

## Lahontan Regional Water Quality Control Board

November 10, 2016

WDID 6A090050000

### INTERESTED PERSONS

#### **Notice of Proposed Settlement with Action Water Sports of Tahoe Inc. for Effluent Limit Violations and Failure to Take Required Samples, Meeks Bay Marina, Lake Tahoe, El Dorado County-Written Comments Due No Later Than 5:00 P.M., December 10, 2016.**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) Executive Officer will consider approval of a proposed settlement with Action Watersports. The proposed settlement, if approved, will resolve effluent limit violations and failure to sample violations alleged by Water Board staff in the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability (ACL) Order No. R6T-2016-0063. The alleged violations are subject to an assessed penalty of \$15,000 pursuant to Water Code section 13385.

As a part of the Settlement Agreement, Action Watersports Inc. waives its right to a hearing and agrees to pay the assessed penalty of \$15,000 for the alleged violations. On October 31, 2016, Action Watersports, Inc. took such action by submitting a signed copy of the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order. This action constitutes a proposed settlement that is subject to a 30-day public comment period pursuant Water Code section 13385 and the State Water Resources Control Board's Enforcement Policy.

The Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order are available at the Water Board's website:

[http://www.waterboards.ca.gov/lahontan/water\\_issues/programs/enforcement/meeks\\_acl.shtml](http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/meeks_acl.shtml)

#### **Persons may comment on the proposed settlement by submitting written comments so that they are received no later than 5:00 p.m. on December 10, 2016.**

Written comments should include "Meeks Bay Marina, Action Watersports Inc. Proposed Settlement" in the subject line, and should be submitted by email to:

[RB6enproceed@waterboards.ca.gov](mailto:RB6enproceed@waterboards.ca.gov)

If the Executive Officer does not approve the proposed settlement, the matter may be scheduled for Water Board consideration on whether to adopt or reject the settlement at the February 8-9, 2017 Board Meeting to be held in South Lake Tahoe, California. Please check the Water Board's website for any updates on this matter.



Lauri Kemper, P.E.  
Assistant Executive Officer

Enclosure: Meeks Bay Proposed Settlement

cc (w/enclosure): Meeks Bay Marina Mailing List

CP/ma/T: Meeks Proposed Settlement Public Notice  
File Under: ECM / WDID 6A090050000



rainfall events that occurred on January 9 and May 20 of 2014. The results indicated an effluent concentration of 2.1mg/L for Total Nitrogen. The effluent limit from the Permit is 0.5mg/L. The concentration of Total Nitrogen from the results exceeds the effluent limit by greater than 20%, a serious violation.

4. The Meeks Bay Annual Reports for 2014 and 2015 contained analytical results from stormwater runoff samples collected at the Meeks Bay Marina Boat Ramp for rainfall events that occurred on January 9, 2014 and October 17, 2015. The results indicated effluent concentrations of 0.7 mg/L and 0.16 mg/L, respectively, of Total Phosphorus. The effluent limit from the Permit is 0.1mg/L. The concentrations of Total Phosphorus from the two results each exceeds the effluent limit by greater than 20%; thus, they are each a serious violation.
5. The Meeks Bay Annual Report for 2014 contained analytical results from stormwater runoff samples collected at the Meeks Bay Marina Boat Ramp for rainfall events that occurred on January 9, 2014. The results indicated an effluent concentration of 14 mg/L of Total Iron. The effluent limit from the Permit is 0.5mg/L. The concentration of Total Iron from the results exceeds the effluent limit by greater than 20%, a serious violation.
6. The Marina General Permit requires a minimum of two samples a year for stormwater discharges. Additionally, storm water discharge samples must be collected at all discharge points where storm water and non-storm water is discharged onsite to infiltration and land based treatment systems, offsite to storm drainage systems not under the Discharger's control, and to surface waters [Permit Attachment E, Section IV.A.2]. The Dischargers' SWPPP identifies two such monitoring locations: Storm water runoff into the marina from the boat ramp, and storm water runoff discharge to an on-site infiltration system (the Discharger has since indicated that the on-site infiltration system had not been constructed). There was an opportunity to collect a sample on February 6, 2015, however the Discharger's consultant did not sample because it was Friday, and the hold times for nutrient analysis would have been exceeded because the laboratory is not open on weekends. However, the hold times for other analytes, such as metals, would have been sufficient. Thus, it was a failure to take the required samples; the consultant should have adequate procedures in place to achieve the necessary holding times for the required analytes.
7. Water Code section 13385 provides that any person who violates the General Permit or a requirement of Clean Water Act section 301 may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs, and up to \$10 per gallon of waste discharged but not cleaned up over 1,000 gallons. The Discharger violated the General Permit and the federal Clean Water Act by discharging wastes into waters of the US.
8. The State Water Board adopted Resolution No. 2009-0083, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy), which became effective

on May 20, 2010 after being approved by the Office of Administrative Law. The Enforcement Policy establishes a methodology for assessing administrative civil liability that addresses factors outlined in Water Code section 13385(e), which water boards are required to consider when imposing civil liability pursuant to section 13385.

9. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulation to the Lahontan Water Board for adoption as an order pursuant to government Code section 11415.60. To resolve by consent and without further administrative proceedings the alleged violation of Water Code Section 13385 as set forth herein in Attachment A, the Parties have agreed to the imposition of **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** in administrative liability against the Discharger. The Discharger shall pay this amount in the manner described in Stipulation 2, no later than 30 days following the Lahontan Water Board's adoption of this Order.
10. During the settlement discussions between the Parties, the Parties discussed the application of the Enforcement Policy, including adjustments to factors regarding the Discharger's culpability and cooperation. The Prosecution Team presented its analysis of the information and the application of the Enforcement Policy. The Discharger agreed to forego challenging the administrative civil liability. The Discharger emphasized a desire to comply with the Permit, and indicated there were challenges to compliance because the Discharger was not the landowner and the landowner was responsible for the application of BMPs on the site. Further, this discharge came from a shared use dirt parking lot which the landowner failed to pave despite Notices from the Lahontan Water Board staff. And the specific chemicals which discharged (in minimal amounts) were not caused by active marina operations as the marina had been closed and all marina equipment removed at least four months earlier. And last, as to the failure to collect a minimum of two effluent samples, Discharger's consultant reminds the Prosecution Team that in February 6, 2015, when the Discharger was found not to have taken a second annual sample 'when there was an opportunity to do so', no one at the time could have predicted an eight month drought would have followed making it impossible to take a second runoff sample. In addition, with regard to the failure to sample, the Discharger's view was that sampling was impracticable under the circumstances. The Lahontan Water Board believes that proper sampling procedures would have allowed for completion of the required number of samples to comply with the Permit.
11. Based on the circumstances, including the Discharger's limited control of BMPs on the site, and the subsequent cancellation of the Discharger's lease to operate the Marina, the Prosecution Team finds that the resolution of the alleged violation is for less than indicated by the attached methodology is fair, reasonable, and fulfills its enforcement objectives, that no further action is warranted concerning

the alleged violation described above and in Attachment A, except as provided in the Stipulation, and that this Stipulation is in the best interest of the public.

## B. STIPULATIONS

The Parties stipulate to the following:

1. **Jurisdiction:** The Parties agree that the Lahontan Water Board has subject matter jurisdiction over the violations described herein and personal jurisdiction over the Parties to this Settlement Agreement.
2. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** by the Lahontan Water Board to resolve the alleged Water Code violations in the following manner:
  - a. Within 30 days of adoption of this Stipulated Order, the Discharger shall remit **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** in the form of a check made payable to the "State Water Resources Control Board Cleanup and Abatement Account". The Discharger shall indicate on the check "ACL Order No. R6T-2016-0063" and send it to the following address: State Water Resources Control Board; Division of Administrative Services, ATTN: ACL Payment; P.O. Box 1888; Sacramento, California 95812-1888.
  - b. A copy of the check shall be transmitted electronically to Catherine Pool at \_\_\_\_\_.
3. **Scope of Order:** Upon adoption by the Lahontan Water Board, or its delegate, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against the Discharger as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of the administrative civil liability by the deadline specified in Stipulation 2.
4. **Waiver of Hearing:** The Discharger has been informed of their rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Lahontan Water Board prior to the adoption of the Order.
5. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Stipulated Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Stipulated Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Lahontan Water Board against the Discharger.

6. **Release and Covenant not to Sue the Discharger:** Upon the full payment of the **FIFTEEN THOUSAND DOLLARS (\$15,000.00)** as required in Stipulation 2, the Lahontan Water Board shall and does release, discharge, and covenant not to sue the Discharger, including its officers, elected board members, agents, directors, employees, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or cause of action, including for civil penalties or administrative oversight costs, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
7. **Release and Covenant not to Sue Lahontan Water Board:** Upon the effective date of this Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Lahontan Water Board, including its officers, board members, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
8. **Public Notice:** The Parties agree that the Settlement Agreement, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Lahontan Water Board, or its delegate, for adoption in the Stipulated Order. In the event objections are raised during the public review and comment period, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the proposed Settlement Agreement. Except in such an event, the Discharger agrees that it will not rescind or otherwise withdraw its approval of this Settlement Agreement. The Lahontan Water Board, or its delegate, may, under certain circumstances, require a public hearing regarding the Settlement Agreement.
9. **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 Settlement Agreement, will be adequate. In the event procedural objections are raised prior to the effective date of the Stipulated Order, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the procedure as necessary or advisable under the circumstances. However, agreement to such revisions or adjustments shall not require Discharger to pay any amount in excess of that set forth in this Settlement Agreement. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Lahontan Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Lahontan Water Board, or its delegate.
10. **Order not Adopted/Vacated:** In the event that this Order does not take effect because it is not adopted by the Lahontan Water Board's delegate, or is vacated in whole or in part by the State Water Board or a court, the Discharger acknowledges that the Prosecution Team may proceed to a contested evidentiary hearing before the Lahontan Water Board to determine whether to assess administrative civil

liability for the underlying alleged violations, or may continue to pursue settlement. The Lahontan Water Board, or its delegate, may, under certain circumstances, require a public hearing regarding the Settlement Agreement. In the event of the Order being vacated by the State Water Board or a court, unless waived by the Discharger in writing, the Lahontan Water Board shall refund to the Discharger, the amounts in Stipulation 2, provided that the Discharger had paid the amount per this Settlement Agreement.

11. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, including this Settlement Agreement and all Attachments, will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing.
12. The Parties also agree to waive the following objections related to their efforts to settle this matter:
  - 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, except that Discharger may object to members of the Prosecution Team serving as advisors to the Lahontan Water Board in any such subsequent administrative or judicial proceeding or hearing; 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.
13. **Appeals:** Upon adoption of this Order, the Discharger waives their right to appeal this Order to the State Water Board, a California Superior Court and/or any California appellate level court. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Water Board.
14. **Effect of Stipulated Order:** Except as expressly provided in this Settlement Agreement, nothing in the Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity, or any local agency from exercising its authority under any law, statute, or regulation.
15. **Water Boards not Liable:** Neither the Lahontan Water Board members nor the Lahontan Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the Lahontan Water Board, its members, or staff be held as parties to or guarantors of any contract entered into by Discharger,

or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.

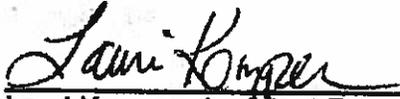
16. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Lahontan Water Board to enforce any provision of this Settlement Agreement shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Agreement. The failure of the Prosecution Team or Lahontan Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Settlement Agreement. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Settlement Agreement shall be construed to relieve any Party regarding matters covered in this Settlement Agreement. This Settlement Agreement relates only to the subjective matter hereof, including administrative civil liability for the violations listed in Attachment A. 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 Settlement Agreement.
17. **Regulatory Changes:** Nothing in this Settlement Agreement shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
18. **Third Party Claims:** Nothing in this Settlement Agreement shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
19. **Authority to Enter Stipulated Order:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.
20. **Integration:** This Settlement Agreement constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Settlement Agreement.
21. **Modification:** This Stipulated Order shall not be modified by oral representation whether made before or after the execution of this Stipulated Order. All modifications made before execution of the Stipulated Order must be made in writing and approved by the Discharger and the Lahontan Water Board Prosecution Team.
22. **Interpretation:** This Settlement Agreement 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.
23. **Effective Date:** The effective date of the Order shall be the date on which it is adopted by the Lahontan Water Board or its delegate.
24. **Disputes:** In the event of a dispute, the Discharger, as appropriate, shall file a "Notice of Dispute" with the Executive Officer or the Executive Officer's Designee within ten (10) days of discovery of the problem. The Lahontan Water Board and

Discharger shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the Lahontan Water Board and the Discharger are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer Designee shall be final, unless appealed to a court of competent jurisdiction.

- 25. Counterpart Signatures:** This Settlement Agreement 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.
- 26. Incorporated Attachments:** Attachment A is incorporated by reference and are made fully a part of this Settlement Agreement as though set forth herein.

Action Water Sports, Inc.  
Order No. RGT-2016-0063

**IT IS SO STIPULATED<sup>1</sup>:**



\_\_\_\_\_  
Lauri Kemper, Assistant Executive Officer  
Lahontan Water Board  
Prosecution Team

10-25-2016

Date



\_\_\_\_\_  
Bob Hassett  
President  
Action Motorsports of Tahoe, Inc.  
dba Action Watersports of Tahoe

10-31-2016  
Date

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<sup>1</sup> The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.



**HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ABOVE SETTLEMENT AGREEMENT, THE LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:**

1. In adopting this Order, the Lahontan Regional Water Quality Control Board ("Lahontan Water Board") or its Delegate has assessed a penalty in accordance with Water Code section 13385 and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Lahontan Water Board. The Lahontan Water Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

**PURSUANT TO SECTION 13385 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE OFFICER HEREBY ADOPTS THIS ORDER.**

\_\_\_\_\_  
**Patty Z. Kouyoumdjian**  
Executive Officer

\_\_\_\_\_  
Date

Attachment A: Penalty Methodology

