

1 property located at 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (the
2 "South Y Site" or "Site").

3 The Final Order requires Fox, as the former general partner of an entity called Century
4 Properties Equity Fund 73 ("Century 73"), to investigate and clean up contamination originating
5 from the Site. As set out in this Petition and Fox's accompanying Statement of Points and
6 Authorities, the Regional Board acted inappropriately and improperly when it concluded that
7 Fox and Century 73 were dischargers under Section 13304 of the Water Code ("Section 13304")
8 and were responsible for investigating and cleaning up contamination originating from the Site
9 under Section 13267 of the Water Code ("Section 13267"). The Regional Board has not shown
10 that Fox or Century 73 "caused or permitted" a discharge under Section 13304 or that they
11 discharged waste under Section 13267.

12 Furthermore, the Regional Board exceeded its authority under Section 13267 by requiring
13 an off-site investigation without showing that the burden of the investigation bears a reasonable
14 relationship to the need for the investigation. Specifically, the Regional Board failed to consider
15 the cost of conducting the investigation, failed to consider that investigations conducted since
16 2003 have confirmed that no contamination has migrated off-site at levels that require
17 investigation or remediation, and failed to account for other sources that are contributing to the
18 regional PCE plume discussed in paragraphs 7 and 29 of the Final Order ("Regional PCE
19 Contamination").

20 Accordingly, the State Board should invalidate the Final Order and at a minimum reverse
21 the Regional Board's decision to name Fox as a responsible party in the Final Order.

22 **I. PETITIONER'S NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL
23 ADDRESS**

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1 **II. REGIONAL BOARD ACTION OF WHICH FOX SEEKS REVIEW**

2 Fox petitions the State Board to review the Regional Board’s conclusion that Fox is liable
3 for investigating and cleaning up contamination originating from the Site under Water Code
4 Section 13304 and/or Section 13267, as set out in the Final Order, a copy of which is attached
5 hereto as Exhibit A. In particular, and as described in detail in the Statement of Points and
6 Authorities set out below, Fox seeks review of the Regional Board’s conclusions (as well as the
7 factual and legal determinations underlying these conclusions) that:

- 8 1. Fox is liable for the investigation and cleanup of contamination originating from
9 the Site under Section 13267;
- 10 2. An investigative order under Section 13267 can be issued without a showing
11 that the burden of the investigation bears a reasonable relationship to the need
12 for the investigation, including an evaluation of the cost of the investigation;
- 13 3. A discharge of perchloroethylene (“PCE”) occurred at the Site while Century 73
14 owned it;
- 15 4. A discharge of PCE occurred during Century 73’s ownership because PCE was
16 discharged into the environment prior to its ownership and continued to “emit”
17 during its ownership;
- 18 5. Former landowners and landlords, such as Century 73, may be held liable under
19 Section 13304 for “permitting” a discharge even if the Regional Board has not
20 established that such landowners or landlords knew or should have known of
21 the discharge;
- 22 6. Century 73 or Fox had the knowledge requisite to be liable under section 13304;
- 23 7. Century 73 or Fox had the legal authority to prevent a discharge of PCE at the
24 Site; and,
- 25 8. Fox is liable under Section 13304 as a former general partner of Century 73.

20 **III. DATE ON WHICH REGIONAL BOARD ACTED**

21 The Regional Board issued the Final Order on May 12, 2017.

22 **IV. STATEMENT OF REASONS THAT THE REGIONAL BOARD’S ACTION WAS
23 INAPPROPRIATE AND IMPROPER**

24 The Regional Board did not establish that Fox is liable under Water Code Section 13304
25 or Section 13267 for investigating and remediating contamination originating from the Site. In

1 particular, and as set out in detail in the Statement of Points and Authorities below, the Regional
2 Board action was inappropriate and improper because the Regional Board:

- 3 1. Exceeded its authority under Section 13267 by failing to establish that Fox is a
4 discharger under that section;
- 5 2. Exceeded its authority under Section 13267 by failing to provide an explanation
6 and supporting evidence for why the technical reports it has required bear a
7 reasonable relationship to the need for the reports and the benefits to be
8 obtained from the reports;
- 9 3. Exceeded its authority under Section 13267 by requiring Fox to clean up
10 contamination originating from the Site;
- 11 4. Failed to show that a dry cleaner discharged PCE at the Site while Century 73
12 owned and leased the Site between 1974 and 1985;
- 13 5. Improperly concluded that passive migration of contamination constitutes a
14 “continuing discharge”;
- 15 6. Misapplied the law by concluding that Century 73 or Fox could be held liable
16 under Section 13304 as a former owner and lessor of the Site and former
17 general partner of Century 73, respectively, without actual knowledge or
18 constructive knowledge of the discharge caused by a tenant (if, in fact one
19 occurred);
- 20 7. Failed to show that Century 73 or Fox had the knowledge requisite to be liable
21 under Section 13304;
- 22 8. Failed to prove that Century 73 or Fox had the legal authority to prevent a
23 discharge of PCE at the Site; and,
- 24 9. Adopted the Final Order without providing Fox with notice and a reasonable
25 opportunity to be heard.

20 **V. THE MANNER IN WHICH FOX IS AGGRIEVED**

21 Fox is aggrieved by the Final Order because Fox’s interests have been and will be
22 adversely affected by the Final Order’s imposition on Fox of Site investigation and remediation
23 obligations despite the Regional Board’s inappropriate and improper conclusion that Fox is a
24 liable party under Water Code Section 13304 or Section 13267.

24 **VI. STATE BOARD ACTION REQUESTED BY FOX**

25 Fox requests that the State Board take the following actions:

1 A. Fox seeks an order from the State Board that invalidates the Regional Board's
2 Final Order or, at a minimum, modifies it to remove Fox as a named party responsible for
remediating the Site.

3 B. Fox requests permission under 23 CCR § 2050.6 to present additional evidence to
4 the State Board that was not presented to the Regional Board. The supplemental evidence that
5 Fox seeks to present to the State Board consists of new technical evidence that has been
6 generated since the Regional Board issued the Final Order, a declaration from Kerstin Hakansson
7 regarding discharges at the Site that was obtained after the Regional Board issued the Final
8 Order, updated figures depicting on-site and off-site contaminant levels and sources around the
Site based upon data collected between September 2016 and May 2017, and documentation
related to the current status of an off-site investigation that Fox is currently undertaking, all of
which Fox has incorporated into its Statement of Points and Authorities.

9 The California Water Code provides broad authority to the State Board to consider any
10 "relevant evidence" that was not in the record before the Regional Board, "which, in the
11 judgment of the state board, should be considered to effectuate and implement the policies of
12 [the Water Quality Division of the Water Code]." Cal. Water Code § 13320(b). To implement
this provision, the State Board has provided by regulation that it may, in its discretion, accept
supplemental evidence offered by petitioners before the State Board that was not presented to the
regional board or improperly excluded from the record by the regional board. 23 CCR § 2050.6.

13 The additional evidence that Fox seeks to introduce consists of the following:

- 14 1. New data generated in May 2017, after the Regional Board issued the Final Order. 1/
15 Specifically, the new data, which the Regional Board itself directed Fox to collect,
16 show that the existing remediation system is successfully remediating the on-site
17 contamination and confirm the conclusions of previous investigations that
18 contamination has not migrated off-site at concentrations that warrant further
investigation or cleanup. The new data are relevant because the Final Order expressly
alleges that "the lateral and vertical extent of PCE contamination originating from the
Site has never been determined," and that the existing SVE/AS system "is not
completely controlling lateral or vertical contaminant migration."
- 19 2. A declaration from Kerstin Hakansson, dated June 6, 2017. 2/ Mrs. Hakansson's
20 declaration provides evidence that a discharge did not occur at the Site during
21 Century 73's ownership of the Site. Despite many months of attempting to reach
Mrs. Hakansson, Fox was only recently able to do so.

22
23

1/ E₂C, Second Quarter 2017 Groundwater Monitoring Report and Current Site Remediation Status Report,
24 Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe ("Second Quarter 2017
Monitoring Report") (Exhibit B).

25 2/ Declaration of K. Hakansson (Jun. 6, 2017) (Exhibit C).

1 3. Updated figures depicting PCE concentrations in groundwater at and around the Site,
2 data documenting the direction of groundwater flow, and facilities using PCE around
3 the Site. ^{3/} These updated figures incorporate data that was collected since Fox
4 submitted its comments on the revised proposed order issued by the Regional Board
on July 18, 2016. The updated figures provide an up-to-date depiction of current Site
conditions.

5 4. A permit from the City of South Lake Tahoe for Encroachment, Excavation and
6 Grading. ^{4/} The permit is related to Fox's investigation to identify sources of the
7 Regional PCE Contamination and demonstrates that Fox has begun the offsite
investigation. The fact that the investigation is proceeding is one of the many reasons
that the Final Order is not necessary under Section 13267.

8 C. Fox also requests that the State Board conduct a hearing on this Petition to
9 consider the supplemental evidence offered by Fox and any additional evidence and argument
necessary to resolve the Petition.

10 **VII. STATEMENT OF POINTS AND AUTHORITIES**

11 A statement of points and authorities in support of this Petition is set out below.

12 **VIII. STATEMENT THAT PETITION HAS BEEN SENT TO THE REGIONAL**
13 **BOARD AND OTHER RESPONSIBLE PARTIES**

14 Fox has simultaneously served a copy of this Petition, and all supporting documentation,
15 by e-mail and/or certified mail on the State Board, the Executive Officer of the Regional Board,
Seven Springs Limited Partnership and its counsel, Bobby Pages, Inc., and Connolly
Development, Inc.

16 **IX. STATEMENT THAT SUBSTANTIVE ISSUES AND OBJECTIONS WERE**
17 **RAISED BEFORE THE REGIONAL BOARD**

18 To the extent apparent from prior Regional Board actions, Fox raised before the Regional
19 Board, as reflected in the record, ^{5/} all of the substantive issues and objections raised in this
20 petition, except to the extent the following are deemed to concern new issues or objections: (a)
new technical data gathered in May 2017 subsequent to the issuance of the Final Order, (b) the
21 declaration of Kerstin Hakansson that was obtained after issuance of the Final Order, (c) updated

22 ^{3/} See Figures 1-4 attached to this Petition.

23 ^{4/} City of South Lake Tahoe, Permit EN17-27, Encroachment, Excavation and Grading Within the City Right
of Way (approved June 6, 2017) (Exhibit D).

24 ^{5/} See e.g., Fox's Comments on the Proposed Cleanup and Abatement Order for Former Lake Tahoe Laundry
Works; 1024 Lake Tahoe Boulevard, South Lake Tahoe, California (Feb. 11, 2016) (Exhibit E); Fox's
25 Comments on the Revised Cleanup and Abatement Order for Former Lake Tahoe Laundry Works; 1024 Lake
Tahoe Boulevard, South Lake Tahoe, California (Sept. 8, 2016) (Exhibit F).

1 figures based on new data collected at the Site since Fox submitted comments on the prior
2 cleanup and abatement order proposed by the Regional Board on August 9, 2016, and (d) the
3 City of South Lake Tahoe Permit for Encroachment, Excavation and Grading that was obtained
4 after issuance of the Final Order. To the extent the Final Order raises issues that were not raised
5 by the Regional Board's prior proposed orders, because the Regional Board adopted the Final
6 Order without a hearing, this petition is Fox's first opportunity to contest those issues and to
7 raise associated objections.

8
9 Respectfully submitted this 12th day of June 2017.

10
11 

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**STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF
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1 **STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF FOX'S PETITION**
2 **FOR REVIEW**

3 **I. INTRODUCTION**

4 On May 12, 2017, the California Regional Water Quality Control Board, Lahontan Region
5 (“Regional Board”) issued a Cleanup and Abatement Order R6T-2017-0022 (“Final Order”),
6 requiring investigation and cleanup of contamination originating from the former Lake Tahoe
7 Laundry Works (“LTLW”) site in the South Y shopping center (“South Y Site” or “Site”). The
8 Final Order names Fox Capital Management Corporation (“Fox”) as a party that “caused or
9 permitted” a discharge under Section 13304 of the Water Code (“Section 13304”) and alleges
10 that Fox is liable under Section 13267 of the Water Code (“Section 13267”) for investigation and
11 cleanup of perchloroethylene (“PCE”) contamination allegedly migrating from the Site. The
12 Final Order alleges that Fox is liable under the Water Code because it is the former general
13 partner of Century Properties Equity Fund 73 (“Century 73”), a former owner of the South Y
14 Site, which “had knowledge of and control over the activities occurring at the Site that caused
15 the discharge and had the legal ability to prevent the discharge.” *See* Final Order at 10, ¶ 35.
16 The Regional Board further alleges that Fox is a discharger under Section 13304 because “it also
17 had knowledge of and control over the activities occurring at the Site that caused the discharge.”
18 *Id.* at 10, ¶ 36.

19 For a multitude of reasons, the allegations in the Final Order are unfounded and the Final Order
20 is unlawful. First, the Regional Board conflates its authority under Section 13304 and Section
21 13267 of the California Water Code by improperly attempting to require Fox to investigate,
22 clean up and abate contamination under Section 13267 based on Fox’s alleged liability under
23 Section 13304. Second, the Regional Board has failed to establish that either Century 73 or Fox
24 is liable under either Section 13304 or Section 13267. The Regional Board has not shown that
25 either entity has “discharged waste” under Section 13267 or that either has “caused or permitted”
a discharge under Section 13304. Under State Board precedents, the latter requires the Regional
Board to show: (1) that a discharge occurred during Century 73’s ownership of the South Y Site,
(2) that Century 73 knew or should have known of the discharge, and (3) that Century 73 could
have prevented the discharge. But the Regional Board has failed to prove any of these elements.

Even if the Regional Board could make these showings, Fox still would not be liable for the
investigation and cleanup required under the Final Order. First, contrary to the express terms of
Section 13267, the Regional Board has failed to consider the burden of the required
investigation, and whether that burden (including costs) are reasonable in light of the
investigation’s benefits. Such an assessment would show that the required investigation is
unreasonable because investigations conducted on and off-site between 2003 and 2008
previously demonstrated that the LTLW contamination was localized and had not migrated off-
site. Based on these investigations, the Regional Board and Fox and Seven Springs agreed to the
remediation plan currently being implemented at the Site, and, until recently, the Regional Board
had not indicated that it considered that plan deficient. Second, data collected since have
confirmed the findings of these prior investigations. These data show that the soil vapor

1 extraction/groundwater air sparging system (“SVE/GASS”) that has operated at the Site since
2 2010 has been effective in remediating the Site and preventing contamination from migrating
3 off-site at concentrations that require further investigation or remediation. Moreover, the
4 distribution of PCE in on-site and off-site groundwater demonstrates that the regional PCE
5 plume discussed in the Final Order, *see* Final Order at 2, ¶ 7; 8, ¶ 29, (“Regional PCE
6 Contamination”) is attributable to off-site sources, and not attributable to the Site.
7 Contamination at the South Y Site has been elevated in the shallow zone and has been much
8 lower in the middle zone. By contrast, off-site contaminant distributions consist of higher PCE
9 concentrations in middle zone groundwater than shallow zone groundwater. Additionally, the
10 direction of groundwater flow does not support the contention that the Site is the source of
11 Regional PCE Contamination that is located to the northeast of the Site.

12
13 Importantly, the Regional Board has not sufficiently evaluated other possible sources of the
14 Regional PCE Contamination. These sources include the Napa/Former Lakeside Auto Store
15 facility, the former Big O Tires Store facility, and the former South Y Exxon service station
16 (current Transit Terminal). PCE has been detected at these and other sites in the area, but the
17 Regional Board has failed to adequately investigate whether these sources have contributed to
18 the contamination in the area. In the absence of an adequate investigation of these other sources
19 – which could be more efficiently undertaken by the sources themselves – the Regional Board
20 cannot properly conclude that the off-site investigation it has ordered Fox to undertake is
21 necessary and reasonable under Section 13267.

22
23 Finally, regardless of these liability issues, the Final Order is unreasonable and unnecessary
24 because it imposes a stringent default cleanup standard that is ten times lower than the standard
25 adopted in its prior actions with respect to the Site and other sources in the vicinity of the Site
and imposes impractical deadlines.

The basis for Fox’s objections to Final Order is explained in more detail below.

17 **II. FACTUAL BACKGROUND**

18 **A. Site History**

19 Century 73 purchased the South Y Site, including what is now known as the Lake Tahoe
20 Laundry Works, in September 1974 from Connolly Development, Inc. (“Connolly
21 Development”) and owned the South Y Site until it sold it to Interland Communities, Inc.
22 (“Interland”) in December 1985.

23 ¹ Upon acquiring the South Y Site, Century 73 immediately leased the South Y Site back to
24 Connolly Development for one year, with an option by Connolly Development to extend the

25 ¹ *See* Agreement for Purchase and Sale of South “Y” Shopping Center, between Century 73 and Interland
(Dec. 19, 1985) (Exhibit G); Grant Deed from Connolly Development (Grantor) to Century 73 (Grantee) (Sept.
11, 1974) (Exhibit H).

1 lease for two additional one-year periods. 2 It is not known whether Connolly Development ever
2 exercised the option.

3 Multiple tenants or subtenants operated a laundromat at the South Y Site beginning in 1972,
4 before, during and after Century 73's ownership of the South Y Site. 3 These tenants and
5 subtenants included Robert and Bernice Prupas/Bobby Page's (1972-1982), Kjell and Kerstin
6 Hakansson (1973-1976), Leeroy and Mary Louise Baisley (1976-1996), Kim and Debra Welch
7 (1996-1998), and David and Louzel Rogers (1998-approximately 2011). 4

8 The Regional Board began investigating properties in the vicinity of the South Y Site following
9 the discovery of contamination in drinking water wells in the late 1980s. In November 1991, the
10 Regional Board identified the South Y Site as a source of PCE contamination, allegedly
11 stemming from the historic operation of the LTLW laundromat at the South Y Site. 5 According
12 to the Final Order, the suspected source of the contamination at the South Y Site was a
13 coin-operated dry cleaning machine, which according to the Final Order was present on-site
14 between approximately 1972 and 1979/1980. *See* Final Order at 9, ¶ 33. A May 1972 lease
15 between Connolly Development and Robert and Bernice Prupas identified authorized uses of the
16 premises as "[d]ry cleaning and coin-operated laundry, and purposes related thereto." 6
17 According to information from the deposition of Mary Louise Baisley, a subsequent LTLW
18 tenant, the coin-operated machine was present at the South Y Site when Mrs. Baisley and her
19 husband purchased the laundry business in July 1976 and was removed three and a half to four
20 years later. 7

21 In 2007, the current owner of the South Y Site, Seven Springs Limited Partnership ("Seven
22 Springs"), sued Fox in federal court under the federal Comprehensive Environmental Response,
23 Compensation and Liability Act ("CERCLA") and under an indemnity provision in the purchase
24 agreement between Century 73 and Interland. 8 Fox filed a Motion to Dismiss, which the court
25 granted in part and denied in part. 9 In the same action, Fox filed claims against a number of

2 Memorandum of Lease Between Century 73 and Connolly Development (Sept. 11, 1974) (Exhibit I).

3 *See* Memorandum from A. Bassak, Esq. to H. Singer and L. Dernback (Regional Board), South Y Center Chain of Title and Laundry Lease History (Mar. 11, 2004) (Exhibit J).

4 *See id.*; Notice to Creditors, Escrow No. 203-96154 (Feb. 5, 1998) (Exhibit K).

5 *See* Regional Board, Status Report on the "Y" Investigation in South Lake Tahoe (Sept. 4-5, 1997) (Exhibit L); Letter from E. Garfinkle (Dreher, Garfinkle & Watson) to J. Short (Regional Board), Tahoe Y Shopping Center, South Lake Tahoe, El Dorado County, APNs: 023-421-011 and 021 (Jan. 10, 1992) (Exhibit M).

6 Lease Between Landlord Connolly Development and Tenants the Prupas (May 24, 1972) ("May 1972 Lease") (Exhibit N) § 7.

7 *See* Transcript of Deposition of Mary Louise Baisley, *Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.* (E.D. CA, 2007) (No. 2:07-00412-LKK-GGH) ("Baisley Deposition") (Exhibit O) at 44-46.

8 *See* Complaint, *Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.*, No. 2:07-00142-LKK-GGH (E.D. Cal. 2007) (Exhibit P).

9 *See* Order, *Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.*, No. 2:07-00142-LKK-GGH (E.D. Cal. 2007) (Exhibit Q) (order granting in part and denying in part Fox's motion to dismiss and holding that Seven Springs did not qualify for the innocent landowner defense, was restricted to pursuing a contribution claim under CERCLA § 113 and was not entitled to the benefits of the indemnity, which had, in any event, expired).

1 third parties, including Connolly Development, Interland, Leid's Inc., and several former LTLW
2 tenants, but never pursued these claims, as it eventually reached a confidential settlement
3 agreement with its insurance company and with Seven Springs. 10

4 **B. Investigation and Remediation of the South Y Site**

5 Between 2003 and 2008, PES Environmental, Inc. ("PES") conducted soil and groundwater
6 investigations at and adjacent to the South Y Site to determine the extent of the on-site
7 contamination and whether any contamination was migrating off-site. 11 This investigation
8 determined that contamination was confined on-site. 12

9 Following the settlement with Seven Springs, Fox and Seven Springs jointly retained a
10 consultant, Environmental Engineering, Consulting and Remediation, Inc. ("E₂C"), to conduct
11 the remediation of the on-site contamination that the Regional Board required. In June 2009,
12 E₂C submitted to the Regional Board an Interim Remedial Action Workplan ("IRAP") that
13 proposed to install an SVE/GASS to address volatile organic compounds ("VOCs") in vadose
14 zone soil and shallow zone groundwater at the South Y Site and to prevent any contamination
15 from migrating offsite. 13 E₂C amended the plan in August 2009 14, and the Regional Board
16 approved it on September 1, 2009. 15 Operation of the SVE/GASS began in April 2010. The
17 system consists of:

- 18 • Six (6) horizontal SVE wells
- 19 • Twenty (20) vertical SVE well pairs
- 20 • Twenty-seven (27) groundwater air sparge wells
- 21 • Ten (10) vapor probe points
- 22 • Four (4) on-site monitoring wells
- 23 • Two (2) off-site monitoring wells

24 10 See Fox Capital Mgmt. Corp. Third Party Complaint Against Real Estate Mgmt. Associates, LLC, et al.,
25 *Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.*, No. 2:07-00142-LKK-GGH (E.D. Cal. 2007) (Exhibit
R).

11 See E₂C, Interim Remedial Action Workplan for SZA Groundwater Investigation, SZA Groundwater
Monitoring, Interim Remedial Action Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe
Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (June 4, 2009) (Exhibit S) ("IRAP") at 1 .

12 See E₂C, Site Investigation Report of Findings, Lake Tahoe Laundry Works, Project No. 1950BK43 (Sept.
22, 2008) (Exhibit T) at 1-3. ("Soil impact in the vadose zone beneath the LTLW Site has been sufficiently
defined in all directions"; "[c]ontaminant plume migration in the [Middle Zone Aquifer ("MZA")] beneath the
LTLW Site appears to originate in offsite areas to the northwest and north").

13 IRAP (Exhibit S) at 3-4.

14 E₂C, Amendment to Interim Remedial Action Workplan for SZA Groundwater Investigation, SZA
Groundwater Monitoring, Interim Remedial Action Vadose Zone Soil and Shallow Groundwater Cleanup,
Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 26, 2009)
("IRAP Addendum") (Exhibit U).

15 Letter from L. Dernbach (Regional Board) to S. Reisch (Fox's counsel) and B. Beard (Seven Springs'
counsel) (Sept. 1, 2009) (Exhibit V).

1 The system was judged effective and E₂C recommended its continued operation. 16 The
2 Regional Board approved the SVE/GASS as the final remedy for the South Y Site in 2013. 17
3 Quarterly sampling events show PCE concentrations in groundwater have since declined by
4 several orders of magnitude on-site. Since 2014, only two on-site wells (LW-MW-1S and LW-
5 MW-5S) have detected PCE above the maximum contaminant level (“MCL”) of 5 micrograms
6 per liter (“µg/L”). 18 PCE concentrations in well LW-MW-1S have fluctuated between 35 µg/L
7 and 110 µg/L over the last 18 months. 19 This fluctuation may have been related to changes in
8 groundwater levels, which may have mobilized pockets of contaminants at the suspected source
9 area near LW-MW-1S. During the same period, PCE concentrations in well LW-MW-5S
10 peaked at 180 µg/L (in March 2016) and then sharply declined to 40 µg/L in June 2016, possibly
11 as a result of the return of the SVE/GASS wells around LW-MW-5S to service on May 20,
12 2016. 20 In May 2017, PCE levels in LW-MW-5S were down to 13 µg/L. 21

13 In January 2017, the Regional Board requested that Seven Springs and Fox collect additional
14 data to evaluate the effectiveness of the SVE/GASS. 22 E₂C collected this data in May 2017.
15 With the exception of small pockets of contamination at MW-1S and MW-5S, none of the
16 shallow groundwater samples collected contained PCE at concentrations above the MCL of 5
17 µg/L. 23

18 C. Off-Site Activities

19 While the on-site remediation continued, in late 2014 and early 2015, the Regional Board tested
20 a series of domestic wells, some of which were located nearly two thousand feet away from the
21 South Y Site, and discovered PCE contamination in two of them. 24 Pursuant to a stipulated
22 agreement with the Regional Board, without admitting liability, Fox and Seven Springs agreed to

23 16 E₂C, Interim Remedial System Installation/Pilot Testing Report of Findings and Draft Remedial Action
24 Plan for Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe
25 Boulevard, South Lake Tahoe (Aug. 12, 2010) (“RAP”) (Exhibit W) at 45.

17 Regional Board, Acceptance of Work Plan for Remediation and Order to Submit Technical Reports,
Former Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County,
Investigative Order R6T-2013-064 (Aug. 2, 2013) (Exhibit X) at 2.

18 E₂C, Fourth Quarter 2016 Groundwater Monitoring Report and Current Site Remediation Status Report
(Feb. 23, 2017) (“Fourth Quarter 2016 Monitoring Report”) (Exhibit Y) Table 3.

19 *Id.*

20 *Id.*

21 Second Quarter 2017 Monitoring Report (Exhibit B) Table 3.

22 Regional Board, Request for Supplemental Work Plan to Perform Batch Pumping, Former Lake Tahoe
Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Jan. 4, 2017) (Exhibit Z)
at 2 and Regional Board, Reply to Response to Comments on Air Sparge Performance Test and Discussion of
Off—Site PCE Extent, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe – El
Dorado County (Feb. 28, 2017) (“Regional Board Reply to Air Sparge Comments”) (Exhibit AA) at 8.

23 See Second Quarter 2017 Monitoring Report (Exhibit B).

24 *In re Fox Capital Mgmt. Corp. and Seven Springs Ltd. P’Ship*, Cal. Reg. Water Quality Control Bd.,
Lahontan Region, Stipulated Agreement for Replacement Water Supply at 883 and 903 Eloise Avenue, South
Lake Tahoe (Jun. 5, 2015) (“Stipulated Agreement”) (Exhibit BB) ¶¶ 4-8.

1 provide alternative water supply to the affected landowners. 25 The Regional Board
2 subsequently confirmed that Fox and Seven Springs had complied with the stipulated
3 agreement.26

4 In the fall of 2015, the Regional Board sponsored an off-site groundwater investigation. 27 The
5 investigation found that there could be multiple potential sources for contamination in Lukins
6 Brothers Wells No. 2 and No 5. 28

7 On September 15, 2015, the Regional Board published a proposed cleanup and abatement order
8 (“2015 Proposed Order”), which would have required Fox and Seven Springs to undertake
9 supplemental remedial measures to contain contamination on the South Y Site and to investigate,
10 clean up, and abate an area of off-site contamination allegedly emanating from the South Y Site.
11 Almost a year later, on August 9, 2016, the Regional Board published a revised cleanup and
12 abatement order (“Revised Proposed Order”) that significantly revised the 2015 Proposed Order
13 by, among other things, expanding the off-site contamination area to be studied and remediated.
14 Fox submitted extensive comments on both the 2015 Proposed Order and the Revised Proposed
15 Order. 29

16 On May 12, 2017, without a hearing, 30/the Regional Board published the Final Order, which
17 requires several named dischargers – Seven Springs, Century 73, Fox, Connolly Development
18 and Bobby Pages, Inc. – to investigate and clean up contamination originating from the South Y
19 Site.

20 **III. BURDEN OF PROOF AND STANDARD OF REVIEW**

21 The Regional Board acknowledges that it must prove its claim by the “preponderance of the
22 evidence.” *See* Final Order at 8 n. 3. Under that standard, the Regional Board must show that
23 “the greater and superior weight of evidence” supports its allegations. *People v. Miller*, 171 Cal.
24 649, 651 (1916). The Regional Board contends that it has met its burden, and that, upon review
25 by the State Board, the substantial evidence standard applies. *See* Final Order at 8, n.3. As
explained herein, the Regional Board has neither supported its claims with substantial evidence
nor established them by a preponderance of the evidence.

26 25 *See id.* ¶¶ 10-13.

27 26 *See* Revised Proposed Order at 4, ¶ 11.

28 27 *See* URS Corporation Americas, Final PCE Investigation Report, South Lake Tahoe, California (Jan. 19,
2016) (“URS Final Report”) (Exhibit CC).

29 28 *See id.* at 7-8.

30 29 *See* Fox’s Comments on the 2015 Proposed Order (Feb. 11, 2016) (Exhibit E); Fox’s Comments on the
Revised Proposed Order (Sept. 8, 2016) (Exhibit F).

31 30/ Although Fox commented extensively on the Regional Board’s prior proposed orders, the Regional Board
did not provide Fox with an opportunity to comment on the Final Order. To the extent the Final Order raises
new issues, Fox objects on the grounds that it was denied reasonable notice and an opportunity to be heard.
See Today’s Fresh Start, Inc. v. L.A. Cnty Office of Ed., 57 Cal.4th 197, 212 (2013) (procedural due process
requires an agency to provide private parties with adequate notice and an opportunity to be heard).

1 **IV. THE REGIONAL BOARD HAS EXCEEDED ITS AUTHORITY UNDER**
2 **SECTIONS 13304 AND 13267 OF THE WATER CODE**

3 The Regional Board concedes at the very outset that “current evidence is insufficient to require
4 the cleanup and abatement of the regional PCE plume under California Water Code section
5 13304.” See Final Order at 2, ¶ 7. It then contends that “sufficient evidence currently exists
6 under California Water Code section 13267” to require an investigation and cleanup and
7 abatement of contamination originating from the Site. *Id.* Confusingly, the Final Order then
8 purports to name Fox as a discharger *under Section 13304* and to require Fox to undertake
9 cleanup and abatement work pursuant to *both* Section 13304 and 13267. See Final Order at 8-9,
10 ¶¶ 35-36, *id.* at 15.

11 The Regional Board has improperly conflated its authority under Sections 13304 and 13267 of
12 the Water Code and in the process, has exceeded its statutory power under both sections. First,
13 having concluded that it lacks the evidence necessary to pursue a cleanup and abatement order
14 under Section 13304, the Regional Board cannot then issue an order based on the conclusion that
15 Fox is a discharger under Section 13304. Second, to the extent that the Regional Board intends
16 to impose liability on Fox based on Section 13267, the Final Order fails to make the necessary
17 allegations required by that section, let alone support them with appropriate evidence. Whereas
18 Section 13304 imposes liability on parties that are causing or permitting, have caused or
19 permitted or will cause or permit a discharge, the Final Order cites Section 13267 as imposing
20 liability on a narrower class of persons who have “*discharged waste.*” Final Order at 12 ¶ 44.
21 There is no mention in Section 13267 of persons who “caused or permitted” discharges; thus,
22 under Section 13267, liability only attaches to parties that discharged wastes. ³¹ Because the
23 plain language of these two sections of the Water Code impose liability on different classes of
24 parties, the Regional Board cannot use them interchangeably. And the Regional Board cannot
25 seriously assert that Century 73 or Fox *discharged waste.* Century 73 was a landlord (and Fox
the general partner of a landlord) that did not operate the on-site dry cleaner and was not
involved in the day-to-day operations at the Site. Therefore, the Regional Board does not have a
basis for imposing liability on Century 73 or Fox under Section 13267.

Moreover, as the Regional Board acknowledges in the Final Order, Section 13267 authorizes the
Regional Board to require dischargers to provide “technical or monitoring program reports”; it
does not impose liability for cleanup and abatement. Therefore any attempt by the Regional
Board to use Section 13267 to require the cleanup and abatement of contamination exceeds the
Regional Board’s authority under that section.

The Regional Board also exceeded its authority under Section 13267 in another respect. Section
13267 specifically provides that, in order to require a discharger to provide technical or
monitoring reports:

³¹ While Section 13267(b) also refers to parties that are “suspected of having discharged” waste, the Regional
Board does not cite that portion of the statute in the Final Order even though it quotes the statute at length.
Final Order at 12, ¶ 44. Even if it had, there is no basis for suspecting that Fox or Century 73 actually
discharged waste at the Site, and the Final Order does not allege otherwise.

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2 The burden, including *costs*, of these reports shall bear a reasonable relationship
3 to the need for the report and the benefits to be obtained from the reports. In
4 requiring those reports, the regional board shall provide the person with a written
5 explanation with regard to the need for the reports, and shall identify the evidence
6 that supports requiring that person to provide the reports. [Cal. Water Code
7 § 13267(b) (emphasis added).]

8 The Regional Board has not made any attempt to estimate the cost of the work it has ordered, let
9 alone explain how that bears a reasonable relationship to the need for those reports. As
10 explained in Section VI below, given the low levels of contamination currently found on-site and
11 the evidence demonstrating that contamination has not migrated and is not migrating off-site at
12 levels that require additional investigation or remediation, the Regional Board simply cannot
13 make the determination required by Section 13267.

14 In short, the Regional Board cannot base the Final Order on Section 13304 because the Final
15 Order itself (correctly) states that the Regional Board lacks a basis for doing so. And the Final
16 Order is unlawful under Section 13267 because it does not provide any evidence that Fox has
17 discharged waste, and even if it did, the Regional Board lacks authority under Section 13267 to
18 require Fox to perform any cleanup and abatement work or even to require technical reports
19 without a showing that the costs of such reports are warranted.

20 Although the Regional Board itself concedes that it has no basis for issuing the Final Order under
21 Section 13304, below we explain why Fox has not “caused or permitted” a discharge within the
22 meaning of that statute.

23 **V. THE REGIONAL BOARD HAS NOT SHOWN THAT FOX HAS CAUSED OR
24 PERMITTED A DISCHARGE UNDER THE WATER CODE**

25 Section 13304(a) of the Water Code authorizes a regional water quality control board to issue a
cleanup and abatement order to “[a]ny person . . . who has caused or permitted, causes or
permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or
probably will be, discharged into the waters of the state and creates, or threatens to create, a
condition of pollution or nuisance . . .” Cal. Water Code § 13304(a). In order to hold Fox liable
as a discharger, the Regional Board alleges that Century 73 caused or permitted a discharge at
the LTLW, and that Fox, as the general partner of Century 73, “also had knowledge of and
control over the activities occurring at the Site that caused the discharge.” See Final Order at 10,
¶ 36. As set forth below, the Regional Board has failed to prove this allegation by a
preponderance of the evidence or even to support it with substantial evidence.

**A. Century 73 is Not a Discharger and Has Not Caused or Permitted a
Discharge at the South Y Site**

As noted above, the Regional Board cannot seriously allege that Century 73 discharged or
otherwise caused a discharge at the South Y Site. Century 73 did not operate the LTLW and had

1 no responsibility for handling PCE at the Site. Instead, the Regional Board apparently maintains
2 that Century 73 has “permitted” a discharge under Water Code Section 13304(a). *See* Final
3 Order at 10, ¶ 36. However, under State Board precedent, liability under Section 13304(a) arises
4 as to former owners and landlords *only* if the Regional Board can demonstrate that the former
5 owner/landlord:

- 6 • owned or possessed the relevant property at the time of the discharge;
- 7 • knew or should have known of the discharge; *and*
- 8 • had the legal ability to prevent the discharge.

9 *See In re Stuart*, Cal. State Water Res. Control Bd. Order No. WQ 86-15 (Sept. 18, 1986) at 6,
10 n.3; *In re Exxon Co.*, Cal. State Water Res. Control Bd. Order No. WQ 85-7 (Aug. 22, 1985) at
11 2-6. As explained below, the Regional Board has failed to prove all three of these elements and
12 has thus failed to show that Century 73 (or Fox itself) caused or permitted a discharge within the
13 meaning of Section 13304(a).

14 **1. The Regional Board Has Not Demonstrated That a Discharge
15 Occurred During Century 73’s Ownership of the South Y Site**

16 To establish that Century 73 (and by extension, Fox) is liable under Section 13304, the Regional
17 Board must prove that a discharge occurred while Century 73 owned the South Y Site. *See In re
18 Logsdon*, Cal. State Water Res. Control Bd. Order No. WQ 84-6 (Jul. 19, 1984) at 8 (imposing
19 liability on former landowners because “they were owners for the initial three year period during
20 which substantial discharges took place”); *In re San Diego Unified Port Dist.*, Cal. State Water
21 Res. Control Bd. Order No. WQ 89-12 (Aug. 17, 1989) at 9 (Port District liable as the owner of
22 the property during the time of discharge). Here, the Regional Board has failed to produce any
23 evidence that a discharge occurred during Century 73’s ownership and essentially admits that it
24 does not know when a discharge occurred at the Site. Indeed, the Final Order expressly states
25 that there “is no evidence of when a spill occurred at the Site.” Final Order at 3, n.2.

In the absence of “evidence,” the Regional Board relies on the mere *assumption* that a discharge
would have occurred during Century 73’s ownership of the South Y Site because Century 73
“was [] the owner of the Site at the time the self-service, coin-operated, dry cleaning machine
existed in the laundromat at the Site.” Final Order at 9, ¶ 35. Based on its admission regarding
the absence of evidence, and for the reasons set forth below, the Regional Board has failed to
carry its burden of proof on the first element of its Section 13304 claim.

a. The Regional Board’s Investigation Was Inadequate

The Regional Board has not made a serious attempt to gather evidence to determine whether a
discharge occurred during Century 73’s ownership of the South Y Site. In particular, the
Regional Board has not tried to identify or interview relevant witnesses, has not required all

1 relevant parties to submit site histories, or and has not even requested facility maintenance
2 records. As early as 2003, the Regional Board was corresponding with former operators of the
3 LTLW, but there is no record of the Regional Board ever asking any of the operators basic
4 questions about the coin-operated laundry, including the frequency of solvent deliveries and
5 reports of any spills. 32 Indeed, as Fox has pointed out previously, Kerstin Hakansson, a tenant
6 at the LTLW between 1973 and 1976, is still alive and despite the fact that the Regional Board
has known how to contact her for years, *see* Revised Proposed Order at 5, ¶ 16, 33 and the fact
that Fox has repeatedly urged the Regional Board to interview her, 34 there is no indication that
the Regional Board has ever required Ms. Hakansson to submit relevant information or even
attempted to interview her.

7 b. The Direct Evidence Establishes That a Discharge did not Occur
8 During Century 73's Ownership of the Site

9 Surprisingly, the Regional Board has completely ignored the direct, relevant and reliable
10 evidence that Fox provided to the Regional Board that no release occurred at the Site between
11 1976 and 1979/1980, during Century 73's ownership – the testimony of Century 73's former
12 tenant Mary Louise Baisley. Mrs. Baisley's testimony directly contradicts the Regional Board's
13 assertions and indicates that no spill of PCE occurred between July 1976 and 1979/1980 when
14 the Regional Board indicates that the coin-operated dry cleaning machine was removed from the
15 South Y Site. 35 In her April 2007 deposition, Mrs. Baisley declared under oath that the coin-
operated machine was used infrequently during her tenure, and thus the solvent used in the
machine did not need to be replaced frequently. Mrs. Baisley testified that trucks delivered
solvent to the facility only four or so times during the entire period of the Baisleys' ownership of
the laundry business. 36 Mrs. Baisley further declared that she was at the LTLW facility nearly
every day and neither witnessed nor heard her husband describe any spill or leak during their
ownership. 37

16 Nothing in the Final Order explains the Regional Board's decision to completely ignore Mrs.
17 Baisley's testimony on this critical point. The Regional Board presents no contrary testimony
18 and has identified no reason why Mrs. Baisley's testimony should not be considered truthful and

19 32 Letter from H. Singer (Regional Board) to L. Baisley and J. Meredith, Notice to Submit Workplan for
20 Investigation at 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (APN 023-421-011) (Aug.
21 21, 2003) (Exhibit DD).

22 33 The Regional Board has apparently known of Ms. Hakansson's whereabouts for over a decade. *See, e.g.,*
23 Letter from H. Singer (Regional Board) to J. Meredith, SSR Realty Advisors, R and M. Baisley, R. Prupas, K.
24 and K. Hakansson, re Revised Request for Workplan for Supplemental Site Investigation at the Lake Tahoe
25 Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (May 17, 2004) (Exhibit
EE).

34 *See* Fox's Comments on Revised Proposed Order (Exhibit F) at 11; Fox's Comments on 2015 Proposed
Order (Exhibit E) at 7-8.

35 *See* Baisley Deposition at 56-62, 101, 136-37.

36 *See id.* at 135.

37 *See id.* at 136-37.

1 reliable. Indeed, the Regional Board cites Mrs. Baisley's testimony for other purposes. *See*
2 Final Order at 3, 10.

3 In addition to Mrs. Baisley's testimony, Fox recently obtained a declaration from Kerstin
4 Hakansson, which provides additional evidence that no spill occurred during Century 73's
5 ownership of the Site. ^{38/} In her declaration, Mrs. Hakansson indicates that her husband was at
6 the laundromat on a daily basis and told her about important occurrences there. *See id.* She
7 declares that during their ownership of the laundromat from 1973 until 1976, her husband never
8 told her "about any spill of any fluid in the parking lot or anywhere on the property" and if a spill
9 had occurred, her husband would have told her about it. *See id.*

7 The Regional Board's failure to consider Mrs. Baisley's testimony was arbitrary and capricious,
8 and Mrs. Hakansson's declaration provides further evidence that contradicts the Regional
9 Board's assumptions. Thus, the uncontroverted evidence indicates that no spills occurred at the
10 Site between 1974 and 1980, during Century 73's ownership of the Site.

10 c. The Regional Board Improperly Assumes that a Discharge Must
11 Have Occurred During Century 73's Ownership of the South Y
12 Site

12 Because the Regional Board does not know when the discharge at the South Y Site occurred, and
13 has not undertaken a serious investigation to determine the timing, it instead attempts to prove
14 this element of its case based on the fact that Century 73 owned the Site during the time the coin-
15 operated dry cleaning machine was present on-site and general assertions in a 2001 dry cleaning
16 study.

15 In particular, the Regional Board relies, in one short footnote, on a 2001 graduate student paper
16 describing dry cleaner remediation programs in Kansas, Oregon and Wisconsin that it says
17 suggests that releases in the 1970s and 1980s "generally result[ed] from significant releases
18 during solvent delivery or in solvent storage areas." ³⁹ *See* Final Order at 3, n.2. This graduate
19 student paper, prepared in the summer of 2001, is based in part on "Internet searches" and
20 "personal communications." ⁴⁰ The paper itself notes that it has not been peer reviewed or
21 "independently confirmed." ⁴¹ Moreover, the paper barely discusses dry cleaning equipment
22 and does not even mention coin-operated machines. The paper thus provides no evidence
23 whatsoever that one of the multiple possible discharge scenarios it identifies actually occurred at

21 ^{38/} *See* Declaration of K. Hakansson (June 6, 2017) (Exhibit C).

22 ³⁹ The Regional Board has previously made various other assertions regarding the timing of the discharge
23 including the fact that Century 73 was the owner of the Site for ten consecutive years and maintenance
24 activities often led to careless spills. *See* Revised Proposed Order, App. B. Presumably because it now
25 realizes that these baseless assertions prove nothing about the timing of the discharge, it has removed them
from the Final Order.

24 ⁴⁰ *See* K. Cardamone, Drycleaner Remediation programs: An Overview and Case Studies (Aug. 2001) at iii,
available at https://drycleancoalition.org/download/dryclean_cardamone.pdf (Exhibit FF).

25 ⁴¹ *See id.* at ii.

1 coin-operated dry cleaner sites in California let alone at the Site. At best, the paper provides a
2 description of how contamination from dry cleaners can occur. It is undisputed that a discharge
3 occurred at the Site. Enumerating possible discharge scenarios does not prove, as the Regional
Board must, that a discharge occurred during Century 73's ownership.

4 Another difficulty in relying on the 2001 student paper is that doing so requires the Regional
5 Board to assume that all dry cleaners discharge PCE into the environment all the time. Yet, to
6 date, the Regional Board has apparently concluded that multiple facilities that used PCE in the
South Y area, including a dry cleaner located 1000 feet from the Site, used PCE without
experiencing a PCE release. ⁴²

7 The Final Order briefly seems to acknowledge the one scenario that comports with the available
8 evidence – a discharge occurred prior to Century 73's ownership of the Site. *See* Final Order at
9 9-10, ¶ 35. The coin-operated laundry operated for almost two and a half years *before* Century
10 73 took title to the South Y Site. The May 1972 Lease between Connolly Development as the
11 landlord, and Robert and Berniece Prupas, as the tenants, indicates that the Prupases leased the
12 LTLW to operate a "[d]ry cleaning and coin-operated laundry, and purposes related thereto." ⁴³
13 Thus, a discharge in the parking lot during the transfer of solvents from delivery trucks could
14 well have occurred between May 1972, when a laundromat first operated at the South Y Site, and
September 1974, before Century 73 acquired the South Y Site. In fact, there is un-refuted
evidence that the asphalt parking lot at the South Y Site was not installed until
1974.⁴⁴ Accordingly, a surficial spill prior to that period (i.e., May 1972-September 1974),
when the ground was not paved, was more likely to reach the subsurface than one during
Century 73's ownership of the Site after 1974.

15 Although the Final Order mentions the possibility of a pre-September 1974 release, it concludes
16 based on a single State Board decision, that even if a discharge occurred before 1974, Century 73
17 would be liable because that would mean there was a "continuing discharge" during Century
18 73's ownership. *See* Final Order at 9-10, ¶ 35. But the discharge at issue under the statute is the
19 initial discharge of contamination into the environment, not the subsequent passive migration of
20 contaminants in the subsurface. *See Lake Madrone Water Dist. v. State Water Res. Control Bd.*,
21 209 Cal.App.3d 163, 174 (1989) (flushing of sediment into a creek by opening a grate constitutes
a "discharge" under the plain meaning of Section 13304); *see also In re Wenwest Cal. State*
22 *Water Res. Control Bd. Order No. WQ 92-13* (Oct. 22, 1992) at 6 (landlord was not liable under
23 Section 13304 even though it took title to property after a discharge occurred where it was not
24 "involved in the *activity* which created the pollution problem" (emphasis added). Indeed, the
25 only published court decision addressing this issue under Section 13304 found that subsequent
channeling or migration of contamination is not the discharge at issue under Section 13304. *See*

⁴² *See* C. Hutto, URS Corporation Americas ("URS"), PCE Investigation, South Lake Tahoe, Summary of Findings (Feb. 5, 2016) (Exhibit GG), slide 15 (conceding that multiple PCE users operated in the South Y area).

⁴³ *See* May 1972 Lease (Exhibit N).

⁴⁴ *See* AMB Investments, Inc., South Tahoe (Y) Shopping Center Post Closing Memorandum (Apr. 22, 1986), included as Exhibit No. 11 to Baisley Deposition (Exhibit O).

1 *Redevelopment Agency of City of Stockton v. BNSF Ry. Co.*, 643 F.3d 669, 677 (9th Cir. 2011).
2 In addition, under a similar provision in CERCLA, the Ninth Circuit Court of Appeals has held
3 that passive migration does not constitute “disposal” for purposes of CERCLA liability. *See e.g.*,
4 *Pakootas v. Teck Cominco Metals, LTD.*, 830 F.3d 975 (9th Cir. 2016). Similarly, the plain
5 meaning of “discharge” in Section 13304 requires active conduct. Given the statutory
6 requirement of a discharge and more recent court decisions cited above, the Regional Board’s
7 “continuing discharge” theory is flawed and should be rejected. ⁴⁵

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d. The Regional Board’s Approach Contravenes Established State
Water Board Precedent

In the absence of factual evidence and sound technical analysis, the Regional Board’s determination that PCE was discharged during Century 73’s ownership is based on mere speculation. Such speculation does not meet the Regional Board’s evidentiary burden. Importantly, there is no State Board precedent for reaching a conclusion as to the timing of a discharge without credible eyewitness testimony or persuasive technical evidence. After an extensive review, we have found no State Board decisions upholding cleanup and abatement orders where the timing of a discharge was in dispute and the State Board made or upheld a finding on that issue based solely on the grounds that a detected chemical was in use at the site during the relevant time period and assertions in general studies regarding how discharges typically occur. Instead, in the few cleanup and abatement orders where the timing of a discharge was directly in dispute, the State Board has relied on at least some direct evidence that the relevant contaminant was in fact spilled at the site in the relevant time period or on substantial technical evidence to determine the timing and location of the discharge.

For example, in *In re Stinnes-Western*, the State Board affirmed a cleanup and abatement order issued by a regional board to the current owner of a contaminated site and the successor-in-interest of the former owner of the site based on eyewitness declarations about the timing of a PCE spill and a technical calculation of solvent-plume velocity to determine the timeframe in which a discharge occurred. *See* Cal. State Water Res. Control Bd. Order No. WQ 86-16 (Sept. 8, 1986) at 8-10.

Similarly, in *In re Wenwest*, the State Board upheld a regional board’s finding that discharges occurred while the site was owned by a former owner based on technical reports that, “considering the soil in the area and the distance the gasoline has travelled to reach the neighbor’s well, discharges took place at least 12 years before it was detected by the neighbor,” placing the discharge well within the period in which the site was owned by the former owner. *See In re Wenwest* at 2. Importantly, in *In re Wenwest*, the State Water Board determined that the technical reports produced by the regional board were sufficient by themselves to establish that the former owner was a discharger because the former owner did not produce any evidence

⁴⁵ Even if the State Board determines that the passive migration of contaminants constitutes a discharge under Section 13304, Fox still would not be liable because the Regional Board has not established that Century 73 or Fox knew or should have known of the discharge. *See* discussion in Section V.A.2, *infra*.

1 whatsoever that would rebut the regional board's assertions. *See id.* Clearly, that is not the
2 situation in this case.

3 In *In re Sanmina Corp.*, Cal. State Water Res. Control Bd. Order No. WQ 93-14 (Oct. 19, 1993)
4 at 4, the State Board found evidence sufficient to find the petitioner—a former tenant at the
5 site—caused or permitted a discharge where the petitioner operated a manufacturing business in
6 which volatile organic compounds (“VOCs”) were typically used, documentary and testimonial
7 evidence established that the petitioner stored or used VOCs, such compounds were detected
8 beneath the petitioner's concrete “wet floor” at the facility, the petitioner had a history of
9 repeated spills, and the contamination could not be attributed to an upgradient source. *See also*
10 *In re Spencer Rental Serv.*, Cal. State Water Res. Control Bd. Order No. WQ 87-1 (Jan. 22,
11 1987) at 3 (lessee of contaminated site properly named as discharger despite claims that the
12 contamination pre-dated his tenancy where contamination was detected directly beneath gasoline
13 tank used by lessee, evidence showed that no such contamination was present when the tank was
14 installed, and monitoring data were consistent with a more recent spill).

15 Unlike the situations addressed by State Board precedents, in this case, the Regional Board has
16 offered no direct evidence in support of its conclusion that PCE was released during Century
17 73's ownership. ⁴⁶ And the only direct evidence from the time period, Mrs. Baisley's sworn
18 testimony and Mrs. Hakansson's declaration, directly conflicts with the Regional Board's
19 determination. By failing to follow State Board precedents that require compelling evidence of
20 the timing of the discharge and ignoring the only direct evidence in the record, the Regional
21 Board abused its discretion. *See Dept. of Finance v. Comm'n on State Mandates*, 1 Cal.5th 749,
22 774 (2016) (remanding to the agency because it failed to consider all relevant evidence).

23 The Regional Board's conclusion in this case is not only at odds with existing State Board
24 precedent, it creates a new (and ill-considered) precedent, as it suggests that every company that
25 owned commercial or industrial property is automatically liable under Section 13304 if it or its
tenants used chemicals that are later found on the property, regardless of any evidence of a spill
during their ownership. Such a broad threat of liability contradicts the express terms of the
statute, which requires some culpability – in the form of evidence that prior owners “caused or
permitted” a discharge – before they can be held liable.

2. The Regional Board Has Not Proven That Century 73 or Fox Knew or Should Have Known of a Discharge

Even if the Regional Board concludes, despite the lack of supporting evidence, that a discharge
at the South Y Site occurred during Century 73's ownership of the South Y Site, the Regional
Board still must make an even more difficult showing, namely that Century 73 and Fox *knew or*

⁴⁶ In the Revised Proposed Order, in response to Fox's complaints that the Regional Board's Proposed Order was not in line with State Board precedent, the Regional Board offered a truncated and flawed technical analysis in an attempt to attribute the Regional PCE Contamination to the LTLW. *See* Revised Proposed Order, App. B. Perhaps because it knew this analysis was flawed the Regional Board has omitted that analysis from the Final Order.

1 should have known of the discharge while Century 73 owned the South Y Site. See *In re Stuart*
2 at 6, n.3 (liability may attach under Section 13304 without proof of actual knowledge of
3 contamination because the risk of leaking underground storage tanks was common knowledge in
4 the oil industry in 1986); *In re Logsdon*, Cal. State Water Res. Control Bd. Order No. WQ 84-6
5 (Jul. 19, 1984) at 5-12 (former landowners caused or permitted a tenant’s discharge where they
6 had “(1) actual knowledge of the dangerous condition and (2) an opportunity to obviate it.”); *In*
7 *re Wenwest* at 2 (former landowner not liable because it did not have knowledge of the discharge
8 at issue and leaks from underground storage tanks were not “common knowledge” at the time).
9 The theory behind the knowledge requirement uniformly recognized by these precedents is that
10 the statutory predicate for imposing liability—i.e., that the landlord has “permitted” a nuisance—
11 is met only if the landlord knows or should know that the nuisance exists or is threatened, has the
12 authority to prevent it, and chooses not to. See *In re Stuart* at 6, n.3.

13 In *In re Logsdon*, the former owners of the contaminated property at issue argued that they did
14 not permit their tenant, who operated a wood-treatment plant on the property, to discharge wood-
15 preserving chemicals into state waters and that they did not know their tenant was doing so. WQ
16 84-6 at 8. Relying upon California common-law principles governing landowner nuisance
17 liability, the State Board rejected those claims and concluded that landowners could be liable
18 under Section 13304(a) for dangerous conditions created by their tenants where the landowners
19 “had or should have had *knowledge of the discharges of waste at the site.*” *Id.* at 11 (emphasis
20 added). In finding that the petitioners could properly be named as dischargers under Section
21 13304(a), the State Board relied on overwhelming evidence that the petitioners had or should
22 have had extensive knowledge of their tenant’s discharges. For example, during the period that
23 the petitioners owned and leased the property, (1) the regional board had notified them that a
24 report of waste discharge requirements was necessary before wood-treatment operations began,
25 (2) one of the petitioners was a defendant in a regional board lawsuit involving discharges
caused by another wood-treatment business of which he was an officer, (3) petitioners were
named in permits that required compliance with regional board requirements, and (4) one of the
petitioners was president of the tenant wood-treatment business and routinely visited the
property. WQ 84-6 at 10–11. Moreover, before petitioners sold the property, regional board
inspectors discovered toxic chemicals in a shallow unlined pond on the property and issued a
cleanup and abatement order to the tenant wood-treatment business. *Id.* at 2–3, 8. Accordingly,
the former landowners in *In re Logsdon* were not deemed liable simply because they knew that
their tenant was in the wood-treatment business. Instead, the State Board specifically relied upon
overwhelming evidence that the landowners knew or should have known of discharges into the
environment.

26 In *In re Stuart*, the State Board reiterated that the relevant question concerning landowner
27 knowledge is whether the landowner knew or should have known of contamination. WQ 86-15
28 at 6, n. 3. In evaluating whether the petitioner, Stuart Petroleum, could be liable for
29 contamination caused by its tenant, who rented a gas station from Stuart Petroleum, the State
30 Board held that Section 13304’s knowledge requirement may be met by landlords who have
31 “general knowledge of the operation and the *normal dangers common to it.*” *Id.* (emphasis
32 added). The State Board further found that the normal danger common to the tenant’s gas-

1 station operation was that underground storage tanks often leak, and the State Board emphasized
2 that “[p]roblems of leaking underground tanks have become common knowledge, particularly in
3 the oil business, in recent years and legislative responses (e.g. Health and Safety Code § 25280 et
seq.) have called further attention to the issue.” *Id.*

4 Thus, the critical ruling by the State Board in *In re Stuart* was that a petroleum-company
5 landlord can be found to have “permitted” its tenant gas-station operator’s discharges where such
6 discharges were common knowledge in the industry in which both companies operated.
7 Importantly, the State Board did not impose liability on Stuart Petroleum because it knew that its
tenant operated a gas station at the site. Rather, Stuart Petroleum was found liable because it was
in the oil business and it was common knowledge at the time Stuart Petroleum leased the
property that gasoline was often discharged from leaking underground storage tanks.

8 These State Board decisions are consistent with more recent judicial decisions. California courts
9 have emphasized that Section 13304(a) should be “construed harmoniously with the law of
10 nuisance.” *Redevelopment Agency of the City of Stockton v. BNSF Ry. Co.*, 643 F.3d 668, 677
11 (9th Cir. 2011); *City of Modesto Redevelopment Agency v. Superior Court*, 119 Cal.App.4th 28,
12 37–38 (2004); *see also In re Logsdon* at 9–10 (relying on nuisance and landlord tort cases to
13 determine the standard of liability for landowners and landlords under Section 13304(a)). Thus,
14 the statute, *Logsdon*, and *Stuart* all must be read in the context of California nuisance cases,
15 which hold that a landlord may be liable for a tenant’s nuisance only if the landlord “knows or
16 should know of the condition and the nuisance or unreasonable risk of nuisance involved.” *City
of Stockton*, 643 F.3d at 675; *see also Resolution Trust Corp. v. Rossmoor Corp.*, 34 Cal.App.4th
93, 102 (1995) (for a landlord to be liable for a tenant’s nuisance, the landlord “must be aware of
the specific dangerous condition and be able to do something about it before liability will
attach”). Knowledge of the “condition and the nuisance” means knowledge or constructive
knowledge of the contamination. *City of Stockton*, 643 F.3d at 675 (“We focus instead on
whether the [defendants] knew or should have known of the contamination.”).

17 Taken together, it is crystal clear from all of these precedents that landowners and landlords
18 cannot be presumed to know of a discharge based on the simple fact that their tenant’s activities
19 involved the use of a coin-operated dry cleaning machine. Rather, landowners and landlords
may only be liable under Section 13304(a) if they knew or should have known of the *discharge*
of contaminants on their property.

20 As a result of the knowledge requirement established by both State Board and judicial decisions,
21 even if a discharge had occurred during Connolly Development’s ownership of the South Y Site,
22 i.e., between 1972 and September 1974, neither Century 73 nor Fox would be liable unless they
23 knew or should have known of that discharge. In *In re Wenwest*, the State Board evaluated
24 whether a former landowner could be liable under Section 13304(a) for contamination caused by
25 a leaking underground storage tank *before* the landlord purchased the site. In finding that the
former owner, Wendy’s, was not a discharger under Section 13304(a), the State Board addressed
the knowledge issue, observing that “Wendy’s purchased the site in 1984 at a time when leaking
underground tanks were just being recognized as a general problem and before most of the

1 underground tank legislation was enacted.” WQ 92-13 at 6. Thus, as in *In re Stuart*, the State
2 Board considered whether knowledge of leaking underground storage tanks was common when
3 the former landowner owned the property, and, in that case, since it was not, declined to impose
4 liability. The State Board’s decision in *In re Wenwest* makes clear that a landlord who does not
know of the *specific* discharge at the site that preceded his or her ownership, is not liable for that
discharge under Section 13304. *See id.*

5 None of the factors on which the State Board and California courts have relied in prior
6 precedents to conclude that a landowner or landlord should have known of its tenant’s discharges
7 are present in this case. There is no evidence that Century 73 or Fox was or should have been
8 present on-site to observe everyday operations, let alone to observe what could well have been a
9 one-time spill in the parking lot. Unlike in *In re Stuart*, there is simply no evidence, let alone
10 persuasive evidence, that real estate companies that were not in the dry cleaning business should
11 have known based on common knowledge in the 1970s that PCE was likely to be released into
12 the environment. On the contrary, numerous sources confirm that this hazard was not discovered
13 by regulators until the late 1980s, after Century 73 sold the South Y Site. The first cleanup and
14 abatement order published by the State Board that addresses groundwater contamination caused
15 by a dry cleaner was issued in 1989, upholding a 1988 regional board order. *See In re Spitzer*,
Cal. State Water Res. Control Bd. Order No. WQ 89-8 (May 16, 1989) at 9-10. A publication of
the State Coalition for Remediation of Drycleaners also suggests that groundwater contamination
from dry cleaning operations was first discovered in the late 1980s.⁴⁷ And the paper cited by
the Regional Board regarding disposal practices at dry cleaners was not published until 2001.
See Final Order at 3, n.2 (citing K. Cardamone, *Drycleaner Remediation Programs: An
Overview and Case Studies* (2001) at 2-3, available at
https://drycleancoalition.org/download/dryclean_cardamone.pdf). Therefore, based on State
Board precedent, the Regional Board cannot impute today’s general knowledge of dry-cleaner
hazards to a real estate company operating in the 1970s.

16 For the foregoing reasons, there is no basis for concluding that Century 73 or Fox should have
17 known of the discharges from the dry cleaner at the time Century 73 owned the South Y Site.

18 3. The Regional Board Has Not Demonstrated that Century 73 or Fox 19 Could Have Prevented a Discharge

20 In determining the third element of a Section 13304 claim -- whether a landlord has the legal
21 authority to prevent a tenant’s discharge of waste -- the State Board has focused on whether the
22 terms of the relevant lease authorized the landlord to terminate the tenancy, enter the premises,
23 or otherwise remediate the contamination. *See, e.g., In re Logsdon* at 4-6 (lease authorized
landlord to re-enter the premises if tenants violated lease provisions prohibiting tenants from
creating a nuisance on the premises and requiring tenants to abide by all laws); *In re Spitzer* at 4
(owners had right to regain possession of the site if the lessee failed to maintain the premises in
good order and condition or failed to comply with all applicable laws); *see also Resolution Trust*,

24 ⁴⁷ *See* State Coalition for Remediation of Drycleaners, “A Chronology of Historical Developments in
25 Drycleaning” (Nov. 2007) (Exhibit HH) at 4.

1 34 Cal.App.4th at 101 (lease provisions allowing landlord to re-enter premises established
2 landlord's ability to obviate dangerous conditions on property).

3 The Regional Board has provided no evidence whatsoever that Century 73 or Fox had the legal
4 ability to prevent any discharge that may have occurred and failed to exercise that ability.
5 Instead, the Regional Board appears to attempt to prove this element based on the mere fact that
6 Century 73 was a landlord. However, the Regional Board confuses Century 73's status as a
7 landlord with the legal ability to prevent a discharge under applicable State Board precedent and
8 case law. The fact that Century 73 was a landlord does not prove that it had the legal ability to
9 prevent a discharge under the terms of its leases with dry cleaner tenants. It would make no
10 sense for the State Board to specifically require proof that a landlord could prevent a discharge
11 under a lease if the mere fact of being a landlord already established that fact. 48/

12 Finally, even if the Regional Board had shown that the terms of Century 73's leases with its
13 tenants allowed Century 73 (or Fox) to enter the premises to abate a discharge, Century 73 or
14 Fox could be expected to prevent a discharge only if they knew or should have known about it.
15 As explained above, Century 73 and Fox did not know or have reason to know of any PCE being
16 discharged into the environment from LTLW's operations. Furthermore, subsurface drycleaner
17 contamination was unknown—and subsurface testing for contamination was virtually unheard
18 of— during the period that Century 73 was a landlord at the Site. *See In re Hemingway Transp.,*
19 *Inc.*, 174 B.R. 148, 169 (D. Mass. 1994) (“In early 1983, at the time this sale was closed,
20 professional environmental site assessments were not yet common or customary); *Ashley II of*
21 *Charleston, LLC v. PCS Nitrogen, Inc.*, 791 F.Supp.2d 431, 452-53 (D.S.C. 2011), *aff'd*, 714
22 F.3d 161 (4th Cir. 2013) (finding that it was not customary in 1985 for purchasers of commercial
23 property to investigate the property' environmental condition). Thus, it is highly unlikely that
24 Century 73 or Fox could have detected, much less prevented, a PCE discharge into groundwater
25 at the Site in the 1970s through a reasonable investigation at the time. In addition, unlike the
landlord in the State Board's decision in *In re Spitzer*, Century 73 did not own the South Y Site
at the time the contamination was discovered, and thus was never in a position to stop it. *See In*
re Spitzer at 7-9.

18 For all the reasons set out above, there is no substantial evidence, let alone compelling evidence,
19 that PCE was discharged at the Site during Century 73's ownership, that Century 73 or Fox
20 either knew or should have known about PCE discharges, if any, at the LTLW, or that they had
21 the ability to prevent any such discharges. Accordingly, the Regional Board's conclusion that
22 Century 73 and Fox caused or permitted a discharge under Section 13304 is unlawful and must
23 be overturned.

24 48/ Similarly, the Regional Board has not established that Fox, as the general partner of Century 73, would
25 have had the legal ability to prevent a discharge caused by Century 73's tenants.

1 **B. The Board Has Not Demonstrated that Fox is Liable as Century 73's General**
2 **Partner**

3 The Regional Board asserts that Fox is liable as a discharger under Section 13304 because as the
4 general partner of Century 73, "it is liable for all obligations of the limited partnership, including
5 the environmental contamination from the operation of the partnership." Final Order at 10, ¶ 36.
6 Additionally, the Regional Board contends that "[a]s a general partner, [Fox] also had knowledge
7 of and control over the activities occurring at the Site that caused the discharge." *Id.* As
8 explained above, Century 73 is not liable under Section 13304, and so neither is its general
9 partner. Moreover, there is simply no evidence whatsoever that Fox had any greater knowledge
10 of Site activities than Century 73. In addition, even if Century 73 had "caused or permitted" a
11 discharge under Section 13304, both its liability and that of Fox may have been extinguished
12 pursuant to Cal. Corp. Code § 15908.07 when Century 73 dissolved in 1990. 49 Fox is
13 continuing to investigate whether Century 73 published the required notice of its dissolution
14 under that section and hereby reserves the right to raise this defense in this and subsequent
15 proceedings.

16 **VI. THE REGIONAL BOARD EXCEEDED ITS AUTHORITY BY REQUIRING THE**
17 **OFF-SITE INVESTIGATION**

18 Pursuant to Section 13267 of the Water Code, when the Regional Board requires technical
19 reports, "[t]he burden, including costs, of these [technical or monitoring program] reports shall
20 bear a reasonable relationship to the need for the report and the benefits to be obtained from the
21 reports." Water Code § 13267(b). Furthermore, "[i]n requiring those reports, the regional board
22 shall provide the person with a written explanation with regard to the need for the reports, and
23 shall identify the evidence that supports requiring that person to provide the reports." *Id.*

24 Even if Century 73 or Fox could be considered a discharger, they still would not be liable for the
25 off-site work set forth in the Final Order because the Regional Board has not met its obligation
under Section 13267 to show that the burden of conducting the required investigation bears a
reasonable relationship to the need for the investigation. 50

A. The Regional Board Failed to Evaluate the Costs of the Off-Site Investigation

 Contrary to the express requirements of Section 13267, the Regional Board has not prepared any
estimate of the cost of pursuing the investigation it has ordered, and has not weighed the costs of
the investigation it has ordered against the need for the reports. On this ground alone, the Final
Order is invalid.

49 See Century 73, Certificate of Cancellation – Limited Partnership (filed Jun. 29, 1990) (Exhibit II); see
also Cal. Corp Code § 15908.07 (barring claims against a dissolved limited partnership four years after the
publication of the notice to creditors of the dissolution in accordance with the terms of the statute).

50 To the extent the Regional Board relies on Section 13304, Fox objects to the off-site investigation under
that statute as well. For the reasons identified in this Section VI, the off-site investigation required by the
Regional Board is not supported by the evidence, and is an abuse of discretion.

1 cleanup were agreed upon. 56 The understanding of the parties was memorialized in the IRAP,
2 which the Regional Board explicitly approved. 57

3 The IRAP states:

4 *Based on the results of soil and groundwater investigations conducted at the Site*
5 *in conjunction with the measured direction of groundwater flow, the area to be*
6 *addressed for remedial action consists of two (2) parts: 1) The vadose zone soils*
7 *impacted by VOCs (see Figure 3 for approximate areal extent of vadose zone soil*
8 *cleanup); and 2) An area of the SZA [Shallow Zone Aquifer] that was*
9 *approximately 375 feet in length and 145 feet in width with a vertical extent (from*
10 *bottom of vadose zone to approximately thirty (30) feet below ground surface*
11 *(bgs) (see Figure 3 for approximate areal extent of proposed SZA cleanup). 58*

12 The Regional Board approved the IRAP, 59 which subsequently became the Remedial Action
13 Plan (“RAP”). 60 The Final Order does not offer new data or other technical justification for its
14 current assertion that the lateral and vertical extent of contamination at the LTLW has not been
15 adequately defined. *See* Final Order at 7, ¶ 27. An agency may not change its position without
16 providing an explanation for its action. *See Olive Proration Program Committee for Olive*
17 *Proration Zone No. 1 v. Ag. Prorate Comm’n*, 17 Cal.2d 204, 209 (1941) (“almost without
18 exception, courts have held that the determination of an administrative agency as to the existence
19 of a fact or status which is based upon a present or past group of facts, may not thereafter be
20 altered or modified”).

14 2. Data Collected Since 2008 Confirms the LTLW Plume is Localized

15 Seven Springs and Fox installed the SVE/GASS to remediate PCE in vadose zone soil and
16 shallow zone groundwater at the South Y Site in accordance with the IRAP and RAP approved
17 by the Regional Board. The system was designed in 2009 and commenced operation in April
18 2010. *See* Final Order at 4, ¶ 12 and ¶ 13. Data obtained from implementing this remedial action

19 56 *See* Letter from P. Goalwin (E₂C) to S. Reisch (Fox’s counsel), Remedial Action Workplan for SZA
20 Groundwater Investigation, SZA Groundwater Monitoring, Interim Remedial Action, Vadose Zone Soil and
21 Shallow Groundwater Cleanup (Jun. 4, 2009) (Exhibit JJ).

22 57 *See* Letter from L. Dernbach (Regional Board) to S. Reisch (Fox’s counsel) and B. Beard (Seven Springs’
23 counsel) (Sept. 1, 2009) (Exhibit V).

24 58 IRAP (Exhibit S) at 3 and 4 (emphasis added).

25 59 *See* Regional Board, Acceptance of Work Plan for Remediation and Order to Submit Technical Reports,
Former Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County
(Aug. 2, 2013) (Exhibit X) at 2, and Letter from L. Dembach (Regional Board) to S. Reisch (Fox’s counsel)
and B. Beard (Seven Springs’ counsel) (Sept. 1, 2009) (Exhibit V).

60 *See* E₂C, Interim Remedial System Installation/Pilot Testing Report of Findings and Draft Remedial
Action Plan for Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake
Tahoe Boulevard, South Lake Tahoe (Aug. 12, 2010) (“RAP”) (Exhibit KK).

1 confirm no PCE contamination in groundwater has migrated from the South Y Site at
2 concentrations that require investigation or remediation.

3 a. The SVE/GASS was designed to limit off-site migration and data
4 show that it worked

5 In the Final Order, the Regional Board recognizes that the SVE/GASS was “designed to
6 remediate vadose zone soils to reduce shallow zone aquifer groundwater concentrations and limit
7 further migration from the shallow zone aquifer source area.” See Final Order at 5, ¶ 14. The
8 data presented below show that the SVE/GASS has been operated as designed and has been
9 effective at removing PCE and related compounds from soil and groundwater before they enter
10 indoor air or migrate off the South Y Site.

11 i. *The SVE System Has Operated Effectively*

12 In accordance with the IRAP, Seven Springs and Fox installed 20 vertical SVE well pairs at the
13 Site in 2009. 61 Each SVE well pair consists of one well with a screen interval between
14 approximately 5 and 10 feet below ground surface (“ft bgs”) and the other with a screen interval
15 between approximately 10 and 12 ft bgs. SVE well pairs are spaced 30 feet from each other.
16 This spacing maintains overlapping radii of influence (“ROIs”) between the well pairs and
17 ensures that the entire vadose zone within the cleanup area is addressed by SVE. The number of
18 SVE well pairs is more than adequate to achieve cleanup. In coarse-grained soil such as that
19 encountered above the groundwater table at the LTLW, the ROI of SVE wells can extend 100
20 feet. 62 Consistent with this fact, in the RAP approved by the Regional Board, E₂C found that
21 “[v]acuum influence over the entire site, including under the building and into Lake Tahoe
22 Boulevard, can be readily achieved using all shallow SVE wells.” 63

23 Analytical results of indoor air samples collected from the building at the LTLW in
24 December 2015 demonstrate the SVE system’s effectiveness. PES obtained indoor air samples
25 from tenant spaces in the building where LTLW was located. The maximum PCE concentration
of 0.514 micrograms per cubic meter (“µg/m³”) detected in indoor air was considerably less than
the San Francisco Bay Regional Water Quality Control Board PCE ESL of 2.1 µg/m³ established
for protection of human health under commercial/industrial land-use scenarios. 64 Accordingly,
SVE is mitigating any vapor intrusion threat at the South Y Site. 65

21 61 See *id.* at 2-4.

22 62 U.S. EPA, “Chapter II: Soil Vapor Extraction in How to Evaluate Alternative Cleanup Technologies for
23 Underground Storage Tank Sites, A Guide for Corrective Action Plan Reviewers,” EPA 510-R-04-002
(May 2004) (Exhibit LL) at II-15.

24 63 RAP (Exhibit KK) at 15.

25 64 PES, Indoor Air Sampling Report, Former Lake Tahoe Laundry Works (Jan. 14, 2016) (Exhibit MM).

65 Vapor intrusion is the general term given to migration of VOCs from soil and groundwater into the indoor
air space of an overlying building through openings in the building foundation.

1 South Y Site. 72 None of the groundwater samples collected from these wells contained
2 PCE at concentrations greater than the MCL of 5 µg/L. Groundwater PCE concentrations
3 ranged from non-detectable at the analytical method reporting limit of 0.5 µg/L to a maximum of
4 2.4 µg/L, thereby establishing that the ZOIs of the air sparge wells overlap and that the entire
shallow groundwater zone designated for cleanup in the RAP is being addressed by the
SVE/GASS. 73

5 The May 2017 data also show no groundwater containing PCE above the MCL is escaping from
6 the South Y Site between air sparge wells. Groundwater samples were collected from vapor
7 extraction wells VE-10 through VE-13, which are situated between air sparge wells located at
8 the edge of the property in the direction of groundwater flow from the South Y Site. PCE in
these vapor extraction wells ranged from non-detectable levels to 0.64 µg/L. The Final Order's
statements, *see* Final Order at 5, ¶ 17 and 7, ¶ 27, that SVE/GASS has not contained the plume to
the South Y Site are inaccurate.

9 3. The Data Cited by the Final Order is Not Evidence of a Migrating 10 Plume

11 The Final Order contends "PCE impacted groundwater is still migrating off-Site" based on data
12 compiled for monitoring wells LW-MW-2S, LW-MW-5S, and LW-MW-13S. *See* Final Order
13 at 5 ¶ 17. Current PCE concentrations in these wells are low and demonstrate that significant
14 amounts of PCE are not migrating off the South Y Site. In May 2017, PCE was measured at
15 2 µg/L in well LW-MW-2S and 13 µg/L in well LW-MW-5S, and was not detected at the
16 analytical method reporting limit of 0.5 µg/L in well LW-MW-13S. The Regional Board has
17 closed many sites in the South Y area where PCE has been measured above these concentrations,
18 as discussed in Section VII. In 2015, the Regional Board cited the low PCE concentrations in
the perimeter monitoring wells as evidence that contaminated groundwater was being contained
by SVE/GASS at the South Y Site. The degree of containment was such that the Regional Board
recommended closure of the former Big O Tires Store property, which is in the downgradient
direction of groundwater flow from the LTLW. The Regional Board concluded that solvent
compounds in groundwater at the edge of the South Y Site "no longer pose a threat to human
health and the environment at the former Big O Tires Store property." 74

19 The Final Order also observes that 1,400 µg/L of PCE was measured in monitoring
20 well LW-MW-5S in June 2010. This concentration was the result of the start-up of SVE/GASS
21 operation. No PCE was detected in the well at start-up of the system in April 2010. The
concentration increase is due to groundwater mixing caused by air sparging. USACOE states

22 72 Regional Board, Request for Supplemental Work Plan to Perform Batch Pumping, Former Lake Tahoe
Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Jan. 4, 2017) (Exhibit Z)
23 at 2 and Regional Board Reply to Air Sparge Comments (Exhibit BB) at 8.

73 *See* Second Quarter 2017 Groundwater Monitoring Report (Exhibit B), Table 1.

24 74 Regional Board, Notification of Consideration of No Further Action; Napa Auto Parts/Former Lakeside
Auto, 1935 Lake Tahoe Boulevard South Lake Tahoe, South Lake Tahoe, El Dorado County, Lahontan SCP
25 Case #T6S034, (Oct. 8, 2015) (Exhibit TT), Case Closure Summary at 3.

1 “groundwater quality may initially deteriorate because of increased contaminant dissolution,” but
2 [t]hese effects will be ameliorated over time, as contaminant mass is removed from the aquifer
3 and remediation proceeds.” 75 The PCE concentration decline from 1,400 µg/L in June 2010 to
4 5.06 µg/L in August 2012 is consistent with USACOE’s observations. A similar trend occurred
5 in monitoring well LW-MW-2S. PCE rose from 5.9 µg/L at SVE/GASS start-up in April 2010
6 to a maximum of 376 µg/L in May 2011 and subsequently declined to 1.38 µg/L in November
7 2012. 76 Groundwater PCE concentrations in these monitoring wells have remained low after
8 2012 except for periods when the SVE/GASS was temporarily inactive.

9 Air sparging increases the rate of dissolution of the sorbed phase contamination and eventual
10 stripping from groundwater. 77 Thus, the PCE mass responsible for increased PCE
11 concentrations in monitoring wells LW-MW-1S and LW-MW-2S was removed from
12 groundwater by the air sparge wells and then from vadose zone soil by the vapor extraction
13 wells. According to Suthersan, the mass removal efficiency of the in situ air sparging process
14 can be demonstrated by measuring the increase in contaminant levels in the effluent of the vapor
15 extraction system after initiation of the air sparging system. 78 The SVE/GASS was removing
16 on the order of 0.1 to 0.2 pounds per hour (“lb/hr”) of PCE in August 2010 shortly after system
17 start-up. By December 2012, the SVE/GASS PCE mass removal rate had dropped to roughly
18 0.005 lb/hr coincident with PCE concentration declines in wells LW-MW-1S and LW-MW-2S.
19 The current PCE mass removal rate is less than 0.0005 lb/hr, 79 which indicates depleted PCE
20 mass in the subsurface. The depleted PCE mass is reflected by the non-detectable or low PCE
21 concentrations measured in shallow groundwater throughout the Site in May 2017. 80

12 4. There is No Evidence That Preferential Pathways Allowed LTLW 13 Contamination to Migrate Off-Site

14 The Final Order speculates that subsurface preferential pathways (e.g., utility lines and
15 associated trench materials) exist north of the LTLW tenant space. *See* Final Order at 7, ¶ 25.
16 The Regional Board has previously examined and rejected the possibility of preferential
17 pathways at the South Y Site.

18 Preferential pathways were considered by Water Board Staff when evaluating
19 whether potential off-site PCE sources affected the Facility [Big O Tires Store].
20 The 2004 *Supplemental Site Investigation Report* for the Laundry site shows that
21 extensive sampling was conducted along the sewer line on the property. When
22 samples failed to show PCE detections, the sewer line was ruled out as a
23 preferential pathway for contaminant migration. No sampling was required along

24 75 USACOE In-Situ Air Sparging Manual (Exhibit OO) at 3-3.

25 76 *See* Second Quarter 2017 Groundwater Monitoring Report (Exhibit B), Table 3.

77 Suthersan, S., *In Situ Air Sparging. Remediation Engineering: Design Concepts*, CRC Press LLC, (1999)
(Exhibit NN).

78 *Id.*

79 *See* Second Quarter 2017 Groundwater Monitoring Report (Exhibit B), Table 6.

80 *Id.*, Table 1.

1 the storm drain on the Laundry property since it was not installed until about 15
2 years after the Laundry release ceased. 81

3 The Final Order also insinuates that the silt layer separating the shallow zone aquifer from the
4 middle zone aquifer near the suspected source location by monitoring well LW-MW-1S is
5 discontinuous and allowing PCE to migrate to deeper portions of the saturated zone. *See* Final
6 Order at 7, ¶ 25. As discussed in Section VI.C, available data show that this is not the case. The
7 silt layer acts as a confining unit. PCE concentrations in middle zone groundwater have
8 decreased from 137 µg/L in 2008 to 66 µg/L in 2017 at the suspected source location.

9 **C. The Off-Site Investigation Required by the Final Order is Unnecessary and
10 Burdensome Because the Regional PCE Contamination Arises from Other
11 Sources**

12 Not only is it clear that contamination on the LTLW has not migrated off-site at levels that
13 require further investigation or remediation, but a review of the available data demonstrates that
14 that Regional PCE Contamination did not originate from the LTLW.

15 **1. The Regional PCE Contamination is in the Middle Zone Whereas
16 LTLW Contamination is in the Shallow Zone and not the Middle
17 Zone**

18 Analytical results of off-site groundwater samples reveal that off-site PCE contamination resides
19 in the middle zone aquifer. As shown on Figure 1, PCE has been detected at the following
20 concentrations in middle zone groundwater *between* the South Y Site and Eloise Avenue wells:

- 21 • 310 µg/L PCE at 60 ft bgs from borehole near James Avenue and Fifth Street in
22 1998.
- 23 • 430 µg/L PCE at 50 ft bgs from borehole on TCI Cable Site/Former Honda Motor
24 Company Dealership in 2001.
- 25 • 1,500 µg/L PCE at 45 ft bgs from borehole on Hurzel property in 2007.
- 3,000 µg/L PCE at 44 to 46 ft bgs from borehole on the Napa/Former Lakeside
Auto Store site in 2002.
- 4,700 µg/L PCE at 47.5 to 50 ft bgs from borehole on the former Big O Tires
Store site in 2001.

These PCE concentrations are much higher than the maximum PCE concentration of 137 µg/L
detected in middle zone groundwater at the South Y Site in well LW-MW-1D in 2008. Well
LW-MW-1D is screened from 40 to 50 ft bgs, and is co-located (or nested) with shallow zone
well LW-MW-1S. Figure 2 shows PCE concentrations in shallow and middle zone groundwater

81 Regional Board, Comments on Draft Amended Cleanup and Abatement Order (CAO) No.
R6T-2003-031A1 for the Big O Tires Store, South Lake Tahoe (Dec. 12, 2005) (Exhibit UU) at 8.

1 at the Site, generally between 2003 and 2008, before operation of the SVE/GASS commenced.
2 These data indicate that while the surficial spill of PCE resulted in concentrations in the shallow
3 zone as high as 5,380 µg/L, they did not significantly affect middle zone groundwater at the Site.
4 None of the PCE concentrations at the Site are suggestive of dense non-aqueous phase liquid
5 (“DNAPL”) in the middle zone. U.S. EPA states DNAPL may be present if sampled
6 groundwater concentrations are in excess of one percent of their pure phase or effective
7 solubility. ⁸² One percent of the pure phase solubility of PCE is approximately 2,100 µg/L. ⁸³
8 No PCE has been detected in middle zone groundwater at the Site at concentrations greater than
9 this threshold value.

10 The significant difference between the concentrations of PCE in shallow and middle zone
11 groundwater at the South Y Site is not accidental. Rather, available information indicates a
12 confining unit impedes movement of groundwater from the shallow zone to the middle zone and
13 any associated downward migration of PCE. As depicted on cross-section figures in its 2008
14 Site Investigation Report, E₂C encountered a 1- to 2.5-foot thick fine-grained silt layer beneath
15 the South Y Site beginning at a depth of roughly 35 ft bgs. ⁸⁴ E₂C recognized this silt layer as
16 an important stratigraphic feature and constructed monitoring wells at the Site and within Lake
17 Tahoe Boulevard so the screened intervals of shallow zone wells were above the layer and those
18 of middle zone wells were below it.

19 Groundwater elevation measurements in the nested wells built by E₂C show this silt layer acts as
20 a confining unit. The groundwater elevations in shallow and middle zone monitoring wells at the
21 LTLW and within Lake Tahoe Boulevard differed by approximately 10 feet. ⁸⁵ Groundwater
22 elevation differences this large demonstrate the shallow and middle zones are not hydraulically
23 connected.

24 Independent scientists unaffiliated with any of the parties in this matter studied the confining unit
25 and found it to be laterally extensive and concluded that:

[t]he general continuity of these fine-grained lacustrine units within the South Y
area at the 6–15 m [20-50 ft] depth interval is supported by the lithologic record
reviewed for this study, as well as hydraulic head differences and contaminant
migration patterns. It is recognized that the potential for discontinuity exists.

⁸² See U.S. EPA, Ground Water Issue: Assessment and Delineation of DNAPL Source Zones at Hazardous
Waste Sites, EPA/600/R-09/119 (“U.S. EPA Delineation of DNAPL Source Zones”) (Sept. 2009) (Exhibit
VV) at 6.

⁸³ This is based upon PCE solubility limit in water of 210,000 µg/L, as reported by U.S. EPA in its Regional
Screening Level (“RSL”) Chemical-specific Parameters Supporting Table (Nov. 2015) (Exhibit WW).

⁸⁴ See Site Investigation Report (Exhibit T) Figures 2B, 4, and 4A through 7C.

⁸⁵ See *id.*, Table 1B.

1 However, no evidence of discontinuities in the lithologic data or water-level data
2 was observed. 86

3 Kennedy/Jenks Consultants, on behalf of the South Tahoe Public Utility District (“STPUD”),
4 also studied the matter and agrees, stating the following regarding basin stratigraphy:

5 Units of relatively high permeability typically correspond to coarse-grained
6 glacial outwash, fluvial and deltaic deposits forming the basin-fill aquifer. The
7 laterally continuous fine-grained lacustrine (lake-bed) deposits form local
8 confining layers or aquitards that affect groundwater flow between these higher
9 permeability deposits. 87

10 The presence of a confining unit serves as a barrier to vertical groundwater movement, and
11 explains why the surficial release of PCE at the Site has not contaminated middle zone
12 groundwater.

13 2. **The Off-Site Contamination Across Lake Tahoe Boulevard is** 14 **Attributable to Other Sources**

15 By contrast to the distribution of PCE at the South Y Site, PCE concentrations across Lake
16 Tahoe Boulevard beneath the former Big O Tires Store and along Glorene Avenue near the
17 Napa/Fomer Lakeside Auto property indicate the potential existence of DNAPL in middle zone
18 groundwater at these properties. Groundwater PCE concentrations were measured up to 4,700
19 µg/L in 2001 and 2,200 µg/L in 2003 beneath the former Big O Tires Store and along Glorene
20 Avenue, respectively. These concentrations are an order-of-magnitude greater than the maximum
21 PCE concentration of 137 µg/L detected in middle zone groundwater at the South Y Site in 2008.

22 Regional Board staff have examined these same PCE distributions and arrived at the same
23 conclusion—the off-site PCE contamination was not attributable to the South Y Site. In an email
24 dated November 15, 2004, from Ms. Lisa Dernbach of the Regional Board to Mr. Harold Singer
25 of the Regional Board, Ms. Dernbach stated the following:

- “... the source of the contamination in GW-6 [middle zone groundwater in Lake Tahoe Boulevard between the LTLW site and Napa site – see Figure 1] is not from the laundromat [LTLW site].”
- “... the laundromat [LTLW] plume is clearly in the upper portion of the saturated zone (20-30 ft) and is unlikely to be pulled to the 44 ft depth in the absence of an active force....”

23 86 Morgan et al., Glacio-Lacustrine Stratigraphy, Aquifer Characterization and Contaminant Transport: A
24 Case Study in South Lake Tahoe, California, USA, Hydrogeology Journal, Vol. 16 (2008) (Exhibit XX) at
25 992.

23 87 Kennedy/Jenks Consultants, Tahoe Valley South Basin (6-5.01) 2014 Groundwater Management Plan,
24 Prepared for South Tahoe Public Utility District (Dec. 22, 2014) (Exhibit YY) at 5-1.

- 1 • “More likely, contamination at GW-6 is from the Lakeside Napa Auto Store....” 88

2 Similarly, in its Staff Report dated August 22, 2005, the Regional Board concluded that the
3 LTLW PCE plume was confined to the shallow zone aquifer while contamination at Big O and
4 Glorene Avenue was predominantly found in the middle zone aquifer. The Board stated:

5 . . . the plume from the Laundry site migrates near the water table since PCE
6 concentrations decrease with distance from the site. Whereas, sample results near
7 the Glorene Avenue intersection suggest that a solvent plume from a different
8 source or sources is migrating deeper in the aquifer from the west direction. 89

9 In a letter dated February 22, 2007, Regional Board staff stated that the Big O site potentially
10 contributed to groundwater PCE contamination in the South Y area, and that as a result, the
11 Regional Board could not issue a closure or no further action letter related to the Big O site. 90

12 Since these prior statements by the Regional Board, no additional middle zone groundwater data
13 have been generated that would be expected to alter the Regional Board’s conclusions and
14 opinions regarding the source for the PCE in middle zone groundwater at the Big O site. 91

15 To the contrary, recent data confirms the prior analysis. Earlier this year, prior to the issuance of
16 the Final Order, the Regional Board requested that Fox and Seven Springs sample middle zone
17 monitoring wells LW-MW-1D, LW-MW-2D, and LW-MW-5D by May 15, 2017 and provide a
18 report summarizing the testing no later than 45 days after the sampling event. 92 The results
19 from the sampling required by the Board show PCE concentrations have declined in middle zone
20 groundwater beneath the Site. In 2017, the maximum PCE concentration was 66 µg/L 93, which
21 is roughly one-half of the maximum PCE concentration of 137 µg/L detected in middle zone
22 groundwater between 2003 and 2008. As these data are consistent with (and show
23 concentrations even lower than) the data collected in and prior to 2008, they confirm that the Site
24 is not the source of the much higher middle zone PCE concentrations detected off-site.

25 The data from the off-site groundwater investigation performed by URS on behalf of the
Regional Board in 2015 is to the same effect. URS’s report found no PCE at concentrations

88 Email correspondence from L. Dernbach (Regional Board) to H. Singer (Regional Board) (“Napa site email correspondence”) (Nov. 15, 2004) (Exhibit ZZ).

89 Staff Report, Regional Board, Solvent Contamination at the Big O Tires Store, 1961 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 22, 2005) (“Regional Board 2005 Staff Report”) (Exhibit AAA) at 8.

90 Regional Board, Comments on Site Investigation Results, Big O Tires Store, 1961 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Feb. 22, 2007) (Exhibit BBB) at 2.

91 PCE was detected at a maximum concentration of 5,380 µg/L in shallow zone groundwater at LTLW in 2011, but this contamination is associated with PCE trapped in shallow vadose zone soil, not PCE DNAPL that has migrated to middle zone groundwater. *See* Fourth Quarter 2016 Groundwater Monitoring Report (Exhibit Y), Table 3.

92 Regional Board Reply to Air Sparge Comments (Exhibit AA) at 8.

93 *See* Second Quarter 2017 Groundwater Monitoring Report (Exhibit B), Table 1.

1 above the MCL in the shallow zone at locations in the downgradient direction of groundwater
2 flow from the Site. ⁹⁴ This too confirms that the South Y Site contamination – which is a
3 shallow zone plume – has not migrated from the South Y Site.

3 **3. Groundwater Flow and Water Quality Data Confirm that the**
4 **Regional PCE Contamination is not Attributable to the LTLW**

5 The Regional Board previously has asserted that the Regional PCE Contamination is attributable
6 to contamination from the LTLW in part upon contaminant concentrations identified in the off-
7 site Hurzel property and off-site monitoring well OS-1. *See* Revised Proposed Order at 6-7 ¶ 20;
8 Regional Board Response to CAO Comments at 2 ¶ 5 4 ¶ 7; 5 ¶ 10. Although the Final Order
9 does not repeat these specific assertions, it continues to allege that the LTLW may be responsible
10 for a vast regional plume. Accordingly, we demonstrate below that groundwater from the LTLW
11 does not flow toward the Hurzel property or off-site monitoring well OS-1. This is apparent both
12 from groundwater flow data and groundwater quality data.

10 a. Groundwater from the South Y Site Principally Flows to the
11 Northwest Whereas Much of the Regional PCE Plume is to the
12 Northeast

12 Quarterly groundwater monitoring reports for the South Y Site prepared by E₂C since 2010 show
13 that the groundwater gradient or flow direction is predominantly to the north-northwest as
14 opposed to the northeast toward the Hurzel property and monitoring well OS-1. ⁹⁵ This
15 groundwater flow direction is corroborated by URS in its January 19, 2016 groundwater
16 investigation report, ⁹⁶ and by the site investigation report and groundwater monitoring reports
17 prepared for the Hurzel property. Figure 1 of the URS Final Report shows groundwater flow
18 direction arrows to the north at Tucker Avenue and Emerald Bay Road (near the South Y Site),
19 and to the northwest at 5th Street and James Avenue (both located within the area of regional
20 PCE contamination). Similarly, Stantec Consulting, Inc. states the following regarding the
21 groundwater flow direction at the Hurzel property:

18 The four quarters of monitoring and sampling at the site indicates that there is a
19 significant shift in groundwater flow direction from fall and winter of the year to
20 spring and summer of the year. During the fall and winter when the groundwater
21 is deeper, the predominant groundwater flow direction is to the west northwest

20 ⁹⁴ URS Final Report (Exhibit CC), Figure 2.

21 ⁹⁵ *See e.g.*, E₂C, Third Quarter 2010 Groundwater Monitoring Report and Current Site Remediation Status
22 Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Nov. 1, 2010) (Exhibit
23 CCC); E₂C, Fourth Quarter 2012 Groundwater Monitoring Report and Current Site Remediation Status
24 Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Oct. 31, 2012) (Exhibit
25 DDD); E₂C, Second Quarter 2014 Groundwater Monitoring Report and Current Site Remediation Status
Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Oct. 16, 2014) (Exhibit
EEE); E₂C, First Quarter 2015 Monitoring Report and Current Site Remediation Status Report, Lake Tahoe
Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (June 23, 2015) (Exhibit FFF).

⁹⁶ URS Final Report (Exhibit CC) at 2.

1 and during the spring and summer shifts to the north. The hydraulic gradient
2 during the fall and winter is also steeper than the hydraulic gradient in the spring
and summer. 97

3 Figure 3 depicts the relationship of the South Y Site to the Hurzel property and monitoring
4 well OS-1. The predominant north-northwest groundwater flow direction as reported by URS,
5 Stantec, and E₂C is illustrated by arrows on this figure. Accordingly, there is no groundwater
flow path between the LTLW and OS-1 or the Hurzel property.

6 b. Groundwater quality data

7 Groundwater quality data tell a similar story. Contaminant concentrations are highest beneath
8 their source at any site where a chemical release has taken place. 98 As noted by the Regional
Board in its 2005 Staff Report, “plumes composed of dissolved solvent compounds migrate with
9 groundwater flow and decrease in concentration with distance from the source.” 99

10 Thus, if a release of PCE at the South Y Site were a source of the Regional PCE Contamination,
one would expect the concentrations of PCE in *between* the South Y Site and the Hurzel property
11 to be higher than the concentrations in the Hurzel monitoring wells. In fact, that is not the case.
As shown on Figure 3, PCE was measured at 1.5 µg/L in shallow zone groundwater at 986
12 Emerald Bay Road (Runnels Automotive site), which is located between the South Y Site and
Hurzel (presumably sampled during the Regional Board investigation in 1997-1998). This PCE
13 concentration is much lower than groundwater PCE concentrations detected later at Hurzel. In
2008, PCE was measured at 1,300 µg/L and 400 µg/L in Hurzel monitoring wells MW-4 and
14 MW-5, respectively (Figure 3).

15 Contemporaneous PCE concentrations in LTLW perimeter monitoring wells and shallow zone
16 monitoring wells in Lake Tahoe Boulevard (between LTLW and Hurzel) also were lower than
those detected in Hurzel wells. In 2008, PCE was measured in South Y Site perimeter wells
17 LW-MW-2S and LW-MW-5S at 3 µg/L and 85.1 µg/L, respectively. Lake Tahoe Boulevard
wells sampled in 2008 showed PCE concentrations generally less than 85 µg/L, considerably
18 below PCE concentrations detected in Hurzel shallow zone monitoring wells sampled during the
same time period (Figure 3). The lack of a groundwater PCE concentration gradient from LTLW
19 to Hurzel indicates the higher PCE concentrations in shallow zone groundwater at the Hurzel
property are due to a source other than the South Y Site.

20 No correlation exists between PCE concentrations in off-site monitoring well OS-1 and LTLW
21 perimeter monitoring wells, which is not surprising, because well OS-1 was never intended to

22 _____
23 97 Stantec Consulting, Inc., Third Quarter 2008 Water Quality Report, Former Dry Cleaning Business,
949 Emerald Bay Drive, South Lake Tahoe (Dec. 10, 2008) (Exhibit GGG) at 3.

24 98 U.S. EPA, Handbook, Ground Water, Volume 1: Ground Water and Contamination, EPA/625/6-90/016a
(Sept. 1990) (Exhibit HHH) at 109-110.

25 99 See Regional Board 2005 Staff Report (Exhibit AAA) at 6.

1 evaluate the effectiveness of the SVE/GASS in containing on-site contamination. This was made
2 clear by E₂C in the IRAP Addendum:

3 Well OS-1 will be installed as an accommodation to the CRWQCB. We
4 understand that groundwater monitoring analytical results collected from well
5 OS-1 will be used to evaluate groundwater conditions in the proximity of that
6 well and the data collected from that well will not affect the operation or cessation
7 of operation of the remediation system on the South Y Site. 100

8 The Regional Board approved the IRAP on September 1, 2009, without commenting on this
9 statement.

10 **4. There are Numerous Potential Sources that Could Explain the**
11 **Regional PCE Contamination and Which Have Not Been Investigated**

12 Multiple properties exist that could be the source of the Regional PCE Contamination, as
13 depicted on Figure 4. The Regional Board has identified many of these properties as possible
14 PCE sources, but has not required their investigation. As recently as 2016, Regional Board staff
15 indicated assessment of other PCE sources is warranted based on the findings of the off-site
16 investigations performed by URS 101 and GEI Consultants, Inc. 102 Regional Board staff stated
17 their intention to assess other potential PCE sources as part of a Phase II Investigation tentatively
18 scheduled to be performed in 2017. 103

19 The Regional Board recognizes that “PCE is normally associated with dry cleaning activities, but
20 the solvent compound can also be used for metal degreasing and is an ingredient in paint
21 strippers.” 104 Metal degreasing can be associated with automotive or equipment repair, or
22 machine shops; and paint stripping can be associated with auto body shops, and wood and metal
23 working businesses. URS reached similar conclusions as a result of the off-site
24 investigation. 105 Numerous current and former auto repair and auto body shops, as well as
25 other industries, that may have contributed PCE to the regional PCE contamination await
sufficient characterization.

Napa/Former Lakeside Auto (1935 Lake Tahoe Boulevard). As alluded to above and as set forth
in Fox’s comments on the proposed no further action letter for this site, PCE was detected in

100 IRAP Addendum (Exhibit U) at 2.

101 URS Final Report (Exhibit CC) at 8.

102 See GEI Consultants, Inc., Results of PCE Investigation for Tahoe Keys Property Owners Association
(TKPOA), South Y Area South Lake Tahoe, California (Aug. 15, 2016) (Exhibit III); and South Y Extraction
Well Suitability Investigation (Jun. 29, 2016) (Exhibit JJJ).

103 See Regional Board, Meeting Summary to Discuss Next Steps for the South Y PCE Investigation (Sept.
2, 2016) (Exhibit KKK) at 2.

104 Regional Board Media Release, “Lahontan Water Board to Conduct Groundwater Testing for PCE in
South Lake Tahoe” (Oct. 21, 2015) (Exhibit LLL) at 1.

105 See C. Hutto, URS, PCE Investigation, South Lake Tahoe, Summary of Findings (Feb. 5, 2016)
(Exhibit GG), slides 14 and 15.

1 shallow and middle zone groundwater but the Napa site was not fully investigated in 2003 or
2 thereafter. 106 For example:

- 3 • No shallow soil samples were collected directly beneath a concrete sump and potential
4 PCE discharge point located within a former auto service bay in the Napa shop. The
5 Regional Board sidesteps this shortcoming by asserting collection of a single soil sample
6 at 8 ft bgs from borehole BH-10 moved outside the building away from the sump was
7 adequate. 107 This sampling was not sufficient given the manner in which DNAPL
8 behaves. The National Research Council explains “DNAPL often follows a highly
9 irregular path, resulting in a source zone that contains narrow vertical pathways
10 connected to thin, laterally extensive horizontal lenses.” 108 Collecting soil samples at
11 various depths was critical to assessing whether PCE was released from the sump, but
12 this was not done.
- 13 • No soil or groundwater samples were collected from interior areas of the Napa shop,
14 including the auto service bays and machining areas where chemicals such as solvents
15 may have been used or stored. Thus, the soil beneath the service bays remains
16 uncharacterized and may be impacted by PCE.
- 17 • No soil or groundwater samples were collected next to floor drains or subsurface
18 wastewater pipelines within the Napa shop. Borehole BH-1 was to be placed next to a
19 floor drain but was eliminated because the Regional Board states the “potential floor
20 drain inside the shop did not exist.” 109 The fact that Secor International Incorporated
21 (“Secor”), the consultant performing the investigation, was unable to locate the floor
22 drain because it was “no longer visible” does not exclude the floor drain as a potential
23 conduit or release point. 110
- 24 • No shallow or middle zone groundwater monitoring wells were installed at the Napa site
25 in both upgradient and downgradient locations to obtain representative and reproducible
groundwater sample results, or to assess the nature and extent of the contamination.

19 106 EKI, Response to Water Board Notification of Consideration of No Further Action; Napa Auto
20 Parts/Former Lakeside Auto, 1935 Lake Tahoe Boulevard South Lake Tahoe, California, (Dec. 3, 2015)
(Exhibit MMM). Fox incorporates these comments by reference into this submittal.

21 107 Regional Board, Response to Fox Capital Management Corporation Comments on 60-Day No Further
22 Action Notice, Lakeside Napa Auto Store Case (T6S035), 1935 Lake Tahoe Boulevard, South Lake Tahoe,
23 El Dorado County (“Response to Fox Napa Comments”) (Undated) (Exhibit NNN) at 3-4, ¶ B.

24 108 National Research Council, Contaminants in the Subsurface: Source Zone Assessment and Remediation,
25 Committee on Source Removal of Contaminants in the Subsurface (2004) (Exhibit OOO) at 52.

109 Regional Board, Response to Fox Napa Comments (Exhibit NNN) at 3, ¶ B.

110 Secor stated in the investigation work plan that “a drain pipe enters the concrete sump from the south,
which was at one time connected to a floor drain in the building. The floor drain in the building is no longer
visible;...” See Secor, Work Plan to Investigate Chlorinated Hydrocarbon-Impacted Soil and Groundwater On
and Off the Lakeside Automotive Property, South Lake Tahoe, California (Oct. 1, 2003) (Exhibit PPP) at 3.

1 Despite these significant data gaps, the Regional Board proposed to grant a no further action
2 determination to the Napa/Lakeside Auto site based on the results of soil and groundwater
3 samples collected in 2003, which largely failed to detect PCE contamination. 111 However, the
4 absence of PCE in soil samples collected in 2003 is not remarkable considering that the numbers
5 of samples were insufficient and too far from potential PCE discharge points inside the shop to
6 evaluate the possible presence of DNAPL. Moreover, no groundwater monitoring wells have
7 been constructed and no soil gas testing has been performed to confirm the results of the limited
8 soil data compiled for the Napa site. Indeed, PCE concentrations of 120 µg/L and 130 µg/L
9 were detected in two shallow zone groundwater samples collected at the Napa site in 2002. In
10 addition, PCE has been detected in middle zone groundwater below the Napa site at
11 concentrations greater than 1 percent of its pure phase solubility (i.e., ≈2,100 µg/L), which is an
12 indicator of DNAPL according to U.S. EPA. 112. In 2002, up to 3,000 µg/L of PCE was
13 reported in a grab groundwater sample obtained at 44 to 46 ft bgs. 113 In 2004, the Regional
14 Board concluded the Napa site was a source of PCE contamination. 114 Inexplicably, the
15 Regional Board failed to insist upon installation of monitoring wells that would have allowed it
16 to ascertain groundwater quality and flow direction at the Napa site.

17 Former Big O Tires Store (1961 Lake Tahoe Boulevard). As set forth in Fox’s comments on the
18 proposed no further action for this site, PCE was detected in shallow and middle zone
19 groundwater but the Big O site was never fully investigated. 115 An investigation work plan
20 prepared by LFR Inc. (“LFR”), dated April 27, 2006, which apparently was reviewed and
21 approved by the Regional Board, proposed the advancement of boreholes and the collection of
22 soil samples in specific suspected PCE source areas on the Big O site; however, the boreholes
23 were never advanced in these areas and samples were never collected. In the LFR findings
24 report, dated August 9, 2006, there is no indication as to why these targeted areas were not
25 sampled. For example:

- Borehole B-12 proposed to be located in the bottom of the lube pit adjacent to a drain
was relocated approximately 20 feet to the northwest and outside of the pit.
- Borehole B-11 proposed to be located adjacent to a floor drain in the main service bay
was relocated approximately 8 feet northwest of the drain.
- Borehole B-10 proposed to be located adjacent to the above ground storage tank and filter
drum area was relocated approximately 15 feet to the north.

111 See Regional Board, Consideration of No Further Action Required, Former Big O Tire Store, 1061 Lake
Tahoe Boulevard (Oct. 7, 2015) (Exhibit QQQ).

112 See Section VI.C.1, *supra*.

113 Regional Board 2005 Staff Report (Exhibit AAA) at 5.

114 Email correspondence from L. Dernbach (Regional Board) to H. Singer (Regional Board) (Nov. 15,
2004) (Exhibit ZZ).

115 EKI, Response to Water Board Notification of Consideration of No Further Action, Former Big O Tires
Store Site, 1961 Lake Tahoe Boulevard, South Lake Tahoe, California (Dec. 3, 2015) (Exhibit RRR).

- 1
- Borehole B-9 proposed to be located in an unpaved area off the edge of a concrete paved surface was moved approximately 15 feet to the northeast and onto the paved surface.
- 2

3 These areas were identified by Big O's own consultant as suspected PCE source areas but were
4 never sampled. Because these locations are upgradient from the Regional PCE Contamination,
5 these areas could be potential sources of that contamination. The Regional Board has previously
6 admitted that Big O did not follow its own work plan, stating that "the indoor investigation
7 conducted within the shop at the Big O site was the best that could be done at that time. Water
8 Board staff did not see the benefit that might be gained by requiring additional indoor
9 investigations." ¹¹⁶ However, given the number of unexplored source areas and the difficulty in
10 locating PCE sources by soil sampling, alternative investigative methods, such as soil gas testing,
11 could easily be employed to assess if DNAPL beneath the building is a source of high PCE
12 concentrations detected in middle zone groundwater at the Big O site.

9 Other areas of the Big O site that were not fully investigated and could be PCE sources for all or
10 some of the regional PCE contamination are presented below:

- The area where a shallow soil sample contained detectable PCE (borehole B-9), located
11 in an area of the Big O site that may have received surface water runoff from operations
12 areas, was not further investigated or characterized to determine if PCE concentrations
13 increased away from that sample location. Borehole B-9 was placed on a concrete paved
14 surface and was not completed in the unpaved area that may have directly received
15 surface water runoff. Additional boreholes and samples should have been collected from
16 this area of the Big O site, including unpaved areas, to determine the lateral and vertical
17 extent of the PCE contamination, and to determine whether higher concentrations of PCE
18 existed away from borehole B-9.
- Soil in other unpaved areas of the Big O site that may have received surface water runoff
19 from Big O operations areas, such as the unpaved areas along Tucker Avenue and
20 unpaved areas on the Classic Cue portion of the site, were not sampled. These areas may
21 have been impacted by PCE in surface water runoff from Big O operations and should
22 have been sampled as part of the 2006 LFR investigation.
- The 2006 LFR investigation was conducted during a period of unusually high
23 groundwater elevation (depth to groundwater was reported to be within 8 feet of the
24 ground surface); thus, PCE concentrations in shallow zone groundwater may have been
25 diluted due to fresh water influx possibly from the nearby storm water retention and
percolation basin. In a letter dated February 22, 2007, prepared by the Regional Board
(Exhibit BBB), the Regional Board indicated that high groundwater at the Big O site
during sampling could potentially have diluted PCE concentrations in the shallow zone.

¹¹⁶ Regional Board, Response to Fox Capital Management Corporation Comments on 60-Day No
Further Action Notice, Big O Tire Store #147 Case (T6S034), 1961 Lake Tahoe Boulevard, South Lake
Tahoe, El Dorado County ("Response to Fox Big O Comments") (Undated) (Exhibit SSS) at 3, ¶ B.

1 The comments by the Regional Board in its February 22, 2007 letter suggested that
2 several groundwater sampling events over several seasons with varying groundwater
3 elevations would have more accurately depicted groundwater quality conditions at the
Big O site, yet this investigation was never undertaken.

- 4 • During the 2006 LFR investigation, shallow zone groundwater samples were collected on
5 the upgradient side of sub-grade features, such as wastewater pipelines, which may have
6 missed shallow zone groundwater impacts, if any, at those potential source locations. It
7 is unclear why boreholes B-3, B-13 and B-14 were placed on the upgradient (west) side
of the wastewater pipeline from the Big O building, and not on the downgradient (east)
side. The wastewater pipeline from the Big O building, which presumably was
connected to floor drains in the building, was inadequately characterized.

8 Further, the Amended Cleanup and Abatement Order (No. R6T-2003-031A1) (Mar. 7, 2006)
9 (“2006 Big O Order”) issued for the Big O site states that “further investigation is needed to
10 attempt to locate the source area(s);” “[t]he investigation must be comprehensive, evaluating all
11 on-site potential release areas and waste disposal areas;” and sampling is required at “all
potential release sources to evaluate whether solvent compounds were discharged on site.” 117
These requirements from the 2006 Big O Order have not been met.

12 In addition, the 2006 Big O Order references an El Dorado County Department of Environmental
13 Health report documenting an inspection of the Big O site on April 6, 2005, which identifies a
14 receipt for contaminated soil taken to a transfer disposal facility. The 2006 Big O Order requires
15 that Big O provide details of the release and the nature of the contaminated soil removed from
the site as it “may be contributing to the groundwater pollution” at the Big O site. 118 It does not
appear that this requirement of the 2006 Big O Order has ever been met.

16 The Regional Board has been inconsistent in its interpretation of data for the Big O site. In 2007,
17 the Regional Board concluded the PCE concentration of 4,700 µg/L in middle zone groundwater
18 detected in 2001 on the east side of the Classic Cue building suggested an on-site PCE
19 source. 119 The Regional Board subsequently claimed that this high PCE concentration does not
20 indicate a source because, at the same time in 2001, PCE was detected at 1,900 µg/L in the
21 middle zone on the west side of the Big O building. 120 As shown on Figure 1, these two
sample locations are located at least 75 feet from one another in the opposite direction. While
the Regional Board assumed that one sample reflects migration from the other, in fact, PCE
detected in these middle zone samples may derive from two entirely different Big O releases at
the site.

22 117 Big O Tires, Amended Cleanup and Abatement Order (No. R6T-2003-031A1) (Mar. 7, 2006) (Exhibit
TTT), ¶¶ 7 & 9.

23 118 See *id.* ¶ 10.

24 119 Regional Board, Comments on Site Investigation Results, Big O Tires Store, 1961, Lake Tahoe
Boulevard, South Lake Tahoe, El Dorado County – Cleanup and Abatement Order No. R6T-2003-031A1 (Feb.
22, 2007) (Exhibit BBB) at 2.

25 120 Response to Fox Big O Comments (Exhibit SSS) at 9.

1
2 PES has observed that no nexus exists between PCE at the LTLW and PCE in the middle zone
3 groundwater because PCE concentrations in middle zone groundwater are higher beneath
4 Napa 121 and/or Big O 122 compared with LTLW. The higher concentrations reflect spills at
5 Napa and Big O that have added PCE mass to groundwater.

6 Rather than assigning responsibility for these releases to Big O, the Regional Board has now left
7 it to the recipients of the Final Order to investigate Big O's contamination. Instead, the Regional
8 Board could require Big O to construct shallow and middle zone monitoring wells at locations
9 that encompass both upgradient and downgradient directions of groundwater flow beneath the
10 Big O site. Sampling these wells would generate contemporaneous, representative, and
11 groundwater sample results that can be compared to data collected by Seven Springs and Fox for
12 the South Y Site.

13 Former South Y Exxon Service Station; Current Transit Terminal (1000 Emerald Bay Road).

14 An auto service station was formerly located at the southwest corner of Emerald Bay Road and
15 Lake Tahoe Boulevard. Based on a review of historical aerial photographs, this facility appears
16 to have operated at this location from approximately 1960 through the 1980s. An environmental
17 database search report prepared by Environmental Data Resources, Inc. ("EDR") 123 indicates
18 the presence of a 350-gallon waste oil tank on the Exxon site, which suggests auto repair and
19 servicing activities were performed on-site. Past auto repair operations may have included the
20 use of PCE as a degreasing solvent. During PES's initial subsurface investigations of the South
21 Y Site in 2005, a shallow zone groundwater sample (16 to 20 ft bgs) was collected from a
22 borehole (GW-10) advanced at the northeast corner of the former Exxon site (see Figure 3). The
23 groundwater sample contained PCE at a concentration of 20 µg/L. The former Exxon site is not
24 located downgradient of the LTLW, based on reported groundwater flow directions. Thus, PCE
25 in groundwater at the Exxon site does not appear to be from the LTLW. Other than one
groundwater sample collected in 2005, no sampling for PCE in the subsurface on the South Y
Exxon site appears to have been performed.

Runnels Automotive (986 Emerald Bay Road). Based on a review of historical aerial
photographs, 124 an auto repair and service station have been located at the northwest corner of
Emerald Bay Road and Lake Tahoe Boulevard since around 1970. According to the EDR
database report (Exhibit WWW), a 400-gallon waste oil tank was reportedly located on-site.

121 PES, Comments on Consideration of No Further Action Required, Lakeside Napa Auto Store, 1935 Lake
Tahoe Boulevard, South Lake Tahoe, California, Lahontan SCP Case No. T6S035 (Dec. 7, 2015) (Exhibit
UUU) at 4.

122 PES, Comments on Consideration of No Further Action Required, Former Big O Tire Store, 1961 Lake
Tahoe Boulevard, South Lake Tahoe, California, Lahontan SCP Case No. T6S034 (Dec. 7, 2015) (Exhibit
VVV) at 9.

123 Environmental Data Resources, Inc. ("EDR"), The EDR Radius Map Report, South Y Center, South Lake
Tahoe, California (July 13, 2007) (Exhibit WWW).

124 EDR, The EDR Aerial Photo Decade Package, South Y Center, South Lake Tahoe, California (July 13,
2007) (Exhibit XXX).

1 Past auto repair operations may have included the use of PCE as a degreasing solvent. In 1997,
2 according to the EDR report, the Regional Board required Runnels to submit a work plan to
3 conduct a groundwater investigation on its site. One shallow zone groundwater sample was
4 collected from the Runnels site in 1997 or 1998, which may have been in response to the
5 Regional Board's request (see Figure 3). Other than this one groundwater sample, to our
6 knowledge, no other subsurface investigations have been performed on the Runnels site for the
7 presence of PCE. Given the presence of elevated concentrations of PCE in shallow zone
8 groundwater at the Hurzel property, which is located directly north and downgradient of the
9 Runnels site (see Figures 3 and 4), the Runnels site may be a source of a portion of the regional
10 PCE contamination.

11 976 Emerald Bay Road. A small, industrial or commercial cinder block building with a roll-up
12 door is currently located at this site. Based on a review of aerial photographs (Exhibit XXX),
13 this building has existed since the early 1960s. To our knowledge, past uses of the site and the
14 potential for PCE use have not been investigated. Given the presence of elevated concentrations
15 of PCE in shallow zone groundwater on the Hurzel property, which is located directly north and
16 downgradient of the 976 Emerald Bay Road site (see Figures 3 and 4), this site may be a
17 contributing source of the regional PCE contamination.

18 1963 Tucker Avenue. This site is currently being used for commercial purposes (a window and
19 door company), based on visual observations from Tucker Avenue. Past uses of the site included
20 glass service and repair, and wood working, according to an EDR City Directory Report. ¹²⁵
21 Review of aerial photographs (Exhibit XXX) indicates the current site building has existed since
22 the early 1960s. Solvents, such as PCE, may have been used on-site in the past. To our
23 knowledge, the site has not been investigated. This site is located directly south, and upgradient
24 of the TCI Cable Site/Former Honda Motor Company Dealership, where PCE has been detected
25 in groundwater (see Figures 3 and 4, and discussion below). Thus, the 1963 Tucker Avenue site
may be a source of PCE at the TCI Cable site and of a portion of the regional PCE
contamination.

Hurzel Property; Current BevMo Store (945, 949, and 961 Emerald Bay Road). Past uses of the
site included appliance repair (SOS Appliance) at 945 and 961 Emerald Bay Road, and dry
cleaning at 949 Emerald Bay Road (formerly Norma's Cleaners). SOS Appliance operated
directly adjacent to and northeast of Norma's Cleaners, within the same building on the Hurzel
property. ¹²⁶

The Regional Board appears to have identified the Hurzel property as a source of PCE
contamination based on the results of soil gas surveys that it performed in the South Y area in
1992 and 1993. The soil gas surveys, conducted with Petrex tubes, revealed significant soil gas
responses near the Hurzel property and former Lampson One-Hour Cleaners/Sierra Dry Cleaners

¹²⁵ EDR, The EDR City Directory Image Report, South Y Area, South Lake Tahoe, California (June 5, 2015)
("EDR City Directory Report") (Exhibit YYY).

¹²⁶ Harding ESE, Groundwater Investigation, Hurzel Properties, LLC, 949 Emerald Bay Road, South Lake
Tahoe, California (Dec. 12, 2001) (Exhibit ZZZ).

1 that was located at 2022 Lake Tahoe Boulevard. ¹²⁷ The Regional Board stated the following
2 concerning the Hurzel property and former Lampson /Sierra Dry Cleaners:

3 Raw data from the second survey confirmed the first survey results – we were
4 dealing with multiple sources. Both historic dry cleaners may have been sources,
but there seemed to be other sources, as well, which were not as obvious. ¹²⁸

5 Subsequent investigations show PCE is present in soil and groundwater on the Hurzel property.
6 In 2003, PCE was detected at 0.098 and 0.016 mg/kg at 1 and 3.5 ft bgs, respectively, in a
7 borehole advanced beneath a former coin-operated dry cleaning unit that reportedly operated
8 between 1969 and 1977 within Norma’s Cleaners. ¹²⁹ In 2007, PCE was detected at
9 0.045 mg/kg in a soil sample collected at a depth of approximately 2 ft bgs from a borehole
10 (BH-16) advanced approximately 50 feet southeast of the former dry cleaning unit in the parking
lot (Exhibit CCCC). Finally, according to Secor’s 2008 report (Exhibit CCCC), waste residue
from the Norma’s Cleaners coin-operated dry cleaning machine (presumably PCE-containing
waste) was periodically collected in a plastic bucket that was placed “into the trash dumpster for
disposal with the normal trash products.”

11 Based on a review of historical aerial photographs, the trash dumpster appears to have been
12 located in the northern portion of the Hurzel property, adjacent to James Avenue and the location
13 where the Regional Board recorded a significant soil gas response in 1992 and 1993. None of
14 these areas were assessed to delineate the extent of contamination. Accordingly, PCE released at
the Hurzel property has not been investigated fully and may serve as a contributing source of the
regional PCE contamination.

15 Former Crystal Range Motel (941 Emerald Bay Road). Two carpet cleaning businesses are
16 reported to have operated on this site in the 1980s and 1990s (Chem-Dry Carpet Cleaning of SLT
17 and Custom Carpet Cleaning). ¹³⁰ This site is located adjacent to the Hurzel site and upgradient
of the Eloise Avenue wells. Past carpet cleaning operations may have included the use, storage
18 or disposal of PCE as a carpet cleaner. To our knowledge, this site has not been investigated for
19 releases of PCE. As shown on Figure 1, in 1998, PCE was detected at a concentration of
310 µg/L in middle zone groundwater (60 ft bgs) from a borehole advanced on James Avenue,
directly north and downgradient of the 941 Emerald Bay Road site. Thus, the site may be a
source of a portion of the regional PCE contamination.

21 ¹²⁷ Regional Board, Tahoe South Y PCE Investigation (“Regional Board Soil Gas Survey”) (Jan. 5, 1996)
22 (Exhibit AAAA), South “Y” Study Map.

¹²⁸ See *id.*, App. I at 2.

23 ¹²⁹ MACTEC Engineering and Consulting, Inc. (“MACTEC”), Report of Findings, Potential PCE Source
24 Investigation, 949 Emerald Bay Road, South Lake Tahoe, California (Nov. 3, 2003) (Exhibit BBBB); Secor,
Site Investigation Report, Former Dry Cleaning Business, 949 Emerald Bay Drive, South Lake Tahoe, CA,
96150 (May 30, 2008) (Exhibit CCCC).

25 ¹³⁰ Hill-Donnelly City Directory (1992) (Exhibit DDDD); Pacific Bell Directory (1985) (Exhibit EEEE).

1 Former Lampson One-Hour Cleaners/Sierra Dry Cleaners (2022 Lake Tahoe Boulevard).

2 Former dry cleaners were located at the southeast corner of Emerald Bay Road and Lake Tahoe
3 Boulevard from the 1970s through the 1990s. ¹³¹ These businesses likely used PCE in their dry
4 cleaning operations. In 1996, the Regional Board identified the Lampson/Sierra Dry Cleaners
5 site as a likely source of the PCE contamination based on soil gas studies in 1992 and 1993 using
6 Petrex tubes. The Regional Board noted that the Petrex tube data indicated a “very ‘hot’ area”
7 near the Lampson/Sierra Dry Cleaners site. ¹³²

8 Regional Board case files show a groundwater sample collected on the former Lampson/Sierra
9 Dry Cleaners site at a depth of approximately 40 ft bgs contained PCE at 5 µg/L. ¹³³ LTLW is
10 not the source for this PCE because the Lampson/Sierra Dry Cleaners site is southeast, in the
11 opposite direction of groundwater flow, from LTLW.

12 The Hurzel property and the Redwood Oil facility (located at 2060 Eloise Avenue) are situated
13 in the downgradient direction of groundwater flow from the Lampson/Sierra Dry Cleaners site.
14 Shallow zone monitoring well MW-3 was constructed on Dunlap Avenue at Eloise Avenue to
15 investigate a petroleum hydrocarbon release at Redwood Oil. Besides petroleum hydrocarbons,
16 groundwater samples collected from this well between 2006 and 2010 contained PCE ranging
17 from 100 µg/L to 430 µg/L (*see* Figures 3 and 4). PCE concentrations in well MW-3 were
18 higher than those measured during the same time period in monitoring wells constructed at the
19 perimeter of the South Y Site and within Lake Tahoe Boulevard. This finding combined with
20 the northerly direction of groundwater flow proves LTLW is not the source of PCE in well
21 MW-3. Lampson/Sierra Dry Cleaners is possibly the source but the extent of contamination
22 associated with the site has not been delineated.

23 Former Five Star Texaco (2037 Lake Tahoe Boulevard). This site is located at the northeast
24 corner of the intersection of Dunlap Drive and Lake Tahoe Boulevard (*see* Figure 4). Historical
25 aerial photographs indicate an automobile service station operated at 2037 Lake Tahoe
Boulevard from the 1960s through the 1980s. According to the EDR report (Exhibit WWW), a
release from an underground storage tank occurred at this site; however, no additional
information is reported. PCE may have been used as a degreasing solvent if automotive service
or repair activities were performed in addition to dispensing gasoline. In 1997, PCE was
detected at 5.7 µg/L in groundwater collected from a borehole located downgradient (i.e., north)
of the former Five Star Texaco site. ¹³⁴ The source for PCE in groundwater at this location was
not further investigated. Consequently, the former Five Star Texaco site remains a potential
contributing source of the regional PCE contamination.

22 ¹³¹ South Lake Tahoe phonebook (1979) (Exhibit FFFF); Hill-Donnelly City Directory (1989) (Exhibit
GGGG).

23 ¹³² Regional Board Soil Gas Survey (Exhibit AAAA), App. I at 2.

24 ¹³³ Images of the GHH Engineering, Inc. (“GHH”) PCE Compilation Map (Exhibit HHHH). Fox requests
25 that the entire map (Drawings 1, 2, and 3), which is available at the Regional Board office, be added to the
record.

¹³⁴ *See id.*

1 TCI Cable Site/Former Honda Motor Company Dealership (924 Emerald Bay Road). This site is
2 a former automobile dealership that performed auto service and repair during the 1970s and
3 1980s (*see* Figure 4). The site also reportedly was a snowmobile dealership. PCE was detected
4 in middle zone and deeper zone groundwater on the TCI Cable site in 2001 at concentrations up
5 to 430 µg/L and 190 µg/L, respectively. Soil sampling was performed in limited areas of the
6 site, including adjacent to a former oil/water separator. No PCE was detected in soil samples;
7 however, the 2001 findings report indicated that specific former chemical use and storage areas
8 at the site associated with past maintenance and repair activities, including areas where solvents
9 may have been stored, were not fully known. It is possible that past spills or releases of PCE on
10 the TCI Cable site may have been missed during the 2001 investigation, and residual site
11 contamination may be contributing to the regional PCE contamination.

8 Emerald Bay Chevron (1069 Emerald Bay Road). According to a Regional PCE Data
9 Compilation Report prepared by GHH, dated October 2002 ¹³⁵, PCE was detected in
10 groundwater on the Chevron site at a concentration of 8.7 µg/L at a depth of approximately
11 40 ft bgs. The Chevron site is located approximately 1,100 feet south-southeast, and upgradient
12 of monitoring well OS-1 (*see* Figure 4). To our knowledge, the source for the PCE at the
13 Chevron site was never investigated, including sampling of the shallower water bearing zone or
14 determination of the lateral or vertical extent of PCE in the subsurface at and around the Chevron
15 site. The data suggest that this site is a potential source for PCE in groundwater upgradient of
16 well OS-1 that could be impacting the well.

13 Former Beacon/Swiss Mart Gasoline Service Station (913 Emerald Bay Road). This site was a
14 former gasoline service station that operated roughly between the early 1960s through the 1990s.
15 It is not known whether past uses included auto service and repair. Shallow zone groundwater
16 on the Swiss Mart site is reported to contain PCE at a concentration of 29 µg/L (Exhibit YYY).
17 The source for the PCE in groundwater is not known but could be from past releases on the
18 Swiss Mart site.

17 South Tahoe Shell Gasoline Service Station (1020 Emerald Bay Road). This site was formerly
18 and is currently used as a gasoline service station (*see* Figure 4). According to the EDR report
19 (Exhibit WWW), a 550-gallon waste oil tank was located at this site which suggests past
20 automobile service and repair operations, with possible use of PCE as an engine degreaser.
21 Groundwater sampling at the Shell site found PCE in groundwater at 20 ft bgs at 18 µg/L and at
22 40 ft bgs at 9 µg/L (Exhibit IIII). To our knowledge, the source for the PCE in groundwater on
23 the Shell site was never investigated. The Shell site is located approximately 500 feet east of the
24 LTLW. The Shell site is *not* located downgradient of the LTLW, based on reported groundwater
25 flow direction at the LTLW. Thus, the source for the PCE in groundwater on the Shell site
cannot be the LTLW. Accordingly, the Shell site may be a source of a portion of the off-site
contamination. PCE sources also may exist upgradient (south-southeast) of the Shell site.

¹³⁵ GHH, Regional PCE Data Compilation, South Tahoe Y Area, South Lake Tahoe, California (Oct. 2002)
(Exhibit IIII).

1 Fifth Street Businesses. Review of historical city directories ¹³⁶ reveals light industrial and
2 commercial businesses have operated along 2028 through 2042 Fifth Street, between James
3 Avenue and Eloise Avenue (*see* Figure 4). Businesses that may have used, stored or disposed of
PCE are listed below.

- 4 • DC Turbo Parts
- 5 • Summit Carpets
- 6 • Performance Sleds-Polaris Parts
- 7 • Paradise Garage
- 8 • Performance Mobile Auto Repair
- 9 • American Motorcycle Service
- 10 • Pete's Auto Repair

11 To our knowledge, no testing for PCE has been performed at any of the Fifth Street businesses.
12 The off-site groundwater investigation by URS in 2015, however, did test for PCE at
13 boreholes SB-20 and SB-21, which are downgradient of the Fifth Street businesses. No PCE
14 was detected in the shallow zone groundwater sample obtained from borehole SB-20. PCE was
15 measured at 3 µg/L in the shallow zone groundwater sample collected from borehole SB-21.
16 Groundwater monitoring wells MW-4A/4B are just north of the Fifth Street businesses, across
17 Eloise Avenue. The Regional Board sampled these wells in October 2015. PCE was detected at
18 14 µg/L and 150 µg/L in groundwater samples from these wells. ¹³⁷ Thus, the Fifth Street
19 businesses could be a source for the PCE detected in MW-4A/4B.

20 Eloise Avenue Businesses. Historical city directories (Exhibit YYY) also indicate light
21 industrial and commercial businesses have operated along the east and west sides of Eloise
22 Avenue, upgradient of the 883 and 903 Eloise Avenue domestic water supply wells (*see* Figure
23 4). As part of its off-site groundwater investigation, URS collected groundwater samples near
24 some, but not all of the businesses along Eloise Avenue where PCE releases may have occurred.

25 URS obtained groundwater samples from borehole SB-20 completed at 912 Eloise Avenue,
which is occupied by Sunshine/Yellow Taxi – Yellow Cab, and from borehole SB-21 completed
at 934 Eloise Avenue, which is occupied by South Side Auto Body. According to a search of
regulatory agency databases presented in the EDR report (Exhibit WWW), South Side Auto
Body generates PCE-containing hazardous waste at its facility located at 920 Eloise Avenue. No
groundwater sample was obtained at this facility.

As discussed above, no PCE was detected in shallow zone groundwater from SB-20 and 3 µg/L
was found in shallow zone groundwater from SB-21. URS also obtained a groundwater sample
from borehole SB-19 placed on Patricia Lane, which is in the north-northwest direction of
groundwater flow from Hatch Electric, Bill's Automotive, and Sierra Pacific Power that are

¹³⁶ EDR City Directory Report (Exhibit YYY).

¹³⁷ URS Final Report (Exhibit CC) at 6.

1 located at 921, 927, and 933 Eloise Avenue, respectively. PCE was detected at 0.6 µg/L in the
2 shallow zone groundwater sample from borehole SB-19 138

3 The URS Final Report recommends that further investigation be performed to identify the source
4 of PCE detected in groundwater along Eloise Avenue. 139 The following businesses along
5 Eloise Avenue have yet to be investigated:

- 6 • Doug Gayner General Contractor
- 7 • Olsen Paving and Seal Coating
- 8 • Pedersen Underground Paving
- 9 • Two Guys Automotive
- 10 • Tahoe Valley Auto

11 Upgradient Sources. Soil gas surveys performed by the Regional Board in the South Y area in
12 1992 and 1993 identified significant soil gas responses at upgradient locations along Delta Street
13 and Industrial Avenue that have not been adequately investigated. 140 The Regional Board
14 collected grab groundwater samples in 1997 and 1998 and, despite identifying “chlorinated
15 hydrocarbons likely originating from the Tahoe Asphalt facility, upgradient of the Industrial
16 Avenue #2 well,” elected not to pursue potentially responsible parties in the vicinity of STPUD
17 municipal supply well No. 4 on Tata Lane. 141

18 ***

19 The existence of numerous known and suspected sources in the vicinity of the South Y Site
20 makes the work required by the Final Order especially burdensome and costly. Based on
21 existing data, it is inevitable that any off-site investigation will detect PCE downgradient of the
22 LTLW that derives from non-LTLW sources. Indeed, such sources are known to exist right
23 across the street from the South Y Site at the Big O and Napa sites. Yet the Final Order provides
24 no mechanism for distinguishing that contamination and imposes the cost of collecting that data
25 on Fox and the other Final Order recipients. Rather than issuing the Final Order, the Regional
Board should have investigated these sources or required the owners of these suspected sources
to collect their own data.

Because the Regional Board has failed to investigate (or required others to investigate) these
potential sources of PCE and the Regional Board’s previously expressed intention to hold them
responsible for the Regional PCE Contamination, Fox and Seven Springs agreed to voluntarily

138 See *id.* at 5.

139 See *id.* at 8.

140 Regional Board Soil Gas Survey (Exhibit AAAA), South “Y” Study Map.

141 See Memorandum from H. Singer (Regional Board) to E. Anton (State Water Board), re Summary
Results for the Tahoe South “Y” PCE Investigation – CAA #82 (Feb. 25, 1999) (Exhibit JJJJ) at 2-4 and
Figure 3.

1 conduct their own investigation of some of these sources. ¹⁴² Fox and Seven Springs
2 communicated their intention to the Regional Board in advance of the Final Order, but the Final
3 Order makes no mention of this additional investigation. On May 23, 2017, the parties applied
4 for permits necessary to conduct the planned investigation and on June 6, 2017, they received a
5 permit from the City of South Lake Tahoe (Exhibit D).

6 In light of:

7 (a) the Regional Board's failure to consider the costs associated with compliance with the Final
8 Order;

9 (b) the delineation of the LTLW contamination prior to implementation of the IRAP and RAP;

10 (c) data collected since 2008 demonstrating that the efficacy of the on-site remediation system in
11 remediating contamination on-site and preventing its off-site migration;

12 (d) the fact that the on-site contamination was mostly limited to the shallow zone while the
13 Regional PCE Contamination is largely in the middle zone;

14 (e) the Regional Board's prior attribution of middle zone contamination to other sources;

15 (f) the number and location of sites in the South Y vicinity that may have used PCE but which
16 have not been fully investigated;

17 (g) the fact that there are numerous parties who are better suited to investigate their own
18 contamination ¹⁴³;

19 (h) the detection of PCE in groundwater at and downgradient of some of these sites;

20 (i) the presence of PCE in groundwater at several sites located cross-gradient to and upgradient
21 of LTLW; and

22 (j) the fact that a further investigation of the Regional PCE Contamination is already underway,

23 the Regional Board has not shown that the burden of the required work is commensurate with the
24 cost or that the Regional Board has a reasonable basis for requiring Fox to conduct an
25 investigation into alleged off-site migration of LTLW contamination.

¹⁴² See E-mail from N. Billings (Fox) to P. Kouyoumdjian (Regional Board), re Proposed Cleanup and Abatement Order (CAO)-Remediation of PCE Groundwater contamination, Lake Tahoe Laundry Works (Mar. 6, 2017) and attachment (Exhibit KKKK).

¹⁴³ Any off-site investigation conducted under the Final Order will likely require Fox to obtain site access from numerous other parties. That process will be unduly burdensome. Moreover, these parties are better placed to identify proper sampling locations based on historic uses and the need to avoid interference with existing operations. The Final Order fails to take these costs and burdens into account.

1 **VII. THE FINAL ORDER IMPOSES UNREASONABLE AND UNNECESSARY**
2 **INVESTIGATION AND CLEANUP STANDARDS AND TIMEFRAMES**

3 The Final Order requires investigation and remediation of contaminants in groundwater to
4 non-detectable (e.g., 0.5 µg/L for PCE) or background concentrations. See Final Order at 13,
5 ¶ 49. Establishment of these criteria as default cleanup levels is arbitrary and capricious. The
6 Regional Board has already approved cleanup goals for contaminants in shallow groundwater at
7 the South Y Site. The approved cleanup goals are equal to State of California MCLs or
8 measured background levels, whichever are higher. ¹⁴⁴ The Final Order provides no basis for
9 changing the cleanup goal at the Site nine years after the remediation began, and there is none.

10 This is particularly true because the Regional Board has closed or proposed closing numerous
11 sites in the vicinity of the South Y Site where PCE was detected above these default cleanup
12 levels. Such sites include the following:

- 13 • Hurzel Property at 945, 949, and 961 Emerald Bay Road, where groundwater PCE
14 concentrations ranged from non-detectable at the analytical method reporting limit of
15 1 µg/L to 1,300 µg/L in December 2008 near the time of closure. ¹⁴⁵
- 16 • Former Redwood Oil facility at 2060 Eloise Avenue where groundwater PCE
17 concentrations ranged from non-detectable at 0.5 µg/L to 29 µg/L in June 2012, which
18 was the final time that wells at the facility were sampled before the Regional Board
19 granted closure in 2014. ¹⁴⁶
- 20 • TCI Cable Site/Formal Honda Motor Company Dealership at 924 Emerald Bay Road
21 where PCE was measured in groundwater at concentrations as high as 430 µg/L. ¹⁴⁷ The
22 Regional Board granted closure in 2011 even though it concluded that the property had
23 not been sufficiently investigated to eliminate it as a possible source of PCE to
24 groundwater. ¹⁴⁸
- 25 • Former Big O Tires Store at 1961 Lake Tahoe Boulevard where PCE up to 4,700 µg/L
has been found in middle zone groundwater. ¹⁴⁹ In 2015, the Regional Board proposed
closing the site even though PCE in middle zone groundwater has been measured at the
highest concentration of any property in the South Y area (i.e., at 4,700 µg/L).

¹⁴⁴ RAP (Exhibit W) at 30.

¹⁴⁵ Stantec Consulting, Inc., Third Quarter 2008 Monitoring Report (Exhibit GGG) Table 1.

¹⁴⁶ RDM Environmental Inc., Request for “No Further Action,” Former Redwood Oil Company Bulk Plant,
2060 Eloise Avenue, South Lake Tahoe, California (Dec. 19, 2012) (Exhibit LLLL) Table 1.

¹⁴⁷ GHH Engineering, Inc. Additional Assessment Report, TCI Building, 924 Emerald Bay Road, South
Lake Tahoe (Feb. 2001) (Exhibit MMMM) Table 2.

¹⁴⁸ Regional Board, Denial of Request for Site Closure, 924 Emerald Bay Road, South Lake Tahoe, El
Dorado County (Jun. 17, 2002) (Exhibit NNNN).

¹⁴⁹ Harding ESE, Inc., Groundwater Investigation, Big-O Tire Center, 1961 South Lake Tahoe Boulevard,
South Lake Tahoe, California (Oct. 20, 2001) (Exhibit OOOO) at 2.

- Campora Gas property at 1640 Shop Street where 26 µg/L of PCE was detected in an existing monitoring well during September 1997, but the Regional Board does not appear to have required delineation of the lateral and vertical extent of contamination in groundwater beneath the property. 150
- Tahoe Asphalt at 1104 Industrial Avenue was closed by the Regional Board in 2004 despite the Board finding that releases at the facility had contributed to PCE detected in STPUD Industrial Avenue #2 municipal supply well. No investigation was required to characterize PCE in off-site groundwater. 151

Moreover, defining and remediating PCE in groundwater off-site is not technically feasible because the Regional Board has not required the same approach for contamination discovered on the above and other properties in the South Y area. It is indisputable that the anthropogenic background concentrations of PCE in off-site groundwater is greater than 0.5 µg/L. Requiring Fox to investigate (and potentially remediate) contamination to 0.5 µg/L guarantees that Fox will be investigating contamination that (a) was caused by other parties, and (b) that the Regional Board has already agreed can remain in place.

At the very least, cleanup levels in the Final Order should be changed to MCLs to be consistent with those already accepted by the Regional Board for the South Y Site and anthropogenic background concentrations in off-site groundwater.

VIII. CONCLUSION

In issuing the Final Order, the Regional Board has exceeded its authority under the Water Code. The Regional Board has conflated Sections 13267 and 13304 and improperly attempts to require Fox to clean up the Site contamination based on Fox's alleged liability under Section 13304. Moreover, the Regional Board has failed to establish that Fox is liable under either Section 12367 or Section 13304.

The Final Order also is improper because the Regional Board has failed to undertake an evaluation of whether the burden of requiring an investigation under Section 13267 is reasonable and necessary in light of the costs of such an investigation. Because numerous investigations regarding groundwater flow, contaminant distribution, and the efficacy of the on-site remediation system demonstrate that the South Y Site contamination is adequately being contained within the

150 Regional Board, Campora Gas Property, 1640 Shop Street, South Lake Tahoe (Jul. 15, 1998) (Exhibit PPPP).

151 See Regional Board, No Further Action Required for Tahoe Asphalt, 1104 Industrial Avenue, South Lake Tahoe, El Dorado County, UST No. 6T0153A, UST Cleanup Fund Claim No. 12439 (Dec. 7, 2004) (Exhibit QQQQ), Case Closure Summary at 2 and 5, and Memorandum from H. Singer (Regional Board) to E. Anton (State Water Board), re Summary Results for the Tahoe South "Y" PCE Investigation – CAA #82 (Feb. 25, 1999) (Exhibit JJJJ) at 2 and 3.

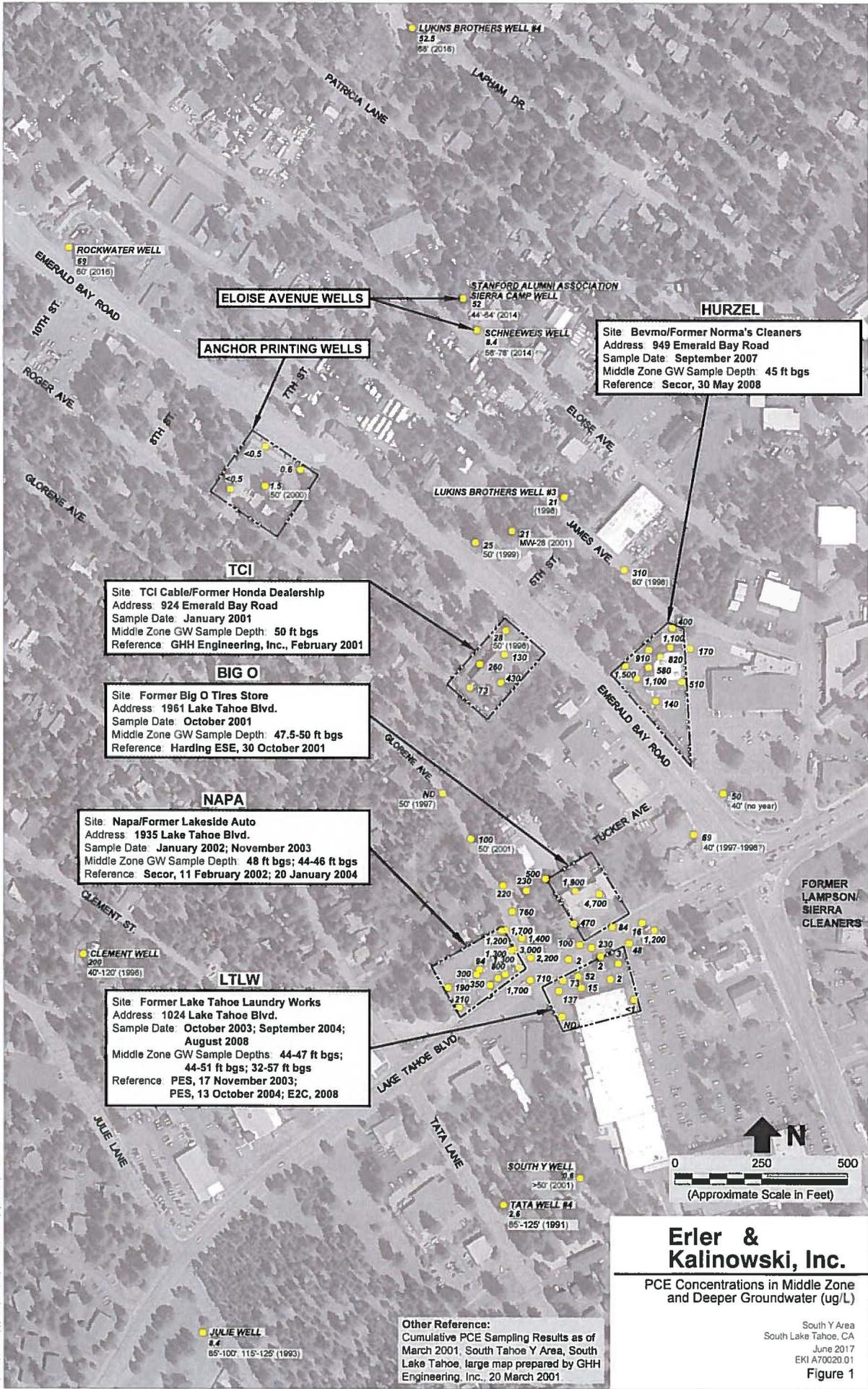
1 boundaries of the South Y Site and that sources other than the LTLW are the source of the
2 Regional PCE Contamination, the Regional Board cannot make this showing.

3 Accordingly, Fox respectfully requests that the State Board overturn the Final Order or at a
4 minimum, revise it to remove Fox. In addition, Fox respectfully requests the opportunity to
5 present its arguments to the State Board in person in an appropriate proceeding.

6 Respectfully submitted,

7 Handwritten signature in blue ink, appearing to read "Scott H. Reisch / MO".

8 Scott H. Reisch
9 Hogan Lovells US LLP
10 1601 Wewatta Street, Suite 900
11 Denver, Colorado 80202
12 303-899-7355



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ELOISE AVENUE WELLS

ANCHOR PRINTING WELLS

TCI
 Site TCI Cable/Former Honda Dealership
 Address 924 Emerald Bay Road
 Sample Date January 2001
 Middle Zone GW Sample Depth: 50 ft bgs
 Reference GHH Engineering, Inc., February 2001

BIG O
 Site Former Big O Tires Store
 Address 1961 Lake Tahoe Blvd.
 Sample Date October 2001
 Middle Zone GW Sample Depth: 47.5-50 ft bgs
 Reference Harding ESE, 30 October 2001

NAPA
 Site Napa/Former Lakeside Auto
 Address 1935 Lake Tahoe Blvd.
 Sample Date January 2002; November 2003
 Middle Zone GW Sample Depth: 48 ft bgs; 44-46 ft bgs
 Reference Secor, 11 February 2002; 20 January 2004

LTLW
 Site Former Lake Tahoe Laundry Works
 Address 1024 Lake Tahoe Blvd.
 Sample Date October 2003; September 2004;
 August 2008
 Middle Zone GW Sample Depths: 44-47 ft bgs;
 44-51 ft bgs; 32-57 ft bgs
 Reference PES, 17 November 2003;
 PES, 13 October 2004; E2C, 2008

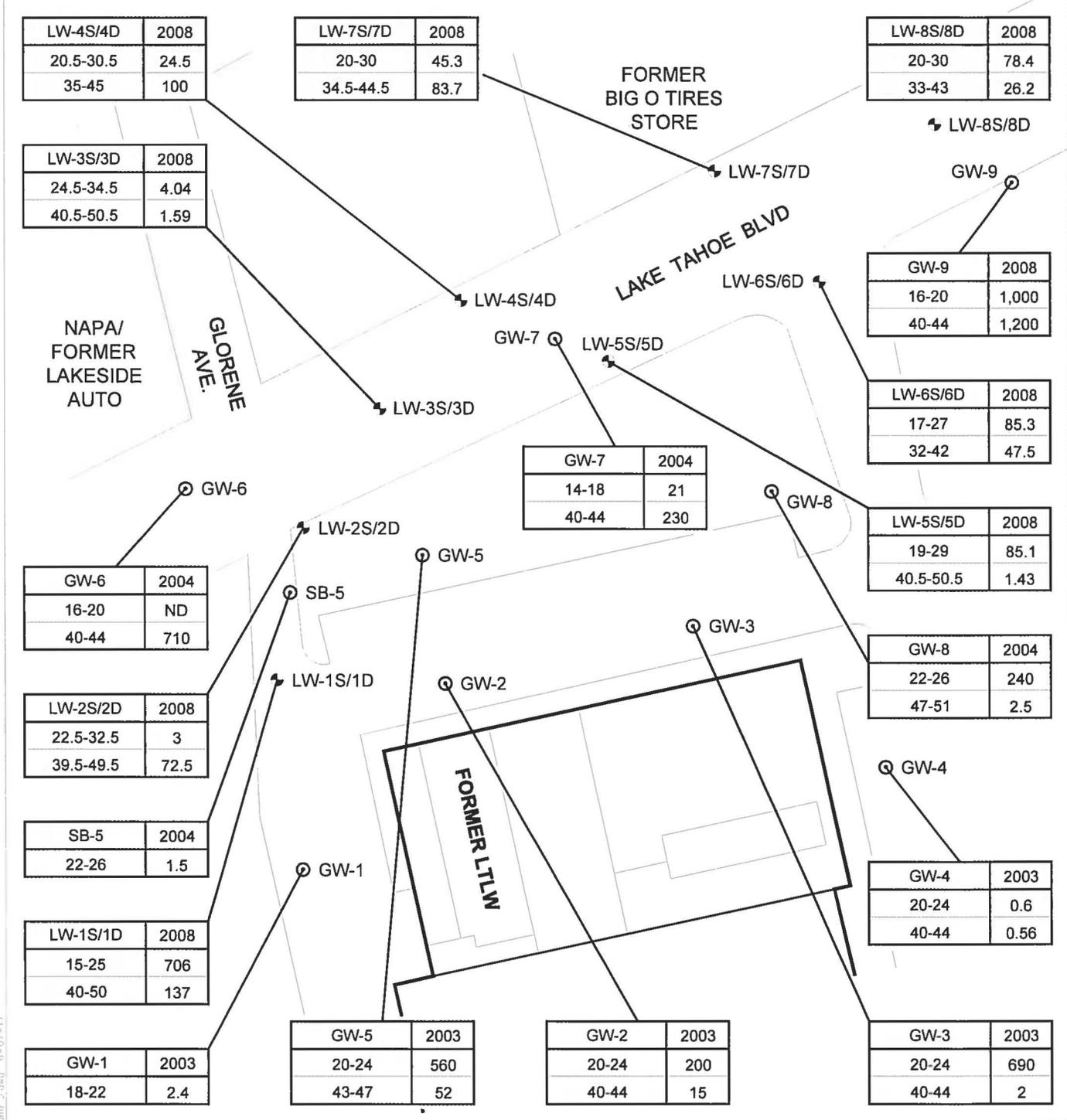
HURZEL
 Site Bevmo/Former Norma's Cleaners
 Address 949 Emerald Bay Road
 Sample Date September 2007
 Middle Zone GW Sample Depth: 45 ft bgs
 Reference Secor, 30 May 2008

Other Reference:
 Cumulative PCE Sampling Results as of
 March 2001, South Tahoe Y Area, South
 Lake Tahoe, large map prepared by GHH
 Engineering, Inc. 20 March 2001

Erler & Kalinowski, Inc.

PCE Concentrations in Middle Zone
 and Deeper Groundwater (ug/L)

South Y Area
 South Lake Tahoe, CA
 June 2017
 EKI A70020.01
 Figure 1

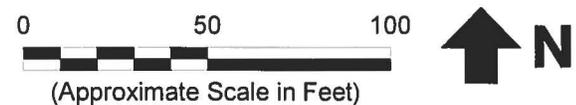


Legend:

Sample ID	GW-2	2003	Sample Year
Sample Depths (ft bgs)	20-24	200	PCE Concentration (ug/L)
	40-44	15	

Abbreviations:

- ft bgs = feet below ground surface
- ug/L = micrograms per liter
- PCE = tetrachloroethene



Erler & Kalinowski, Inc.

PCE Concentrations in Shallow and Middle Zone Groundwater (2003-2008)

Former Lake Tahoe Laundry Works
South Lake Tahoe, CA

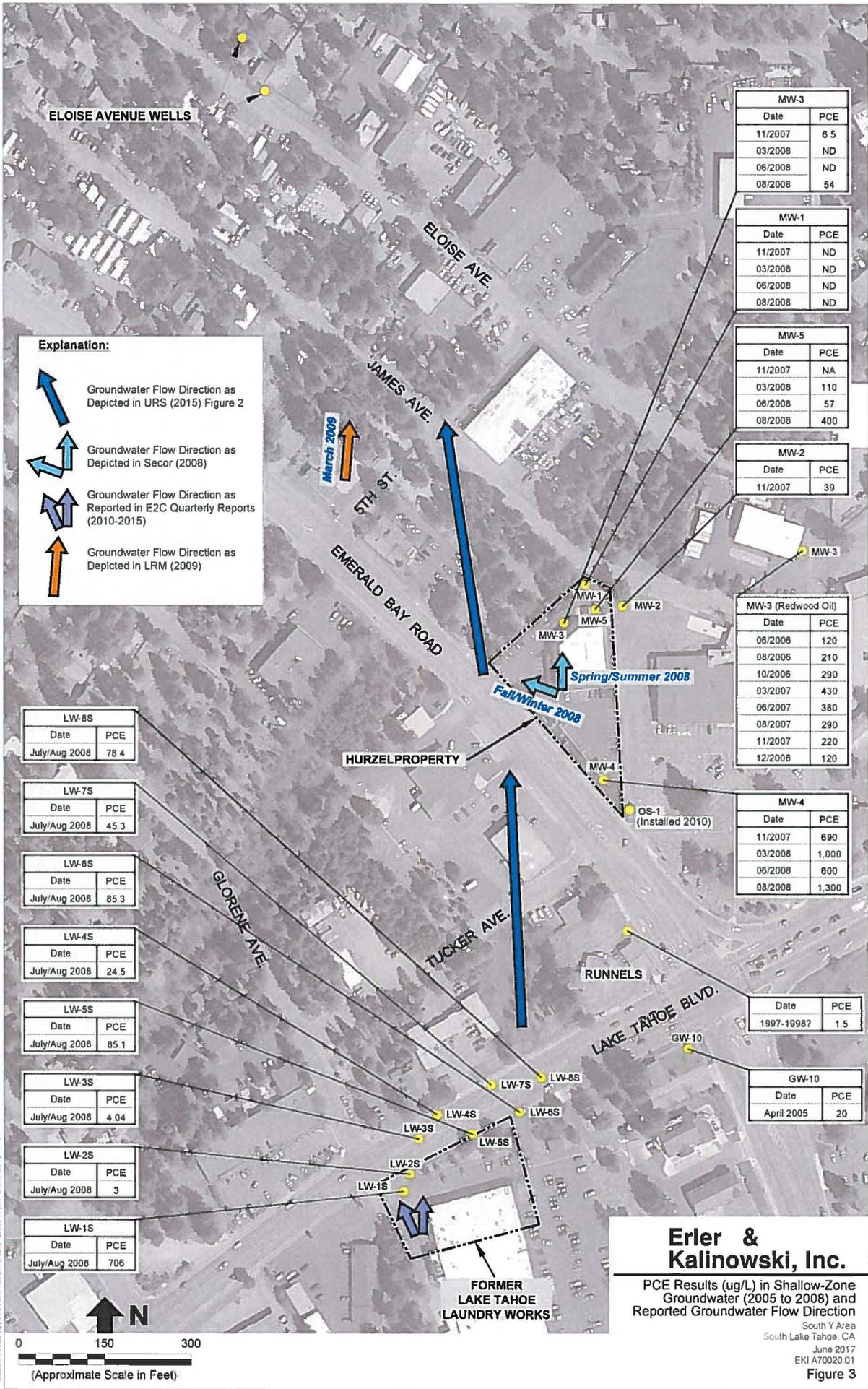
June 2017
EKI A70020.01

Figure 2

Notes:

1. All locations are approximate.
2. Basemap source: E2C Remediation

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MW-3		
Date	PCE	
11/2007	65	
03/2008	ND	
06/2008	ND	
08/2008	54	

MW-1		
Date	PCE	
11/2007	ND	
03/2008	ND	
06/2008	ND	
08/2008	ND	

MW-5		
Date	PCE	
11/2007	NA	
03/2008	110	
06/2008	57	
08/2008	400	

MW-2		
Date	PCE	
11/2007	39	

MW-3 (Redwood Oil)		
Date	PCE	
06/2006	120	
08/2006	210	
10/2006	290	
03/2007	430	
06/2007	380	
08/2007	290	
11/2007	220	
12/2008	120	

MW-4		
Date	PCE	
11/2007	690	
03/2008	1,000	
06/2008	600	
08/2008	1,300	

GW-10		
Date	PCE	
1997-1998?	1.5	

GW-10		
Date	PCE	
April 2005	20	

LW-8S		
Date	PCE	
July/Aug 2008	78.4	

LW-7S		
Date	PCE	
July/Aug 2008	45.3	

LW-6S		
Date	PCE	
July/Aug 2008	85.3	

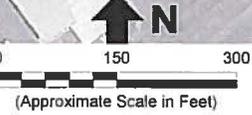
LW-4S		
Date	PCE	
July/Aug 2008	24.5	

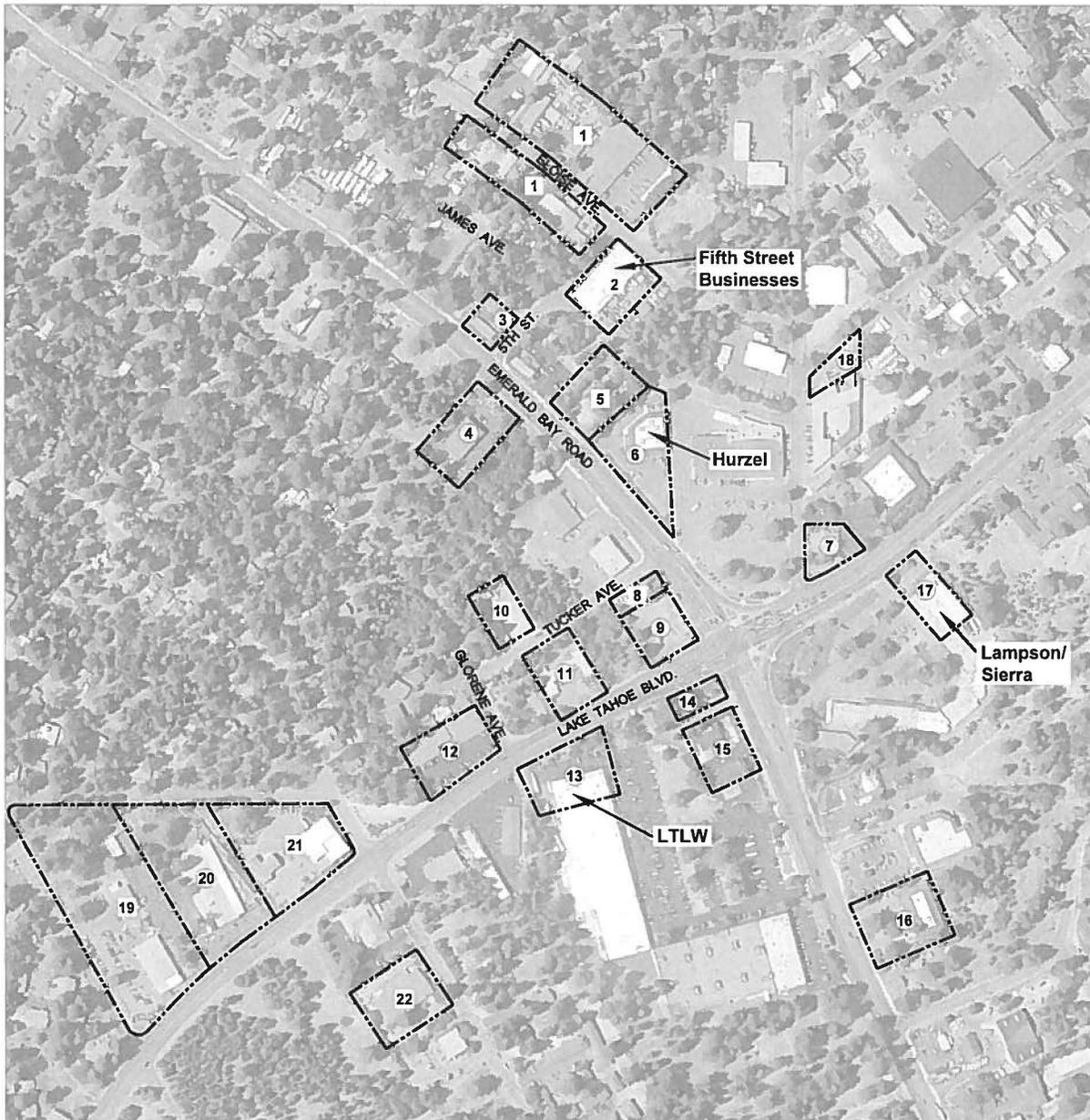
LW-5S		
Date	PCE	
July/Aug 2008	85.1	

LW-3S		
Date	PCE	
July/Aug 2008	4.04	

LW-2S		
Date	PCE	
July/Aug 2008	3	

LW-1S		
Date	PCE	
July/Aug 2008	706	





Explanation:

- 1 Eloise Avenue Businesses
- 2 Fifth Street Businesses
- 3 Former Beacon/Swiss Mart (913 EBR)
- 4 TCI/Former Honda Dealership (924 EBR)
- 5 Former Crystal Range Motel/Carpet Cleaning (941 EBR)
- 6 Hurzel/Former Dry Cleaners and Appliance Repair (949 and 945/961 EBR)
- 7 Former Five Star (2037 Lake Tahoe Blvd)
- 8 976 Emerald Bay Road
- 9 Runnels Automotive (986 EBR)
- 10 1963 Tucker Avenue
- 11 Former Big O Tires (1961 LTB)
- 12 Napa/Former Lakeside Auto (1935 LTB)
- 13 Former Lake Tahoe Laundry Works
- 14 Former Exxon (1000 EBR)
- 15 Shell Site (1020 EBR)
- 16 Former Emerald Chevron (1069 EBR)
- 17 Former Lampson/Sierra Dry Cleaners (2022 LTB)
- 18 Redwood Oil (2060 Eloise)
- 19 Shehadi Motors (1855 LTB)
- 20 South Shore Motors (1875 LTB)
- 21 Terry Libbon Motors (1901 LTB)
- 22 Former Dodge Dealerships

Abbreviations:

PCE = tetrachloroethylene

Legend:

- Sites with Reported PCE in Groundwater
- Suspected PCE Source Site



Erler & Kalinowski, Inc.

Reported and Potential PCE Use Sites
in South Y Area

South Y Area
South Lake Tahoe, CA
June 2017
EKI A70020.01

Figure 4

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 12 day of June 2017, I served the foregoing **FOX CAPITAL**
3 **MANAGEMENT CORPORATION'S PETITION FOR REVIEW** by e-mail and/or certified
mail on the following recipients:

4 State Water Resources Control Board
5 Office of Chief Counsel
6 Adrianna M. Crowl
7 1001 "I" Street, 22nd Floor
8 Sacramento, CA 95814
9 waterqualitypetitions@waterboards.ca.gov

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11 Douglas F. Smith, Supervising Engineering Geologist &
12 Manager of Planning & Restoration Division
13 Lahontan Regional Water Quality Control Board
14 2501 Lake Tahoe Blvd.
15 South Lake Tahoe, CA 96150
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18 Seven Springs Limited Partnership
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22 Kansas City, MO 64141-6248
23 christopher.blair@commercebank.com

24 Alejandro L. Bras
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402 North Division Street
Carson City, NV 89703

Connolly Development, Inc.
c/o Mary and Matt Connolly
9120 Double Diamond Parkway
Reno, NV 89521

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Scott Reisch / mo
Scott H. Reisch

Index of Exhibits to Fox's State Board Petition	
Exhibit A	Regional Board, Cleanup and Abatement Order R6T-2017-0022 (May 12, 2017)
Exhibit B	E2C, Second Quarter 2017 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe
Exhibit C	Declaration of Kerstin Hakansson (Jun. 6, 2017)
Exhibit D	City of South Lake Tahoe, Permit for Encroachment, Excavation and Grading (Jun. 6, 2017)
Exhibit E	Fox's comments on the Proposed Cleanup and Abatement Order issued by the Regional Board on September 15, 2015
Exhibit F	Fox's comments on the Revised Proposed Cleanup and Abatement Order issued by the Regional Board on July 18, 2016
Exhibit G	Agreement for Purchase and Sale of South "Y" Shopping Center, between Century 73 and Interland Communities, Inc. (Dec. 19, 1985)
Exhibit H	Grant Deed from Connolly Development (Grantor) to Century 73 (Grantee) (Sept. 11, 1974)
Exhibit I	Memorandum of Lease Between Century 73 and Connolly Development (Sept. 11, 1974)
Exhibit J	Memorandum from A. Bassak, Esq. to H. Singer and L. Dernbach (Regional Board), South Y Center Chain of Title and Laundry Lease History (Mar. 11, 2004)
Exhibit K	Notice to Creditors, Escrow No. 203-96154 (Feb. 5, 1998)
Exhibit L	Regional Board, Status Report on the "Y" Investigation in South Lake Tahoe (Sept. 4-5, 1997)
Exhibit M	Letter from E. Garfinkle (Dreher, Garfinkle & Watson) to J. Short (Regional Board), Tahoe Y Shopping Center, South Lake Tahoe, El Dorado County, APNs: 023-421-011 and 021 (Jan. 10, 1992)
Exhibit N	Lease Between Landlord Connolly Development and Tenants the Prupases (May 24, 1972)
Exhibit O	Transcript of Deposition of Mary Louise Baisley, <i>Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.</i> (E.D. CA, 2007) (No. 2:07-00412-LKK-GGH)
Exhibit P	Complaint, <i>Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.</i> , No. 2:07-00142-LKK-GGH (E.D. Cal. 2007)
Exhibit Q	Order, <i>Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.</i> , No. 2:07-00142-LKK-GGH (E.D. Cal. 2007)
Exhibit R	Fox Capital Mgmt. Corp. Third Party Complaint Against Real Estate Mgmt. Associates, LLC, et al., <i>Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.</i> , No. 2:07-00142-LKK-GGH (E.D. Cal. 2007)
Exhibit S	E2C, Interim Remedial Action Workplan for SZA Groundwater Investigation, SZA Groundwater Monitoring, Interim Remedial Action Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (June 4, 2009)
Exhibit T	E2C, Site Investigation Report of Findings, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Sept. 22, 2008)
Exhibit U	E2C, Amendment to Interim Remedial Action Workplan for SZA Groundwater Investigation, SZA Groundwater Monitoring, Interim Remedial Action Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 26, 2009)
Exhibit V	Letter from L. Dernbach (Regional Board) to S. Reisch (Fox's counsel) and B. Beard (Seven Springs' counsel) (Sept. 1, 2009)
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	Tahoe (Aug. 12, 2010)
Exhibit X	Regional Board, Acceptance of Work Plan for Remediation and Order to Submit Technical Reports, Former Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County, Investigative Order R6T-2013-064 (Aug. 2, 2013)
Exhibit Y	E2C, 2016 Groundwater Monitoring Report and Current Site Remediation Status Report (Feb. 23, 2017)
Exhibit Z	Regional Board, Request for Supplemental Work Plan to Perform Batch Pumping, Former Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Jan. 4, 2017)
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Exhibit BB	<i>In re Fox Capital Mgmt. Corp. and Seven Springs Ltd. P'Ship</i> , Cal. Reg. Water Quality Control Bd., Lahontan Region, Stipulated Agreement for Replacement Water Supply at 883 and 903 Eloise Avenue, South Lake Tahoe (Jun. 5, 2015)
Exhibit CC	URS Corporation Americas, Final PCE Investigation Report, South Lake Tahoe, California (Jan. 19, 2016)
Exhibit DD	Letter from H. Singer (Regional Board) to L. Baisley and J. Meredith, Notice to Submit Workplan for Investigation at 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (APN 023-421-011) (Aug. 21, 2003)
Exhibit EE	Letter from H. Singer (Regional Board) to J. Meredith, SSR Realty Advisors, R and M. Baisley, R. Prupas, K. and K. Hakansson, re Revised Request for Workplan for Supplemental Site Investigation at the Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (May 17, 2004)
Exhibit FF	K. Cardamone, Drycleaner Remediation Programs: An Overview and Case Studies (Aug. 2001), available at https://drycleancoalition.org/download/dryclean_cardamone.pdf
Exhibit GG	C. Hutto, URS, PCE Investigation, South Lake Tahoe, Summary of Findings (Feb. 5, 2016)
Exhibit HH	State Coalition for Remediation of Drycleaners, "A Chronology of Historical Developments in Drycleaning" (Nov. 2007)
Exhibit II	Century 73, Certificate of Cancellation — Limited Partnership (filed Jun. 29, 1990)
Exhibit JJ	Letter from P. Goalwin (E2C) to S. Reisch (Fox's counsel), Remedial Action Workplan for SZA Groundwater Investigation, SZA Groundwater Monitoring, Interim Remedial Action, Vadose Zone Soil and Shallow Groundwater Cleanup (Jun. 4, 2009)
Exhibit KK	E2C, Interim Remedial System Installation/Pilot Testing Report of Findings and Draft Remedial Action Plan for Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 12, 2010)
Exhibit LL	U.S. EPA, "Chapter II: Soil Vapor Extraction in How to Evaluate Alternative Cleanup Technologies for Underground Storage Tank Sites, A Guide for Corrective Action Plan Reviewers," EPA 510-R-04-002 (May 2004)
Exhibit MM	PES, Indoor Air Sampling Report, Former Lake Tahoe Laundry Works (Jan. 14, 2016)
Exhibit NN	Suthersan, S., In Situ Air Sparging. Remediation Engineering: Design Concepts, CRC Press LLC, (1999)
Exhibit OO	U.S. Army Corps of Engineers, In-Situ Air Sparging Engineer Manual, EM 200-1-19 (Dec. 31, 2013)
Exhibit PP	Wisconsin Department of Natural Resources, Guidance for Design, Installation

	and Operation of In Situ Air Sparging Systems, RR-186 (Feb. 2015)
Exhibit QQ	E2C, January 4, 2016 Air Sparge Confirmation Test Summary, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, California (Jan.12, 2016)
Exhibit RR	Regional Board, Comments on Air Sparge Performance Test, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, (May, 24, 2016)
Exhibit SS	Letter from PES to L. Kemper, L. Dernbach (Regional Board), Lake Tahoe Laundry Works (LTLW) (Apr. 4, 2017)
Exhibit TT	Regional Board, Notification of Consideration of No Further Action; Napa Auto Parts/Former Lakeside Auto, 1935 Lake Tahoe Boulevard South Lake Tahoe, South Lake Tahoe, El Dorado County, Lahontan SCP Case #T6S034, (Oct. 8, 2015)
Exhibit UU	Regional Board, Comments on Draft Amended Cleanup and Abatement Order (CAO) No. R6T 2003 031A1 for the Big O Tires Store, South Lake Tahoe (Dec. 12, 2005)
Exhibit VV	U.S. EPA, Ground Water Issue: Assessment and Delineation of DNAPL Source Zones at Hazardous Waste Sites, EPA/600/R-09/119 (Sept. 2009)
Exhibit WW	U.S. EPA Regional Screening Level Chemical-specific Parameters Supporting Table (Nov. 2015)
Exhibit XX	Morgan et al., Glacio-Lacustrine Stratigraphy, Aquifer Characterization and Contaminant Transport: A Case Study in South Lake Tahoe, California, USA, Hydrogeology Journal, Vol. 16 (2008)
Exhibit YY	Kennedy/Jenks Consultants, Tahoe Valley South Basin (6-5.01) 2014 Groundwater Management Plan, Prepared for South Tahoe Public Utility District (Dec. 22, 2014)
Exhibit ZZ	Email correspondence from L. Dernbach (Regional Board) to H. Singer (Regional Board) (Nov. 15, 2004)
Exhibit AAA	Staff Report, Regional Board, Solvent Contamination at the Big O Tires Store, 1961 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 22, 2005)
Exhibit BBB	Regional Board, Comments on Site Investigation Results, Big O Tires Store, 1961 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Feb. 22, 2007)
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Exhibit EEE	E2C Second Quarter 2014 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Oct. 16, 2014)
Exhibit FFF	E2C First Quarter 2015 Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (June 23, 2015)
Exhibit GGG	Stantec Consulting, Inc., Third Quarter 2008 Water Quality Report, Former Dry Cleaning Business, 949 Emerald Bay Drive, South Lake Tahoe (Dec. 10, 2008)
Exhibit HHH	U.S. EPA, Handbook, Ground Water, Volume 1: Ground Water and Contamination, EPA/625/6-90/016a (Sept. 1990)
Exhibit III	GEI Consultants, Inc., Results of PCE Investigation for Tahoe Keys Property Owners Association (TKPOA), South Y Area South Lake Tahoe, California (Aug. 15, 2016)
Exhibit JJJ	GEI Consultants, Inc., South Tahoe Public Utility District, South Y Extraction Well Suitability Investigations (Jun. 29, 2016)

Exhibit KKK	Regional Board, Meeting Summary to Discuss Next Steps for the South Y PCE Investigation (Sept. 2, 2016)
Exhibit LLL	Regional Board Media Release, "Lahontan Water Board to Conduct Groundwater Testing for PCE in South Lake Tahoe" (Oct. 21, 2015)
Exhibit MMM	EKI, Response to Water Board Notification of Consideration of No Further Action, Napa Auto Parts/Former Lakeside Auto, 1935 Lake Tahoe Boulevard South Lake Tahoe, California, (Dec. 3, 2015)
Exhibit NNN	Regional Board, Response to Fox Capital Management Corporation Comments on 60-Day No Further Action Notice, Lakeside Napa Auto Store Case (T6S035), 1935 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Undated)
Exhibit OOO	National Research Council, Contaminants in the Subsurface: Source Zone Assessment and Remediation, Committee on Source Removal of Contaminants in the Subsurface (2004)
Exhibit PPP	Secor, Work Plan to Investigate Chlorinated Hydrocarbon-Impacted Soil and Groundwater On and Off the Lakeside Automotive Property, South Lake Tahoe, California (Oct. 1, 2003)
Exhibit QQQ	Regional Board, Consideration of No Further Action Required, Former Big O Tire Store, 1061 Lake Tahoe Boulevard (Oct. 7, 2015)
Exhibit RRR	EKI, Response to Water Board Notification of Consideration of No Further Action, Former Big O Tires Store Site, 1961 Lake Tahoe Boulevard, South Lake Tahoe, California (Dec. 3, 2015)
Exhibit SSS	Regional Board, Response to Fox Capital Management Corporation Comments on 60-Day No Further Action Notice, Big O Tire Store #147 Case (T6S034), 1961 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Undated)
Exhibit TTT	Big O Tires, Amended Cleanup and Abatement Order (No. R6T-2003-031A1) (Mar. 7, 2006)
Exhibit UUU	PES, Comments on Consideration of No Further Action Required, Lakeside Napa Auto Store, 1935 Lake Tahoe Boulevard, South Lake Tahoe, California, Lahontan SCP Case No. T6S035 (Dec. 7, 2015)
Exhibit VVV	PES, Comments on Consideration of No Further Action Required, Former Big O Tire Store, 1961 Lake Tahoe Boulevard, South Lake Tahoe, California, Lahontan SCP Case No. T6S034 (Dec. 7, 2015)
Exhibit WWW	Environmental Data Resources, Inc. ("EDR"), The EDR Radius Map Report, South Y Center, South Lake Tahoe, California (Jul. 13, 2007)
Exhibit XXX	EDR, The EDR Aerial Photo Decade Package, South Y Center, South Lake Tahoe, California (Jul. 13, 2007)
Exhibit YYY	EDR, The EDR City Directory Image Report, South Y Area, South Lake Tahoe, California (Jun. 5, 2015)
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Exhibit HHHH	Images of the GHH Engineering, Inc. ("GHH") PCE Compilation Map
Exhibit IIII	GHH, Regional PCE Data Compilation, South Tahoe Y Area, South Lake Tahoe,

	California (Oct. 2002)
Exhibit JJJJ	Memorandum from H. Singer (Regional Board) to E. Anton (State Water Board), re Summary Results for the Tahoe South "Y" PCE Investigation — CAA #82 (Feb. 25, 1999)
Exhibit KKKK	E-mail from N. Billings (Fox) to P. Kouyoumdjian (Regional Board), re Proposed Cleanup and Abatement Order (CAO)-Remediation of PCE Groundwater contamination, Lake Tahoe Laundry Works (Mar. 6, 2017) and attachment
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Exhibit MMMM	GHH Engineering, Inc. Additional Assessment Report, TCI Building, 924 Emerald Bay Road, South Lake Tahoe (Feb. 2001)
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Exhibit OOOO	Harding ESE, Inc., Groundwater Investigation, Big-O Tire Center, 1961 South Lake Tahoe Boulevard, South Lake Tahoe, California (Oct. 30, 2001)
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