following:
 - i. Certification of completion in accordance with the terms of this Stipulated Order, addressing how the expected outcome(s) for the project were met,
 - ii. Certification documenting the expenditures by the TRWC for the Donner Creek Restoration SEP, and
 - iii. Certification that the TRWC followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act, Porter-Cologne Water Quality Control Act, and federal Clean Water Act.

Documentation of SEP completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Lahontan Water Board to evaluate completion of the SEP and the costs incurred.

9. **Publicity Associated with the SEP:** Whenever the Dischargers, or their agents, publicizes one or more SEP elements, it shall state in a prominent manner that the

project was undertaken as part of a settlement of a Lahontan Water Board enforcement action against the Dischargers.

10. **Site Inspections:** The Dischargers shall coordinate with TRWC to allow the Lahontan Water Board staff to inspect the Donner Creek Restoration SEP implementation locations during normal business hours as well as review any documents associated with Donner Creek Restoration SEP implementation at any time without notice.
11. **SEPs are Above and Beyond the Dischargers' Obligations:** The Donner Creek Restoration SEP included in this Stipulated Order contains only measures that go above and beyond the Dischargers' obligations. The Donner Creek Restoration SEP is not part of the Dischargers' normal business nor are the Dischargers otherwise legally required to implement any portion of the Donner Creek Restoration SEP.
12. **No Benefit to Lahontan Water Board Functions, Members, or Staff:** The Donner Creek Restoration SEP provides no direct fiscal benefit to the Lahontan Water Board's functions, its members, its staff, or any family member of staff.
13. **Lahontan Water Board Not Liable:** The Lahontan Water Board and its members, staff, attorneys, and representatives shall not be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Dischargers or their directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
14. **Request for Extension of Completion Date:** If the Dischargers cannot complete the Donner Creek Restoration SEP by the SEP Completion Date due to circumstances beyond the control of the Dischargers or their agents and which could not have been reasonably foreseen and prevented or minimized by the exercise of due diligence, the Dischargers shall notify the Executive Officer in writing within thirty (30) days of the date that the Dischargers first knew of the event or circumstance that caused or would cause a violation of this Order. The notice shall describe the reason for the non-compliance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken to minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The Dischargers shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the Dischargers or their agents will be made by the Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite timely good faith efforts, due to circumstances beyond the Dischargers' control that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the Dischargers or their agents, a new compliance

deadline shall be established. The Executive Officer will endeavor to grant a reasonable extension of time if warranted.

15. **Failure to Expend the SEP Amount on the Approved SEP:** If the Dischargers are not able to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP Amount was spent on the completed Donner Creek Restoration SEP, the Dischargers shall pay the difference between the SEP Amount and the amount the Dischargers can demonstrate was actually spent on the Donner Creek Restoration SEP (the Difference). The Executive Officer shall issue a "Notice of Violation" that will require the Dischargers to pay the Difference to the State Water Pollution Cleanup and Abatement Account within thirty (30) days of the Notice of Violation's issuance date. The Dischargers shall submit payment consistent with the payment method described in Section III, paragraph 2.a., above. Payment of the Difference shall satisfy the Dischargers' obligations to implement the Donner Creek Restoration SEP.
16. **Failure to Complete the SEP:** If the Donner Creek Restoration SEP is not fully implemented by the SEP Completion Date listed in Attachment B, or if there has been a material failure to satisfy a project milestone, the Executive Officer shall issue a "Notice of Failure to Complete SEP". The amount of suspended liability owed shall be determined via a Motion for Payment of Suspended Liability before the Lahontan Water Board or its delegee. The Dischargers shall be liable to pay the entire SEP Amount, or, if shown by the Dischargers, some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing, or as determined by the Motion for Payment of Suspended Liability. Unless the Lahontan Water Board or its delegee determines otherwise, the Dischargers shall not be entitled to any credit, offset, or reimbursement from the Lahontan Water Board for expenditures made on the Donner Creek Restoration SEP prior to the issuance date of the Notice. Within thirty (30) days of the Lahontan Water Board's or its delegee's determination of the suspended liability amount assessed for the Dischargers to pay, the Dischargers shall submit payment consistent with the payment method described in Section III, paragraph 2.a., above. Payment of the assessed amount shall satisfy the Dischargers' obligations to implement the Donner Creek Restoration SEP.
17. **Lahontan Water Board Acceptance of Completed SEP:** Upon the Dischargers' satisfaction of its obligations under this Stipulated Order, and the completion of the Donner Creek Restoration SEP, the Lahontan Water Board or its delegee shall issue a "Satisfaction of Order." The issuance of the Satisfaction of Order will terminate any further obligation of the Dischargers under this Stipulated Order and permanently suspend the SEP Amount.
18. **Compliance with Applicable Laws and Regulatory Changes:** The Dischargers understand that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated

Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject them to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Dischargers from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

19. Party Contacts for Communications Related to Stipulated Order:

For the Lahontan Water Board:

Shelby Barker, Enforcement Coordinator

Lahontan Regional Water Quality Control Board

(760) 241-7307

Shelby.Barker@waterboards.ca.gov

Julie Macedo, Senior Staff Counsel

State Water Resources Control Board, Office of Enforcement

(916) 323-6947

Julie.Macedo@waterboards.ca.gov

For the Dischargers:

Bryan Ramirez Regional Manager,

Teichert Construction

(530) 304-2636

bramirez@teichert.com

Mike Isle

Stonebridge Properties LLC

(916) 296-3884

misle@teichert.com

Kim Yapchai, Chief Legal Officer

Teichert, Inc

(916) 484-3278

kyapchai@teichert.com

Nicole E. Granquist

Stoel Rives LLP

(916) 527-6243

Nicole.granquist@stoel.com

20. Attorneys' Fees and Costs: Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

21. Covered Matters: Upon the Lahontan Water Board's adoption of this Order, this Order presents a final and binding resolution and settlement of the alleged violations in this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline

specified in Section III, paragraph 2.a. and the successful completion of the Donner Creek Restoration SEP as outlined in this Stipulated Order and Attachment B, or full payment of the associated SEP Amount.

22. **Public Notice:** The Dischargers understand that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Lahontan Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Lahontan Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Lahontan Board, or its delegee. The Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
23. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
24. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Lahontan Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Lahontan Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Lahontan Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
25. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Lahontan Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
26. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
27. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Lahontan Water Board or its delegee.

28. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
29. **If Order Does Not Take Effect:** The Dischargers' obligation under this Stipulated Order is contingent upon the entry of the Order of the Lahontan Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Lahontan Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Lahontan Water Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
- a. Objections related to prejudice or bias of any of the Lahontan Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Lahontan Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.
30. **Waiver of Hearing:** The Dischargers have been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Lahontan Water Board, hereby waive their right to a hearing before the Lahontan Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Lahontan Water Board or State Water Board for hearing, the Dischargers do not waive the right to a hearing before an order is imposed.
31. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Lahontan Water Board, the Dischargers hereby waive the right to petition the Lahontan Water Board's adoption of the Stipulated Order as written for

review by the State Water Board, and further waive the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

32. **Covenant Not to Sue:** The Dischargers covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.
33. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
34. **Necessity for Written Approvals:** All approvals and decisions of the Lahontan Water Board under the terms of this Stipulated Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Lahontan Water Board regarding submissions or notices shall be construed to relieve the Dischargers of their obligation to obtain any final written approval required by this Stipulated Order.
35. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, except for the TRWC, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
36. **No Admission of Liability/ No Waiver of Defenses:** In settling this matter, the Dischargers do not admit to any of the allegations stated herein or admit to any violations of the Water Code, or any other federal, State, or local law or ordinance. By entering this Stipulated Order, the Dischargers do not waive any defenses or arguments related to any future enforcement brought by the Lahontan Water Board. The existence of this settlement, however, may be considered in future enforcement actions pursuant to the “history of violations” factor.
37. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
38. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Lahontan Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
39. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party

hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

Settlement Agreement and Stipulation for Entry of Administrative Civil Liability

Order R6-2025-0009

Stonebridge Properties LLC and Teichert Construction

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IT IS SO STIPULATED.

**California Regional Water Quality Control Board Prosecution Team
Lahontan Region**

By: (see page 15)

Ben Letton, Acting Executive Officer

Date

Stonebridge Properties, LLC

By:

Mike Isle

Date

Teichert Construction

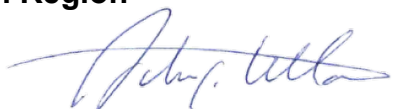
By:

Bryan Ramirez

Date

IT IS SO STIPULATED.

**California Regional Water Quality Control Board Prosecution Team
Lahontan Region**

By:  _____ 4/18/25
Ben Letton, Acting Executive Officer Date

Stonebridge Properties, LLC

By: _____
Mike Isle Date

Teichert Construction

By: _____
Bryan Ramirez Date

**HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE LAHONTAN
REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:**

1. The foregoing Stipulation, including Attachments A and B, is fully incorporated herein and made part of this Order.
2. In accepting the foregoing Stipulation, the Lahontan Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Lahontan Water Board's consideration of these factors is based upon information obtained by the Lahontan Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Lahontan Water Board.
3. This is an action to enforce the laws and regulations administered by the Lahontan Water Board. The Lahontan Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
4. The Executive Officer of the Lahontan Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Lahontan Region.



JAN ZIMMERMAN
EXECUTIVE OFFICER DELEGATE
Lahontan Regional Water Quality Control Board

July 15, 2025

Date

Attachment A: Penalty Calculation Methodology
Attachment B: Donner Creek Restoration SEP Workplan

**FINAL ATTACHMENT A
ALLEGED VIOLATIONS AND FACTORS IN DETERMINING
ADMINISTRATIVE CIVIL LIABILITY**

**STONEBRIDGE PROPERTIES LLC AND TEICHERT CONSTRUCTION
COLDSTREAM PLANNED COMMUNITY
NEVADA COUNTY**

This document provides details to support a discretionary monetary liability in response to Stonebridge Properties LLC and Teichert Construction's alleged violations of the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, as amended by 2010-0014-DWQ* (Construction General Permit or Permit) at the Coldstream Planned Community (Site) construction project. The Site is south of the intersection of Coldstream Road, Donner Pass Road, and Interstate 80, in Truckee, Nevada County. Within this document, Stonebridge Properties LLC and Teichert Construction are either referred to jointly as "Dischargers" or individually as "Stonebridge" and "Teichert Construction".

The Lahontan Regional Water Quality Control Board (Lahontan Water Board) Prosecution Team has derived the proposed administrative civil liability by applying the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (applicable when the alleged violations accrued) and the State Water Board's 2024 Water Quality Enforcement Policy¹ (Enforcement Policy), as applicable regarding clarification or procedural changes.

Application of the Enforcement Policy

The Enforcement Policy establishes a methodology for assessing administrative civil liability to address the factors required by California Water Code section 13385, subdivision (e), including "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require." This document applies the methodology associated with the Enforcement Policy's steps, as discussed in detail below.

Construction Project and Responsible Parties

On August 24, 2018, Stonebridge submitted a Notice of Intent (NOI) for what was then known as the Coldstream Deep Dynamic Compaction project. Stonebridge is identified as the Legally Responsible Party (LRP) and Stonebridge hired Teichert Construction as the contractor to complete the project. As required by the Construction General Permit, the NOI included a SWPPP (Storm Water Pollution Prevention Plan) which described

¹https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

the project as dynamic compaction of 20 acres of a former aggregate quarry. The dynamic compaction was necessary to increase the density and engineering properties of fill material such that the site could be developed in the future.

The SWPPP has been revised eight times (as of September 2023) to reflect activities after dynamic compaction was completed. While more narrowed areas of the project were/are subject to the SWPPP during various phases, the entire project now encompasses approximately 182 acres, and is a large mixed-use development, including about ten acres of commercial development, 61 acres of residential development with 300 units, 109 acres of open space and recreational uses, and a recreational trail along Cold Stream Creek. After horizontal work (grading, utilities, and roads) is completed on each phase of the project, Stonebridge sells lots to other developers. These developers then obtain their own coverage under the Construction General Permit and complete vertical construction.

Deep dynamic compaction began in late 2018 and continued in 2019. According to the various SWPPP amendments, the 2019 construction season also included installation of roadways, paved parking areas, infrastructure, and pads for 58 townhomes, four live-work units, seven apartment buildings, and commercial space in the Phase 1 section of the Site. In 2020, deep dynamic compaction continued, and the Dischargers continued installing infrastructure and began constructing a multi-use trail along Donner Creek. Construction did not take place in 2021. In 2022, the Dischargers began building a second multi-use trail along Cold Stream Creek. In 2023, the trail was completed and associated drainage improvements were constructed. The Phase 2 and 3 residential areas, as well as restoration of the Cold Stream Creek floodplain, will be completed in 2024 or later. The SWPPP and SWPPP amendments continue to state that the site is Risk Level 2, and therefore the Dischargers must implement the "Risk Level 2 Requirements" found in Attachment D of the Construction General Permit.

Based on interactions with both Stonebridge and Teichert Construction, the Prosecution Team asserts that it is appropriate to name both parties in the Stipulated Order. Liability is joint and several, and the regional boards do not apportion liability. When examining discharger-specific factors, sometimes the actions of Stonebridge and Teichert Construction were similar and should be judged similarly. In other alleged violations, there was specific conduct by one or the other that impacted the Enforcement Policy factor ultimately selected. In these cases, the more egregious conduct was noted and utilized as a basis for the penalty factor.

Summary of Alleged Violations

This administrative civil liability addresses alleged violations of the Construction General Permit which occurred during a three-year period, from January 1, 2020 through November 3, 2022. The Prosecution Team has elected not to include alleged violations that may have occurred (a) from the beginning of construction in September 2018 through December 31, 2019, or (b) after November 3, 2022.

Table 1, below, summarizes the alleged violations that are the subject of this liability assessment, and the Enforcement Policy factors that were used to determine a recommended penalty. The remainder of this document contains a full description of each alleged violation, an assessment of the factors used to determine the base liability for each alleged violation, and a discussion of the additional factors used to determine the final proposed liability.

This recommended liability represents a significant penalty across a broad range of Construction General Permit requirements. The Prosecution Team is proceeding against both Stonebridge and Teichert Construction due to alleged disregard for some regulatory requirements while undertaking a significant, long-term construction project. The Site is bisected by Cold Stream Creek and contains several large ponds, establishing the potential for water quality impacts.

Repeated violations can represent a lack of planning or inexperience, which we do not consider to be the case here. As we have outlined in this document, the Prosecution Team is not pursuing every possible violation, but we do want to stress the types of violations noted and the inadequate response by the Dischargers. Pursuing monetary enforcement remains discretionary for the regional board, and enforcement resources are limited. However, given the persistent nature of the alleged violations, the failure to resolve such alleged violations quickly and completely when specifically identified, and the lack of documented weekly inspections, which are designed to be a “first line” defense mechanism to protect against environmental harm, the Prosecution Team determined that a substantial penalty was necessary here.

| Table 1: Summary of Alleged Violations | | | | | | |
|---|--|-------------------|-------------|----------------------|------------------|---|
| Summary of Alleged Violations | Potential for Harm and Deviation from Requirements | Days of Violation | Culpability | History of Violation | C/C ² | Base Liability |
| 1. Failure to perform weekly inspections. (CGP Attach D, Section G.2). Dischargers did not inspect from January 6-April 27, 2020 (17 weeks) and from November 23, 2020 through June 27, 2022 (84 weeks). | Harm=moderate Dev=moderate PDF=0.30 | 101 days | 1.3 | 1.0 | 1.0 | \$393,900 Reduced under “Other Factors” to \$140,400 |

² Cleanup and Cooperation

Table 1: Summary of Alleged Violations

| Summary of Alleged Violations | Potential for Harm and Deviation from Requirements | Days of Violation | Culpability | History of Violation | C/C² | Base Liability |
|---|---|--------------------------|--------------------|-----------------------------|------------------------|-----------------------|
| 2. Failure to implement BMPs for construction materials (CGP Attach D, Section B.1). Dischargers had 31 violations found during 16 inspections (30% of inspections). Material was not covered/bermed or protected from rain, hazardous material not properly stored, and trash not picked up. | Harm=moderate Dev =moderate PDF=0.35 | 16 days | 1.3 | 1.0 | 1.3 | \$94,640 |
| 3. Failure to implement BMPs for waste management (CGP Attach D, Section B.2). Dischargers had 25 violations over 24 days. Material not protected from wind/rain, no spill kit, concrete washout to ground. | Harm=moderate Dev =moderate PDF=0.35 | 24 days | 1.3 | 1.0 | 1.3 | \$141,960 |
| 4. Failure to implement BMPs for vehicle storage and maintenance (CGP Attach D, Section B.3). Dischargers had 28 violations found during 28 inspections (52% of inspections). Oil/grease/fuel drips and leaks, lack of a designated parking area. | Harm=moderate Dev =moderate PDF=0.35 | 28 days | 1.3 | 1.0 | 1.3 | \$165,620 |
| 5. Failure to implement BMPs for erosion control (CGP Attach D, Section D). Dischargers had 3 violations found during 3 inspections (6% of inspections). Lack of dust control measures, bare soil not protected. | Harm=moderate Dev =moderate PDF=0.30 | 3 days | 1.2 | 1.0 | 1.1 | \$11,880 |
| 6. Failure to implement BMPs for sediment control (CGP Attach D, Section E). Dischargers had 124 violations found during 49 inspections (91% of inspections). BMPs missing, improperly installed, or not maintained; construction entrances and/or exits not stabilized; storm drain inlets not protected; sediment on bridge or road; lack of sweeping. | Harm=moderate Dev =moderate PDF=0.35 | 49 days | 1.4 | 1.0 | 1.4 | \$336,140 |

Table 1: Summary of Alleged Violations

| Summary of Alleged Violations | Potential for Harm and Deviation from Requirements | Days of Violation | Culpability | History of Violation | C/C ² | Base Liability |
|---|---|-------------------|-------------|----------------------|------------------|----------------|
| Combined Base Liability all violations: | \$1,144,140 (before "Other Factors") | | | | | |
| Economic Benefit: | \$66,632 | | | | | |
| Other Factors as Justice May Require: | Reduce base liability for Violation 1 as described in text Add staff costs of \$26,819 Base liability becomes \$917,199 | | | | | |
| Maximum and Minimum Liability: | Maximum: \$2,210,000 Minimum is economic benefit + 10%: \$73,296 | | | | | |
| Final Proposed Liability: | \$917,199 | | | | | |

ALLEGED VIOLATION 1: Failure to Perform Weekly Inspections

The Construction General Permit requires that a discharger perform weekly inspections, which are to be performed or supervised by a Qualified SWPPP Practitioner (QSP) representing the discharger.

This Complaint alleges that the Dischargers failed to perform weekly inspections from (a) the week of January 6, 2020 through the week of April 27, 2020 (17 weeks) and (b) the week of November 23, 2020 through the week of June 27, 2022 (84 weeks). The failure to complete weekly inspections is a violation of Attachment D, Section G.2 of the Construction General Permit, which states: "*Risk Level 2 dischargers shall perform weekly inspections...*" The Dischargers allege inspections were not performed during winter months based on representations from the QSP that such inspections were unnecessary post-winterization of the site, or during periods of construction inactivity.

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The “per day” factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of deviation from the applicable requirements.

Potential for Harm: *Moderate*

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

Storm water from the site flows to Cold Stream Creek, a tributary of the Truckee River. The beneficial uses of Cold Stream Creek, as described in the Water Quality Control Plan for the Lahontan Region (Basin Plan),³ are municipal and domestic supply; agricultural supply; groundwater recharge; water contact recreation; noncontact water recreation; commercial and sportfishing; cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; and spawning, reproduction, and development.

The beneficial uses of the Truckee River as described in the Basin Plan are municipal and domestic supply; agricultural supply; industrial supply; groundwater recharge; freshwater replenishment; hydropower generation; water contact recreation; noncontact water recreation; commercial and sportfishing; cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; migration of aquatic organisms; and spawning, reproduction, and development.

The construction site is immediately adjacent to, and bisected by, Cold Stream Creek. The failure to conduct weekly inspections for the winter of 2020, the entire year of 2021 (during construction inactivity), and the spring of 2022, resulted in the potential for water quality impacts. Regular inspections by a QSP ensures that all necessary Best Management Practices (BMPs) are in place and in working order, thereby limiting the potential for pollutants to discharge from the site.

The QSP’s last inspection in 2019 was conducted on December 3, 2019. The QSP resumed weekly inspections on May 4, 2020. That first inspection found that the silt fence above the creek needed repair, sediment was being tracked off site, the sediment basins needed to be stabilized, and oil leaks needed to be cleaned up. If the QSP had conducted the required weekly inspections between December 2019 and May 2020, then it is reasonable to assume that the BMPs would have been maintained or replaced as needed, and that the site conditions would be protective of water quality.

Similarly, the QSP’s last inspection in 2020, on November 16, 2020, found that sediment needed to be removed from on top of the bridge, soil above the creek needed additional stabilization, trash near the creek needed to be cleaned up, concrete bags were exposed to rain/snow, and the sediment basin needed repair. Weekly inspections did not take place again for almost 18 months, until July 7, 2022. That inspection found

³ https://www.waterboards.ca.gov/lahtontan/water_issues/programs/basin_plan/docs/ch2_bu.pdf

that BMPs were damaged and/or disintegrating and not functioning as intended. If the weekly inspections had been conducted throughout 2021 and the first half of 2022 as required, then it is reasonable to assume that the BMPs would have been maintained or replaced as needed, and that the site conditions would be protective of water quality. A potential for harm of at least moderate is warranted.

Deviation from Requirement: *Moderate*

The Enforcement Policy requires determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements.

The Construction General Permit expressly requires that a discharger perform weekly inspections. During the period covered by this Complaint, the Dischargers did not complete 101 of the required 156 weekly inspections (i.e., 65% of the required inspections were not conducted). The Construction General Permit's inspection-related requirements were compromised in their essential function and therefore the deviation from requirement is characterized as moderate.

Per Day Factor: 0.30

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.30 is assigned.

Step 4. Adjustment Factors

The Enforcement Policy states that three additional factors must be considered for potential modification of the liability amount: (a) the Dischargers' degree of culpability, (b) the Dischargers' prior history of violations, and (c) the Dischargers' voluntary efforts to cleanup, or cooperation with regulatory authorities after the violation. In determining these adjustment factors, the Prosecution Team has reviewed the conduct of both Stonebridge and Teichert Construction in consideration of an appropriate penalty and consequently, an enforcement message to both the two named dischargers and the regulated community as a whole.

Culpability: 1.3

The Enforcement Policy states that higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence.

The Construction General Permit clearly states that weekly inspections must be conducted. The Dischargers' August 20, 2018 SWPPP includes Section 4.1, titled "BMP Inspection and Maintenance," which states that weekly inspections will be performed. Section 7 of the SWPPP, the Construction Monitoring Program, also states that routine BMP inspections will be completed weekly. In addition, the SWPPP includes a copy of the Construction General Permit as an appendix.

Neither the Construction General Permit nor the SWPPP state that inspections may be suspended during the winter or when construction is not occurring, though the

Dischargers allege they were provided differing advice and instruction by the QSP based on the unique winter conditions of the area.⁴

It is noted that the requirement to conduct weekly inspections has been a component of the Construction General Permit since its adoption in 2009. This is nothing new or unusual, and an experienced construction contractor such as Teichert Construction was responsible for ensuring that weekly inspections were implemented at its other construction sites. It should have ensured that weekly inspections were also implemented at this site.

The Dischargers are culpable for the failure to conduct weekly inspections. A multiplier value of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the alleged continuing violation and the ability to resolve it.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations relevant to this matter.

Cleanup and Cooperation: 1.0

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

During the 2022 construction season, Lahontan Water Board staff told the Dischargers that they must follow the Construction General Permit's inspection requirement on a year-round basis. The Dischargers complied by inspecting weekly during the winter of 2022-2023 and have continued weekly inspections during the 2023 construction season. The Dischargers responded as expected, and therefore a multiplier of 1.0 is appropriate.

Days of Violation: 101 days

The Dischargers failed to perform weekly inspections for (a) the week of January 6, 2020 through the week of April 27, 2020 (17 weeks) and (b) the week of November 23, 2020 through the week of June 27, 2022 (84 weeks). A total of 101 inspections were not performed, which equates to 101 days of alleged violation.

The Enforcement Policy provides that, for violations lasting more than 30 days, the Lahontan Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. To adjust the per-day basis, the Lahontan Water Board must make express findings that the violation: (a) is not causing daily detrimental impacts to the environment or the regulatory program; (b) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (c) occurred without the knowledge or control of the violator, who therefore did not take

⁴ For purposes of settlement, the Prosecution Team has elected to not include the Dischargers' alleged failure to conduct pre-storm, storm, and post-storm inspections as violations in this ACL.

action to mitigate or eliminate the violation. If one of these findings is made, an alternate approach may be used to calculate the liability for multiple day violations.

For this alleged violation, the Prosecution Team contends that the lack of weekly inspections resulted in an economic benefit that can be measured on a daily basis and that the Dischargers knew that weekly inspections were not taking place. Therefore, the alleged days of violation may not be adjusted.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The Total Base Liability is determined by multiplying the following: the Per Day Factor, the number of days, the statutory maximum of \$10,000 per day, the degree of culpability factor, the history of violations factor, and the cleanup and cooperation factor.

The statutory maximum liability is determined by multiplying the number of days by the statutory maximum (\$10,000/day, as described in Water Code section 13385).

Total Base Liability: Alleged Violation 1

$$0.30 \times 101 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.0 = \$393,900$$

Statutory Maximum: Alleged Violation 1

$$101 \text{ days} \times \$10,000/\text{day} = \$1,010,000$$

ALLEGED VIOLATION 2: Failure to Implement BMPs for Construction Materials

The Construction General Permit requires that a discharger implement good housekeeping BMPs for construction materials that could impact or threaten to impact water quality. These BMPs are designed to reduce or eliminate the addition of pollutants to storm water runoff from a construction site through analysis of pollutant sources, implementation of proper handling/disposal practices, employee education, and other similar activities.

The Dischargers failed to implement BMPs for construction materials on at least 31 instances over 16 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP during the 2020 and 2022 construction seasons⁵. During this period, 30% of the weekly inspections found one or more alleged BMP violations for construction materials.

The failure to implement BMPs for construction materials is a violation of Attachment D, Section B.1 of the Construction General Permit, which states, in part, *“Risk Level 2 dischargers shall implement good site management (i.e., “housekeeping”) measures for construction materials that could potentially be a threat to water quality if discharged. At*

⁵ A total of 54 inspections took place between May 4-November 16, 2020 and July 7-November 3, 2022.

a minimum, Risk Level 2 dischargers shall implement the following good housekeeping measures:

- b. Cover and berm loose stockpiled construction materials that are not actively being used...*
- c. Store chemicals in watertight containers (with appropriate secondary containment to prevent spillage or leakage) or in a storage shed (completely enclosed).*
- d. Minimize the exposure of construction materials to precipitation...*
- e. Implement BMPs to prevent the off-site tracking of loose construction and landscape materials."*

The following alleged violations related to BMPs for construction materials were observed:

- (1) The QSP's or Lahontan Water Board staff's inspections found that construction materials need to be covered, bermed, or secured, and exposure to precipitation minimized, on the following 11 dates:
2022: July 14, September 15, September 20, September 22, September 30, October 6, October 11, October 14, October 19, October 28, October 31.
- (2) The QSP's or Lahontan Water Board staff's inspections found that chemicals or hazardous materials were not properly stored on the following 5 dates:
2022: September 20, October 11, October 19, October 28, October 31.
- (3) The QSP's or Lahontan Water Board staff's inspections found that trash and/or debris needed to be cleaned up on the following 15 dates:
2020: July 28, August 11, August 18.
2022: July 13, July 18, September 15, September 20, September 22, September 30, October 6, October 11, October 14, October 19, October 28, October 31.

Steps 1 and 2

These steps are not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger properly manage construction materials to protect water quality. However, the Dischargers failed to appropriately cover and protect stockpiles of soil and construction material; failed to properly store hazardous materials, failed to minimize the exposure of construction material to precipitation, and failed to clean up trash and debris from work areas. The

Dischargers' failure to properly store these materials resulted in the potential for them to be transported off-site in storm water.

According to the U.S. Environmental Protection Agency, solid waste and trash create a wide range of problems when they enter surface waters⁶. Aquatic trash affects water quality, endangers plants and animals, and pollutes outdoor spaces. Though all types of aquatic trash can have potentially harmful impacts, plastic waste is particularly concerning because of its tendency to persist in the environment and its widespread production and use.

The U.S. Environmental Protection Agency considers sediment to be the most common pollutant in surface waters⁷. Storm water polluted with sediment degrades beneficial uses as follows: (a) sediment clouds the water, preventing animals from seeing food, (b) cloudy, murky water prevents natural vegetation from growing, (c) sediment in stream beds disrupts the food chain by destroying habitat where the smallest aquatic organisms live, resulting in significant declines in fish populations; (d) sediment can clog fish gills, resulting in lowered growth rates, lowered resistance to disease, and altered egg and larvae development; (e) sediment increases the cost of treating drinking water and can cause taste and odor problems; (f) nutrients released by sediment can stimulate blue-green algae production, resulting in illness to swimmers, pets, and wildlife; and (g) sediment deposits in rivers can alter the flow of water and reduce water depth, making navigation difficult and leading to flooding. A moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement BMPs for construction materials that impact or threaten to impact water quality. Although the Dischargers implemented some BMPs for construction materials, the Dischargers failed to consistently implement other standard BMPs. 30% of the weekly inspections found construction material items that required attention, and therefore the intended effectiveness of the Construction General Permit was partially compromised. A moderate deviation from requirement is appropriate.

Per Day Factor: 0.35

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: 1.3

The Construction General Permit clearly describes the need to implement BMPs related to construction materials, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize each of the alleged violations listed above are described in the SWPPP and its amendments. In addition, the SWPPP includes a copy of the Construction General Permit as an appendix. The Dischargers were fully aware of the

⁶ <https://www.epa.gov/trash-free-waters/learn-about-aquatic-trash>

⁷ https://cfpub.epa.gov/npstbx/files/ksmo_sediment.pdf

requirement to implement good housekeeping practices related to construction materials and incorporated relevant BMPs into its SWPPP.

It is noted that the BMPs related to good housekeeping for construction materials are standard, common-sense BMPs that have been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders of the need to comply with the Construction General Permit, both from their QSP and from Lahontan Water Board staff. As the QSP's weekly inspection reports were completed, they were e-mailed to the LRP (Stonebridge). These inspection reports clearly list the potential violations of the Construction General Permit and the need to make improvements. It is expected that dischargers immediately review their QSP's inspection reports and ensure that remedial actions are implemented within the timeframe found in Attachment D, Section G.3 (i.e., begin addressing the violations within 72 hours and complete repairs as soon as possible).

However, the Dischargers remained in alleged violation week after week, which indicates a higher level of culpability. The failure to effectively implement BMPs related to construction materials for 30% of the weekly inspections implies misconduct and/or negligence, and therefore a multiplier of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violation and the ability to resolve it.

History of Violation: 1.0

Same rationale as provided in Alleged Violation 1.

Cleanup and Cooperation: 1.3

For the 2022 construction season, the Dischargers' failure to implement BMPs for construction materials was documented the second week after construction began. These alleged construction material violations continued throughout the construction season. For example, every inspection from September 15 through October 31 found that the extremely large, numerous stockpiles in the staging area needed to be covered, bermed, or otherwise protected. This alleged violation was first noted during Lahontan Water Board staff's July 14, 2022 inspection, which states that multiple stockpiles in the staging area were not actively being used and were not covered or bermed.

The lack of BMPs for the staging stockpiles was discussed again during Lahontan Water Board staff's inspection of September 15, 2022. The inspection report states, in part:

"I observed significant and widespread sediment control and erosion BMP installation violations in the project's staging/stockpile area. Several thousand cubic yards...of haphazardly placed soil, asphalt, concrete, mulch, demolition debris/trash, and mixed debris stockpiles originating from both the Coldstream-Stonebridge project and the adjacent Caltrans Truckee Rehab Project has been placed in the staging/stockpile area without sediment and erosion control BMPs. The stockpiles were not actively being used on the date of inspection...[I] reminded the inspection attendees that 1) sediment and erosion control BMP related

requirements detailed in the Statewide CGP are still applicable, and 2) the poor condition of the staging/stockpile area indicates that Teichert Construction staff were not managing the staging/stockpile area appropriately."

As stated in the inspection report, the Dischargers were reminded again that they must follow all relevant requirements regarding stockpiles, yet alleged violations continued through the end of the 2022 construction season (and only ceased with the November 3rd inspection, when the site became covered with snow, preventing installation of BMPs).

The alleged construction material violations were discussed with the Dischargers during the Lahontan Water Board's inspections on July 14, September 15, and October 14, 2022, and were also identified in the QSP's weekly reports. The Lahontan Water Board expects a discharger to review its QSP's inspection reports as they are submitted, to begin addressing violations with 72 hours, and to achieve compliance as soon as possible. However, these Dischargers did not do so and instead allowed certain alleged violations to continue week after week, to the extent that 30% of the inspections found alleged construction material violations. The Dischargers failed to voluntarily return to compliance in a timely manner, and their actions were significantly less than what is expected. A factor of 1.3 is appropriate.

Days of Violation: 16 days

The Dischargers failed to implement BMPs for construction materials on at least 31 instances over 16 days.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

Total Base Liability: Alleged Violation 2

$$0.35 \times 16 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.3 = \$94,640$$

Statutory Maximum: Alleged Violation 2

$$16 \text{ days} \times \$10,000/\text{day} = \$160,000$$

**ALLEGED VIOLATION 3:
Failure to Implement BMPs for Waste Management**

The Construction General Permit requires that a discharger implement good housekeeping BMPs for waste management. This includes procedural and structural BMPs for handling, storing, and cleaning up spills, and ensuring proper disposal of waste to prevent their release into stormwater. Such waste may include solid waste, hazardous waste, contaminated soil, concrete wash-out, and sanitary-septic.

The Dischargers failed to implement BMPs for waste management on at least 25 instances over 24 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP during the 2020 and 2022 construction seasons⁸.

The failure to implement good housekeeping BMPs for waste management is a violation of Attachment D, Section B.2 of the Construction General Permit, which states in part, *“Risk Level 2 dischargers shall implement good housekeeping measures for waste management materials, which at a minimum, shall consist of the following:*

- f. Contain and securely protecting [sic] stockpiled waste material from wind and rain at all times unless actively being used.*
- h. Develop a spill response and implementation element of the SWPPP prior to commencement of construction activities. The SWPPP shall require that:*
 - i. Equipment and materials for cleanup of spills shall be available on site and that spills and leaks shall be cleaned up immediately and disposed of properly; and*
 - ii. Appropriate spill response personnel are assigned and trained.*
- i. Ensure containment of concrete washout areas...so there is no discharge into the underlying soil and onto surrounding areas.”*

The following alleged violations related to waste management were observed:

- (1) The QSP or Lahontan Water Board inspections found that the large stockpiles of various materials in the staging/stockpile area were not protected from wind and rain on the following 10 dates:
2022: September 15, September 20, September 22, September 30, October 6, October 11, October 14, October 19, October 28, October 31.
- (2) The QSP or Lahontan Water Board inspections found that the Dischargers did not have a spill response plan or spill kit onsite, or personnel trained to respond to a spill for 13 days. This violation took place from July 7, 2022 (first day of inspection for 2022 construction season) through July 19, 2022 (the date that the QSP inspection report implies that the kit will be delivered to the site).
- (3) The QSP or Lahontan Water Board inspections found that there was evidence of concrete spills on the ground or that a concrete washout area was needed on the following two dates:
2020: June 30, July 15.

⁸ A total of 54 inspections took place between May 4-November 16, 2020 and July 7-November 3, 2022.

Steps 1 and 2.

These steps are not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to prepare for spills, as well as the failure to clean up spills, has the potential to harm beneficial uses. A discharger should strive to prevent spills of construction materials and waste; however, spills and leaks will occur even with the best prevention efforts. This is why the Construction General Permit requires that a discharger have a spill response plan, a spill response kit, and on-site trained personnel that are ready to respond quickly and effectively to any inadvertent spills. As described in Alleged Violation 4, spills of petroleum products were observed at the site. The lack of a spill response plan, spill kit, and trained personnel had the potential to hinder the clean-up of these spills.

Petroleum products contain heavy metals such as zinc, lead, and cadmium, and volatile organic compounds such as benzene, toluene, and xylenes. These compounds are so toxic that just a small amount of petroleum will adversely affect the beneficial uses of a large volume of surface water, ground water, or drinking water⁹. In addition to petroleum spills, the Dischargers also spilled concrete and concrete washout water to the ground. Discharges of concrete waste have a high pH, which can percolate through the soil and alter soil chemistry, inhibit plant growth, and contaminate the groundwater¹⁰. The high pH can also increase the toxicity of other substances in surface waters and soils.

When spills and leaks are not cleaned up immediately, there is the potential for these materials to be transported off-site in storm water or non-storm water discharges and then impact beneficial uses and receiving waters. A moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement BMPs related to waste management. Although the Dischargers implemented some BMPs for waste materials, the Dischargers failed to consistently implement other standard good housekeeping practices. Therefore, the intended effectiveness of the Construction General Permit was partially compromised. A moderate deviation from requirement is appropriate.

Per Day Factor: 0.35

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

⁹ https://cfpub.epa.gov/npstbx/files/KSMO_oil.pdf

¹⁰ <https://www3.epa.gov/npdes/pubs/concretewashout.pdf>

Step 4. Adjustment Factors

Culpability: 1.3

Same rationale as provided for Alleged Violation 2.

History of Violation: 1.0

Same rationale as provided in Alleged Violation 1.

Cleanup and Cooperation: 1.3

For the 2020 construction season, the QSP first reminded the Dischargers that a concrete washout was needed on June 30, 2020. Two weeks later, on July 15, 2022, the QSP reminded the Dischargers again. And then two weeks later, on July 28, 2020, the QSP again told the Dischargers to “be mindful of [concrete washing out on site-should have a washout.” It is the Dischargers’ responsibility to review their QSP’s weekly inspection reports and, as required by the Construction General Permit, begin to address all BMP violations within 72 hours of identification and come into compliance as soon as possible. However, the Dischargers failed to do so.

For the 2022 season, Lahontan Water Board staff’s July 14, 2022 inspection found that the physical copy of the spill response plan and spill cleanup kit had not been on site since the beginning of construction, and the Dischargers had no plans to place a physical copy of the plan at the site, believing that an electronic copy was sufficient.

Despite the fact that these items are standard at construction sites, the Dischargers did not have them onsite, and did not plan to provide them onsite. After a reminder by Lahontan Water Board staff that these items are necessary, it still took the Dischargers at least 13 days from onset of construction before the spill response plan and a spill response kit were placed on-site. This is more time than would be expected of a reasonable discharger, and especially of Teichert Construction, a company with years of experience in the construction industry. The failure to comply with such a basic requirement as placing a spill kit and spill response plan at a construction site results in a higher Cleanup and Cooperation factor.

Similarly, the Dischargers failed to protect the large stockpiles of various materials in the staging/stockpile area from wind and rain. For purposes of this action, the Prosecution Team is alleging that this alleged violation only took place from September 15, 2022 through snowfall on November 3, 2022, though more days likely occurred.

The above examples speak to the Dischargers’ failure to voluntarily return to compliance in a timely manner. The Lahontan Water Board expects a discharger to address these types of alleged violations as they are noted and not allow them to continue for inspection after inspection. The Dischargers’ actions are significantly less than what is expected and therefore a factor of 1.3 is appropriate.

Days of Violation: 24 days

The Dischargers failed to implement BMPs for waste materials on at least 25 instances for at least 24 days.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

| |
|---|
| Total Base Liability: Alleged Violation 3 $0.35 \times 24 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.3 = \$141,960$ |
| Statutory Maximum: Alleged Violation 3 $24 \text{ days} \times \$10,000/\text{day} = \$240,000$ |

ALLEGED VIOLATION 4: Failure to Implement BMPs for Vehicle Storage, Fueling, and Maintenance

The Construction General Permit requires that a discharger implement good housekeeping BMPs for vehicle storage, fueling, and maintenance, and if a spill or leak occurs, it requires that a discharger immediately clean it up and appropriately dispose of the cleaning material.

The Dischargers failed to implement BMPs for vehicle storage, fueling, and maintenance for at least 28 instances over 28 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP from during the 2020 and 2022 construction seasons¹¹. During this period, 52% of the weekly inspections found this type of alleged violation.

The failure to implement good housekeeping Best Management Practices for vehicle storage, fueling, and maintenance is a violation of Attachment D, Section B.3 of the Construction General Permit, which states in part, *“Risk Level 2 dischargers shall implement good housekeeping for vehicle storage and maintenance, which at a minimum, shall consist of the following:*

- a. Prevent oil, grease, or fuel to leak in to [sic] the ground, storm drains or surface waters.*
- b. Place all equipment or vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.*
- c. Clean leaks immediately...”*

The following alleged violations related to vehicle storage, fueling, and maintenance were observed:

¹¹ A total of 54 inspections took place between May 4-November 16, 2020 and July 7-November 3, 2022.

- (1) The QSP's inspections found that oil, grease, or fuel leaks needed to be cleaned up and properly disposed for the following 29 dates:

2020: May 4, May 12, May 18, May 20, May 28, June 1, June 9, June 16, June 23, June 30, July 7, July 15, July 21, July 28, August 4, August 11, August 18, August 24, August 31, September 9, September 15, September 21, September 29, October 7.

2022: September 12, September 20, October 6, October 11.

Steps 1 and 2.

These steps are not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to implement adequate vehicle storage and maintenance BMPs poses a substantial potential for harm. Vehicle fluids contain petroleum and oil byproducts, which contain toxic constituents such as metals and volatile organic compounds. When not cleaned up, vehicle fluid spills will be either directly transported into receiving waters by storm water runoff or indirectly transported when they attach to sediment that is mobilized by storm water runoff. Storm water runoff polluted with vehicle fluids is harmful to beneficial uses in the receiving water ecosystem because, among other items, petroleum products are toxic, smother plants and wildlife, and bioaccumulate¹². A moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger install and maintain BMPs related to vehicle storage, fueling, and maintenance. Although the Dischargers implemented some BMPs for vehicle storage, fueling, and maintenance, the Dischargers failed to consistently implement other expected practices. 52% of the weekly inspections found these types of alleged violations, and therefore the intended effectiveness of the Construction General Permit was partially compromised. A moderate deviation from requirements is appropriate.

Per Day Factor: *0.35*

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*

Same rationale as provided for Alleged Violation 2.

¹² https://cfpub.epa.gov/npstbx/files/KSMO_oil.pdf

History of Violation: 1.0

Same rationale as provided in Alleged Violation 1.

Cleanup and Cooperation: 1.3

For 2020, the Dischargers' failure to clean up spills and leaks was documented by the QSP in the first inspection of the construction season (May 4, 2020). Spills and leaks were then documented in every subsequent inspection in May, June, July, August, September, and early October. The Dischargers are responsible for reviewing the QSP's weekly inspection reports. If the Dischargers had questions or disagreed with the contents, then they should discuss the inspection report with the QSP. As required by the Construction General Permit, a discharger shall begin addressing violations within 72 hours and resolve violations as soon as possible. Six months to address an alleged continuing violation is not a reasonable time. A reasonable discharger would take all necessary steps to prevent spills and leaks, and if they occurred, clean them up immediately. However, the Dischargers allowed spills and leaks to continue to occur, and not be cleaned up, for 52% of the weekly inspections. The Dischargers' actions are less than what is expected and therefore a factor of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the alleged continuing violation and the ability to resolve it.

Days of Violation: 28 days

The Dischargers failed to implement BMPs for vehicle storage, fueling, and maintenance for at least 28 days.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

Total Base Liability: Alleged Violation 4

$$0.35 \times 28 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.3 = \$165,620$$

Statutory Maximum: Alleged Violation 4

$$28 \text{ days} \times \$10,000/\text{day} = \$280,000$$

**ALLEGED VIOLATION 5:
Failure to Control Erosion**

The Construction General Permit requires that a discharger implement actions to control erosion. Erosion control, also referred to as soil stabilization, is designed to prevent soil particles from detaching and becoming transported in stormwater runoff. Erosion control measures protect the soil surface by covering and/or binding soil particles.

The Dischargers failed to install and maintain erosion control measures on at least 3 instances on 3 days, as observed during inspections conducted by Lahontan Water

Board staff and the QSP during the 2020 and 2022 construction seasons¹³. During this period, 6% of the weekly inspections found alleged erosion control violations.

The failure to install and maintain erosion control measures is a violation of Attachment D, Section D of the Construction General Permit, which states, in part,

1. Risk Level 2 dischargers shall implement effective wind erosion control.

2. Risk Level 2 dischargers shall provide effective soil cover for inactive areas¹ and all finished slopes, open space, utility backfill, and completed lots....”

[Inactive areas of construction are areas of construction activity that have been disturbed and are not scheduled to be re-disturbed for at least 14 days.]

The following alleged violations related to the lack of erosion control were observed:

(1) The QSP or Lahontan Water Board staff's inspections found that dust control measures were missing or insufficient on the following two dates: July 7, 2022 and October 14, 2022.

(2) The QSP or Lahontan Water Board staff's inspection found that bare soil areas needed protection on November 3, 2022.

Steps 1 and 2.

These steps are not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger implement actions to control erosion. These measures are necessary to prevent soil particles from detaching during rain or wind events and being transported to surface waters via stormwater runoff. The Dischargers' failure to implement appropriate erosion control BMPs poses a substantial potential for harm to beneficial uses (see expanded discussion regarding sediment impacts for Alleged Violation 2). A moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger install and maintain erosion control BMPs. Although the Dischargers installed and maintained some erosion control measures, the Dischargers failed to consistently implement other expected practices. 6% of the weekly inspections found alleged erosion control violations, and therefore the

¹³ A total of 54 inspections took place between May 4-November 16, 2020 and July 7-November 3, 2022.

intended effectiveness of the Construction General Permit was partially compromised. A moderate deviation from requirement is appropriate.

Per Day Factor: 0.3

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.3 is assigned.

Step 4. Adjustment Factors

Culpability: 1.2

Same rationale as provided for Alleged Violation 2, with a downward adjustment based on BMPs that were installed and maintained.

History of Violation: 1.0

Same rationale as provided in Alleged Violation 1.

Cleanup and Cooperation: 1.1

For both the 2020-2021 and 2021-2022 construction seasons, the Dischargers were reminded multiple times that dust control measures were needed or were inadequate. At times, the QSP inspection reports note that a water truck was spraying water, but this effort was not sufficient throughout both construction seasons. For example, by the end of the 2022 construction season, the staging/stockpile area had grown extremely large, and the Discharger did not provide adequate dust control in this area.

The above example speaks to the Dischargers' failure to voluntarily return to compliance in a timely manner. A reasonable and prudent discharger would have rectified these alleged BMP violations as they were noted and would not have allowed them to occur for 6% of the weekly inspections. The Dischargers' actions are significantly less than is expected and therefore a factor of 1.1 is appropriate.

Days of Violation: 3 days

The Dischargers failed to install and maintain sufficient erosion measures for at least 3 instances on 3 days.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

Total Base Liability: Alleged Violation 5

$$0.30 \times 3 \text{ days} \times \$10,000/\text{day} \times 1.2 \times 1.0 \times 1.1 = \$11,880$$

Statutory Maximum: Alleged Violation 5

$$3 \text{ days} \times \$10,000/\text{day} = \$30,000$$

ALLEGED VIOLATION 6: Failure to Control Sediment

The Construction General Permit requires that a discharger implement actions to control sediment. Sediment controls are designed to intercept and settle out soil particles that have been detached and subsequently transported. These temporary or permanent measures are to complement the site's erosion control measures and can include silt fencing, fiber rolls, sediment basins, storm drain inlet protection, and street sweeping.

The Dischargers failed to install and maintain sufficient sediment control measures on at least 124 instances over 49 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP during the 2020 and 2022 construction seasons¹⁴. During this period, 91% of the weekly inspections found one or more alleged sediment control violations.

The failure to install and maintain sediment control measures is a violation of Attachment D, Section E of the Construction General Permit, which states, in part,

- "1. Risk Level 2 dischargers shall implement and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.*
- 3. ...Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.*
- 4. ... Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at grade breaks of exposed slopes to comply with the sheet flow lengths in accordance with Table 1.*
- 5. ...Risk Level 2 dischargers shall ensure that construction activity traffic to and from the project is limited to entrances and exits that employ effective controls to prevent offsite tracking of sediment.*
- 6. ...Risk Level 2 dischargers shall ensure that all storm drain inlets...are maintained and protected from activities that reduce their effectiveness.*
- 7. ...At a minimum daily (when necessary) and prior to any rain event, the discharger shall remove any sediment or other construction activity-related materials that are deposited on the roads (by vacuuming or sweeping)."*

The following alleged violations related to sediment control were observed:

- (1) The QSP's or Lahontan Water Board staff's inspections found that BMPs were missing, installed improperly, or were not maintained for the following 38 dates:

¹⁴ A total of 54 inspections took place between May 4-November 16, 2020 and July 7-November 3, 2022.

2020: May 4, May 12, May 18, June 9, June 23, June 30, July 7, July 15, July 21, July 28, August 4, August 11, August 18, August 24, August 31, September 21, September 29, , November 16.

2022: July 7, July 13, July 14, July 18, July 25, August 2, August 9, August 15, August 23, August 31, September 7, September 12, September 15, September 20, September 22, September 30, October 6, October 11, October 14, October 19.

- (2) The QSP's or Lahontan Water Board staff's inspections found that construction entrances and/or exits were not stabilized or were not sufficiently stabilized to prevent off-site tracking on the following 33 dates:

2020: May 4, May 12, May 18, May 20, May 28, August 7, August 31, September 9, September 15, October 14, October 19, October 27, November 16.

2022: July 7, July 13, July 14, July 18, August 2, August 9, August 15, August 23, August 31, September 7, September 12, September 15, September 20, September 22, September 30, October 6, October 11, October 14, October 19, October 31.

- (3) The QSP's or Lahontan Water Board staff's inspections found that storm drain inlets were not maintained or protected on the following 15 dates:

2020: May 12, June 16, June 23, June 30, July 15, July 28, September 15.

2022: August 31, September 12, September 15, September 20, September 22, September 30, October 6, October 11.

- (4) The QSP's or Lahontan Water Board staff's inspections found that sediment was present on streets, sediment was present on the bridge over Cold Creek, that immediate access roads were not being inspected or swept frequently enough, or there was off-site tracking on the following 38 dates:

2020: May 4, May 12, May 28, June 1, June 9, June 16, June 23, June 30, July 7, July 15, July 21, July 28, August 4, August 31, September 15, October 14, October 19, October 27, November 16.

2022: July 7, July 13, July 14, August 2, August 9, August 15, August 23, August 31, September 7, September 12, September 15, September 20, September 22, September 30, October 6, October 11, October 14, , October 31, November 3.

Steps 1 and 2.

These steps are not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger control and/or prevent the movement of sediment into surface waters. Sediment control measures are to be designed to complement a site's erosion control measures. The Dischargers' failure to implement appropriate sediment control BMPs poses a substantial potential for harm to

beneficial uses (see expanded discussion regarding sediment impacts for Alleged Violation 2). A moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement sediment control measures during active construction. Although the Dischargers installed some sediment control BMPs, many were either installed incorrectly, did not receive the necessary maintenance, or were missing. 91% of the weekly inspections found alleged sediment control violations, and therefore the intended effectiveness of the Construction General Permit was at least partially compromised. For purposes of settlement, the Prosecution Team is assessing a moderate deviation from requirement.

Per Day Factor: 0.35

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: 1.4

The rationale provided for Alleged Violation 2 is applicable here. However, for this alleged violation, the Culpability is increased for the following reasons:

As described in Lahontan Water Board staff's inspection report of July 14, 2022, Teichert Construction did not follow their QSP's advice and chose to not deploy any required and appropriate BMPs prior to initiating soil disturbing activities immediately adjacent to Cold Stream Creek and riparian areas. The Teichert Construction project manager stated he wanted to install BMPs only once, at the end of the project, and implied that following the Construction General Permit would result in the need for multiple repairs and/or replacement to the BMPs. According to the inspection report, the Teichert Construction project manager stated that he understood that Teichert Construction took a risk by not deploying appropriate BMPs prior to soil disturbance. Lahontan Water Board staff observed that Teichert Construction's activities, occurring without implementation of sediment control BMPs, resulted in significant soil disturbance and soil movement directly above waterbodies. The Dischargers' conscious decision not to employ BMPs prior to the 2022 construction season implies intentional misconduct and gross negligence, and therefore a multiplier of at least 1.4 is appropriate.

History of Violation: 1.0

Same rationale as provided in Alleged Violation 1.

Cleanup and Cooperation: 1.4

The Dischargers exhibited a lack of cleanup and cooperation with respect to sediment control BMPs. A total of 54 inspections were conducted during the 2020 and 2022 construction seasons, and of that, 49 inspections found one or more alleged sediment control violations, with an average of 2.5 alleged sediment control violations per inspection. The Dischargers' actions were significantly less than what is expected, as described in the examples below:

For the 2020 season, inspection reports documented that sediment control BMPs were missing, improperly installed, or not maintained for 25 of 31 inspections. The reports contained the same statements over and over, for example, “repair silt fence above creek” was noted on May 4, May 12, May 18, July 15, July 28, August 4, September 29, and October 14, and “remove soil away from wattles above creek” was noted on June 9, June 23, June 30, July 7, August 4, and August 31.

For the 2022 season, the Lahontan Water Board inspection on July 14, 2022 identified multiple entrances/exits that were not stabilized with tracking controls, as well as sediment that had been tracked onto roads. The Teichert Construction project manager could not explain why tracking controls had not been deployed, and sediment was not cleaned up, even though he had been given two weeks prior notice of the inspection. In response to the inspection report, the Dischargers submitted a *Corrective Action Summary Letter* (dated July 28, 2022) that documented that entrances/exits had been stabilized with tracking controls. And yet, the Dischargers did not maintain these tracking controls, as evidenced by the August, September, and October weekly inspection reports. Every inspection during these three months found that tracking controls were ineffective, and that sediment was being tracked onto roads and/or the bridge over Cold Stream Creek. Although the Dischargers initially rectified the alleged violations after the Lahontan Water Board’s July inspection, the Dischargers failed to maintain the tracking controls for the remainder of the construction season.

A third example is the failure to remove sediment after it was tracked onto streets or the bridge over Cold Stream Creek. This Site is more sensitive than most, as construction equipment was routinely driven across the bridge over Cold Stream Creek. As described in multiple inspection reports, the Dischargers allowed sediment to accumulate on the bridge. By failing to remove this sediment, the Dischargers increased the possibility that sediment would be pushed off the bridge and fall into the creek below. The Dischargers also allowed sediment to accumulate on streets, both within the construction site and outside the site. For the 2020 season, 65% of the inspection reports stated that sediment was present on streets and/or the bridge, that there was off-site tracking, or that sediment was not being swept frequently enough. For the 2022 season, 83% of the inspection reports contained these same statements.

The Lahontan Water Board expects a discharger to review its QSP’s inspection reports as they are submitted, to begin addressing problems within 72 hours, and to achieve compliance as soon as possible. However, these Dischargers did not do so, consistently ignoring their QSP’s reports and choosing to allow alleged sediment control violations to continue week after week.

The Dischargers exhibited disregard for implementing sediment control BMPs. A reasonable and prudent discharger would have rectified these types of alleged BMP violations as they were noted and would not have allowed them to continuously occur. The Dischargers’ actions are significantly less than is expected and therefore a factor of 1.4 is appropriate.

Days of Violation: 49 days

The Dischargers failed to control sediment for at least 124 instances over 49 days. It is not possible to make one of the Findings allowed by the Enforcement Policy to adjust the days of alleged violation because the failure to implement sediment control BMPs (a) had the potential to cause daily detrimental impacts to the environment or the regulatory program; (b) resulted in an economic benefit that can be measured on a daily basis, and (c) occurred with the knowledge of the Dischargers.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

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|---|
| <p>Total Base Liability: Alleged Violation 6</p> <p>$0.35 \times 49 \text{ days} \times \\$10,000/\text{day} \times 1.4 \times 1.0 \times 1.5 = \\$336,140$</p> <p>Statutory Maximum: Alleged Violation 6</p> <p>$49 \text{ days} \times \\$10,000/\text{day} = \\$490,000$</p> |
|---|

Combined Total Base Liability for All Alleged Violations

The combined Total Base Liability for all violations is determined by adding the base liability amount of each alleged violation, as shown on Table 1. The combined Total Base Liability is \$1,144,140.

Step 6. Economic Benefit

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (U.S. EPA) Economic Benefit Model (BEN) program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. For this case, BEN was determined to be the appropriate method, and the economic benefit was calculated using BEN Version 2022.0.0 (June 2022). Using standard economic principles such as time-value of money and tax deductibility of compliance costs, BEN calculates a responsible party's economic benefit derived from delaying or avoiding compliance with environmental statutes. Two types of costs were considered: delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner, such as providing secondary containment for hazardous waste. Avoided costs include expenditures for services that the permittee should have incurred to avoid the incident of noncompliance, such as additional BMP maintenance and QSP inspections.

The alleged violations that were considered in the analysis are: (1) the failure to perform weekly inspections; (2) the failure to implement BMPs for construction material; (3) the failure to implement BMPs for waste management; (4) the failure to implement BMPs for

vehicle storage and maintenance; (5) the failure to implement BMPs for erosion control; and (6) the failure to implement BMPs for sediment control.

To prevent or mitigate Alleged Violation 1, the Dischargers should have ensured the retained QSP performed weekly inspections from January 6, 2020 to April 27, 2020, and November 23, 2020 to June 27, 2022. Failure of the QSP to perform these inspections resulted in an avoided cost and an economic benefit of \$3,463 in 2020 and \$16,945 in 2022.

For Alleged Violation 2, the Dischargers should have bermed and covered construction material, stored hazardous material appropriately, and cleaned up trash and debris at the end of the day. The failure to store hazardous material and clean up trash and debris resulted in an avoided cost and an economic benefit of \$3,440. The economic benefits related to failure to berm and cover construction material are captured in Alleged Violation 3.

For Alleged Violation 3, the Dischargers should have adequately managed stockpiles, had a spill kit on site, and had a concrete washout container on site to manage concrete waste. For this analysis, the failure to manage stockpiles encompasses the failure to berm and cover construction material, resulting in an avoided cost and an economic benefit of \$7,669. The Dischargers ultimately obtained a spill kit, resulting in a delayed cost and an economic benefit of \$1. The failure to have a concrete washout container to manage concrete waste resulted in an avoided cost on the days of alleged violation and an economic benefit of \$259.

The compliance action for Alleged Violation 4 is assumed to be providing drip pans for vehicles. The cost associated with this compliance action is minimal and therefore excluded from this analysis.

For Alleged Violation 5, the Dischargers should have provided adequate dust control on the alleged days of violation and protected the soil along the creek, bike path, and in area 5b, east of the site. The failure to provide adequate dust control on the alleged days of violation resulted in an avoided cost and an economic benefit of \$5,098. The Dischargers eventually protected the soil along the creek and bike path with wood chips, and the 5b area east of the site with hydroseed, resulting in delayed costs and economic benefits of \$21 and \$53, respectively.

For Alleged Violation 6, the Dischargers should have maintained the perimeter, stabilized entrances and exits, provided protection for storm drains, and swept the paths and roads to prevent track out. The Dischargers failed to maintain the perimeter for nine months, resulting in an avoided cost and an economic benefit of \$9,332. The Dischargers ultimately stabilized the entrances and exits, and provided protection around the storm drains, resulting in delayed costs and economic benefits of \$80 for the entrances and exits, \$138 for protection around the storm drains in 2020, and no economic benefit for protection around the storm drains in 2022. The Dischargers should have contracted a sweeper on the alleged days of violation in order to prevent

track out, resulting in an avoided cost and economic benefit of \$12,661 in 2020 and \$7,470 in 2022.

For computational purposes, the penalty payment date was established as April 1, 2024. Changes to this date will affect the total economic benefit. Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be approximately \$66,632.

Step 7: Other Factors as Justice May Require

The Enforcement Policy states that if the Lahontan Water Board believes the amount determined using the above factors is inappropriate, then the amount may be adjusted under the provision for “other factors as justice may require,” but only if express findings are made to justify this adjustment. The Lahontan Water Board Prosecution Team asserts that the base liability for Alleged Violation 1 (failure to perform weekly inspections) has resulted in a liability disproportionate to the nature of the alleged violations and disproportionate to the base liability calculated for other alleged violations within this administrative civil liability methodology. Although Alleged Violation 1 does not meet the Enforcement Policy’s criteria for compressing days, the Prosecution Team is using its discretion to adjust the base liability of Alleged Violation 1 to a comparable amount as if days were compressed using the Enforcement Policy procedure. Therefore, the 101 days of alleged violation are compressed to 36 days, which reduces the liability from \$393,300 to \$140,400.

The Enforcement Policy also provides under “other factors as justice may require” that the cost of investigation and enforcement should be added to the liability amount. From August 7, 2020 through November 30, 2023, an Engineering Geologist with the Lahontan Water Board invested 47 hours, and an Environmental Program Manager, Retired Annuitant, with the State Water Board Office of Enforcement invested 127 hours to investigate, develop enforcement documents, and prepare to bring this matter to hearing. Following the Enforcement Policy guidance, and based on the staff’s position and overhead, these hours were converted into a staff cost of \$26,819. The staff costs do not include the costs accrued by Lahontan Water Board management or by Lahontan Water Board attorneys. The Prosecution Team finds that it is appropriate to increase the Total Base Liability amount by this amount in consideration of these investigation and enforcement costs. Increasing the final proposed liability amount in this manner serves to create a more appropriate deterrent against future violations.

Step 8. Ability to Pay and Continue in Business

The Water Code and the Enforcement Policy require the Lahontan Water Boards to consider a discharger’s ability to pay when imposing administrative civil liabilities (ACLs). These liabilities should be imposed at levels that do not allow violators to obtain a competitive economic advantage over dischargers that voluntarily incur the costs of regulatory compliance. The Lahontan Water Board has no obligation to ensure that a discharger has the ability to pay an ACL amount; instead, the Lahontan Water Board must only consider these factors when imposing a civil liability. If staff makes an initial

showing that a discharger has sufficient income or net worth to pay the proposed ACL, then the burden of proof on this factor shifts to the discharger to produce sufficient evidence that it lacks an ability to pay.

Based on the currently available information, the Prosecution Team has determined the Dischargers are able to pay the proposed ACL and continue in business. Stonebridge Properties LLC and Teichert Construction do not object to this assessment. The Prosecution Team notes that existing or potential private agreements between Stonebridge Properties LLC and Teichert Construction related to indemnity are not relevant to the proposed penalty. As framed, any penalty would be joint and several between the Dischargers.

Step 9. Maximum and Minimum Liability Amounts

Statutory Maximum: The maximum liability is found in Water Code section 13385(c) and is \$10,000 per day per violation. The maximum liability for each alleged violation is shown at the end of each violation description; the combined total maximum liability for all eight violations is \$2,210,000.

Statutory Minimum: Water Code section 13385(e) requires that, at a minimum, the economic benefit derived from the violations be recovered. The Enforcement Policy states that the Lahontan Water Board should strive to impose civil liabilities 10 percent greater than the economic benefit to the violator. The economic benefit derived from the alleged violations addressed in this matter is \$66,632. Adding 10 percent to the statutory minimum brings the minimum liability for these alleged violations to \$73,296.

Step 10. Final Liability Amount

The final liability amount consists of the added amounts for each alleged violation, with any allowed adjustments, provided the amount is within the statutory minimum and statutory maximum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed Administrative Civil Liability is **\$917,199**.

Attachment B to Stipulated Order R6-2025-0009

Donner Creek Restoration Supplemental Environmental Project (SEP) Workplan

Project Title:

Donner Creek Restoration Supplemental Environmental Project (SEP or Project)

Project Location:

Town of Truckee, Nevada County

Project Description:

For over 150 years, Donner Creek has been repeatedly modified for cattle grazing, construction of the Central Pacific Railroad, construction of roads and highways, and residential and commercial development. As such, Donner Creek is a heavily altered and degraded system. The former meandering, sprawling Donner Creek was straightened, confined, redirected, and disconnected from its natural floodplain. Today, the creek has heavily eroded streambanks, limited riparian habitat, high sediment transport, and stormwater runoff. Monitoring completed by Truckee River Watershed Council (TRWC) concludes that Donner Creek contains three of the top sediment discharging sites to the Truckee River within the Town of Truckee. In 2024, TRWC designed the Donner Creek Restoration Project and began restoration construction to address and restore the degraded system at four sites within the Town of Truckee, specifically, downstream of the confluence of Cold Creek and Donner Creek to the confluence of the Truckee River. To complete restoration construction of the Project, TRWC needs additional funding to finalize the Donner Creek Restoration Project.

Restoration of Donner Creek began in 2024 and will continue into 2025. The SEP funds will be utilized to assist in restoring three of the four sites (Site 2, Site 3, and Lower Site 4) benefiting up to 10 acres of wetland and 5,000 feet of stream along Donner Creek to improve water quality, improve instream and riparian habitat, and protect existing infrastructure. Restoration activities include:

- Site 2 - stabilizing eroding banks, installing boulder bendway weirs, and activating a secondary overflow channel to enhance habitat diversity
- Site 3 - grading an existing wetland complex to enhance wet meadow, and increase pollutant trapping, and revegetation with native species.
- Lower Site 4 – installing rootwad bendway weirs, stabilizing eroding banks, and lowering floodplain benches to improve channel complexity, improve habitat diversity, and enhance sediment aggradation.

Organization proposing the project:

Truckee River Watershed Council (TRWC)
c/o Michele Prestowitz
10418 Donner Pass Road
Truckee, CA 96161
mprestowitz@truckeeriverwc.org
(530) 550-8760 x4

Project readiness, including status of CEQA, permits, and landowner agreements:

On August 7, 2024, the Donner Creek Restoration Project was granted a Notice of Exemption (NOE) to satisfy the California Environmental Quality Act (CEQA) requirements for the Project. The Project is categorically exempt from CEQA as a section 15333 Small Habitat Restoration Project because the project disturbance is less than five acres and has a primary goal of improving habitat and water quality. The project has obtained the following permits:

- Clean Water Act Section 404 Permit – United States Army Corps of Engineers
- Clean Water Act Section 401 Certification – Lahontan Regional water Quality Control Board (Lahontan Water Board)
- Habitat Restoration and Enhancement Act 1653 Consistency Determination – California Department of Fish and Wildlife
- Construction Stormwater General National Pollutant Discharge Elimination System (NPDES) Permit – Lahontan Water Board
- Grading Permit – Town of Truckee

Access agreements are in place with Sierra College and the Truckee Donner Land Trust (Site 2), the Truckee Tahoe Unified School District (Site 3), and the CA Department of Fish and Wildlife and Truckee Donner Recreation and Parks District (Site 4). An Encroachment Permit with Caltrans is in process for portions of work within the Caltrans Right-of-Way at Sites 2, 3 and 4.

Total project cost, amount of SEP money requested, other funding sources:

Construction of the overall Project is expected to cost approximately \$1,685,000. TRWC has already secured \$1,240,000 in other funding and has requested SEP funds amounting to \$445,000.

Project Schedule and Milestones:

June 2025 – Commence project construction for Site 2, Site 3, and Lower Site 4 in successive order.

December 1, 2025 – Complete Project

Reporting

Quarterly Status Reports will be submitted to the Lahontan Water Board's Enforcement Coordinator. The first report will be submitted on July 15, 2025 and will cover the period of March 1 – June 30, 2025. The SEP Project is anticipated to be completed in Fall 2025 and the final report summarizing the completion will be provided in the Report due December 15, 2025. SEP Reports will be submitted in accordance with the schedule below:

| <u>Reporting Period</u> | <u>Report Submittal Date</u> |
|-------------------------|------------------------------|
| March - June | July 15, 2025 |
| July - September | October 15, 2025 |
| October - November | December 15, 2025 |

The Quarterly Status Reports will include a list of all activities completed during the reporting period, an accounting of funds expended, the proposed work for the following reporting period, and a discussion of whether the SEP is compliant with milestones and deadlines, and if not, the cause for the delay and anticipated date of compliance. The final report will describe and evaluate the Performance Standards listed below.

Performance Standards:

The following performance standards will be incorporated into the SEP:

- a. Improved riparian habitat measured by new coverage as plantings will be accomplished through seeding.
- b. Creek restoration measured in linear feet of restored creek.

Publicity:

If Stonebridge Properties LLC or Teichert Construction publicize the Donner Creek Restoration Project, they will state in a prominent manner that funding of the project was undertaken as part of a Settlement Agreement with the Lahontan Water Board.

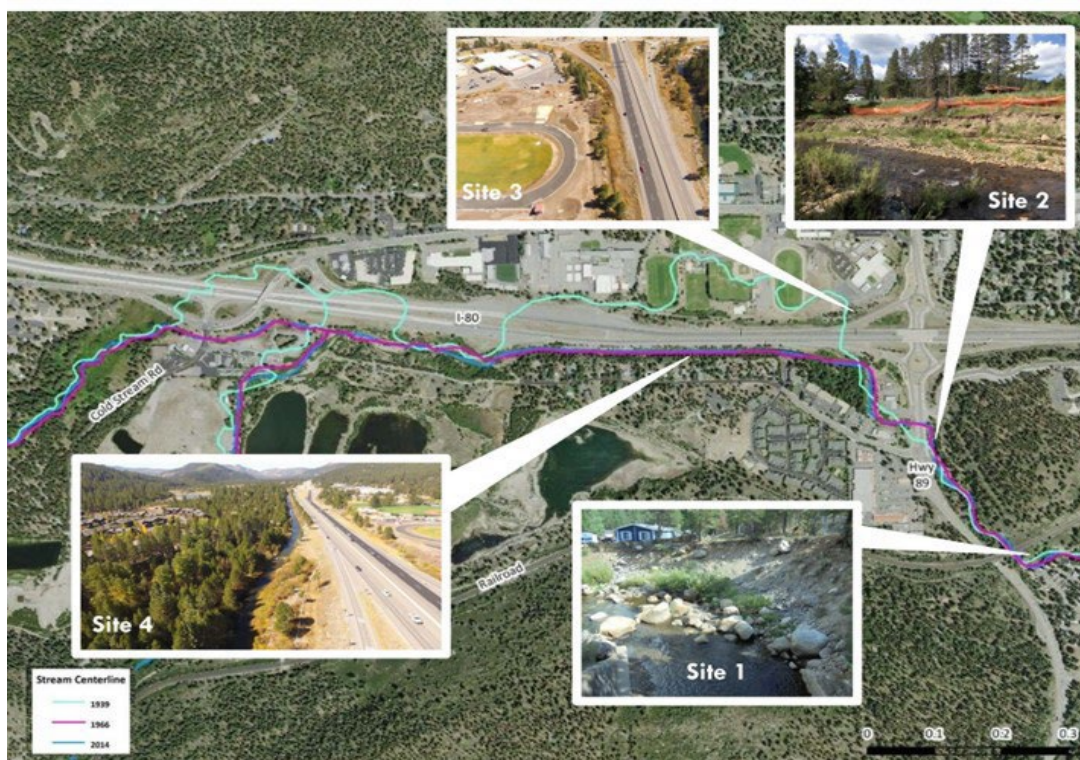
Nexus between violations and the project:

The violations alleged in the Stipulated Order relate to stormwater management of the Coldstream Development Project site, which is within the Truckee River Watershed.

The Donner Creek Restoration Project is also located within the Truckee River Watershed. Potential impacts to beneficial uses as a result of the alleged violations will be directly ameliorated as a result of the project.

Expected benefits or improvements to water quality or beneficial uses:

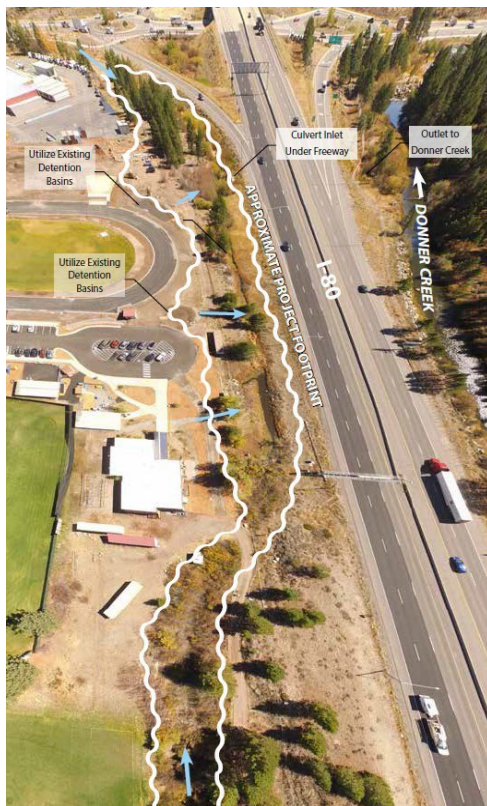
The project is expected to improve water quality in Donner Creek and the Truckee River, improve instream and riparian habitat, and protect existing infrastructure. The restoration design is based on restoring natural functions to promote ecosystem recovery and increase resilience against climate change.



Donner Creek has been heavily modified since the 1800s. The project will restore four sites to improve water quality, improve habitat, and protect infrastructure.



Severe erosion at Donner Creek Site 2 near Sierra College



At Site 3, stormwater runoff from WB I-80 and commercial development discharge untreated to Donner Creek.



Artificially straightened reach of Donner Creek Site 4 near I-80.