

September 8, 2016

**By Electronic Mail**

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

**Re: Response to Revised Cleanup and Abatement Order for  
Former Lake Tahoe Laundry Works; 1024 Lake Tahoe Boulevard, South Lake Tahoe,  
California**

Dear Mr. Kambitsch,

On behalf of Fox Capital Management Corporation ("Fox"), we are pleased to provide these comments to the California Regional Water Quality Control Board, Lahontan Region ("Regional Board") on the Regional Board's proposed Revised Cleanup and Abatement Order No. R6T-2016-PROP, dated July 18, 2016 for the Former Lake Tahoe Laundry Works ("LTLW") located at 1024 Lake Tahoe Boulevard, South Lake Tahoe, California ("South Y Site") and the Regional Board's related proposal to grant No Further Action for the Big O Tires Store and Napa/Former Lakeside Auto Store locations ("Revised Proposed Order"). The Revised Proposed Order, which the Regional Board published for public comment on August 9, 2016, substantially revises a Proposed Cleanup and Abatement Order for the South Y Site, No. R6T-2015-PROP, published by the Regional Board on September 15, 2015 ("2015 Proposed Order").

Our comments update and supplement Fox's comments on the 2015 Proposed Order submitted on February 11, 2016 ("Fox's February 2016 Comments"), 1/ and are comments on the Regional Board's proposal to grant No Further Action for the Big O Tires and Napa/Former Lakeside Auto locations. 2/ We understand that the Regional Board requested that Fox limit its comments on the Revised Proposed Order to just two specific issues – the addition of Bobby Pages, Inc. ("Bobby Page's") as a discharger and the extension of the Regional Board's off-site investigation and clean

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1/ Fox's February 2016 Comments are attached herein as Exhibit A.

2/ Ertler & Kalinowski, Inc. ("EKI"), Response to Water Board Notification of Consideration of No Further Action, Napa Auto Parts/Former Lakeside Auto, 1935 Lake Tahoe Boulevard South Lake Tahoe, California, (Dec. 3, 2015) ("EKI Napa Response") (Exhibit B); EKI, Response to Water Board Notification of Consideration of No Further Action, Former Big O Tires Store Site, 1961 Lake Tahoe Boulevard, South Lake Tahoe, California (Dec. 3, 2015) ("EKI Big O Response") (Exhibit C).

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up requirements to the Tahoe Keys Property Owners Association Well No. 2. For a number of reasons, Fox does not believe that the Regional Board's request is fair or practical. The Revised Proposed Order contains two new appendices, references new sources, significantly revises the Regional Board's rationale for holding Fox liable as a discharger, alters the Regional Board's conceptual site model, adds new investigation requirements, and contains numerous revisions regarding the history of the LTLW technical investigation. Indeed, the Regional Board has itself concluded that "the extent of organizational and other changes" to the 2015 Proposed Order is so pervasive that it would make a redline comparing the Revised Proposed Order to the 2015 Proposed Order difficult to read. See Memorandum from L. Kemper (Regional Board) to P. Kouyoumdjian (Regional Board) (July 18, 2016). Importantly, many of the changes reflected in the Revised Proposed Order – such as the relevant evidentiary standard and the scope of the off-site contamination that the Regional Board directs the parties to address – permeate the entire Revised Proposed Order, such that it would be impractical for Fox to merely incorporate its prior comments by reference. In addition, the extensive changes made to the 2015 Proposed Order means that the references and citations to the 2015 Proposed Order in the Fox's February 2016 Comments may not be accurate as applied to the Revised Proposed Order. Finally, Fox must have the opportunity to preserve its rights in the event of an appeal, and it simply cannot take the chance that the State Water Quality Control Board ("State Water Board") or a reviewing court would conclude that Fox has waived any objections not raised specifically in the context of the Revised Proposed Order. Accordingly, Fox addresses the Revised Proposed Order in its entirety below, and respectfully requests the opportunity to present its arguments to the Regional Board in person in an appropriate proceeding.

## **I. EXECUTIVE SUMMARY**

In September 2015, the Regional Board issued the 2015 Proposed Order, which, if adopted, would have required Fox and the current owner of the South Y Site, Seven Springs Limited Partnership ("Seven Springs"), to address chlorinated hydrocarbon contamination, including perchloroethylene ("PCE") at and in the vicinity of the South Y Site, including contamination in an off-site area bounded by Eloise Avenue to the north, Dunlap Drive to the east, Glorene Avenue to the south and 7<sup>th</sup> Street to the west. In response to comments submitted on the 2015 Proposed Order by multiple parties, including Fox, the Regional Board published the Revised Proposed Order for public comment on August 9, 2016. The Revised Proposed Order significantly revises the 2015 Proposed Order, by, among other things, naming an additional party as a discharger, extending the off-site contamination area to be investigated and remediated to the Tahoe Key Water Property Owners Association's Well No. 2, adding a new requirement to install and sample on a quarterly basis an unspecified number of new wells in order to define the chlorinated hydrocarbon plume, and providing a revised rationale for holding Fox liable as a discharger. The expanded off-site contamination area encompasses PCE detected in:

- Monitoring wells at the Hurzel property located at 949 Emerald Bay Road,
- LTLW monitoring well OS-1, which is adjacent to the Hurzel property,
- Monitoring wells 4A/4B that were installed next to 933 Eloise Avenue in connection with investigation and remediation of a petroleum hydrocarbon release at 913 Emerald Bay Road, and

- Stanford Alumni Association Sierra Camp and Schneeweis domestic supply wells located at 883 Eloise Avenue and 903 Eloise Avenue, respectively,
- Lukins Brothers Well Company, Inc. ("LBWC") Well No. 4,
- Tahoe Keys Property Owners Association ("TKPOA") Well No. 2.

Throughout these comments, Fox refers to this area as the "Off-Site Contamination."

The Revised Proposed Order alleges that Fox is liable for the Off-Site Contamination as a discharger under Section 13304 of the Water Code because it is the corporate successor to Century Properties Equity Fund 73 ("Century 73"). In turn, the Regional Board alleges that Century 73 is a discharger under Section 13304 because it allegedly "caused or permitted" a discharge of PCE at the South Y Site while it owned the site for a period in the 1970s.

There are multiple reasons why the Regional Board's allegations that Fox is responsible for the Off-Site Contamination are unfounded. First, the Regional Board has failed to establish that Century 73 has "caused or permitted" a discharge because it is unable to show, as State Water Board precedents require, (1) that a discharge occurred during Century 73's ownership of the South Y Site, (2) that Century 73 knew or should have known of the discharge, or (3) that Century 73 could have prevented the discharge. Second, as to Fox's liability, the Regional Board has not demonstrated that Fox is the corporate successor to Century 73.

Even if the Regional Board could make these showings, Fox still would not be liable for the off-site work under the Revised Proposed Order because the Regional Board has not shown that the Off-Site Contamination migrated from the South Y Site. First, the distributions of PCE in soil and groundwater do not support the Regional Board's conclusions that the South Y Site is a source of the Off-Site Contamination. Contamination at the South Y Site has been elevated in the shallow zone and much lower in the middle zone. By contrast, off-site contaminant distributions consist of higher PCE concentrations in middle zone groundwater than shallow zone groundwater. Second, the on-site remediation system installed by Seven Springs and Fox has been effective in removing PCE and related chlorinated hydrocarbons from soil and groundwater before they migrate off-site. Third, groundwater data indicate that any releases from the South Y Site are not impacting the off-site Hurzel property or monitoring well OS-1 because groundwater from the South Y Site does not flow towards either location.

Although it contends that the South Y Site is a source of the Off-Site Contamination in large part because it believes there are no other known sources of PCE in the vicinity, our review found that the Regional Board has not sufficiently evaluated other possible sources of the Off-Site Contamination. These sources include the Napa/Former Lakeside Auto Store facility, the former Big O Tires Store facility, and the former South Y Exxon service station (current Transit Terminal). PCE has been detected at these and other sites in the area, but the Regional Board has failed to adequately investigate whether these sources have contributed to the contamination in the area. In the absence of an adequate investigation, the Regional Board cannot properly eliminate these facilities as potential sources of the contamination and attribute all of the Off-Site Contamination to releases from the LTLW.

Based on our review, we also conclude that the Regional Board should continue to name Bobby Page's as a discharger. The current Bobby Page's has held itself out as a successor to the former LTLW tenant of the same name and has failed to provide documentation to support its current assertion that it is unrelated to that entity. The Regional Board also should revise the Revised Proposed Order to name Connolly Development as a discharger. As indicated below, Fox has located potential successors to that entity's liability for the LTLW contamination.

Finally, regardless of these liability issues, the work required by the Revised Proposed Order is not necessary because Seven Springs and Fox have been remediating the South Y Site since 2009, and that remediation has been effective in reducing the on-site PCE concentrations and containing the contamination within the boundaries of the South Y Site.

## II. FACTUAL BACKGROUND

### A. Site History

Century 73 purchased the South Y shopping center property in Lake Tahoe, California, including what is now known as the Lake Tahoe Laundry Works, in September 1974 from Connolly Development, Inc., ("Connolly Development") and owned the South Y Site until it sold it to Interland Communities, Inc. ("Interland") in December 1985. <sup>3/</sup> Upon acquiring the South Y Site, Century 73 immediately leased the South Y Site back to Connolly Development for one year, with an option by Connolly Development to extend the lease for two additional one year periods. <sup>4/</sup> It is not known whether Connolly Development ever exercised the option.

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

The Regional Board began investigating properties in the vicinity of the South Y Site following the discovery of contamination in drinking water wells in the late 1980s. In November 1991, the Regional Board identified the South Y Site as a source of PCE contamination, allegedly stemming from the historic operation of the laundromat at the South Y Site. <sup>7/</sup> According to the Revised Proposed Order, the suspected source of the contamination at the South Y Site is a coin-operated dry cleaning machine and the hose used to transfer solvent chemicals from delivery trucks in the

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<sup>3/</sup> See Agreement for Purchase and Sale of South "Y" Shopping Center, between Century 73 and Interland (Dec. 19, 1985) (Exhibit D); Grant Deed from Connolly Development (Grantor) to Century 73 (Grantee) (Sept. 11, 1974) (Exhibit E).

<sup>4/</sup> Memorandum of Lease Between Century 73 and Connolly Development (Sept. 11, 1974) (Exhibit F).

<sup>5/</sup> See Memorandum from A. Bassak, Esq. to H. Singer and L. Dernback (Regional Board), South Y Center Chain of Title and Laundry Lease History (Mar. 11, 2004) (Exhibit G).

<sup>6/</sup> See *id.*; Notice to Creditors, Escrow No. 203-96154 (Feb. 5, 1998) (Exhibit H).

<sup>7/</sup> See Regional Board, Status Report on the "Y" Investigation in South Lake Tahoe (Sept. 4-5, 1997) (Exhibit I); Letter from E. Garfinkle (Dreher, Garfinkle & Watson) to J. Short (Regional Board), Tahoe Y Shopping Center, South Lake Tahoe, El Dorado County, APNs: 023-421-011 and 021 (Jan. 10, 1992) (Exhibit J).

parking lot. See Revised Proposed Order at 3 ¶¶ 7. The Revised Proposed Order alleges that the machine was located at the South Y Site from at least 1972 until about 1979. See *id.* A May 1972 lease between Connolly Development and Robert and Bernice Prupas identified authorized uses of the premises as “[d]ry cleaning and coin-operated laundry, and purposes related thereto.” 8/ According to information from the deposition of Mary Louise Baisley, a subsequent LTLW tenant, the coin-operated machine was present at the South Y Site when Mrs. Baisley and her husband purchased the laundry business in July 1976 and was removed three and a half to four years later. 9/

In 2007, the current owner of the South Y Site, Seven Springs, sued Fox in federal court under the federal Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) and under an indemnity provision in the purchase agreement between Century 73 and Interland. 10/ Fox filed a Motion to Dismiss, which the court granted in part and denied in part. 11/ In the same action, Fox filed claims against a number of third parties, including Connolly Development, Interland, Leid’s Inc., and a number of former LTLW tenants, but never pursued these claims, as it eventually reached a confidential settlement agreement with its insurance company and Seven Springs. 12/

#### **B. Remediation of the LTLW Site**

Following the settlement with Seven Springs, Fox and Seven Springs jointly retained a consultant, Environmental Engineering, Consulting and Remediation, Inc. (“E<sub>2</sub>C”), to conduct the remediation that the Regional Board required. In June 2009, E<sub>2</sub>C submitted to the Regional Board an Interim Remedial Action Workplan (“IRAP”) that proposed to install a soil vapor extraction/groundwater air sparging system (“SVE/GASS”) to address volatile organic compounds (“VOCs”) in vadose zone soil and shallow zone groundwater at the South Y Site. 13/ E<sub>2</sub>C amended the plan in August 2009 14/

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8/ Lease Between Landlord Connolly Development and Tenants the Prupas (May 24, 1972) (“May 1972 Lease”) (Exhibit K) § 7.

9/ See Transcript of Deposition of Mary Louise Baisley, *Seven Springs Ltd. P’ship v. Fox Capital Mgmt. Corp.* (E.D. CA, 2007) (No. 2:07-00412-LKK-GGH) (“Baisley Deposition”) (Exhibit L) at 44-46.

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

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

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

13/ E<sub>2</sub>C, Interim Remedial Action Workplan for SZA Groundwater Investigation, SZA Groundwater Monitoring, Interim Remedial Action Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (June 4, 2009) (“IRAP”) (Exhibit P).

14/ E<sub>2</sub>C, Amendment to Interim Remedial Action Workplan for SZA Groundwater Investigation, SZA Groundwater Monitoring, Interim Remedial Action Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 26, 2009) (“IRAP Addendum”) (Exhibit Q).

and the Regional Board approved it on September 1, 2009. 15/ Operation of the SVE/GASS began in April 2010. The system consists of:

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

The system was judged effective and E<sub>2</sub>C recommended its continued operation. 16/ The Regional Board approved the SVE/GASS as the final remedy for the South Y Site in 2013. 17/ Quarterly sampling events show PCE concentrations in groundwater have reduced by several orders of magnitude on-site. The most recent sampling conducted in June 2016 showed that only two on-site wells (LW-MW-1S and LW-MW-5S) contained PCE above the maximum contaminant level ("MCL") of 5 micrograms per liter ("µg/L"). 18/ Off-site monitoring well OS-1 contained PCE at 1.5 µg/L, which is below the MCL. 19/

PCE concentrations in well LW-MW-1S rose from 35 µg/L in March 2016 to 110 µg/L in June 2016. 20/ This increase may have been related to the continued rise in groundwater levels, which may have mobilized pockets of contaminants at the suspected source area near LW-MW-1S. PCE concentrations in well LW-MW-5S have sharply decreased from 180 µg/L in March 2016 to 40 µg/L in June 2016, possibly as a result of the return of the SVE/GASS wells around LW-MW-5S to service on May 20, 2016. 21/

The current PCE concentrations are substantially lower than the maximum PCE concentration of 1,400 µg/L detected in June 2010, which demonstrates that the SVE/GASS has been effective in removing PCE mass from the subsurface and improving groundwater quality at the South Y Site.

### C. Off-Site Activities

While the on-site remediation continued, in late 2014 and early 2015 the Regional Board tested a series of domestic wells, some of which were located nearly two thousand feet away from the South

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

16/ E<sub>2</sub>C, Interim Remedial System Installation/Pilot Testing Report of Findings and Draft Remedial Action Plan for Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 12, 2010) ("RAP") (Exhibit S) at 45.

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

18/ E<sub>2</sub>C, Summary of Second Quarter 2016 Groundwater Monitoring Data (Exhibit U) Table 1.

19/ *Id.*

20/ *Id.*, Table 3.

21/ *Id.*

Y Site, and discovered PCE contamination in two of them. 22/ Pursuant to a stipulated agreement with the Regional Board, without admitting liability, Fox and Seven Springs agreed to provide alternative water supply to the affected landowners. 23/

In the fall of 2015, the Regional Board sponsored an off-site groundwater investigation. 24/ The investigation found that there could be multiple potential sources for contamination in LBWC wells No. 2 and No 5. 25/

On September 15, 2015, the Regional Board published the 2015 Proposed Order, which would have required Fox and Seven Springs to undertake supplemental remedial measures to contain contamination on the South Y Site and to investigate, clean up, and abate off-site contamination allegedly emanating from the South Y Site. The Regional Board published the Revised Proposed Order on August 9, 2016, significantly revising the 2015 Proposed Order by, among other things, expanding the off-site contamination area to be studied and remediated.

### III. STANDARD OF PROOF

In the Revised Proposed Order, the Regional Board acknowledges that it must prove its claim by the "preponderance of the evidence." See Revised Proposed Order, App. B at 1-3. In other words, the Regional Board accepts that for Fox to be considered a "discharger," the Regional Board must show that "the greater and superior weight of evidence" supports its allegations. *People v. Miller*, 171 Cal. 649, 651 (Cal. 1916).

The preponderance of the evidence standard is a more demanding standard of proof than the substantial evidence standard that Fox cited in the Fox's February 2016 Comments. See Fox's February 2016 Comments at 6; see *M.S. v. R.D.*, No. G049068, 2015 WL 5697777, at \*9 (Cal. App. 2015) (citing the Welfare code which references the substantial evidence standard as a lesser burden of proof than the preponderance of the evidence standard); *Ephraim v. Pacific Bank*, 149 Cal. 222, 223 (Cal. 1906) (finding that upon review, the appeals court needed to find substantial evidence to support the verdict and did not need to meet the more demanding preponderance of the evidence standard). For the reasons set forth below, the Regional Board has not met its burden under either standard.

### IV. THE REGIONAL BOARD HAS NOT SHOWN THAT FOX IS A "DISCHARGER" UNDER THE WATER CODE

Section 13304(a) of the Water Code authorizes a regional water quality control board to issue a cleanup and abatement order to "[a]ny person . . . who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will

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

23/ See *id.* ¶¶ 10-13.

24/ See URS Corporation Americas, Final PCE Investigation Report, South Lake Tahoe, California (Jan. 19, 2016) ("URS Final Report") (Exhibit W).

25/ See *id.* at 7-8.

be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance. . . ." Cal. Water Code § 13304(a). In order to hold Fox liable as a discharger, the Regional Board alleges that Century 73 caused or permitted a discharge at the LTLW, and that Fox is the corporate successor to Century 73. See Revised Proposed Order at 5 ¶ 16; App. B at 3. As set forth below, the Regional Board has failed to adequately support either of these allegations.

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

The Regional Board cannot seriously allege that Century 73 actually caused a discharge at the South Y Site. Century 73 did not operate the LTLW and had no responsibility for handling PCE at the site. Instead, the Regional Board maintains that Century 73 has "permitted" a discharge under Water Code Section 13304(a). See Revised Proposed Order at 5, ¶ 16. However, under State Water Board precedent, liability under Section 13304(a) arises as to former owners and landlords *only* if it can be demonstrated that the former owner/landlord:

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

See *In re Stuart*, Cal. State Water Res. Control Bd. Order No. WQ 86-15, 1986 WL 25522 at n.3 (Sept. 18, 1986); *In re Exxon Co.*, Cal. State Water Res. Control Bd. Order No. WQ 85-7, 1985 WL 20026 at \*2-6 (Aug. 22, 1985). As explained below, the Regional Board has failed to meet the standard of proof with respect to all three of these criteria and has thus failed to show that Century 73 caused or permitted a discharge within the meaning of Section 13304(a).

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

To establish that Century 73 caused or permitted a discharge, the Regional Board must prove that a release occurred while Century 73 owned the South Y Site. See *In re Exxon*, 1986 WL 20026 at \*5-6. Here, the Regional Board has failed to produce persuasive evidence of the timing of the release, and instead relies on the mere *assumption* that a release would have occurred during Century 73's ownership of the South Y Site because Century 73 "owned and leased the site for more than ten consecutive years" and a coin-operated dry cleaning machine existed on the site during that time. See Revised Proposed Order, App. B at 5. In addition, in response to Fox's well-founded criticism that the Regional Board had failed to support its allegations in the 2015 Proposed Order, see Fox's February 2016 Comments at 7-8, the Regional Board has now come forward with a truncated technical analysis of groundwater flow rates, which allegedly supports its assertion that PCE was discharged from the LTLW during Century 73's ownership. Below, we address both of the Regional Board's arguments

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



At the outset, it is important to recognize that the Revised Proposed Order incorrectly asserts that “[d]irect evidence from percipient witnesses is not available” and that “there is little to no direct evidence such as testimony from percipient witnesses who were present during the time of operation of the coin operated dry cleaning machine and could potentially provide supporting evidence regarding discharges that occurred.” See Revised Proposed Order, App. B at 5, 7. Surprisingly, the Regional Board has chosen to completely ignore the direct, relevant and reliable evidence that Fox provided to the Regional Board that no release occurred during Century 73’s ownership – the testimony of Century 73’s former tenant Mary Louise Baisley. Mrs. Baisley’s testimony directly contradicts the Regional Board’s unsubstantiated assertions and indicates that no spill of PCE occurred between July 1976 and 1979/1980 when the Regional Board indicates that the coin-operated dry cleaning machine was removed from the South Y Site. In her April 2007 deposition, Mrs. Baisley declared under oath that the coin-operated machine was used infrequently during her tenure, and thus the solvent used in the machine did not need to be replaced frequently. Indeed, Mrs. Baisley testified that delivery trucks delivered solvent to the facility only four or so times during the entire period of the Baisleys’ ownership of the laundry business. 26/ Mrs. Baisley further declared that she was at the LTLW facility nearly every day and neither witnessed nor heard her husband describe any spill or leak during their ownership. 27/

Nothing in the Revised Proposed Order explains the Regional Board’s decision to completely ignore Mrs. Baisley’s testimony on this critical point. In fact, the Regional Board cites other aspects of Mrs. Baisley’s testimony no less than *eight* times, so it is clear that the Regional Board believes her to be a reliable witness. See Revised Proposed Order at 3 ¶ 7; 5 ¶ 15; App. B at 5; App. B at 6.

The alleged “evidence” upon which the Regional Board relies in lieu of Mrs. Baisley’s sworn testimony consists entirely of unsupported conjecture. First, as noted above, the Regional Board argues that a spill must have occurred during Century 73’s ownership of the South Y Site because Century 73 owned and leased the South Y Site for “more than ten consecutive years.” Revised Proposed Order, App. B at 5. While Century 73 did own the South Y Site for more than a decade, the Regional Board’s statement is misleading because it is also true – and uncontested – that a coin-operated dry-cleaning machine operated at the Site for less than half of that period. 28/

Second, the Regional Board seems to believe that the mere use of PCE at the LTLW during Century 73’s ownership of the South Y Site automatically establishes that PCE was *discharged* into the environment during Century 73’s ownership. See Revised Proposed Order at 5, ¶ 16. This assumption is unsupported by any evidence in the record and flies in the face of the Regional Board’s apparent conclusion that multiple facilities used PCE in the South Y area without experiencing a PCE release. 29/

Third, the Regional Board’s analysis overlooks the fact that the coin-operated laundry operated for almost two and a half years *before* Century 73 took title to the South Y Site. The May 1972 Lease

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26/ See Baisley Deposition (Exhibit L) at 135.

27/ *Id.* at 56-62, 101, 136-37.

28/ *Id.* at 45.

29/ See C. Hutto, URS Corporation Americas (“URS”), PCE Investigation, South Lake Tahoe, Summary of Findings (Feb. 5, 2016) (Exhibit X), slide 15 (conceding that multiple PCE *users* operated in the South Y area); Revised Proposed Order at 6-7, ¶ 20 (lack of other significant *sources* of PCE).

between Connolly Development as the landlord, and Robert and Berniece Prupas, as the tenants, indicates that the Prupas leased the LTLW to operate a “[d]ry cleaning and coin-operated laundry, and purposes related thereto.” 30/ Thus, a discharge in the parking lot during the transfer of solvents from delivery trucks could well have occurred between May 1972, when a laundromat first operated at the South Y Site, and September 1974, before Century 73 acquired the South Y Site. In fact, there is un-refuted evidence that the asphalt parking lot at the South Y Site was not installed until 1974. 31/ Accordingly, a surficial spill prior to that period (i.e., May 1972-September 1974), when the ground was not paved, was more likely to reach the subsurface than one during Century 73’s ownership of the Site after 1974.

Fourth, the Regional Board’s related argument – that a discharge of PCE from the LTLW must have occurred during Century 73’s ownership of the South Y Site because maintenance activities at the LTLW “often led to careless spills of PCE from the hose and/or truck” – is pure fiction. See Revised Proposed Order, App. B at 4. Astonishingly, the primary basis for the Regional Board’s accusation is not site-specific data nor sworn testimony from those who worked at the LTLW during the 1970s. Instead, the Regional Board relies on a compliance order that the State Water Board issued in 1986, years after the coin-operated laundry ceased operating at the LTLW, with respect to a large chemical distribution facility. In *In re Stinnes-Western Chem. Corp.*, Cal. State Water Res. Control Bd. Order No. WQ 86-16, 1986 WL 25523 at \*6-7 (Sept. 18, 1986), the State Water Board based its conclusions upon sworn declarations from facility employees regarding poor chemical handling practices that caused discharges into the environment at a chemical facility that handled “[l]arge amounts of chemicals” stored in numerous 6,000 and 7,500 gallon underground and aboveground storage tanks. The Regional Board’s assertion that chemical handling practices at this large chemical facility were “likely not entirely different from the re-filling of solvents for a coin-operated dry cleaning unit” at a small dry-cleaning business that used minimal amounts of solvents is not reasonable on its face. See Revised Proposed Order, App. B at 5. Moreover, had the Regional Board consulted site-specific data and testimony instead of a State Water Board order related to chemical distribution facilities, it would have found that the available evidence entirely contradicts its contentions. Mrs. Baisley’s testimony about the absence of spills during her tenure and her statements regarding the infrequency of solvent deliveries indicate that it is *not* reasonable to assume that spills occurred during Century 73’s ownership of the South Y Site. 32/ Similarly, as discussed in more detail in Section VI.A.1 below, there is no evidence of significant releases of PCE in shallow soils in the LTLW building where the dry-cleaning equipment operated. If the Regional Board were correct, and the chemical handling practices at the LTLW were like those at the Western Chemical facility at issue in the State Water Board’s order, the results of investigations in the LTLW building would have shown highly contaminated shallow soils, instead of eight non-detects and a single detection well below any cleanup standard. See Section VI.A, *infra*.

Perhaps because it recognizes that it has failed to carry its evidentiary burden on the key issue of the timing of discharges at the South Y Site, the Regional Board attempts to reverse the burden of proof. It argues that “[t]here is no evidence in the record of maintenance or testing of the [solvent]

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30/ See May 1972 Lease (Exhibit K), ¶ 7.1.

31/ See AMB Investments, Inc., South Tahoe “Y” Shopping Center Post Closing Memorandum (Apr. 22, 1986) (“Post-Closing Memorandum”) included as Exhibit No. 11 to Baisley Deposition (Exhibit L).

32/ See Baisley Deposition (Exhibit L) at 100, 135-137.

drum or connected hoses” and that “[a]bsent evidence to the contrary, the facility investigations of water quality data support the Prosecution Team’s contention.” Revised Proposed Order, App. B at 6, n. 9. In other words, the Regional Board’s position is that the fact that a small business may not have kept maintenance records for 35 years after it ceased operating establishes, by a preponderance of the evidence, that maintenance practices during historic operations must have been poor. There is simply no basis in California law for this untenable position, and, of course, the Regional Board cites none.

The Regional Board’s complaints about the absence of evidence are especially disappointing because the Regional Board has not made a serious attempt to gather the very evidence whose absence it laments. For example, the Regional Board has not attempted to identify or interview relevant witnesses, required all relevant parties to submit site histories, or even requested facility maintenance records. Kerstin Hakansson, a tenant at the LTLW between 1973 and 1976, is still alive and has been located by the Regional Board, *see* Revised Proposed Order at 5 ¶¶ 16, 33/ yet there is no indication that the Regional Board has ever required her to submit relevant information or even attempted to interview her. Under these circumstances, the Regional Board cannot assume that releases of PCE occurred during Century 73’s ownership of the South Y Site.

**b. The Regional Board’s Truncated Analysis of Contaminant Migration Rates Does Not Support its Conclusions**

Given the weakness of its arguments and the dearth of evidence to support its conclusions, the Regional Board has now attempted, at the eleventh hour, to buttress its conclusions by including in the Revised Proposed Order a truncated technical analysis that it argues shows that contamination from LTLW “could have migrated 13,100 feet during the past 36 years since 1979.” *See* Revised Proposed Order at 3 ¶ 7.

Solute transport calculations presented by the Regional Board fail to consider PCE retardation and assume the chemical travels at the same velocity as groundwater. Revised Proposed Order at 6-8 ¶¶ 24, and App. A at 3 ¶ 4. Retardation involves adsorption of a chemical onto sediments as the chemical dissolved in groundwater passes through sediment pore spaces. Chlorinated solvents, such as PCE, move slower than groundwater due to retardation. 34/

Retardation effects and solvent releases at other properties in the South Y area complicate precise estimation of PCE transport rates. Consequently, the year that the release occurred at LTLW cannot be deduced by how far groundwater could have traveled over a given period. Nor can PCE in LBWC and TKPOA municipal supply wells be assigned to the South Y Site simply because groundwater could have reached these wells in 20 to 36 years, as the Regional Board contends. *See* Revised Proposed Order, App. B at 8. Certainly, the fate and transport analysis is insufficiently precise to determine whether a release occurred at the LTLW in 1972, while Connolly Development owned the South Y Site, or in late 1974, after Century 73 owned it. The analysis is further

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33/ The Regional Board has apparently known of Ms. Hakansson’s whereabouts for some time. *See, e.g.,* Letter from H. Singer (Regional Board) to J. Meredith, SSR Realty Advisors, R and M. Baisley, R. Prupas, K. and K. Hakansson, re Request for Workplan for Supplemental Site Investigation at the Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Apr. 12, 2004) (Exhibit Y).

34/ Freeze, R. and J. Cherry, *Groundwater*, Prentice-Hall, Inc. (1979) (Exhibit Z) at 403.

complicated by the fact that as explained in Section VI.D herein, numerous sites where PCE may have been released exist between the LTLW, and affected municipal supply wells. As a result, the fate and transport analysis cannot be used to determine whether impacts at the municipal supply wells were caused by a plume that traveled a shorter distance over a shorter period or a longer distance from a more distant location (like the LTLW) over a longer period.

c. The Regional Board's Approach Contravenes Established State Water Board Precedent

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

For example, in *In re Stinnes-Western*, 1986 WL 25523 at \*3-8, the State Water Board affirmed a cleanup and abatement order issued by a regional board to the current owner of a contaminated site and the successor-in-interest of the former owner of the site based on eyewitness declarations about the timing of a PCE spill and a technical calculation of solvent-plume velocity to determine the timeframe in which a discharge occurred.

Similarly, in *In re Wenwest*, Cal. State Water Res. Control Bd. Order No. WQ 92-13, 1992 WL 12622783 at \*2 (Oct. 22, 1992), the State Water Board upheld a regional board's finding that discharges occurred while the site was owned by a former owner based on technical reports that, "considering the soil in the area and the distance the gasoline has travelled to reach the neighbor's well, discharges took place at least 12 years before it was detected by the neighbor," placing the discharge well within the period in which the site was owned by the former owner. Importantly, in *In re Wenwest*, the State Water Board determined that the technical reports produced by the regional board were sufficient by themselves to establish that the former owner was a discharger because the former owner did not produce any evidence whatsoever that would rebut the regional board's assertions. *See id.*

In *In re Sanmina Corp.*, Cal. State Water Res. Control Bd. Order No. WQ 93-14, 1993 WL 456494 at \*4 (Oct. 19, 1993), the State Water Board found evidence sufficient to find the petitioner—a former tenant at the site—caused or permitted a discharge where the petitioner operated a manufacturing business in which VOCs were typically used, documentary and testimonial evidence established that the petitioner stored or used VOCs, such compounds were detected beneath the petitioner's concrete "wet floor" at the facility, the petitioner had a history of repeated spills, and the contamination could not be attributed to an upgradient source. *See also In re Spencer Rental Serv.*,

Cal. State Water Res. Control Bd. Order No. WQ 87-1, 1987 WL 1411947 (Jan. 22, 1987) (lessee of contaminated site properly named as discharger despite claims that the contamination pre-dated his tenancy where contamination was detected directly beneath gasoline tank used by lessee, evidence showed that no such contamination was present when the tank was installed, and monitoring data were consistent with a more recent spill).

Unlike the situations addressed by State Water Board precedents, in this case, the Regional Board has offered no direct evidence and only a rudimentary and flawed technical analysis in support of its conclusion that PCE was released during Century 73's ownership. The only direct evidence from the time period, Mrs. Baisley's sworn testimony, casts serious doubt on the Regional Board's allegations, and the technical analysis does not support the Regional Board's contentions.

The Regional Board's conclusion in this case is not only at odds with existing State Water Board precedent, it creates a new (and ill-considered) precedent, as it suggests that every company that owned commercial or industrial property is automatically liable under Section 13304 if it or its tenants used chemicals that are later found on the property, regardless of any evidence of a spill during their ownership. Such a broad threat of liability contradicts the express terms of the statute, which requires some culpability – in the form of evidence that prior owners “caused or permitted” a discharge – before they can be held liable. 35/

## **2. The Regional Board Has Not Produced Convincing Evidence That Century 73 Knew or Should Have Known of a Discharge**

Even if the Regional Board concludes, despite the lack of supporting evidence, that a discharge at the South Y Site occurred during Century 73's ownership of the South Y Site, the Regional Board still must make an even more difficult showing, namely that Century 73 *knew or should have known* of the discharge while Century 73 owned the South Y Site. See *In re Stuart*, 1986 WL 25522 at n.3 (liability may attach under Section 13304 without proof of actual knowledge of contamination because the risk of leaking underground storage tanks was common knowledge in the oil industry in 1986); *In re Logsdon*, Cal. State Water Res. Control Bd. Order No. WQ 84-6, 1984 WL 19063 at \*5 (July 19, 1984) (former landowners caused or permitted a tenant's discharge where they had “(1) actual knowledge of the dangerous condition and (2) an opportunity to obviate it.”); see also *In re U.S. Dept. of Ag.*, Cal. State Water Res. Control Bd. Order No. WQ 87-5, 1987 WL 54537 at n.1 (Apr. 16, 1987) (landowners are liable without actual knowledge of a discharge “where the activity permitted on the property might be expected, by a reasonable and prudent landlord, to result in a discharge.”). The theory behind the knowledge requirement uniformly recognized by these precedents is that the statutory predicate for imposing liability—i.e., that the landlord has “permitted” a nuisance—is met only if the landlord knows or should know that the nuisance exists or is

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35/ Surprisingly, the Regional Board seems to have more sympathy for a current owner who purchased property in the 1990s, when the environmental risks of dry cleaning were well-established and could have been fully investigated, remediated and factored into the purchase price, compared to a prior owner required to bear risks that were not known during its ownership and to perform a cleanup of property that may enhance the value of the current owner's property. See Revised Proposed Order, App. B. at 8. To the extent “public policy considerations,” see *id.*, play a role here, the equities lie with prior owners such as Century 73 and their alleged successors, and not with current owners.

threatened, has the authority to prevent it, and chooses not to. See *In re Stuart*, 1986 WL 25522 at \*3.

In *In re Stuart*, the State Water Board held that Section 13304's knowledge requirement may be met by landlords who have "general knowledge of the operation and the normal dangers common to it." *Id.* at n. 3. The Regional Board has not established that Century 73 was aware of the normal dangers posed by a dry cleaner or that such dangers were even known at the time. According to the State Water Board in *In re Stuart*, the normal danger common to the tenant's gas-station operation was that underground storage tanks often leak. *Id.* On that point, the State Water Board emphasized that "[p]roblems of leaking underground tanks have become common knowledge, particularly in the oil business, in recent years and legislative responses (e.g. Health and Safety Code § 25280 *et seq.*) have called further attention to the issue." *Id.* Thus, the critical ruling by the State Water Board in *In re Stuart* was that a petroleum-company landlord can be found to have "permitted" its tenant gas-station operator's discharges where such discharges were common knowledge in the industry in which both companies operated. Importantly, the State Water Board did not impose liability on the petroleum company because it knew that its tenant operated a gas station at the site, that the tenant handled gasoline at the site, that gasoline required careful handling and containment, or because the petroleum company should have somehow inferred from the fact that gasoline is flammable or otherwise dangerous that it could be discharged into the environment. Rather, the petroleum company was found liable because it was in the oil business and it was common knowledge at the time the petroleum company leased the property that gasoline was often discharged from leaking underground storage tanks. 36/

None of the factors on which the State Water Board and California courts have relied in prior precedents to conclude that a landowner or landlord should have known of its tenant's discharges are present in this case. Unlike in *In re Stuart*, there is simply no evidence, let alone persuasive evidence, that Century 73, a real estate company that was not in the dry-cleaning business, should have known based on common knowledge in the 1970s that PCE was likely to be released into the environment. On the contrary, numerous sources confirm that this hazard was not discovered by regulators until the late 1980s, after Century 73 sold the South Y Site. The first cleanup and abatement order published by the State Water Board that addresses groundwater contamination caused by a dry cleaner was issued in 1989, upholding a 1988 regional board order. See *In re Spitzer*, Cal. State Water Res. Control Bd. Order No. WQ 89-8, 1989 WL 97148 at \*9-10 (May 16, 1989). A publication of the State Coalition for Remediation of Drycleaners also suggests that groundwater contamination from dry cleaning operations was first discovered in the late 1980s. 37/ Indeed, the publication cited by the Regional Board regarding disposal practices at dry cleaners was not published until 2001. See Revised Proposed Order, App. B. at 5 (citing K. Cardamone,

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36/ A year after *In re Stuart*, the State Water Board again explained in *In re United States Department of Agriculture* that "a landowner can be held accountable, even without actual knowledge, where the activity permitted on the property might be expected, by a reasonable and prudent landlord, to result in a discharge." 1987 WL 54537 at n.1. Reasonably expecting a tenant's activities to result in a discharge is not the same, of course, as simply knowing generally of the tenant's activities. Similarly, knowing that a tenant is using a chemical in its business is not the same as knowing that the tenant has spilled or discharged that chemical into groundwater.

37/ See State Coalition for Remediation of Drycleaners, "A Chronology of Historical Developments in Drycleaning" (Nov. 2007) (Exhibit AA) at 4.

Drycleaner Remediation Programs: An Overview and Case Studies (2001) at 2-3, available at [https://drycleancoalition.org/download/dryclean\\_cardamone.pdf](https://drycleancoalition.org/download/dryclean_cardamone.pdf)). It is not credible to suggest, as the Regional Board does, that as a real estate owner, Century 73 would or should have known about the allegedly poor chemical handling practices at dry cleaners, that it would or should have known about the allegedly poor chemical handling practices at large chemical distribution facilities, or that it would or should have had any reason to connect the latter with the former.

The Regional Board's theory of liability seems to be that Century 73 knew or should have known of releases of PCE because it knew that a dry cleaner operated at the South Y Site and dry cleaners always leak. As discussed above, Mrs. Bailey's sworn testimony regarding the infrequency of solvent deliveries and the absence of any solvent spills, the soil test data from beneath the LTLW building, and the Regional Board's own conclusions regarding other dry cleaners in the area, indicate that the Regional Board's logic is flawed and its assumptions unfounded.

Perhaps because it recognizes that it has failed to meet its obligation to supply convincing evidence, the Regional Board implies that it should be excused from that obligation on the grounds that "[t]he realities of legacy cleanup sites, such as the Lake Tahoe Laundry Works Facility, present a challenge to obtaining evidence related to specific discharge events." Revised Proposed Order, App. B at 7. The Regional Board complains that "[b]ecause the time period of operating the coin operated dry cleaning machine was a number of years ago (more than thirty-five years ago), key witnesses have passed away and relevant documents cannot be found." *Id.* But the dearth of evidence in this case is largely of the Regional Board's own making. By its own account, PCE contamination was first detected in the vicinity of the Site in the 1980s. In the 30 years since this issue first surfaced, there is no evidence that the Regional Board has interviewed a single witness or used its enforcement authority under Health and Safety Code Section 13267 to require any of the current or former owners or operators of the LTLW to provide a site history or other relevant documents. As previously mentioned, the Regional Board has apparently located Ms. Hakansson, but there is no indication that it has made any effort to interview her about spills that may have occurred during her operation of the LTLW. Having declined to undertake these basic investigative measures, the Regional Board cannot now seek to impose liability based on a conjecture and assumptions rather than substantial, persuasive evidence.

For the foregoing reasons, there is no basis for concluding that Century 73 should have known of the discharges from the dry cleaner at the time Century 73 owned the South Y Site. There is no evidence that Century 73 was or should have been present on-site to observe everyday operations, let alone to observe what could well have been a one-time spill in the parking lot. Moreover, contamination was not a hazard commonly associated with dry cleaners until years after the coin-operated dry cleaning machine ceased operating at the South Y Site. Therefore, based on State Water Board precedent, the Regional Board cannot impute today's general knowledge of dry-cleaner hazards to a 1970s real estate company such as Century 73.

### **3. The Regional Board Has Not Demonstrated that Century 73 Could Have Prevented a Discharge**

In determining whether a landlord has the legal authority to prevent a tenant's discharge of waste, the State Water Board has focused on whether the terms of the relevant lease authorized the

landlord to terminate the tenancy, enter the premises, or otherwise remediate the contamination. See, e.g., *In re Logsdon*, 1984 WL 19063 at \*4-6 (lease authorized landlord to re-enter the premises if tenants violated lease provisions prohibiting tenants from creating a nuisance on the premises and requiring tenants to abide by all laws); *In re Spitzer*, 1989 WL 97148 at \*4 (owners had right to regain possession of the site if the lessee failed to maintain the premises in good order and condition or failed to comply with all applicable laws). The Regional Board asserts that Century 73's failure to maintain the common areas created a conduit for PCE to soil and groundwater. See Revised Proposed Order, App. B at 4. However, in this case, the Regional Board has not demonstrated by a preponderance of the evidence that Century 73 had the legal ability to prevent any discharge that may have occurred and failed to exercise that ability.

First, in support of its conclusion, the Regional Board relies upon a 2007 complaint filed by Seven Springs against Fox in which Seven Springs asserted that Century 73 failed to properly maintain common areas at the South Y Site and that its failure caused PCE to enter the soil and groundwater through cracks in the pavement. See Revised Proposed Order, App. B at 4. As courts have uniformly recognized, unsubstantiated allegations in a complaint are not evidence. See, e.g., *United States v. Bailey*, 696 F.3d 794, 801 (9th Cir. 2012) ("We risk stating the obvious here: a complaint is merely an accusation of conduct and not, of course, proof that the conduct alleged occurred."); *Bushkin v. Deutsche Bank Nat'l Trust Co.*, No. B233529, 2012 WL 1868241, at \*n.6 (Cal. Ct. App. May 23, 2012) ("[petitioner's] unverified complaint is not evidence."). Thus, the first piece of "evidence" cited by the Regional Board has no probative value whatsoever.

Additionally, the Regional Board offers Mrs. Baisley's testimony and a "South Tahoe 'Y' Shopping Center Post Closing Memorandum," ("Post-Closing Memorandum") dated April 22, 1986, prepared after the sale of the South Y Site to Interland, as support for its contention that Century 73 did not properly maintain common areas such as sidewalks. See Revised Proposed Order, App. B at 6. However, the Revised Proposed Order (and the evidence) indicates that spills of PCE occurred in the parking lot, not on the sidewalk. See *id.*, App. B at 4. Neither Mrs. Baisley's testimony nor the Post-Closing Memorandum indicates that Century 73 failed to maintain the parking lot in the 1970s. Indeed, Mrs. Baisley was specifically asked about the condition of the parking lot, and testified that there was nothing wrong with its condition while she and her husband operated the LTLW. 38/ She further stated that Century 73 regularly maintained the parking lots at the property by sealing them "about every other year, or every year." 39/ Mrs. Baisley also testified that she did not recall any cracks or deficiencies in the parking lot and that the parking lot was in "typical" condition. 40/ The Post-Closing Memorandum, which was prepared in 1986, says nothing about the condition of the parking lot six or twelve years earlier (i.e., 1974 to 1979). Interestingly, however, the Post-Closing Memorandum confirms Mrs. Baisley's recollection that Century 73 regularly maintained the parking lot, noting that "[a]sphalt driveways and parking areas were installed in 1974. They were repaired, resurfaced and sealed every 2 years according to the maintenance engineer." 41/

Accordingly, Century 73's supposed failure to maintain sidewalks is irrelevant. And even if it were relevant, the Regional Board cannot rely only upon the portions of Mrs. Baisley's testimony that

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38/ See Baisley Deposition (Exhibit L) at 48-50.

39/ See *id.*

40/ See *id.* at 48-49.

41/ See Post Closing Memorandum included as Exhibit No. 11 to Baisley Deposition (Exhibit L).



allegedly support its contentions; if it finds her to be a credible witness, it also must accept her testimony that no spills occurred during her operation of the LTLW.

Finally, even if, as the Regional Board improperly alleges, Century 73's failure to maintain the parking area contributed to the PCE contamination, Century 73 could only be expected to prevent contamination it knew or should have known about. As explained above, Century 73 did not know or have reason to know of any PCE being discharged into the environment from LTLW's operations. In addition, unlike the landlord in the State Water Board's decision in *In re Spitzer*, Century 73 did not own the South Y Site at the time the contamination was discovered, and thus was not in a position to stop it. 42/

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For all the reasons set out above, there is no persuasive evidence that PCE was discharged at the Site during Century 73's ownership. Moreover, the Regional Board has not shown that Century 73 either knew or should have known about PCE discharges, if any, at the LTLW, or that it had the ability to prevent any such discharges.

#### **B. The Board Has Not Demonstrated that Fox is Century 73's Corporate Successor**

The Regional Board asserts that Fox is liable as a discharger under Section 13304 as the "corporate successor" to Century 73. See Revised Proposed Order at 5 ¶¶ 16. Under established case law, successor liability arises only under specific circumstances, such as where the transfer of assets is for the fraudulent purposes of escaping the debts of the predecessor or a transaction amounts to a merger of the two companies. See *Ray v. Alad Corp.*, 19 Cal. 3d 22, 28 (1977) (setting forth the bases of corporate successor liability). Rather than alleging and proving that those circumstances are present here, the Regional Board appears to contend that Fox is liable as a corporate successor because it was the general partner of Century 73 and because it managed the business of the partnership by allegedly leasing out retail space, and managing and maintaining the common areas such as sidewalks, parking areas and delivery areas. See Revised Proposed Order, App. B at 3. Not only does the Regional Board not provide any evidence that Fox managed the business of Century 73 in the manner it describes, but even if it could do so, such evidence would have nothing to do with whether Fox is the corporate successor to Century 73 under California law regarding successor liability. See *Ray v. Alad Corp.*, 19 Cal. 3d at 28.

Given that the Regional Board concedes that Fox's liability is based upon Century 73's, Fox's liability would have been extinguished if Century 73's liability was extinguished pursuant to Cal. Corp. Code § 15908.07 when Century 73 dissolved in 1990. 43/ Fox is continuing to investigate whether Century 73 published the required notice of its dissolution under that section and hereby reserves the right to raise this defense in this and subsequent proceedings.

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42/ *In re Spitzer*, 1989 WL 97148 at \*7-9.

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

## V. OTHER DISCHARGERS

The Revised Proposed Order names Bobby Page's as a discharger because it was the "operator and/or lessee for the duration of when the coin-operated dry cleaning unit was on-site." See Revised Proposed Order at 5 ¶ 16. Additionally, the Revised Proposed Order indicates that Connolly Development may be named as a discharger "due to its status as a prior landowner," and if contact information regarding Connolly Development comes to light, the Regional Board would name it as a discharger under the Revised Proposed Order. See *id.* Below, Fox explains why it believes Bobby Page's is properly named as a discharger and why Connolly Development should be named as a discharger. Fox also provides contact information for persons associated with Connolly Development.

### A. Bobby Page's Inc. is Properly Named as a Discharger

In the Revised Proposed Order, the Regional Board proposes to name Bobby Page's as a discharger under Section 13304. Bobby Page's began subleasing the LTLW in May 1972. 44/ A few months later, in July 1972, Bobby Page's assumed the lease of the LTLW from Robert and Berniece Prupas, 45/ was the operator and/or sublessor/lessee of the LTLW for the duration of the time the coin-operated dry cleaning machine was located on-site. See Revised Order, App. B at 7. As discussed below, if Century 73 is a discharger, then Bobby Page's also meets all of the requirements for a discharger under Section 13304 and relevant precedents.

First, Bobby Page's was a tenant and sublessor of the LTLW during the entire time the coin-operated dry cleaning machine was on the premises and thus possessed the site at the time of discharge, regardless of whether it occurred before or after September 1974. 46/ Second, if the Regional Board finds that Century 73 knew or should have known of any PCE discharges, then as a tenant and sublessor of the LTLW, as well as a member of the dry cleaning industry, 47/, it is reasonable to conclude that Bobby Page's knew or should have known of any discharge from LTLW operations. Finally, as a tenant and sublessor, Bobby Page's would have had at least as much authority to prevent any discharge that may have occurred as Century 73. 48/

In an August 9, 2016, email to Lisa Dernbach, the current Bobby Page's argues that "Bobby Pages today is not and was not the successor to Bobby Pages, Inc. that was sold many years ago by your

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44/ See May 1972 Lease (Exhibit K).

45/ Addendum to Shopping Center Lease Between Connolly Development, as Landlord and Robert, Berniece and Norman Prupas dba Bobby Page Cleaners, as tenant, dated May 24, 1972 (July 5, 1972) (Exhibit CC).

46/ The May 1972 Lease indicates that the premises were to be used for "Dry cleaning and coin-operated laundry."

47/ According to Bobby Page's website, the company has been in the dry cleaning business since 1964. See Bobby Page's Dry Cleaners and Shirt Laundry, <http://www.bobbypages.com/> (last visited Sept. 5, 2016) (Exhibit DD).

48/ Bobby Page's remained responsible under the May 1972 lease for all obligations under the lease even after the lease was assigned to the Hakanssons. See Sublease between Connolly Development (landlord), Robert Prupas and Berniece Prupas, dba Bobby Page's Inc. (tenant), and Kyell Hakansson and Kersten Hakansson (subtenant) (Nov. 3, 1973) (Exhibit EE).

[sic] [Kevin Leid's] grandfather to PDQ Cleaners, Inc." 49/ Bobby Page's also relies on a 2008 letter from Harold Singer to David Leid indicating that Bobby Page's Dry Cleaners and Leid's Incorporated are no longer considered potential responsible parties for the LTLW contamination because David Leid supposedly indicated that his involvement with Bobby Page's Cleaners was "limited to the purchase of a Carson City location of Bobby Page's Cleaners and use of the Bobby Page's name at his dry cleaners locations." 50/ However, Bobby Page's has not provided the underlying documentation upon which Mr. Singer's determination was supposedly based. Without underlying evidence that the former Bobby Page's was sold to PDQ Cleaners, and that the current Bobby Page's is not related to the entity by the same name, there is no basis on which the Regional Board could confirm this contention. Moreover, Bobby Page's own website indicates that the entity has been a "locally owned and family operated business since 1965" and has served "Reno, Sparks, Carson City, Gardnerville, Dayton, Incline Village, Truckee and most of Lake Tahoe." 51/ "In 1964," the website continues, "the Bobby Pages tradition grew when Bobby's daughter and son-in-law David and Roxann Leid expanded the operation to Carson City making them the 3rd generation of dry cleaners." 52/ Kevin Leid, Janet Leid-Wells, and Steve Wells are identified as the "4th generation . . . who have contributed, developed, and continued with the Bobby Page tradition." 53/ Having held itself out to the rest of the world as a successor to the original Bobby Page's, Leid's/Bobby Page's cannot now claim it is an unrelated entity for purposes of this proceeding. At a minimum, the Regional Board should require Bobby Page's to produce relevant transactional documents and information demonstrating it is not a successor under California law. See *Ray v. Alad Corp.*, 19 Cal. 3d 22, 28 (Cal. 1977) (setting forth grounds for successor liability).

For the reasons stated above, if Century 73 is a discharger, then the Regional Board's proposal to name Bobby Page's as a discharger in the Revised Proposed Order is proper and should be adopted.

#### **B. Connolly Development Inc. Should be Named as a Discharger**

As discussed above, Connolly Development developed the South Y shopping center in 1972 and owned the site until 1974, when it sold the site to Century 73. 54/ Century 73 then immediately leased the shopping center back to Connolly Development for a period of one year with an option to

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49/ Email from L. Dernbach (Regional Board) to [kevin@bobbypages.com](mailto:kevin@bobbypages.com), re Proposed Revisions to Lake Tahoe Laundry Works CAO (Aug. 9, 2016) (Exhibit FF). Bobby Page's also cites to a 2009 Stipulation and Order in which Fox and Leid's, Inc. agreed to dismiss Fox's Third Party Complaint against Leid's, Inc., with prejudice. See Stipulation and Order Re: Dismissal of Third Party Defendant Leid's Inc., *Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.*, No. 2:07-00142-LKK-GGH (E.D. Cal. 2007) (Exhibit GG). Fox's decision to dismiss Bobby Page's from private party litigation seven years ago under a different statute has no bearing on whether the Regional Board should name Bobby Page's as a discharger under Section 13304 of the California Water Code.

50/ See Letter from H. Singer (Regional Board) to D. Leid, A. MacKenzie (Bobby Page's Dry Cleaners and Shirt Laundry), re Submittal of Technical Report, Former Bobby Page's Cleaners, Village Center, 4006 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (July 29, 2008) (Exhibit HH).

51/ Bobby Pages Dry Cleaners & Shirt Laundry, <http://www.bobbypages.com/> (last visited Sept. 5, 2016) (Exhibit DD).

52/ *Id.*

53/ *Id.*

54/ Grant Deed from Connolly Development (Grantor) to Century 73 (Grantee) (Sept. 11, 1974) (Exhibit E).

extend the lease for two additional one year periods. 55/ A May 1972 ten year lease from Connolly Development to the Prupases, and sublease from the Prupases to Bobby Page's Inc., indicates that the tenants were to use the premises for "[d]ry cleaning and coin-operated laundry." 56/

If the Regional Board insists on holding Fox liable as a discharger under Section 13304 merely because a coin-operated dry cleaner operated at the South Y Site during Century 73's ownership, then it must also hold Connolly Development liable on the same theory. Moreover, as noted above, the evidence of spills in the parking lot (which was unpaved before 1974), and testimony that spills did not occur between 1976-1979/80, make it more likely that releases of PCE to soil and groundwater occurred during Connolly Development's ownership than Century 73's.

The Regional Board has indicated that if contact information for Connolly Development came to light, it would name it as a discharger in the Revised Proposed Order. See Revised Proposed Order at 5 ¶ 16. Although Connolly Development filed for Chapter 11 bankruptcy in 1995, it exited in 2000. 57/ Ted Connolly, Connolly Development's founder, died in 2014, but his ex-wife, Mary Connolly, who was a director of Connolly Development, and his son Matt Connolly, who was the General Manager and Development Director of Connolly Development, are alive and manage a real estate company that owns shopping centers, including at least one that was developed by Connolly Development. 58/ Contact information for Mary and Matt Connolly is: 9120 Double Diamond Pkwy, Reno, NV, 89521. 59/ If a general partner (Fox) of a former limited partnership (Century 73) can be held liable as a successor to the limited partnership, it only seems reasonable that the son and former wife of Mr. Connolly (and the real estate company they built with Connolly Development's former assets) can be deemed successors to Connolly Development and Mr. Connolly.

## **VI. THE CONTAMINATION AT ISSUE IN THE PROPOSED ORDER IS NOT ASSOCIATED WITH THE LTLW SITE**

Even if Century 73 could be considered a discharger, it still would not be liable for the off-site work set forth in the Revised Proposed Order because the Regional Board has failed to prove that the Off-Site Contamination that is the subject of the Revised Proposed Order – in particular, the PCE detected in domestic water supply wells at 883 and 903 Eloise Avenue; in monitoring wells OS-1, MW-4A, and MW-4B; and in LBWC and TKPOA municipal supply wells No. 4 and No. 2, respectively – is actually migrating from the LTLW at the South Y Site.

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55/ Memorandum of Lease Between Century 73 and Connolly Development (Sept.11, 1974) (Exhibit F).

56/ See May 1972 Lease (Exhibit K).

57/ D. Phillips, *Lakewood Hills Developer Files to Reorganize Debts*, THE PRESS DEMOCRAT SANTA ROSA, July 18, 1995 (Exhibit II); Connolly Development Inc., Bankruptcy Petition #:95-11749 Docket, U.S. Bankruptcy Court (N.D. Cal. 1995) (Exhibit JJ).

58/ See Matt Connolly, LinkedIn, <https://www.linkedin.com/pub/matt-connolly/11/b8b/8a4> (Exhibit KK); According to Ted Connolly's obituary, the first shopping center Mr. Connolly developed, Bonanza Creek is now owned by C Eagle Spirit LLC. Mary and Matt Connolly are identified as the managers of C Eagle Spirit LLC. See M. James, *Ted Connolly, former 49er and Napa resident, dies at 82*, Napa Valley Register, Mar. 10, 2014, available at [http://napavalleyregister.com/sports/ted-connolly-former-er-and-napa-resident-diesat/article\\_09550610-a8a3-11e3-a0ce-0019bb2963f4.html](http://napavalleyregister.com/sports/ted-connolly-former-er-and-napa-resident-diesat/article_09550610-a8a3-11e3-a0ce-0019bb2963f4.html) (Exhibit LL).

59/ C Eagle Spirit, LLC, Business Entity Information, Nevada Secretary of State (Exhibit MM).

The Regional Board asserts that “[g]iven the lack of other significant PCE sources in the South Y area, it is reasonable for Water Board staff to assume these PCE detections at off-site locations are from the Dischargers’ historical solvent discharges.” Revised Proposed Order at 6-7 ¶ 20. As explained in Section VI.D, the predicate for the Regional Board’s assumption – that there are no other significant sources of PCE in the South Y Area – is untrue. Moreover, the Regional Board does not have authority to impose cleanup obligations based on assumptions; it must base its directives on evidence. See *In re Exxon Co.*, 1985 WL 20026 at \*2-6. Moreover, the mere presence of PCE in off-site groundwater does not establish that the LTLW is the source of the Off-Site Contamination. Before it can conclude that the Off-Site Contamination migrated from the LTLW, at a minimum, the Regional Board must show that groundwater from the South Y Site actually flows in the direction of the observed off-site impacts, and that, consistent with scientific principles and known data, the concentrations and distribution of PCE off-site was caused by the concentrations and distribution of PCE at the South Y Site. Furthermore, as a matter of logic, the Regional Board cannot find that the Off-Site Contamination *must* have been caused by discharges of PCE from the South Y Site because there are *no* other known sources, unless it demonstrates, at a minimum, that all known and suspected sources of PCE have been thoroughly evaluated and exonerated.

The Regional Board cannot make these showings based on all available evidence. Indeed, as explained below, the distribution of PCE concentrations in soil and groundwater at and in the vicinity of the South Y Site and the groundwater flow data contradict the Revised Proposed Order’s assertion that PCE in groundwater at the South Y Site has caused the Off-Site Contamination.

**A. The Distribution of PCE in Soil and in Groundwater Does Not Support the Revised Proposed Order’s Conclusions**

**1. No Significant PCE Concentrations Have Been Detected in Soil Beneath the Coin-Operated Dry Cleaning Machine**

In a major departure from the position articulated in the 2015 Proposed Order and in prior communications, the Regional Board now alleges that PCE contamination at the South Y Site originated not just from a release in the parking lot but also from a surficial spill of PCE in the LTLW building. <sup>60/</sup> The Revised Proposed Order erroneously states that “[s]olvent contamination in soil was found mostly beneath the shopping center parking lot directly adjacent to the north side of the Facility and beneath the laundromat building.” Revised Proposed Order at 2 ¶ 6. The Regional Board contends that “[t]he suspected source for this solvent release beneath the building is the self-service coin-operated dry cleaning machine in the laundromat.” Revised Proposed Order at 3 ¶ 7. This and similar contentions in the Revised Proposed Order and its attachments <sup>61/</sup> should be omitted because the results of investigations at the South Y Site do not indicate soil beneath the building is contaminated by PCE spills.

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<sup>60/</sup> The 2015 Proposed Order identifies only the possible PCE release in the LTLW parking lot as the cause of contamination at the South Y Site. 2015 Proposed Order at 2 ¶ 6. The Revised Proposed Order, meanwhile, identifies two possible releases – in the parking lot and in the facility building. See Revised Proposed Order at 2 ¶ 6; 3 ¶ 7.

<sup>61/</sup> See Revised Proposed Order at 2 ¶ 6; 3 ¶ 7; 6 ¶ 17; App. B at 5-6; Regional Board Response to CAO Comments at 6 ¶ 11.

In 2004, PES Environmental, Inc. ("PES") collected soil samples from three boreholes within the LTLW tenant space, which included a borehole in the former dry cleaning machine and solvent storage area. <sup>62/</sup> PCE was not detected in eight of the nine soil samples obtained between one to eight feet below the concrete slab of the building and in the ninth, at a depth of one foot, it was detected at 0.095 milligrams per kilogram ("mg/kg"). This concentration is less than the San Francisco Bay Regional Water Quality Control Board Environmental Screening Level ("ESL") of 2.8 mg/kg for PCE in soil intended to safeguard human health under a commercial setting, and it is less than the ESL of 0.42 mg/kg for PCE in soil intended to prevent leaching of PCE from soil to underlying groundwater to maintain drinking water use. <sup>63/</sup> Given the lack of PCE in soil underneath the building, PES concluded "is unlikely that significant release of PCE or other solvents occurred inside Lake Tahoe Laundry Works." <sup>64/</sup>

E<sub>2</sub>C performed subsequent investigations and determined in the RAP, approved by the Regional Board, that the only "zone of source material" at LTLW was adjacent to monitoring well LW-MW-1S. <sup>65/</sup> This well is constructed in the parking lot near the suspected spill location and screened in the shallow zone from approximately 15 to 25 feet below ground surface ("ft bgs"). The highest PCE concentrations in soil and groundwater at the South Y Site have been detected at well LW-MW-1S. Maximum PCE concentrations were 532 mg/kg in a soil sample obtained at 7 ft bgs in 2008 <sup>66/</sup> and 5,380 µg/L in a groundwater sample collected in May 2011. <sup>67/</sup>

Soil PCE concentrations attenuate with depth in the suspected spill location near well LW-MW-1S, which demonstrates PCE did not enter the middle zone as dense non-aqueous phase liquid ("DNAPL"). <sup>68/</sup> PCE concentrations deeper than 7 ft bgs are low. PCE was detected at 0.26 mg/kg at 26 ft bgs, 0.33 mg/kg at 38 ft bgs, and was not measured above the laboratory reporting limit of 0.05 mg/kg at 52.5 ft bgs in soil samples obtained from the borehole for well LW-MW-1S. <sup>69/</sup> These data suggest that the quantity of PCE spilled was insufficient to reach the saturated zone as DNAPL, and instead became trapped in shallow vadose zone soil.

Even if a PCE source were detected beneath the former LTLW tenant space, it would be no more likely that the South Y Site is the cause of Off-Site Contamination than if impacts at LTLW are due solely to a surficial spill of PCE in the parking lot. As discussed in Section VI.B, the SVE/GASS is removing PCE in shallow zone groundwater before it flows off-site and, as addressed below, PCE

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<sup>62/</sup> PES, Supplemental Site Investigation Results, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe ("Supplemental Site Investigation Results") (Oct. 13, 2004) (Exhibit NN) at 5.

<sup>63/</sup> Excerpts from San Francisco Bay Regional Water Quality Control Board, ESL Workbook (Microsoft Excel 2010), Revision 3 (Feb. 2016), available at [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/esl.shtml](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.shtml) (Exhibit OO), Tables S-1 and S-2.

<sup>64/</sup> See Supplemental Site Investigation Results (Exhibit NN) at 12.

<sup>65/</sup> See RAP (Exhibit S) at 19-20.

<sup>66/</sup> See IRAP (Exhibit P), Appendix G, Table 2.

<sup>67/</sup> See E<sub>2</sub>C, Summary of Second Quarter 2016 Groundwater Monitoring Data (Exhibit U), Table 3.

<sup>68/</sup> DNAPLs, such as PCE solvent, are liquids that form a separate, immiscible phase when in contact with water. Differences in the properties of DNAPL and water result in the formation of a physical interface between the liquids that prevents the two fluids from mixing. DNAPLs have densities greater than that of water.

<sup>69/</sup> See IRAP (Exhibit P), Appendix G, Table 2.

concentrations in middle zone groundwater are higher off-site than at the LTLW so the South Y Site cannot possibly be the cause of Off-Site Contamination irrespective of PCE releases, if any, to the subsurface beneath the building.

**2. The Distribution of PCE in Groundwater Shows that the Off-Site Contamination is not Migrating from the South Y Site.**

Extensive subsurface investigations at the South Y Site completed before the ongoing remedial action detected PCE in shallow zone groundwater (less than 40 ft bgs) at a maximum concentration of 5,150 µg/L in December 2009. <sup>70/</sup> Sampling of middle zone groundwater (roughly 40 to 50 ft bgs) at the South Y Site at various times between 2003 and 2008 found much lower PCE concentrations, with a maximum detected PCE concentration of 137 µg/L over this time period. By contrast, the Off-Site Contamination consists of much higher PCE concentrations in middle zone groundwater than shallow zone groundwater. As explained below, this difference between the PCE distribution in on-site and off-site groundwater contradicts the Regional Board staff's position that the South Y Site is the source of the Off-Site Contamination.

Groundwater PCE concentrations in the middle zone also were low compared to those in the shallow zone. In the 12 years that groundwater sampling has been conducted at the South Y Site, the highest PCE concentration detected in middle zone groundwater was 137 µg/L in well LW-MW-1D in 2008. Well LW-MW-1D is screened from 40 to 50 ft bgs, and is co-located (or nested) with shallow zone well LW-MW-1S. Figure 1 shows PCE concentrations in shallow and middle zone groundwater at the South Y Site, generally between 2003 and 2008, before operation of the SVE/GASS commenced. These data indicate the surficial spill of PCE did not significantly affect middle zone groundwater at the South Y Site. None of the PCE concentrations are suggestive of DNAPL in the middle zone. U.S. EPA states DNAPL may be present if sampled groundwater concentrations are in excess of 1 percent of their pure phase or effective solubility. <sup>71/</sup> One percent of the pure phase solubility of PCE is approximately 2,100 µg/L. <sup>72/</sup> No PCE has been detected in middle zone groundwater at the South Y Site at concentrations greater than this threshold value.

The Off-Site Contamination data reveal a completely different PCE distribution. As shown on Figure 2, PCE has been detected at the following concentrations in middle zone groundwater *between* the South Y Site and Eloise Avenue wells:

- 310 µg/L PCE at 60 ft bgs from borehole near James Avenue and Fifth Street in 1998.

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<sup>70/</sup> In contrast to the inadequate investigations conducted of other sites suspected by the Regional Board to be PCE sources, soil and groundwater conditions at the South Y Site were thoroughly characterized by various methods between 2003 and 2009. Six separate investigations were performed that entailed advancing 42 soil boreholes, collecting 16 grab groundwater samples, and constructing and sampling 21 groundwater monitoring wells and 10 vapor probes.

<sup>71/</sup> See U.S. EPA, Ground Water Issue: Assessment and Delineation of DNAPL Source Zones at Hazardous Waste Sites, EPA/600/R-09/119 ("U.S. EPA Delineation of DNAPL Source Zones") (Sept. 2009) (Exhibit PP) at 6.

<sup>72/</sup> This is based upon PCE solubility limit in water of 210,000 µg/L, as reported by U.S. EPA in its Regional Screening Level ("RSL") Chemical-specific Parameters Supporting Table (Nov. 2015) (Exhibit QQ).

- 430 µg/L PCE at 50 ft bgs from borehole on TCI Cable Site/Former Honda Motor Company Dealership in 2001.
- 1,500 µg/L PCE at 45 ft bgs from borehole on Hurzel property in 2007.
- 3,000 µg/L PCE at 44 to 46 ft bgs from borehole on the Napa/Former Lakeside Auto Store site in 2002.
- 4,700 µg/L PCE at 47.5 to 50 ft bgs from borehole on the former Big O Tires Store site in 2001.

These PCE concentrations are much higher than the maximum PCE concentration of 137 µg/L detected in middle zone groundwater at the South Y Site. PCE concentrations at the Napa and Big O sites indicate the potential existence of DNAPL in middle zone groundwater at these properties. The significant difference between the PCE distributions in on-site and off-site wells indicates that LTLW is not the source of PCE in middle zone groundwater off-site, including in the Eloise Avenue wells themselves, which are screened in the middle zone (44 to 64 ft bgs) and the deeper groundwater zone (56 to 76 ft bgs). 73/

Regional Board staff have examined these same distributions and arrived at the same conclusion. In an email dated November 15, 2004, from Ms. Lisa Dernbach of the Regional Board to Mr. Harold Singer of the Regional Board, Ms. Dernbach stated the following:

- "... the source of the contamination in GW-6 [middle zone groundwater in Lake Tahoe Boulevard between the LTLW site and Napa site – see Figure 1] is not from the laundromat [LTLW site]."
- "... the laundromat [LTLW] plume is clearly in the upper portion of the saturated zone (20-30 ft) and is unlikely to be pulled to the 44 ft depth in the absence of an active force...."
- "More likely, contamination at GW-6 is from the Lakeside Napa Auto Store...." 74/

Similarly, in its Staff Report dated August 22, 2005, the Regional Board concluded that PCE in middle zone groundwater at the Big O site did not originate from the South Y Site, and that the Big O site is "primarily affected by a PCE source originating on-site." 75/ In a letter dated February 22, 2007, Regional Board staff stated that the Big O site potentially contributed to groundwater PCE contamination in the South Y area, and that as a result, the Regional Board could not issue a closure or no further action letter related to the Big O site. 76/

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73/ See Water Well Drillers Reports in Exhibit RR (providing Eloise Avenue well construction details).

74/ Email correspondence from L. Dernbach (Regional Board) to H. Singer (Regional Board) ("Napa site email correspondence") (Nov. 15, 2004) (Exhibit SS).

75/ Staff Report, Regional Board, Solvent Contamination at the Big O Tires Store, 1961 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 22, 2005) ("Regional Board 2005 Staff Report") (Exhibit TT) at 3.

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



Since preparation of the Regional Board Staff Report in 2005, no additional middle zone groundwater data have been generated that would be expected to alter the Regional Board's conclusions and opinions regarding the source for the PCE in groundwater at the Big O site. PCE was detected at a maximum concentration of 5,380 µg/L in shallow zone groundwater at LTLW in 2011, but this contamination is associated with PCE trapped in shallow vadose zone soil, not PCE DNAPL that has migrated to middle zone groundwater. 77/

Despite concluding previously that LTLW is not the cause of Off-Site Contamination, the Regional Board now attempts to associate this contamination with the LTLW by speculating PCE dissolved in groundwater was somehow "pulled downward" by an "accumulation of annual precipitation, vertical gradient by natural forces, and/or influence by a pumping well or wells." See Regional Board, Response to Comments, Lake Tahoe Laundry Works Cleanup and Abatement Order (CAO) R6V-2016-PROP ("Regional Board Response to CAO Comments") at 3 ¶ 6. No evidence is provided to support the Regional Board's conclusion that these processes have actually occurred or influenced PCE distribution in groundwater.

To the contrary, review of available information indicates a confining unit impedes movement of groundwater from the shallow zone to the middle zone and any associated downward migration of PCE. As depicted on cross-section figures in its 2008 Site Investigation Report, E<sub>2</sub>C encountered a 1- to 2.5-foot thick fine-grained silt layer beneath the South Y Site beginning at a depth of roughly 35 ft bgs. 78/ E<sub>2</sub>C recognized this silt layer as an important stratigraphic feature and constructed monitoring wells at the Site and within Lake Tahoe Boulevard so the screened intervals of shallow zone wells were above the layer and those of middle zone wells were below it.

Groundwater elevation measurements in the nested wells built by E<sub>2</sub>C show this silt layer acts as a confining unit. The groundwater elevations in shallow and middle zone monitoring wells at LTLW and within Lake Tahoe Boulevard differed by approximately 10 feet. 79/ Groundwater elevation differences this large demonstrate the shallow and middle zones are not hydraulically connected.

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

[t]he general continuity of these fine-grained lacustrine units within the South Y area at the 6–15 m [20-50 ft] depth interval is supported by the lithologic record reviewed for this study, as well as hydraulic head differences and contaminant migration patterns. It is recognized that the potential for discontinuity exists. However, no evidence of discontinuities in the lithologic data or water-level data was observed. 80/

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77/ See E<sub>2</sub>C, First Quarter 2016 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe ("E<sub>2</sub>C First Quarter 2016 Groundwater Monitoring Report") (Exhibit VV), Table 3.

78/ See E<sub>2</sub>C, Site Investigation Report of Findings, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe ("Site Investigation Report") (Sept. 22, 2008) (Exhibit WW) Figures 2B, 4, and 4A through 7C.

79/ See *id.*, Table 1B.

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

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

Units of relatively high permeability typically correspond to coarse-grained glacial outwash, fluvial and deltaic deposits forming the basin-fill aquifer. The laterally continuous fine-grained lacustrine (lake-bed) deposits form local confining layers or aquitards that affect groundwater flow between these higher permeability deposits. 81/

The presence of a confining unit means that the STPUD municipal supply well located on Clement Street would have been unable to induce PCE-containing groundwater in the shallow zone to migrate downward to the middle zone as the Regional Board contends. Regional Board Response to CAO Comments at 3, ¶ 6. Even apart from this barrier to groundwater flow, the Regional Board found in 2005 that the STPUD Clement well was too far to affect PCE at the South Y Site:

Since the Facility [Big O Tire Store] and the Laundry are located near the edge of the Clement Well's 1,600-foot capture zone created by increased pumping of 180 gpm, it is unlikely that either site was affected by the smaller capture zone created when the Clement Well was pumping only at 70 gpm before late 1991. Such information supports the contention that PCE detected in the Clement Well in 1989 was not likely from discharges at the Laundry [LTLW] or from potential discharges that may have already occurred at the Facility. 82/

The Regional Board believed STPUD municipal supply well No. 4 on Tata Lane was more likely to capture PCE-containing groundwater from LTLW than the Clement well. 83/ However, only low, intermittent PCE concentrations were detected in Tata well No. 4 from 1989 until its shutdown in 2006. The highest PCE concentration measured was 2.6 µg/L in December 1991. 84/ The lack of PCE in Tata well No. 4 demonstrates pumping from this well also did not influence the distribution of PCE in groundwater at LTLW.

Hence, the Regional Board's hypothesis that downward migration of PCE from the South Y Site explains PCE in middle zone groundwater beneath Big O, Napa, Hurzel, and elsewhere in the South Y area is simply not supported by the facts. Instead, PCE in middle zone groundwater is explained by releases at these and other sites, which have not been adequately investigated, as discussed in Section VI.D.

#### **B. SVE/GASS has Successfully Removed VOCs from the Subsurface and Contained the VOC Plume On-Site**

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

82/ Regional Board 2005 Staff Report (Exhibit TT) at 13.

83/ See *id.*

84/ Regional Board case file, which includes table summarizing volatile organic chemical data for Tata Lane Well #4 (Aug. 23, 2007) (Exhibit ZZ) at 1.

Seven Springs and Fox installed the SVE/GASS to remediate PCE in vadose zone soil and shallow zone groundwater at the South Y Site in accordance with the RAP approved by the Regional Board. 85/ As acknowledged by the Regional Board in the Revised Proposed Order, the system “was designed to provide a ‘curtain’ of remediation so that no groundwater containing contaminant would migrate from the Facility property.” Revised Proposed Order App. A. at 4. The data presented below show that the SVE/GASS has been operated as designed and has been effective at removing PCE and related compounds from soil and groundwater before they enter indoor air or migrate off the South Y Site.

### **1. The SVE System Has Operated Effectively.**

Each SVE well pair consists of one well with a screen interval between approximately 5 and 10 ft bgs and the other with a screen interval between approximately 10 and 12 ft bgs. SVE well pairs are spaced 30 feet from each other. This spacing maintains overlapping radii of influence (“ROIs”) between the well pairs and ensures that the entire vadose zone within the cleanup area is addressed by SVE. The number of SVE well pairs is more than adequate to achieve cleanup. In coarse-grained soil such as that encountered above the groundwater table at the LTLW, the ROI of SVE wells can extend 100 feet. 86/ Consistent with this fact, in the RAP approved by the Regional Board, E<sub>2</sub>C found that “[v]acuum influence over the entire site, including under the building and into Lake Tahoe Boulevard, can be readily achieved using all shallow SVE wells.” 87/

Analytical results of indoor air samples collected from the building at the LTLW in December 2015 demonstrate the SVE system’s effectiveness. PES obtained indoor air samples from tenant spaces in the building where LTLW was located. The maximum PCE concentration of 0.514 micrograms per cubic meter (“ $\mu\text{g}/\text{m}^3$ ”) detected in indoor air was considerably less than the San Francisco Bay Regional Water Quality Control Board PCE ESL of 2.1  $\mu\text{g}/\text{m}^3$  established for protection of human health under commercial/industrial land-use scenarios. 88/ Accordingly, SVE is mitigating any vapor intrusion threat at the South Y Site. 89/

### **2. The Air Sparging System Has Operated Effectively**

Contrary to allegations made by the Regional Board in the Revised Proposed Order, the air sparging component of the LTLW remediation system also has been effective. The design of the system, which the Regional Board approved in the RAP, conforms to the industry standard of practice. As explained in the remediation engineering guidance by Sutheran:

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85/ See Section II.B & n. 12, 13, & 14, *supra* (noting RAP submittal and Regional Board approval; see also Revised Proposed Order ¶ 11 (conceding that Fox and Seven Springs have implemented corrective actions in compliance with Water Board Directives).

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

87/ RAP (Exhibit S) at 15.

88/ PES, Indoor Air Sampling Report, Former Lake Tahoe Laundry Works (Jan. 14, 2016) (Exhibit BBB).

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

The grid should be designed with overlapping zones of influence ["ZOIs"] that provide complete coverage of the area under consideration for remediation. If an air sparging curtain is designed to contain the migration of dissolved contaminants, the curtain should be designed with overlapping zones of influence in a direction perpendicular to the direction of groundwater flow. 90/

At the LTLW, the air sparge wells are arranged in a triangular pattern and individual wells are spaced so their ZOIs overlap in a direction perpendicular to groundwater flow, which is predominantly to the north-northwest. E<sub>2</sub>C projected in the RAP that each well would have a ZOI of at least 25 feet, which is within the typical ZOI range of 5 to 25 feet for in-situ air sparge systems cited by the U.S. Army Corps of Engineers ("USACOE"). 91/ and within the well spacing range of 12 to 50 feet that the Wisconsin Department of Natural Resources states has generally been used for air sparge systems. 92/ Importantly, E<sub>2</sub>C conducted performance tests in January 2016 that verify the air sparge wells at the South Y Site have a ZOI of at least 25 feet as predicted when the SVE/GASS was designed and constructed. 93/

The Regional Board alleges "complete remedial coverage at the Site is lacking, leading to inconsistent and inadequate clean up across the Site allowing contaminants to migrate off-site in groundwater." See Revised Proposed Order at 11-12 ¶ 35. 94/ In a May 24, 2016 letter summarizing its evaluation of the E<sub>2</sub>C performance tests, the Regional Board relies on pressure measurements beyond the 25-foot ZOI to conclude the LTLW air sparge wells do not have ZOIs *exceeding* 25 feet. 95/ As explained by E<sub>2</sub>C in its response, pressures induced at distances greater than 25 feet are not relevant because the SVE/GASS was not designed and is not operated with the need for ZOIs that exceed 25 feet. 96/

Importantly, only a few months ago, the Regional Board concluded that the pressure measured within 25 feet of the air sparge wells during the performance tests met its criterion for effective remediation. 97/ Thus, the Regional Board's prior conclusion regarding the performance test data contradicts its allegation in the Revised Proposed Order that SVE/GASS is not performing as

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90/ Suthersan, S., In Situ Air Sparging. Remediation Engineering: Design Concepts, CRC Press LLC, (1999) (Exhibit CCC).

91/ USACOE, In-Situ Air Sparging Manual (Exhibit DDD) at 5-4.

92/ Wisconsin Department of Natural Resources, Guidance for Design, Installation and Operation of In Situ Air Sparging Systems, RR-186 (Feb. 2015) (Exhibit EEE) at 19.

93/ E<sub>2</sub>C, January 4, 2016 Air Sparge Confirmation Test Summary, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, California (Jan.12, 2016) (Exhibit FFF).

94/ Similar assertions are made in Revised Proposed Order, App. A at 4 ¶ 7 and Regional Board Response to CAO Comments at 2 ¶ 5; 4 ¶ 7; 5 ¶ 10; 8 ¶ 5; 9 ¶ 9; 11 ¶ 11; 15 ¶ 2; 16 ¶ 6; and at 18 ¶ 2.

95/ Regional Board, Comments on Air Sparge Performance Test, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, (May, 24, 2016) ("Regional Board Air Sparge Performance Test Comments") (Exhibit GGG) at 2.

96/ E<sub>2</sub>C, Response to Comments on Air Sparge Performance Test, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, California, (Jul. 27, 2016) (Exhibit HHH) at 3. The aforementioned document thoroughly rebuts the Regional Board Air Sparge Performance Test Comments and is incorporated herein by reference.

97/ Regional Board Air Sparge Performance Test Comments (Exhibit GGG) at 2.

intended. Statements that SVE/GASS has not contained the plume to the South Y Site are inaccurate and should be removed from the Revised Proposed Order and its attachments.

### **3. The Shutdown of the SVE/GASS for Several Months in 2013 Would Not Have Resulted in Off-Site Migration**

The Regional Board further contends that a shutdown of the SVE/GASS in 2013 caused PCE in groundwater to migrate "unchecked" from the Site. Revised Proposed Order, App. A. at 4 ¶ 6 The Regional Board implies that PCE concentrations increased to "tens and hundreds of micrograms per liter versus single digits" in perimeter monitoring wells LW-MW-2S and LW-MW-5S because no remediation systems operated from February through August 2013. 98/

As a preliminary matter, it is important to note the Regional Board's description of the 2013 shutdown is neither accurate nor complete. First, the Regional Board fails to state that the SVE/GASS was paused during that period with the Regional Board's explicit approval in order to allow ozone injection to treat VOCs in the subsurface. 99/ Second, the shutdown was not as lengthy as the Regional Board suggests. Because of the Regional Board's concern that ozone sparging would generate hexavalent chromium, the ozone injection program was designed and approved by the Regional Board as a pulsed system. 100/ Accordingly, upon conducting ozone injection for 24 days from January 10 to February 3, 2013, 101/ the ozone generator was turned off for six weeks to determine if hexavalent chromium had been formed. 102/ Ozone injection resumed on May 3, 2013, but six days later, the corona discharger was found not to be working and the system was shut down for repairs until August. 103/ Because the faulty corona discharge converts oxygen gas to ozone, the result of the discharger malfunction was that oxygen gas bubbled through the shallow zone instead of ozone, but either way the gas still would have stripped PCE from groundwater. In other words, between May 3 and May 9, 2013, the air sparging system functioned as originally designed, rather than as an ozone sparging system. This means that the period in which a remediation system was not operating at the South Y Site was actually three months rather than six months.

In any event, there is no evidence that PCE migrated from the South Y Site during this limited period, and good reason to believe that it would not have. Review of quarterly data shows PCE concentrations in monitoring wells LW-MW-2S and LW-MW-5S were 1.11 µg/L and 3.72 µg/L on

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98/ Regional Board Response to CAO Comments at 7 ¶ 12.

99/ Email from L. Dernbach (Regional Board) to W. Lawson (E<sub>2</sub>C) (Dec. 3, 2012) (Exhibit III) (approving the ozone sparging plan set forth in E<sub>2</sub>C's October 2012 quarterly monitoring report and noting the Board's expectation that implementation of the plan would produce "good results"); see E<sub>2</sub>C, Third Quarter 2012 Groundwater Monitoring Report and Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Oct. 31, 2012) ("E<sub>2</sub>C Third Quarter 2012 Monitoring Report") (Exhibit JJJ) at 9 (setting forth "Workplan to Implement Pulsed Ozone Sparging").

100/ E<sub>2</sub>C Third Quarter 2012 Monitoring Report (Exhibit JJJ).

101/ The dates of operation can be determined by reviewing E<sub>2</sub>C's field logs and electrical meter readings recorded therein. See E<sub>2</sub>C, Daily Activity Notes January & May 2013 (Exhibit KKK).

102/ See E<sub>2</sub>C, Fourth Quarter 2012 Groundwater Monitoring Report and Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Mar. 11, 2013) (Exhibit LLL) at 9.

103/ E<sub>2</sub>C, Second Quarter 2013 Groundwater Monitoring Report and Remediation Status Report (Sept. 25, 2013) ("E<sub>2</sub>C Second Quarter 2013 Groundwater Monitoring Report") (Exhibit MMM), Table 6B; E<sub>2</sub>C, Daily Activity Notes, January & May 2013 (Exhibit KKK).

March 11, 2013 and rose to 67 µg/L and 59 µg/L on July 30, 2013. 104/ While the Regional Board is correct that concentrations in these wells began in the “single digits,” the notion that they increased to “hundreds of micrograms per liter” is simply incorrect.

Based on the groundwater gradient of 0.0115 ft/ft calculated for the vicinity of monitoring well LW-MW-5S 105/ during the time that the ozone generator was shut down, hydraulic conductivity of -7.34 ft/day, 106/, effective porosity of 0.225, 107/ and retardation factor of 1.8, PCE would have traveled roughly 0.2 feet per day or a total of approximately 40 feet during a six month period. 108/ This rate of travel indicates PCE from the Site interior would have reached the perimeter monitoring wells shortly before they were sampled on July 30, 2013. After ozone sparging re-commenced on August 6, 2013, any PCE that traveled to perimeter monitoring wells LW-MW-2S and LW-MW-5S during the malfunction period was treated by the ozone sparging remediation system until November 5, 2013, and by SVE/GASS thereafter when the Regional Board directed operation of the system be resumed. 109/

#### 4. Existing Data Contradict the Regional Board’s Conclusions

The off-site groundwater investigation performed by URS in 2015 and summarized in its report prepared for the Regional Board 110/ confirms that the PCE plume has not migrated from the South Y Site. No PCE at concentrations above the MCL was found in the shallow zone at locations in the downgradient direction of groundwater flow from the Site. 111/

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104 See E<sub>2</sub>C Second Quarter 2013 Groundwater Monitoring Report (Exhibit MMM), Table 3.

105/ See E<sub>2</sub>C, First Quarter 2013 Groundwater Monitoring Report and Interim Remediation Status Report (May 1, 2013) (Exhibit NNN), Figure 3 and E<sub>2</sub>C Second Quarter 2013 Groundwater Monitoring Report and Remediation Status Report (Exhibit MMM), Figure 3. The calculated value is based on the average of hydraulic gradients estimated by E<sub>2</sub>C from groundwater levels measured in March 2013 and July 2013 in the vicinity of well LW-MW-5S. Groundwater levels measured in well LW-MW-2S were not considered because their use results in anomalously high hydraulic gradients relative to the hydraulic gradient of 0.008 ft/ft reported by GEI Consultants, Inc., South Tahoe Public Utility District, South Y Extraction Well Suitability Investigations (Jun. 29, 2016) (Exhibit OOO) at 4-3, and the hydraulic gradient of 0.01 ft/ft reported by Cambria Environmental Technology, Inc., Aquifer Pump Test Report/Groundwater Extraction System Design, Shell-branded Service Station 1020 Emerald Bay Road, South Lake Tahoe, CA (Jul. 1, 1999) (Exhibit PPP) at 4.

106/ See *id.*; This hydraulic conductivity value also is consistent with regional hydraulic conductivity values of 8.64 ft/day estimated for the middle zone based on the aquifer test performed at the STPUD municipal supply well located on Clement Street. See STPUD, Draft Report of Findings, South Y Groundwater Contamination Study, Clement Well Contaminant Pumping Test, SWRCB Contract No. 7-088-160-6 (Jun. 30, 1998) (Exhibit QQQ).

107/ Effective porosity and other parameters used to estimate retardation factor are based on U.S EPA, Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Ground Water, EPA/600/R-98/128 (Sept. 1998) (Exhibit RRR).

108/ EKI, Calculation of Potential PCE Migration in Shallow Zone Between February 2013 through August 2013 (Exhibit SSS).

109/ E<sub>2</sub>C, Third Quarter 2015 Groundwater Monitoring Report and Interim Remediation Status Report (Exhibit TTT) at 2 and 3.

110/ URS Final Report (Exhibit W).

111/ See *id.*, Figure 2.

In an attempt to support its claim that the LTLW remediation has been ineffective at preventing off-site migration, the Regional Board continues to assert groundwater from the South Y Site flows through monitoring well OS-1, which is constructed near the Hurzel property. Based on this unfounded assertion, the Regional Board states "PCE concentrations of 64 µg/L detected at OS-1 during first quarter 2015 were the highest levels in five years at that location and suggest remedial actions (AS/SVE) are not sufficient to fully contain the groundwater plume on-site as originally designed." See Revised Proposed Order at 7, ¶20. 112/

As explained in Section IV.C, both groundwater flow and groundwater quality data indicate that contamination from the LTLW is not migrating towards the Hurzel property or monitoring well OS-1. However, for the sake of argument, if the Regional Board were correct and monitoring well OS-1 could be considered downgradient of the LTLW, the water quality results from that well would simply confirm Fox's conclusion that contamination is not migrating off-site. Although the Regional Board focused on the PCE concentration of 64 µg/L measured in March 2015, that detection turned out to be anomalously high, as evidenced by the plot of PCE data for monitoring well OS-1 presented on Figure 5. PCE has not been more than 10 µg/L in the subsequent five quarterly sampling events and most recently has declined to 1.5 µg/L in June 2016. Accordingly, the declining PCE concentration trend in the well OS-1 certainly does not support the Regional Board's assertion that the SVE/GASS is not containing the PCE plume on the South Y Site.

### **C. Both Groundwater Flow Data and Groundwater Quality Data Indicate that LTLW is not Impacting the Hurzel Property or Monitoring Well OS-1**

Groundwater from the South Y Site does not flow toward the Hurzel property or off-site monitoring well OS-1 as alleged by the Regional Board. See Revised Proposed Order at 6-7 ¶ 20; Regional Board Response to CAO Comments at 2 ¶ 5 4 ¶ 7; 5 ¶ 10. This is apparent both from groundwater flow data and groundwater quality data.

#### **1. Groundwater Flow Data**

At the outset, it is important to note that, contrary to the Regional Board's position, see Regional Board Response to CAO Comments at 4 ¶ 8, the mere detection of PCE at either well OS-1 or the Hurzel property is not evidence that the LTLW is a source of the PCE. Putting aside the issue that Hurzel has been insufficiently characterized and may be a source of PCE itself, the Regional Board must show there is a groundwater flow path that would allow PCE to travel from the LTLW to OS-1 and the Hurzel property before it can logically attribute this contamination to the LTLW.

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112/ Paragraph 20 of the Revised Proposed Order contains three footnotes that reference appendices titled "Elimination of Other Sources of Solvent Contamination," "Water Quality Monitoring Results," and "Remediation Efforts." Based on an email exchange with Regional Board staff, Fox understands these footnotes are typographical errors and that information contained in the appendices has been incorporated into the Revised Proposed Order or Appendix A to the Revised Proposed Order. Email from L. Dernbach (Regional Board) to A. Safford (EKI) dated September 1, 2016 (Exhibit UUU). If these sources exist, we request that they be provided to the public for review. If not, we request the footnotes be corrected or deleted in their entirety before the Revised Proposed Order is adopted.

Quarterly groundwater monitoring reports for the LTLW site prepared by E<sub>2</sub>C since 2010 show that the groundwater gradient or flow direction is predominantly to the north-northwest as opposed to the northeast toward the Hurzel property and monitoring well OS-1. 113/ This groundwater flow direction is corroborated by URS in its January 19, 2016 groundwater investigation report 114/ and by the site investigation report and groundwater monitoring reports prepared for the Hurzel property. Figure 1 of the URS Final Report shows groundwater flow direction arrows to the north at Tucker Avenue and Emerald Bay Road (near the South Y Site), and to the northwest at 5<sup>th</sup> Street and James Avenue (both located within the Off-Site Contamination area). Similarly, Stantec Consulting, Inc. states the following regarding the groundwater flow direction at the Hurzel property:

The four quarters of monitoring and sampling at the site indicates that there is a significant shift in groundwater flow direction from fall and winter of the year to spring and summer of the year. During the fall and winter when the groundwater is deeper, the predominant groundwater flow direction is to the west northwest and during the spring and summer shifts to the north. The hydraulic gradient during the fall and winter is also steeper than the hydraulic gradient in the spring and summer. 115/

Figure 3 depicts the relationship of the South Y Site to the Hurzel property and monitoring well OS-1. The predominant north-northwest groundwater flow direction as reported by URS, Stantec, and E<sub>2</sub>C is illustrated by arrows on this figure. Accordingly, there is no groundwater flow path between the LTLW and OS-1 or the Hurzel property.

## 2. Groundwater Quality Data

Groundwater quality data tell a similar story. Contaminant concentrations are highest beneath their source at any site where a chemical release has taken place. 116/ As noted by the Regional Board in its 2005 Staff Report, "plumes composed of dissolved solvent compounds migrate with groundwater flow and decrease in concentration with distance from the source." 117/ The Regional Board indicates the concentration decline is due to spreading of the VOC plume by dispersion, see Revised Proposed Order at 7-8 ¶¶ 22, but does not acknowledge that the effects of this phenomenon are much weaker in the transverse (cross-gradient) direction than in the longitudinal (downgradient)

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113/ See e.g., E<sub>2</sub>C Third Quarter 2010 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Nov. 1, 2010) (Exhibit VVV); E<sub>2</sub>C Fourth Quarter 2012 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Oct. 31, 2012) (Exhibit WWW); E<sub>2</sub>C Second Quarter 2014 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Oct. 15, 2014) (Exhibit XXX); E<sub>2</sub>C First Quarter 2015 Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (June 23, 2015) (Exhibit YYY).

114/ URS Final Report (Exhibit W) at 2.

115/ Stantec Consulting, Inc., Third Quarter 2008 Water Quality Report, Former Dry Cleaning Business, 949 Emerald Bay Drive, South Lake Tahoe (Dec. 10, 2008) ("Third Quarter 2008 Monitoring Report") (Exhibit ZZZ) at 3.

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

117/ See Regional Board 2005 Staff Report (Exhibit TT) at 6.



direction of groundwater flow. 118/ Studies show that horizontal transverse dispersivities are typically an order of magnitude smaller than longitudinal dispersivities. 119/ The Regional Board's finding that substantial lateral spreading of the PCE plume has occurred near the LTLW is entirely speculative. See Revised Proposed Order at 8 Variations in groundwater flow direction may increase dispersion (i.e., spreading and mixing) of PCE in groundwater, but they will not alter the bulk (i.e., center of mass) movement of the PCE plume from its north-northwest flow direction.

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

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

No correlation exists between PCE concentrations in off-site monitoring well OS-1 and LTLW perimeter monitoring wells, which is not surprising, because well OS-1 was never intended to evaluate the effectiveness of the SVE/GASS in containing on-site contamination. This was made clear by E<sub>2</sub>C in the IRAP Addendum:

Well OS-1 will be installed as an accommodation to the CRWQCB. We understand that groundwater monitoring analytical results collected from well OS-1 will be used to evaluate groundwater conditions in the proximity of that well and the data collected from that well will not affect the operation or cessation of operation of the remediation system on the South Y Site. 120/

The Regional Board approved the IRAP on September 1, 2009, without commenting on this statement. Accordingly, the Revised Proposed Order cannot require implementation of additional

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118/ Freeze, R. and J. Cherry, *Groundwater*, Prentice-Hall, Inc. (1979) (Exhibit Z) at 396.

119/ Gelhar, *A Critical Review of Data on Field-Scale Dispersion in Aquifers*, *Water Resources Research*, Vol. 28, No. 7, pp. 1955-1974. (1992) (Exhibit BBBB).

120/ IRAP Addendum (Exhibit Q) at 2.

remedial actions at the South Y Site based on data from monitoring well OS-1, as the parties agreed at the outset that well OS-1 would not be used to assess SVE/GASS performance. 121/

**D. The Regional Board Has Not Thoroughly Evaluated Other Possible Sources of the Off-Site Contamination.**

The Revised Proposed Order's assertion that the Off-Site Contamination is attributable to the South Y Site is based in large part on the Regional Board's determination that there are no other sources of PCE contamination in the vicinity. Revised Proposed Order at 2 ¶ 5; 6-7 ¶ 20; 15 ¶ 3.2. The Regional Board concludes that the LTLW is the sole source of the Off-Site Contamination in part because none of the investigations of other properties "identified sufficient amounts of solvents in soil that could have led to the concentrations historically and presently detected in the groundwater and water supply wells in the South Y area." Revised Proposed Order at 2 ¶ 5.

Furthermore, the Regional Board claims:

[o]ther potential PCE sources in the vicinity of the LTLW have been adequately evaluated and found to not be contributing to PCE impacts affecting groundwater quality . . . . As reasonable investigations have been conducted over time in the South Y area, only the LTLW site was found to be a source of PCE contamination in soil and groundwater. All other nearby properties have not been shown as sources of PCE contamination (Appendix A).

Regional Board Response to CAO Comments at 5 ¶ 9.

As explained below, both the Regional Board's over-reliance on soil data and its conclusion that other sources of PCE have been adequately investigated are without merit.

**1. The Regional Board's Reliance on Soil Data is Misplaced**

It is not enough to rely on soil data to determine whether PCE was released at a site. Soil sampling can easily miss sources of PCE beneath a site because DNAPL is commonly present in the subsurface as small, disconnected blobs or globules. 122/ The Interstate Technology & Regulatory Council states these globules are "very difficult to discover using standard investigation techniques such as soil borings and monitoring wells given their small size and distribution." 123/

U.S. EPA advocates employing various site investigative methods and related interpretative techniques when assessing DNAPL sources, such as soil chemical concentrations above DNAPL

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121/ Fox raised this same point in its comments on the 2015 Proposed Order, see February 2016 Fox Comments (Exhibit A) at 17, but the Regional Board has refused to provide any explanation, and simply "continues to assert that the PCE concentrations in OS-1 and other off-site monitoring wells downgradient are attributable to the Site." Regional Board Response to CAO Comments at 4 ¶ 7.

122/ U.S. EPA, Ground Water Issue: Dense Nonaqueous Phase Liquids, EPA/540/4-91-002 (Mar. 1991) (Exhibit CCCC) at 1.

123/ Interstate Technology & Regulatory Council, Technology Overview: An Introduction to Characterizing Sites Contaminated with DNAPLs (Sept. 2003) (Exhibit DDDD) at 8.

saturation or partitioning thresholds, vapor concentrations, site use/history, magnitude of groundwater chemical concentrations, persistent groundwater chemical plume, and presence of contamination in anomalous locations. 124/ These methods or converging lines of evidence are used to determine whether or not DNAPL is present in the subsurface, but individual lines of evidence cannot be weighted, as the "strength of the uncertainty/certainty determination is dependent on how often more than one line of evidence occurs at a particular location." 125/

## **2. Other Sources of PCE Have Not Been Adequately Investigated**

Available lines of evidence indicate that the Hurzel property, the former Big O Tires Store, and the Napa/Former Lakeside Auto Store are potential PCE sources. The Regional Board's decision not to require further action at these sites is premature. Additional investigations are imperative before a reasonable, informed judgment can be made as to whether releases at these properties have caused or contributed to PCE contamination in regional groundwater.

Multiple properties exist that could be the source of the Off-Site Contamination, as depicted on Figure 6. The Regional Board has identified many of these properties as possible PCE sources, but has not required their investigation. As recently as February 2016, Regional Board staff indicated assessment of other PCE sources is warranted based on the findings of the off-site investigation performed by URS. 126/ Regional Board staff stated their intention to assess other potential PCE sources as part of a Phase II Investigation tentatively scheduled to be performed in Fall 2016 or Spring 2017. 127/ No justification has been provided for this reversal in the Revised Proposed Order or responses to comments on the Proposed Order.

The Regional Board recognizes that "PCE is normally associated with dry cleaning activities, but the solvent compound can also be used for metal degreasing and is an ingredient in paint strippers." 128/ Metal degreasing can be associated with automotive or equipment repair, or machine shops; and paint stripping can be associated with auto body shops, and wood and metal working businesses. URS reached similar conclusions as a result of the off-site investigation. 129/ Numerous current and former auto repair and auto body shops, as well as other industries, that may have contributed PCE to the Off-Site Contamination await sufficient characterization.

Napa/Former Lakeside Auto (1935 Lake Tahoe Boulevard). As set forth in Fox's comments on the proposed no further action letter for this site, PCE was detected in shallow and middle zone groundwater but the Napa site was not fully investigated in 2003 or thereafter. 130/ For example:

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124/ U.S. EPA Delineation of DNAPL Source Zones (Exhibit PP) at 4-6.

125/ See *id.* at 8.

126/ URS Final Report (Exhibit W) at 8.

127/ See Regional Board, Fall 2015 URS PCE Investigation Meeting (Feb. 5, 2016) (Exhibit EEEE), slide 9.

128/ Regional Board Media Release, "Lahontan Water Board to Conduct Groundwater Testing for PCE in South Lake Tahoe" (Oct. 21, 2015) (Exhibit FFFF) at 1.

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

130/ Erler & Kalinowski, Inc. ("EKI"), Response to Water Board Notification of Consideration of No Further Action; Napa Auto Parts/Formal Lakeside Auto, 1935 Lake Tahoe Boulevard South Lake Tahoe, California, (Dec. 3, 2015) (Exhibit UU). Fox incorporates these comments by reference into this submittal.

- No shallow soil samples were collected directly beneath a concrete sump and potential PCE discharge point located within a former auto service bay in the Napa shop. The Regional Board sidesteps this shortcoming by asserting collection of a single soil sample at 8 ft bgs from borehole BH-10 moved outside the building away from the sump was adequate. 131/ This sampling was not sufficient given the manner in which DNAPL behaves. The National Research Council explains "DNAPL often follows a highly irregular path, resulting in a source zone that contains narrow vertical pathways connected to thin, laterally extensive horizontal lenses." 132/ Collecting soil samples at various depths was critical to assessing whether PCE was released from the sump, but this was not done.
- No soil or groundwater samples were collected from interior areas of the Napa shop, including the auto service bays and machining areas where chemicals such as solvents may have been used or stored. Thus, the soil beneath the service bays remains uncharacterized and may be impacted by PCE.
- No soil or groundwater samples were collected next to floor drains or subsurface wastewater pipelines within the Napa shop. Borehole BH-1 was to be placed next to a floor drain but was eliminated because the Regional Board states the "potential floor drain inside the shop did not exist." 133/ The fact that Secor International Incorporated ("Secor"), the consultant performing the investigation, was unable to locate the floor drain because it was "no longer visible" does not exclude the floor drain as a potential conduit or release point. 134/
- No shallow or middle zone groundwater monitoring wells were installed at the Napa site in both upgradient and downgradient locations to obtain representative and reproducible groundwater sample results, or to assess the nature and extent of the contamination.

Despite these significant data gaps, the Regional Board proposes to grant a no further action determination to the Napa/Lakeside Auto site based on the results of soil and groundwater samples collected in 2003, which largely failed to detect PCE contamination. However, the absence of PCE in soil samples collected in 2003 is not remarkable considering that the numbers of samples were insufficient and too far from potential PCE discharge points inside the shop to evaluate the possible presence of DNAPL. Moreover, as discussed in Section VI.D.I, reliance exclusively on soil sampling is ill-advised. Here, no groundwater monitoring wells have been constructed and no soil gas testing has been performed to confirm the results of the limited soil data compiled for the Napa site.

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131/ Regional Board, Response to Fox Capital Management Corporation Comments on 60-Day No Further Action Notice, Lakeside Napa Auto Store Case (T6S035), 1935 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County ("Response to Fox Napa Comments") (Undated) at 3-4, ¶ B.

132/ National Research Council, Contaminants in the Subsurface: Source Zone Assessment and Remediation, Committee on Source Removal of Contaminants in the Subsurface (2004) (Exhibit GGGG) at 52.

133/ Regional Board, Response to Fox Napa Comments at 3, ¶ B.

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

With respect to groundwater data, the Regional Board is selective regarding the shallow zone groundwater data upon which it relies to support a no further action determination. According to the Regional Board, closure of the Napa site is warranted, in part, because PCE was detected at 1.1 µg/L in one of eight shallow zone grab groundwater samples collected in 2003. 135/ The Regional Board concludes “[t]he near lack of PCE detections in the water table indicates the absence of a source in soil at and above 24 feet bgs throughout the property.” 136/ It chooses to ignore the fact that PCE concentrations of 120 µg/L and 130 µg/L were detected in two shallow zone groundwater samples collected at the Napa site in 2002. In addition, PCE has been detected in middle zone groundwater below the Napa site at concentrations greater than 1 percent of its pure phase solubility (i.e., ≈2,100 µg/L), which is an indicator of DNAPL according to U.S. EPA. 137/. In 2002, up to 3,000 µg/L of PCE was reported in a grab groundwater sample obtained at 44 to 46 ft bgs. 138/ In 2004, the Regional Board concluded the Napa site was a source of PCE contamination. 139/ Inexplicably, the Regional Board failed to insist upon installation of monitoring wells that would have allowed it to ascertain groundwater quality and flow direction at the Napa site.

Instead, the Regional Board has chosen to speculate as to how PCE could have migrated to the Napa site from the LTLW. The Regional Board hypothesizes that a PCE plume sank from the shallow zone to the middle zone due to natural forces or past pumping from the STPUD Clement municipal supply well. 140/ However, the formation of such a plume is not possible because the confining unit that separates the shallow zone from the middle zone prevents downward migration of PCE, as we explain in Section VI.A.2. The lines of evidence (e.g., site history of vehicle maintenance and groundwater PCE DNAPL levels) compel the Regional Board to require more investigation before the Napa site can be reasonably excluded as a source of the Off-Site Contamination.

Former Big O Tires Store (1961 Lake Tahoe Boulevard). As set forth in Fox's comments on the proposed no further action for this site, PCE was detected in shallow and middle zone groundwater but the Big O site was never fully investigated. 141/ An investigation work plan prepared by LFR Inc. (“LFR”), dated April 27, 2006, which apparently was reviewed and approved by the Regional Board, proposed the advancement of boreholes and the collection of soil samples in specific suspected PCE source areas on the Big O site; however, the boreholes were never advanced in these areas and samples were never collected. In the LFR findings report, dated August 9, 2006, there is no indication as to why these targeted areas were not sampled. For example:

- Borehole B-12 proposed to be located in the bottom of the lube pit adjacent to a drain was relocated approximately 20 feet to the northwest and outside of the pit.

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135/ Regional Board, Response to Fox Napa Comments at 8.

136/ See *id.* at 4, ¶ B.

137/ See Section VI.A.2, *supra*.

138/ Regional Board 2005 Staff Report (Exhibit TT) at 5.

139/ Email correspondence from L. Dernbach (Regional Board) to H. Singer (Regional Board) (Nov. 15, 2004) (Exhibit SS).

140/ Regional Board Response to Fox Napa Comments at 4-6, ¶ C.

141/ EKI Big O Response (Exhibit C).

- Borehole B-11 proposed to be located adjacent to a floor drain in the main service bay was relocated approximately 8 feet northwest of the drain.
- Borehole B-10 proposed to be located adjacent to the above ground storage tank and filter drum area was relocated approximately 15 feet to the north.
- Borehole B-9 proposed to be located in an unpaved area off the edge of a concrete paved surface was moved approximately 15 feet to the northeast and onto the paved surface.

These areas were identified by Big O's own consultant as suspected PCE source areas but were never sampled. Because these locations are upgradient from the Off-Site Contamination, these areas could be potential sources of the Off-Site Contamination. The Regional Board admits Big O did not follow its own work plan and states "the indoor investigation conducted within the shop at the Big O site was the best that could be done at that time. Water Board staff did not see the benefit that might be gained by requiring additional indoor investigations." 142/ However, given the number of unexplored source areas and the difficulty in locating PCE sources by soil sampling, alternative investigative methods, such as soil gas testing, could easily be employed to assess if DNAPL beneath the building is a source of high PCE concentrations detected in middle zone groundwater at the Big O site.

Other areas of the Big O site that were not fully investigated and could be PCE sources for all or some of the Off-Site Contamination are presented below:

- The area where a shallow soil sample contained detectable PCE (borehole B-9), located in an area of the Big O site that may have received surface water runoff from operations areas, was not further investigated or characterized to determine if PCE concentrations increased away from that sample location. Borehole B-9 was placed on a concrete paved surface and was not completed in the unpaved area that may have directly received surface water runoff. Additional boreholes and samples should have been collected from this area of the Big O site, including unpaved areas, to determine the lateral and vertical extents of the PCE contamination, and to determine whether higher concentrations of PCE existed away from borehole B-9.
- Soil in other unpaved areas of the Big O site that may have received surface water runoff from Big O operations areas, such as the unpaved areas along Tucker Avenue and unpaved areas on the Classic Cue portion of the site, were not sampled. These areas may have been impacted by PCE in surface water runoff from Big O operations and should have been sampled as part of the 2006 LFR investigation.
- The 2006 LFR investigation was conducted during a period of unusually high groundwater elevation (depth to groundwater was reported to be within 8 feet of the ground surface); thus, PCE concentrations in shallow zone groundwater may have been diluted due to fresh water

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

influx possibly from the nearby storm water retention and percolation basin. In a letter dated February 22, 2007, prepared by the Regional Board (Exhibit UU), the Regional Board indicated that high groundwater at the Big O site during sampling could potentially have diluted PCE concentrations in the shallow zone. The comments by the Regional Board in its February 22, 2007 letter suggested that several groundwater sampling events over several seasons with varying groundwater elevations would have more accurately depicted groundwater quality conditions at the Big O site, yet this investigation was never undertaken.

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

Further, the Amended Cleanup and Abatement Order (No. R6T-2003-031A1) (Mar. 7, 2006) ("2006 Big O Order") issued for the Big O site states that "further investigation is needed to attempt to locate the source area(s);" "[t]he investigation must be comprehensive, evaluating all on-site potential release areas and waste disposal areas;" and sampling is required at "all potential release sources to evaluate whether solvent compounds were discharged on site." 143/ These requirements from the 2006 Big O Order have not been met.

In addition, the 2006 Big O Order references an El Dorado County Department of Environmental Health report documenting an inspection of the Big O site on April 6, 2005, which identifies a receipt for contaminated soil taken to a transfer disposal facility. The 2006 Big O Order requires that Big O provide details of the release and the nature of the contaminated soil removed from the site as it "may be contributing to the groundwater pollution" at the Big O site. 144/ It does not appear that this requirement of the 2006 Big O Order has ever been met.

The Regional Board has been inconsistent in its interpretation of data for the Big O site. In 2007, the Regional Board concluded the PCE concentration of 4,700 µg/L in middle zone groundwater detected in 2001 on the east side of the Classic Cue building suggested an on-site PCE source. 145/ The Regional Board now claims this high PCE concentration does not indicate a source because, at the same time in 2001, PCE was detected at 1,900 µg/L in the middle zone on the west side of the Big O building. 146/ As shown on Figure 2, these two sample locations are located at least 75 feet from one another in the opposite direction. While the Regional Board assumes that one sample reflects migration from the other, in fact, PCE detected in these middle zone samples may derive from two entirely different Big O releases at the site.

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143/ 2006 Big O Order (Exhibit IIII), ¶¶ 7 & 9.

144/ See *id.* ¶ 10.

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

146/ Regional Board Response to Fox Big O Comments at 9.

Rather than assigning responsibility for these releases to Big O, the Regional Board now contends that PCE discovered in middle zone groundwater at the Napa and Big O sites is attributable to the LTLW:

Water Board staff waited until we had adequate investigation data from an off-site source(s) before pursuing case closure for the Big O site. Monitoring well data from the Lake Tahoe Laundry Works site since 2008 indicate it is the source of solvents affecting groundwater that migrated beneath the Napa [sic] site. Now that we have that information, it is appropriate to close this case. 147/

PES observed that no nexus exists between PCE at the LTLW and PCE in the middle zone groundwater because PCE concentrations in middle zone groundwater are higher beneath Napa 148/ and/or Big O 149/ compared with LTLW. The higher concentrations reflect spills at Napa and Big O that have added PCE mass to groundwater. The Regional Board dismissed this observation by stating the data "do not represent sample results from the same time period and therefore cannot be used to argue concentration trends between different properties." 150/ The Regional Board could remedy the need to compare data for differing years by requiring construction of shallow and middle zone monitoring wells at locations that encompass both upgradient and downgradient directions of groundwater flow beneath the Big O site. Sampling these wells would generate contemporaneous, representative, and groundwater sample results that can be compared to data collected by Seven Springs and Fox for the South Y Site. At the very least, granting a no further action to Big O is premature while investigations are still underway into PCE contamination in the area.

This is especially true because the Regional Board has failed to adequately respond to many of the objections raised in response to its proposal to grant no further action status to the Big O site. 151/ For example, the Regional Board does not convincingly respond to Fox's comment that the Regional Board has changed its position on whether Big O is a source of PCE in middle zone groundwater. The Regional Board attributes its change of heart to new data regarding groundwater flow direction from the LTLW, 152/ but the notion that it believed before 2007 that groundwater from the Big O site

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147/ See *id.* at 3.

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

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

150/ Regional Board, Response to Seven Springs Limited Partnership Comments on 60-Day No Further Action Notice, Lakeside Napa Auto Store Case (T6S035), 1935 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Undated) at 3-4, ¶ B; Regional Board, Response to Seven Springs Limited Partnership Comments on 60-Day No Further Action Notice, Big O Tire Store #147 Case (T6S034), 1961 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County ("Response to Seven Springs Big O Comments") (Undated) at 4-5, ¶ B.

151/ Fox made several other arguments as to why the Big O site should not receive a no further action determination. EKI Big O Response (Exhibit C). Those arguments are incorporated herein by reference.

152/ Regional Board Response to Fox Big O Comments at 5.



flowed to the east instead of the north is not supported by the document record. 153/ For example, in 2005, the Regional Board carefully evaluated the groundwater flow direction at the Big O site and concluded that “[g]roundwater flow returned to the natural northeast direction” by 1999. 154/ This is not very different from the Regional Board’s current description of groundwater movement. The Regional Board states the groundwater flow direction from the South Y Site is northerly. See Revised Proposed Order at 3 ¶ 9.

Similarly, the Regional Board off-handedly rejects Fox’s concern that the Big O Site does not meet the Board’s own criteria for closure. According to the Regional Board, the site qualifies for closure because it “consists only of petroleum products” and the site “is not a PCE source impacting or contribution to pollution in groundwater beyond the property.” 155/ This analysis assumes the conclusion. For the reasons stated above, whether the Big O site is a source of PCE has not been adequately assessed.

Former South Y Exxon Service Station; Current Transit Terminal (1000 Emerald Bay Road). An auto service station was formerly located at the southwest corner of Emerald Bay Road and Lake Tahoe Boulevard. Based on a review of historical aerial photographs, this facility appears to have operated at this location from approximately 1960 through the 1980s. An environmental database search report prepared by Environmental Data Resources, Inc. (“EDR”) 156/ indicates the presence of a 350-gallon waste oil tank on the Exxon site, which suggests auto repair and servicing activities were performed on-site. Past auto repair operations may have included the use of PCE as a degreasing solvent. During PES’s initial subsurface investigations of the South Y Site in 2005, a shallow zone groundwater sample (16 to 20 ft bgs) was collected from a borehole (GW-10) advanced at the northeast corner of the former Exxon site (see Figure 3). The groundwater sample contained PCE at a concentration of 20 µg/L. The former Exxon site is not located downgradient of the LTLW, based on reported groundwater flow directions. Thus, PCE in groundwater at the Exxon site does not appear to be from the LTLW. Other than one groundwater sample collected in 2005, no sampling for PCE in the subsurface on the South Y Exxon site appears to have been performed.

Runnels Automotive (986 Emerald Bay Road). Based on a review of historical aerial photographs, 157/ an auto repair and service station have been located at the northwest corner of Emerald Bay Road and Lake Tahoe Boulevard since around 1970. According to the EDR database report (Exhibit LLLL), a 400-gallon waste oil tank was reportedly located on-site. Past auto repair operations may have included the use of PCE as a degreasing solvent. In 1997, according to the EDR report, the Regional Board required Runnels to submit a work plan to conduct a groundwater

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153/ The Regional Board states “The newer groundwater flow direction information has changed Water Board staff’s interpretation of PCE source sites and off-site affected properties since the February 22, 2007 letter. For instance, groundwater flow from the Big O site is now interpreted to move in a northerly direction towards Tucker Avenue instead of easterly towards the LTLW site and South Y intersection.” See Regional Board Response to CAO Comments at 6.

154/ Regional Board 2005 Staff Report (Exhibit TT) at 20.

155/ *Id.* at 8.

156/ Environmental Data Resources, Inc. (“EDR”), The EDR Radius Map Report, South Y Center, South Lake Tahoe, California (July 13, 2007) (Exhibit LLLL).

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

investigation on its site. One shallow zone groundwater sample was collected from the Runnels site in 1997 or 1998, which may have been in response to the Regional Board's request (see Figure 3). Other than this one groundwater sample, to our knowledge, no other subsurface investigations have been performed on the Runnels site for the presence of PCE. Given the presence of elevated concentrations of PCE in shallow zone groundwater at the Hurzel property, which is located directly north and downgradient of the Runnels site (see Figures 3 and 6), the Runnels site may be a source of a portion of the Off-Site Contamination.

976 Emerald Bay Road. A small, industrial or commercial cinder block building with a roll-up door is currently located at this site. Based on a review of aerial photographs (Exhibit MMMM), this building has existed since the early 1960s. To our knowledge, past uses of the site and the potential for PCE use have not been investigated. Given the presence of elevated concentrations of PCE in shallow zone groundwater on the Hurzel property, which is located directly north and downgradient of the 976 Emerald Bay Road site (see Figures 3 and 6), this site may be a contributing source of the Off-Site Contamination.

1963 Tucker Avenue. This site is currently being used for commercial purposes (a window and door company), based on visual observations from Tucker Avenue. Past uses of the site included glass service and repair, and wood working, according to an EDR City Directory Report. 158/ Review of aerial photographs (Exhibit MMMM) indicates the current site building has existed since the early 1960s. Solvents, such as PCE, may have been used on-site in the past. To our knowledge, the site has not been investigated. This site is located directly south, and upgradient of the TCI Cable Site/Former Honda Motor Company Dealership, where PCE has been detected in groundwater (see Figures 3 and 6, and discussion below). Thus, the 1963 Tucker Avenue site may be a source of PCE at the TCI Cable site and of a portion of the Off-Site Contamination.

Hurzel Property; Current BevMo Store (945, 949, and 961 Emerald Bay Road). Past uses of the site included appliance repair (SOS Appliance) at 945 and 961 Emerald Bay Road, and dry cleaning at 949 Emerald Bay Road (formerly Norma's Cleaners). SOS Appliance operated directly adjacent to and northeast of Norma's Cleaners, within the same building on the Hurzel property. 159/

The Regional Board appears to have identified the Hurzel property as a source of PCE contamination based on the results of soil gas surveys that it performed in the South Y area in 1992 and 1993. The soil gas surveys, conducted with Petrex tubes, revealed significant soil gas responses near the Hurzel property and former Lampson One-Hour Cleaners/Sierra Dry Cleaners that was located at 2022 Lake Tahoe Boulevard. 160/ The Regional Board stated the following concerning the Hurzel property and former Lampson /Sierra Dry Cleaners:

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

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

160/ Regional Board, Tahoe South Y PCE Investigation ("Regional Board Soil Gas Survey") (Jan. 5, 1996) (Exhibit PPPP), South "Y" Study Map.

Raw data from the second survey confirmed the first survey results – we were dealing with multiple sources. Both historic dry cleaners may have been sources, but there seemed to be other sources, as well, which were not as obvious. 161/

Subsequent investigations show PCE is present in soil and groundwater on the Hurzel property. In 2003, PCE was detected at 0.098 and 0.016 mg/kg at 1 and 3.5 ft bgs, respectively, in a borehole advanced beneath a former coin-operated dry cleaning unit that reportedly operated between 1969 and 1977 within Norma's Cleaners. 162/ In 2007, PCE was detected at 0.045 mg/kg in a soil sample collected at a depth of approximately 2 ft bgs from a borehole (BH-16) advanced approximately 50 feet southeast of the former dry cleaning unit in the parking lot (Exhibit HHHH). Finally, according to Secor's 2008 report (Exhibit HHHH), waste residue from the Norma's Cleaners coin-operated dry cleaning machine (presumably PCE-containing waste) was periodically collected in a plastic bucket that was placed "into the trash dumpster for disposal with the normal trash products."

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

Former Crystal Range Motel (941 Emerald Bay Road). Two carpet cleaning businesses are reported to have operated on this site in the 1980s and 1990s (Chem-Dry Carpet Cleaning of SLT and Custom Carpet Cleaning). 163/ This site is located adjacent to the Hurzel site and upgradient of the Eloise Avenue wells. Past carpet cleaning operations may have included the use, storage or disposal of PCE as a carpet cleaner. To our knowledge, this site has not been investigated for releases of PCE. As shown on Figure 2, in 1998, PCE was detected at a concentration of 310 µg/L in middle zone groundwater (60 ft bgs) from a borehole advanced on James Avenue, directly north and downgradient of the 941 Emerald Bay Road site. Thus, the site may be a source of a portion of the Off-Site Contamination.

Former Lampson One-Hour Cleaners/Sierra Dry Cleaners (2022 Lake Tahoe Boulevard). Former dry cleaners were located at the southeast corner of Emerald Bay Road and Lake Tahoe Boulevard from the 1970s through the 1990s. 164/ These businesses likely used PCE in their dry cleaning operations. In 1996, the Regional Board identified the Lampson/Sierra Dry Cleaners site as a likely source of the PCE contamination based on soil gas studies in 1992 and 1993 using Petrex tubes. The Regional Board noted that the Petrex tube data indicated a "very 'hot' area" near the Lampson/Sierra Dry Cleaners site. 165/

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161/ See *id.*, App. I at 2.

162/ MACTEC Engineering and Consulting, Inc. ("MACTEC"), Report of Findings, Potential PCE Source Investigation, 949 Emerald Bay Road, South Lake Tahoe, California (Nov. 3, 2003) (Exhibit QQQQ); Secor, Site Investigation Report, Former Dry Cleaning Business, 949 Emerald Bay Drive, South Lake Tahoe, CA, 96150 (May 30, 2008) (Exhibit HHHH).

163/ Hill-Donnelly City Directory (1992) (Exhibit RRRR); Pacific Bell Directory (1985) (Exhibit SSSS).

164/ South Lake Tahoe phonebook (1979) (Exhibit TTTT); Hill-Donnelly City Directory (1989) (Exhibit UUUU).

165/ Regional Board Soil Gas Survey (Exhibit PPPP), App. I at 2.

Regional Board case files show a groundwater sample collected on the former Lampson/Sierra Dry Cleaners site at a depth of approximately 40 ft bgs contained PCE at 5 µg/L. 166/ LTLW is not the source for this PCE because the Lampson/Sierra Dry Cleaners site is southeast, in the opposite direction of groundwater flow, from LTLW.

The Hurzel property and the Redwood Oil facility (located at 2060 Eloise Avenue) are situated in the downgradient direction of groundwater flow from the Lampson/Sierra Dry Cleaners site. Shallow zone monitoring well MW-3 was constructed on Dunlap Avenue at Eloise Avenue to investigate a petroleum hydrocarbon release at Redwood Oil. Besides petroleum hydrocarbons, groundwater samples collected from this well between 2006 and 2010 contained PCE ranging from 100 µg/L to 430 µg/L (see Figures 3 and 6). PCE concentrations in well MW-3 were higher than those measured during the same time period in monitoring wells constructed at the perimeter of the South Y Site and within Lake Tahoe Boulevard. This finding combined with the northerly direction of groundwater flow proves LTLW is not the source of PCE in well MW-3. Lampson/Sierra Dry Cleaners is possibly the source but the extent of contamination associated with the site has not been delineated.

Former Five Star Texaco (2037 Lake Tahoe Boulevard). This site is located at the northeast corner of the intersection of Dunlap Drive and Lake Tahoe Boulevard (see Figure 6). Historical aerial photographs indicate an automobile service station operated at 2037 Lake Tahoe Boulevard from the 1960s through the 1980s. According to the EDR report (Exhibit LLLL), a release from an underground storage tank occurred at this site; however, no additional information is reported. PCE may have been used as a degreasing solvent if automotive service or repair activities were performed in addition to dispensing gasoline. In 1997, PCE was detected at 5.7 µg/L in groundwater collected from a borehole located downgradient (i.e., north) of the former Five Star Texaco site. 167/ The source for PCE in groundwater at this location was not further investigated. Consequently, the former Five Star Texaco site remains a potential contributing source of the Off-Site Contamination.

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

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166/ Images of the GHH Engineering, Inc. ("GHH") PCE Compilation Map (Exhibit VVVV). Fox requests that the entire map (Drawings 1, 2, and 3), which is available at the Regional Board office, be added to the record.  
167/ See *id.*

Emerald Bay Chevron (1069 Emerald Bay Road). According to a Regional PCE Data Compilation Report prepared by GHH, dated October 2002 168/, PCE was detected in groundwater on the Chevron site at a concentration of 8.7 µg/L at a depth of approximately 40 ft bgs. The Chevron site is located approximately 1,100 feet south-southeast, and upgradient of monitoring well OS-1. To our knowledge, the source for the PCE at the Chevron site was never investigated, including sampling of the shallower water bearing zone or determination of the lateral or vertical extents of PCE in the subsurface at and around the Chevron site. The data suggest that this site is a potential source for PCE in groundwater upgradient of well OS-1 that could be impacting the well.

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

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

Fifth Street Businesses. Review of historical city directories 169/ reveals light industrial and commercial businesses have operated along 2028 through 2042 Fifth Street, between James Avenue and Eloise Avenue. Businesses that may have used, stored or disposed of PCE are listed below.

- DC Turbo Parts
- Summit Carpets
- Performance Sleds-Polaris Parts
- Paradise Garage
- Performance Mobile Auto Repair
- American Motorcycle Service
- Pete's Auto Repair

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168/ GHH, Regional PCE Data Compilation, South Tahoe Y Area, South Lake Tahoe, California (Oct. 2002) (Exhibit WWWW).

169/ EDR City Directory Report (Exhibit NNNN).

To our knowledge, no testing for PCE has been performed at any of the Fifth Street businesses. The off-site groundwater investigation by URS in 2015, however, did test for PCE at boreholes SB-20 and SB-21, which are downgradient of the Fifth Street businesses. No PCE was detected in the shallow zone groundwater sample obtained from borehole SB-20. PCE was measured at 3 µg/L in the shallow zone groundwater sample collected from borehole SB-21. Groundwater monitoring wells MW-4A/4B are just north of the Fifth Street businesses, across Eloise Avenue. The Regional Board sampled these wells in October 2015. PCE was detected at 14 µg/L and 150 µg/L in groundwater samples from these wells. 170/ Thus, the Fifth Street businesses could be a source for the PCE detected in MW-4A/4B.

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

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

As discussed above, no PCE was detected in shallow zone groundwater from SB-20 and 3 µg/L was found in shallow zone groundwater from SB-21. URS also obtained a groundwater sample from borehole SB-19 placed on Patricia Lane, which is in the north-northwest direction of groundwater flow from Hatch Electric, Bill's Automotive, and Sierra Pacific Power that are located at 921, 927, and 933 Eloise Avenue, respectively. PCE was detected at 0.6 µg/L in the shallow zone groundwater sample from borehole SB-19 171/

The URS Final Report recommends that further investigation be performed to identify the source of PCE detected in groundwater along Eloise Avenue. 172/ The following businesses along Eloise Avenue have yet to be investigated:

- Doug Gayner General Contractor
- Olsen Paving and Seal Coating
- Pedersen Underground Paving
- Two Guys Automotive
- Tahoe Valley Auto

Upgradient Sources. Soil gas surveys performed by the Regional Board in the South Y area in 1992 and 1993 identified significant soil gas responses at upgradient locations along Delta Street and

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170/ URS Final Report (Exhibit W) at 6.

171/ See *id.* at 5.

172/ See *id.* at 8.

Industrial Avenue that have not been adequately investigated. <sup>173/</sup> The Regional Board collected grab groundwater samples in 1997 and 1998 and, despite identifying “chlorinated hydrocarbons likely originating from the Tahoe Asphalt facility, upgradient of the Industrial Avenue #2 well,” elected not to pursue potentially responsible parties in the vicinity of STPUD municipal supply well No. 4 on Tata Lane. <sup>174/</sup>

Instead of investigating these upgradient sources, and no longer content with attributing all PCE contamination to the north, northeast, and northwest of the South Y Site to a release from the LTLW, the Regional Board now alleges that at least certain of the *upgradient* contamination is attributable to releases from the LTLW. According to the Regional Board:

VOCs are not naturally occurring and have not been attributed to any upgradient source. The Dischargers have not installed a monitoring well considered to be in the upgradient flow direction of the Facility; MW-10 originally thought to be an upgradient well on the Facility parcel is actually affected at times by soil gas beneath the building foundation. <sup>175/</sup>

To be clear, the Regional Board agrees that LW-MW-10-SR is in an upgradient (south) direction from the LTLW building; it simply believes the well cannot be considered an upgradient well for the purpose of establishing anthropogenic background concentrations of VOCs in shallow zone groundwater because it has been impacted by the LTLW source.

While it is physically possible for VOCs to migrate in soil gas independent of groundwater flow, no data are provided to demonstrate that this is what happened at the LTLW. To the contrary, the data referenced above suggest that off-site upgradient VOC sources are impacting the LTLW, other downgradient locations, and upgradient STPUD municipal supply wells that the Regional Board alleges were contaminated by a release from the South Y Site. Revised Proposed Order at 1 ¶ 2; 9 ¶ 28; and App. A 1 ¶ 2.

The Proposed Order’s conclusion that Off-Site Contamination must have migrated from LTLW is unsupported when one considers: (a) the number and location of sites in the South Y vicinity that may have used PCE but which have not been fully investigated, (b) the detection of PCE in groundwater at and downgradient of some of these sites, and (c) the presence of PCE in groundwater at several sites located cross-gradient to and upgradient of LTLW.

## **VII. THE WORK REQUIRED BY THE ORDER IS UNNECESSARY**

### **A. Containment**

Even if the Regional Board were to conclude, contrary to the evidence, that the Off-Site Contamination is attributable to the LTLW (e.g., because the contamination migrated off-site prior to

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<sup>173/</sup> Regional Board Soil Gas Survey (Exhibit PPPP), South “Y” Study Map.

<sup>174</sup> See Memorandum from H. Singer (Regional Board) to E. Anton (State Water Board), re Summary Results for the Tahoe South “Y” PCE Investigation – CAA #82 (Feb. 25, 1999) (Exhibit XXXX) at 2-4 and Figure 3.

<sup>175/</sup> See Revised Proposed Order App. B at 6.

the installation of the SVE/GASS), the Proposed Order's requirements for containment are completely unnecessary. As explained above:

- The remaining contamination at the South Y Site is limited to a small area in the vicinity of LW-MW-1S and LW-MW-5S and concentrations of PCE in all other wells at the South Y Site are below the MCL of 5 µg/L;
- The zone of influence of the SVE/GASS remediation system at the South Y Site effectively precludes any remaining contamination from migrating off-site; and
- The Regional Board's off-site investigation performed in 2015 did not find any contamination attributable to the South Y Site, which confirms no additional containment is needed because PCE is not migrating from the South Y Site.

#### **B. Off-Site Investigation and Corrective Action**

As noted in Section VI.A, above, the evidence does not establish that the Off-Site Contamination is associated with releases from the LTLW at the South Y Site. At best, the source of that contamination is unknown and the Regional Board should thoroughly investigate other possible sources before putting that burden on Fox. The PCE spill at the South Y Site affected vadose zone soil and shallow zone groundwater. This contamination is being remediated and contained on-site by the SVE/GASS.

The results of the off-site investigation performed by URS in 2015 on behalf of the Regional Board confirm that PCE in groundwater has not migrated from the South Y Site. Figure 2 from the URS Final Report (Exhibit W) summarizes groundwater PCE results. Low PCE concentrations of 1.4 to 1.8 µg/L in the vicinity of 10<sup>th</sup> Street and James Avenue must originate from a source other than the LTLW because no PCE was found in the seven grab groundwater samples collected south and just upgradient at the intersection of Emerald Bay Road/10<sup>th</sup> Street/Roger Avenue, an area that is located in between the PCE detections at the 10<sup>th</sup> Street/James intersection and the LTLW. These groundwater data further support the fact that PCE detections in the LBWC municipal supply wells Nos. 2 and 5, which are located farther north of the intersection of 10<sup>th</sup> Street and James Avenue at 22 µg/L and 46 µg/L in 2014 are not from the LTLW. Similarly, PCE detected in shallow zone groundwater at 1.9 µg/L and 85 µg/L in Hurzel North and South monitoring wells, respectively, and at 14 µg/L and 150 µg/L in monitoring well MW-4A/B at the intersection of 5<sup>th</sup> Street and Eloise Avenue are attributable to sources other than the LTLW because these wells are not in the north-northwest direction of groundwater flow from the LTLW. As discussed in Section VI.D, numerous PCE sources exist near the wells that have not been fully investigated.

Under these circumstances, the Proposed Order's investigation and corrective action requirements are unwarranted. If, contrary to the evidence, the Regional Board insists on requiring an off-site investigation as part of the Revised Proposed Order, it must clearly define the area to be investigated. As currently drafted, the Proposed Order is unduly vague and ambiguous and provides little to no information regarding the boundaries of the area that the Regional Board wants the named dischargers to investigate. See *In re Ocean Mist Farms and RC Farms et al.*, Cal. State Water Res. Control Bd. Order No. WQ 2012-12, 2012 WL 5494091 at \*8 (Sept. 19, 2012) (staying



an ambiguous provision of an order and indicating that “with no further clarification of its meaning or guidance . . . it poses a challenge to dischargers seeking to comply with its requirements”). Without fair notice of the Proposed Order’s requirements, Fox is unable to fully evaluate or contest the scope of its potential liability. Moreover, if the Revised Proposed Order were finalized in its current form, Fox would be subject to penalties for failing to comply with requirements that have not been clearly articulated. As the State Water Board has recognized, “an order must be sufficiently clear to give notice of prohibited conduct.” See *In re Aerojet General Corporation and Cordova Chemical Company*, Cal. State Water Res. Control Bd. Order No. WQ 80-4, 1980 WL 590838 at \*16 (Mar. 20, 1980). The Revised Proposed Order violates this requirement. While Fox recognizes that the area the Regional Board wants investigated could evolve over time, the Regional Board is obligated to define the area as best it can before finalizing the Revised Proposed Order.

For the reasons stated above, the Revised Proposed Order’s corrective action requirements are similarly unwarranted. Moreover, even if the Regional Board were to adopt an order that requires some form of off-site investigation, imposing a corrective action requirement at this time is premature. As the URS Final Report acknowledges and these comments demonstrate, there are multiple additional potential sources of PCE in the vicinity of the LTLW, and it would be inappropriate, improper and unlawful for the Regional Board to require Fox to undertake corrective actions with respect to contamination caused by these other sources. See generally Cal. Water Code § 13320(c) (“Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, the state board may direct that the appropriate action be taken by the regional board, refer the matter to another state agency having jurisdiction, take the appropriate action itself, or take any combination of those actions.”) Moreover, as was discussed at the public meeting held on February 5, 2016, other parties are currently investigating both environmental conditions and possible treatment systems in the area north of the South Y Site. 176/ These efforts could significantly impact the Regional Board’s understanding of the source of the Off-Site Contamination and the scope of any necessary corrective actions with respect to the Off-Site Contamination and must be better understood before the Regional Board imposes corrective action requirements upon Fox.

#### **VIII. THE PROPOSED ORDER CONTAINS MISSTATEMENTS THAT SHOULD BE REVISED**

We identified a number of mis-statements or statements that require clarification in the Revised Proposed Order. For your convenience, we have tracked our specific comments in the Proposed Order, and attached that document as Exhibit YYYY. The comments set forth in Exhibit YYYY are in addition to (and in no way limit) the comments set forth in the text of this document.

#### **IX. CONCLUSION**

The Regional Board continues to improperly identify Fox as a liable party under Section 13304 of the Water Code and incorrectly attributes off-site contamination to releases at the South Y Site. Numerous investigations regarding groundwater flow, contaminant distribution, and the efficacy of the on-site remediation system demonstrate that the South Y Site contamination is being contained within the boundaries of the South Y Site and that sources other than the LTLW are the source of

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176/ See Regional Board, Fall 2015 URS PCE Investigation Meeting (Feb. 5, 2016) (Exhibit EEEE), slide 9.

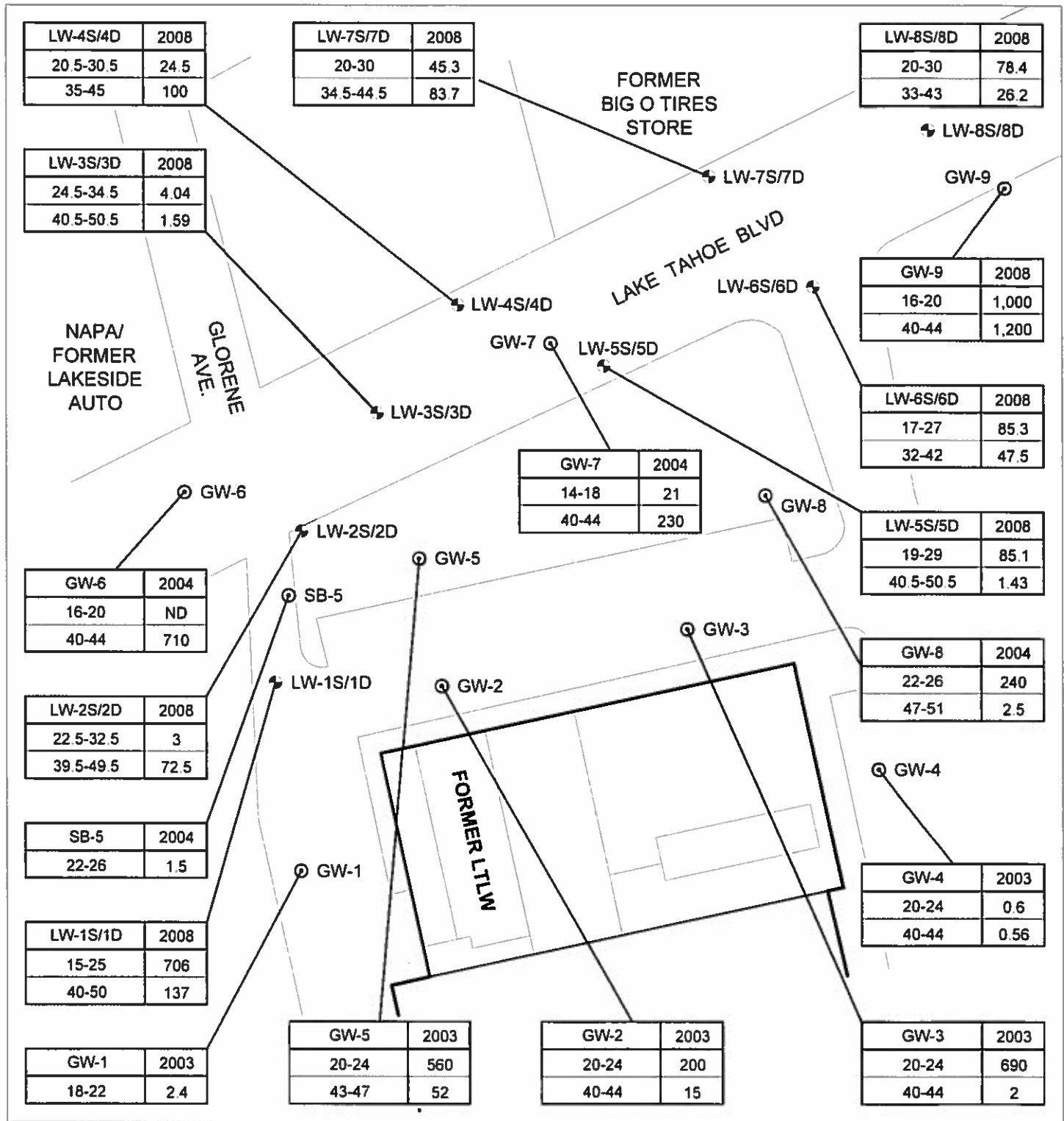
the contamination in the off-site area. Significantly, the Regional Board has failed to fully investigate those other potential sources. In any event, the work sought by the Regional Board in the Revised Proposed Order is unnecessary because Seven Springs and Fox have been remediating the South Y Site since 2009, and that remediation has been successful in reducing the on-site PCE concentrations and containing the contamination within the boundaries of the South Y Site.

Accordingly, Fox respectfully requests that the Regional Board reconsider issuing the Revised Proposed Order and respectfully requests the opportunity to present its arguments to the Regional Board in person in an appropriate proceeding. Fox remains willing to discuss alternative, collaborative approaches to addressing the Regional Board's concerns.

Respectfully submitted,



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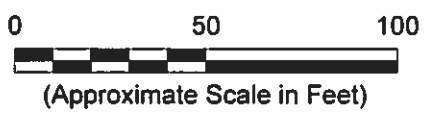


**Legend:**

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

**Abbreviations:**

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



**Notes:**

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

**Erler & Kalinowski, Inc.**

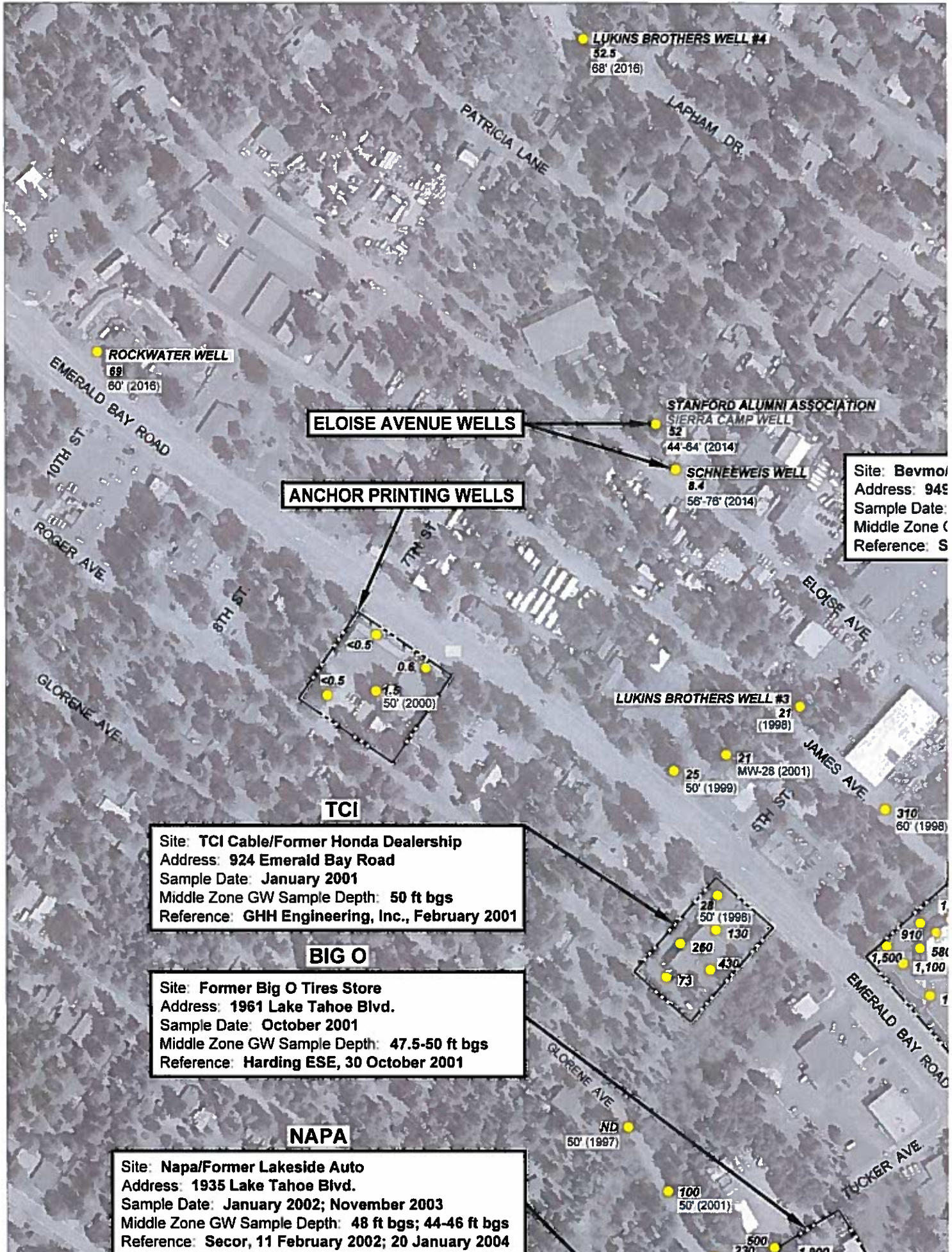
**PCE Concentrations in Shallow and Middle Zone Groundwater (2003-2008)**

Former Lake Tahoe Laundry Works  
South Lake Tahoe, CA

September 2016  
EKI A70020.01

**Figure 1**

G:\A70020\01\2016-09\Figure 1 through 8.doc 9-06-16



**LUKINS BROTHERS WELL #4**  
 52.5  
 68' (2016)

**ROCKWATER WELL**  
 69  
 60' (2016)

**ELOISE AVENUE WELLS**

**STANFORD ALUMNI ASSOCIATION  
 SIERRA CAMP WELL**  
 52  
 44-64' (2014)

**SCHNEEWEIS WELL**  
 8.4  
 56'-78' (2014)

Site: Bevmor  
 Address: 949  
 Sample Date:  
 Middle Zone (C  
 Reference: S

**ANCHOR PRINTING WELLS**



**LUKINS BROTHERS WELL #3**  
 21  
 (1998)

25  
 50' (1999)

21  
 MW-28 (2001)

310  
 60' (1998)

**TCI**

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



**BIG O**

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



**NAPA**

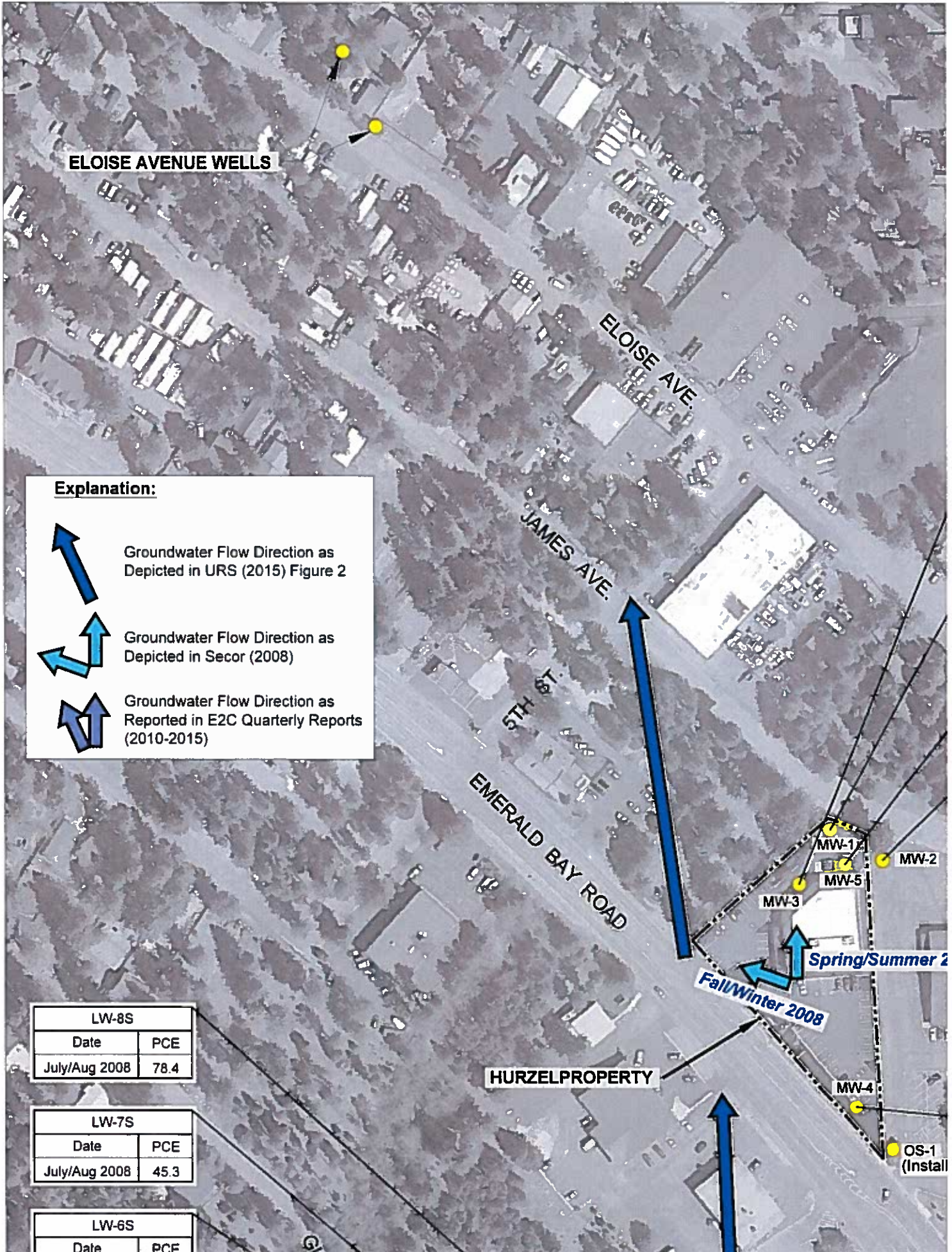
Site: Napa/Former Lakeside Auto  
 Address: 1935 Lake Tahoe Blvd.  
 Sample Date: January 2002; November 2003  
 Middle Zone GW Sample Depth: 48 ft bgs; 44-46 ft bgs  
 Reference: Secor, 11 February 2002; 20 January 2004

ND  
 50' (1997)

100  
 50' (2001)




500  
 230

1,900



**ELOISE AVENUE WELLS**

**Explanation:**

-  Groundwater Flow Direction as Depicted in URS (2015) Figure 2
-  Groundwater Flow Direction as Depicted in Secor (2008)
-  Groundwater Flow Direction as Reported in E2C Quarterly Reports (2010-2015)

LW-8S	
Date	PCE
July/Aug 2008	78.4

LW-7S	
Date	PCE
July/Aug 2008	45.3

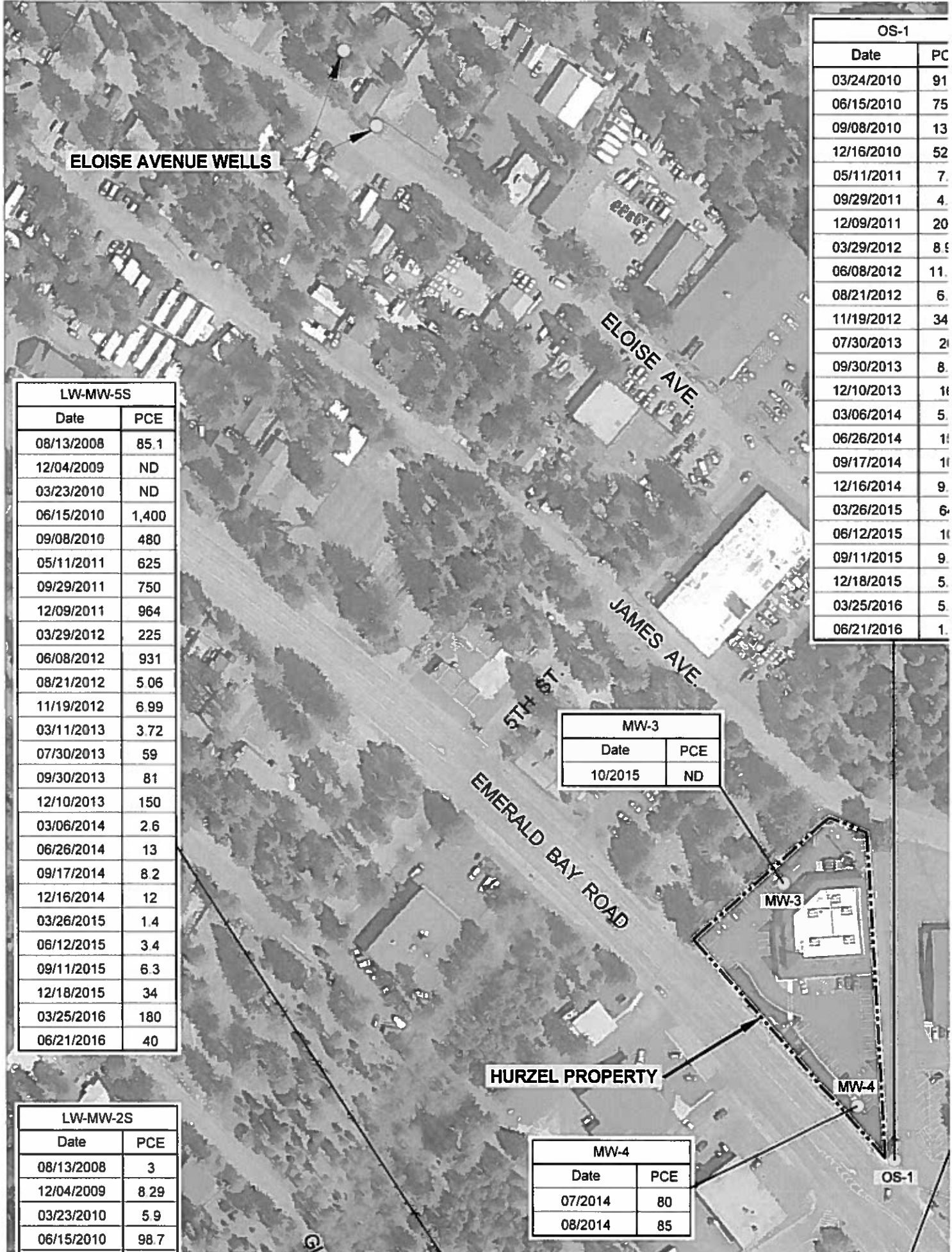
LW-6S	
Date	PCE

**HURZELPROPERTY**

Spring/Summer 2

Fall/Winter 2008

OS-1 (Install)



**ELOISE AVENUE WELLS**

OS-1	
Date	PCE
03/24/2010	91
06/15/2010	75
09/08/2010	13
12/16/2010	52
05/11/2011	7.
09/29/2011	4
12/09/2011	20
03/29/2012	8.5
06/08/2012	11.
08/21/2012	6
11/19/2012	34
07/30/2013	2
09/30/2013	8
12/10/2013	11
03/06/2014	5
06/26/2014	11
09/17/2014	11
12/16/2014	9
03/26/2015	6
06/12/2015	11
09/11/2015	9
12/18/2015	5
03/25/2016	5
06/21/2016	1.

LW-MW-5S	
Date	PCE
08/13/2008	85.1
12/04/2009	ND
03/23/2010	ND
06/15/2010	1,400
09/08/2010	480
05/11/2011	625
09/29/2011	750
12/09/2011	964
03/29/2012	225
06/08/2012	931
08/21/2012	5.06
11/19/2012	6.99
03/11/2013	3.72
07/30/2013	59
09/30/2013	81
12/10/2013	150
03/06/2014	2.6
06/26/2014	13
09/17/2014	8.2
12/16/2014	12
03/26/2015	1.4
06/12/2015	3.4
09/11/2015	6.3
12/18/2015	34
03/25/2016	180
06/21/2016	40

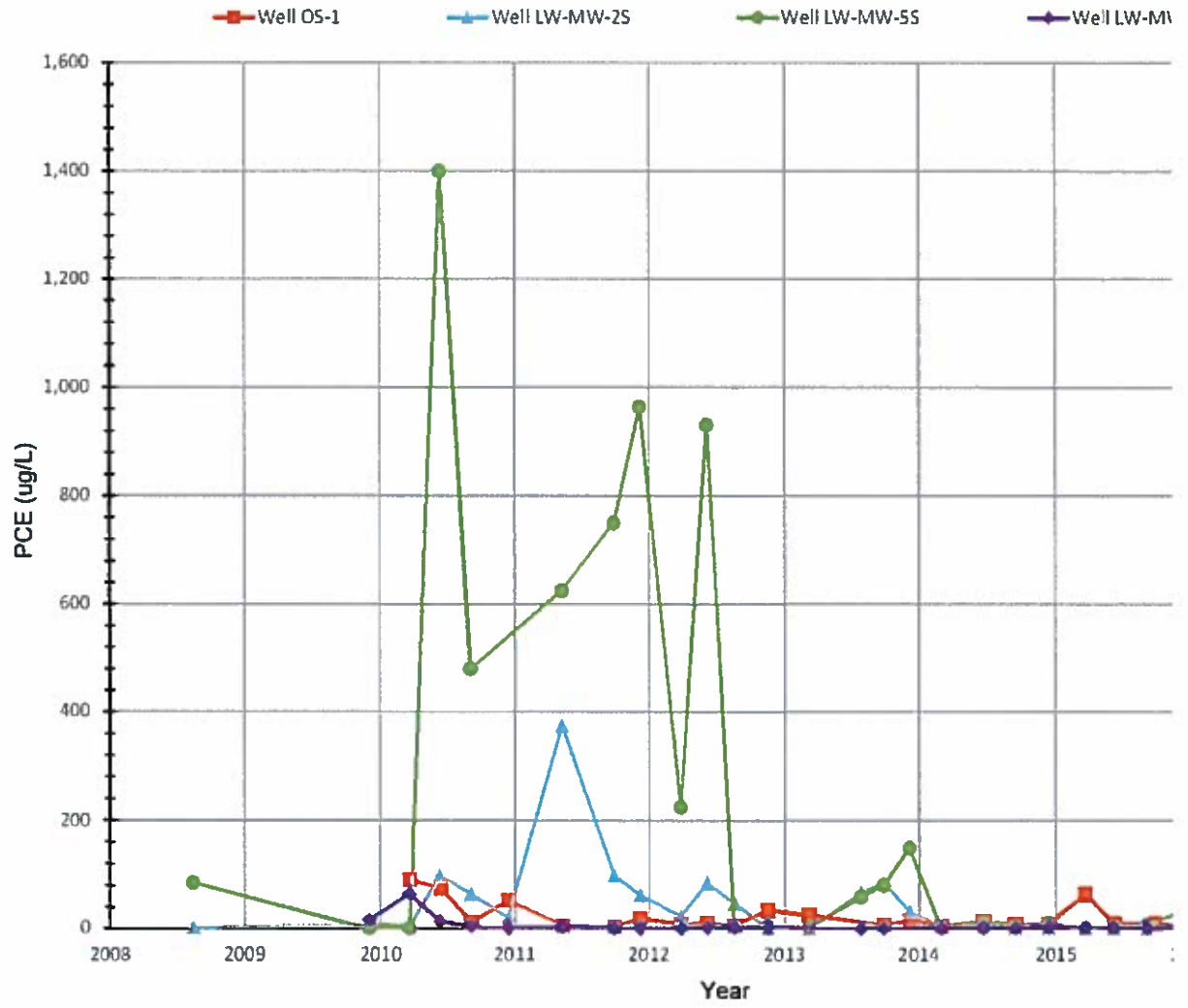
MW-3	
Date	PCE
10/2015	ND

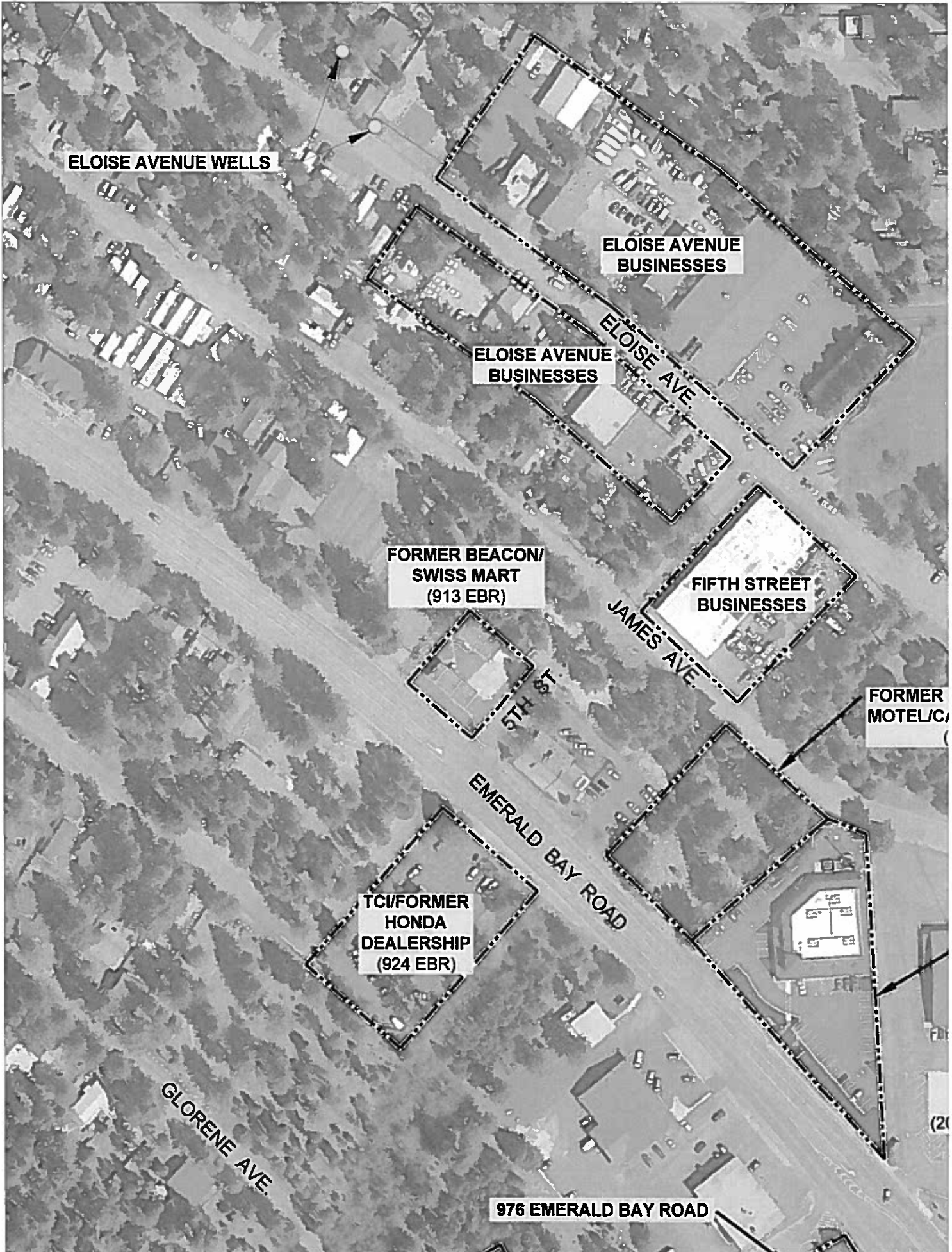
**HURZEL PROPERTY**

LW-MW-2S	
Date	PCE
08/13/2008	3
12/04/2009	8.29
03/23/2010	5.9
06/15/2010	98.7

MW-4	
Date	PCE
07/2014	80
08/2014	85

OS-1





**ELOISE AVENUE WELLS**

**ELOISE AVENUE  
BUSINESSES**

**ELOISE AVENUE  
BUSINESSES**

**FORMER BEACON/  
SWISS MART  
(913 EBR)**

**FIFTH STREET  
BUSINESSES**

**FORMER  
MOTEL/C...**

**TCI/FORMER  
HONDA  
DEALERSHIP  
(924 EBR)**

**976 EMERALD BAY ROAD**

**GLORENE AVENUE**

**ELOISE AVENUE**

**JAMES AVENUE**

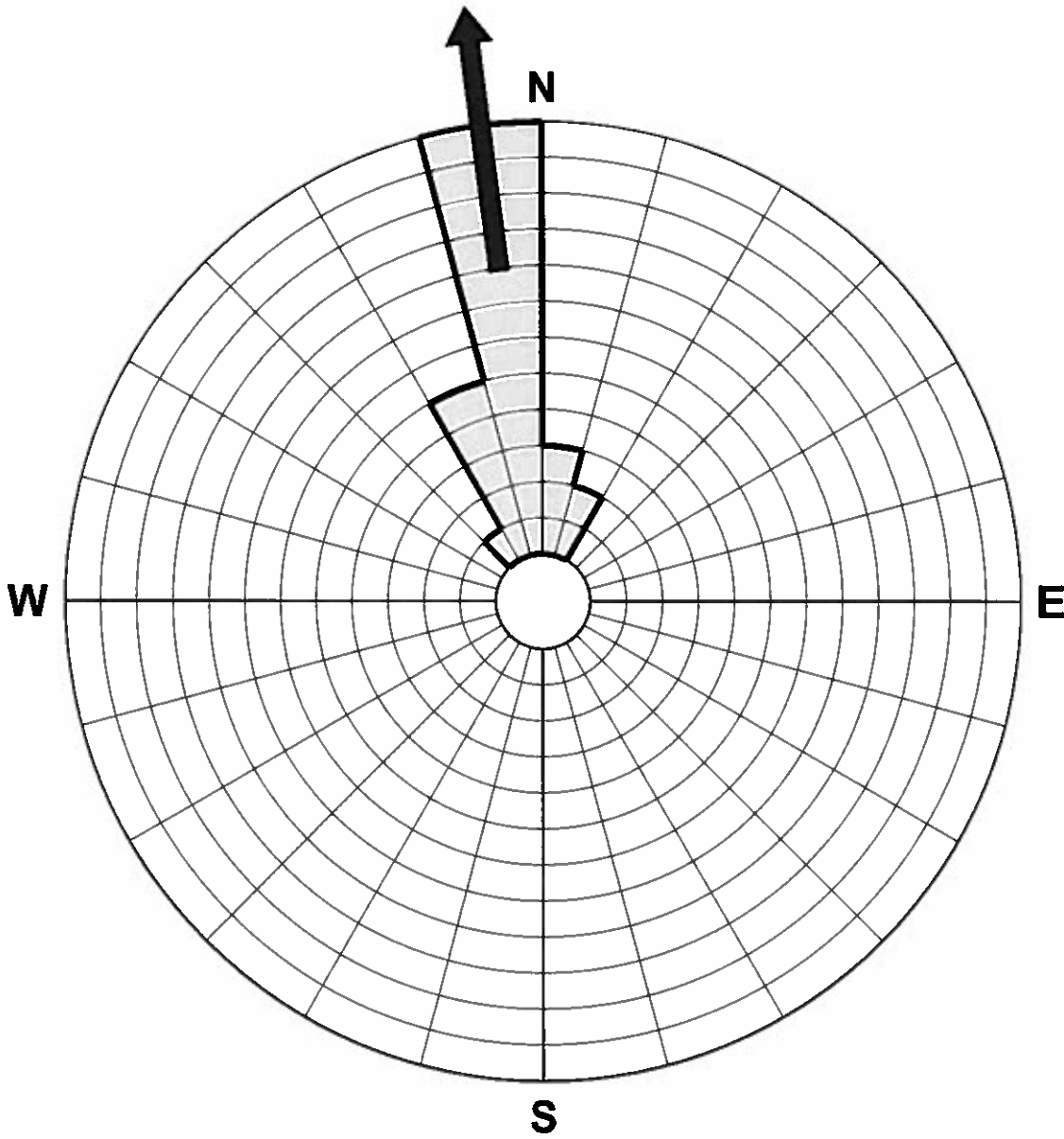
**EMERALD BAY ROAD**

**FIFTH STREET**

(2)



**Average Groundwater Flow Direction  
(7.3 Degrees West of North)**



**Notes:**

1. Based on 23 LTLW Quarterly Sampling Events from 2009 to 2015.

**Erler &  
Kalinowski, Inc.**

Rose Diagram  
LTLW Groundwater Flow Direction

Former Lake Tahoe Laundry Works  
South Lake Tahoe, CA

September 2016  
EKI A70020.01

Figure 7

<b>Index of Exhibits to Fox's September 2016 Comments on Revised Proposed Order</b>	
Exhibit A	Fox Comments on the Regional Board's Proposed Cleanup and Abatement Order for the Former Lake Tahoe Laundry Works located at 1024 Lake Tahoe Boulevard, South Lake Tahoe, California, No. R6T-2015-PROP (Feb. 11, 2016)
Exhibit B	Erler & Kalinowski, Inc., Response to Water Board Notification of Consideration of No Further Action, Napa Auto Parts/Former Lakeside Auto, 1935 Lake Tahoe Boulevard South Lake Tahoe, California, (Dec. 3, 2015)
Exhibit C	Erler & Kalinowski, Response to Water Board Notification of Consideration of No Further Action, Former Big O Tires Store Site, 1961 Lake Tahoe Boulevard, South Lake Tahoe, California (Dec. 3, 2015)
Exhibit D	Agreement for Purchase and Sale of South "Y" Shopping Center, between Century 73 and Interland Communities, Inc. (Dec. 19, 1985)
Exhibit E	Grant Deed from Connolly (Grantor) to Century 73 (Grantee) (Sept. 11, 1974)
Exhibit F	Memorandum of Lease Between Century 73 and Connolly Development (Sept. 11, 1974)
Exhibit G	Memorandum from A. Bassak, Esq. to H. Singer and L. Dernback (Regional Board), South Y Center Chain of Title and Laundry Lease History (Mar. 11, 2004)
Exhibit H	Notice to Creditors, Escrow No. 203-96154 (Feb. 5, 1998)
Exhibit I	Regional Board, Status Report on the "Y" Investigation in South Lake Tahoe (Sept. 4-5, 1997)
Exhibit J	Letter from E. Garfinkle (Dreher, Garfinkle & Watson) to J. Short (Regional Board), Tahoe Y Shopping Center, South Lake Tahoe, El Dorado County, APNs: 023-421-011 and 021 (Jan. 10, 1992)
Exhibit K	Lease Between Landlord Connolly Development and Tenants the Prupases (May 24, 1972)
Exhibit L	Transcript of Deposition of Mary Louise Baisley, <i>Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.</i> (E.D. CA, 2007) (No. 2:07-00412-LKK-GGH)
Exhibit M	Complaint, <i>Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.</i> , No. 2:07-00142-LKK-GGH (E.D. Cal. 2007)
Exhibit N	Order, <i>Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.</i> , No. 2:07-00142-LKK-GGH (E.D. Cal. 2007)
Exhibit O	Fox Capital Mgmt. Corp. Third Party Complaint Against Real Estate Mgmt. Associates, LLC, et al., <i>Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.</i> , No. 2:07-00142-LKK-GGH (E.D. Cal. 2007)
Exhibit P	E <sub>2</sub> C, Interim Remedial Action Workplan for SZA Groundwater Investigation, SZA Groundwater Monitoring, Interim Remedial Action Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (June 4, 2009)
Exhibit Q	E <sub>2</sub> C, Amendment to Interim Remedial Action Workplan for SZA Groundwater Investigation, SZA Groundwater Monitoring, Interim Remedial Action Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 26, 2009)
Exhibit R	Letter from L. Dernbach (Regional Board) to S. Reisch (Fox's counsel) and B. Beard (Seven Springs' counsel) (Sept. 1, 2009)
Exhibit S	E <sub>2</sub> C, Interim Remedial System Installation/Pilot Testing Report of Findings and Draft Remedial Action Plan for Vadose Zone Soil and Shallow Groundwater Cleanup, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 12, 2010)
Exhibit T	Regional Board, Acceptance of Work Plan for Remediation and Order to Submit Technical Reports, Former Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County, Investigative Order R6T-2013-064 (Aug. 2, 2013)

Exhibit U	E2C, Summary of Second Quarter 2016 Groundwater Monitoring Data
Exhibit V	<i>In re Fox Capital Mgmt. Corp. and Seven Springs Ltd. P'Ship</i> , Cal. Reg. Water Quality Control Bd., Lahontan Region, Stipulated Agreement for Replacement Water Supply at 883 and 903 Eloise Avenue, South Lake Tahoe (Jun. 5, 2015)
Exhibit W	URS Corporation Americas, Final PCE Investigation Report, South Lake Tahoe, California (Jan. 19, 2016)
Exhibit X	C. Hutto, URS, PCE Investigation, South Lake Tahoe, Summary of Findings (Feb. 5, 2016)
Exhibit Y	Letter from H. Singer (Regional Board) to J. Meredith, SSR Realty Advisors, R and M. Baisley, R. Prupas, K. and K. Hakansson, re Request for Workplan for Supplemental Site Investigation at the Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Apr. 12, 2004)
Exhibit Z	Freeze, R. and J. Cherry, Groundwater, Prentice-Hall, Inc. (1979)
Exhibit AA	State Coalition for Remediation of Drycleaners, "A Chronology of Historical Developments in Drycleaning" (Nov. 2007)
Exhibit BB	Century 73, Certificate of Cancellation – Limited Partnership (filed Jun. 29, 1990)
Exhibit CC	Addendum to Shopping Center Lease Between Connolly Development Inc., as Landlord and Robert, Berniece and Norman Prupas dab Bobby Page Cleaners, as tenant, dated May 24, 1972 (July 5, 1972)
Exhibit DD	Bobby Page's Dry Cleaners and Shirt Laundry, <a href="http://www.bobbypages.com/">http://www.bobbypages.com/</a> (last visited Sept. 6, 2016)
Exhibit EE	Sublease between Connolly Development Inc. (landlord), Robert Prupas and Berniece Prupas, dba Bobby Page's Inc. (tenant), and Kyell Hakansson and Kersten Hakansson (subtenant) (Nov. 3, 1973)
Exhibit FF	Email from L. Dernbach (Regional Board) to <a href="mailto:kevin@bobbypages.com">kevin@bobbypages.com</a> , re Proposed Revisions to Lake Tahoe Laundry Works CAO (Aug. 9, 2016)
Exhibit GG	Stipulation and Order Re: Dismissal of Third Party Defendant Leid's Inc., <i>Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.</i> , No. 2:07-00142-LKK-GGH (E.D. Cal. 2007)
Exhibit HH	Letter from H. Singer (Regional Board) to D. Leid, A. MacKenzie (Bobby Page's Dry Cleaners and Shirt Laundry), re Submittal of Technical Report, Former Bobby Page's Cleaners, Village Center, 4006 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (July 29, 2008)
Exhibit II	D. Phillips, <i>Lakewood Hills Developer Files to Reorganize Debts</i> , The Press Democrat Santa Rosa, July 18, 1995
Exhibit JJ	Connolly Development Inc., Bankruptcy Petition #:95-11749 Docket, U.S. Bankruptcy Court (N.D. Cal. 1995)
Exhibit KK	Matt Connolly, LinkedIn, <a href="https://www.linkedin.com/pub/matt-connolly/11/b8b/8a4">https://www.linkedin.com/pub/matt-connolly/11/b8b/8a4</a>
Exhibit LL	M. James, <i>Ted Connolly, former 49er and Napa resident, dies at 82</i> , Napa Valley Register, Mar. 10, 2014, available at <a href="http://napavalleyregister.com/sports/ted-connolly-former-er-and-napa-resident-diesat/article_09550610-a8a3-11e3-a0ce-0019bb2963f4.html">http://napavalleyregister.com/sports/ted-connolly-former-er-and-napa-resident-diesat/article_09550610-a8a3-11e3-a0ce-0019bb2963f4.html</a>
Exhibit MM	C Eagle Spirit, LLC, Business Entity Information, Nevada Secretary of State
Exhibit NN	PES, Supplemental Site Investigation Results, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe ("Supplemental Site Investigation Results") (Oct. 13, 2004)
Exhibit OO	Excerpts from the San Francisco Bay Regional Water Quality Control Board, ESL Workbook (Microsoft Excel 2010), Revision 3 (Feb. 2016)
Exhibit PP	U.S. EPA, Ground Water Issue: Assessment and Delineation of DNAPL Source Zones at Hazardous Waste Sites, EPA/600/R-09/119 (Sept. 2009)
Exhibit QQ	U.S. EPA Regional Screening Level Chemical-specific Parameters Supporting Table (Nov. 2015)

Exhibit RR	Water Well Drillers Reports
Exhibit SS	Email correspondence from L. Dernbach (Regional Board) to H. Singer (Regional Board) (Nov. 15, 2004)
Exhibit TT	Staff Report, Regional Board, Solvent Contamination at the Big O Tires Store, 1961 Lake Tahoe Boulevard, South Lake Tahoe (Aug. 22, 2005)
Exhibit UU	Regional Board, Comments on Site Investigation Results, Big O Tires Store, 1961 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County (Feb. 22, 2007)
Exhibit VV	E <sub>2</sub> C, First Quarter 2016 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe
Exhibit WW	E <sub>2</sub> C, Site Investigation Report of Findings, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe ("Site Investigation Report") (Sept. 22, 2008)
Exhibit XX	Morgan et al., Glacio-Lacustrine Stratigraphy, Aquifer Characterization and Contaminant Transport: A Case Study in South Lake Tahoe, California, USA, <i>Hydrogeology Journal</i> , Vol. 16 (2008)
Exhibit YY	Kennedy/Jenks Consultants, Tahoe Valley South Basin (6-5.01) 2014 Groundwater Management Plan, Prepared for South Tahoe Public Utility District (Dec. 22, 2014)
Exhibit ZZ	Regional Board case file, which includes table summarizing volatile organic chemical data for Tata Lane Well #4 (Aug. 23, 2007)
Exhibit AAA	U.S. EPA, "Chapter II: Soil Vapor Extraction in How to Evaluate Alternative Cleanup Technologies for Underground Storage Tank Sites, A Guide for Corrective Action Plan Reviewers," EPA 510-R-04-002 (May 2004)
Exhibit BBB	PES, Indoor Air Sampling Report, Former Lake Tahoe Laundry Works (Jan. 14, 2016)
Exhibit CCC	Suthersan, S., In Situ Air Sparging. Remediation Engineering: Design Concepts, CRC Press LLC, (1999)
Exhibit DDD	U.S. Army Corps of Engineers, In-Situ Air Sparging Engineer Manual, EM 200-1-19 (Dec. 31, 2013)
Exhibit EEE	Wisconsin Department of Natural Resources, Guidance for Design, Installation and Operation of In Situ Air Sparging Systems, RR-186 (Feb. 2015)
Exhibit FFF	E <sub>2</sub> C, January 4, 2016 Air Sparge Confirmation Test Summary, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, California (Jan.12, 2016)
Exhibit GGG	Regional Board, Comments on Air Sparge Performance Test, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, (May, 24, 2016)
Exhibit HHH	E <sub>2</sub> C, Response to Comments on Air Sparge Performance Test, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe, California, (Jul. 27, 2016)
Exhibit III	Email from L. Dernbach (Regional Board) to W. Lawson (E <sub>2</sub> C) (Dec. 3, 2012) (approving ozone sparge0
Exhibit JJJ	E <sub>2</sub> C, Third Quarter 2012 Groundwater Monitoring Report and Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Sep. 25, 2013)
Exhibit KKK	E <sub>2</sub> C, Daily Activity Notes (May 9, 2013)
Exhibit LLL	E <sub>2</sub> C, Fourth Quarter 2012 Groundwater Monitoring Report and Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Mar. 11, 2013)
Exhibit MMM	E <sub>2</sub> C, Second Quarter 2013 Groundwater Monitoring Report and Remediation Status Report
Exhibit NNN	E <sub>2</sub> C, First Quarter 2013 Groundwater Monitoring Report and Interim Remediation

	Status Report (May 1, 2013)
Exhibit OOO	GEI Consultants, Inc., South Tahoe Public Utility District, South Y Extraction Well Suitability Investigations (Jun. 29, 2016)
Exhibit PPP	Cambria Environmental Technology, Inc., Aquifer Pump Test Report/Groundwater Extraction System Design, Shell-branded Service Station 1020 Emerald Bay Road, South Lake Tahoe, CA (Jul. 1, 1999)
Exhibit QQQ	STPUD, Draft Report of Findings, South Y Groundwater Contamination Study, Clement Well Contaminant Pumping Test, SWRCB Contract No. 7 --088 -160-6 (Jun. 30, 1998)
Exhibit RRR	U.S EPA, Technical Protocol for Evaluating Natural Attenuation of Chlorinated Solvents in Ground Water, EPA/600/R -98/128 (Sept. 1998)
Exhibit SSS	EKI, Calculation of Potential PCE Migration in Shallow Zone Between February 2013 through August 2013
Exhibit TTT	E <sub>2</sub> C, Third Quarter 2015 Groundwater Monitoring Report and Interim Remediation Status Report
Exhibit UUU	Email from L. Dembach (Regional Board) to A. Safford (EKI) (Sept. 1, 2016)
Exhibit VVV	E <sub>2</sub> C Third Quarter 2010 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Nov. 1, 2010)
Exhibit WWW	E <sub>2</sub> C Fourth Quarter 2012 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Oct. 31, 2012)
Exhibit XXX	E <sub>2</sub> C Second Quarter 2014 Groundwater Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (Oct. 15, 2014)
Exhibit YYY	E <sub>2</sub> C First Quarter 2015 Monitoring Report and Current Site Remediation Status Report, Lake Tahoe Laundry Works, 1024 Lake Tahoe Boulevard, South Lake Tahoe (June 23, 2015)
Exhibit ZZZ	Stantec Consulting, Inc., Third Quarter 2008 Water Quality Report, Former Dry Cleaning Business, 949 Emerald Bay Drive, South Lake Tahoe (Dec. 10, 2008)
Exhibit AAAA	U.S. EPA, Handbook, Ground Water, Volume 1: Ground Water and Contamination, EPA/625/6-90/016a (Sept. 1990)
Exhibit BBBB	Gelhar, A Critical Review of Data on Field-Scale Dispersion in Aquifers, Water Resources Research, Vol. 28, No. 7, pp. 1955-1974. (1992)
Exhibit CCCC	U.S. EPA, Ground Water Issue: Dense Nonaqueous Phase Liquids, EPA/540/4-91-002 (Mar. 1991)
Exhibit DDDD	Interstate Technology & Regulatory Council, Technology Overview: An Introduction to Characterizing Sites Contaminated with DNAPLs (Sept. 2003)
Exhibit EEEE	Regional Board, Fall 2015 URS PCE Investigation Meeting (Feb. 5, 2016)
Exhibit FFFF	Regional Board Media Release, "Lahontan Water Board to Conduct Groundwater Testing for PCE in South Lake Tahoe" (Oct. 21, 2015)
Exhibit GGGG	National Research Council, Contaminants in the Subsurface: Source Zone Assessment and Remediation, Committee on Source Removal of Contaminants in the Subsurface (2004)
Exhibit HHHH	Secor, Site Investigation Report, Former Dry Cleaning Business, 949 Emerald Bay Drive, South Lake Tahoe, CA, 96150 (May 30, 2008)
Exhibit IIII	Big O Tires, Amended Cleanup and Abatement Order (No. R6T-2003-031A1) (Mar. 7, 2006)
Exhibit JJJJ	PES, Comments on Consideration of No Further Action Required, Lakeside Napa Auto Store, 1935 Lake Tahoe Boulevard, South Lake Tahoe, California, Lahontan SCP Case No. T6S035 (Dec. 7, 2015)
Exhibit KKKK	PES, Comments on Consideration of No Further Action Required, Former Big O

	Tire Store, 1961 Lake Tahoe Boulevard, South Lake Tahoe, California, Lahontan SCP Case No. T6S034 (Dec. 7, 2015)
Exhibit LLLL	Environmental Data Resources, Inc. ("EDR"), The EDR Radius Map Report, South Y Center, South Lake Tahoe, California (July 13, 2007)
Exhibit MMMM	EDR, The EDR Aerial Photo Decade Package, South Y Center, South Lake Tahoe, California (July 13, 2007)
Exhibit NNNN	EDR, The EDR City Directory Image Report, South Y Area, South Lake Tahoe, California (June 5, 2015)
Exhibit OOOO	Harding ESE, Groundwater Investigation, Hurzel Properties, LLC, 949 Emerald Bay Road, South Lake Tahoe, California (Dec. 12, 2001)
Exhibit PPPP	Regional Board, Tahoe South Y PCE Investigation (Jan. 5, 1996)
Exhibit QQQQ	MACTEC Engineering and Consulting, Inc., Report of Findings, Potential PCE Source Investigation, 949 Emerald Bay Road, South Lake Tahoe, California (Nov. 3, 2003)
Exhibit RRRR	Hill-Donnelly City Directory (1992)
Exhibit SSSS	Pacific Bell Directory (1985)
Exhibit TTTT	South Lake Tahoe phonebook (1979)
Exhibit UUUU	Hill-Donnelly City Directory (1989)
Exhibit VVVV	Images of the GHH Engineering, Inc. ("GHH") PCE Compilation Map
Exhibit WWWW	GHH, Regional PCE Data Compilation, South Tahoe Y Area, South Lake Tahoe, California (Oct. 2002)
Exhibit XXXX	Memorandum from H. Singer (Regional Board) to E. Anton (State Water Board), re Summary Results for the Tahoe South "Y" PCE Investigation – CAA #82 (Feb. 25, 1999)
Exhibit YYYY	Fox's Specific Comments on Revised Proposed Order