

September 8, 2016

Writer's Direct Contact

+1 (415) 268.7569

ABras@mofocom

Via Electronic Mail to RB6enfproceed@waterboards.ca.gov

Daryl Kambitsch
Acting Executive Assistant
California Regional Water Quality Control Board
Lahontan Region
2501 Lake Tahoe Boulevard
South Lake Tahoe, California 96150

Re: Lake Tahoe Laundry Works' CAO Comments: Comments on Proposed Revisions to Lake Tahoe Laundry Works Cleanup and Abatement Order No. R6T-2016-PROP, Former Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, California

Dear Daryl Kambitsch:

On behalf of Commerce Bank, as trustee of the Jack R. Lyddon Trust Two, as managing member of Real Estate Management Associates, LLC, as general partner of Seven Springs Limited Partnership, the entity that holds title to the South Y Center (collectively, "Seven Springs"), Morrison & Foerster LLP and PES Environmental, Inc. submit these comments on the California Regional Water Quality Control Board, Lahontan Region ("RWQCB") Proposed Revisions to Lake Tahoe Laundry Works Cleanup and Abatement Order No. R6T-2016-PROP ("Order") dated July 18, 2016. By email correspondence dated August 9, 2016, RWQCB set Thursday, September 8, 2016 as the deadline for comments to the Order.

As a preliminary matter, Seven Springs strongly disagrees with RWQCB's attempt to limit public comment on the Order. By email correspondence dated September 8, 2016, RWQCB purports to limit any comments by the public, with the exception of newly-added responsible party Bobby Page's Inc, to "incorporation of Bobby Page's Inc as a responsible party and to the revised requirements for a more extensive off-site investigation and clean-up requirements extending to the Tahoe Keys Water Company Well #2." The public, including Seven Springs, should not be so limited.

As noted in the cover letter to the Order dated July 18, 2016, the proposed revisions to the Order are so extensive that a redline from a prior draft was not provided because of "the extent of organizational and other changes." The proposed revisions have created an entirely new document with two new substantive appendices. In effect, RWQCB previously drafted

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one Cleanup and Abatement Order that received extensive public comment, and has now drafted a separate Order that it wishes to force upon the responsible parties without proper public comment. In addition, it is not clear to Seven Springs how RWQCB's decision to limit public comment will impact the record of submissions, attachments, and referenced materials with respect to the Order. Consistent with the public's rights under California law, Seven Springs requests that RWQCB allow the public to comment fully on the Order and set a new deadline for those comments.

Comments on the Order

Seven Springs together with Fox Capital Management Corporation ("Fox") have been cooperating with RWQCB for decades and have been successfully remediating the Former Lake Tahoe Laundry Works located at 1024 Lake Tahoe Boulevard, South Lake Tahoe, California ("Site") since 2009. Demonstrative of this cooperation are the ongoing discussions between Seven Springs, Fox, and RWQCB regarding polishing remediation options for the Site.

As evidenced by the ongoing remediation, the quarterly reports submitted to RWQCB regarding that remediation, and multiple investigations of the remediation system, Seven Springs and Fox have succeeded in containing all contamination within the boundaries of the Site. RWQCB's attempt to hold Seven Springs responsible for off-site contamination, with investigation and clean-up requirements potentially extending all the way to Tahoe Keys Water Company Well #2, is without foundation or reasoned basis. The evidence shows that Seven Springs has not caused or permitted discharge off-site, and in fact that PCE is contained on-Site. RWQCB has no evidence otherwise, only hypotheses that are logically and legally insufficient.

In a desire to hold someone accountable, RWQCB has failed to conduct adequate investigation of the South Lake Tahoe area, including incomplete investigations at known PCE-contaminated Lakeside Napa Auto and Big O Tires sites, to consider the substantial evidence that shows that contamination from the Site is not extending off-site, and to acknowledge that other sites in the South Lake Tahoe area are far more likely to be the contributors of the observed contamination. It is unwarranted, inappropriate, and unlawful for RWQCB to hold Seven Springs responsible for contamination not caused by Seven Springs or stemming from the Site. As such, Seven Springs requests that the Order be rescinded.

Below, Seven Springs sets forth specific comments to the revised Order. In addition, Seven Springs incorporates the entirety of its comments to the Proposed Cleanup and Abatement Order, No. R6T-2015-PROP, submitted to RWQCB on February 11, 2016 by PES Environmental, Inc. Seven Springs also incorporates its comments to RWQCB's consideration of No Further Action for both the Lakeside Napa Auto and Big O Tire sites, submitted on December 7, 2015 by PES Environmental, Inc. These letters demonstrate that

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closure of these sites is inappropriate considering the inadequate investigations previously conducted and that these sites are sources of tetrachloroethene (PCE) contamination in South Lake Tahoe.

Seven Springs also notes and references the Response to Comments on Air Sparge Performance Test submitted on July 27, 2016 by Phil Goalwin of E2C Remediation, Inc. (“E2C”), and the underlying results of the tests conducted by E2C submitted February 1, 2016. Those comments address RWQCB’s misinterpretation of the air sparge testing results conducted by E2C at the site that confirm that the zone of influence of air sparge wells at the Site is at least 25 feet and support Seven Springs’ conclusion that the soil vapor extraction/groundwater air sparge system (SVE/GASS) provides containment and coverage for the Site.

Naming of Responsible Parties

The Order identifies Seven Springs as a responsible party, but fails to point to any evidence that shows that Seven Springs is a contaminant discharger to groundwater beyond the confines of the Site. RWQCB has found contamination at the Site, that has been remediated and contained, and it has found contamination of off-site locations downgradient. RWQCB has not associated the two, and instead infers a connection where there is no actual evidence of one. The theory that high concentrations of PCE once existed at the Site, and that PCE could have migrated off-site because PCE is found in wells downgradient of the Site, is not evidence of a discharge nor is it a reasonable conclusion given the direct evidence that PCE concentrations in and around the Site are indicative of other sources of PCE contamination, not releases from the Site, and also given the numerous other potential contributors to PCE contamination in the South Lake Tahoe area.

In addition to having no direct evidence that contamination at the Site is contributing to off-Site contamination of the general South Lake Tahoe area, and despite the available evidence suggesting that contamination on the Site is contained, RWQCB is attempting to hold Seven Springs responsible for contamination in South Lake Tahoe without having adequately investigated other known PCE-contributors in the area and without having investigated at all numerous other potential sources of contamination.

RWQCB identifies Connolly Development Inc. as a potential discharger, but does not name it in the Order because RWQCB has been “unable to locate contact information” for the company. Seven Springs is unaware of what the “reasonable search efforts” have been conducted, and in any event disputes that an existing entity that RWQCB has identified as causing the at-issue contamination should not be named in the Order.

Two known PCE contributors, Lakeside Napa Auto and Big O Tires, have been previously addressed in comments by Seven Springs that are herein incorporated. PCE has been detected in shallow and middle zone groundwater at Lakeside Napa Auto. However, as

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indicated in prior comments, no adequate soil sampling was ever conducted at the site. PCE was also found at the Big O Tire site, also in shallow and middle zone groundwater. Again, the Big O Tire site was never adequately investigated for soil impacts; a proposed work plan to do soil sampling in certain areas of the site was approved by RWQCB but never actually conducted. Nor was further investigation required by the Amended Cleanup and Abatement Order (No. R6T-2003-031A1), dated March 7, 2006, ever completed. Despite groundwater sampling indicating PCE in the thousands of parts per billion at these two sites, and despite the lack of proper soil sampling at either site that could identify whether solvent exists in the soil, RWQCB has determined that there is no potential PCE contamination migrating from these sources. This conclusion defies RWQCB's duty and the evidence.

Other examples of sites in the South Lake Tahoe area that may be the causes of PCE contamination include current and former service stations, auto and appliance repair shops, industrial facilities, carpet cleaners, and drycleaners. A non-exhaustive but extensive list of such sites that the RWQCB has failed to fully evaluate can be found in Fox's Response to Proposed Cleanup and Abatement Order for Former Lake Tahoe Laundry Works, dated February 11, 2016 and submitted by Hogan Lovells.

Order No. 1 – Current Corrective Actions

Order number 1 requires Seven Springs to “continuously implement current corrective actions” at the Site. Continuous is defined in the Order as “90 percent of the time or more.” This Order, by definition, is unnecessary. As previously mentioned Seven Springs and Fox have been actively and successfully monitoring and remediating the Site consistent with the submitted Remedial Action Plan since 2009.

Order No. 2 – On-Site Plume Containment

Similarly, Order number 2 is also unnecessary as on-site containment is already being accomplished. As evidenced by quarterly reporting, the remaining contamination at the Site is limited to a small area. Concentrations of PCE are low and near Site cleanup goals. And as shown by the recent air sparge testing conducted by E2C, the zone of influence of the SVE/GASS system is effective in preventing off-site migration. E2C conducted air sparge zone of influence confirmation tests in January 2016. The results of the tests confirm the design parameters of the SVE/GASS system constructed and operated at the Site since 2010. Based on the results of the observations and measurements collected during the tests, E2C estimates that the air sparge zone of influence exceeds 25 feet. These findings are consistent with previous pilot tests conducted and support that groundwater within the area of the Site being treated via air sparging is being effectively remediated. RWQCB has no persuasive evidence to the contrary.

Further, the Order's proposed implementation of on-Site containment is not feasible. Order number 2 requires submittal of a work plan that describes alternative methods to achieve on-

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Site containment of chlorinated volatile organic compounds (CVOCs) in groundwater. The work plan is to be submitted within 30 days of the effective date of the Order. Order number 2.1.1 of the Order requires that the work plan include a proposal for an off-Site monitoring program that has the ability to fully evaluate the CVOCs in all affected groundwater between the Site and domestic wells on Eloise Avenue, before and after implementing Order number 3.1. Order number 3.1 requires implementation of an off-Site investigation to fully determine the full lateral and vertical extent of the CVOCs in groundwater from the Site.

Seven Springs comments that until the investigation contemplated in Order number 3 is conducted, development of an off-Site monitoring program that has the ability to fully evaluate the CVOCs in all affected groundwater between the Site and domestic wells on Eloise Avenue is not practicable. Should further work related to on-Site containment be required over Seven Springs objections, Order number 2 should be limited to submittal of a work plan that describes alternative methods to achieve on-Site containment of CVOCs in groundwater and include a description of a proposed off-Site monitoring program that has the ability to assess the efficacy of the proposed alternate containment. The requirement to submit a work plan describing an off-Site monitoring program that has the ability to fully evaluate the CVOCs in all affected groundwater between the Site and domestic wells on Eloise Avenue should be a component of the planning documents contemplated in Order number 3 or Order number 6.

Order No. 3 – Off-Site Investigation

As a preliminary matter, RWQCB conducted its own investigation of PCE contamination in the South Lake Tahoe area in 2015. Notably, RWQCB failed to find any evidence of contamination attributable to the Site from that investigation. Further, Order number 3 is vague and ambiguous with respect to the extent of the investigation called for. Seven Springs again asserts that RWQCB has produced no evidence that Seven Springs is responsible for off-Site contamination of the area that RWQCB seeks to have Seven Springs investigate.

Order number 3 contemplates submittal of a work plan that describes methods to determine the full lateral and vertical extent of CVOCs in groundwater from the Site in a northerly direction to Venice Drive. The work plan is to be submitted within 75 days of the effective date of the Order. Order number 3.1 contemplates implementation of the off-Site investigation to fully determine the full lateral and vertical extent of the CVOCs in groundwater from the Site.

Seven Springs comments that the lateral extent of the off-Site investigation should not be pre-determined by the RWQCB and stipulated in the Order. The lateral extent of CVOCs released from the Site should be determined based on the results of the off-Site investigation rather than pre-determined based on RWQCB's unfounded opinion.

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Order number 3 also contemplates that the work plan propose collection and analysis of samples from known affected municipal and private supply wells or use data recently collected. This proposal is vague and ambiguous with respect to what it purports to require. The Order must clearly define its demands of the named parties. Seven Springs comments that sampling of affected municipal and private supply wells should be limited to those supply wells located within the lateral and vertical extent of the CVOCs from the Site, as determined through the implementation of the off-Site investigation.

Order number 3.2 requires submittal of a technical report describing the off-Site groundwater investigation proposed in the work plan. Order number 3.1 requires the technical report to be submitted to the RWQCB within 105 days of the acceptance of the work plan by the RWQCB. Seven Springs comments that based on the extensive scope of the investigation described in the Order, 105 days is insufficient time to conduct the investigation and submit the report. The scope of the investigation will require acquisition of access to third party-owned supply wells, submittal and acquisition of encroachment permits to conduct sampling in public roadways, submittal and acquisition of drilling permits, extensive collection of geologic and hydrogeologic information during drilling and sampling, groundwater sampling and analysis, submittal and acquisition of groundwater monitoring well permits (if applicable), design and construction of groundwater monitoring wells (if applicable), collection and analysis of groundwater samples, assessment of geologic and hydrogeologic data, assessment of laboratory analytical results, preparation of geologic cross-sections, development of a Site Conceptual Model, and preparation of the technical report. Seven Springs requests that Order number 3.2 be revised to require submittal of the technical report to the RWQCB within 180 days from RWQCB acceptance of the work plan.

Order No. 4 – Off-Site Corrective Action Plan (“CAP”)

The same reasons why an off-Site investigation should not be required apply equally to the development of an off-Site CAP.

With respect to procedure, Order number 4 of the Order requires submittal of an off-Site CAP to the RWQCB that describes methods to clean up and abate off-Site groundwater impacted by CVOCs from the Site. The CAP is to be submitted within 60 days of submittal of the technical report required in Order number 3.2 to the RWQCB. Development of an off-Site CAP should be conducted after the off-Site investigation required in Order 3 has been completed and the technical report documenting the investigation has been accepted by the RWQCB. Development of an off-Site CAP based on a technical report that may not be accepted by the RWQCB may result in proposed corrective actions that are not appropriate and subject to revisions. Accordingly, Seven Springs requests that the requirement for submittal of the off-Site CAP be revised to be within 60 days after acceptance by the RWQCB of the technical report required in Order number 3.2.

Order No. 5 – Groundwater Monitoring and Reporting

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Order number 5 requires upload of all technical documents to the State Water Resources Control Board's GeoTracker web page. Order number 5.1 requires that by July 16, 2016 and quarterly thereafter, Seven Springs and Fox conduct groundwater sampling at all existing monitoring well locations associated with the Site. It is not clear how RWQCB defines wells associated with the Site, as it has at past times suggested that off-Site wells are not associated with the Site only to later determine that they are. This proposed requirement is therefore vague. Further, Seven Springs requests that the date listed in Order number 5.1 be revised to the next quarter following the date of the final Order.

Order number 5.2 requires that by September 15, 2015 and quarterly thereafter, Seven Springs and Fox submit a digital technical report describing the groundwater monitoring and remediation results for the prior quarter. Seven Springs requests that the date listed in Order number 5.2 be revised to 30 days following the prior quarter and that the date be revised to the next reporting date following the date of the final Order.

Order No. 6 – Chlorinated Hydrocarbon Plume Definition

Order number 6 requires submittal of a work plan to the RWQCB by January 30, 2017. The work plan is to propose: (1) monitoring wells at additional locations along Lake Tahoe Boulevard to reduce gaps between current monitoring wells; (2) deeper on-Site locations to monitor and evaluate clean up actions; (3) multi-depths at all off-Site locations where CVOCs attributed to the Site were detected to 1 microgram per liter ($\mu\text{g/L}$); (4) describe the process for gaining access to off-Site locations; proposed well designs specifications; and (5) maps depicting the proposed well locations. Development of the scope of work required in Order number 6 requires that the scope of work described in Order number 3 be completed and described in the technical report required in Order number 3.2. Accordingly, Seven Springs requests that the requirement for submittal of the work plan describing the above components be revised to be within 60 days after acceptance by the RWQCB of the technical report required in Order 3.2.

Appendix A – History of Groundwater Impacts and Supply Wells

Appendix A of the Order provides a brief history of groundwater impacts and aquifer investigations conducted at the Site and in South Lake Tahoe. In Item No. 6 under the heading "Lake Tahoe Laundry Works", RWQCB discusses operation and non-operation of an ozone system at the Site. RWQCB states the ozone system operated for five days and was non-operational for six months. According to groundwater monitoring reports prepared by E2CR for the Site, the ozone system was non-operational from May 9, 2013 until August 6, 2013, due to needed repairs. Therefore the time that the ozone system was non-operational was 89 days or approximately three months, not six months as reported in the Order.

In Item No. 7 under the heading "Lake Tahoe Laundry Works", RWQCB discusses the results of the recent air sparge test conducted at the Site. The RWQCB asserts that the

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results of the air sparge test indicated inconsistent and inadequate remediation across the Site. Seven Springs disagrees with that conclusion as documented by E2C in its response to comments prepared by the RWQCB, previously referenced and submitted to RWQCB on July 27, 2016. The RWQCB further asserts that the findings of the air sparge test could explain why PCE was detected up to 150 µg/L in off-Site monitoring wells located on the north side of the South Y intersection or northeast of the Site. As documented by Seven Springs in comments submitted previously on the draft proposed Order issued in September 2015, groundwater flow direction and groundwater sampling results conducted on the Site do not support that conclusion. This is supported by a northerly direction of groundwater flow at the Site and groundwater samples collected from wells located on the east portion of the Site have not contained PCE at or above the State of California Maximum Contaminant Level (5 µg/L) since 2010.

For the reasons stated, Seven Springs requests that RWQCB reject the Order, and also not issue closure to the Lakeside Napa Auto and Big O Tires sites. Rather, RWQCB should continue to work cooperatively with Seven Springs and Fox on the ongoing and remediation at the Site, which has so far been successful in containing and addressing on-Site contamination.

If you have any questions or require additional information, please call Morrison & Foerster at (415) 268-6358 or PES Environmental, Inc. at (415) 899-1600.

Sincerely,

PES ENVIRONMENTAL, INC.

Morrison & Foerster LLP



Kyle S. Flory, P.G.
Principal Geologist



Alejandro L. Bras, Esq.

cc: Mr. Christopher Blair, Commerce Bank
William F. Tarantino, Esq., Morrison & Foerster LLP