

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD**

ORDER WR 2022-_____

**In the matter of the petitions
for extensions of time and petitions for change of
Trimont Land Company and Northstar Community Services District
for water-right Permits 15905, 15906, 16618, and 16619 (Applications A022822,
A022823, A023851, and A023849), which authorize diversions and use of water
from Unnamed Streams, Unnamed Springs, Sawmill Flat Springs, West Martis
Creek and Martis Creek in Placer County.**

COUNTY: Placer

STREAM SYSTEM: Truckee River

ORDER ON PETITIONS FOR EXTENSION OF TIME AND PETITIONS FOR CHANGE

Table of Contents

1.0	INTRODUCTION	1
2.0	BACKGROUND	1
2.1	Trimont and Northstar CSD's Water-Diversion and Conveyance Facilities	1
2.2	Truckee-Carson-Pyramid Lake Water Rights Settlement Act and Truckee River Operating Agreement	2
2.3	Water-Right Applications A022822, A022823, A023851, and A023849, and Permits 15905, 15906, 16618, and 16619	4
2.3.1	Applications A022822 (Permit 15905) and A022823 (Permit 15906)	4
2.3.2	Applications A023849 (Permit 16619) and A023851 (Permit 16618)	6
2.3.3	Assignments of Interests in Permits; Creation of Northstar CSD	7
2.4	Petitions for Extensions of Time and Petitions of Changes in Authorized Points of Diversion, Places of Use and Purposes of Use	8
2.5	Assignment of Petitions to AHO; AHO Pre-Hearing Proceedings	9
2.6	AHO Hearing	11
2.7	California Environmental Quality Act Documents	13
2.8	AHO Post Hearing Proceedings	14
3.0	DISCUSSION	14
3.1	Petitions for Extensions of Time	14
3.1.1	Petitions for Extensions of Time for Permits 15906, 16618 and 16619	15
3.1.2	Petition for Extension of Time for Permit 15905	16
3.1.3	Effects on California's Allocations Under Settlement Act	19
3.1.4	Conclusions Regarding Petitions for Extensions of Time	22
3.2	Change Petitions	22
3.2.1	Would the State Water Board's approval of the change petitions and petitions for extensions of time result in injury to any other legal user of water?	22
3.2.2	Would the State Water Board's approval of the change petitions and petitions for extensions of time unreasonably affect any fish, wildlife or any other instream beneficial use?	24
3.2.3	Would the State Water Board's approval of these petitions cause the initiation of any new water-right?	24
3.2.4	If these change petitions are granted, then what new terms or conditions, if any, should be added to the Permits when the petitions are granted?	25
3.3	CEQA compliance	27
4.0	CONCLUSIONS	28
	ORDER	28

CERTIFICATION.....	29
Figure 1 – Map Showing Water Conveyance Facilities (exh. Trimont-Northstar 6)	
Figure 2 – Engineer’s map for Trimont and Northstar Change Petitions (exh. Trimont-Northstar 11 (revised))	
APPENDIX A – New Amended Water-Right Permit 15905	
APPENDIX B – New Amended Water-Right Permit 15906	
APPENDIX C – New Amended Water-Right Permit 16618.....	
APPENDIX D – New Amended Water-Right Permit 16619.....	

1.0 INTRODUCTION

This matter came to the State Water Resources Control Board (State Water Board or Board) as a proposed order prepared and transmitted by the Presiding Hearing Officer of the Board's Administrative Hearings Office (AHO), pursuant to Water Code section 1114, subdivision (c)(1). Pursuant to Water Code section 1114, subdivision (c)(2)(A), the Board adopts the AHO's proposed order in its entirety.

As described in this order, the State Water Board grants the petitions for extensions of time and petitions for change (collectively, the Petitions) of Trimont Land Company (Trimont) and Northstar Community Services District (Northstar CSD) (collectively, the Petitioners) for water-right Permits 15905, 15906, 16618, and 16619 (Applications 22822, 22823, 23851, and 23849) (the Permits).¹

2.0 BACKGROUND

2.1 Trimont and Northstar CSD's Water-Diversion and Conveyance Facilities

The attached Figure 1 shows the locations of the authorized points of diversion for the Permits and the associated collection facilities.²

As shown on this map, the authorized points of diversion for Permits 15906, 16618 and 16619 all are located in West Martis Creek watershed. The diversion facilities associated with these permits are: (a) Reservoir A, (b) Sawmill Flat Springs Collection System, and (c) Big Springs Collection System. (See Fig. 1.) Reservoir A, sometimes referred to as "Sawmill Flat Reservoir," is located on West Martis Creek and has a storage capacity of 180 acre-feet (af). (Exh. Trimont-Northstar 13, p. 2.) The Sawmill Flat Springs Collection Gallery is located on West Martis Creek upstream of Reservoir A. It consists of a network of perforated and corrugated metal pipes that assist in transporting surface and sub-

¹ Trimont holds Permit 15905. Northstar CSD holds Permit 15906. Petitioners jointly hold Permits 16618 and 16619.

² The attached Figure 1 is a copy of exhibit Trimont-Northstar 6. The administrative record the AHO prepared for this matter contains a Hearing Documents folder, and, within that folder, a Trimont-Northstar exhibits sub-folder.

surface water to the Sawmill Flat Manhole. (Exh. Trimont-Northstar 10, p. 5.) Water diverted at this manhole can be transported to Reservoir A, the Big Springs Cistern or Northstar CSD's water treatment plant. (*Ibid.*) The Big Springs Collection Gallery and related facilities are located on an unnamed tributary to West Martis Creek. (See Fig. 1.) Water diverted by these facilities is conveyed to the Big Springs Cistern. (Exh. Trimont-Northstar 10, pp. 4-5.) The Northstar Pump House is adjacent to the Big Springs Cistern. (Exh. Trimont-Northstar 6.) This pump house can convey water to locations throughout the Northstar system. (Exh. Trimont-Northstar 10, p. 4.)

The Trimont Water Company (Trimont WC) and its successors constructed these facilities during 1969-1982, at a total cost of \$2,894,000. (Exh. Trimont-Northstar 1, p. 3:21-23; exh. Trimont-Northstar 21, p. 12.) Trimont and Northstar CSD operate these facilities as a single unit, and use the water diverted and stored by them for irrigation, municipal, domestic and recreation purposes within the boundaries of the district and the Northstar California Resort (Northstar). (Exh. Trimont-Northstar 2, p. 2, ¶ 4; p. 4, ¶ 12.)

The authorized point of diversion for Permit 15905 is at the dam for proposed Reservoir B, which would be located on Martis Creek.³ Reservoir B has not been constructed. (Exh. Trimont-Northstar 1, pp. 9-10.) Reservoir B and related surface water facilities remain in Trimont's long-term plans, and Reservoir B will add necessary additional water supply and storage for the water system when needed to supply additional demands associated with further build-out at Northstar. (*Ibid.*)

2.2 Truckee-Carson-Pyramid Lake Water Rights Settlement Act and Truckee River Operating Agreement

After decades of conflicts regarding the interstate waters of the Lake Tahoe and Truckee and Carson Rivers, Congress enacted the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Settlement Act) in 1990. (Pub. Law 101-618, tit. II, 104 Stat. 3294-3324 (1990).)

³ Martis Creek is located to the west of West Martis Creek. (See Fig. 1.)

Section 204 of the Settlement Act allocated the waters of the Carson and Truckee Rivers and Lake Tahoe between California and Nevada. (*Id.*, § 204, 104 Stat. 3296-3304.) For all uses of water from natural sources within the Lake Tahoe Basin, including groundwater, the Settlement Act allocates 23,000 acre-feet per year (af/yr) to California and 11,000 af/yr to Nevada. (*Id.*, § 204, subd. (b)(1), 104 Stat. 3297.) For waters in the Truckee River Basin, the Settlement Act allocates 32,000 af/yr of water from all natural sources, including both surface water and groundwater, to California, subject to the condition that total annual diversions of surface water supplies may not exceed 10,000 af/yr, and subject to priorities for some specified rights of use in Nevada. (*Id.*, § 204, subd. (c)(1), 104 Stat. 3300-3303.)

Section 205 of the Settlement Act directed the Secretary of the Interior to negotiate an operating agreement with Nevada and California, after consultation with other parties that might be designated by the Secretary or either of the two states. (*Id.*, § 205, subd. (a)(1), 104 Stat. 3304-3305.)

On September 6, 2008, the United States, California, Nevada and several other entities executed the Truckee River Operating Agreement (TROA). (2008-09-06 Truckee River Operating Agreement.)⁴ TROA article six contains detailed provisions and procedures regarding the allocation and accounting of the waters of the Lake Tahoe and Truckee River Basins. (*Id.*, pp. 6-1 – 6-28.) TROA section 6.E.2 provides that the diversion and use of water by California water users in the Truckee River Basin shall not result in total

⁴ Unless otherwise indicated, citations in this order are to files in the administrative record the AHO has prepared for this matter. Each filename contains the date of the document, followed by a brief description. Besides background documents like TROA and the Settlement Act, the administrative record also contains pdf files of some of the documents in the Board's Division of Water Rights Records Unit's paper files for water-right Applications 22822, 22823, 23851, and 23849. The administrative record contains a separate folder for the Records Unit files for each application.

Besides the United States, California and Nevada, the other parties to TROA are: Truckee Meadows Water Authority, Pyramid Lake Paiute Tribe, Washoe County Water Conservation District, City of Reno, City of Sparks, City of Fernley, Washoe County, Sierra Valley Mutual Water Company, Truckee Donner Public Utility District, North Tahoe Public Utility District, Carson-Truckee Water Conservancy District, and Placer County Water Agency. (TROA, p. R-1.)

California Truckee River Total Depletion, as that term is defined in TROA, of more than 17,600 af/yr. (*Id.*, p. 6-19.)

2.3 Water-Right Applications A022822, A022823, A023851, and A023849, and Permits 15905, 15906, 16618, and 16619

2.3.1 Applications A022822 (Permit 15905) and A022823 (Permit 15906)

On June 16, 1967, Trimont WC filed water-right Applications A022822 and A022823. (1967-06-16 A022822; 1967-06-16 A022823.) The copies of these applications in the Board's Division of Water Rights (Division) Records Unit files indicate that the applicant filed amended applications on February 23, 1968. (*Ibid.*)

On June 19, 1969, the State Water Board adopted water-right Decision 1342. Decision 1342 described these applications, concluded that sufficient water was available to justify issuing permits on these applications, and ordered that the permits be issued, with specified conditions. (Decision 1342, pp. 1-9.)

On October 28, 1969, the Division issued water-right Permit 15905 on Application A022822 and water-right Permit 15906 on Application A022823. (1969-10-28 water-right Permit 15905; 1969-10-28 water-right Permit 15906.) The Division listed Trimont WC as the permittee in both permits. (*Ibid.*)

Permit 15905 lists an "Unnamed Stream," tributary to Martis Creek, as the source of water. (1969-10-28 water-right Permit 15905, p. 1, ¶ 1.) This permit authorizes direct diversions of water at rates up to 1.33 cubic-feet per second (cfs), from January 1 through December 31 of each year, and collection of up to 530 af/yr to water to storage between October 1 of each year and April 30 of the succeeding year. (*Id.*, p. 2, ¶ 5.) This permit lists the "service area of the Trimont Water Company as shown on map filed with the State Water Resources Control Board" as the authorized place of use. (*Id.*, p. 1, ¶ 4.) The AHO's notice of petitions stated that this map is the June 17, 1967 map in the administrative record for Application A022822. (2020-11-06 Notice of Petitions, p. 2.)

Permit 15906 lists West Martis Creek and Sawmill Flat Springs as the sources of water. (1969-10-28 water-right Permit 15906, p. 1, ¶ 1.) This permit authorizes direct diversions

of water at rates up to 0.3 cfs, and the collection of up to 88 af/yr of water to storage, with the same authorized diversion seasons as those in Permit 15905. (*Id.*, p. 2, ¶ 5.) This permit specifies a maximum rate of diversion to offstream storage of 1.35 cfs. (*Ibid.*) This permit states that a service area of 16,352 acres in various specified sections is the authorized place of use. (*Id.*, p. 1, ¶ 4.) The AHO's notice of petitions stated that the June 17, 1967 map in the administrative record for Application A022823 shows the authorized place of use. (2020-11-06 Notice of Petitions, p. 3.) On October 29, 1971, the Division issued an order changing the authorized points of diversion in Permit 15906. (1971-10-29 order allowing change in points of diversion.)

Each permit specifies recreational and municipal as the authorized purposes of use. (1969-10-28 water-right Permit 15905, p. 1, ¶ 3; 1969-10-28 water-right Permit 15906, p. 1, ¶ 3.)

In Decision 1342, the Board concluded that the December 1, 1985 deadline for applying water to beneficial use was appropriate because, if Trimont WC did not proceed with the proposed development within a reasonable period of time, the amounts of water covered by the two permits should be released for appropriation by others. (Decision 1342, p. 4, ¶ 8.) In this discussion, Decision 1342 referred to the proposed interstate compact between California and Nevada, which would have limited water use within the California part of the Truckee River Basin to 10,000 af/yr. (*Id.*, pp. 3-4, ¶¶ 4, 8; see Wat. Code, § 5976, art. VI.B.1.)⁵

As ordered by Decision 1342, each permit contains a term requiring complete application of the water to be diverted under the permit to the proposed use on or before December 1, 1985. (1969-10-28 water-right Permit 15905, p. 2, ¶ 9; 1969-10-28 water-right Permit 15906, p. 2, ¶ 9.) Each permit contains a term stating that no extensions of time beyond December 1, 1985 to complete application of the water to the proposed use shall be

⁵ Both California and Nevada approved this compact (Wat. Code §§ 5975-5976; Nev. Rev. Stat. § 538.600), but Congress never approved it, so it never went into effect (see U.S. Const., art. I, § 10, cl. 3).

allowed without a hearing before the State Water Board. (1969-10-28 water-right Permit 15905, p. 2, ¶ 10; 1969-10-28 water-right Permit 15906, p. 2, ¶ 10.)

2.3.2 Applications A023849 (Permit 16619) and A023851 (Permit 16618)

On August 19, 1971, Trimont WC filed water-right Applications A023849 and A023851. (1971-08-19 A023849; 1971-08-19 A023851.) The Division's public notice of these two applications stated that Trimont WC proposed to revise its project authorized under water-right Permits 15905 and 15906 so that applicant's three direct diversions and two storage reservoirs could be operated as part of a single project under which water could be taken in varying amounts from one or more of the sources in the manner most desirable from time to time. (1972-10-12 Notice of A023849, A023850, A023851.)⁶ The Division's notice stated that it was intended that total diversions under the permits that would be issued on new applications and under the two existing permits would be limited to total direct diversions of 2.5 cfs, total collection to storage of 710 af/yr, and total direct diversion and collection to storage of 1,206 af/yr. (*Ibid.*)

On February 21, 1974, the Division issued water-right Permit 16618 on Application A023851 and water-right Permit 16619 on Application A023849.

Permit 16618 lists "Unnamed Springs," tributary to an "Unnamed Stream" that is tributary to Martis Creek, as the source of water. (1974-02-21 water-right Permit 16618, p. 1, ¶ 1.) This permit authorizes direct diversions of water at rates up to 2.5 cfs, from January 1 through December 31 of each year. (*Id.*, p. 2, ¶ 5.) This permit specifies municipal as the authorized purpose of use. (*Id.*, p. 1, ¶ 3.) This permit states that a service area of 16,352 acres in various specified sections is the authorized place of use. (*Id.*, p. 1, ¶ 4.) The AHO's notice of petitions stated that the August 3, 1972 map in the administrative

⁶ The Division's October 12, 1972 notice listed a third application, Application A023850, but stated that the applicant had requested cancelation of that application, subject to approval of Applications A023849 and A023851. (1972-10-12 Notice of A023849, A023850, A023851.) The Division's eWRIMS database does not list any water-right permit for Application A023850.

record for Application A023851 shows the authorized place of use for Permit 16618. (2020-11-06 Notice of Petitions, p. 5.)

Permit 16619 lists “Unnamed Stream,” tributary to West Martis Creek, and West Martis Creek, as the sources of water. (1974-02-21 water-right Permit 16619, p. 1, ¶ 1.) This permit authorizes direct diversions of water at rates up to 2.2 cfs, from January 1 through December 31 of each year, and collection to storage of water at rates up to 180 af/yr, between October 1 of each year and May 31 of the following year. (*Id.*, p. 2, ¶ 5.) This permit specifies recreational and municipal as the authorized purposes of use. (*Id.*, p. 1, ¶ 3.) This permit states that a service area of 16,352 acres in various specified sections is the authorized place of use. (*Id.*, p. 1, ¶ 4.) The AHO’s notice of petitions states that two maps dated September 17, 1971 in the administrative record for Application A023849 show the authorized place of use. (2020-11-06 Notice of Petitions, p. 4.)

Permits 16618 and 16619 each contain limits of 2.5 cfs on the total direct diversions, 710 af/yr on the total collections to storage, and 1,206 on the total direct diversions plus collection to storage that be made under Permits 15905, 15906, 16618 and 16619. (1974-02-21 water-right Permit 16618, p. 2, ¶ 5; 1974-02-21 water-right Permit 16619, p. 2, ¶ 5.)

Like Permits 15905 and 15906, Permits 16618 and 16619 each contain a term requiring complete application of water diverted under the permit to the proposed use on or before December 1, 1985, and a term providing that no extensions of this deadline shall be allowed without a hearing before the State Water Board. (1974-02-21 water-right Permit 16618, p. 2, ¶¶ 6, 9; 1974-02-21 water-right Permit 16619, p. 2, ¶¶ 6, 9.)

2.3.3 Assignments of Interests in Permits; Creation of Northstar CSD

Between 1972 and 1985, Trimont WC and its successor, Fiberboard Corp., assigned various interests in Permits 15906, 16618 and 16619 to Placer County, for the County to use to provide water service to Northstar residents through a county service area. (See exh. Trimont-Northstar 1, p. 3: 13-18; exh. Trimont-Northstar 2, p. 3, ¶ 6; exh. Trimont-Northstar 21, pp. 1, 4.) After Trimont WD and Fiberboard Corp. made these assignments,

the County had the right to appropriate up to 600 af/yr under Permits 15906, 16618 and 16619 for use in the County's service area. (Exh. Trimont-Northstar 1, p. 3:18-19.)

Northstar CSD was formed in 1990 to provide domestic, municipal and recreational water service, and to assume from Placer County the responsibility for providing various public services, including water service, to the Northstar community. (Exh. Trimont-Northstar 2, pp. 2-3, ¶¶ 3, 7.) In 2012, when Northstar CSD discovered that State Water Board records did not show the district as the co-owner of Permits 16618 and 16619, the district and the County coordinated to formally transfer the County's interests in these permits to the district. (*Id.*, p. 4, ¶ 9; see exh. Trimont-Northstar 1, p. 3:19-20.)

As a result of these assignments and transfers, Trimont now is the sole permittee for Permit 15905, Northstar CSD is the sole permittee for Permit 15906, and Trimont and Northstar CSD are joint permittees for Permits 16618 and 16619.

2.4 Petitions for Extensions of Time and Petitions of Changes in Authorized Points of Diversion, Places of Use and Purposes of Use

Petitioners and their predecessors filed various petitions in 1985, 1990 and 2018 for extensions of the 1985 deadlines in all four Permits for applying water to beneficial use. (These petitions are referred to as "petitions for extensions of time.") (2020-11-06 Notice of Petitions, pp. 5-7.) Together, these petitions seek extensions of the December 1, 1985 deadlines in these permits for applying water to beneficial use to December 31, 2028. (*Ibid.*)

Petitioners and their predecessors filed various petitions in 1972, 1977 and 2018 to change the authorized points of diversion in Permits 15905, 15906 and 16619. (*Id.*, pp. 5-7.) Petitioners also filed petitions in 1972 to change the authorized places of use in Permits 15905 and 15906, and they filed petitions in 2018 to change the authorized places of use in all four Permits, and to add snowmaking to the authorized purposes of use in all four Permits. (*Ibid.*) The attached Figure 2, which is revised exhibit Trimont-Northstar 11, shows the requested new authorized place of use for all four Permits for

municipal, recreational and snowmaking purposes of use, and the requested new authorized place of use for irrigation of golf course lands.

2.5 Assignment of Petitions to AHO; AHO Pre-Hearing Proceedings

On May 1, 2020, Erik Ekdahl, the Division's Deputy Director, sent a memorandum to Eileen Sobeck, the Board's Executive Director, proposing to transfer the petitions pending on the Permits to the AHO. (2020-05-01 E. Ekdahl memorandum to E. Sobeck.) Ms. Sobeck then issued a memorandum to Alan Lilly, the AHO's Presiding Hearing Officer, assigning the Petitions to the AHO. (2020-05-01 E. Sobeck memorandum to A. Lilly.)

On November 6, 2020, the AHO issued a Notice of Petitions for Changes and Extensions of Time. (2020-11-06 Trimont-Northstar petitions notice.) This notice explained that, due to disputes and uncertainties regarding rights to the interstate waters of the Lake Tahoe and Truckee River Basins, the State Water Board had held all proceedings concerning water-right permits and licenses in these basin in abeyance while the proceedings that ultimately resulted in the Settlement Act and TROA were pending. (*Id.*, p. 1.) The notice described the Executive Director's assignment of these petitions to the AHO, and stated that, after the deadline for filing protests to the Petitions had passed, the AHO would conduct its proceedings. (*Id.*, pp. 1-2.) The notice described the Permits (*id.*, pp. 2-5), and the requested changes in the pending petitions (*id.*, pp. 5-7). The notice stated that any person or entity could file a protest to any of the petitions, and specified a December 18, 2020 deadline for filing protests. (*Id.*, pp. 7-8.)

On December 18, 2020, Adam Nickels, Regional Resource Manager of the United States Department of the Interior, Bureau of Reclamation (Reclamation) filed a letter with the AHO. (2020-12-18 A. Nickels (Bureau of Reclamation) ltr. to AHO.) That letter stated that Reclamation did not intend to submit a protest to the Petitions, that Reclamation intended to emphasize the importance of adherence to applicable provisions of the Settlement Act and TROA, and that Reclamation requested that any rights issued on Applications A022822, A022823, A023849 and A023951 be conditioned in accordance with the Settlement Act and TROA. (*Id.*, p. 1.)

No person or entity filed any protest to the Petitions.

On March 24, 2021, the AHO issued its Notice of Pre-Hearing Conference and Hearing. (2021-03-24 notice of pre-hearing conference and hearing (Trimont-Northstar.) The hearing notice confirmed that a representative of Reclamation had filed a comment letter, and that no person or entity had filed a protest. (*Id.* at p. 5.) The notice stated that the hearing on the Petitions was scheduled to begin on May 20, 2021.

The AHO held the pre-hearing conference on May 5, 2021, and then issued a pre-hearing conference order. (2021-05-05 Pre-Hearing Conference Order (Trimont-Northstar). Responding to Trimont and Northstar's request, this order re-scheduled the hearing to begin on August 6, 2021 and listed the following hearing issues:

- 1) Should Trimont's and Northstar CSD's change petitions and petitions for extensions of time be granted?
 - a) Are the elements of California Code of Regulations, title 23, section 844, satisfied for the pending petitions of extensions of time?
 - b) Would the State Water Board's approval of the change petitions and petitions for extensions of time result in injury to any other legal user of water?
 - c) Would the State Water Board's approval of these petitions unreasonably affect any fish, wildlife or any other instream beneficial use?
 - d) Would the State Water Board's approval of these petitions be in the public interest?
 - e) Would the State Water Board's approval of these petitions cause the initiation of any new water-right?
 - f) What is the status of Trimont's and Northstar CSD's actions to comply with the California Environmental Quality Act ("CEQA") for these petitions?
- 2) If these change petitions are granted, then what new terms or conditions, if any, should be added to Permits 15905, 15906, 16618 and 16619 when the petitions are granted?
 - a) If these change petitions are granted, then what new terms or conditions, if any, should be added to these permits so that they will comply with the applicable provisions of the Settlement Act and TROA?

(*Id.*, pp. 1-2.)

On June 28, 2021, the AHO issued a memorandum to the parties. (2021-06-28 AHO memo to Trimont and Northstar.) This memorandum transmitted drafts of amended water-right Permits 15905, 15906, 16618, and 16619 the AHO had prepared, and asked Trimont and Northstar to submit comments on them in the exhibits and written proposed testimony they would be submitting for the AHO hearing. (*Id.*, p. 1.) This memorandum also listed several questions regarding the AHO's drafts of the amended Permits, and asked the parties to submit answers to them with the parties' exhibits and written proposed testimony. (*Id.*, pp. 1-2.)

One of these questions noted that Trimont historically had used some of the water diverted under Permits 15906, 16618 and 16619 for golf course irrigation,⁷ pointed out that irrigation was not listed as an authorized purpose of use in any of these permits or Permit 15905 but the change petitions for these permits indicated that some water may continue to be diverted under these permits for golf course irrigation, and asked Trimont and Northstar if they wanted to add irrigation as an authorized purpose of use in any of these permits. (*Id.*, p. 2, ¶ 7.)

2.6 AHO Hearing

The AHO held hearings in this matter on August 6, October 27 and December 3, 2021. Trimont called three witnesses, Deirdra. Walsh, Robert Wagner and Diane Wagner.

Ms. Walsh, Northstar California Resort's general manager, testified during the August 6 hearing about the processes that led to the issuance of the Permits, the development of the diversion works and associated infrastructure, the pending petitions for extensions of time and change petitions, and Trimont and Northstar's historical and planned water use. (Exh. Trimont-Northstar 1.) Ms. Walsh testified that Trimont requested that irrigation be added as an authorized purpose of use in Permits 15905, 16618 and 16619. (Exh. Trimont-Northstar 1, pp. 15:27-28, 17:3-4, 17:24-25.) During the October 27 hearing, Ms.

⁷ Attachment A to its 1985 petition for extension of time stated that water use for golf course irrigation ranged from 163.7 to 215.0 af/yr between 1980 and 1984. (Exh. Trimont-Northstar 21, pp. 6-7.)

Walsh testified about Trimont's plans for construction of the Reservoir B described in Permit 15905. (Exh. Trimont-Northstar 36.)

Mr. Wagner, a registered civil engineer, testified during the August 6 hearing about the engineer's map (exh. Trimont-Northstar 11) he prepared for the Petitions. (Exh. Trimont-Northstar 3.)

Ms. Wagner, a water resources specialist, testified during the August 6 hearing about the Northstar water system, the purposes of Petitioners' water-right change petitions, and the availability of water for diversion and use under the Permits, considering the Settlement Act and TROA. (Exh. Trimont-Northstar 8.) Ms. Wagner provided detailed technical memoranda regarding the Northstar water system infrastructure, Sawmill Flat Reservoir, and her water availability analysis. (Exhs. Trimont-Northstar 10, 13 & 14.)

During the October 27 hearing, in response to questions from the AHO hearing officer, Ms. Wagner testified about the details of historical diversions and use under the Permits and the relationships between proposed maximum diversions and use under the Permits and California's allocations under the Settlement Act and TROA. (Exh. Trimont-Northstar 38, pp. 1-6; exh. Trimont-Northstar 39.) During the December 3 hearing, Ms. Wagner testified about the Truckee River Ranger Station precipitation station that is referred to in term 17 of water-right Permit 15905. (Exhs. Trimont-Northstar 44; Trimont-Northstar 45.)

Northstar CSD called one witness, Eric Martin, Northstar CSD's district engineer. During the August 6, 2021 hearing, Mr. Martin testified about the history of the formation of Northstar CSD and the Permits, the development of Northstar CSD's water system, historical amounts of water diverted under the Permits, and projected future amounts of diversions. (Exh. Trimont-Northstar 2.) Mr. Martin testified that some water diverted under all four Permits is used for golf course irrigation. (Exh. Trimont-Northstar 2, pp. 5-6, ¶ 17.)⁸

⁸ Because no water is being diverted under Permit 15905 (see section 3.1.2), we assume that Mr. Martin intended to state that some water diverted under Permits 15906, 16618

2.7 California Environmental Quality Act Documents

During August 6 hearing, Ms. Wagner testified about the California Environment Quality Act (CEQA) documents Northstar CSD had prepared for the Northstar Mountain Master Plan and the Northstar water system. (Exhs. Trimont-Northstar 8, pp. 11-12.) These CEQA documents included the 2004 Northstar Mountain Master Plan Update Final Environmental Impact Report (2004 NMMP FEIR), which Northstar CSD certified in 2004. (Exhs. Trimont-Northstar 8, pp. 11-12; Trimont-Northstar 16-18.) After certifying this Final EIR, Northstar CSD approved the Master Water Plan Update project described in the Final EIR on July 20, 2004. (Exhibit Trimont-Northstar 16.)

During the October 27 hearing, Ms. Wagner testified that Northstar CSD had decided to prepare a CEQA addendum to the 2004 NMMP FEIR. (Exh. Trimont-Northstar 38, p. 7, ¶ 24.) During the December 3 hearing, Mr. Martin testified that Northstar CSD's Board of Directors considered and discussed this CEQA Addendum during the Board's November 17, 2021 meeting. (Exh. Trimont-Northstar 46, p. 1, ¶ 4.)

This CEQA Addendum discussed the project described in the 2004 NMMP FEIR and the proposed modifications to this project. (Exh. Trimont-Northstar 47, pp. 4-6.) The Addendum described the Permits and the petitions to amend the Permits. (*Id.*, pp. 5-6.) After discussing the history of the Permits, the Settlement Act and TROA, and the details of the Permits and the pending change petitions and petitions for extensions of time (*id.*, pp. 6-12), the Addendum analyzed the proposed changes to the Permits and concluded that these changes did not meet any of the criteria in CEQA Guidelines section 15162 that would have required Northstar CSD to prepare a subsequent EIR, and that the changes met the provisions of CEQA Guidelines section 15164 for preparing a CEQA Addendum to the 2004 NMMP FEIR (*id.*, pp. 12-17).

Mr. Martin testified that Northstar CSD's Board of Directors approved Resolution No. 21-17, which adopted this CEQA Addendum. (Exh. Trimont-Northstar 46, pp. 1-2, ¶ 5; see

and 16619 is used for golf course irrigation. (Unless the context indicates otherwise, references in this order to "section" are to sections of this order.)

exh. Trimont-Northstar 48.) Northstar CSD filed a CEQA Notice of Determination for this Addendum with the Placer County Clerk and the State Office of Planning and Research on November 19, 2021. (Exh. Trimont-Northstar 49.)

2.8 AHO Post Hearing Proceedings

On March 1, 2022, the AHO issued a notice extending the March 2, 2022 deadline for the AHO to prepare its proposed order in this matter to April 1, 2022. On April 1, 2022, the AHO issued a Notice of Draft Proposed Order and circulated its draft proposed order for this matter. The AHO's notice directed the parties to submit comments by May 2, vacated the prior submission of the matter to the AHO and stated that the matter would be deemed re-submitted on May 2, 2022. Petitioners submitted a revised exhibit Trimont-Northstar 11 on May 2, and advised the AHO that they did not have any comments on the draft proposed order. After considering revising the draft proposed order, the AHO transmitted its proposed order to the Clerk of the Board on June 14, 2022.

3.0 DISCUSSION

3.1 Petitions for Extensions of Time

Water Code sections 1395-1396 provide that construction work on the project covered by a water-right permit shall begin within the time specified in the permit, and thereafter be prosecuted with reasonable diligence, in accordance with the Division 2 of the Water Code (sections 1000-5976) and the State Water Board's rules and regulations. Water Code section 1397 provides that the construction work shall be completed and the water applied to beneficial use in accordance with these statutes and regulations and the terms of the permit. Water Code section 1398, subdivision (a), authorizes the State Water Board, for good cause shown, to extend any of the deadlines specified in the permit for beginning and completing construction work and applying water to beneficial use.

The applicable Board regulation provides that the Board will grant water-right petitions for extensions of time only upon such conditions as the Board determines are in the public interest, and upon a showing that: (a) due diligence has been exercised, (b)

failure to comply with the previous time requirements was occasioned by obstacles which could not be reasonably avoided, and (c) satisfactory progress will be made if an extension of time is granted. (Cal. Code Regs., tit. 23, § 844.) This regulation states that “[l]ack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.” (*Ibid.*)

As discussed in section 2.4, Trimont, Northstar CSD and their predecessors filed petitions for extensions of time for all four Permits in 1985, 1990 and 2018. Together, these petitions seek extensions of the December 1, 1985 deadlines in these permits for applying water to beneficial use to December 31, 2028.

3.1.1 Petitions for Extensions of Time for Permits 15906, 16618 and 16619

Trimont WC and its successors constructed the Northstar water system facilities described in section 2.1 during 1969-1982 at a total cost of \$2,894,000. (Section 2.1; exh. Trimont-Northstar 1, p. 3:21-23; exh. Trimont-Northstar 21, p. 12.)

Ms. Walsh testified that the diversion works for Permits 15906, 16618 and 16619 were completed during 1972 and 1982. (Exh. Trimont-Northstar 1, pp. 3:28, 4:19-21.) She testified that water use at Northstar increased as build-up occurred, and that 56.4 percent of the planned dwelling units at Northstar have been completed and occupied. (*Id.*, pp. 5:11; 7:26-27.)

Trimont expects development to continue to occur over the next decade and anticipates that the entire 1,206 af/yr authorized for diversion and use under all four Permits will be placed to beneficial use if the State Water Board grants the pending petitions for extensions of time. Trimont plans to continue to add and expand ski trails, as described in the 2017 Northstar Mountain Master Plan, including about 143 acres of infill ski trail widening, 150 acres of new ski trails, and 90 acres of “program level” ski trails. With these developments, about 300 acres of new snowmaking coverage is expected, and Trimont has planned additional snowmaking facilities and upgrades to accompany the ski trail expansions. There is no evidence in the record that any other substantial additional construction is contemplated or required for Trimont and Northstar CSD to divert and

beneficially use all of the water that will be available for diversion by these facilities under Permits 15906, 16618 and 16619.

Mr. Martin testified that 57.3 percent of the 3,739 condominium and single-family dwelling units within the Northstar California Resort have been completed and occupied, and that development is ongoing, although the rate of development has been slower than that envisioned when the Permits were issued. (Exh Trimont-Northstar 2, p. 5, ¶ 14.) He testified that Northstar CSD expects that the entire 1,206 af/yr eventually will be put to beneficial use. (*Ibid.*)

Considering these facts, we conclude that Petitioners have satisfied the three elements in the State Water Board regulation regarding extensions of time for Permits 15906, 16618 and 16619. (Cal. Code Regs, tit. 23, § 844.) Petitioners have exercised due diligence by constructing most of the facilities necessary to divert, treat and convey the water authorized for diversion and use under these three permits. Petitioner's failures to complete all the necessary construction and application of all the water authorized for diversion and use under these permits to beneficial use by the December 1, 1985 deadline were occasioned by obstacles that could not reasonably be avoided, primarily the slower-than-anticipated development rate for Northstar. Petitioners have demonstrated that satisfactory progress will be made if extensions to December 31, 2028 are granted, through additional developments of snowmaking facilities, construction of more dwelling units, and associated increases in water demands and use.

3.1.2 Petition for Extension of Time for Permit 15905

As discussed in sections 2.1 and 2.3.1, the Division issued water-right Permit 15905 in 1969, and Trimont and its predecessors have not constructed the Reservoir B described in the permit or any of the other facilities necessary to divert or use water under the permit.

During the August 6, 2021 hearing, Ms. Walsh testified that there are two primary reasons why Trimont has not yet constructed Reservoir B and the other related facilities. First, Trimont has not constructed these facilities because water supplies diverted from other sources under Permits 15906, 16618 and 16619 and groundwater supplies have been

sufficient to support the improvements that have been constructed at Northstar. (Exh. Trimont-Northstar 1, pp. 4:21-23, 7:21-23; 9:27-28.) Second, Trimont has not undertaken any substantial work regarding these facilities because the State Water Board has not acted on the pending petitions for extensions of time for Permit 15905. (*Id.*, p. 3:23-25.)

Ms. Walsh testified that, once additional information is known regarding the Board's actions on these petitions, Trimont intends to work diligently to research and plan the infrastructure necessary to divert and use water under Permit 15905. (*Id.*, p. 3:25-28.) She testified that the water supplies that will be produced by these facilities are likely to be needed to meet peak delivery water demands at Northstar's full build-out. (*Id.*, p. 9:23-24.)

During the October 27 hearing, Ms. Walsh provided additional details regarding proposed Reservoir B. She re-iterated that Trimont's anticipated total water demand at Northstar's build-out will require water supplies beyond those available from existing surface water and groundwater supplies, and that the storage capacity of Reservoir B will be necessary for Trimont's snowmaking system to meet peak demands. (Exh. Trimont-Northstar 36, p. 2:3-25.) She also explained in more detail why Trimont has delayed Reservoir B construction until the State Water Board rules on the pending petitions for extensions of time for Permit 15905. (*Id.*, pp. 2:27-28, 3:1-5.)

Ms. Walsh testified that Trimont has hired Auerbach Engineering to help develop Reservoir B, and that, if the Board grants the petitions for extensions of time for Permit 15905, Trimont intends to proceed with Auerbach Engineering's proposed feasibility study. (Exh. Trimont-Northstar 36, p. 3:21-25.) Auerbach Engineering's proposal describes proposed site reconnaissance, land surveys and mapping, civil engineering related to dam construction access and a proposed transmission pipeline, geotechnical engineering related to the dam site and potential borrow areas, environmental and CEQA analyses, stream flow gaging, and development of a watershed yield model. (Exh. Trimont-Northstar 37, pp. 8-23.) Under its anticipated project schedule, the feasibility study will be completed by the end of 2023, the preliminary design will be completed by June 2024, environmental review will be completed by the end of 2025, permitting will be

completed by June 2026, and construction will be completed by the end of 2028. (*Id.*, p. 25.)

Water Code section 1475 provides that, where a reservoir is proposed to be constructed for a system in which water is to be used under appropriations of water and rights held by the owner of the reservoir site, “the reservoir, appropriations and rights shall, in the discretion of the [B]oard, constitute a single enterprise unit, and work of constructing the reservoir or work on any of the appropriations shall, in the discretion of the [B]oard, be sufficient to maintain and preserve all applications for appropriation and rights thereunder.” In Order WR 82-5, the Board stated that Water Code section 1475 “gives the Board discretion to determine whether progress toward the development of water under one project that may be viewed as a part of a single enterprise, shall preserve the right to develop water for all applications being a part of the enterprise.” (Order WR 82-5, p. 3.)

As discussed in section 3.1.1, Trimont, Northstar CSD and their predecessors have exercised diligence regarding the planning and construction of the facilities necessary to divert and use water under Permit 15906, 16618 and 16619. Because Trimont, Northstar CSD and their predecessors have staged their planning and construction of facilities to divert and use water under all four Permits as part of an overall plan of development, we conclude that their overall diligence for this plan of development is sufficient to satisfy the diligence requirement for the petitions for extensions of time for Permit 15905.

Petitioner’s failures to complete all of the necessary construction and application of all of the water authorized for diversion and use under all four Permits to beneficial use by the December 1, 1985 deadline were occasioned by obstacles that could not reasonably be avoided, primarily the slower-than-anticipated development rate for the Northstar California Resort. Also, we agree with Trimont that it was reasonable for Trimont to delay development of Reservoir B until the issues regarding overall allocations of water in the Lake Tahoe and Truckee River Basin could be resolved and the Board could act on the pending petitions for extensions of time.

Trimont has demonstrated that satisfactory progress, through construction of Reservoir B and related facilities, additional developments of snowmaking facilities, construction of more dwelling units, and associated increases in water demands and use, may be made if extensions to December 31, 2028 are granted for Permit 15905.

Considering these facts, we conclude that Trimont has satisfied the three elements in the State Water Board regulation regarding cause for extensions of time for Permit 15905. (Cal. Code Regs, tit. 23, § 844.)⁹

3.1.3 Effects on California's Allocations Under Settlement Act

Decision 1342 ordered that the permits to be issued on Applications A022822 and A022823 contain terms directing that complete application of water to the proposed uses by made by December 1, 1985, and that no extensions of this deadline shall be allowed without a hearing before the Board. (Decision 1342, p. 7, ¶¶ 6-7; see section 2.3.1.) Discussing the 10,000 af/yr limitation on water use within the California portion of the Truckee River Basin in the proposed California-Nevada Compact, Decision 1342 indicated that the reason for these permit terms was that, if the applicant did not proceed with the proposed development within a reasonable time, then the requested amount of water should be released for appropriation by others. (Decision 1342, p. 4, ¶ 8.)

Given this background, it is appropriate for us to consider the potential effects of granting Petitioners' petitions for extensions of time on the allocations of water to all California water users under the Settlement Act and TROA.

Ms. Wagner testified that the maximum reported total diversions under Permits 15906, 16618 and 16619 through 1985 was 500.8 acre-feet (af) in 1985. (Exh. Trimont-Northstar 38, p. 4, ¶ 12; exh. Trimont-Northstar 39, p. 7, table 5.) If we were to deny the pending

⁹ The annual permittee progress reports for Permit 15905 list non-zero diversion and use amounts for each year between 2001 and 2019. (See A022822, Annual Progress Reports.) Although we conclude that the proposed facilities contemplated for diversions and use under Permit 15905 are part of an overall plan of development, Trimont should not report any diversions or use under this permit until Trimont constructs Reservoir B and related facilities and starts using them to divert and use water.

petitions for extensions of time and direct the Division to issue water-right licenses to replace the Permits, then these licenses could limit total diversions under them to this 500.8 af/yr amount. On the other hand, if we grant the pending petitions, then Petitioners will have rights to increase their total annual direct diversions and collection to storage under all four Permits to 1,206 af/yr. (See section 2.3.2.) Thus, the maximum increase in total diversions and collections to storage under the Permits that may occur if we grant the pending petitions for extensions of time, compared the potential annual limit that would occur if we were to deny the petitions, is 705.2 af/yr. (1,206 af/yr – 500.8 af/yr = 705.2 af/yr.)

Ms. Wagner testified that the maximum reported total diversions under Permits 15906, 16618 and 16619 since 1985 was 838.22 af in 2018. (Exh. Trimont-Northstar 38, pp. 2-3, ¶ 6; exh. Trimont-Northstar 39, app. B.)¹⁰ Thus, if we grant the pending petitions for extensions of time, then Petitioners' total diversions and collections to storage under the Permits may increase from the maximum historical annual use amount of 838.22 af by 367.78 af/yr to 1,206 af/yr. (1,206 af/yr – 838.22 af/yr = 367.78 af/yr.)

To determine the percentages of the Settlement Act and TROA allocations to California water users in the Truckee River Basin (see section 2.2.) that currently are being used by Petitioners and all California water users, Ms. Wagner compiled data from the California Department of Water Resources Annual Inventory of Water Use, Lake Tahoe & Truckee River Basins reports for 2016-2019 (DWR reports). (Exh. Trimont-Northstar 38, p. 4, ¶ 13; exh. Trimont-Northstar 41, p. 1.)

The DWR reports indicate that total annual surface-water use in the California part of the Truckee River Basin ranged from 310.0 af to 516.0 af during 2016-2019, and that, of these amounts, Petitioners' total annual water use ranged from 245.1 af to 416.9 af. (Exh. Trimont-Northstar 41, p. 3, table 1.) These total annual use amounts were 3.1 to 5.2

¹⁰ For 2018, Trimont and Northstar CSD also reported use of 375.59 af of groundwater, for total surface water and groundwater use of 1,213.81 af. (Exh. Trimont-Northstar 39, app. B.)

percent of the 10,000 af/yr surface-water allocation to California water users, and Petitioner's amounts were 2.5 to 4.2 percent of this allocation. (*Id.*; exh. Trimont-Northstar 38, pp. 4-5, ¶ 15.)

Total annual depletions attributed to surface-water use in the California part of the Truckee River Basin ranged from 134.4 af to 282.2 af during 2016-2019, and, of these amounts, annual depletions attributed to Petitioners' total water use ranged from 98.7 af to 211.2 af. (Exh. Trimont-Northstar 41, p. 4, table 2.) These total annual depletion amounts were 0.8 to 1.6 percent of the 17,600 af/yr total allowed depletion for California water users, and Petitioner's amounts were 0.6 to 1.2 percent of this total allowed depletion. (*Id.*; exh. Trimont-Northstar 38, pp. 4-5, ¶ 15.)

Ms. Wagner estimated that, if Petitioners' diversions were to increase to 1,206 af/yr, then total annual surface-water diversions in the California part of the Truckee River Basin could be as high as 1,270.9 af/yr, which would be 12.7 percent of California's 10,000 af/yr allocation. (Exh. Trimont-Northstar 38, p. 5, ¶ 17; exh. Trimont-Northstar 41, p. 6, table 3.) Of this amount, Petitioners' diversions of 1,206 af/yr would be 12.1 percent of California's allocation. (*Ibid.*) With Petitioners' diversions at this annual rate, total annual depletions attributed to surface-water use could be as high as 523.9 af/yr, which would be 3.0 percent of the 17,600 af/yr total allowed depletion, and Petitioner's amounts would be 2.8 percent of this total amount. (*Id.*; exh. Trimont-Northstar 38, p. 5, ¶ 18; exh. Trimont-Northstar 41, p. 7, table 4.)

Ms. Wagner also estimated how water use under the total allocation of 32,000 af/yr to California surface-water and groundwater users in the Truckee River Basin during 2016-2019 would have been affected if Petitioners' diversions had been at 1,206 af/yr during these years. (Exh. Trimont-Northstar 38, pp. 5-6, ¶ 19; exh. Trimont-Northstar 41, p. 8, table 5.) She estimated that total water use ranged from 7,882.0 af to 8,529.0 af during these years, and that, if Petitioners had been diverting 1,206 af/yr during these years, then total water use would have ranged from 8,457.5 to 9,055.9 af/yr. With these additional diversions, total California water use would have increased to 26 to 28 percent of the 32,000 af/yr allocation. (Exh. Trimont-Northstar 41, p. 8, table 5.)

These estimated annual amounts of total surface-water use, total depletions associated with surface-water diversions and total water use (surface water plus groundwater) all are substantially less than the corresponding total amounts authorized by the Settlement Act and TROA.

3.1.4 Conclusions Regarding Petitions for Extensions of Time

Considering the discussions in sections 3.1.1 through 3.1.3, we conclude that the criteria in California Code of Regulations, title 23, section 844 are satisfied, and that granting the petitions would not cause diversions or consumptive use by California water users in the Truckee River watershed to exceed the allocations in the Settlement Act and TROA. Also, granting the petitions for the municipal-use portions of the Permits held by Northstar CSD would be consistent with the policy stated in Water Code section 106.5 that the rights of municipalities to acquire and hold water rights should be protected to the fullest extent necessary for existing and future uses. (See Order WR 2000-0013, pp. 12-13 (“A municipality . . . is to be afforded some latitude in putting water to beneficial use, because the municipality must be able to plan for, and meet, the needs of its existing and future citizens.”))

3.2 Change Petitions

3.2.1 Would the State Water Board’s approval of the change petitions and petitions for extensions of time result in injury to any other legal user of water?

Water Code section 1702 provides that, before the State Water Board may grant a petition to change the point of diversion, place of use, or purpose of use in a water-right permit, “the petitioner shall establish, to the satisfaction of the board, and it shall find, that the change will not operate to the injury of any legal user of the water involved.”

In *Barnes v. Hussa* (2006) 136 Cal.App.4th 1358, the court discussed how changes in place of use in appropriative rights may impact other legal users of water:

Injury from a change in place of use generally occurs when use at the new location results in the appropriator using a greater amount of water than he was

entitled to [citation] or when use at the new location reduces return flows to the watercourse, thus reducing the amount of water available for diversion by downstream users [citation].

(*Id.*, p. 1369)

Petitioners' requested changes in points of diversion, place of use and purpose of use are briefly discussed in section 2.4 and are discussed in more detail in the AHO's notice of petitions. (2020-11-06 Trimont-Northstar petitions notice, pp. 5-6.) The requested changes are just to add new authorized points of diversion in the same general area as the currently authorized points of diversion. Similarly, the requested changes in place of use are so the authorized places of use in all four Permits will be the same. (*Id.*, pp. 5-7.)

The requested changes in purposes of use in the Petitions are to add snowmaking. During the AHO's pre-hearing process, the AHO asked the Petitioners if they also wanted to add irrigation to the authorized places of use. (See section 2.5.) During the AHO hearing, both Ms. Walsh and Mr. Martin testified that Petitioners want the State Water Board to make this addition. (See section 2.6.) Some water diverted under Permits 15906, 16618 and 16619 currently is used for snowmaking and golf course irrigation. (Exh. Trimont-Northstar 1, p. 5:11-13; exh. Trimont-Northstar 2, pp. 5-6, ¶ 17.)

No one filed a protest to the Petitions, and there is no evidence in the record that any of these requested changes in points of diversion, places of use or purposes of use would operate to the injury of any legal user of the water involved. Also, even if we approve these changes and, as a result, Petitioners' total direct diversions and collections to storage increase to the maximum authorized rate of 1,206 af/yr, total diversions and total depletions by all California water users in the Truckee River Basin still will be substantially less than the limits specified in the Settlement Act and TROA (see section 3.1.4), so these increases are not likely to affect the rights of other California water users under these allocations.

3.2.2 Would the State Water Board's approval of the change petitions and petitions for extensions of time unreasonably affect any fish, wildlife or any other instream beneficial use?

Although Water Code section 1702 does not explicitly refer to the effects of changes to water-right permits on fish, wildlife, or other beneficial instream uses, the Board considers such effects when evaluating water-right change petitions. (Decision 1651, p. 17, fn. 12 [citing Order WR 2009-0033, p. 6, fn. 4].)

Section 4.9 of Northstar CSD's 2004 Master Water Plan Update Draft EIR contains extensive descriptions of the biological resources in the project area, and extensive analyses of the proposed project's potential impacts on these resources. (Exhibit Trimont-Northstar 17, pp. 276-298.) The Draft EIR concludes that, with implementation of the specified mitigation measures, all of these impacts will be less than significant. (*Id.*, p. 298.) The 2004 NMMP FEIR for this project did not change any of these conclusions. (Exhibit Trimont-Northstar 18.)

Northstar CSD's November 2021 Addendum to the 2004 FEIR discussed the modifications to the 2004 Master Water Plan project for the Petitions and concluded that the changes would not result in any new significant environmental effects or substantially increase the severity of any previously identified effects. (Exh. Trimont-Northstar 47, pp. 1, 5-6, 17.)

There is no evidence in the administrative record that the Board's approval of the Petitions would unreasonably affect any fish, wildlife, or other beneficial instream uses.

3.2.3 Would the State Water Board's approval of these petitions cause the initiation of any new water-right?

It is a fundamental principle of California water right law that "a right cannot be so changed that it in essence constitutes a new right." (Order WR 2009-0061, p. 5, citing Cal. Code, Regs., tit. 23, § 791(a).) Changes that may constitute a new right include expansions of the right "to appropriate a greater amount of water, to increase the season of diversion, or to use a different source of water." (*Id.*, at pp. 5-6.) "The common feature among the

changes that have been found to constitute the creation of a new right, as opposed to a change in an existing right, is that the changes that initiate a new right increase the amount of water taken from a water source at a given time.” (*Id.* at p. 6.)

The Petitions do not request any changes to the Permits that would increase maximum total authorized rate for direct diversions and collection to storage of 1,206 af/yr or that would change the sources of water from which the Permits authorize diversions. Our granting the Petitions therefore would not initiate any new water right.

3.2.4 If these change petitions are granted, then what new terms or conditions, if any, should be added to the Permits when the petitions are granted?

Water Code section 1704, subdivision (a), authorizes the Board, after a hearing, to “approve with conditions” a petition to change a water-right license.

On June 28, 2021, the AHO issued a memorandum to the parties, which transmitted the drafts of amended water-right Permits 15905, 15906, 16618, and 16619 the AHO had prepared, and asked Petitioners to submit comments on them in the exhibits and written proposed testimony they would be submitting for the AHO hearing. (2021-06-28 AHO memo to Trimont and Northstar, p. 1.) This memorandum also listed several questions regarding the AHO’s drafts of the amended Permits, and asked the parties to submit answers to them with the parties’ exhibits and written proposed testimony. (*Id.*, pp. 1-2.)

Because Reservoir B would be constructed on Martis Creek, Martis Creek is listed as the source of water in amended Permit 15905.

As discussed in section 2.6, water currently is being diverted under Permits 15906, 16618 and 16619 to for golf course irrigation, and Petitioners plan to divert water under all four Permits in the future for this purpose. No one has objected to the addition of this purpose of use to these permits. The attached amended permits include irrigation as an authorized purpose of use, and the golf course is depicted on the attached maps as the authorized place of use for this irrigation.

We conclude we should delete term 15 of Permit 16618 and term 21 of Permit 16619.

This term provides:

No water shall be appropriated until permittee has established a permanent organization which will, to the Board's satisfaction, properly operate and maintain the permittee's water supply system.

This term no longer is necessary for these permits, because Northstar CSD now is a co-permittee and operates the facilities that divert and convey water under these permits for municipal purposes.

Trimont is the sole permittee for Permit 15905, and the facilities to divert and convey water under this permit have not been constructed. If these facilities are constructed, then water diverted under this permit may be used for municipal purposes by Northstar CSD, or for some or all of the other authorized purposes of use by Trimont. To address these possible future uses, the following term should be included in this permit:

No water may be diverted under this right for municipal purposes until right holder has entered into an agreement with Northstar Community Services District for the dedication of designated amounts of water to be diverted under this right for delivery to the District for municipal purposes within the authorized place of use. This term does not apply to diversions of water under this permit by right holder for other purposes of use.

Term 16 of Permit 15906 and term 17 of Permit 16619 required permittee to obtain approval from the Department of Water Resources, Division of Safety of Dams, for the plans and specifications for the dam that would be constructed to store water under these permits. The Division of Safety of Dams issued a certificate of approval of this dam (the Reservoir A dam) in 1973, (exh. Trimont-Northstar 13, p. 5), so this term should be deleted from these permits.

The amended permits each contain a new term specifying that the permit is subject to all applicable provisions of the Settlement Act and TROA, and new terms implementing the applicable provisions of TROA sections 6.C.2(b)(1) and 6.C.3(b). These TROA sections provide that the State Water Board shall include such terms in changes to existing water-right permits for diversions in the California part of the Truckee River Basin.

3.3 CEQA compliance

Northstar CSD certified the 2004 NMMP FEIR in 2004. (Section 2.7; exh. Trimont-Northstar 8, pp. 11-12; exh. Trimont-Northstar 16-18.) On November 17, 2021, Northstar CSD approved a CEQA Addendum to the 2004 NMMP FEIR, which discussed the project described in the 2004 NMMP FEIR and the proposed modifications to this project due to the Petitions. (Exh. Trimont-Northstar 47, pp. 4-6.) After discussing the history of the Permits, the Settlement Act and TROA, and the details of the Permits and the pending change petitions and petitions for extensions of time (*id.*, pp. 6-12), the Addendum analyzed the proposed changes to the Permits that would occur if we grant the Petitions and concluded that these changes did not meet any of the criteria in CEQA Guidelines section 15162 that would have required Northstar CSD to prepare a subsequent EIR, and that the changes met the provisions of CEQA Guidelines section 15164 for preparing a CEQA Addendum to the 2004 NMMP FEIR (*id.*, pp. 12-17).

For purposes of considering whether to approve the Petitions, the State Water Board is a responsible agency under CEQA. (See Pub. Resources Code, § 21069.) In deciding whether and how to approve a project, a CEQA responsible agency must consider the environmental effects of the project as disclosed in the environmental documentation prepared by the CEQA lead agency. (CEQA Guidelines, § 15096, subd. (f).) Here, Northstar CSD is the CEQA lead agency. (Pub. Resources Code, § 21067.) Except under limited circumstances when a responsible agency may assume lead agency status or prepare subsequent CEQA documentation, a CEQA responsible agency must presume that the conclusions reached by the CEQA lead agency in its CEQA documentation regarding the environmental effects of the proposed project are adequate, or challenge the lead agency's CEQA action in court. (CEQA Guidelines, § 15096, subds. (e) & (f).)

As required by CEQA Guidelines section 15096, subdivisions (a) and (f), we have considered Northstar CSD's 2004 NMMP FER and 2021 CEQA Addendum and the environmental effects described in those documents. Exercising our independent judgment, we conclude that these CEQA documents are adequate for our actions in this

order. Considering those documents and the other evidence described in this order, we have decided to take the actions described in this order.

4.0 CONCLUSIONS

1. We grant Petitioners' petitions for extensions of time and to change water-right Permits 15905, 15906, 16618 and 16619. Attachments A through D contain copies of the new amended permits, with the changes and new terms discussed in this order.
2. Our granting these petitions will not operate to the injury of any other legal user of the water involved, will not unreasonably affect fish, wildlife or other instream beneficial uses or any other public trust values, will be in the public interest, and will not initiate any new water rights.

ORDER

IT IS HEREBY ORDERED THAT:

1. Trimont and Northstar CSD's Petitions for Extensions of Time and Petitions for Change for Permits 15905, 15906, 16618, and 16619 are granted.
2. The Deputy Director for the Division of Water Rights shall issue amended Permits 15905, 15906, 16618, and 16619 in the forms in Attachments A through D.
3. The Deputy Director for the Division of Water Rights shall prepare and file a CEQA Notice of Determination for this order.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on **[insert date]**.

AYE:

NAY:

ABSENT:

ABSTAIN:

Jeanine Townsend
Clerk to the Board

FIGURES AND APPENDICES

Figure 1 – Map Showing Water Conveyance Facilities (exh. Trimont-Northstar 6)

Figure 2 – Engineer’s map for Trimont and Northstar Change Petitions (exh. Trimont-Northstar 11 (revised))

APPENDIX A – New Amended Water-Right Permit 15905

APPENDIX B – New Amended Water-Right Permit 15906

APPENDIX C – New Amended Water-Right Permit 16618

APPENDIX D – New Amended Water-Right Permit 16619

FIGURE 1

Map Showing Water Conveyance Facilities
(exh. Trimont-Northstar 6)

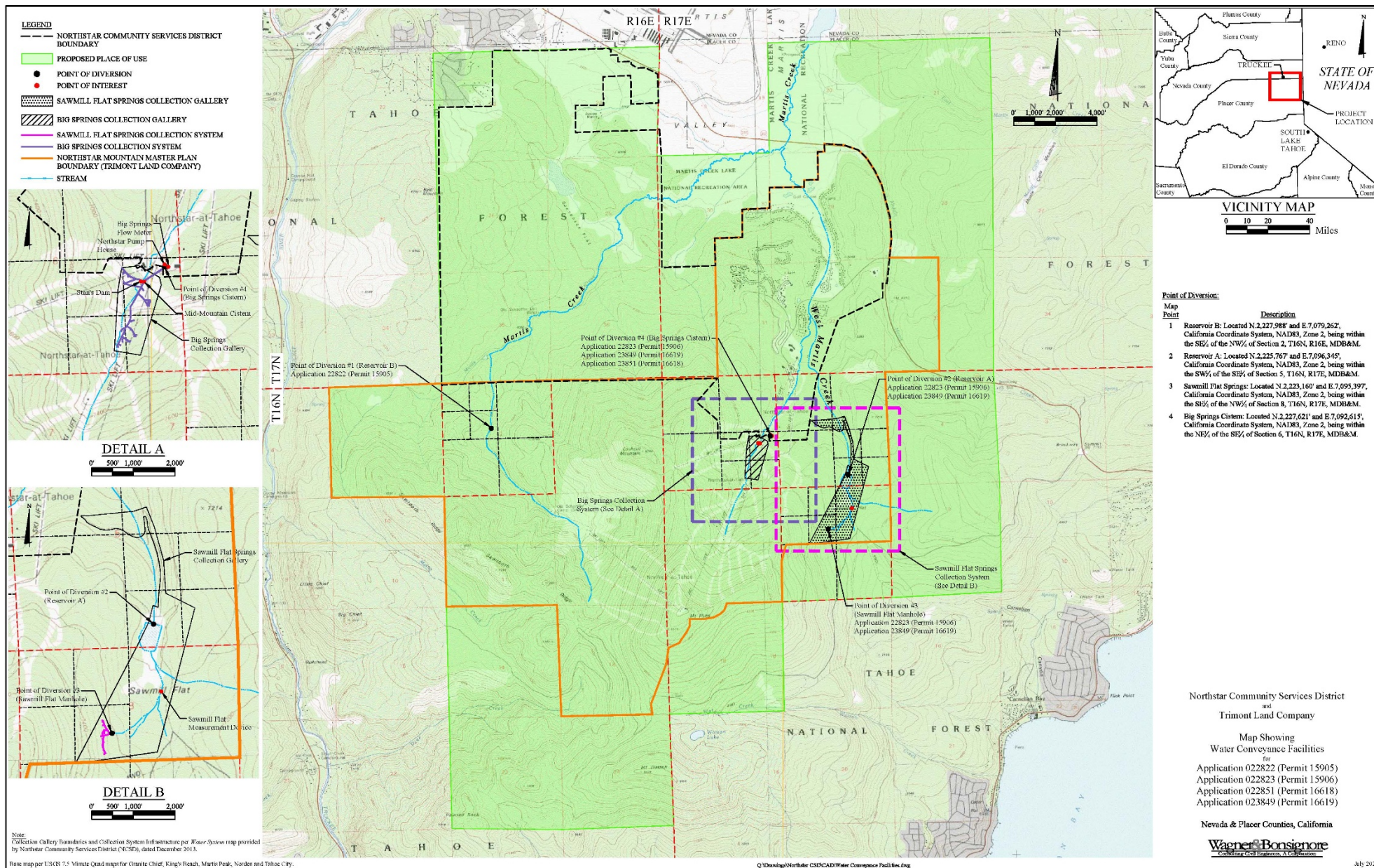
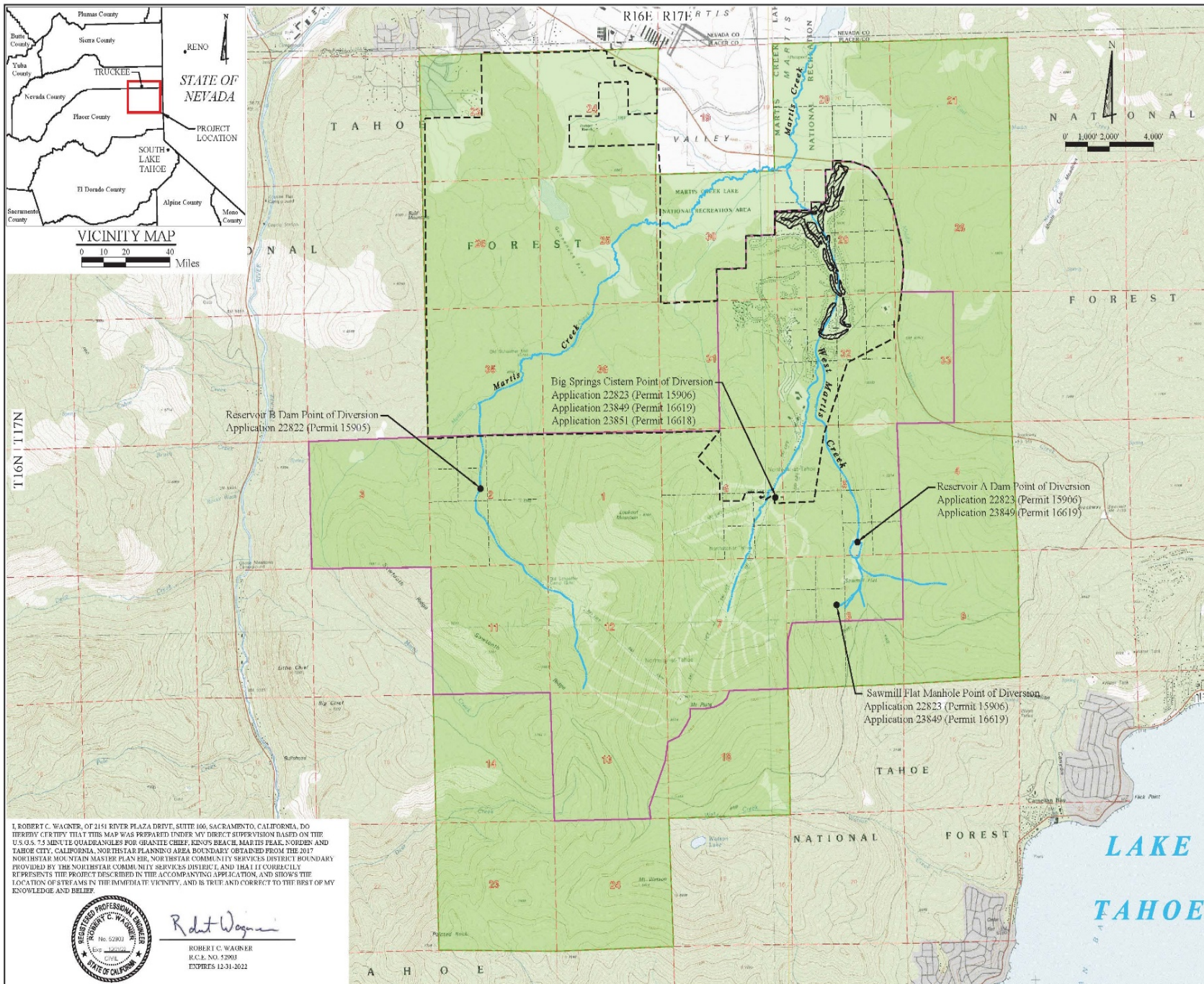


FIGURE 2

Engineer's map for Trimont and Northstar
Change Petitions (exh. Trimont-Northstar 11
(revised)



Point of Diversion:

Reservoir B Dam: Located N.2,227,988' and E.7,079,262', California Coordinate System, NAD83, Zone 2, being within the SE¼ of the NW¼ of Section 2, T16N, R16E, MDB&M.

Reservoir A Dam: Located N.2,225,767' and E.7,086,345', California Coordinate System, NAD83, Zone 2, being within the SW¼ of the SE¼ of Section 5, T16N, R17E, MDB&M.

Sawmill Flat Manhole: Located N.2,223,160' and E.7,095,397', California Coordinate System, NAD83, Zone 2, being within the SE¼ of the NW¼ of Section 8, T16N, R17E, MDB&M.

Big Springs Cistern: Located N.2,227,621' and E.7,092,615', California Coordinate System, NAD83, Zone 2, being within the NE¼ of the SE¼ of Section 6, T16N, R17E, MDB&M.

Place of Use (Municipal, Recreation & Snow Making)

Section	Township	Range	DBM	Section	Township	Range	DBM
1	T16N	R16E	M.D.	23	T17N	R16E	M.D.
2	T16N	R16E	M.D.	24	T17N	R16E	M.D.
3	T16N	R16E	M.D.	25	T17N	R16E	M.D.
11	T16N	R16E	M.D.	26	T17N	R16E	M.D.
12	T16N	R16E	M.D.	34	T17N	R16E	M.D.
13	T16N	R16E	M.D.	36	T17N	R16E	M.D.
14	T16N	R16E	M.D.	20	T17N	R17E	M.D.
23	T16N	R16E	M.D.	21	T17N	R17E	M.D.
24	T16N	R16E	M.D.	38	T17N	R17E	M.D.
4	T16N	R17E	M.D.	29	T17N	R17E	M.D.
5	T16N	R17E	M.D.	30	T17N	R17E	M.D.
6	T16N	R17E	M.D.	31	T17N	R17E	M.D.
7	T16N	R17E	M.D.	32	T17N	R17E	M.D.
8	T16N	R17E	M.D.	33	T17N	R17E	M.D.
9	T16N	R17E	M.D.				
18	T16N	R17E	M.D.				

Place of Use (Irrigation)

Use within	Section	Township	Range	DBM	Acres	Previously Calculated
SW¼ of SE¼	20	T17N	R17W	M.D.	2.1	Yes
NE¼ of NW¼	29	T17N	R17W	M.D.	4.1	Yes
SE¼ of NW¼	29	T17N	R17W	M.D.	14.1	Yes
SW¼ of NW¼	29	T17N	R17W	M.D.	13.7	Yes
NW¼ of NE¼	29	T17N	R17W	M.D.	7.5	Yes
SW¼ of NE¼	29	T17N	R17W	M.D.	1.3	Yes
NE¼ of SW¼	29	T17N	R17W	M.D.	10.9	Yes
SE¼ of SW¼	29	T17N	R17W	M.D.	4.1	Yes
SW¼ of SE¼	29	T17N	R17W	M.D.	3.2	Yes
NE¼ of NW¼	32	T17N	R17W	M.D.	3.7	Yes
SE¼ of NW¼	32	T17N	R17W	M.D.	3.1	Yes
NW¼ of NE¼	32	T17N	R17W	M.D.	3.4	Yes
SW¼ of NE¼	32	T17N	R17W	M.D.	1.6	Yes
					72.5	

LEGEND

- NORTHSTAR COMMUNITY SERVICES DISTRICT BOUNDARY
- NORTHSTAR PLANNING AREA (TRIMONT LAND COMPANY)
- PLACE OF USE: MUNICIPAL, RECREATION & SNOW MAKING
- PLACE OF USE: IRRIGATION
- POINT OF DIVERSION
- STREAM

Northstar Community Services District
and
Trimont Land Company

Amended Map to Accompany Petition for Change
to
Water Right Permits
15905 (A022822), 15906 (A022823),
16618 (A022851) & 16619 (A023849)

Nevada & Placer Counties, California

Wagner & Bonsignore
Certified Civil Engineers, A Corporation

April 5, 2022

I, ROBERT C. WAGNER, OF 2151 RIVER PLAZA DRIVE, SUITE 100, SACRAMENTO, CALIFORNIA, DO HEREBY CERTIFY THAT THIS MAP WAS PREPARED UNDER MY DIRECT SUPERVISION BASED ON THE U.S.G.S. 7.5 MINUTE QUADRANGLES FOR GRANITE CHIEF, KING'S BEACH, MARTIS PEAK, NORDEN AND TAHOE CITY, CALIFORNIA. NORTHSTAR PLANNING AREA BOUNDARY OBTAINED FROM THE 2017 NORTHSTAR MOUNTAIN MASTER PLAN VIE. NORTHSTAR COMMUNITY SERVICES DISTRICT BOUNDARY PROVIDED BY THE NORTHSTAR COMMUNITY SERVICES DISTRICT. AND THAT IT CORRECTLY REPRESENTS THE PROJECT DESCRIBED IN THE ACCOMPANYING APPLICATION, AND SHOWS THE LOCATION OF STREAMS IN THE IMMEDIATE VICINITY, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Robert C. Wagner
ROBERT C. WAGNER
R.C.E. NO. 52903
EXPIRES 12-31-2022

Base map per USGS 7.5 Minute Quad maps for Granite Chief, King's Beach, Martis Peak, Norden and Tahoe City.

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