

LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

**Town of Truckee and
Teichert Construction
Coldstream Roundabout
Nevada County**

ORDER R6T-2024-0003

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

I. Introduction

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

II. Recitals

2. On June 29, 2021, the Town of Truckee submitted a Notice of Intent for coverage under the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, as amended by 2010-0014-DWQ* (General Permit) for the Coldstream Roundabout construction project. The Town of Truckee, the Legally Responsible Party (LRP), hired Teichert Construction as the contractor for the project.
3. The Coldstream Roundabout project consists of the replacement of a stop sign-controlled intersection with a roundabout. The project is located at the intersection of Highway 80, Coldstream Road, and Donner Pass Road in Truckee. Storm water from the site flows to Donner Creek, a tributary of the Truckee River. The project was scheduled to be completed in the 2021 construction season; however, it extended through the 2022 construction season. On July 24, 2023, Lahontan Water Board staff accepted the project's Notice of Termination.
4. The Prosecution Team has determined that the Town of Truckee and Teichert Construction are jointly liable for violations of the General Permit at the Coldstream Roundabout construction site, as described on page 2 of Attachment A, which is hereby incorporated by reference.

4. **Violation 1:** The Prosecution Team alleges that the Dischargers violated Section XIV.C of the General Permit by failing to maintain a physical copy of a Storm Water Pollution Prevention Plan (SWPPP) on site from at least August 9 through August 16, 2021 and from at least July 14 through July 18, 2022 for a total of 12 days of alleged violation.
5. **Violation 2:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section G of the General Permit by failing to perform weekly inspections for the week of November 1, 2021 (one inspection), from the week of November 29, 2021 through the week of January 31, 2022 (ten inspections), from the week of February 21, 2022 through the week of May 2, 2022 (ten inspections), and from the week of November 7, 2022 through the week of November 21, 2022 (three inspections) for a total of 24 days of alleged violation.
6. **Violation 3:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section B.1 of the General Permit by failing to implement some good housekeeping best management practices (BMPs) for construction materials on at least 27 instances found during 19 weekly inspections, for a total of 19 days of alleged violation.
7. **Violation 4:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section B.2 of the General Permit by failing to implement some good housekeeping BMPs for waste management on at least 23 instances found during 21 weekly inspections, for a total of 21 days of alleged violation.
8. **Violation 5:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section B.3 of the General Permit by failing to implement some good housekeeping BMPs for vehicle storage, fueling and maintenance on at least 14 instances found during 13 weekly inspections, for a total of 13 days of alleged violation.
9. **Violation 6:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section D of the General Permit by failing to implement a portion of the erosion control measures on at least nine instances found during nine weekly inspections, for a total of nine days of alleged violation.
10. **Violation 7:** The Prosecution Team alleges that the Dischargers violated Attachment D, Section E of the General Permit by failing to implement a portion of the sediment control measures on at least 49 instances found during 20 weekly inspections, for a total of 20 days of alleged violation.

11. These alleged violations constitute violations of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c). The Prosecution Team could have alleged many of the violations described above with a separate violation category but have elected to combine the violations as described above for purposes of settlement.
12. On April 4, 2017, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2017-0020, which adopted the *2017 Water Quality Enforcement Policy* (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017.
13. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology incorporates Water Code sections 13327 and 13385(e) that require the Lahontan Water Board to consider specific factors when determining the amount of civil liability to impose, including "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require." The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the Enforcement Policy as discussed in Attachment A, the terms of which are incorporated herein by reference.
14. Pursuant to the Enforcement Policy, section VI.B. (Settlement Considerations), the Prosecution Team agreed during settlement negotiations to reduce the administrative civil liability amount contained in the penalty calculation methodology included as Attachment A in consideration of hearing and/or litigation risks.
15. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations alleged in this Stipulated Order and Attachment A, without administrative or civil litigation and by presenting this Stipulated Order to the Lahontan Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
16. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against the Dischargers in the amount of **\$559,701 (five hundred fifty-nine thousand seven hundred one dollars)**. The Prosecution Team believes that

the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

1. **Jurisdiction:** The Parties agree that the Lahontan Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
2. **Administrative Civil Liability:** The Dischargers hereby agree to the imposition of an administrative civil liability in the amount of **five hundred fifty-nine thousand seven hundred one dollars (\$559,701)** to resolve the violations specifically alleged in this Stipulated Order as follows:

- a. No later than 30 days after the Effective Date of this Order, the Dischargers shall submit a check for **two hundred eighty-seven thousand eight hundred fifty-two dollars (\$287,852)** to the State Water Board. The check shall be made payable to the "State Water Pollution Cleanup and Abatement Account," shall reference Order No. R6T-2024-0003, and shall be mailed to:

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

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

- b. The Parties agree that the remaining **two hundred seventy-one thousand eight hundred forty-nine dollars (\$271,849)** (SEP amount) of the administrative civil liability shall be conditionally suspended pending completion of the Trout Creek Restoration (Reach 1, Segment A) Project (Trout Creek SEP) as described herein and in Attachment B, which is hereby incorporated by reference. The Trout Creek SEP is designed to restore the natural and ecological value of a section of Trout Creek in downtown Truckee, creating a

functioning riparian corridor with enhanced aquatic habitat and addressing flooding impacts.

- c. The liability amount was adjusted downward from the initial potential liability in part by the Dischargers' agreement to voluntarily implement the "Construction Stormwater General NPDES Permit Commitments" as proposed by the Dischargers and found in Attachment C, which is hereby incorporated by reference. These Commitments do not represent requirements enforceable as distinct from the General Permit, but the Lahontan Water Board anticipates that the incorporation of the Commitments into daily decision-making or broader awareness of water quality protections that can be implemented on construction projects will prevent similar violations from occurring after the Effective Date of this Agreement.
3. **SEP Requirements:** The Parties agree that the SEP Amount specified in Section III, paragraph 2.b. is for the Trout Creek SEP as identified in Attachment B. For purposes of this Stipulated Order, the Parties agree that both Dischargers shall remain liable for the suspended portion of the liability until construction of Reach 1, Segment A is completed. At that time, the SEP Amount shall be treated as a permanently suspended administrative civil liability. The Lahontan Water Board is entitled to recover any SEP funds that are not expended in accordance with this Stipulated Order, to be paid consistent with Section III, paragraph 2.a., above. Detailed project descriptions, including milestones, budgets, and performance measures are attached hereto as Attachment B.
4. **Representation of the Dischargers:** As a material consideration for the Lahontan Water Board's acceptance of this Order, the Dischargers represent that they will utilize the SEP Amount to implement the Trout Creek SEP in accordance with terms and conditions described in this Stipulated Order and Attachment B. The Dischargers understand that their commitment to implement the Trout Creek SEP in accordance with the schedule and deliverables for implementation is a material condition of this settlement of liability between the Parties.
5. **Nexus to the Violation:** The SEP Policy requires that a SEP have a nexus to the alleged violation. (SEP Policy, section VIII.F.) The violations alleged in this Stipulated Order relate to storm water management at the Coldstream Roundabout construction site, which is also located within the Truckee River watershed. Potential impacts to beneficial uses will be directly ameliorated as a result of the SEP.

6. **SEP Categories:** The SEP Policy provides for seven categories of SEPs. (SEP Policy, section V.) The Trout Creek SEP falls under the Environmental Restoration and Protection category.
7. **SEP Oversight:** The Town of Truckee will oversee implementation of the Trout Creek SEP on behalf of the Dischargers. The Lahontan Water Board will provide additional oversight of the Trout Creek SEP which includes, but is not limited to, updating regulatory and records databases, reviewing and evaluating progress, conducting site inspections, reviewing the final completion report, and verifying appropriate expenditure of the SEP Amount. The Dischargers are responsible for any charged costs for any reasonable and necessary Lahontan Water Board staff oversight, which is not included in the SEP Amount.
8. **SEP Completion Date:** As shown in Attachment B, the SEP will be completed within sixty-six (66) months after the Effective Date of this Agreement.
9. **Reporting Requirements for the SEP:** The Town of Truckee will provide the following reports to the Lahontan Water Board:
 - a. **Quarterly Reports:** Quarterly Reports must be submitted in accordance with the schedule provided in Attachment B (i.e., by May 1, August 1, November 1, and February 1 each year). **The first Quarterly Report is due on May 1, 2024** and is to cover the period of January through March, 2024. The Quarterly Reports must describe the tasks completed and funds expended during the previous quarter, and proposed work for the following quarter. In addition, the Quarterly Reports must describe whether the Dischargers have complied with the milestones and deadlines contained in Attachment B, and if not, the cause(s) of the delay(s) and the anticipated date of compliance with this Stipulated Order. The Quarterly Reports may also include descriptions and photos of activities completed during the previous quarter and an analysis of the Trout Creek SEP's progress. Quarterly reports shall be submitted to Shelby Barker at Shelby.Barker@waterboards.ca.gov.
 - b. **Certification of SEP Completion:** No later than **four months** after the SEP Completion Date, the Town of Truckee must submit a final report that documents completion of the SEP and provides a certified statement (Certification of SEP Completion), signed under penalty of perjury, that documents the following:
 - i. Certification of completion in accordance with the terms of this Stipulated Order, addressing how the expected outcome(s) for the project were met,

- ii. Certification documenting the expenditures by the Town of Truckee during the completion period for the Trout Creek SEP, and
- iii. Certification that the Town of Truckee followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act, Porter-Cologne Water Quality Control Act, and federal Clean Water Act.

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

10. **Publicity Associated with the SEP:** Whenever the Dischargers, or their agents, publicizes one or more SEP elements, it shall state in a prominent manner that the project was undertaken as part of a settlement of a Lahontan Water Board enforcement action against the Dischargers.
11. **Site Inspections:** The Dischargers shall permit Lahontan Water Board staff to inspect the Trout Creek SEP implementation locations during normal business hours as well as review any documents associated with Trout Creek SEP implementation at any time without notice.
12. **SEPs are Above and Beyond the Dischargers' Obligations:** The Trout Creek SEP included in this Stipulated Order contains only measures that go above and beyond the Dischargers' obligations. The Trout Creek SEP is not part of the Dischargers' normal business nor are the Dischargers otherwise legally required to implement any portion of the Trout Creek SEP.
13. **No Benefit to Lahontan Water Board Functions, Members, or Staff:** The Trout Creek SEP provides no direct fiscal benefit to the Lahontan Water Board's functions, its members, its staff, or any family member of staff.
14. **Lahontan Water Board Not Liable:** The Lahontan Water Board and its members, staff, attorneys, and representatives shall not be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Dischargers or their directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
15. **Request for Extension of Completion Date:** If the Dischargers cannot complete the Trout Creek SEP by the SEP Completion Date due to circumstances beyond the control of the Dischargers or their agents and which could not have been

reasonably foreseen and prevented or minimized by the exercise of due diligence, the Dischargers shall notify the Executive Officer in writing within thirty (30) days of the date that the Dischargers first knew of the event or circumstance that caused or would cause a violation of this Order. The notice shall describe the reason for the non-compliance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken to minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The Dischargers shall adopt all reasonable measures to avoid and minimize such delays.

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

16. **Failure to Expend the SEP Amount on the Approved SEP:** If the Dischargers are not able to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP Amount was spent on the completed Trout Creek SEP the Dischargers shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the Trout Creek SEP (the Difference). The Executive Officer shall issue a "Notice of Violation" that will require the Dischargers to pay the Difference to the State Water Pollution Cleanup and Abatement Account within 30 days of the Notice of Violation's issuance date. The Dischargers shall submit payment consistent with the payment method described in Section III, paragraph 2.a., above. Payment of the Difference shall satisfy the Dischargers' obligations to implement the Name of SEP.
17. **Failure to Complete the SEP:** If the Trout Creek SEP (including construction of Reach 1, Segment A) is not fully implemented by the SEP Completion Date listed in Attachment B, or if there has been a material failure to satisfy a project activity, the Executive Officer shall issue a "Notice of Failure to Complete SEP". The amount of suspended liability owed shall be determined via a Motion for Payment of Suspended Liability before the Lahontan Water Board or its delegate. The Dischargers shall be liable to pay the entire SEP Amount, or, if shown by the Dischargers, some portion thereof less the value of any completed activity as

stipulated to by the Parties in writing, or as determined by the Motion for Payment of Suspended Liability. Unless the Lahontan Water Board or its delegee determines otherwise, the Dischargers shall not be entitled to any credit, offset, or reimbursement from the Lahontan Water Board for expenditures made on the Trout Creek SEP prior to the issuance date of the Notice. Within 30 days of the Lahontan Water Board's or its delegee's determination of the suspended liability amount assessed for the Dischargers to pay, the Dischargers shall submit payment consistent with the payment method described in Section III, paragraph 2.a., above. Payment of the assessed amount shall satisfy the Dischargers' obligations to implement the Trout Creek SEP.

18. **Replacement SEP:** If there is a material failure, in whole or in part, to perform the Trout Creek SEP described in Section III, paragraph 2.b. and Attachment B, due to circumstances beyond the control of the Dischargers, and the Lahontan Water Board does not move to collect the Payment of Suspended Liability amount as provided in Section III, paragraph 17, above, the Parties agree that the Dischargers may propose a Replacement SEP. Whether there is a material failure to perform the Trout Creek SEP described in Section III, paragraph 2.b. and Attachment B shall be determined by the Executive Officer. The Dischargers shall have 60 days from the date of the Executive Officer's determination to propose a Replacement SEP(s). The cost of the Replacement SEP shall be for the entire SEP Amount, or some portion thereof less the value of any completed activity as stipulated to by the Parties in writing and shall be treated as a suspended liability subject to the same conditions provided for the SEP being replaced. The terms and conditions of the Replacement SEP shall be memorialized in a Supplemental Agreement to this Stipulated Order, signed by both parties and approved by the Lahontan Water Board or its delegee. The Replacement SEP shall meet the criteria in the SEP Policy and shall be completed within 36 months of the Lahontan Water Board's or its delegee's approval of the Supplemental Agreement (Replacement SEP Completion Date). The Executive Officer may grant an extension for good cause shown as to why the Replacement SEP cannot be completed by the Replacement SEP Completion Date. The Parties agree that, unless requested by the Executive Officer, the Supplemental Agreement will not be subject to public notice and comment so long as the initial notice and comment period complies with federal and/or state requirements. If there is a material failure to perform a Replacement SEP, then the Executive Officer shall issue a "Notice of Failure to Complete SEP" as described in Section III, paragraph 18. The Dischargers shall not have an opportunity to propose a second Replacement SEP should it fail to complete the Replacement SEP for any reason.

19. **Lahontan Water Board Acceptance of Completed SEP:** Upon the Dischargers' satisfaction of its obligations under this Stipulated Order, the completion of the Trout Creek SEP and any audits, the Lahontan Water Board or its delegee shall issue a "Satisfaction of Order." The issuance of the Satisfaction of Order will terminate any further obligation of the Dischargers under this Stipulated Order and permanently suspend the SEP Amount.
20. **Compliance with Applicable Laws and Regulatory Changes:** The Dischargers understand that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject them to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Dischargers from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
21. **Party Contacts for Communications Related to Stipulated Order:**

For the Lahontan Water Board:

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

For the Dischargers:

Dan Wilkins
Public Works Director/Town Engineer
Town of Truckee
(530) 582-2902
DWilkins@townoftruckee.com

Becky Bucar
Assistant Public Works Director
Town of Truckee
(530) 582-2932
Bbucar@townoftruckee.com

Bryan Ramirez
Regional Manager, Teichert Construction

(530) 304-2636
bramirez@teichert.com

22. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
23. **Covered Matters:** Upon the Lahontan Water Board's adoption of this Order, this Order presents a final and binding resolution and settlement of the alleged violations in this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, paragraph 2.a. and the successful completion of the Trout Creek SEP as outlined in this Stipulated Order and Attachment B, or full payment of the associated SEP Amount.
24. **Public Notice:** The Dischargers understand that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Lahontan Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Lahontan Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Lahontan Board, or its delegee. The Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
25. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
26. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Lahontan Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Lahontan Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Lahontan Water Board reserves all

rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.

27. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Lahontan Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
28. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
29. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Lahontan Water Board or its delegee.
30. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
31. **If Order Does Not Take Effect:** The Dischargers' obligation under this Stipulated Order is contingent upon the entry of the Order of the Lahontan Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Lahontan Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Lahontan Water Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Lahontan Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Lahontan Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.
32. **Waiver of Hearing:** The Dischargers have been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Lahontan Water Board, hereby waive their right to a hearing before the Lahontan Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Lahontan Water Board or State Water Board for hearing, the Dischargers do not waive the right to a hearing before an order is imposed.
33. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Lahontan Water Board, the Dischargers hereby waive the right to petition the Lahontan Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waive the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
34. **Covenant Not to Sue:** The Dischargers covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.
35. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
36. **Necessity for Written Approvals:** All approvals and decisions of the Lahontan Water Board under the terms of this Stipulated Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions, or comments by

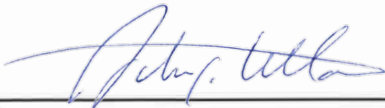
employees or officials of the Lahontan Water Board regarding submissions or notices shall be construed to relieve the Dischargers of their obligation to obtain any final written approval required by this Stipulated Order.

37. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
38. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the Dischargers do not admit to any of the allegations stated herein nor admit to any violations of the Water Code, or any other federal, state, or local law or ordinance. By entering into this Stipulated Order, the Dischargers do not waive any defenses or arguments related to any future enforcement action brought by the Lahontan Water Board. Notwithstanding this paragraph, this enforcement matter may be considered in the application of the “history of violations” factor in any future enforcement against parties to this Order.
39. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
40. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Lahontan Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
41. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

Settlement Agreement and Stipulation for Entry of Administrative Civil Liability
Order R6T-2024-0003
Town of Truckee and Teichert Construction


IT IS SO STIPULATED.

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

By: 
Ben Letton
Assistant Executive Officer


3/4/2024
Date

Town of Truckee

By: 
Jen Callaway
Town Manager

2/24/2024
Date

Teichert Construction

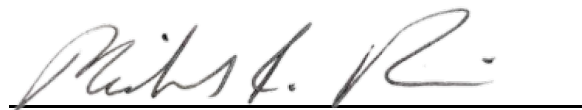
By: 
Scott Lewis
Vice President, General Manager

3/1/2024
Date

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

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

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



Michael Plaziak
Executive Officer
Lahontan Regional Water Quality Control Board

Date

- Attachment A: Penalty Calculation Methodology
Attachment B: Trout Creek Restoration (Reach 1, Segment A) SEP Workplan
Attachment C: Dischargers' Construction General Permit Commitments

ATTACHMENT A

**ATTACHMENT A TO STIPULATED ORDER R6T-2024-0003
ALLEGED VIOLATIONS AND FACTORS IN DETERMINING
ADMINISTRATIVE CIVIL LIABILITY**

**TOWN OF TRUCKEE AND TEICHERT CONSTRUCTION
COLDSTREAM ROUNDABOUT
NEVADA COUNTY**

This document provides details to support a discretionary monetary liability in response to The Town of Truckee and Teichert Construction’s alleged violations of the *NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, as amended by 2010-0014-DWQ* (Construction General Permit or Permit) at the Coldstream Roundabout (Site) construction project. The Site is at the intersection of Coldstream Road, Donner Pass Road, and eastbound Interstate 80, in Truckee, Nevada County. Within this document, the Town of Truckee and Teichert Construction are either referred to jointly as “Dischargers” or individually as “Town” or “Teichert”.

The Lahontan Regional Water Quality Control Board (Lahontan Water Board) Prosecution Team has derived the proposed administrative civil liability by applying the State Water Resources Control Board’s (State Water Board) 2017 Water Quality Enforcement Policy¹ (Enforcement Policy).

Application of the Enforcement Policy

The Enforcement Policy establishes a methodology for assessing administrative civil liability to address the factors required by California Water Code section 13385, subdivision (e), including “...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.” This document applies the methodology associated with the Enforcement Policy’s steps, as discussed in detail below.

Construction Project and Responsible Parties

On June 29, 2021, the Town submitted a Notice of Intent (NOI) for the Coldstream Roundabout. As required by the Construction General Permit, the NOI included a Storm Water Pollution Prevention Plan (SWPPP) which described the project as the

¹[WATER QUALITY ENFORCEMENT POLICY \(ca.gov\)](https://www.waterboards.ca.gov/water_quality/enforcement/policy)

replacement of an existing four-way stop-controlled intersection with a roundabout. The project was scheduled to be completed within the 2021 construction season; however, it extended through the 2022 construction season. On July 24, 2023, Lahontan Water Board staff accepted the Notice of Termination for the Coldstream Roundabout construction project.

The Lahontan Water Board Prosecution Team has determined that the Town and Teichert are jointly liable for alleged violations of the Construction General Permit at the Site. The Town is the Legally Responsible Party (LRP) and hired Teichert as the contractor to complete the project. Case law makes operators liable under the Clean Water Act if they have responsibility for, or control over, the activities that caused violations. Teichert, as the operator, had responsibility for, and control over, the activities that caused the alleged violations. For example, the Section 100.1 of the SWPPP states “The SWPPP was developed by the Contractor [i.e., Teichert] and submitted for review and acceptance to the RE [Resident Engineer, i.e., Michael Vaughn of the Town] ...The Contractor is responsible for and liable at all times for compliance with applicable requirements of the [Construction General Permit] ...”

Teichert hired Tully Consulting Group (Tully) to prepare the SWPPP. Teichert submitted the SWPPP to the Town for approval, and the Town signed off on the SWPPP. Therefore, both parties were aware of the contents of the SWPPP and its requirements. Teichert also hired Tully to act as the Qualified Stormwater Practitioner (QSP) and complete the QSP-related tasks required by the Construction General Permit, including reporting violations to Teichert. The Prosecution Team alleges herein that Teichert should have been more diligent in reviewing its QSP's reports and addressing storm water management actions at the Site. During the two construction seasons, Teichert's work was inspected by the Town. The Town should have been familiar with the Construction General Permit and upon observing violations, should have ordered its contractor to comply with the Permit. In summary, both the Town and Teichert are responsible for the violations of the Construction General Permit alleged herein.

A number of legal theories can support naming an appropriate party as a “discharger” beyond the LRP. Based on interactions with both the Town and Teichert, the Prosecution Team asserts that it is appropriate to name both parties and have them respond jointly or independently. Liability would be joint and several, and the regional boards do not apportion liability. When examining discharger-specific factors, sometimes the shortcomings of Teichert and Town were similar and should be judged similarly. For other alleged violations, there was specific conduct that impacted the Enforcement Policy factor ultimately selected. In these cases, the more egregious conduct was noted and utilized as a basis for the penalty factor.

Summary of Alleged Violations

This administrative civil liability addresses alleged violations of the Construction General Permit that occurred from the start of construction in early July 2021 through submittal of the Notice of Termination on November 29, 2022.

Table 1, below, summarizes the seven alleged violations that are the subject of this liability assessment and the Enforcement Policy factors that were used to determine a recommended penalty. The remainder of this document contains a full description of each alleged violation, a complete assessment of the factors used to determine the base liability for each alleged violation, and a discussion of the additional five factors used to determine the final proposed liability.

This recommended penalty assessment represents a significant penalty across a broad range of basic Construction General Permit requirements. The Prosecution Team is proceeding against both Teichert and the Town due to disregard for some regulatory requirements while undertaking a significant construction project. Repeated violations can represent a lack of planning or inexperience, which we do not consider to be the case here. As we have outlined in this document, the Prosecution Team is not pursuing every potential violation at this time, but we do want to stress the types of violations noted herein and the inadequate response by the Dischargers. Pursuing monetary enforcement remains discretionary for the regional board, and enforcement resources are limited. However, given the persistent nature of the alleged violations during the construction project, the failure to quickly and completely resolve alleged violations when specifically identified, and the lack of weekly inspections during certain portions of the winter, which are designed to be a “first line” defense mechanism to protect against environmental harm, a penalty was necessary in this instance.

Alleged Violations	Potential for Harm and Deviation from Requirements	Days of Violation	Culpability	History of Violation	C/C²	Base Liability
1.Failure to maintain a physical copy of the SWPPP on-site. <i>CGP Section XVI states that SWPPP shall be available on site. Dischargers did not have SWPPP on-site from at least August 9-16, 2021 and July 14-18, 2022.</i>	Harm=moderate Dev=-minor Per Day Factor (PDF)= 0.25	12 days	1.3	1.0	1.2	\$46,800

² Cleanup and Cooperation

Table 1: Summary of Alleged Violations

Alleged Violations	Potential for Harm and Deviation from Requirements	Days of Violation	Culpability	History of Violation	C/C ²	Base Liability
2. Failure to perform weekly inspections. <i>CGP Attach D, Section G.2 requires weekly inspections. Dischargers did not inspect weekly for 24 weeks,</i>	Harm=moderate Dev=moderate PDF=0.35	24 days	1.3	1.0	1.3	\$141,960
3. Failure to implement BMPs related to good housekeeping for construction materials (<i>CGP Attach D, Section B.1</i>). <i>Dischargers had 27 alleged violations found during 19 inspections (33% of inspections found this type of alleged violation). Solid waste/trash/asphalt concrete waste not cleaned up, material not in secondary containment, piles of asphalt concrete not properly stored, stockpiles without BMPs.</i>	Harm=moderate Dev =moderate PDF=0.35	19 days	1.3	1.0	1.2	\$103,740
4. Failure to implement BMPs related to good housekeeping for waste management (<i>CGP Attach D, Section B.2</i>). <i>Dischargers had 24 alleged violations found during 21 inspections). Portable toilet needed secondary containment, spill response plan and spill kit not on-site.</i>	Harm=moderate Dev =moderate PDF=0.35	21 days	1.3	1.0	1.2	\$114,660
5. Failure to implement BMPs related to good housekeeping for vehicle storage and maintenance (<i>CGP Attach D, Section B.3</i>). <i>Dischargers had 14 alleged violations found during 13 inspections (22% of inspections found this type of alleged violation). Oil/grease/fuel drips and leaks, paving equipment needed BMPs.</i>	Harm=moderate Dev = minor PDF=0.25	13 days	1.3	1.0	1.1	\$46,475

Table 1: Summary of Alleged Violations						
Alleged Violations	Potential for Harm and Deviation from Requirements	Days of Violation	Culpability	History of Violation	C/C ²	Base Liability
6. Failure to implement BMPs related to erosion control (CGP Attach D, Section D). Dischargers had 9 alleged violations found during 9 inspections (16% of inspections had this type of alleged violation). BMPs damaged by storms, missing BMPs, BMPs needing maintenance.	Harm=moderate Dev = minor PDF=0.25	9 days	1.3	1.0	1.1	\$32,175
7. Failure to implement BMPs related to sediment control (CGP Attach D, Section E). Dischargers had 48 alleged violations found during 20 inspections (34% of inspections found this type of alleged violation). Fiber rolls not properly installed or need maintenance, silt fence needed maintenance, damaged BMPs, entrance/exits not stabilized, missing BMPs around storm drains, sediment in ditch leading to storm drain, sediment on road.	Harm=moderate Dev =moderate PDF=0.35	20 days	1.3	1.0	1.3	\$118,300
Combined Base Liability of all violations:	\$604,110					
Ability to Pay and Continue in Business:	The Town and Teichert have the ability to pay and remain in business.					
Other Factors as Justice May Require:	Reduce penalty by 10% for litigation risk (subtract \$60,411), and then add staff costs of \$16,002 to the Combined Base Liability.					
Economic Benefit:	\$73,984					
Statutory Maximum Liability:	\$1,180,000					
Statutory Minimum Liability plus 10%:	\$81,382					
Final Proposed Liability:	\$559,701					

**ALLEGED VIOLATION 1:
Failure to Maintain a SWPPP At Construction Site**

The Construction General Permit requires that a discharger prepare, implement, and maintain on-site a SWPPP that (a) is designed to control all pollutants and their sources and (b) contains BMPs designed to reduce or eliminate pollutants in storm water discharges. The SWPPP must be physically available at the construction site during working hours.

Lahontan Water Board staff's inspection on August 9, 2021 found that the SWPPP was not on-site. This alleged violation continued for seven days, through August 16, 2021 when the Dischargers' QSP submitted a response to the Water Board's inspection report documenting that the SWPPP had been placed on-site. Lahontan Water Board staff inspected the site again on July 14, 2022, during the second year of construction, and found that the SWPPP was not physically on-site. This alleged violation continued for at least four days, through July 18, 2022, when the Dischargers' project manager "personally attested" that the SWPPP had been placed on-site.

The failure to have a physical copy of a SWPPP on-site is a violation of Section XIV.C of the Construction General Permit, as follows:

Section XIV.C states in part, "*The discharger shall make the SWPPP available at the construction site during working hours while construction is occurring and shall be made available upon request by a State or Municipal inspector...*"

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

The "per day" factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of deviation from the applicable requirements.

Potential for Harm: Moderate

The Enforcement Policy requires a determination of whether the characteristics of the alleged violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

Storm water from the site flows to Donner Creek, a tributary of the Truckee River. The beneficial uses of Donner Creek, as described in the Water Quality Control Plan for the Lahontan Region (Basin Plan),³ are municipal and domestic supply; agricultural supply; groundwater recharge; water contact recreation; noncontact water recreation; commercial and sportfishing; cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; migration of aquatic organisms; and spawning, reproduction, and development.

The beneficial uses of the Truckee River as described in the Water Quality Control Plan for the Lahontan Region, are: municipal and domestic supply; agricultural supply;

³ [Chapter 2 Present and Potential Beneficial Uses \(ca.gov\)](#)

industrial supply; groundwater recharge; freshwater replenishment; hydropower generation; water contact recreation; noncontact water recreation; commercial and sportfishing; cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; migration of aquatic organisms; and spawning, reproduction, and development.

The construction site is immediately adjacent to Donner Creek. The Dischargers' failure to physically maintain a SWPPP at the construction site resulted in the potential for water quality impacts. Although the Dischargers prepared a SWPPP, it was not physically on-site⁴ and therefore not available in hard copy for construction personnel to refer to and apply the BMPs described therein. The failure to implement this requirement has "substantially impaired the Water Boards' ability to perform their statutory and regulatory functions, present[s] a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm." The Enforcement Policy states that most non-discharge violations should be considered to present a moderate potential for harm. Based on the above, a value of moderate is warranted.

Deviation from Requirement: *Minor*

The Enforcement Policy requires determination of whether the alleged violation represents a minor, moderate, or major deviation from the applicable requirements. According to the Enforcement Policy, a minor deviation from requirement is appropriate when "the intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not material compromised)." A minor factor is appropriate because the Dischargers had an electronic version of the SWPPP even though a hard copy was not onsite.

Per Day Factor: 0.25

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.25 is assigned.

Step 4. Adjustment Factors

The Enforcement Policy states that three additional factors must be considered for potential modification of the liability amount: (a) the Dischargers' degree of culpability, (b) the Dischargers' prior history of violations, and (c) the Dischargers' voluntary efforts to clean up or cooperate with regulatory authorities after the violation. The Prosecution Team has reviewed the conduct of both Teichert and the Town in consideration of an appropriate penalty.

⁴ The Dischargers state that it was available electronically.

Culpability: 1.3

The Enforcement Policy states that higher liabilities should result from intentional or negligent violations as opposed to accidental violations.

A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional misconduct or gross negligence.

The Dischargers are fully responsible for failing to have a SWPPP at the construction site. The Construction General Permit requires that a SWPPP be present, as does the Dischargers' own SWPPP, which states "*The SWPPP shall be readily available on site for the duration of the project*⁵." The SWPPP also includes a copy of the Construction Stormwater Permit as an appendix. In submitting an NOI, the Town obligated itself to comply with the requirements of the CGP. Its obligations cannot be fulfilled by hiring or delegating to Teichert.

Lahontan Water Board staff inspected the site during the 2021 construction season, on August 9, 2021, and found that the SWPPP was not physically available on-site. The SWPPP was placed on-site seven days later. Construction ceased for the winter in late November 2021 and did not resume until May 18, 2022. Lahontan Water Board staff inspected the site on July 14, 2022, and found that once again the SWPPP was not physically available on-site.

Lahontan Water Board staff provided approximately two weeks advance notice of the inspection planned for July 14, 2022. The Dischargers should have used this time to ensure that they were complying with all aspects of the Construction General Permit, including maintaining the SWPPP at the site. However, as stated in the Lahontan Water Board's July 21, 2022 inspection report,

"I asked Teichert staff (Ryan Payne) to show me the physical copy of the SWPPP document and related required documents. Teichert staff (Ryan Payne) stated that Teichert did not have physical copies of the SWPPP and related and required documents but could print out a copy...at his office. Teichert staff (Ryan Payne) also stated that there was no current plan in place to maintain a physical copy of the SWPPP...on-site..."

Teichert was the party who was in control of on-site activities, although both Dischargers received notices of inspection reports and communications from Water Board staff. The Dischargers' lack of maintaining a SWPPP at the construction site, especially during the 2022 construction season, was not a case of accidental forgetfulness. Keeping a SWPPP on-site and available to construction personnel is a

⁵ Section 200 of the SWPPP for Coldstream Roundabout Project, dated June 15, 2021 and prepared by Tully Consulting Group.

standard requirement of the Construction General Permit and in fact, the Dischargers' own SWPPP re-states this requirement.

Although the Dischargers could argue that they should be assigned a Culpability factor of just over 1.0 for the failure to have a SWPPP on-site during the 2021 construction season, it is not possible to make the same argument for the 2022 construction season. The Dischargers received an August 9, 2021 Staff Enforcement Letter for, among other alleged violations, the failure to have a SWPPP on-site during 2021, were explicitly told by Lahontan Water Board staff that a SWPPP was required on-site and were provided with approximately two weeks advance notice of the July 14, 2022 inspection. The Dischargers exhibited an apparent disregard for the Construction General Permit by failing to have the SWPPP on-site for multiple days during the 2022 construction season. An average culpability factor, considering both the 2021 and 2022 alleged violations, of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violation and the ability to resolve it.

History of Violation: 1.0

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Dischargers do not have a history of adjudicated violations; therefore, a multiplier of 1.0 is appropriate.

Cleanup and Cooperation: 1.2

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

Lahontan Water Board staff inspected the site on August 9, 2021 and found that the SWPPP was not on-site, even though the Dischargers' own SWPPP states that it shall be kept at the job site. Staff reminded Teichert – both during the inspection, and in an email later that same day- that the Construction General Permit requires the SWPPP to be available on-site. A reasonable and prudent discharger would have placed a copy of the SWPPP at the construction site immediately. However, the Dischargers continued to violate the Construction General Permit for seven days, through August 16, 2021 when the QSP documented that the SWPPP had been placed on-site.

Lahontan Water Board staff inspected the site again on July 14, 2022, during the second year of construction, and found that the SWPPP was not physically on-site. The Prosecution Team consider this second failure to have a SWPPP on-site to be a blatant disregard of the Construction General Permit, given that (a) the SWPPP contains text that clearly states that it shall be available at the site, (b) Teichert had previously been notified of the same alleged violation in 2021, (c) Lahontan Water Board staff provided approximately two weeks advance notice prior to the inspection, and (d) the alleged

violation continued for at least four days, through July 18, 2022, when the Dischargers' project manager (Ryan Payne) "personally attested" that the SWPPP had been placed on-site.

Given the lack of cooperation in complying with the Construction General Permit's requirement to maintain the SWPPP on-site, a cleanup and cooperation factor of 1.2 is appropriate.

Days of Violation: 12 days

Lahontan Water Board staff inspected the site on August 9, 2021 and determined that a SWPPP was not present. This alleged violation continued for seven days, through August 16, 2021. Lahontan Water Board staff inspected the site again on July 14, 2022 and found that the SWPPP was not on-site. This alleged violation continued for four days, through July 18, 2022. In total, there were 21 days of alleged violation. The Enforcement Policy does not allow days of violation to be compressed for violations that are 30 days or less.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The Total Base Liability is determined by multiplying the following: the Per Day Factor, the number of days, the statutory maximum of \$10,000 per day, the degree of culpability factor, the history of violations factor, and the cleanup and cooperation factor.

The statutory maximum liability is determined by multiplying the number of days by the statutory maximum (\$10,000/day, as described in Water Code section 13385).

Total Base Liability: Alleged Violation 1

$$0.25 \times 12 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.2 = \$46,800$$

Statutory Maximum: Alleged Violation 1

$$12 \text{ days} \times \$10,000/\text{day} = \$120,000$$

ALLEGED VIOLATION 2:

Failure to Perform Weekly Inspections

The Construction General Permit requires that a discharger perform weekly inspections at construction sites. These inspections are to be performed or supervised by a QSP representing the discharger.

This Complaint alleges that the Dischargers failed to perform weekly inspections for the week of November 1, 2021 (one inspection), from the week of November 29, 2021 through the week of January 31, 2022 (ten inspections), from the week of February 21,

2022 through the week of May 2, 2022 (ten inspections), and from the week of November 7 through the week of November 21, 2022 (three inspections). In total, the Dischargers failed to complete 24 (twenty-four) weekly inspections.

Although the Dischargers did not complete weekly inspections on three occasions, this Complaint does not assess a penalty for the following reasons: (a) the weeks of July 19 and 26, 2021: although BMPs had been installed, construction had not yet begun and (b) the week of October 25, 2021: a storm caused Highway 80 to be closed on October 24-25, 2021.

The failure to complete weekly inspections is a violation of Attachment D, Section G of the Construction General Permit.

Attachment D, Section G.2 states “*Risk Level 2 dischargers shall perform weekly inspections...*”

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to conduct weekly inspections for most of the winter of 2021, as well as the Fall of 2022, resulted in the potential for significant water quality impacts. Regular inspections by a QSP ensures that all necessary BMPs are in place and in working order, thereby limiting the potential for pollutant discharge from the site. However, the Lahontan Water Board’s inspection on February 7, 2022 found that the BMPs were damaged and/or disintegrating and not functioning as intended. If weekly inspections had been conducted throughout the winter of 2021-2022 as required, then it is reasonable to assume that the BMPs would have been maintained or replaced as needed, and that the site conditions would be protective of water quality. A potential for harm of at least moderate is warranted.

Deviation from Requirement: *Moderate*

The Construction General Permit expressly requires that a discharger perform weekly inspections. The Dischargers only completed 55 of the required 79 weekly inspections (69%). This failure to implement the Construction General Permit’s inspection-related requirements partially compromised the intended effectiveness of the requirement. The deviation from requirement is characterized as moderate.

Per Day Factor: 0.35

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment FactorsCulpability: 1.3

The Construction General Permit clearly states that weekly inspections must be conducted. The Dischargers' SWPPP includes Section 700, "Construction Site Monitoring Program" which contains numerous references to the need for weekly inspections and documentation of those inspections. In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix.

Neither the Construction General Permit nor the SWPPP state that inspections may be suspended during the winter. On the contrary, the Construction General Permit acknowledges that there is a greater potential for water quality impacts during rain events – which most often occur during the winter- and requires pre-storm, during storm, and post-storm inspections⁶.

During the February 16, 2022 inspection, Lahontan Water Board staff reminded the Dischargers verbally, and in the written inspection report, that weekly inspections were mandatory. However, despite these reminders, the Dischargers chose not to resume inspections until construction began again in mid-May 2022.

With respect to the failure to inspect in the Fall of 2022, the Dischargers stated in an October 26, 2022 email that they would continue weekly inspections until Lahontan Water Board staff inspected the site. However, the Dischargers chose to discontinue inspections after November 1, 2022. Water Board staff did not authorize the Dischargers to cease weekly inspections until the Notice of Termination was accepted for review on November 30, 2022.

The Dischargers are fully culpable for the failure to conduct weekly inspections. The Dischargers performed the required inspections from the beginning of construction in May 2021 through the late Fall of 2021. This demonstrates that the Dischargers understood the requirement to inspect on a weekly basis. The Dischargers intentionally chose not to comply with the Construction General Permit and therefore a multiplier value of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violation and the ability to resolve it.

⁶ It is noted that for purposes of settlement, the Prosecution Team is not alleging violations for failure to conduct these three types of storm inspections but asserts that they were not completed.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.3

The Dischargers chose to cease the weekly inspections beginning with the week of November 29, 2021. On February 2, 2022, Lahontan Water Board staff drove by the site and found that erosion and sediment control BMPs had been “hammered” by storms and no longer protected the site. If the Dischargers had conducted the required inspections, they would have known that the BMPs needed maintenance and could have taken appropriate actions to protect water quality.

Lahontan Water Board staff met with Dischargers at the construction site on February 16, 2022. As documented in the inspection report, staff *“also provided direction on the Statewide CGP compliance regarding inspection and maintenance requirements to Teichert and Town of Truckee staff. It is the project implementor’s responsibility to inspect and maintain project BMPs to ensure that threats to water quality are mitigated.”* However, despite Lahontan Water Board staff’s express direction that the Dischargers comply with the Construction General Permit and complete weekly inspections, the Dischargers failed to do so until May 10, 2022, when construction resumed. A reasonable and prudent Discharger would have heeded Lahontan Water Board staff’s reminder and complied with the Construction General Permit’s requirement to conduct weekly monitoring.

In addition, the Dischargers failed to conduct the required weekly monitoring for three weeks, from November 7, 2022 to November 17, 2022. This is despite the October 26, 2022 email from Teichert to Lahontan Water Board staff which states *“Following our conversation yesterday, we are planning to continue inspections in compliance with the CGP until you have had an opportunity to inspect the permanent erosion control implementation.”* Although the Dischargers asserted that weekly inspections would continue, they did not. The Dischargers exhibited significantly less than expected cooperation in returning to compliance, and therefore a multiplier of 1.3 is appropriate.

Days of Violation: 24 days

The Dischargers failed to perform weekly inspections for the week of November 1, 2021 (one inspection), from the week of November 29, 2021 through the week of January 31, 2022 (10 inspections), from the week of February 21, 2022 through the week of May 2, 2022 (10 inspections), and from the week of November 7 through the week of November 21, 2022 (three inspections). In total, the Dischargers failed to complete 24 weekly inspections, which equates to 24 days of alleged violation. The Enforcement Policy does not allow days of violation to be compressed for violations of 30 days or less.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

<p>Total Base Liability: Alleged Violation 2 $0.35 \times 24 \text{ days} \times \\$10,000/\text{day} \times 1.3 \times 1.0 \times 1.3 = \\$141,960$</p> <p>Statutory Maximum: Alleged Violation 2 $24 \text{ days} \times \\$10,000/\text{day} = \\$240,000$</p>

**ALLEGED VIOLATION 3:
 Failure to Implement BMPs for Construction Materials**

The Construction General Permit requires that a discharger implement good housekeeping BMPs for construction materials that could impact or threaten to impact water quality. These BMPs are designed to reduce or eliminate the addition of pollutants to storm water runoff from a construction site through analysis of pollutant sources, implementation of proper handling/disposal practices, employee education, and other similar activities.

The Dischargers failed to implement good housekeeping BMPs for construction materials on at least 27 instances over 19 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP between July 8, 2021 and November 30, 2022. During this period, 33% of the weekly inspections found alleged good housekeeping BMP violations for construction materials.

The failure to implement good housekeeping BMPs for construction materials is a violation of Attachment D, Section B.1 of the Construction General Permit, which states, in part, *“Risk Level 2 dischargers shall implement good site management (i.e., “housekeeping”) measures for construction materials that could potentially be a threat to water quality if discharged. At a minimum, Risk Level 2 dischargers shall implement the following good housekeeping measures:*

- b. Cover and berm loose stockpiled construction materials that are not actively being used...*
- c. Store chemicals in watertight containers (with appropriate secondary containment to prevent spillage or leakage) or in a storage shed (completely enclosed).*
- d. Minimize the exposure of construction materials to precipitation...*

- e. *Implement BMPs to prevent the off-site tracking of loose construction and landscape materials.*”

The following alleged violations related to good housekeeping BMPs for construction materials were observed:

- (1) The QSP’s inspection reports for 15 inspections (September 9, 2021, September 16, 2021, September 23, 2021, October 8, 2021, October 12, 2021, October 19, 2021, June 14, 2022, June 22, 2022, June 29, 2022, July 6, 2022, July 14, 2022, July 18, 2022, August 1, 2022, August 5, 2022, and August 9, 2022), state that asphalt concrete, concrete washout, solid waste, and/or trash were strewn about the site, and that these materials must be properly disposed of.
- (2) The QSP and/or Lahontan Water Board staff’s inspection reports for three inspections (July 6, 2022, July 14, 2022, and July 18, 2022) found that the Dischargers had allowed concrete fragments to spill into a temporary stormwater conveyance which discharges directly to Donner Creek. The inspection report photos show that this same waste remained at the same location for each inspection and was not cleaned up until the July 25, 2022 inspection.
- (3) During the inspection on October 11, 2022, the QSP observed a pile of asphalt concrete waste in the road gutter near a drop inlet.
- (4) The QSP and/or Lahontan Water Board staff’s inspection reports for six inspections (May 10, 2022, June 22, 2022, June 29, 2022, July 14, 2022, July 18, 2022, September 12, 2022) state that stockpiles must be covered and/or fiber rolls must be installed around the perimeter of the stockpiles.
- (5) During the inspection on June 7, 2022, the QSP took a picture of a black liquid in two open-topped buckets and wrote “place hazardous liquids in secondary containment”.
- (6) During the inspection on October 8, 2021, the QSP noted that piles of asphaltic concrete were not covered or properly stored.

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger properly manage construction materials to protect water quality. However, the Dischargers failed to timely clean up the solid waste and trash from work areas; failed to timely pick up piles of asphalt concrete or, in the alternative, failed to properly cover the piles; failed to pick up concrete fragments that had spilled into a stormwater conveyance that discharges directly to Donner Creek; failed to appropriately cover and protect stockpiles of soil and construction material; and failed to appropriately store a liquid that its QSP characterized as “hazardous”. The Dischargers’ failure to properly store or manage the above construction materials resulted in the potential for these materials to be transported off-site in storm water, which would negatively impact receiving waters and their beneficial uses.

According to the U.S. Environmental Protection Agency, solid waste and trash create a wide range of problems when they enter surface waters⁷. Aquatic trash affects water quality, endangers plants and animals, and pollutes outdoor spaces. Though all types of aquatic trash can have potentially harmful impacts, plastic waste is particularly concerning because of its tendency to persist in the environment and its widespread production and use.

The U.S. Environmental Protection Agency considers sediment to be the most common pollutant in surface waters⁸. Storm water polluted with sediment degrades beneficial uses as follows: (a) sediment clouds the water, preventing animals from seeing food, (b) cloudy, murky water prevents natural vegetation from growing, (c) sediment in stream beds disrupts the food chain by destroying habitat where the smallest aquatic organisms live, resulting in significant declines in fish populations; (d) sediment can clog fish gills, resulting in lowered growth rates, lowered resistance to disease, and altered egg and larvae development; sediment increases the cost of treating drinking water and can cause taste and odor problems; (f) nutrients released by sediment can stimulate blue-green algae production, resulting in illness to swimmers, pets, and wildlife; and (g) sediment deposits in rivers can alter the flow of water and reduce water depth, making navigation difficult and leading to flooding. A moderate potential for harm is appropriate in this case.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement good housekeeping practices for construction materials that impact or threaten to impact

⁷ [Learn About Aquatic Trash | US EPA](#)

⁸ [What is Sediment Pollution? Brochure \(epa.gov\)](#)

water quality. Although the Dischargers implemented some good housekeeping practices for construction materials, the Dischargers failed to consistently implement other standard good housekeeping practices. Of the 58 weekly inspections that were conducted, 19 inspections, or 33%, found alleged construction material violations. The Dischargers' failure to implement appropriate good housekeeping practices for construction partially compromised the intended effectiveness of the Construction General Permit's requirements related to construction materials. A moderate deviation from requirement is appropriate.

Per Day Factor: 0.35

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: 1.3

The Construction General Permit clearly describes the need to implement good housekeeping practices related to construction materials, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize each of the alleged violations listed above are described in the SWPPP. For example,

Section 500.4, WM-5 Solid Waste Management, states "*This project will involve solid waste generation. The contractor will have appropriate waste containers in the staging area...The contractor shall not allow litter, trash, or debris to accumulate anywhere on the job site...All food-related trash items such as wrappers, cans, bottles, and food scraps must be disposed of in closed containers and removed at least once every day from the entire project site.*"

Section 500.4, WM-8 Concrete Waste Management, states "*The contractor shall use practices to prevent the discharge of asphalt concrete, PCC [Portland cement concrete] and HMA [hot mix asphalt] into storm drain systems and receiving waters.*"

Section 500.4, WM-3 Stockpile Management, states "*Protection of stockpiles is a year-round requirement...The contractor will cover and berm stockpiles when the contractor is not onsite actively using the stockpile.*"

Section 500.4, WM-3 Stockpile Management, states "*Place stockpiles of cold mix asphalt concrete on an impervious surface and cover them with an impermeable material. Protect the stockpile from stormwater run-on and run-off.*"

Section 500.4, WM-1 Material Storage and Delivery, states "*Chemicals shall be stored in original containers and shall be properly labelled. If non-original containers*

are used, the containers shall be in accordance with MSDS sheets and manufacturer's recommendations."

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to implement good housekeeping practices related to construction materials and incorporated relevant BMPs into the SWPPP.

It is noted that the BMPs related to good housekeeping for construction materials are standard, common-sense BMPs that have been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders of the need to comply with the Construction General Permit, both from their QSP and from Lahontan Water Board staff. However, the Dischargers remained in alleged violation week after week, which indicates a higher level of culpability. The failure to effectively implement good housekeeping practices related to construction materials for 33% of the weekly inspections implies misconduct and negligence, and therefore a multiplier of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violations and the ability to resolve them.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.2

The Dischargers' failure to implement good housekeeping practices related to construction materials was first documented in the QSP's September 9, 2021 inspection report. These alleged violations continued intermittently through October 11, 2022. It is the Dischargers' responsibility to review their QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

The good housekeeping alleged violations were also discussed during the Lahontan Water Board inspection on July 14, 2022. A reasonable and prudent discharger would immediately rectify the alleged violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week. For example, the Dischargers' QSP noted that solid waste and trash needed to be cleaned up during the September 9, 2021 inspection. Instead of correcting the matter, the Dischargers continued to allow trash to be scattered throughout the site for over a month, through October 19, 2021. Similarly, on July 6, 2022, the QSP noted concrete spillage/fragments in a drainage channel leading to Donner Creek. Instead of picking up

and disposing of the material, the Dischargers allowed it to remain in the drainage channel for 19 more days. These actions speak to the Dischargers' failures to voluntarily return to compliance in a timely manner. A reasonable and prudent discharger would have rectified these types of alleged BMP violations as they were noted and would not have allowed them to occur for 33% of the weekly inspections. The Dischargers' actions are significantly less than what is expected and therefore a factor of 1.2 is appropriate.

Days of Violation: 19 days

The Dischargers failed to implement good housekeeping practices for construction materials on at least 27 instances over 19 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

Total Base Liability: Alleged Violation 3

$$0.35 \times 19 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.2 = \$103,740$$

Statutory Maximum: Alleged Violation 3

$$19 \text{ days} \times \$10,000/\text{day} = \$190,000$$

ALLEGED VIOLATION 4:

Failure to Implement BMPs for Waste Management

The Construction General Permit requires that a discharger implement good housekeeping BMPs for waste management. Waste management consists of implementing procedural and structural BMPs for handling, storing, and cleaning up spills, and ensuring proper disposal of wastes to prevent their release into stormwater. Such wastes may include solid waste, hazardous waste, contaminated soil, concrete wash-out, and sanitary-septic.

The Dischargers failed to implement good housekeeping BMPs for waste management on at least 24 instances over 21 days, as observed during inspections conducted by the QSP and Lahontan Water Board staff between July 8, 2021 and November 30, 2022.

The failure to implement good housekeeping BMPs for waste management is a violation of Attachment D, Section B.2 of the Construction General Permit, which states, in part: *"Risk Level 2 dischargers shall implement good housekeeping measures for waste management materials, which at a minimum, shall consist of the following:*

- b. Ensure containment of sanitation facilities (e.g., portable toilets) to prevent discharges of pollutants to the storm water drainage system or receiving water.*
- h. Develop a spill response and implementation element of the SWPPP prior to commencement of construction activities. The SWPPP shall require that:
 - i. Equipment and materials for cleanup of spills shall be available on site and that spills and leaks shall be cleaned up immediately and disposed of properly; and*
 - ii. Appropriate spill response personnel are assigned and trained.**
- i. Ensure containment of concrete washout areas...so there is no discharge into the underlying soil and onto surrounding areas.”*

The following alleged violations related to waste management were observed:

- (1) The QSP's inspection reports for 13 inspections (May 23, 2022, May 31, 2022, June 7, 2022, June 14, 2022, June 22, 2022, June 29, 2022, July 6, 2022, July 14, 2022, July 18, 2022, July 25, 2022, August 1, 2022, August 5, 2022, and August 9, 2022) state that the portable toilet was missing the required secondary containment.
- (2) On August 9, 2021, Lahontan Water Board staff inspected the site and found that the Dischargers did not have a spill response plan or a spill cleanup kit available at the site, and that the Dischargers did not have on-site personnel trained to respond to spills. This violation continued for seven days, until August 16, 2021, when the QSP documented that the spill plan and kit were on-site. It is unknown when, or if, personnel were trained to respond to spills.
- (3) On July 14, 2022, Lahontan Water Board staff inspected the site and found that once again, the Discharger did not have a spill response plan or a spill cleanup kit available at the site, and that the Dischargers did not have on-site personnel trained to respond to spills. This alleged violation continued for four days, until July 18, 2022 when the Dischargers' project manager "personally attested" that the spill plan and kit were on-site. It is unknown when, or if, personnel were trained in spill response.

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to prepare for spills, as well as the failure to clean up spills, has the potential to harm beneficial uses. A discharger should strive to prevent spills of construction materials and wastes; however, spills and leaks will occur even with the best prevention efforts. This is why the Construction General Permit requires that a discharger have a spill response plan, a spill response kit, and on-site trained personnel that are ready to respond quickly and effectively to any inadvertent spills. However, these Dischargers failed to have a spill response plan available on-site, did not have a spill kit on-site, and did not identify to Lahontan Water Board staff that they had personnel trained to respond to spills.

As described in Alleged Violation 5, spills of petroleum products were observed at the site. The lack of a spill response plan and kit had the potential to hinder the clean-up of these spills. Petroleum products contain heavy metals such as zinc, lead, and cadmium, and volatile organic compounds such as benzene, toluene, and xylenes. These compounds are so toxic that just a small amount of petroleum will adversely affect the beneficial uses of a large volume of surface water, ground water, or drinking water.⁹

The Dischargers did not have secondary containment underneath the portable toilets for almost three months. In addition to human waste, portable toilets contain a “blue liquid” deodorizer composed of biocides, dyes, surfactants, and fragrances¹⁰. If spilled, these components can adversely affect water quality.

When spills and leaks are not cleaned up immediately, there is the potential for these materials to be transported off-site in storm water or non-storm water discharges and then impact beneficial uses and receiving waters. A moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement good housekeeping practices related to waste management. Although the Discharger implemented some BMPs for waste materials, the Dischargers failed to consistently implement other standard good housekeeping practices. Of the 58 weekly inspections that were conducted, 21 inspections found alleged waste management violations. The Dischargers’ failure to implement appropriate good housekeeping practices for waste management partially compromised the intended effectiveness of the Construction

⁹ [Oil and Water Don't Mix Brochure \(epa.gov\)](http://epa.gov)

¹⁰ [The Blue Liquid in Porta Potties: What Is It? \(pitstopportables.net\)](http://pitstopportables.net)

General Permit's requirements related to waste management. A moderate deviation from requirement is appropriate.

Per Day Factor: 0.35

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: 1.3

The Construction General Permit clearly describes the need to implement good housekeeping practices related to construction waste, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize each of the alleged violations listed above are described in the SWPPP. For example,

Section 500.4.2, WM-4 Spill Prevention and Control, states "*The contractor will have spill kits available on-site in yards. Employees will be trained on emergency response procedures and shall know the location of spill kits. The contractor has an Employee Health and Safety Plan that covers emergency procedures, including spill prevention and cleanup. All employees shall be trained on the contents of this Plan.*"

Section 500.4.2, WM-9 Sanitary and Septic Wastes, states "*Sanitary unit facilities shall be provided with secondary containment trays...*"

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to implement good housekeeping practices related to waste management, including the need prepare for and clean up spills. The Dischargers incorporated relevant BMPs into their SWPPP, yet still failed to implement these practices to protect the site.

With respect to the lack of secondary containment under the portable toilets during most of the 2022 construction season, the Dischargers knew this was a requirement of the Construction General Permit, as evidenced by the fact that there was secondary containment under the toilets during the 2021 construction season (e.g., see the QSP's September 16, 2021 inspection report photos, one of which is a picture of a portable toilet with the text "portable restroom is in secondary containment."). The Dischargers are fully culpable for the failure to have secondary containment under the portable toilets for 80 days during the 2022 construction season.

It is noted that the BMPs related to waste management are standard, common-sense BMPs that have been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders of the need to comply with the Construction General Permit, both from their QSP and from Lahontan Water

Board staff. However, the Dischargers remained in alleged violation week after week, indicating intentional failure to comply, which therefore results in a higher level of culpability. The failure to effectively implement good housekeeping practices related to waste management also demonstrates misconduct and negligence on the Dischargers' part. A multiplier of at least 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violations and the ability to resolve them.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.2

The Dischargers' failure to implement good housekeeping practices related to waste management was first documented in the Lahontan Water Board's August 9, 2021 inspection report. These alleged violations continued intermittently through August 15, 2022. It is the Dischargers' responsibility to review their QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

A reasonable and prudent discharger would immediately rectify the violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week. For example, the Dischargers' QSP first noted that the portable toilets required secondary containment during the May 23, 2022 inspection. Instead of correcting the matter, the Dischargers continued to ignore the alleged violation for 84 days. It was not until the August 15, 2022 inspection that the lack of secondary containment under the portable toilets was no longer flagged as a violation. It is noted that the Dischargers had secondary containment under their portable toilets during the 2021 construction season, showing that they understood the requirement and how to comply. However, the Dischargers' continuing disregard for the portable toilet alleged violations during the 2022 construction season, and the Dischargers' failure to voluntarily return to compliance within a reasonable timeframe, results in a higher Cleanup and Cooperation factor.

Similarly, the Dischargers were reminded by Lahontan Water Board staff during the inspection on August 9, 2021 that they must have a spill response plan and spill response kit on-site, and that on-site personnel must be trained to respond to spills. Despite the fact that the spill response plan had already been prepared (as a component of the Dischargers' SWPPP dated June 15, 2021), and despite the fact that spill response kits are a standard item at construction sites, it still took the Dischargers seven days before a copy of the spill response plan and a spill response kit were placed

on-site. This is significantly more time than what would be expected of a reasonable and prudent discharger and lends credence to a higher Cleanup and Cooperation factor.

After having been reminded by Lahontan Water Board staff during the 2021 construction season that a spill response plan and spill response kit were required on-site, and that on-site personnel must be trained to respond to spills, Lahontan Water Board staff found that the Dischargers did not have these items at the construction site when Lahontan Water Board staff inspected in 2022. As documented in staff's July 14, 2022 inspection report:

"Despite me providing approximately two weeks advance notice, Teichert staff were unprepared for my inspection...I asked Teichert staff (Ryan Payne) to show me the spill response plan. Ryan stated that he did not have a copy of the spill response plan but could print out a physical copy at his office. Teichert staff (Ryan Payne) also stated that there was no current plan in place to maintain a physical copy...of the spill response plan onsite but that corrective action could be implemented quickly. I stated that making a physical copy of the spill response plan available at the construction site as part of the SWPPP is a Statewide CGP requirement..."

I asked Teichert staff (Ryan Payne) to show me the location of the spill response kit(s). Teichert staff (Ryan Payne) stated that he could not identify the location of a spill response kit on the project. Teichert staff (Ryan Payne) also stated that there was no current plan in place to identify and maintain a spill response kit onsite but that corrective actions could be implemented quickly. I stated that having the equipment and materials for cleanup of spills is a Statewide CGP requirement..."

I asked Teichert staff (Ryan Payne) to identify project personnel assigned and trained in spill response. Teichert staff (Ryan Payne) stated that he could not identify project personnel assigned and trained in spill response. Teichert staff (Ryan Payne) also stated that there was no current plan in place to identify site personnel with appropriate spill response training but that corrective action could be implemented quickly. I stated that assigning and training site personnel in spill response is a Statewide CGP requirement..."

Despite that fact that the QSP documented that a spill response plan and spill response kit were on-site for the latter half of the 2021 construction season, it still took the Dischargers four days to place these items on-site after the July 14, 2022 inspection. A discharger should not have to be reminded for a second time about the need to have a spill response plan, personnel trained in spill response, and spill kit on-site and would not have taken so long to rectify the matter. This lack of cooperation in returning to compliance justifies a higher Cleanup and Cooperation factor.

The above actions speak to the Dischargers' failures to voluntarily return to compliance in a timely manner. A reasonable and prudent discharger would have rectified these types of alleged BMP violations as they were noted. The Dischargers' actions are significantly less than what is expected and therefore a factor of 1.2 is appropriate.

Days of Violation: 21 days

The Dischargers failed to implement good housekeeping BMPs for waste materials on at least 24 instances over 21 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

<p>Total Base Liability: Alleged Violation 4 $0.35 \times 21 \text{ days} \times \\$10,000/\text{day} \times 1.3 \times 1.0 \times 1.2 = \\$114,660$</p> <p>Statutory Maximum: Alleged Violation 4 $21 \text{ days} \times \\$10,000/\text{day} = \\$210,000$</p>

**ALLEGED VIOLATION 5:
 Failure to Implement BMPs for Vehicle Storage, Fueling, and
 Maintenance**

The Construction General Permit requires that a discharger implement good housekeeping BMPs for vehicle storage, fueling, and maintenance, and if a spill or leak occurs, requires that a discharger immediately clean it up and appropriately dispose of the cleaning material.

The Dischargers failed to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance for at least 14 instances over 13 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP between July 8, 2021 and November 30, 2022. During this period, 22% of the weekly inspections found alleged BMP violations for vehicle storage, fueling, and maintenance.

The failure to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance is a violation of Attachment D, Section B.3 of the Construction General Permit. Attachment D, Section B.3 states, in part, *"Risk Level 2 dischargers shall implement good housekeeping for vehicle storage and maintenance, which at a minimum, shall consist of the following:*

- a. *Prevent oil, grease, or fuel to leak in to [sic] the ground, storm drains or surface waters.*
- b. *Place all equipment or vehicles, which are to be fueled, maintained and stored in a designated area fitted with appropriate BMPs.*
- c. *Clean leaks immediately...*”

The following alleged violations related to vehicle storage, fueling, and maintenance were observed:

- (1) The QSP’s inspection reports for seven inspections (August 1, 2022, August 5, 2022, August 9, 2022, August 15, 2022, October 6, 2022, October 11, 2022, and October 20, 2022) stated that there was oil, grease, or fuel drips and leaks onsite.
- (2) The QSP and/or Lahontan Water Board staff’s inspection reports for seven inspections (June 14, 2022, June 22, 2022, June 29, 2022, July 14, 2022, September 12, 2022, September 22, 2022, and October 6, 2022) stated that paving equipment must be placed on top of plastic and/or stored in an area fitted with appropriate BMPs.

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The failure to implement adequate vehicle storage and maintenance good housekeeping BMPs poses a substantial potential for harm. Vehicle fluids contain petroleum and oil byproducts, which contain toxic constituents such as metals and volatile organic compounds. When not cleaned up, vehicle fluid spills can be either directly transported into receiving waters by storm water runoff or indirectly transported when they attach to sediment that is mobilized by storm water runoff. Storm water runoff polluted with vehicle fluids is harmful to beneficial uses in the receiving water ecosystem because, among other items, it is toxic, it smothers plants and wildlife, and it bioaccumulates¹¹. A moderate potential for harm is appropriate.

¹¹ [Oil and Water Don't Mix Brochure \(epa.gov\)](https://www.epa.gov/oia/oil-and-water-dont-mix-brochure)

Deviation from Requirement: *Minor*

The Construction General Permit requires that a discharger implement good housekeeping BMPs related to vehicle storage, fueling, and maintenance. Although the Dischargers did not consistently implement these BMPs, most of the inspections found that these BMPs were in place. A minor deviation from requirement is appropriate.

Per Day Factor: 0.25

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.25 is assigned.

Step 4. Adjustment FactorsCulpability: 1.3

The Construction General Permit clearly describes the need to implement good housekeeping practices related to vehicle storage, fueling, and maintenance, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize each of the alleged violations listed above are described in the SWPPP. For example,

Section 500.4.2, WM-4 Spill Prevention and Control, states in part "*The contractor shall implement spill and leak prevention procedures for chemicals and hazardous substances...As soon as it is safe, the contractor shall contain and clean up spills of petroleum materials...*"

Section NAS-9/NS-10 Vehicle and Equipment Fueling and Maintenance, states in part "*If [vehicle fueling and maintenance] must be done on site, BMPs must be utilized to prevent discharges of fuel and vehicle fluids...If leaks cannot be repaired immediately, the contractor shall remove the vehicle or equipment from the job site.*"

Attachment BB, Water Pollution Control Drawings, includes a figure of the "Contractor's Staging Areas" with a note "*Park paving equipment on plastic when not in use after work hours. Refer to BMP NS-2 for paving, sawcutting, and grinding operations.*"

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to implement good housekeeping practices related to vehicle storage, fueling, and maintenance and incorporated relevant BMPs into their SWPPP, yet still failed to incorporate the actions needed to protect the site.

It is noted that the BMPs related to vehicle storage, fueling, and maintenance are standard, common-sense BMPs that have been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders

of the need to comply with the Construction General Permit, both from their QSP and from Lahontan Water Board staff. However, the Dischargers remained in alleged violation week after week, which indicates a higher level of culpability. The failure to effectively implement good housekeeping practices related to construction materials for 22% of the weekly inspections implies misconduct and negligence, and therefore a multiplier of 1.3 is appropriate.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.1

The Dischargers' failure to implement good housekeeping practices related to vehicle storage, fueling, and maintenance was first documented in the QSP's June 14, 2022 inspection report. These alleged violations continued intermittently through October 20, 2022. It is the Dischargers' responsibility to review the QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

The good housekeeping alleged violations were also discussed during the Lahontan Water Board inspection on July 14, 2022. A reasonable and prudent discharger would immediately rectify the alleged violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week.

For example, Lahontan Water Board staff's July 14, 2022 inspection report states *"I observed Teichert's storage of soil compaction and asphalt paving equipment in staging areas without adequate housekeeping (e.g., no drip pans and/or plastic sheeting) and/or sediment control/erosion control BMPs (e.g., perimeter sediment controls/fiber rolls)...Teichert staff (Ryan Payne) stated that the equipment was parked there recently (perhaps overnight?) and could not provide an explanation as to why no BMPs were deployed."*

Even though this alleged violation was specifically brought to Teichert's attention, the alleged violation was documented during three subsequent weekly inspections. Similarly, the QSP observed multiple leaks and spills, and repeatedly reminded the Dischargers to clean them up. A reasonable discharger would take all reasonable steps to prevent spills and leaks, and if they occurred, clean them up immediately.

These actions speak to the Dischargers' failures to voluntarily return to compliance in a timely manner. Dischargers are expected to rectify these types of alleged BMP violations as they are noted and should not allow them to occur for 22% of the weekly inspections. The Dischargers' actions are less than what is expected and therefore a

factor of 1.1 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing violation and the ability to resolve it.

Days of Violation: 13 days

The Dischargers failed to implement good housekeeping BMPs for vehicle storage, fueling, and maintenance for at least 14 instances over 13 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

<p>Total Base Liability: Alleged Violation 5</p> <p>$0.25 \times 13 \text{ days} \times \\$10,000/\text{day} \times 1.3 \times 1.0 \times 1.1 = \\$46,475$</p> <p>Statutory Maximum: Alleged Violation 5</p> <p>$13 \text{ days} \times \\$10,000/\text{day} = \\$130,000$</p>
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ALLEGED VIOLATION 6: Failure to Control Erosion

The Construction General Permit requires that a discharger implement actions to control erosion. Erosion control, also referred to as soil stabilization, is designed to prevent soil particles from detaching and becoming transported in stormwater runoff. Erosion control measures protect the soil surface by covering and/or binding soil particles and include disturbing as little of the land as possible, preserving existing vegetation where feasible, re-vegetating disturbed areas as soon as possible after disturbance, and temporary soil stabilization measures such as hydroseed, soil stabilizers, binders, fiber, geotextile mats, and hydraulic, straw, or wood mulch.

The Dischargers failed to install and maintain erosion control measures on at least nine instances over nine days, as observed during weekly inspections conducted by Lahontan Water Board staff and the QSP between July 8, 2021 and November 30, 2022. During this period, 16% of the weekly inspections found alleged erosion control violations.

The failure to install and maintain erosion control measures is a violation of Attachment D, Section D of the Construction General Permit, which states, in part,

“2. Risk Level 2 dischargers shall provide effective soil cover for inactive areas¹ and all finished slopes, open space, utility backfill, and completed lots....”

[Inactive areas of construction are areas of construction activity that have been disturbed and are not scheduled to be re-disturbed for at least 14 days.]”

The following alleged violations related to the lack of erosion control were observed:

- (1) The QSP and/or Lahontan Water Board staff's inspection reports for one inspection (February 7, 2022) stated that erosion control BMPs had been damaged by winter storms and needed maintenance and/or replacement.
- (2) The QSP's inspection reports for eight inspections (October 5, 2021, October 8, 2021, October 12, 2021, May 23, 2022, June 7, 2022, September 12, 2022, September 19, 2022, and September 20, 2022) stated that erosion control BMPs for slopes either needed to be installed or needed maintenance.

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger implement actions to control erosion. Erosion control measures are necessary to prevent soil particles from detaching during rain or wind events and being transported to surface waters via stormwater runoff. The Dischargers' failure to implement erosion control BMPs poses a substantial potential for harm to beneficial uses if storm water or non-storm water flows through the site and transports sediment to receiving waters. Storm water runoff polluted with sediment is harmful to beneficial uses of the receiving water ecosystem because, among other items, it can contain material that is toxic to aquatic organisms, it can smother plants and wildlife, bury fish eggs, clog fish gills, and can contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat (see expanded discussion regarding sediment impacts for Alleged Violation 3). A moderate potential for harm is appropriate.

Deviation from Requirement: *Minor*

The Construction General Permit requires that a discharger install and maintain erosion control measures. Although the Dischargers did not consistently implement erosion control BMPs, most of the inspections found that these BMPs were in place. A minor deviation from requirements is appropriate.

Per Day Factor: 0.25

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.25 is assigned.

Step 4. Adjustment FactorsCulpability: 1.3

The Construction General Permit clearly describes the need to implement erosion control BMPs, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize the alleged violations listed above are described in the SWPPP. For example,

Section 500.3, BMP Selection for Erosion and Sediment Control, states "*An effective combination of erosion (soil stabilization) and sediment control BMPs shall be implemented and maintained during the project...*"

Section 500.3.2, SS-7 Temporary Cover, states "*Temporary cover shall be used to cover DSA's [disturbed soil areas] prior to rain events or if left inactive for over 14 days... Temporary cover for slope areas should include geotextile material...*"

Section 700.1.4, Visual Monitoring Follow-Up and Tracking Procedures, states in part, "*For deficiencies identified during visual monitoring (site inspections), the required repairs or maintenance of BMPs shall begin and be completed as soon as possible...(but cannot be authorized longer than required by the CGP: implemented within 72 hours of identification and completed as soon as possible thereafter.)...*"

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to implement erosion control BMPs and incorporated relevant BMPs into their SWPPP, yet at times still failed to implement these practices to protect the site.

It is noted that erosion control BMP installation and maintenance is a standard, common-sense practice that has been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders of the need to comply with the Construction General Permit, both from the QSP and from Lahontan Water Board staff. However, the Dischargers remained in alleged violation week after week, which indicates a higher level of culpability. The failure to effectively implement good housekeeping practices related to erosion control for 16% of the weekly inspections demonstrates misconduct and negligence on the Dischargers' part, and therefore a multiplier of at least 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violations and the ability to resolve them.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.1

The Dischargers' failure to install and maintain BMPs related to sediment control was first documented in the QSP's October 5, 2021 inspection report. These alleged violations continued intermittently through September 20, 2022. It is the Dischargers' responsibility to review their QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

A reasonable and prudent discharger would immediately rectify the alleged violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week. For example, there were three extended periods (October 2021, May 2022, and September 2022) when the QSP's inspection reports found that slopes either needed BMPs or the BMPs on the slopes needed maintenance. In October 2021, it took the Dischargers two weeks to come into compliance. In May 2022, it took the Dischargers three weeks to come into compliance. And in September 2022, it took the Dischargers one and a half weeks to come into compliance. These timelines are longer than what is expected of a reasonable discharger to take iterative steps to acknowledge deficiencies and install BMPs to the site as directed.

The above example speaks to the Dischargers' failure to voluntarily return to compliance in a timely manner. It is expected that a discharger would address these types of alleged BMP violations as they are noted and not allow them to occur for 16% of the weekly inspections. The Dischargers' actions are less than what is expected and therefore a factor of 1.1 is appropriate.

Days of Violation: 9 days

The Dischargers failed to install and maintain sufficient erosion measures for at least 9 instances over 9 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

Total Base Liability: Alleged Violation 6

$$0.25 \times 9 \text{ days} \times \$10,000/\text{day} \times 1.3 \times 1.0 \times 1.1 = \$32,175$$

Statutory Maximum: Alleged Violation 6

$$9 \text{ days} \times \$10,000/\text{day} = \$90,000$$

ALLEGED VIOLATION 7: Failure to Control Sediment

The Construction General Permit requires that a discharger implement actions to control sediment. Sediment controls are designed to intercept and settle out soil particles that have been detached and subsequently transported. These temporary or permanent measures are to complement the site's erosion control measures and can include silt fencing, fiber rolls, sediment basins, storm drain inlet protection, and street sweeping.

The Dischargers failed to install and maintain sufficient sediment control measures on at least 48 instances over 20 days, as observed during inspections conducted by Lahontan Water Board staff and the QSP between July 8, 2021 and November 30, 2022. During this period, 34% of the weekly inspections found alleged sediment control violations.

The failure to install and maintain sediment control measures is a violation of Attachment D, Section E of the Construction General Permit. Attachment D, Section E states, in part, "*Sediment Control*

1. *Risk Level 2 dischargers shall implement and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.*
5. *...Risk Level 2 dischargers shall ensure that construction activity traffic to and from the project is limited to entrances and exits that employ effective controls to prevent offsite tracking of sediment.*
6. *...Risk Level 2 dischargers shall ensure that all storm drain inlets...are maintained and protected from activities that reduce their effectiveness.*
7. *...At a minimum daily (when necessary) and prior to any rain event, the discharger shall remove any sediment or other construction activity-related materials that are deposited on the roads (by vacuuming or sweeping)."*

The following alleged violations related to sediment control were observed:

- (1) The QSP and/or Lahontan Water Board staff's inspection reports for 15 inspections (September 28, 2021, May 18, 2022, May 31, 2022, June 7, 2022, June 14, 2022, June 22, 2022, June 29, 2022, July 6, 2022, July 14, 2022, July 18, 2022, August 1, 2022, August 9, 2022, August 15, 2022, August 22, 2022, and August 29, 2022) found that fiber rolls were not properly placed or staked, needed maintenance, and/or needed to be replaced.
- (2) The QSP and/or Lahontan Water Board staff's inspection reports for 12 inspections (June 14, 2022, June 22, 2022, June 29, 2022, July 6, 2022, July

- 14, 2022, July 18, 2022, August 1, 2022, August 5, 2022, August 9, 2022, August 29, 2022, September 6, 2022, and September 12, 2022) found that silt fences needed maintenance.
- (3) On February 7, 2022, the QSP and/or Lahontan Water Board staff inspected the site and found that winter storms had damaged most of the sediment control BMPs and that damaged silt fencing and other BMPs needed to be replaced.
- (4) On July 14, 2022 and August 22, 2022, the QSP and/or Lahontan Water Board staff inspected the site and found that construction entrances and exits were not stabilized to control sediment discharges.
- (5) The QSP and/or Lahontan Water Board staff's inspection reports for eight inspections (September 28, 2021, February 7, 2022, June 29, 2022, July 14, 2022, August 5, 2022, August 9, 2022, August 15, 2022, and August 29, 2022) found that BMPs had not been installed around storm drain drop inlets.
- (6) Lahontan Water Board staff's inspection on July 14, 2022 found that sediment had accumulated in the flow line of the Coldstream Road curb and gutter.
- (7) The QSP and/or Lahontan Water Board staff's inspection reports for nine inspections (August 26, 2021, May 18, 2022, May 31, 2022, June 14, 2022, June 22, 2022, June 29, 2022, July 14, 2022, July 18, 2022, and August 29, 2022) found that sediment had been tracked onto the roadways and needed to be swept up.

Step 1. Potential for Harm for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 2. Assessment for Discharge Violations

This step is not applicable because this alleged violation is a non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: *Moderate*

The Construction General Permit requires that a discharger control and/or prevent the movement of sediment into surface waters. Sediment control measures are to be designed to complement a site's erosion control measures. The Dischargers' failure to implement appropriate sediment control BMPs poses a substantial potential for harm to beneficial uses if storm water or non-storm water flows through the site and transports

sediment to receiving waters. Storm water runoff polluted with sediment is harmful to beneficial uses of the receiving water ecosystem because, among other items, it can contain material that is toxic to aquatic organisms, it can smother plants and wildlife, bury fish eggs, clog fish gills, and can contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat (see expanded discussion regarding sediment impacts for Alleged Violation 3). A moderate potential for harm is appropriate.

Deviation from Requirement: *Moderate*

The Construction General Permit requires that a discharger implement sediment control measures during active construction. Although the Dischargers installed some sediment control BMPs, some were either installed incorrectly, did not receive the necessary maintenance, or were missing. Of the 58 weekly inspections that were conducted, 20 inspections, or 34%, found alleged sediment control violations. The Dischargers' failure to implement appropriate sediment control BMPs partially compromised the intended effectiveness of the Construction General Permit's requirements related to sediment control. A moderate deviation is appropriate.

Per Day Factor: *0.35*

Using Table 3 in the Enforcement Policy, a Per Day Factor of 0.35 is assigned.

Step 4. Adjustment Factors

Culpability: *1.3*

The Construction General Permit clearly describes the need to implement sediment control BMPs, as does the Dischargers' own SWPPP. BMPs that would prevent or minimize each of the alleged violations listed above are described in the SWPPP. For example,

Section 500.3.3, SC5 Temporary Fiber Rolls, states "*Fiber roll shall be properly embedded into the ground and shall be installed level along parallel contours...Fiber roll shall be installed and maintained throughout the course of construction, regardless of season...Fiber rolls shall be repaired and replaced as necessary if damaged. Vehicles and equipment shall be kept off of fiber rolls to prevent damage.*"

Section 500.3.3, SC-1 Temporary Silt Fence, states "...*Maintain silt fence regularly...*"

Section 500.3.4, TC-1 Temporary Construction Entrance, states "*A stabilized construction entrance/exit will be constructed and maintained at construction site entrances and exits...*"

Section 500.3.3, SC-10 Temporary Drain Inlet Protection, states “...*Inlet protection BMPs will be installed at all active inlets effected by construction activities...Inlet protection BMPs shall be maintained as required...Inlet protections shall be installed and maintained at all times during construction... Drainage inlet protections shall be inspected regularly to clean any sediment deposit and maintain damaged protections.*”

Section 500.3.3, SC-7 Street Sweeping, states “*Sweep by hand or mechanical methods, such as vacuuming...Sweep paved roads at construction entrance and exit locations and paved areas within the job site after observing off-site tracking of material...Monitor paved areas and roadways within the project...the Contractor shall inspect paved roads at job site access points for street sweeping daily...*”

Section 700.1.4, Visual Monitoring Follow-Up and Tracking Procedures, states in part, “*For deficiencies identified during visual monitoring (site inspections), the required repairs or maintenance of BMPs shall begin and be completed as soon as possible...(but cannot be authorized longer than required by the CGP: implemented within 72 hours of identification and completed as soon as possible thereafter.)...*”

In addition, the SWPPP includes a copy of the Construction Stormwater Permit as an appendix. The Dischargers were fully aware of the requirement to install and maintain sediment control BMPs and incorporated relevant BMPs into their SWPPP, yet still failed to implement the BMPs as needed to protect the site.

It is noted that the BMPs related to sediment control are standard, common-sense BMPs that have been a component of the Construction General Permit since its adoption in 2009. The Dischargers received multiple reminders of the need to comply with the Construction General Permit, both from the QSP and from Lahontan Water Board staff. However, the Dischargers remained in alleged violation week after week, resulting in a higher level of culpability. The failure to effectively implement good housekeeping practices related to sediment control BMPs for 34% of the weekly inspections also implies misconduct and negligence, and therefore a multiplier of 1.3 is appropriate. This factor is applicable to either Discharger and considers the knowledge of the continuing alleged violations and the ability to resolve them.

History of Violation: 1.0

The Dischargers do not have a history of adjudicated violations.

Cleanup and Cooperation: 1.3

The Dischargers' failure to install and maintain BMPs related to sediment control was first documented in the QSP's July 8, 2021 inspection report. These alleged violations continued intermittently through October 20, 2022. It is the Dischargers' responsibility to

review their QSP's weekly inspection reports and, as required by the Construction General Permit (Attachment D, Section G.3), begin addressing all BMP violations within 72 hours of identification, and come into compliance as soon as possible.

A reasonable and prudent discharger would immediately rectify the alleged violations and ensure future compliance with the Construction General Permit. However, these Dischargers did not do so, and instead allowed certain alleged violations to continue week after week. For example, the QSP's October 22, 2021 inspection found that silt fences needed maintenance. This same alleged violation was noted in the next four weekly inspections, through November 23, 2021. Because the QSP erroneously stopped conducting inspections after November 23, 2021, it appears that the Dischargers did not address the silt fence alleged violations until after Lahontan Water Board staff's February 7, 2022 email titled "Notice Regarding Deficient BMP Maintenance", which means that the Dischargers allowed this sediment control alleged violation to extend for more than 109 days. This is significantly longer than the time it would take a reasonable discharger to take iterative steps to acknowledge deficiencies and install BMPs at the site as directed by the QSP. It is noted that while the Dischargers had alleged intermittent silt fence violations during the 2021 construction season, the record shows that the alleged violations were usually addressed as they arose. This shows that the Dischargers understood the requirement and how to comply. However, the Dischargers' disregard for the maintaining the silt fences during the fall of 2021 and winter of 2021-2022 indicates a failure to voluntarily return to compliance within a reasonable timeframe, and results in a higher Cleanup and Cooperation factor.

Similarly, the Dischargers consistently failed to cleanup sediment on the roadways within the site. The Dischargers generally complied during the 2021 construction season, as only one of the weekly inspections noted that sediment "track out" needed to be swept up. However, during the 2022 construction season, the Dischargers consistently ignored the requirement to clean up sediment that had been tracked onto a road. The QSP first noted the issue during the May 18, 2022 inspection and continued flagging the alleged violation intermittently through August 29, 2022. The Dischargers' failure to voluntarily comply exhibits a lack of cooperation. A reasonable discharger would comply with its SWPPP, which in this case states that the contractor will inspect paved roads daily to determine the need for sweeping. The same reasonable discharger would then comply with the Construction General Permit and would remove any sediment from roadways on at least a daily basis.

The above examples speak to the Dischargers' failure to voluntarily return to compliance in a timely manner. A reasonable and prudent discharger would have rectified these types of alleged BMP violations as they were noted and would not have allowed them to occur for 34% of the weekly inspections. The Dischargers' actions are significantly less than what is expected and therefore a factor of 1.3 is appropriate.

Days of Violation: 20 days

The Dischargers failed to control sediment for at least 48 instances over 20 days. The Enforcement Policy does not allow the days of violation to be compressed for violations of 30 days or less.

Step 5. Total Base Liability and Statutory Maximum Liability Amount

The total base liability and statutory maximum liability are determined as described in Alleged Violation 1.

<p>Total Base Liability: Alleged Violation 7 $0.35 \times 20 \text{ days} \times \\$10,000/\text{day} \times 1.3 \times 1.0 \times 1.3 = \\$118,300$</p> <p>Statutory Maximum: Alleged Violation 7 $20 \text{ days} \times \\$10,000/\text{day} = \\$200,000$</p>

Combined Total Base Liability for All Violations

The combined Total Base Liability for Alleged Violations 1 through 7 is determined by adding the base liability amount of each alleged violation and is \$604,110.

Step 6. Ability to Pay and Continue in Business

The Water Code and the Enforcement Policy require the Water Boards to consider a discharger's ability to pay when imposing administrative civil liabilities (ACLs). These liabilities should be imposed at levels that do not allow violators to obtain a competitive economic advantage over dischargers that voluntarily incur the costs of regulatory compliance. The Lahontan Water Board is under no obligation to ensure that a discharger has the ability to pay an ACL amount; instead, the Lahontan Water Board must only consider these factors when imposing a civil liability. If staff makes an initial showing that a discharger has sufficient income or net worth to pay the proposed ACL, then the burden of proof on this factor shifts to the discharger to produce sufficient evidence that it lacks an ability to pay.

The Prosecution Team reviewed the Town of Truckee's *Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2021*. The Introductory Section includes a Letter of Transmittal which states:

"The ending fund balance (total of the committed, assigned, and unassigned components of the fund balance) in the General Fund at year-end is \$41.5 million, or 132% of General Fund revenues. This includes a cash available balance of \$15.3 million, which is above the guideline set by Council of \$5.0 million and a Council mandated \$12.5 million General Fund contingency (equal to 40% of

budgeted operating revenues). The fiscal year 2022 budget identifies using \$4.3 million of this fund balance on capital expenditures.”¹²

The Prosecution Team has also reviewed publicly available information relative to Teichert Construction. Teichert Construction is a division of Teichert¹³, a construction and materials company operating in California since 1887. Teichert provides residential development, public infrastructure, and site development services, and operates 22 materials plants in California and Nevada, specializing in aggregate, asphaltic concrete, concrete, and recycled products. Teichert also funds the Teichert Foundation which provides grants to “build and preserve a healthy and prosperous region.” According to Zippia (an online recruiting company), Teichert had 1,800 employees and a revenue of \$520 million in 2021¹⁴.

Based on the currently available information, the Prosecution Team has determined the Dischargers are able to pay the proposed ACL and continue in business.¹⁵

Step 7. Economic Benefit

Pursuant to California Water Code Section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency’s (U.S. EPA) Economic Benefit Model (BEN)¹⁶ program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. The economic benefit was calculated using BEN Version 2022.0.0 (June 2022). For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger’s economic benefit derived from delaying or avoiding compliance with environmental statutes.

Staff evaluated the types of actions that the Dischargers should have taken to avoid the alleged violations and estimated the cost of these actions. Two types of costs were considered: delayed costs and avoided costs¹⁷.

¹² [637877014130870000 \(townoftruckee.com\)](https://www.townoftruckee.com/637877014130870000) This is the most recent CAFR available to the public.

¹³ [Teichert](#)

¹⁴ [Teichert Revenue: Annual, Quarterly, and Historic - Zippia](#)

¹⁵ Existing or potential private agreements between Town and Teichert related to indemnity are not relevant to the proposed penalty. As framed, any penalty would be joint and several between the Dischargers.

¹⁶ BEN is available for download at [Penalty and Financial Models | US EPA](#)

¹⁷ Delayed costs include expenditures that should have been made sooner. Avoided costs include expenditures for services that the permittee should have incurred to avoid the incident of noncompliance, such as additional BMP maintenance and QSP inspections.

The estimated economic benefit for this case is based on the Dischargers' failure to adhere to the requirements of the Construction General Permit. The Dischargers' economic benefit is mainly derived from the avoided cost of additional QSP inspections and labor that would have been required to properly implement and maintain BMPs onsite. There are also some marginal benefits obtained by delaying the purchase of materials needed to successfully implement BMPs.

Avoided Costs: The Dischargers received an economic benefit by avoiding the costs of:

- 23 missed QSP inspections;
- Labor associated with daily monitoring of BMPs and ensuring the construction site was free from asphaltic concrete, solid waste, concrete spillage, and trash;
- An additional onsite dumpster to dispose of trash and debris;
- Labor associated with monitoring and maintaining BMPs over winter of 2021; and
- General costs associated with maintaining fiber rolls, silt fencing, and slopes.

Delayed Costs: With the exception of providing secondary containment for hazardous waste, staff determined that the Dischargers received a negative economic benefit¹⁸ for delaying the implementation of the following BMPs:

- Providing secondary containment for a portable toilet;
- Providing a spill kit onsite;
- Providing drip bags for vehicles;
- Providing plastic lining underneath paving equipment; and
- Stabilizing the construction yard entrance and exit.

For computational purposes, the penalty payment date was established as the tentative hearing date, which is July 1, 2023. Changes to this date will affect the total economic benefit. Based on specific assumptions within the model, as well as the assumptions outlined in Appendix A, the total economic benefit of non-compliance was determined to be approximately **\$73,984**.

¹⁸ A negative economic benefit occurs when inflation outpaces the time-value of money. In other words, a negative economic benefit indicates that it would have been marginally more cost-effective for the Discharger to implement certain BMPs sooner.

Step 8. Other Factors as Justice May Require

The Prosecution Team has elected to reduce the liability by 10% (\$60,411) for the uncertainty inherent in an administrative enforcement proceeding and potential litigation.

The Enforcement Policy provides under “other factors as justice may require” that the cost of investigation and enforcement should be added to the liability amount. From August 9, 2021 through March 13, 2023, an Engineering Geologist with the Lahontan Water Board invested 34 hours, and an Environmental Program Manager, Retired Annuitant, with the State Water Board Office of Enforcement invested 89 hours, to investigate, develop enforcement documents, and prepare to bring this matter to hearing. Following the Enforcement Policy guidance, and based on the staff’s position and overhead, these hours were converted into a staff cost of \$16,002. The staff costs do not include the costs accrued by Lahontan Water Board management or by Water Board attorneys. The Prosecution Team finds that it is appropriate to increase the Total Base Liability amount by \$16,002 in consideration of these investigation and enforcement costs. Increasing the final proposed liability amount in this manner serves to create a more appropriate deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

Statutory Maximum: The maximum liability is found in Water Code section 13385(c) and is \$10,000 per day per violation. The combined total maximum liability for all alleged violations is \$1,180,000.

Statutory Minimum: Water Code section 13385(e) requires that, at a minimum, the economic benefit derived from the alleged violations be recovered. The Enforcement Policy states that the Water Board should strive to impose civil liabilities that are 10 percent greater than the economic benefit to the violator. The economic benefit derived from the alleged violations addressed in this matter is \$73,984. Adding 10 percent to the statutory minimum brings the minimum liability for these alleged violations to \$81,382.

Step 10. Final Liability Amount

The final liability amount consists of the added amounts for each alleged violation, with any allowed adjustments, provided the amount is within the statutory minimum and statutory maximum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed Administrative Civil Liability is **\$559,701**.

Attachment: Economic Benefit Analysis spreadsheet

Economic Benefit Analysis										
Coldstream Roundabout										
Compliance Action	One-Time Non-Depreciable Expenditure				Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance	
	Amount	Basis	Date	Delayed?						
1. Complete missed QSP inspections	\$ 11,279	ECI	1/5/2023	N	11/29/2021	7/1/2023	7/1/2023	2.20%	\$ 11,027.166	
2. Maintain BMPs during construction	\$ 7,283	ECI	1/5/2023	N	8/9/2021	7/1/2023	7/1/2023	2.20%	\$ 7,109.963	
3. Have an additional dumpster onsite	\$ 13,325	GDP	1/5/2023	N	8/9/2021	7/1/2023	7/1/2023	2.20%	\$ 12,950.699	
4. Have additional fiber rolls and tarps	\$ 1,944	CCI	1/5/2023	N	8/9/2021	7/1/2023	7/1/2023	2.20%	\$ 1,877.789	
5. Have secondary containment for hazardous waste	\$ 280	GDP	1/5/2023	Y	6/7/2022	6/13/2022	7/1/2023	2.20%	\$ 0.100	
6. Have secondary containment for portable toilet	\$ 109	GDP	1/5/2023	Y	5/23/2022	8/14/2022	7/1/2023	2.20%	\$ (0.483)	
7. Have a spill-kit onsite	\$ 260	GDP	1/5/2023	Y	8/9/2021	7/24/2022	7/1/2023	2.20%	\$ (8.075)	
8. Provide drip bags for vehicles	\$ 33	GDP	1/5/2023	Y	8/1/2022	10/26/2022	7/1/2023	2.20%	\$ (0.848)	
9. Provide plastic underneath paving equipment	\$ 370	GDP	1/5/2023	Y	6/14/2022	10/10/2022	7/1/2023	2.20%	\$ (2.483)	
10. Maintain BMPs over winter	\$ 1,137	ECI	1/5/2023	N	2/7/2022	2/7/2022	7/1/2023	2.20%	\$ 1,123.585	
11. Implement hydroseeding on slopes	\$ 24,000	CCI	7/1/2012	N	10/5/2021	9/21/2022	7/1/2023	2.20%	\$ 33,317.892	
12. Build and maintain silt fencing	\$ 4,735	CCI	7/1/2012	N	8/9/2021	2/16/2022	7/1/2023	2.20%	\$ 6,595.186	
13. Stabilize construction yard entrance and exit	\$ 2,400	CCI	7/1/2012	Y	7/14/2022	8/28/2022	7/1/2023	2.20%	\$ (6.037)	
Income Tax Schedule: Municipality								Total Benefit:	\$ 73,984.5	
USEPA BEN Model Version: Version 2022.0.0										
Analyst: Michael Yoakam										
Date/Time of Analysis: 1/05/2023 2:00pm										
Assumptions: See Appendix A										

ATTACHMENT B

Attachment B to Stipulated Order R6T-2024-0003

Trout Creek Restoration (Reach 1, Segment A) Supplemental Environmental Project (SEP) Workplan

Project Title:

Trout Creek Restoration (Reach 1, Segment A) Supplemental Environmental Project (SEP or Project)

Project Location:

Town of Truckee, Nevada County

Project Description:

Trout Creek is a perennial stream that drains a 5.1 square mile watershed along the eastern crest of the Sierra Nevada Range and is a medium-sized tributary to the Truckee River. Past impacts have dramatically altered the creek, but over the last two decades, the Town of Truckee (Town) has restored portions of Reach 1 and Reaches 2, 3, 4, and 5 (Figure 1), using a combination of local funds and grant funding.

This SEP would address Reach 1, Segment A, which is one of the remaining upstream segments of Trout Creek in need of restoration. This segment of Trout Creek is approximately 180 linear feet in length and extends upstream from the end of the Reach 1, Phase 1 project to the School Street Bridge in downtown Truckee (Figure 2). This restoration is crucial towards restoring the natural and ecological value of the creek, creating a functioning riparian corridor with enhanced aquatic habitat, and addressing flooding impacts.

Segment A of Reach 1 of Trout Creek has severely degraded habitat and does not contain the 100-year flow. This segment currently contains an undersized 10-foot-wide concrete channel that parallels Jibboom Street (Figure 3). The project would replace segments of the concrete channel with a 30-foot-wide meandering channel to greatly increase flood control capacity and will allow for incorporation of a natural bed and riparian canopy. Large structural elements such as boulders and large woody materials will also be incorporated into the project to encourage variability in the flow field, create pockets of local scour and deposition, and provide cover for aquatic organisms.

The SEP funds will be utilized for final design, easements, permitting and construction associated with restoring Segment A of Reach 1 of Trout Creek. The SEP funds will be considered permanently suspended when Segment A is constructed.

Organization proposing the project:

Town of Truckee
 Dan Wilkins, Public Works Director/Town Engineer
 DWilkins@townoftruckee.com
 (530) 582-2902

Project Readiness, including status of CEQA, permits, and landowner agreements:

The Town Council certified a Mitigated Negative Declaration (MND) for the entire Trout Creek Restoration Project in January 2011 to satisfy the California Environmental Quality Act (CEQA) for the construction of the Project. Initial design for the Project was prepared, but a final design must be completed. One easement from a private property owner adjacent to Segment A is also required. Once final design is complete, the Town will pursue funding for completion of the Project through grants and local matching funds. For prior phases of the Trout Creek Restoration Project, upon completion of final design, the Town successfully obtained approximately \$6 Million in grant funds, coupled with \$3.8 Million of local matching funds. The Town will use the SEP funds towards final design, easement acquisition, permitting, and construction.

Total project cost, amount of SEP money requested, other funding sources:

The amount of SEP funds requested is \$271,849. This suspended penalty will be considered permanently suspended when Segment A is constructed. SEP funding can be utilized for final design, easement acquisition, permitting and/or construction. The estimated cost to complete Segment A post-design is approximately \$985,000, as shown below:

Segment A Cost Estimate

	<u>Estimated Cost</u>
<u>Project Phase: Design, Permitting, and Easement</u>	
<u>Complete Final Design</u>	<u>\$ 80,000</u>
<u>Easement Acquisition</u>	<u>\$100,000</u>
<u>Permitting</u>	<u>\$ 40,000</u>
<u>Subtotal Design:</u>	<u>\$205,000</u>
<u>Project Phase: Construction, Monitoring, and Maintenance</u>	
Construction	\$835,000
Monitoring and Maintenance	\$50,000
Subtotal:	\$885,000
TOTAL:	\$1,105,000

Potential grant funding sources the Town will pursue for construction include the Department of Water Resources Urban Streams Restoration Program, California Department of Fish and Wildlife's Prop 1 Watershed Restoration Grant Program, California Wildlife Conservation Board Habitat Enhancement, and Restoration Program, and the Watershed and Flood Prevention Operations Program. The Town will likely use Stormwater Impact Fees and/or Town General Fund as match to these grants.

Project Tasks, Schedules, Milestones

Task 1 (SEP): Completion of Easement Acquisition and Final Design within 18 months of the Stipulated Order becoming effective.

Month 1-6: Easement Acquisition

Month 7-8: Retain design consultant

Month 9: Initiate design

Month 10-11: Additional topographic surveys to evaluate existing condition (weather dependent)

Month 12-15: Draft final design

Month 13-15: Draft permit application documentation (acquisition of 404, 401, and CDFW permits will be delayed until construction funding is secured)

Month 16-18: Complete final design

Task 2 (Segment A): Completion of Segment A within four (4) years of the completion date for Final Design as defined in Task 1. This task includes acquiring construction funding through grants after completion of final design (approximately three (3) years), as well as the project construction (one (1) year).

Reporting:

Quarterly reports will be submitted to the Lahontan Water Board's Enforcement Coordinator. The first report will be submitted on August 1, 2024 and will cover the period of April-June 2024. Reports will be submitted in accordance with the schedule below:

<u>Reporting Period</u>	<u>Report Submittal Date</u>
January – March	May 1
April – June	August 1
July – September	November 1
October – December	February 1

The Quarterly reports will include a list of all activities completed during the quarter, an accounting of funds expended, the proposed work for the following quarter, and a

discussion of whether the SEP is compliant with milestone/deadline, and if not, the cause for delay and anticipated date of compliance. The Final Report will describe and evaluate the Performance Standards listed below.

Performance Standards

The following performance standards will be incorporated into the SEP:

- a. Improved floodplain quality measured in square feet of natural and vegetated floodplain created;
- b. Improved riparian habitat measured in terms of number of plants planted and survival rates (90% goal for container and 50% goal for other planted plants, such as plugs); and
- c. Creek restoration measured in linear feet of restored creek.

Publicity

If the Town or Teichert Construction publicizes the Trout Creek Reach 1, Segment A project, it will state in a prominent manner that design of the project was undertaken as part of a Settlement Agreement with the Lahontan Water Board.

Nexus between the violations and the project:

The violations alleged in the Stipulated Order relate to stormwater management of the Coldstream Roundabout Project site, which is within the Truckee River watershed. The Trout Creek project is also located within the Truckee River Watershed. Potential impacts to beneficial uses as a result of the alleged violations will be directly ameliorated as a result of the project.

Expected benefits or improvements to water quality or beneficial uses:

The project is expected to improve water quality and riparian habitat through the removal of an existing concrete channel and creation of a meandering natural channel, natural features, and riparian canopy. This will result in improved ecological/geomorphic functions, improved riparian habitat and increased protection to aquatic beneficial uses.

Figure 1: All reaches of the Trout Creek restoration project

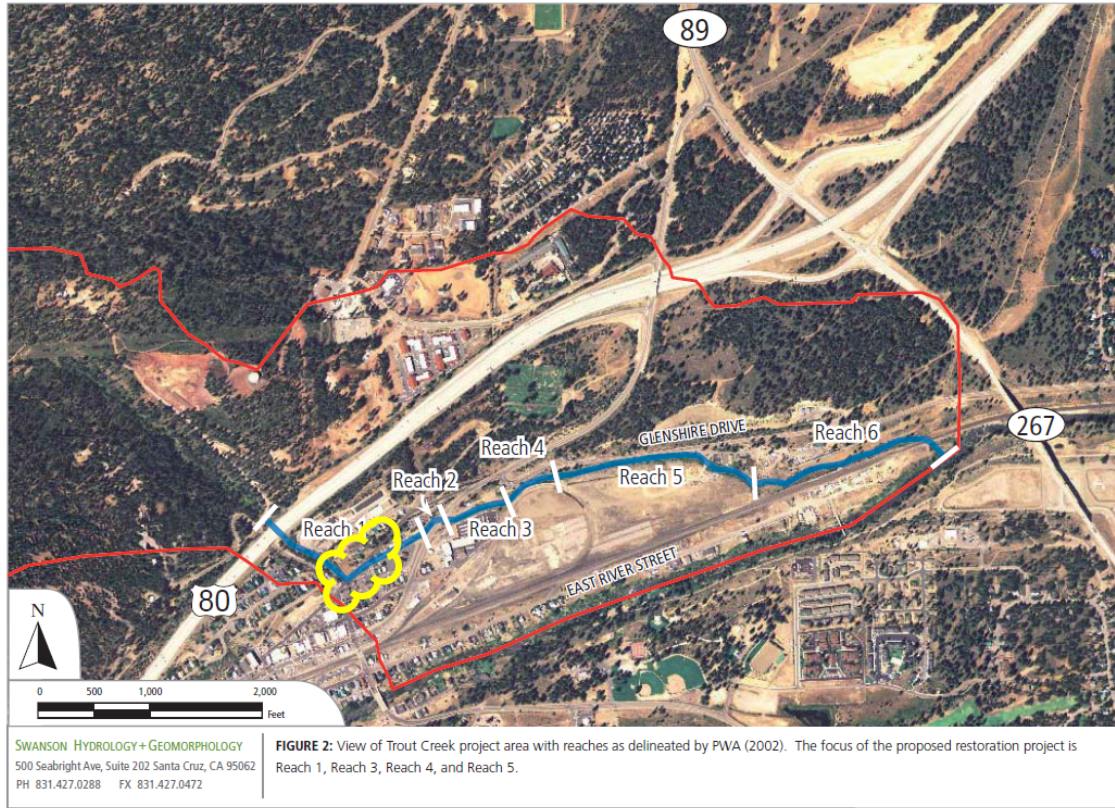


Figure 2: Reach 1, Segment A

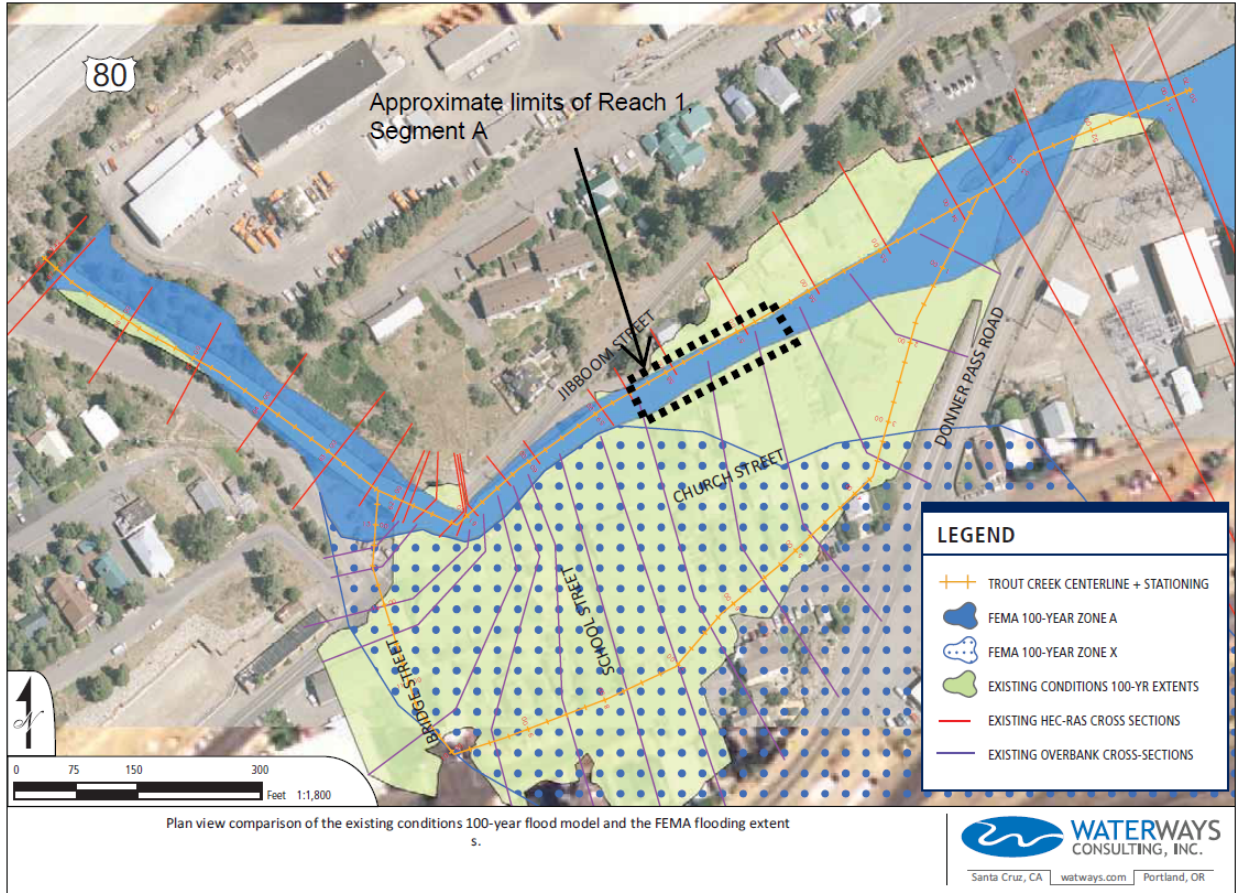
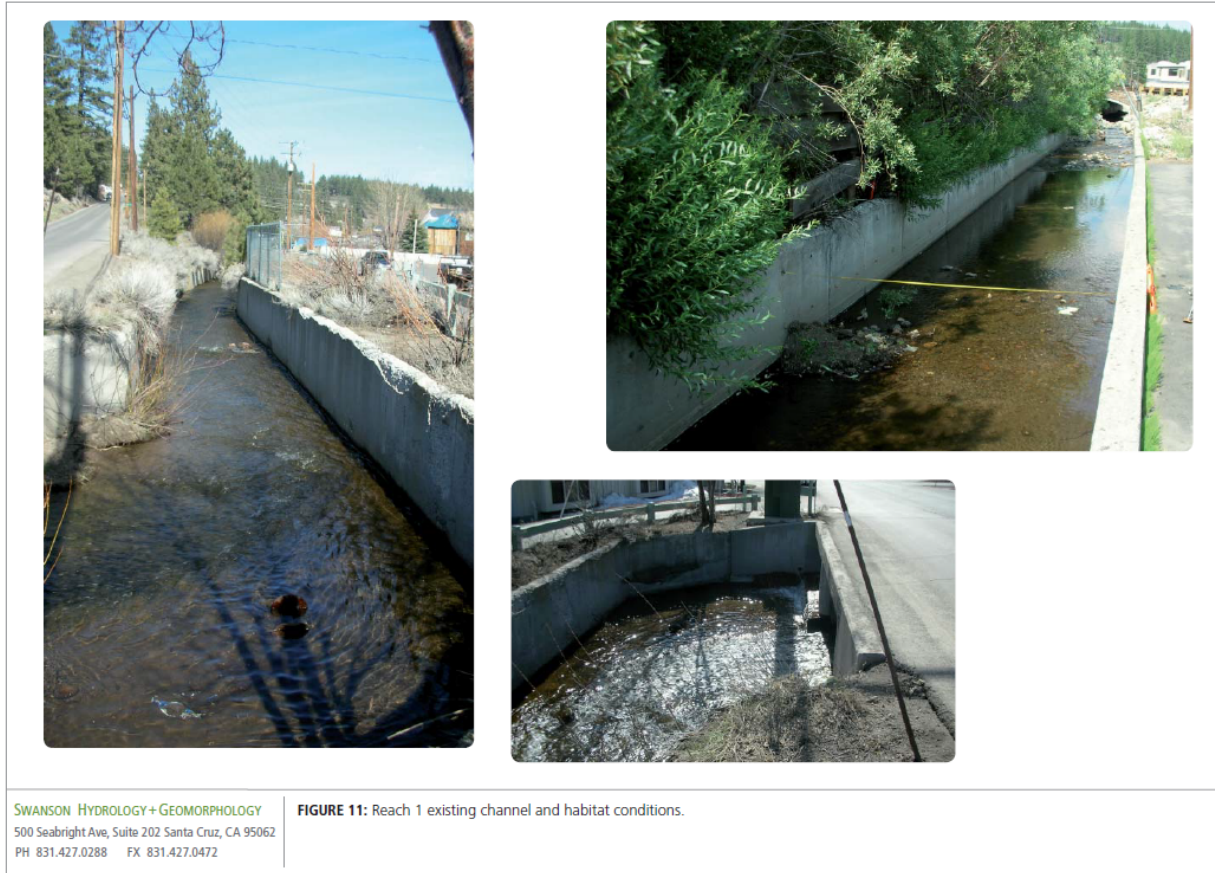


Figure 3: Current conditions of Reach 1, Segment A



ATTACHMENT C

Attachment C

Teichert Construction – Construction Stormwater General NPDES Permit Commitments

Teichert Construction is committed to sound environmental stewardship at its project sites and seeks to be a positive project partner with state and local agencies in implementing the State Water Resources Control Board's Construction Stormwater General NPDES Permit (CGP). To that end, Teichert Construction will ensure the following items are implemented at active sites within the Lahontan region, and will work cooperatively with the Town of Truckee (Town) towards the commitments they are concurrently providing:

1. **SWPPP Preparation:** Implement a QC/QA protocol for Stormwater Pollution Prevention Plan (SWPPP) preparation to ensure requirements are tailored to specific projects and to ensure SWPPP elements that differ from, or are more stringent than, CGP requirements are clearly identified. Include this QC/QA protocol in Teichert Construction's Housekeeping Code of Safe Practices (COSP).
2. **Training:**
 - a. Conduct annual water pollution control project manager training for all project managers (*e.g.*, 8 hour comprehensive training recently performed by Verux). Repeat the annual training before each wet season. If a new project manager joins, provide the training within six (6) months of the hiring date (if the annual training does not already occur within 6 months of the hiring date).
 - b. Conduct project manager-specific training on the project specific SWPPPs in coordination with QSD/QSP, *i.e.*, when the SWPPP differs from CGP or other project components or actions. Repeat the project manager training before each wet season.
 - c. Require all project managers to attend training on the 2022 CGP by qualified personnel.
 - d. These activities will supplement the existing weekly tailgate and ongoing training for onsite craft personnel.¹
3. **On-site Documentation:** Ensure water pollution control materials are on-site, visible (when onsite physically), and available for use and during inspections. With the 2022 CGP allowing for electronic copies, determine location and format of SWPPP at pre-construction meeting with local agency and Water Board staff (if electronic is the intended manner of SWPPP availability, confirm and document agreement).

¹ Please note that all onsite training documents are bi-lingual, in English and Spanish.

4. Inspections: Conduct inspections consistent with the CGP throughout the year (unless road closures or safety issues preclude, which will be timely documented) until Notice of Termination submitted for approval. Develop a project specific checklist of required inspections that will be shared with the local agency and Regional Water Board staff prior to project commencement.
5. Inspection Report Review and Response Protocol: Prepare and implement inspection report (Water Board or QSP) review and response protocol to ensure implementation of repairs or other action commence within 72-hours. This protocol will be reflected in a newly created internal SWPPP COSP.
6. Documentation of Response Protocol: Document weekly review and response actions.
7. On-site Checklists: Prepare and implement on-site checklist for pre-inspection activities.
8. Winterization: Ensure project team and SWPPP emphasis on timely winterization efforts in regionally impacted projects (e.g., Truckee, where there is snow). Teichert will also hold a pre-winterization meeting with the local agency and Regional Water Board staff to ensure winterization efforts and inspection frequency are appropriate.

Town of Truckee Construction General Permit Process Commitments

The Town of Truckee (Town) is committed to continuing to improve its municipal stormwater program, including its associated construction program. To best promote compliance with the CGP requirements, the Town agrees to implement the following process changes and take other actions as specified below:

1. On or before July 1, 2024, the Town will update its public works construction contract and related bid documents to reflect the requirements of the new CGP that will become effective on September 1, 2023. As part of this update, the Town will specify the roles and responsibilities of the Town, the contractor, the QSD, and the QSP/QSP delegate, and will require the contractor to address and timely implement all applicable corrective actions identified by the QSP pursuant to the requirements of the CGP.
2. For all new public works construction projects that are governed by the CGP, and on which the Town is the Legally Responsible Person (LRP), the Town shall, prior to CGP enrollment, conduct a quality control assessment with the contractor of the SWPPP developed by the QSD in order to confirm roles and

responsibilities and to verify the specific stormwater requirements for the project. For all pending public works construction projects that have CGP coverage, that remain active, and on which the Town is LRP, the Town shall meet with the contractor to review the SWPPP within forty-five (45) days of the final approval of this settlement.

3. For all new public works construction projects that are governed by the CGP, and on which the Town is LRP, the Town shall require that all pending corrective actions identified by the QSP/QSP delegate be discussed at a weekly construction meeting and that the contractor shall commence and document actions to timely address and/or implement the corrective actions. The Town will include this as a requirement in its updated construction contract.
4. On or before July 1, 2024, the Town will require its project managers and inspectors that work on CGP-related project, to attend a CGP training (minimum two (2) hours), to include requirements to timely address QSP identified corrective actions. New employees serving as project managers or inspectors shall receive this training within six (6) months of hire. The Town will require its project managers and inspectors to attend a refresher training (minimum one (1) hour) every two years after receiving the initial training.
5. Not later than July 1, 2024, after the training required by paragraph 4 above occurs, as part of the Town's inspection process of projects subject to the CGP on which the Town is the LRP, the Town's project managers and inspectors shall document on the Town's inspection reports implementation of QSP identified corrective actions or steps taken by the Town, including but not limited to stop work orders, to require such implementation.
6. If Regional Board staff agrees to attend and present, the Town will host a public education session regarding the winterization/inactive status process and required inspections of winterized projects. The Town will host this education session within ninety (90) days of the final approval of this settlement and Regional Board staff's agreement to participate. The Town will invite contractors, municipal staff and members of the public throughout the Truckee Watershed to attend, including, but not limited to the Contractors Association of Truckee Tahoe. The Town will also work with Regional Board staff to provide public notice of this education session.
7. The Town shall cause all required CGP inspections to occur on all public works construction projects governed by the CGP and on which the Town is the LRP,

including, without limitation, required inspections of projects subject to winterization/inactive status.