

CONFIDENTIAL SETTLEMENT COMMUNICATION

LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

**Sugar Pine Housing Partners LP
Deacon Construction, LLC
Sugar Pine Village
El Dorado County**

ORDER R6T-2024-0004

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

I. Introduction

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

II. Recitals

2. On June 21, 2022, Sugar Pine Housing Partners LP submitted a Notice of Intent for coverage under Order No. R6T-2016-0010, the *General Waste Discharge Requirements and National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity in the Lake Tahoe Hydrologic Unit, Counties of Alpine, El Dorado, and Placer* (General Permit) for the Sugar Pine Village Phase I construction project.
3. The Prosecution Team has determined that Sugar Pine Housing Partners LP and Deacon Construction, LLC are both liable for violations of the General Permit at the Sugar Pine Village construction site. Sugar Pine Housing Partners LP is the Legally Responsible Party (LRP) under the General Permit and hired Deacon Construction, LLC as the contractor to complete the project. Operators are liable under the Clean Water Act if they have responsibility for or control over the activities that caused the violations. Deacon Construction, LLC, as the operator, had responsibility for and control over the activities that caused the violations.

4. Sugar Pine Village will consist of 248 affordable housing units in nine apartment buildings and two community buildings. Construction will take place in four phases. Phase I began in late 2022 and consists of three apartment buildings with associated parking and infrastructure. The project is located at 1888 Lake Tahoe Blvd, 1860 Lake Tahoe Blvd, and 1029 Tata Lane, all within the City of South Lake Tahoe. Storm water from the site flows to the City of South Lake Tahoe's stormwater infrastructure, which discharges into the Upper Truckee River about one mile east of the site.
5. **Violation 1:** The Prosecution Team alleges that the Dischargers violated Sections VIII.A.13, IX.M, and IX.D of the General Permit by failing to have a written spill response plan and a spill response kit onsite on September 27, 2023, for a total of one day of alleged violation.
6. **Violation 2:** The Prosecution Team alleges that the Dischargers violated Section VIII.A.10 and Attachment F, Section F.5 of the General Permit by failing to remove trash and properly secure waste stockpiles on September 27, October 3, and October 17, 2023 for a total of three days of alleged violation.
7. **Violation 3:** The Prosecution Team alleges that the Dischargers violated Sections VIII.A.11 and VIII.B.15 of the General Permit by failing to adequately protect stockpiles of earthen materials on September 27, October 3, and October 9, 2023 for a total of three days of alleged violation.
8. **Violation 4:** The Prosecution Team alleges that the Dischargers violated Section VIII.B of the General Permit by failing to install best management practices (BMPs) at the perimeter of the site and/or failing to correctly install BMPs on September 27, October 3, October 9, and October 17, 2023 for a total of four days of alleged violation.
9. **Violation 5:** The Prosecution Team alleges that the Dischargers violated Section VII.A.4 of the General Permit by failing to store chemicals in watertight containers and with secondary containment on September 27, October 3, and October 9, 2023 for a total of three days of alleged violation.
10. **Violation 6:** The Prosecution Team alleges that the Dischargers violated Section VII.B.5 of the General Permit by failing to prevent off-site tracking of sediment on September 27, October 3, and October 17, 2023 for a total of three days of alleged violation.
11. **Violation 7:** The Prosecution Team alleges that the Dischargers violated Section VIII.B.4 of the General Permit by failing to protect not yet connected storm drain

inlets on September 27 and October 17, 2023 for a total of two days of alleged violation.

12. These alleged violations constitute violations of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c).
13. On April 4, 2017, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2017-0020, which adopted the *2017 Water Quality Enforcement Policy* (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017.
14. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology incorporates Water Code sections 13327 and 13385(e) that require the Lahontan Water Board to consider specific factors when determining the amount of civil liability to impose, including "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require." The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the Enforcement Policy as discussed in Attachment A, the terms of which are incorporated herein by reference.
15. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations alleged in this Stipulated Order and Attachment A, without administrative or civil litigation and by presenting this Stipulated Order to the Lahontan Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
16. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against the Dischargers in the amount of **\$79,690 (seventy nine thousand six hundred ninety dollars)**. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

1. **Jurisdiction:** The Parties agree that the Lahontan Water Board has regulatory jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
2. **Administrative Civil Liability:** The Dischargers hereby agree to the imposition of an administrative civil liability in the amount of **\$79,690 (seventy nine thousand six hundred ninety dollars)** to resolve the violations specifically alleged in this Stipulated Order as follows:
 - a. No later than 30 days after the Effective Date of this Order, the Dischargers shall submit a check for **\$4,690 (four thousand, six hundred ninety dollars)** to the State Water Board. The check shall be made payable to the "State Water Pollution Cleanup and Abatement Account," shall reference Order No. R6T-2024-0004, and shall be mailed to:

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

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

- b. The Parties agree that the remaining **\$75,000 (seventy-five thousand dollars)** (SEP amount) of the administrative civil liability shall be conditionally suspended pending completion of the Barton Basin Excavation portion of the Tahoe Valley Stormwater and Greenbelt Improvement Project (Barton Basin Supplemental Environmental Project [SEP]) as described herein and in Attachment B, which is hereby incorporated by reference. The Barton Basin SEP is designed to allow storm water to spread out, infiltrate, and reduce sediment and nutrients, thus improving the quality of the storm water that enters Lake Tahoe. The Barton Basin SEP is one portion of a larger project which is designed to help meet the sediment and nutrient reductions mandated by the Lake Tahoe Total Maximum Daily Load (TMDL) program.

- c. The State Water Board's *Policy on Supplemental Environmental Projects* (SEP Policy) states that that the Director of the Office of Enforcement may approve a SEP in an amount greater than 50% of the administrative civil liability in certain cases, including when the SEP is located in, or benefits, a Disadvantaged Community. The Barton Basin SEP is located in, and will benefit a Disadvantaged Community and therefore the Director has allowed 100% of the liability to fund the SEP.
3. **SEP Requirements:** The Parties agree that the SEP Amount specified in Section III, paragraph 2.b. is for the Barton Basin SEP as identified in Attachment B. Upon completion of the Barton Basin SEP, the SEP Amount shall be treated as a permanently suspended administrative civil liability. The Lahontan Water Board is entitled to recover any SEP funds that are not expended in accordance with this Stipulated Order, to be paid consistent with Section III, paragraph 2.a., above. Detailed project descriptions, including milestones, budgets, and performance measures are attached hereto as Attachment B.
4. **Representation of the Dischargers:** As a material consideration for the Lahontan Water Board's acceptance of this Order, the Dischargers represent that they will utilize the SEP Amount to implement the Barton Basin SEP in accordance with terms and conditions described in this Stipulated Order and Attachment B. The Dischargers understand that their commitment to fund the Barton Basin SEP in accordance with the schedule and deliverables for implementation is a material condition of this settlement of liability between the Parties.
5. **Nexus to the Violation:** The SEP Policy requires that a SEP have a nexus to the alleged violation. (SEP Policy, section VIII.F.) The violations alleged in this Stipulated Order relate to storm water management at the Sugar Pine Village construction site, which is located within the same watershed as the Barton Basin SEP. Potential impacts to the beneficial uses of Lake Tahoe will be directly ameliorated as a result of the SEP.
6. **SEP Categories:** The SEP Policy provides for seven categories of SEPs. (SEP Policy, section V.) The Barton Basin SEP falls under the Pollution Reduction and Environmental Restoration and Protection categories.
7. **SEP Oversight:** The City of South Lake Tahoe, the SEP Recipient, will implement the Barton Basin SEP on behalf of the Dischargers. The Lahontan Water Board will provide additional oversight of the Barton Basin SEP which includes, but is not limited to, updating regulatory and records databases, reviewing and evaluating

progress, conducting site inspections, reviewing the final completion report, and verifying appropriate expenditure of the SEP Amount. The Dischargers are responsible for any charged costs for any reasonable and necessary Lahontan Water Board staff oversight, which is not included in the SEP Amount.

SEP Completion Date: As shown in Attachment B, the SEP will be completed within thirty-six (36) months after the Effective Date of this Agreement.

8. **Reporting Requirements for the SEP:** The Dischargers and/or the SEP Recipient will provide the following reports to the Lahontan Water Board:
- a. **Quarterly Reports:** Quarterly Reports must be submitted in accordance with the schedule provided in Attachment B (i.e., by May 1, August 1, November 1, and February 1 each year). **The first Quarterly Report is due on November 1, 2024** and is to cover the period of July through September, 2024. The Quarterly Reports must describe the tasks completed and funds expended during the previous quarter, and proposed work for the following quarter. In addition, the Quarterly Reports must describe whether the Dischargers have complied with the milestones and deadlines contained in Attachment B, and if not, the cause(s) of the delay(s) and the anticipated date of compliance with this Stipulated Order. The Quarterly Reports may also include descriptions and photos of activities completed during the previous quarter and an analysis of the Barton Basin SEP's progress. Quarterly reports shall be submitted to Shelby Barker at Shelby.Barker@waterboards.ca.gov.
 - b. **Certification of SEP Completion:** No later than **four months** after the SEP Completion Date, the Dischargers and/or the SEP Recipient must submit a final report that documents completion of the SEP and provides a certified statement (Certification of SEP Completion), signed under penalty of perjury, that documents the following:
 - i. Certification of completion in accordance with the terms of this Stipulated Order, addressing how the expected outcome(s) for the project were met,
 - ii. Certification documenting the expenditures by the City of South Lake Tahoe during the completion period for the Barton Basin SEP, and
 - iii. Certification that the City of South Lake Tahoe followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act, Porter-Cologne Water Quality Control Act, and federal Clean Water Act.

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

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

will be implemented, and the anticipated date of compliance. The Dischargers shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the Dischargers and their agents will be made by the Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite timely good faith efforts, due to circumstances beyond the Dischargers' control that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the Dischargers or their agents, a new compliance deadline shall be established. The Executive Officer will endeavor to grant a reasonable extension of time if warranted. Any approval of extension by the Executive Officer (or their designee) must be in writing.

- 15. Failure to Expend All Suspended Funds or Complete the Approved SEP:** If the SEP is not fully implemented within 36 months of this Order's adoption (SEP Completion Date) and no extension is granted by the Executive Officer (or his/her designee) within the 5-year statutory period, if the Discharger is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP amount was spent on the completed SEP by the SEP Completion Date, or if there has been a material failure to satisfy a project milestone, Regional Water Board staff shall issue a "Notice of Violation" to the Discharger. As a consequence, the Discharger shall be liable to pay the entire SEP Amount, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim project milestone that has an identifiable and stand-alone environmental benefit. Unless the Regional Water Board or its delegate determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the Notice of Violation's issuance date. The amount of the suspended liability owed shall be determined via a written, stipulated agreement between the Parties or, if the Parties cannot reach an agreement on the amount owed, via a "Motion for Payment of Suspended Liability" before the Regional Water Board or its delegate. Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability assessed, the Discharger shall pay the amount owed to the "State Water Pollution Cleanup and Abatement Account." Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability amount assessed for the Discharger to pay, the Discharger shall submit payment consistent with the payment method described in Section III, paragraph 2. Payment of the assessed amount shall satisfy the Discharger's obligation to implement the SEP.

16. **Replacement SEP:** If there is a material failure, in whole or in part, to perform the Barton Basin SEP described in Section III, paragraph 2.b. and Attachment B, due to circumstances beyond the control of the Dischargers, and the Lahontan Water Board does not move to collect the Payment of Suspended Liability amount as provided in Section III, paragraph 2, above, the Parties agree that the Dischargers may propose a Replacement SEP. Whether there is a material failure to perform the Barton Basin SEP described in Section III, paragraph 2.b. and Attachment B shall be determined by the Executive Officer. The Dischargers shall have 60 days from the date of the Executive Officer's determination to propose a Replacement SEP(s). The cost of the Replacement SEP shall be for the entire SEP Amount, or some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing and shall be treated as a suspended liability subject to the same conditions provided for the SEP being replaced. The terms and conditions of the Replacement SEP shall be memorialized in a Supplemental Agreement to this Stipulated Order, signed by both parties and approved by the Lahontan Water Board or its delegee. The Replacement SEP shall meet the criteria in the SEP Policy and shall be completed within 36 months of the Lahontan Water Board's or its delegee's approval of the Supplemental Agreement (Replacement SEP Completion Date). The Executive Officer may grant an extension for good cause shown as to why the Replacement SEP cannot be completed by the Replacement SEP Completion Date. The Parties agree that, unless requested by the Executive Officer, the Supplemental Agreement will not be subject to public notice and comment so long as the initial notice and comment period complies with federal and/or state requirements. If there is a material failure to perform a Replacement SEP, then the Executive Officer shall issue a "Notice of Violation" as described in Section III, paragraph 15. The Dischargers shall not have an opportunity to propose a second Replacement SEP should it fail to complete the Replacement SEP for any reason.
17. **Lahontan Water Board Acceptance of Completed SEP:** Upon the Dischargers' satisfaction of its obligations under this Stipulated Order, the completion of the Barton Basin SEP and any audits, the Lahontan Water Board or its delegee shall issue a "Satisfaction of Order." The issuance of the Satisfaction of Order will terminate any further obligation of the Dischargers under this Stipulated Order and permanently suspend the SEP Amount.
18. **Compliance with Applicable Laws and Regulatory Changes:** The Dischargers understand that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional

violations of the type alleged may subject them to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Dischargers from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

19. Party Contacts for Communications Related to Stipulated Order:

For the Lahontan Water Board:

Shelby Barker, Enforcement Coordinator
Lahontan Water Quality Control Board
(760) 241-7307
Shelby.Barker@waterboards.ca.gov

For the Dischargers:

Ann Silverberg
Sugar Pine Housing Partners LP
(510) 610-9777
asilverberg@related.com

Brett Mykrantz
Deacon Construction, LLC
(916) 417-9138
brett.mykrantz@deacon.com

20. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
21. **Covered Matters:** Upon the Lahontan Water Board's adoption of this Order, this Order presents a final and binding resolution and settlement of the alleged violations in this Stipulated Order and all associated Reports of Inspection and Notices of Violation that were prepared by Lahontan Water Board staff. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, paragraph 2.a. and the successful completion of the Barton Basin SEP as outlined in this Stipulated Order and Attachment B, or full payment of the associated SEP Amount.
22. **Public Notice:** The Dischargers understand that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by

the Lahontan Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Lahontan Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Lahontan Board, or its delegee. The Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order once executed.

23. **Public Comment Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
24. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Lahontan Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Lahontan Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Lahontan Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
25. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Lahontan Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
26. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
27. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All

modifications must be made in writing, signed by all Parties, and approved by the Lahontan Water Board or its delegee.

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

may appear at any Regional Water Board hearing where approval of this settlement is discussed. If the settlement is not adopted and the matter proceeds to the Lahontan Water Board or State Water Board for hearing, the Dischargers do not waive the right to an adjudicatory hearing before any order other than the Stipulated Order is imposed.

31. **Waiver of Right to Petition or Appeal:** Except in the instance where the settlement is not adopted by the Lahontan Water Board, the Dischargers hereby waive the right to petition the Lahontan Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waive the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
32. **Covenant Not to Sue:** The Dischargers covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order, except that this covenant is not intended to, and does not, limit the Dischargers' right to sue over other Lahontan Water Board orders or limit the Dischargers' rights to defend against any other taken by the Lahontan Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any state agency, or the State of California or its officers, Lahontan Water Board members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.
33. **No Admission of Liability/ No Waiver of Defenses:** In settling this matter, the Dischargers do not admit to liability, admit to the truth of the findings or allegations made by the Prosecution Team, or admit to any of the findings in this Stipulation and Order or Attachment A, or admit to any violations of the Clean Water Act, the Water Code, any Regional or State Water Board order, or any other federal, state or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385(e), and the State Water Board's Water Quality Enforcement Policy. By entering into this agreement, Dischargers do not waive any defenses or arguments related to any new enforcement action that may be brought by the Lahontan Water Board.

34. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
35. **Necessity for Written Approvals:** All approvals and decisions of the Lahontan Water Board under the terms of this Stipulated Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Lahontan Water Board regarding submissions or notices shall be construed to relieve the Dischargers of their obligation to obtain any final written approval required by this Stipulated Order.
36. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
37. **Severability:** The provisions of this Stipulated Order are severable; should any provision be found invalid, the remainder shall remain in full force and effect.
38. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Lahontan Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
39. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

IT IS SO STIPULATED.


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

By:  6/11/24
Ben Letton, Assistant Executive Officer Date

Sugar Pine Housing Partners LP

By: See page 16 _____
Ann Silverberg, Authorized Signatory Date

Deacon Construction, LLC

By:  5/30/24
Brett Mykrantz, Vice President Date

Settlement Agreement Order R6T-2024-0004
Sugar Pine Housing Partners LP and Deacon Construction, LLC

IT IS SO STIPULATED.

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

By: _____
Ben Letton, Assistant Executive Officer

_____ Date

Sugar Pine Housing Partners LP

By: _____
Ann Silverberg, Authorized Signatory

_____ 5/30/2024
Date

Deacon Construction, LLC

By: _____
Brett Mykrantz, Vice President

_____ Date

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

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

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

Michael Plaziak
Executive Officer
Lahontan Regional Water Quality Control Board

Date

Attachment A: Penalty Calculation Methodology
Attachment B: Barton Basin SEP Workplan