

## Lahontan Regional Water Quality Control Board

November 23, 2016

WDID 6A090050000

### INTERESTED PERSONS

#### **Public Comment Period Extension 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 23, 2016**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) Executive Officer will consider approval of a proposed settlement with Action Water Sports. 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 Water Sports 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 Proposed Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order, as well as Attachment A were corrected for typographical errors and 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 23, 2016.**

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

[RB6enfpceed@waterboards.ca.gov](mailto:RB6enfpceed@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): Patty Kouyoumdjian, Executive Officer  
Regional Board Members  
Meeks Bay Marina Mailing List

CP/ma/T: meeks proposed settlement public notice cp  
File Under: ECM / WDID 6A090050000

State of California  
California Regional Water Quality Control Board  
Lahontan Region

IN THE MATTER OF: )  
 )  
Action Motorsports of Tahoe, Inc. )  
dba Action Watersports of Tahoe )  
 ) Settlement Agreement and Stipulation For  
Attn: Bob Hassett ) Entry of Administrative Civil Liability Order  
 ) No. R6T-2016-0063

**Settlement Agreement and Stipulation  
for Entry of Administrative Civil Liability  
Order**

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 and the State Water Resources Control Board Office of Enforcement Prosecution Team (Prosecution Team), and Action Motorsports of Tahoe, Inc. dba Action Watersports of Tahoe (Discharger) (collectively known as the Parties) and is presented to the Lahontan Water Board, or its delegate, for adoption as an order by settlement, pursuant to Government Code section 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the Discharger for violation of California Water Code section 13385.

**A. Recitals**

1. Action Motorsports of Tahoe, Inc. dba Action Watersports of Tahoe operated the Meeks Bay Marina located at the Meeks Bay Resort. Action Water Sports, Inc. enrolled in the Marina General Permit, NPDES General Permit, Lahontan Water Board Order No. R6T-2011-0024, Requirements for Lake Tahoe Marinas (Permit). Action Water Sports, Inc. was the tenant of the Washoe Tribe, who operated the Meeks Bay Resort and Marina under a use permit from the United States Forest Service (Forest Service). The Forest Service was responsible for installing Best Management Practices (BMPs) to comply with the Permit.
2. The Discharger submitted annual reports in 2014 and 2015 that demonstrated effluent exceedances of the limits contained in the Permit.
3. 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 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 40%, 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 40%; 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 40%, 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 [catherine.pool@waterboards.ca.gov](mailto:catherine.pool@waterboards.ca.gov).
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

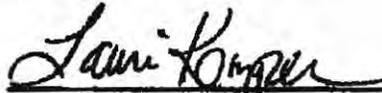
Discharger shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the Lahontan Water Board and the Discharger are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer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

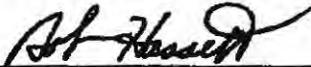
Action Water Sports, Inc.  
Order No. RBT-2016-0063

~~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

(This section intentionally left blank)

<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

## **ATTACHMENT A**

### **ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY**

Administrative civil liability may be imposed pursuant to the procedures described in California Water Code section 13323. The Complaint alleges the acts or failures to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

Pursuant to Water Code section 13385, subdivision (c), civil liability may be imposed administratively by the Lahontan Regional Water Quality Control Board (Lahontan Water Board) in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

Water Code section 13385, subdivision (e) requires the Lahontan Water Board to consider several factors when determining the amount of civil liability to impose. These factors include:

“...the nature, circumstances, 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. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”

On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy provides a calculation methodology for determining administrative civil liability. The calculation methodology includes an analysis of the factors in Water Code section 13385, subdivision (e), and it enables fair and consistent implementation of the Water Code’s liability provisions.

The Penalty Calculation Methodology Worksheet (Penalty Worksheet, Attachment C to the ACL Complaint) and the following discussion presents the administrative civil liability derived from the Enforcement Policy’s administrative civil liability calculation methodology. The Penalty Worksheet is incorporated herein by this reference. The

alleged violations by the Discharger in the Complaint and this technical analysis are a combination of discharge and non-discharge violations of the NPDES General Permit, Lahontan Water Board Order No. R6T-2011-0024, Requirements for Lake Tahoe Marinas (Permit) and of *The Water Quality Control Plan for the Lahontan Region* (Basin Plan).

The alleged discharge violations resulted from discharges on January 9, 2014, and on October 17, 2015, that exceeded permitted effluent limits. The alleged non-discharge violation resulted from the Discharger's failure to collect effluent samples in 2015 for discharges to its land treatment system and to surface water. Below is a table listing the alleged violations.

<b>Violation No.</b>	<b>Description</b>	<b>Date of Violation</b>	<b>Days of Violation</b>	<b>Initial Base Liability</b>
<b>1</b>	Exceed effluent limit for Total Nitrogen (exceedance is noted as a serious violation).	January 9, 2014	<b>1</b>	<b>\$3,000.00<sup>1</sup></b>
<b>2</b>	Exceed effluent limit for Total Phosphorus (both instances are noted as serious violations).	January 9, 2014 October 17, 2015	<b>2</b>	<b>\$6,000.00<sup>2</sup></b>
<b>3</b>	Exceed effluent limit for Total Iron (exceedance is noted as a serious violation).	January 9, 2014	<b>1</b>	<b>\$3,000.00<sup>3</sup></b>
<b>4</b>	Failure to collect minimum of two effluent samples each to land treatment system and surface water discharge.	2015 Annual Report	<b>1</b>	<b>\$5,005.00</b>
			<b>TOTAL</b>	<b>\$17,005.00</b>

Alleged violations numbers 1 through 3 are "serious" effluent limit violations, which are subject to mandatory minimum penalties under CWC 13385(h) which is \$3,000.00 per day per violation.

<sup>1</sup> The penalty for the effluent violations are based upon a minimum mandatory penalty from CWC 13385(h) and (i), in addition to a discretionary penalty.

<sup>2</sup> The penalties for the effluent violations are based upon a minimum mandatory penalty from CWC 13385(h) and (i).

<sup>3</sup> *Id.*

Alleged violation number 4 is a non-discharge related violation. The associated analysis for each of these non-discharge violations omits step numbers 1 and 2 of the Enforcement Policy's administrative civil liability methodology, which addresses discharge violations.

Methodology Steps Nos. 6 through 10 apply to the Combined Total Base Liability Amount for all violations, and these steps are discussed after the Total Base Liability amounts are discussed for each violation.

## **Violation No. 1**

### **Exceed Effluent Limit for Total Nitrogen**

Water Code section 13385, subdivision (h), requires a mandatory minimum penalty of three thousand dollars to be assessed for each serious violation. A serious violation means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more for a Group I pollutant, as specified in Appendix A to Section 123.45 of title 40 of the Code of Federal Regulations, by 40 percent or more.

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 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 40%; thus, it is a serious violation.

A single instance of a serious violation results in the assessment of a \$3,000.00 penalty.

## **Violation No. 2**

### **Exceed Effluent Limit for Total Phosphorus**

Water Code section 13385, subdivision (h), requires a mandatory minimum penalty of three thousand dollars to be assessed for each serious violation. A serious violation means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more for a Group I pollutant, as specified in Appendix A to Section 123.45 of title 40 of the Code of Federal Regulations, by 40 percent or more.

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 concentration of Total Phosphorus from the results each exceeds the effluent limit by greater than 40%; thus, they are each a serious violation.

Two instances of serious violations result in the assessment of a \$6,000.00 penalty.

### **Violation No. 3**

#### **Exceed Effluent Limit for Total Iron**

Water Code section 13385, subdivision (h), requires a mandatory minimum penalty of three thousand dollars to be assessed for each serious violation. A serious violation means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more for a Group I pollutant, as specified in Appendix A to Section 123.45 of title 40 of the Code of Federal Regulations, by 40 percent or more.

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 40%; thus, it is a serious violation.

A single instance of a serious violation results in the assessment of a \$3,000.00 penalty.

### **Violation No. 4**

#### **Failure to Collect Samples for Effluent Discharges to Surface Water and to Land Treatment Systems in 2015**

##### **Synopsis**

Effluent monitoring is necessary to assess compliance with effluent limitations and to assess the impacts of the discharges on the receiving water. Sampling must be conducted frequently enough to ensure that the effluent is in compliance with the discharge specifications of the permit. At a minimum, storm water discharges must be monitored two times per year.

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 collected a runoff sample on October 17, 2015, and the only other reasonable opportunity to collect another sample occurred on February 6, 2015. Therefore, at a minimum, a second runoff sample should have been collected on February 6, 2015.

The Discharger's consultant did not collect the necessary runoff sample for nutrient and sediment analyses on February 6, 2015 because the 48-hour holding time would preclude a sample collected on a Friday from being analyzed by the Discharger's contracted laboratory on the following Monday (the laboratory is closed on weekends).

However, the holding times are 28 days for Total Phosphorus, Total Kjeldahl Nitrogen, and Oil and Grease; 7 days for Total Dissolved Solids and Total Suspended Solids; and 6 months for Total Iron [Babcock Laboratories Standard Operation Procedure, April 7, 2014]. While the holding times for nitrate and nitrite is 48 hours, the holding time for combined nitrate and nitrite Nitrogen can be extended to 28 days with a sulfuric acid preservative [RMB environmental Laboratories, <http://rmbel.info/wp-content/uploads/2013/05/Sample-Collection-and-Preservation-List.pdf>]. Other preservation techniques, such as freezing water quality samples, can be employed. Additionally, many labs offer weekend services, but for an extra fee.

### **Steps 1 and 2: Potential for Harm and Assessments for Discharge Violations**

Discharge violations are not applicable for this alleged violation.

### **Step 3: Initial Liability Determination**

#### **A. Potential for Harm – Moderate**

As noted under the "Harm or Potential Harm to Beneficial Uses" discussion for Violation Number 1, Lake Tahoe is, a designated ONRW and has become impaired by declining deep water transparency and increasing phytoplankton productivity due to increased fine sediment particles and nutrient loading. "Lake Tahoe has historically been considered nitrogen limited; recent bioassays indicated that phosphorus is also becoming limiting. It is important to control **all** controllable sources of both nitrogen and phosphorus." [Basin Plan, page 5-1] Extensive efforts and expenses have been expended to restore and protect Lake Tahoe. The Lahontan Water Board considers any discharge of sediments and nutrients into Lake Tahoe, regardless of the magnitude of the discharge, to seriously threaten the extensive efforts made toward restoring Lake Tahoe's famed clarity. No permanent or long-term reduction in water quality is allowable in areas given special protections as ONRW [48 Federal Register 51402].

Effluent monitoring consists of Total Nitrogen, Total Phosphorus, Iron, Turbidity, Oil and Grease, and pH (pH is measured in the field and is not subject to hold times). Failure to collect the necessary samples diminishes the Permit's ability to ensure the necessary protection of Lake Tahoe.

The Discharger's failure to collect an effluent sample on February 6, 2015, resulted in, at a minimum, **moderate potential for harm** to the beneficial uses of Lake Tahoe. The Enforcement Policy defines moderate as:

*“Moderate – The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.”*

#### B. Deviation from Requirement – **Moderate**

Permit Order VII.B requires the Discharger to comply with the Monitoring and Reporting Plan (MRP) provided as Attachment E to the Permit. Section IV.A.2 of the MRP requires the Discharger to collect storm water discharge samples 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 Discharger’s SWPPP identifies two such monitoring locations to be sampled twice per year: storm water runoff into the marina from the boat ramp, and storm water runoff discharge to an on-site infiltration system.

The Discharger partially met this requirement by collecting one of the required two annual storm water runoff to surface water samples. The Discharger collected a storm water runoff sample entering the marina surface waters on October 17, 2015. Therefore, the failure to collect a storm water runoff sample on February 6, 2015, resulted in a **moderate** deviation from the requirement. The Enforcement Policy defines major as:

*“Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirements was not met, and the effectiveness of the requirement is only partially achieved).”*

Based upon a moderate potential for harm and a moderate deviation from the requirement, a per day factor of **0.35** was selected. The initial liability amount is then determined by multiplying the per day factor by the total number of days of violation and by statutory maximum daily penalty.

For this violation, the statutory maximum penalty is \$10,000 (Water Code section 13385). The Lahontan Water Board considers each discovery at the time of staff inspection to warrant a separate day of violation.

$$\begin{aligned} \text{Initial Liability} &= (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Maximum Penalty}) \\ &= (0.35 \times 1 \text{ days}) \times (\$10,000/\text{day}) \\ &= \$3,500 \end{aligned}$$

#### **Step 4: Adjustment Factors**

The Enforcement Policy describes three factors related to the violator’s conduct that should be considered for modification of the amount of initial liability: the violator’s culpability, the violator’s efforts to clean up or cooperate with regulatory authorities after the violation, and the violator’s compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

A. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case, a culpability multiplier of **1.3** has been selected for the reasons described below:

The Discharger failed to collect one of the two required storm water runoff to surface water samples. The Discharger could only reasonably collect a second sample on Friday, February 6, 2015, because all other precipitation events did not produce enough runoff flow to collect a sample.

However, the Discharger's consultant failed to realize that the holding times for the required analyses are much longer than the 48-hours that the consultant believed would preclude him from collecting a sample on a Friday. Further, the Consultant should have consulted with the laboratory to determine the ability to offer weekend services if the Consultant was in doubt of meeting what he believed to be short holding times.

The Discharger's consultant argues that it was impossible on that date to predict that February 2015 would be followed by an eight month drought, making it impossible to take a meaningful second annual runoff sample, thus it was impossible to perform the Permit requirements.

The Discharger is ultimately responsible for the actions of its employees and consultants, and the Discharger is ultimately responsible for complying with all Permit conditions. The Discharger's failure to collect an effluent sample on February 6, 2015, justifies a culpability multiplier of at least 1.3.

B. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 and 1.5. A lower multiplier is for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is for situations where cleanup and/or cooperation is minimal or absent. In this case, a neutral Cleanup and Cooperation multiplier of **1** has been selected.

The Discharger did collect one of the two required storm water runoff to surface water samples, but failed to collect a sample on February 6, 2015. A value less than neutral is therefore not warranted. A higher value than neutral may be warranted, but the Discharger did display some degree of cooperation by collecting one of the two required samples.

### C. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used for this factor. The Lahontan Water Board issued prior NOV's to the Dischargers in 2007, 2008, and 2009 for, among other items, failure to implement BMPs and failure to submit an adequate SWPPP. Therefore, a multiplier of **1.1** has been selected.

### **Step 5: Determination of Total Base Liability Amount**

Total Base Liability Amount of **\$5,005.00** is determined by multiplying the initial liability amount for the violation from Step 3 by the adjustment factors from Step 4:

$$\begin{aligned} (\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) &= \text{Total Base Liability} \\ (\$3,500) \times (1.3) \times (1) \times (1.1) &= \$5,005.00 \end{aligned}$$

### **Methodology Steps 6 through 10**

### **Step 6: Ability to Pay and Ability to Continue Business**

The Enforcement Policy provides that if the Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

In this case, the Lahontan Water Board Prosecution Team has sufficient information to suggest the Dischargers have the ability to pay the proposed liability. To date, the Discharger has not provided information indicating the inability to pay the proposed liability.

### **Step 7: Other Factors as Justice May Require**

#### Adjustment for Staff Costs

The Water Board has suspended the practice of adding staff cost into administrative civil liabilities based upon the California State Auditor's findings stated in its 2012-120 Audit Report. Specifically, one of the findings in the Audit Report is that staffing costs in penalty actions for water quality certification violations are, "generally not supported and are inaccurate because of inflated cost rates." (California State Auditor Report 2012-120 State Water Resources Control Board, *It Should Ensure a More Consistent Administration of Water Quality Certification Program*, June 2013). This enforcement action does not involve violations of a 401 Water Quality Certification, as was the focus in Audit Report 2012-120. However, staff believes the justification in the Audit Report still applies to this enforcement action where the staff cost rate has yet to be

revised to reflect actual staff salaries and overhead cost for each program. In an abundance of caution, the Water Board, in consultation with the State Water Resources Control Board, has suspended adding staff cost into administrative civil liabilities until the issues identified by the State Auditor can be addressed.

#### Adjustment for Additional Considerations

Since the violations have occurred, the Discharger's lease to operate the Meeks Bay Marina has been terminated by the entity operating the Meeks Bay Resort. The Discharger is therefore unable to continue generating income at this facility. The Water Board has considered this information to reduce the penalty amount associated with Violation No. 4 to \$3,000. The Water Board may reduce this penalty amount further. However, the penalty denotes the importance of having adequate sample collection protocols in place to achieve permit compliance regardless of the timing of storm events.

#### **Step 8: Economic Benefit**

The Enforcement Policy directs the Water Board to determine any Economic Benefit Amount of the violation based on the best available information. The Enforcement Policy suggests that the Water Board compare the Economic Benefit Amount to the Adjusted Total Base Liability and ensure that the Adjusted Total Base Liability is at a minimum, 10 percent greater than the Economic Benefit Amount. Doing so should create a deterrent effect and will prevent administrative civil liabilities from simply becoming the cost of doing business.

#### Violations Nos. 1 through 3

Lahontan Water Board staff determined there is no economic benefit associated with the discharge violations.

#### Violation No. 4

The Discharger failed to collect one sample. The economic benefit is the laboratory costs for analyzing the collected sample.

#### **Step 9: Maximum and Minimum Liability Amounts**

The Enforcement Policy directs the Water Board to consider and maximum or minimum liability amounts set forth in the applicable statutes.

#### Violations No. 1 through 3

The maximum liability amount the Lahontan Water Board may assess administratively pursuant to Water Code section 13385, subdivision (c), is \$10,000 per day of violation. Serious violations are associated with Violations Nos. 1 through 3. Each of the serious

violations is subject to a minimum mandatory penalty of \$3000 per violation pursuant to Water Code section 13385 (h) and 13385(i).

Violation No. 4

The maximum liability amount the Lahontan Water Board may assess administratively pursuant to Water Code section 13385, subdivision (c), is \$10,000 per day of violation. These violations are not subject to a mandatory minimum amount.

The table below summarizes the initial base liability, the minimum required liability, the potential maximum liability, and the proposed revised liability associated with each of the 12 violations. Where the minimum mandatory penalty exceeds the initial base liability, the minimum mandatory penalty was used to determine the revised liability associated with the respective violation.

<b>Violation No.</b>	<b>Initial Base Liability</b>	<b>Minimum Amount</b>	<b>Maximum Amount</b>	<b>Revised Liability</b>
<b>1</b>	\$3,000.00	\$3,000.00	\$10,000.00	<b>\$3,000.00</b>
<b>2</b>	\$6,000.00	\$6,000.00	\$20,000.00	<b>\$6,000.00</b>
<b>3</b>	\$3,000.00	\$3,000.00	\$10,000.00	<b>\$3,000.00</b>
<b>4</b>	\$5,005.00	\$0.00	\$10,000.00	<b>\$3,000.00</b>
<b>TOTAL PROPOSED LIABILITY</b>				<b>\$15,000.00</b>

The proposed liability falls within these maximum and minimum liability amounts.

The maximum potential liability for all five violations is **\$50,000.00**. The minimum required liability is **\$12,000 for violations 1 through 3, in addition to the economic benefit derived from the remaining violations.**

**Step 10: Final Liability Amount**

The final liability amount for Violations Nos. 1 through 4 is \$15,000.00.

Attachments:

1. Notice of Violation, with July 16, 2014 Inspection Report, February 24, 2015
2. Notice of Violation, with July 23, 2015 Inspection Report dated October 29, 2015

## Lahontan Regional Water Quality Control Board

February 24, 2015

CERTIFIED MAIL NO. 7009 0820 0001 6638 8253

Jennifer Johnson, Interim Director  
Washoe Environmental Protections Department  
Washoe Tribe of California and Nevada  
919 US Highway 395 South  
Gardnerville, NV 89410

**NOTICE OF VIOLATION OF NPDES GENERAL PERMIT REQUIREMENTS FOR LAKE TAHOE MARINAS, NOTICE OF VIOLATION OF *THE WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION*, AND REQUEST FOR WORKPLAN AND IMPLEMENTATION SCHEDULE - MEEKS BAY MARINA, EL DORADO COUNTY, WDID NO. 6A090050000**

California Regional Water Quality Control Board, Lahontan Region (Water Board) staff inspected the Meeks Bay Marina on July 16, 2014. A copy of the inspection report is enclosed. The inspection was performed as part of the Water Board's routine inspection program to verify compliance with the *National Pollutant Discharge Elimination System General Permit for Industrial Activities and Maintenance Dredging at Marinas in the Lake Tahoe Hydrologic Unit*, Board Order No. R6T-2011-0024 (Marina General Permit).

The inspection report identifies the dirt parking lot as a potential sediment source into Lake Tahoe due to the failure to install adequate erosion and sediment control best management practices. No drainage improvements have been installed within the dirt parking lot, and the dirt parking lot area slopes towards the marina waters. The gangways to the marina slips are located on low lying areas along the edge of the dirt parking lot, which create areas where rills and gullies can erode the adjacent slope during a storm event.

Subsequently, Water Board Executive Officer Patty Kouyoumdjian, Lake Tahoe Basin Management Unit Supervisor Nancy Gibson, and respective staff met on October 29, 2014 to discuss the violations at the Meeks Bay Marina. The violations (see following discussion) were acknowledged by all parties at the meeting. It was agreed that Water Board and Forest Service staffs will evaluate potential corrective action options in a manner that respects the long-term planning goals for the entire Meeks Bay Resort area. The identified corrective action elements would then be memorialized in a Notice of Violation.

Water Board and US Forest Service (Forest Service) technical staffs met again on February 5, 2015 to discuss the results of project scoping associated with the long-term

improvements for the Meeks Bay Resort area. The short-term implementation plan provides for installing drainage dips/infiltration trenches and fiber rolls between the unpaved areas and the marina/ramp areas. The long-term plan provides for stabilizing all unpaved areas and the installing storm water retention basins. The long-term plan is scheduled to be fully developed by July 2016, with construction to be completed in 2017. The elements that will address the violations associated with the Meeks Bay Marina are incorporated into this Notice of Violation.

## **PERMIT VIOLATIONS**

Section VII.C.3 of the Marina General Permit requires you to develop and implement a Storm Water Pollution Prevention Plan (SWPPP). Section 9 of your SWPPP states the marina parking lot, "...requires retro-fitting with storm water BMPs [Best Management Practices] to comply with the provision of the General Permit and other regulations." Section 7 of your SWPPP (dated June 21, 2012) states the retro-fit plan, "...will include paving the parking area and installing the necessary storm water treatment BMPs to meet Lahontan requirements." The inspection report documents your failure to comply with the SWPPP by not paving the parking lot and by not installing the necessary storm water treatment BMPs.

The SWPPP for the Meeks Bay Marina facility is dated June 21, 2012, and the inspection was conducted July 16, 2014. At a minimum, you have therefore been in violation of your current SWPPP and the existing Marina General Permit for over a year. Our file history suggests that this violation has been ongoing for many more years. The February, 1997 "Prospectus: Operations and Maintenance of Meeks Bay Resort and Marina" was prepared by the Forest Service, Lake Tahoe Basin Management Unit as a part of the invitation for proposals to operate the facility. The Prospectus identifies erosion problems throughout the resort and, in particular, at the marina, and it requires a plan and implementation schedule for installing BMPs from the selected operator/permittee. Additionally, prior versions of the SWPPP contained the requirement to pave the parking lot and install appropriate storm water BMPs. This requirement was contained in SWPPPs dated November 15, 2000; March 17, 2006; and April 15, 2008. Therefore, permit violations for failing to install the necessary BMPs potentially date back to November, 2000 – almost fourteen years ago.

## **BASIN PLAN VIOLATIONS**

The *Water Quality Control Plan for the Lahontan Region* prohibits, "The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to the surface waters of the Lake Tahoe Basin..." Your failure to retrofit the unpaved parking lot has created areas where rills and gullies have formed (see attached inspection report). At a minimum, the rills and gullies provide evidence of past discharges of earthen materials into Lake Tahoe in violation of the Basin Plan.

## WORKPLAN AND IMPLEMENTATION SCHEDULE

All entities (USFS, Lahontan Water Board, Marina operator) recognize the unpaved parking lot as a potential sediment source to Lake Tahoe. Furthermore, all entities recognize the need to stabilize the parking lot and install appropriate stormwater BMPs in order to prevent sediments from discharging into Lake Tahoe. Because this need has been documented as far back as 1997, and potentially further, the Water Board requires implementation of the Meeks Bay Marina SWPPP without further delay to comply with the Marina General Permit. We therefore request that you:

1. By **May 1, 2015**, submit to this office an amendment to the Meeks Bay Marina SWPPP. The amendment will consist of a description and plan for installing temporary BMPs to address existing storm water runoff from un-paved areas. The amendment will also include a revised map of the marina. The revised map shall provide the following information:
  - Locations and descriptions of proposed temporary BMPs
  - Drainage areas and flow directions
  - Collection and conveyance systems and/or structures
  - Catch basins and other existing BMPs
  - Boat washing areas
  - Outfall/discharge locations to land,
  - Outfall/discharge locations to water
  - Location of potential sources of pollutants
  - Impervious areas
  - Monitoring locations for discharges to land and to water
  - Snow storage areas
  - Location of fueling station and any fuel storage areas or any other areas of industrial activity
  - Location of pump-out facility
  - Marina facility boundaries (include associated parking and driveway areas)
  - Topography and elevations
  - Lake shoreline with ordinary high water elevation indicated
2. By **May 22, 2015**, install temporary BMPs in accordance with the amended SWPPP. At no time following May 22, 2015 shall any parking or vehicular activity be allowed on any unpaved surface in violation of the Marina General Permit and associated SWPPP, unless appropriate temporary BMPs are installed.
3. By **May 22, 2015**, submit to this office documentation that all temporary BMPs have been installed in accordance with amended SWPPP. Also, submit to this office a plan with schedule to inspect all temporary BMPs on a weekly basis and immediately correct any observed deficiencies. The plan shall specify the level of

wear on each installed BMP that would classify it as deficient. The plan shall provide for the monthly submittal of all weekly inspection reports to the Lahontan Water Board. The plan shall be an amendment to the SWPPP for the facility.

4. By **July 31, 2016**, submit to this office an appropriate retrofit plan for the existing dirt parking area with a time schedule for implementation. The implementation time schedule must provide for completion by October 15, 2017.
5. By **October 15, 2017**, complete the BMP retrofit plan and submit photo-documentation and a narrative description of such to this office.

#### **POTENTIAL ADMINISTRATIVE CIVIL LIABILITY**

This Notice informs you of violations of the Marina General Permit so that you may take immediate actions to comply with requirements. The Water Board is authorized to impose administrative civil liability for such violations on a daily basis for each violation (California Water Code sections 13350 and 13385).

Water Board staff will evaluate your response to this Notice to achieve compliance with the Marina General Permit. Continued non-compliance with the Marina General Permit may result in additional enforcement action, including, but not limited to, administrative civil liabilities. The Water Board may impose administrative civil liability up to \$10,000 for each day in which each violation of the Marina General Permit occurs pursuant to California Water Code section 13385(c). Please be advised that the number of days of violation may continue to accrue until each instance of violation has been satisfactorily corrected. The Water Board reserves the right to take any further enforcement action authorized by law.

Please contact Eric J. Taxer at (530) 542-5434 or Tobi Tyler at (530) 542-5435 if you have any questions regarding this Notice.



Scott C. Ferguson, P.E.  
Supervising Water Resource Control Engineer

Enclosure: July 16, 2014 Inspection Report

cc (w/enclosure):

Johnathan Cook-Fisher, Special Use Permit Coordinator, United States Forest Service

Gina M. Thompson, Forest Recreation, Lands, Special Uses and Heritage Staff Officer, United States Forest Service

Jay Kniep

Ken Kasman, TRPA

Suzanne Garcia, Assistant Legal Counsel, Washoe Tribe of California and Nevada

Jeff Marsolais, Acting Forest Supervisor, Lake Tahoe Basin Management Unit, United States Forest Service

Bob Hassett, Action Water Sports, Meeks Bay Marina

SCF/dk/T: Meeks Bay Marina, NOV for July 2014 Inspections  
File Under: Marinas / Meeks Bay Marina / WDID 6A0900500000

**COMPLIANCE INSPECTION REPORT**

ROUTING: SF  
CH

FILE/WDID #: 6A090050000

BOARD ORDER NO: R6T-2011-0024  
NPDES NO: CAG616003

**PRE-INSPECTION REVIEW**

DISCHARGER: Action Motorsports of Tahoe  
DISCHARGER CONTACT: Bob Hassett  
DISCHARGER PHONE NUMBER: (530) 542- 6552 [work]  
DISCHARGER ADDRESS: P.O. Box 9653, South Lake Tahoe, Ca 96150

CATEGORY: 3C  
TYPE: IND

FACILITY NAME: Mæeks Bay Resort & Marina  
FACILITY ADDRESS: 3501 Bode Drive, South Lake Tahoe, CA 96150

DATE OF LAST INSPECTION: Unknown  
PROBLEMS NOTED: N/A

DATE LAST SMR SUBMITTED: November 15, 2014  
PROBLEMS NOTED: Multiple violations were cited for the annual report. The following items were noted and entered in CIWQS for the 2012-2013 reporting year.

1. The discharger conducted seven out of the required minimum of twelve monthly visual inspections.
2. Two storm water discharge events were sampled per identified location "ramp" but no samples were provided for parking lot run-off.
3. Two of four benchmark sampling events were conducted for the surface water discharge sampling point, "ramp."
4. One out of two required pH sampling results were conducted for marina surface waters.
5. All four storm water inspection logs were missing various sections including: weather reports, photographs, inspector's name, title and signature.
6. The site map did not identify sampling locations as required despite answering "yes" to question #50 in the annual report form. A new site map was requested (and yet to be provided) indicating which effluent limits the sample points are intended to be compared with (discharge to land treatment systems or discharge to surface waters).

**FIELD OBSERVATIONS**

INSPECTOR: Kelsi Buts, Scientific Aid  
Eric Taxer, WRCE

DATE: July 16, 2014  
TIME: 12:55 p.m.

**DISCHARGER REP: Jay Knlep, QSD  
Chris Gallup, Operations Manager  
Ed Oliver, Site Manager**

**REMARKS:**

The weather was hot, sunny, and little to no breeze. There were some clouds moving in. All photos were taken with a Sony Cyber-Shot DSC-5700 by Eric Taxer, WRCE.

I called Jay Knlep, QSD, on July 10, 2014 to inform him we would be inspecting the facility. Eric Taker and I arrived to inspect at 12:30 a.m. Chris Gallup, director of operations and Jay Knlep had yet to arrive. While we waited, we inspected the dirt parking lot. No drainage improvements have been installed and the area slopes towards the marina waters. The gangways to the slips in the inner marina lie on low lying sections that posed an opportunity for rill or gully erosion during a storm event. These are potential sources of sediment as there are no BMPs. Photographs Nos. 1 through 4 document the state of the parking area and areas of erosion concern.



**Picture 1: The parking lot is composed of exposed loose dirt and a small amount of gravel on the edges. The depression in the photo is a gangway to the marina slips below. There is no berm protecting this area from concentrated flow down along the gangway causing erosion.**



**Picture 2: The walkway is downward sloping from the parking lot to the gangways. Potential for rill or gully erosion into the marina surface waters is possible.**



**Picture 3: Gangway number three is also in a low depression of the hillside. These are potential sediment sources as there are no BMPs installed.**



**Picture 4: This is gangway number 1, closest to the lake. Due to the topography of the parking lot, a low spot forms at the top and runs down during significant rain events.**

Jay Kniep and Chris Gallup arrived at 12:55 p.m. and met us in the parking lot. Jay stated that most of the runoff during storms is on the boat ramp and sometimes on the first gangway. He states that the other gangways don't experience the same flow due to natural berms of gravel or dirt that prevent flow. Jay only monitors one point, the boat ramp sheet flow, during storm events, which is very difficult to capture.

The state of the parking lot was discussed. The land is owned by the U.S. Forest Service and the Washoe Tribe leases the land for the Meeks Bay Marina and Resort. Action Motorsports of Tahoe then leases the marina operation from the Washoe Tribe. When concerns about potential sediment sources were brought up, Jay indicated that Bob Hassett, owner of Action Watersports of Tahoe, does not own the land and cannot fix the parking lot himself. A discussion of on-site improvements restrictions commenced. The U.S. Forest Service is ultimately the limiting owner of the site and any improvements would need to be taken up with them. We stated that we will draft a letter addressed to all three owner/operators (U.S.F.S, the Washoe Tribe, and Action Motorsports of Tahoe) requiring a plan and improvement schedule to address the sedimentation spots.

We then moved on to the small main marina area. The marina as a whole contains 120 slips in an inner marina and no buoys. Most of the slips were empty. A boat rental operation is conducted from a small office onsite. The waste oil and oily rags are kept in a shed within secondary containment. The shed is also a storage area.

# BOAT LAUNCHING & RENTALS



**Picture 5: The waste oil is contained in a second container. Oil rags are also double contained up in the right hand corner. The rest of the items are stored floatation devices, etc.**

There is a public boat ramp with newer, smooth concrete. Jay commented that the smooth surface makes it nearly impossible to capture runoff samples. This ramp is the only discharge point of the marina, and it discharges to surface water.

A file inspection was conducted following the site tour. All the files were on-site and current. There are no fueling pumps; all rental boat fueling is conducted from a tank located on the back of the manager's pickup truck. There is no sale of diesel on site.

**CONDITIONS IN VIOLATION:** Lack of appropriate BMPs to prevent sedimentation from the dirt parking lot into the marina surface waters.

**ACTION SUGGESTED:** Issue a Notice of Violation requiring a site improvement plan.

**BY:** Kelsi Buts, Scientific Aid

**DATE:** July 23, 2014

*Kelsi Buts*

*7/23/14*



**Lahontan Regional Water Quality Control Board**

October 29, 2015

Bob Hassett  
Action Water Sports  
Meeks Bay Marina  
PO Box 9653  
South Lake Tahoe, CA 96158  
[wtrspt@charter.net](mailto:wtrspt@charter.net)

**CERTIFIED MAIL: 7009 0820 0001 6638 8055**  
(Tracking No: 9590940307105196099446)

Jennifer Johnson, Interim Director  
Washoe Environmental Protections Dept.  
Washoe Tribe of California and Nevada  
919 US Highway 395 South  
Gardnerville, NV 89410  
[Jennifer.johnson@washoetribe.us](mailto:Jennifer.johnson@washoetribe.us)

**CERTIFIED MAIL: 7009 0820 0001 6630 1030**  
(Tracking No: 9590940307105196099439)

Jeff Marsolais, Forest Supervisor  
Lake Tahoe Basin Management Unit  
United States Forest Service  
35 College Drive  
South Lake Tahoe, CA 96150  
[jmarsolais@fs.fed.us](mailto:jmarsolais@fs.fed.us)

**CERTIFIED MAIL: 7009 0820 0001 6630 6103**  
(Tracking No: 9590940307105196099460)

**NOTICE OF VIOLATION OF NPDES GENERAL PERMIT, BOARD ORDER NO. R6T-2011-0024, REQUIREMENTS FOR LAKE TAHOE MARINAS AND VIOLATION OF THE WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION - MEEKS BAY MARINA, EL DORADO COUNTY, WDID NO. 6A090050000**

This letter serves to notify you of violations of your permit. The violations include failure to maintain best management practices (BMPs) and exceeding effluent limitations in January 2014. This letter also discusses inconsistencies between facility staff's observations documented in self-inspection reports and the Lahontan Regional Water Quality Control Board (Water Board) staff's July 23, 2015, observations documented in the enclosed inspection report.

## INTRODUCTION

Water Board staff inspected the Meeks Bay Marina on July 23, 2015. A copy of the inspection report is enclosed. The inspection was performed to evaluate the additional temporary BMPs that had been installed as a requirement of the Water Board's February 24, 2015, Notice of Violation (NOV). You amended the facility's Storm Water Pollution Prevention Plan (SWPPP) on June 3, 2015, to identify and implement the additional BMPs. Water Board staff also evaluated compliance with the *National Pollutant Discharge Elimination System General Permit for Industrial Activities and Maintenance Dredging at Marinas in the Lake Tahoe Hydrologic Unit*, Board Order No. R6T-2011-0024 (Marina General Permit, hereinafter referred to as Permit).

The inspection report identifies deficiencies in implementing the SWPPP, also identified, below. The deficiencies resulted in the discharge of sediments into waters of Lake Tahoe.

1. The existing site gradient prevents stormwater runoff from flowing into the designated infiltration area near the boat ramp.
2. Fiber rolls are not installed in accordance with the SWPPP. Fiber roll ends are not turned up (J-Hooked), are not appropriately overlapped, and are not installed along a level contour.
3. Fiber rolls are not maintained in accordance with the SWPPP. Sections of fiber rolls are flattened or otherwise degraded, resulting in a loss of capacity/effectiveness. Sediments accumulating behind fiber roll sections need to be removed to maintain capacity.

The August 10 and September 9, 2015, submittals of the July and August 2015 weekly self-inspection reports (emails from Bob Hassett to Eric Taxer) state that all BMPs are appropriately installed and that no rills, gullies, or accumulated sediments were observed during all nine weekly inspections conducted in July and August. These reports conflict with the site conditions that were observed and documented by Water Board staff.

Water Board staff also reviewed the results of the facility's annual report, which was submitted on November 14, 2014. The analytical results in the report are associated with samples collected from stormwater runoff entering the marina (waters of Lake Tahoe) from the boat ramp during rainfall events on January 9 and May 20, 2014. The results are summarized in the following table.

**Meeks Bay Marina 2014 Annual Report - Analytical Results from Stormwater Runoff Samples Collected at Meeks Bay Marina Boat Ramp for Rainfall Events on January 9 and May 20, 2014:**

Constituent	Effluent Concentration	Effluent Limit	Serious Violation Limit (Exceeds 40 Percent of Limit)	Serious/Chronic Violation
Total Nitrogen	2.1 mg/L	0.5 mg/L	0.7 mg/L	Serious
Total Phosphorus	0.7 mg/L	0.1 mg/L	0.14 mg/L	Serious
Total Iron	14 mg/L	0.5 mg/L	0.7 mg/L	Serious
Turbidity	160 NTU	20 NTU	Not a Category	Chronic
Total Suspended Solids (TSS)	440 and 2 mg/L Sum = 442 mg/L	100 mg/L	EPA Final Benchmark Value of 100	N/A
Aluminum	13 and 0.14 mg/L Sum = 13.14 mg/L	0.75 mg/L	EPA Final Benchmark Value of 0.75 mg/L	N/A
Total Recoverable Lead	0.029 mg/L and ND Sum = 0.029 mg/L	0.014 mg/L	EPA Final Benchmark Value of 0.014 mg/L	N/A
Total Recoverable Zinc	0.130 and 0.0035 mg/L Sum = 0.1335 mg/L	0.04 mg/L	EPA Final Benchmark Value of 0.04 mg/L	N/A
Total Recoverable Copper	0.011 mg/L and ND Sum = 0.011 mg/L	0.0152 mg/L	EPA Final Benchmark Value of 0.0152 mg/L	N/A

**PERMIT VIOLATIONS**

Permit Order VII.C.3 requires you to develop and implement a SWPPP. The observed implementation deficiencies noted above violate the Permit.

Permit Order IV.J.6 prohibits the discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to lands below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe. The failure to maintain BMPs and the evidence of sediment discharges into the marina (see attached inspection report) violates the Permit.

Permit Order V.A.1 establishes effluent limits for stormwater runoff entering Lake Tahoe. The 2014 annual report documents exceedances of the effluent limits for Total Nitrogen, Total Phosphorus, Turbidity, and Total Iron on January 9, 2014. These exceedances violate the Permit. Additionally, the effluent violations for Total Nitrogen, Total Phosphorus, Total Iron, and Turbidity are subject to minimum mandatory penalties [Water Code section 13385(h) and (i)].

Permit Order V.D. establishes benchmark limits for TSS, Aluminum, Total Recoverable Lead, Total Recoverable Zinc, and Total Recoverable Copper. The 2014 annual report documents exceedance of these benchmark limits. When the benchmark limits are exceeded, Permit Order V.D. requires you to,

*“... immediately initiate a review of the BMPs at the site, take corrective actions, and repeat the quarterly monitoring. These actions must be repeated until the average concentration from the quarterly sampling is less than the benchmark. Failure to implement corrective actions and monitoring requirements is a violation of this Marina General Permit.”*

You have not appropriately identified and implemented corrective actions to address the benchmark limit exceedances. The February 2015 NOV requires you to amend your SWPPP to include the installation and maintenance of temporary BMPs to address the unpaved parking situation. Those BMPs may, in fact, help to address the benchmark exceedances if they were effectively installed and maintained. However, you have failed to effectively implement and maintain the BMPs required by your SWPPP (and, therefore, required by your Permit). The failure to effectively implement the BMPs will likely result in additional benchmark and effluent limit exceedances. Such future exceedances may be subject to additional minimum mandatory penalties and discretionary liability.

## **BASIN PLAN VIOLATIONS**

Chapter 5.2 of the Basin Plan prohibits the discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to lands below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe. The failure to maintain BMPs and the evidence of sediment discharges into the marina violates the Basin Plan.

## **WORKPLAN AND IMPLEMENTATION SCHEDULE**

1. By **November 30, 2015**, submit to this office, documentation that all BMPs have been properly installed/implemented and/or maintained in accordance with the June 2015 Amended SWPPP.

2. By **November 30, 2015**, submit to this office, documentation that facility staff responsible for conducting weekly site inspection and preparing site inspection reports, has reviewed this Notice and its enclosed inspection report's findings regarding BMP implementation and maintenance, and SWPPP requirements for proper BMP implementation and maintenance. Additionally, submit a SWPPP amendment that requires all weekly inspection reports to include date-stamped photographs of all inspected BMPs to verify accuracy of report findings.
3. In response to the benchmark limit exceedances, immediately initiate a review of the BMPs related to stormwater runoff at the site, implement the necessary corrective actions, and submit the results of the review and implemented corrective actions to this office by **December 28, 2015**. As stated above, effectively installing and maintaining the temporary BMPs identified in the June 2015 Amended SWPPP may address the conditions leading to the above-referenced benchmark limit exceedances. If you believe this to be the situation, then state in the report described in Requirement No. 1, above, that the actions/activities described in the report also address the conditions responsible for the above-referenced benchmark limit exceedances. Otherwise, identify the additional corrective actions taken in response to the benchmark limit exceedances.

## **POTENTIAL ADMINISTRATIVE CIVIL LIABILITY**

This Notice informs you of violations of the Marina General Permit and the Basin Plan so that you may take immediate actions to comply with requirements. The violations identified, above, are subject to additional enforcement action. The information, below, is being provided to inform you of the serious nature of these violations.

Water Board staff will evaluate your response to this Notice to achieve compliance with the Marina General Permit. Non-compliance with the Marina General Permit may result in additional enforcement action, including, but not limited to, administrative civil liabilities. The Water Board may impose administrative civil liability up to \$10,000 for each day in which each violation of the Marina General Permit occurs pursuant to California Water Code section 13385(c). Please be advised that the number of days of violation may continue to accrue until each instance of violation has been satisfactorily corrected. The Water Board reserves the right to take any further enforcement action authorized by law.

Additionally, certain effluent violations are subject to minimum mandatory penalties, pursuant to Water Code sections 13385(h) and 13385(i). The Water Board must assess a minimum of \$3,000 for each serious and chronic effluent violation. The Water Board may elect to assess a higher amount of up to \$10,000 per violation.

Bob Hassett, Meeks Bay Marina  
Jennifer Johnson, Washoe Tribe of CA & NV  
Jeff Marsolias, LTBMU, U.S.F.S.

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It is also imperative that necessary corrective actions be completed prior to the onset of the upcoming wet-weather season to avoid further waste discharges from the marina facilities to Lake Tahoe. Keep in mind long-term weather forecasts indicating a greater potential for high-precipitation events during the upcoming wet-weather season when designing, implementing, and maintaining corrective actions/BMPs.

Please contact Eric J. Taxer, Water Resources Control Engineer, at (530) 542-5434, or Tobi Tyler, Water Resources Control Engineer, at (530) 542-5435, if you have any questions regarding this Notice.



Cathe Pool, P.E.  
Senior Water Resource Control Engineer

Enclosure: July 23, 2015, Inspection Report

cc (w/enclosure): Johnathan Cook-Fisher, Special Use Permit Coordinator, U.S.F.S.  
(via email: [jcfisher@fs.fed.us](mailto:jcfisher@fs.fed.us))  
Gina M. Thompson, Forest Recreation, Lands, Special Uses and  
Heritage Staff Officer, U.S.F.S.  
(via email: [gthompson04@fs.fed.us](mailto:gthompson04@fs.fed.us))  
Jay Kniep, (via email: [jaykniep@cs.com](mailto:jaykniep@cs.com))  
Ken Kasman, Tahoe Regional Planning Agency  
(via email: [kkasman@trpa.org](mailto:kkasman@trpa.org))  
Suzanne Garcia, Assistant Legal Counsel, Washoe Tribe of  
California and Nevada

# COMPLIANCE INSPECTION REPORT

ROUTING: SF  
CH

FILE/WDID #: 6A090050000

BOARD ORDER NO: R6T-2011-0024  
NPDES NO: CAG616003

## PRE-INSPECTION REVIEW

DISCHARGER: Action Motorsports of Tahoe  
DISCHARGER CONTACT: Bob Hassett  
DISCHARGER PHONE NUMBER: (530) 542- 6552 [work]  
DISCHARGER ADDRESS: P.O. Box 9653, South Lake Tahoe, CA 96150

CATEGORY: 3C  
TYPE: IND

FACILITY NAME: Meeks Bay Resort & Marina  
FACILITY ADDRESS: 3501 Bode Drive, South Lake Tahoe, CA 96150

DATE OF LAST INSPECTION: July 16, 2014

PROBLEMS NOTED: Lack of appropriate BMPs to prevent sedimentation from the dirt parking lot into the marina surface waters. NOV issued February 24, 2015. Facility SWPPP revised June 3, 2015.

DATE LAST SMR SUBMITTED: November 14, 2014 (Annual Report)

PROBLEMS NOTED: See table, below, of effluent limit violations from January 9, 2014 Sample date. Samples were collected from storm water runoff entering the marina (waters of Lake Tahoe) from the boat ramp during a rainfall event.

Constituent	Effluent Concentration	Effluent Limit	Serious Violation Limit (Exceeds 40% of Limit)	Serious/Chronic Violation?
Total Nitrogen	2.1 mg/l	0.5 mg/l	0.7 mg/l	Serious
Total Phosphorus	0.7 mg/l	0.1 mg/l	0.14 mg/l	Serious
Total Iron	14 mg/l	0.5 mg/l	0.7 mg/l	Serious
Turbidity	160 NTU	20 NTU	Not a Category.	No
Total Suspended Solids (TSS)	440 mg/l	100 mg/l	EPA Benchmark Value of 100	N/A
Aluminum	13 mg/l	0.75 mg/l	EPA Benchmark Value of .75	N/A
Total Recoverable Lead	0.029 mg/l	0.014 mg/l	EPA Benchmark Value of .014	N/A

Total Recoverable Zinc	0.130 mg/l	0.04 mg/l	EPA Benchmark Value of .04	N/A
Total Recoverable Copper	0.011 mg/l	0.0152 mg/l	EPA Benchmark Value of .0152	N/A

NOTE: EPA Benchmark Values are not considered effluent limits, as noted in Permit Order section V.D.

**FIELD OBSERVATIONS**

INSPECTOR: Eric J. Taxer, WRCE  
Will Chen, Scientific Aid

DATE: July 23, 2015  
TIME: 2:30 p.m. – 3:10 p.m.

DISCHARGER REP: Ed Oliver

TITLE: Site Manager

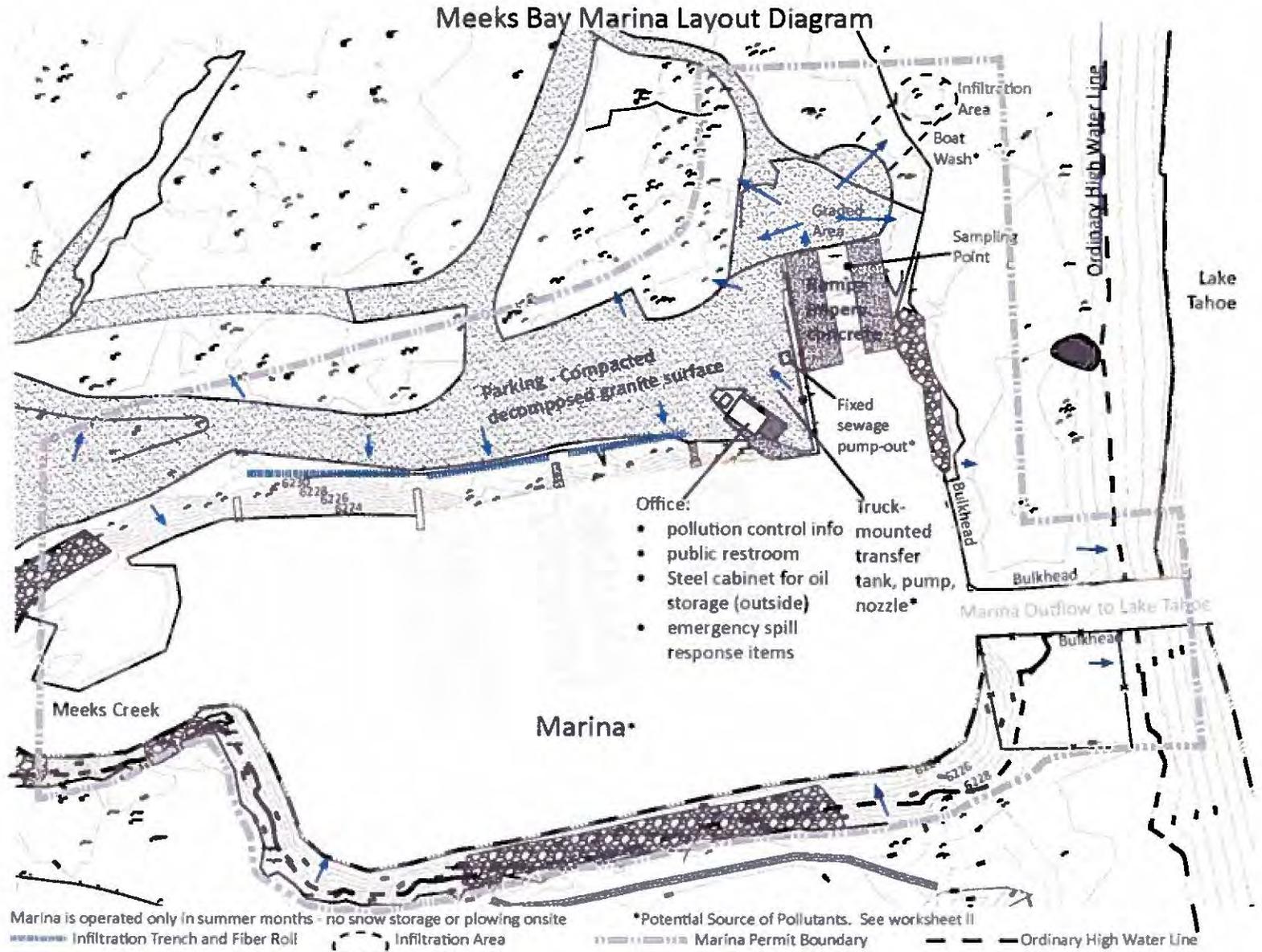
**REMARKS:**

Weather was sunny with a slight breeze, although rain had occurred in the area two days prior. All photographs were taken with a 7.2 Megapixel Sony Cybershot DSC-S700 camera. I took all photos, unless otherwise noted. Will Chen left a voice mail with Bob Hasset the morning of the inspection to inform him that we would be inspecting the facility later in the day.

The purpose of the inspection was to evaluate additional temporary best management practices (BMPs) that had been installed as a condition of the Water Board's February 24, 2015 NOV. The additional BMPs are documented in the facility's Storm Water Pollution Prevention Plan (SWPPP), which was updated on June 3, 2015.

Will Chen and I arrived on site at 2:30 p.m. While walking to the on-site manager's office, I observed a ponded area in the northeast driveway area, immediately north of the ramp. I took three photos, Photograph Nos. 01, 02 and 03. According to the facility SWPPP, the site area is to be graded to direct stormwater runoff from this area to a vegetated depression/infiltration area northwest of the driveway area (see Figure 1). Ponded water in this area indicates that the site is not sufficiently graded to direct runoff to an appropriate infiltration area, and such runoff may potentially flow toward the boat ramp and into the marina (waters of Lake Tahoe).

Figure 1. Site Map, From Page 18 of Meeks Bay Marina June 3, 2015 SWPPP





Photograph 01 - Facing West Toward Parking Area, Boat ramp on far left



Photograph 02 - Facing West Toward Parking Area, Panning right of Photo 1, Standing Ponded Water in Lot From Recent Rains



Photograph 03 - At Northeast area, Looking Northeast at Ponded Water In Parking Area. Per the SWPPP, the infiltration area should be located roughly where the willow stand in the center of the photograph is located. This Photograph was taken at the conclusion of the inspection at approximately 3:10 p.m.

We went to the site manager's building, and we identified ourselves to Ed Oliver, the marina site manager. Mr. Oliver permitted us to inspect the marina facility.

We walked the facility from the east toward the west. There is one boat launch ramp located on the east side of the facility. West of the boat ramp and west of the site manager's building, there are four pedestrian ramps into the marina to access boat slips. We observed a pump out station for boats West of the marina office, and we observed an oil storage containment and dumpster south of the marina shop. The oil containment and dumpster appeared clean.

The amended SWPPP identifies the placement of BMPs (fiber rolls, boulders, drainage basins, and site grading) to prevent erosion from stormwater runoff entering the marina waters. The amended SWPPP requires all fiber rolls to be installed and maintained in accordance with the CASQA guidelines. The guidelines require:

- The ends of the fiber roll are to be turned up (J-Hooked) to prevent runoff from going around the fiber roll.
- Install along a level contour (parallel to grade, not perpendicular to the grade).
- If more than one fiber roll is placed in a row, the rolls should be overlapped, not abutted.

- Install and maintain fiber rolls to maintain a minimum height of four inches of fiber roll above grade (see entrenchment detail).
- Remove accumulated sediment behind the fiber roll when sediment accumulation reaches one-half the designated sediment storage depth, usually one half the distance between the top of the fiber roll and the adjacent ground surface.

The remaining photographs (nos. 03 through 31) document deficient and degraded fiber rolls which have resulted in eroded sediment discharge into the marina within waters of Lake Tahoe. A



Photograph 04 - Looking East, Northeast at fiber roll. The fiber roll is not J-Hooked at its end which is also installed perpendicular to the grade lower than the rest of the fiber roll, and not parallel to the grade. Any runoff that flows toward the fiber will flow along it toward the downgradient end and, eventually, down the boat ramp and into the marina.



**Photograph 05 - Flattened fiber roll adjacent to marina office, facing southwest. Also, the end of the fiber roll is installed perpendicular to the gradient, which will channelize storm water runoff.**



**Photograph 06 - BMP joint is not J-hooked, and the fiber roll section by the pylons has been flattened. This area is by marina office, facing southeast**



**Photograph 07 - First ramp west of office, facing south. A gap exists between the concrete section of the ramp walkway and the fiber roll to the right (west) of the ramp. Runoff that bypasses the drainage ditch will flow through this area and into the marina.**



**Photograph 08 - Second ramp west of office, facing southeast. Fiber rolls do not prevent runoff from going down ramp and into marina.**



**Photograph 09 – Close up of Photograph No. 08. Note that ends of fiber rolls are not J-Hooked.**



**Photograph 10 – Moving closer to the ramp to get a further close-up of Photograph No. 08. Note that the fiber rolls do not prevent runoff from going down ramp and into marina**



Photograph 11 – Moving closer to the second ramp west of office to get a further close up.



Photo 12 - Moving closer to the second ramp west of office to get a further close up within the marina area. Note that the fiber rolls were unable to prevent runoff from going down ramp and into marina, as evidenced by a sediment deposit in marina located on left (east) side of ramp.



Photograph 13 – Close up of sediment deposit noted in Photograph No. 12.

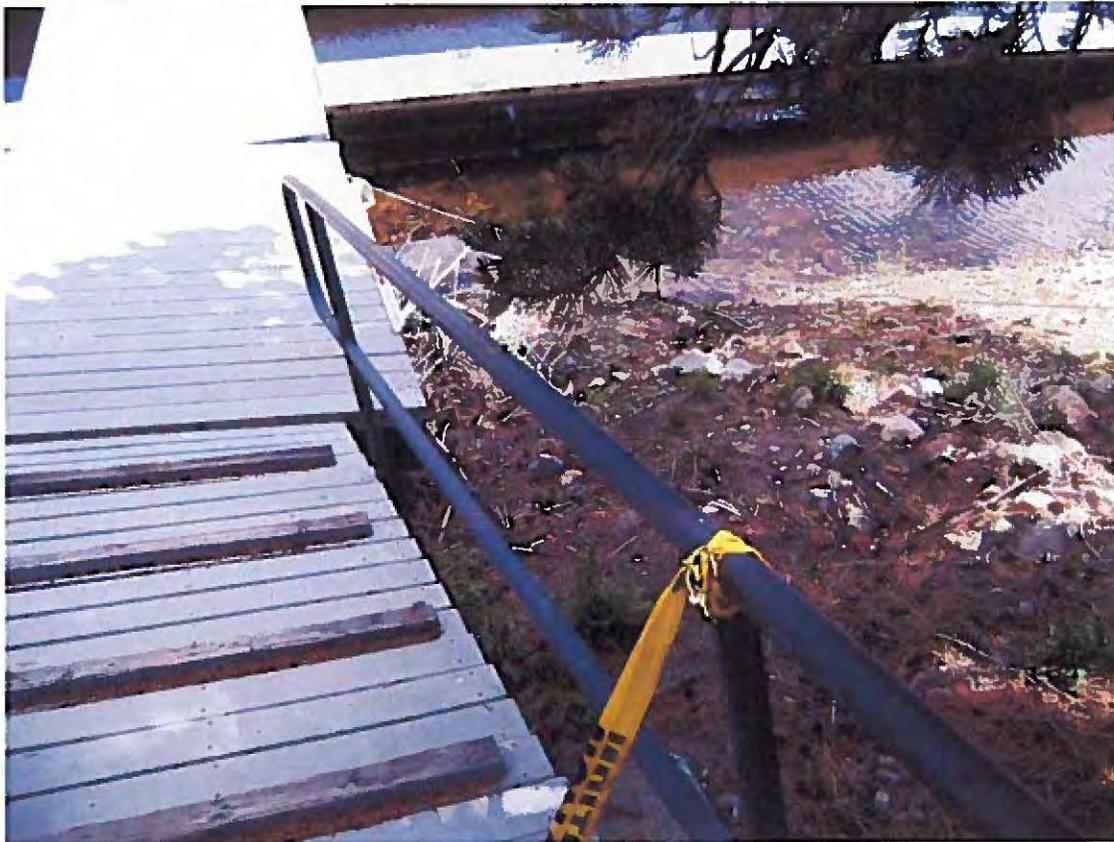


Photo 14 – From same location as Photograph No. 13, but looking on the west side of the second ramp west of office.



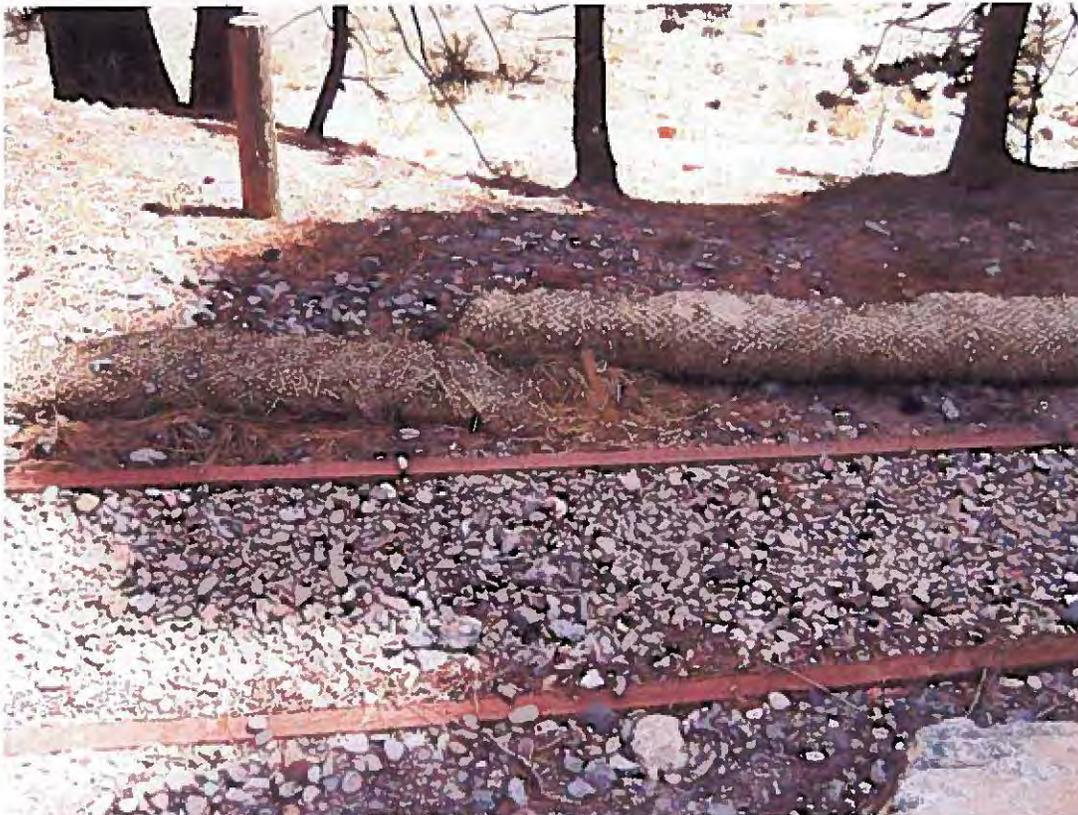
**Photograph 15 - About 20 feet west of 2nd ramp west from office, looking south-southeast. The fiber roll has been degraded degraded and flattened.**



**Photograph 16 - Mid-way between 2nd and 3rd ramps west from the office. The fiber rolls have been slightly flattened, and the ends have not been overlapped leaving a gap between the rolls where stormwater runoff can become concentrated.**



**Photograph 17 - 3rd ramp west from office, facing south. A rill has formed beneath the metal plate, creating a threatened discharge of sediments into the marina. No fiber rolls or other BMP exists to prevent runoff from flowing down this area and causing bank erosion.**



**Photograph 18 - Midway between 3rd and 4th ramps west of office. The ends of the fiber rolls are degrading, and they are barely overlapped.**



Photograph 19 - West of photo 18, between 3rd and 4th ramps west of office. In this area, the fiber rolls are adequately overlapped.



Photograph 20 - At 4th walkway ramp west of office. Fiber rolls to left of walkway and above walkway are not J-hooked at their ends. Fiber roll on right and above walkway is inundated with sediment, and evidence of sediment discharge into the marina is apparent.



Photograph 21 – Close up of the sediment-inundated fiber roll shown in Photograph No. 20.



Photograph 22 - Close up of the sediment-inundated fiber roll shown in Photograph No. 20, also showing sediment deposits down along the embankment and into Lake Tahoe.



Photograph 23 - Close up of the sediment-inundated fiber roll shown in Photograph No. 20, facing east. The fiber roll end in the foreground was slightly J-Hooked to capture runoff and sediment, while the end of the fiber roll at the top of the photograph is not J-Hooked and allows runoff to flow down the embankment. Photograph taken by Will Chen.



Photograph 24 - Close-up of the west side of the 4<sup>th</sup> walkway shown in Photograph No. 20. Evidence of erosion can be observed.



**Photograph 25 - 10 feet west of the 4<sup>th</sup> walkway west of the office. The fiber roll has degraded.**



**Photograph 26 - 20 feet west of 4th walkway ramp from office, facing east. No fiber roll has been installed, and a small gully erosion can be observed.**



Photograph 27 – Same photo point as Photograph No. 26, panning toward the southeast.



Photograph 28 - Same photo point as Photograph No. 26 and 27, panning toward the south.



**Photograph 29 - Standing at photo point 28, looking southwest. Fiber rolls have not been placed to collect potential stormwater runoff from the unpaved parking area.**



**Photograph 30 - Standing at photo point 28, panning west from photo point 29, looking southwest-west. Fiber rolls have not been placed to collect potential stormwater runoff from the unpaved parking area.**



**Photograph 31 - Standing at photo point 28, panning west from photo point 30, looking west to boat trailer parking area. Fiber rolls have not been placed to collect potential stormwater runoff from the unpaved parking area.**



**Photograph 32 - At west end of the marina boundary in the boat trailer parking area looking east. Fiber rolls were not installed at trailer parking area. Note the evidence of ponded water in the middle of the photograph, indicating fiber rolls may not be necessary in this area.**



Photograph No. 33 – Close-up of storm water ponding line noted in Photograph No. 32. While there isn't evidence that stormwater runoff discharged over the bank in this area, it is likely that storm water flowed eastward toward the discharge point noted in Photographs No. 26-28.

### **CONDITIONS IN VIOLATION:**

Permit Order VII.C.3 requires the Discharger to develop and implement a Storm Water Pollution Prevention Plan (SWPPP). The following deficiencies in implementing the SWPPP were observed, resulting in violations of the permit.

1. Deficient site gradient which prevents stormwater runoff from flowing into designated infiltration area.
2. Fiber rolls were not installed in accordance with the SWPPP. Fiber roll ends were not turned up (J-Hooked), fiber rolls were not appropriately overlapped, and fiber rolls were not installed along a level contour.
3. Fiber rolls were not maintained in accordance with the SWPPP. Sections of fiber rolls had been flattened or had otherwise degraded, resulting in a loss of capacity. Fiber roll sections had been overwhelmed with sediments resulting in a loss of capacity.

Permit Order IV.J.6 and Chapter 5.2 of the *Water Quality Control Plan for the Lahontan Region*, prohibit the discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to lands below the high water rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe. The failure to maintain BMPs and the evidence of sediment discharges into the marina violates these prohibitions.

Permit Order V.A.1 establishes effluent limits for storm water runoff entering Lake Tahoe. The Discharger violated effluent limits for Total Nitrogen, Total Phosphorus, Turbidity, and Total Iron on January 9, 2014. Many of these effluent violations are subject to minimum mandatory penalties, pursuant to water code section 13385(h).

The Discharger violated benchmark limits established by Permit Order V.D. for TSS, Aluminum, Total Recoverable Lead, Total Recoverable Zinc, and Total Recoverable Copper. Permit Order V.D. requires the Discharger to,

*"... immediately initiate a review of the BMPs at the site, take corrective actions, and repeat the quarterly monitoring. These actions must be repeated until the average concentration from the quarterly sampling is less than the benchmark. Failure to implement corrective actions and monitoring requirements is a violation of this Marina General Permit."*

The Discharger has not identified nor has the Discharger implemented such corrective actions other than those required by the February, 2015 NOV.

**ACTION SUGGESTED:** Issue second Notice of Violation for all violations noted. Refer to enforcement committee for potential discretionary and minimum mandatory civil liability.

BY: Eric J. Taxer

TITLE: WRCE

DATE: August 10, 2015



**ACTION RECOMMENDED:**

BY:



TITLE:

SWRCE

DATE:

8/17/15