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7 Attorneys for Petitioner LEAGUE TO SAVE LAKE TAHOE

8 BEFORE THE STATE WATER RESOURCES CONTROL BOARD

9 IN RE: EL DORADO COUNTY, PLACER ) PETITION TO REVIEW OF  
10 COUNTY, AND THE CITY OF SOUTH LAKE ) CALIFORNIA REGIONAL WATER  
11 TAHOE, STORM WATER/URBAN RUNOFF ) QUALITY CONTROL BOARD,  
12 DISCHARGES EL DOPRADO AND PLACER ) LAHONTAN REGION'S ADOPTION  
13 COUNTIES, CALIFORNIA ) OF ORDER NO. R6T-2011-0101  
14 ) (NPDES NO. CAG616001) -  
15 ) UPDATED WASTE DISCHARGE  
16 ) REQUIREMENTS AND NATIONAL  
17 ) POLLUTANT DISCHARGE  
18 ) ELIMINATION SYSTEM (NPDES)  
19 ) PERMIT FOR STORM  
20 ) WATER/URBAN RUNOFF  
21 ) DISCHARGES FROM EL DORADO  
22 ) COUNTY, PLACER COUNTY, AND  
23 ) THE CITY OF SOUTH LAKE  
24 ) TAHOE WITHIN THE LAKE  
25 ) TAHOE HYDROLOGIC UNIT;  
26 ) REQUEST FOR HEARING

27 Pursuant to Water Code § 13320, the League to Save Lake Tahoe ("League") hereby  
28 petitions the State Water Resources Control Board ("State Board") to review the Regional Water  
Quality Control Board, Lahontan Region's adoption of Order No. R6T-2011-0101 (NPDES No.  
CAG616001) updating waste discharge requirements and the National Pollutant Discharge  
Elimination System (NPDES) permit for storm water/urban runoff discharges from El Dorado  
County, Placer County, and the City of South Lake Tahoe within the Lake Tahoe Hydrologic  
Unit.

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1 **I. NAME AND CONTACT INFORMATION OF PETITIONER.**

2 Carl Young, Acting Executive Director  
3 League to Save Lake Tahoe  
4 2608 Lake Tahoe Boulevard  
5 South Lake Tahoe, CA 96150  
6 (530) 541-5388  
7 carl@keptahoeblue.org

8 **II. REGIONAL BOARD AND STATE BOARD ACTIONS BEING PETITIONED.**

9 This petition seeks review of the Regional Board's adoption of Order No. R6T-2011-  
10 0101 (NPDES No. CAG616001) updating waste discharge requirements and the National  
11 Pollutant Discharge Elimination System (NPDES) permit for storm water/urban runoff  
12 discharges from El Dorado County, Placer County, and the City of South Lake Tahoe within the  
13 Lake Tahoe Hydrologic Unit. A true and correct copy of adopted Order No. R6T-2011-0101 is  
14 attached hereto as Exhibit 1.

15 **III. THE DATE OF THE REGIONAL BOARD'S ACTION.**

16 The Regional Board adopted Order No. R6T-2011-0101 (NPDES No. CAG616001) on  
17 December 6, 2011.

18 **IV. STATEMENT OF REASONS THE REGIONAL BOARD'S ACTION WAS  
19 INAPPROPRIATE OR IMPROPER.**

20 As discussed in more detail below in Petitioners' Statement of Points and Authorities, the  
21 Regional Board's action eliminates the previous permit's numeric effluent limitations for storm  
22 water discharges, abandoning numeric effluent limitations required to be included in NPDES  
23 permits by the Lahontan Basin Plan and unlawfully backsliding from the requirements of the  
24 2005 permit.

25 The Basin Plan establishes effluent limitations for storm water discharges. Basin Plan, p.  
26 5.6-4. As is required by Water Code §§ 13247 and 13146, these Basin Plan limitations are  
27 required and were included in the previous municipal storm water NPDES permits for the  
28 counties and South Tahoe.

The Fact Sheet for the permit relies upon 40 C.F.R. § 122.44(l) as authority for  
eliminating the numeric storm water effluent limitations. However, Section 122.44(l) does not

1 apply to the water quality-based effluent limitations proposed for deletion in the Tentative  
2 Permit. EPA's antibacksliding regulation prohibits any backsliding whatsoever with some  
3 limited exceptions for effluent limitations that were established based on best professional  
4 judgment.

5 In the response to comments, staff claims to rely upon the recently adopted TMDL for the  
6 Lake's deep water transparency standard. The TMDL for the deep water transparency standard  
7 does not provide a rationale for eliminating the water quality standards and effluent limitations  
8 for storm water established by the Basin Plan. The Basin Plan plainly requires that the storm  
9 water effluent limitations "shall apply in addition to any more stringent effluent limitations for  
10 the constituents below, or to limitations for additional constituents, which are necessary to  
11 achieve all applicable water quality objectives for specific receiving waters." *Id.*

12 The TMDL only addresses the deep water transparency standard. It does not address the  
13 Lake's near shore waters which the Basin Plan's storm water effluent limitations also are  
14 intended in part to address and protect. The Regional Board emphasized during the TMDL  
15 proceedings that the TMDL was not addressing near-shore standards or water quality issues and  
16 those areas of the Lake would be a priority in future years. Given the different focus of the deep  
17 water transparency TMDL, the Regional Board cannot meet the requirements of Section  
18 303(d)(4) providing for any relaxation of existing effluent limitations affecting the Lake's near-  
19 shore waters.

20 In addition, the dischargers should be monitoring for compliance with the numeric  
21 effluent limitations illegally removed from the permit. Only because the previous permit failed  
22 to require any water quality monitoring of the municipalities' discharges can the Regional Board  
23 now claim that there is no evidence of chronic violations of near-shore standards and the numeric  
24 storm water standards. For example, data in the Regional Board's files of the performance of  
25 several pilot studies conducted by Caltrans shows that, even with the implementation of those  
26 pilot treatment efforts, discharges well-above the numeric effluent limitations occur. Obviously,  
27 where no such treatment is in place, the resulting water quality will almost certainly be worse.  
28 The State Board should provide for an evidentiary hearing that is designed to fully disclose the

1 data cryptically referenced by the Regional Board's staff in response to comments as well as the  
2 Caltrans data collected for several pilot projects in the Tahoe Basin.

3 **V. STATEMENT OF POINTS AND AUTHORITIES.**

4 **A. The Tentative Permit's Proposed Deletion of Numerous Water Quality-**  
5 **Based Effluent Limitations Violates the Clean Water Act's Anti-Backsliding**  
6 **Prohibition.**

7 The Board's elimination of the previous permit's numeric effluent limitations unlawfully  
8 backslides from the requirements of the 2005 permit. Section 402(o) of the federal Clean Water  
9 prohibits a renewed or modified NPDES permit from containing less stringent water quality-  
10 based effluent limitations that were enacted in the previous permit. "In the case of effluent  
11 limitations established on the basis of section 301(b)(1)(C) or section 303 (d) or (e) [33 USC §  
12 1311(b)(1)(C) or 1313(d) or (e)], a permit may not be renewed, reissued, or modified to contain  
13 effluent limitations which are less stringent than the comparable effluent limitations in the  
14 previous permit except in compliance with section 303(d)(4) [33 USCS § 1313(d)(4)]." 33 USC  
15 § 1342(o)(1). Section 303(d)(4) allows for the revision of effluent limitations for waters  
16 indentified on the Section 303(d)(1)(A) list of impaired waters. Section 303(d)(4)(A) only  
17 applies to the listed waters and where the "*applicable water quality standard*" has not yet been  
18 attained and is limited to revisions of an "effluent limitation based on a total maximum daily load  
19 or other waste load allocation established under this section [1313(d)]. . . ." 33 U.S.C. §  
20 1313(d)(4)(A). Section 303(d)(4)(B) also only applies to the portion of a waterbody listed as  
21 impaired and where the quality of such water "equals or exceeds levels necessary to protect" its  
22 designated uses "or otherwise required by applicable water quality standards." In addition to  
23 Section 303(d)(4), additional limited exceptions to the Clean Water Act's backsliding prohibition  
24 are set forth at 33 U.S.C. § 1342(o)(2).

25 The Permit is plainly inconsistent with the Act's backsliding prohibition. Consistent with  
26 the Basin Plan (as well as the regional Board's duty under Water Code §§ 13246 and 13146), the  
27 2005 permit included numeric effluent limitations for storm water discharges for Total Nitrogen,  
28 Total Phosphorous, Turbidity, Oil and Grease, and Total Iron. Order R6T-2005-0026, p. 7. The

1 2005 Permit also includes a long list of receiving water limitations. *Id.*, pp. 8-10. The new  
2 permit eliminates those limits and replaces them with the TMDL mass-based limitations adopted  
3 to address the Lake's ongoing violation of the deep water transparency standard. Tentative  
4 Permit, pp. 7-35 – 7-36. The Permit Fact Sheet only discusses the deep-water transparency  
5 standard as relevant to the inclusion of the TMDL-based mass limits and the deletion of the  
6 permit's previous water quality-based and Basin Plan driven effluent limitations. *Id.* at 7-36.

7 No other standards that apply to Lake Tahoe are mentioned or considered:

8       The mass-based limitations on storm water discharges are protective of the Lake  
9 Tahoe transparency standard and are supported by extensive scientific analysis  
10 performed for the development of the TMDL. Rather than imposing  
11 concentration-based limitations at discrete discharge points, the Water Board has  
12 adopted mass-based limitations on a watershed basis that are expected to reduce  
13 pollutant loads to levels needed to achieve the transparency standard.

14 *Id.* The Fact Sheet also indicates that staff has only considered EPA's regulation at 40 C.F.R.  
15 122.44(l) in proposing its antibacksliding conclusion. *Id.*

16       The initial Fact Sheet's discussion failed to provide adequate information as to how the  
17 Regional Board is applying the Act's anti-backsliding provisions and how the proposed deletion  
18 of numerous water quality-based effluent limitations in the tentative permit is consistent with  
19 those requirements.

20       To begin, 40 C.F.R. § 122.44(l) does not apply to the water quality-based effluent  
21 limitations proposed for deletion in the Tentative Permit. EPA's antibacksliding regulation  
22 prohibits any backsliding whatsoever with some limited exceptions for effluent limitations that  
23 were established based on best professional judgment. The effluent limitations in the 2005  
24 permit are water quality-based effluent limitations. Nothing in the 2005 Fact Sheet indicates that  
25 the limitations were based on best professional judgment. As a result, Section 122.44(l) does not  
26 apply at all to the deleted effluent limitations.

27       In its response to comments, the Regional Board invoked Section 303(d)(4) as a  
28 purported basis for deleting the Permit's existing water quality-based effluent limitations for total  
nitrogen, total phosphorus and turbidity. That reliance also is unlawful. First, the listing of

1 Lake Tahoe only applies to the deep water transparency standard. That is not the only standard  
2 applicable to Lake Tahoe.

3 The Basin Plan establishes a long list of standards that apply to Lake Tahoe and which  
4 are distinct from the deep water transparency standard. See Basin Plan, p. 5.1-6 (the following  
5 objectives (listed alphabetically) apply to all surface waters of the Lahontan Region, including  
6 the Lake Tahoe HU"); pp. 5.1-6 – 5.1-9; p. 3-2 – 3-6 (“Listed alphabetically below, these  
7 narrative and numerical water quality objectives apply to **all** surface waters (including wetlands)  
8 within the Lahontan Region: Ammonia, Bacteria, Coliform, Biostimulatory Substances,  
9 Chemical Constituents, Chlorine, Total Residual, Color, Dissolved Oxygen, Floating Materials,  
10 Oil and Grease, Non-degradation of Aquatic Communities and Populations, Pesticides, pH,  
11 Radioactivity, Sediment, Settleable Materials, Suspended Materials, Taste and Odor,  
12 Temperature, Toxicity [and] Turbidity”). The Basin Plan also establishes standards for Lake  
13 Tahoe that are applicable “at any point in the Lake”, not just the deep water areas, including  
14 algal growth potential, clarity, conductivity, pH and plankton counts. As for clarity, the Basin  
15 Plan specifically sets a standard for shallow waters:

16 When water is too shallow to determine a reliable extinction coefficient, the turbidity  
17 shall not exceed 3 Nephelometric Turbidity Units (NTU). In addition, turbidity shall not  
18 exceed 1 NTU in shallow waters not directly influenced by stream discharges.

19 Basin Plan, pp. 5.1-9, 3-8. The Basin Plan establishes numeric water quality objectives for Lake  
20 Tahoe for TDS, Cl, SO<sub>4</sub>, B, N, P, and Fe. Basin Plan, 5.1-20. In addition, the Basin Plan  
21 establishes numeric water quality objectives for most of the creeks into which the permittees also  
22 discharge storm water. *Id.*, pp. 5.1-20 – 5-21.

23 The Basin Plan also establishes effluent limitations for storm water discharges. Basin  
24 Plan, p. 5.6-4. These are the limitations included in the previous 2005 permit. The Basin Plan  
25 plainly requires that “These limits shall apply in addition to any more stringent effluent  
26 limitations for the constituents below, or to limitations for additional constituents, which are  
27 necessary to achieve all applicable water quality objectives for specific receiving waters.” *Id.*  
28

1 None of these standards are addressed by the TMDL mass-loading limits established to  
2 achieve the deep water transparency standard. The only standard applicable to the Lake's listing  
3 as an impaired water is the deep water transparency standard. Indeed, in the response to  
4 comments on the TMDL, the Regional Board admits that the deep water transparency standard  
5 TMDL does not address compliance with standards on the Lake's near-shore zone:

6 The draft Lake Tahoe TMDL was developed to meet federal requirements under  
7 section 303(d) of the federal Clean Water Act, by addressing Lake Tahoe's deep  
8 water transparency. Because the Lake is not meeting the deep water transparency  
9 standard, it was listed as impaired on the federal 303(d) list. The TMDL was  
10 developed to specifically address that impairment. Because Lake Tahoe's  
11 nearshore environment is not yet listed as impaired on the State Water Board's  
12 303(d) list, the draft Lake Tahoe TMDL does not specifically address issues in the  
13 nearshore. However, actions taken to reduce pollutant loads from the four source  
14 categories are expected to result in improved conditions in the nearshore because  
15 of the reductions in amount of pollutants entering the lake through stormwater in  
16 the nearshore.

17 Response to League Comments on TMDL, p. 26

18 ([http://www.waterboards.ca.gov/lahtontan/water\\_issues/programs/tmdl/lake\\_tahoe/docs/comments/responses/letter\\_6.pdf](http://www.waterboards.ca.gov/lahtontan/water_issues/programs/tmdl/lake_tahoe/docs/comments/responses/letter_6.pdf)) Of course, even assuming the expected "reductions" to near shore  
19 pollutants occur says nothing about whether the applicable water quality standards will be  
20 achieved.

21 Because Lake Tahoe's 303(d) listing is limited to the deep water transparency standard,  
22 Section 303(d)(4)'s antibacksliding exception also is limited to modifying effluent limitations  
23 implementing that applicable water quality standard. Because none of the effluent limitations  
24 included in the Basin Plan are implemented by the deep water transparency TMDL, the Regional  
25 Board may not modify the effluent limitations implementing those standards pursuant to Section  
26 303(d)(4).

27 Second, Section 303(d)(4)(A) cannot be used to change any effluent limitations that  
28 themselves were not based on a TMDL or waste load allocation. The numeric and narrative  
effluent limitations in the municipal storm water permit were not based on any TMDL or  
accompanying waste load allocation. They simply implemented the still applicable Basin Plan

1 requirements. Accordingly, the Regional Board cannot rely on Section 303(d)(4)(A) as a basis  
2 for deleting those limitations.

3 Third, the Regional Board cannot show that the standards implemented by the existing  
4 permit's limitations are all being attained. Nothing in the Fact Sheet claims this is the case. In  
5 fact, numerous studies available to the Regional Board show that standards besides the deep  
6 water transparency standard are being violated in the Lake, especially in the near-shore area. As  
7 the Regional Board and Tahoe Regional Planning Agency already have recognized for several  
8 years, the near-shore zone of Lake Tahoe is currently not protecting beneficial uses. *See, e.g.*  
9 Taylor, K., *Investigation of Near Shore Turbidity At Lake Tahoe* (March 2002)  
10 ([http://www.swrcb.ca.gov/water\\_issues/programs/swamp/docs/laketahoe\\_turbidity\\_](http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf)  
11 [mar2002.pdf](http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf)); SNPLMA Proposal for Theme 2c (Near-Shore Water Quality) (2007)  
12 ([http://www.fs.fed.us/psw/partnerships/tahoescience/documents/SchladowNearShoreProposal.pd](http://www.fs.fed.us/psw/partnerships/tahoescience/documents/SchladowNearShoreProposal.pdf)  
13 [f](http://www.fs.fed.us/psw/partnerships/tahoescience/documents/SchladowNearShoreProposal.pdf)); McConnell, Joe; Kendrick Taylor, Spatial Variability of Near Shore Turbidity at Lake Tahoe  
14 (2001) (synopsis) ([http://www.agu.org/meetings/fm01/fm01-pdf/fm01\\_H42G.pdf](http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf)). *See also*  
15 Basin Plan, pp. 5.7-8 Human activities in and near the littoral zone can physically alter fish  
16 habitat and contribute nutrients leading to eutrophication and the alteration of food webs . . . ;  
17 erosion and sedimentation can degrade habitat quality"); *Id.* ("Increased growth of attached  
18 algae and rooted plants in the shorezone is the most visible sign of eutrophication to human  
19 recreational users of lakes"). Readily available evidence indicates that "[t]here is a strong  
20 correlation between elevated turbidity near the shore and development on the shore." Taylor  
21 2002. *See also* McConnell & Taylor (2004) ("Perimeter surveys (Taylor et al., 2004) quantified  
22 turbidity on a basin-wide scale, finding a distinct association between elevated near-shore  
23 turbidity and several developed areas"). "The near shore zone is the portion of the lake first  
24 impacted by disturbances on shore because the material causing the adverse impact will have the  
25 greatest concentration near the source on shore." *Id.* As Geoffrey Schladow of the Tahoe  
26 Environmental Research Center explains:

27 Conditions in the near-shore zone have degraded over time. Elements of this  
28 degradation include elevated turbidity (Taylor et al. 2004)...and increasing

1 concentrations of periphyton (attached algae) on rocks, piers and other hard  
2 substrate (Hackley et al. 2004, 2005, 2006).

3 <http://www.fs.fed.us/psw/partnerships/tahoescience/documents/SchladowNearShoreProp>  
4 [osal.pdf](#). Dr. Schladow also emphasizes that, even assuming any benefits accrue from  
5 pollution control measures attempting to address clarity issues in the deep waters of the  
6 Lake, those measures cannot be assumed to benefit the near-shore:

7 Recent optical modeling (Swift et al. 2006) suggests that mid-lake clarity is  
8 predominantly controlled by the concentration and size distribution of fine,  
9 inorganic particles (< 20 microns). The near-shore zone, by contrast, is more  
10 biologically productive suggesting that nutrient fluxes and other factors may play  
11 a much larger role in that zone. It therefore cannot be assumed that the same  
12 management strategies will work for both the near-shore and mid-lake.

13 *Id.* Kendrick Taylor, in her 2002 study, linked degradation of the near-shore from turbidity to  
14 development:

15 The highest turbidity values were in the lake adjacent to Tahoe Keys and  
16 exceeded the TRPA littoral zone turbidity threshold. Areas with persistently high  
17 turbidity occurred off South Lake Tahoe and Tahoe City. Areas with occasional  
18 high turbidity occurred off Incline Village and Kings Beach.

19 [http://www.swrcb.ca.gov/water\\_issues/programs/swamp/docs/laketahoe\\_turbidity\\_mar2002.pdf](http://www.swrcb.ca.gov/water_issues/programs/swamp/docs/laketahoe_turbidity_mar2002.pdf).

20 *See also* [http://www.agu.org/meetings/fm01/fm01-pdf/fm01\\_H42G.pdf](http://www.agu.org/meetings/fm01/fm01-pdf/fm01_H42G.pdf). Because the Regional  
21 Board has no evidence that the Lake is achieving all of the other applicable standards, the  
22 Regional Board cannot rely on Section 303(d)(4)(B) to backslide by deleting the effluent  
23 limitations adopted to implement those standards.

24 As for Oil and Grease, the Board, again in its response to comments, claims that because  
25 the Permit retains the narrative standard that no discharges result in a sheen on the water, the  
26 Board's elimination of the numeric effluent limitation for Oil and Grease of 2 mg/L does not  
27 backslide from the previous permit. The Board contends that the narrative sheen standard is  
28 more restrictive than the numeric limitation. Both limitations are included in the Basin Plan.  
The Regional Board provides no evidence for its assertion that the narrative sheen standard is  
more restrictive than the 2 mg/L standard also required by the Basin Plan. Given that the Basin  
Plan requires that the 2 mg/L limitation "shall apply in addition to any more stringent effluent

1 limitations. . .,” the Regional Board still had no authority to delete the limitation even if the  
2 sheen standard was more stringent. Plan, p. 5.6-4. Of course, in the real world, documenting  
3 and enforcing a subjective sheen standard is an entirely different task than requiring monitoring  
4 of compliance with a numeric limitation and the relatively streamlined enforcement of that limit.  
5 Whether or not the sheen standard or a 2 mg/L numeric limitation turns out to be “more  
6 stringent” may turn on the type of data and information that is available or collected.

7 In its response to comments, the Regional Board claims to have data on hand showing  
8 that the municipal storm water dischargers are not sources of iron to the Lake. What this data  
9 may be is a mystery to the League. The previous permit did not require any monitoring by the  
10 municipalities of their storm water discharges. Previous document requests by the League did  
11 not disclose any such data. The State Board should hold an evidentiary hearing to determine  
12 whether any such evidence exists.

13 Lastly, the Board claims that eliminating the previous permit’s numeric effluent  
14 limitations as required by the existing Basin Plan is excused because the new Permit clarifies the  
15 dischargers’ duty not to cause or contribute to violations of any water quality standards. Of  
16 course, that narrative catch-all language, although important, is an entirely different limitation.  
17 The purported rationale is not one of the listed exceptions to backsliding provided by Section  
18 402(p)(6). The catch-all provision is not new information nor does it suggest that the Basin  
19 Plan’s numeric effluent limitations are mistaken. The Regional Board’s attempt to replace clear  
20 numeric effluent limitations required by the Basin Plan with the narrative general requirement to  
21 comply with water quality standards is contrary to law and an abuse of discretion.

22 **B. THE PERMIT FAILS TO REQUIRE MONITORING SUFFICIENT TO**  
23 **ASSURE COMPLIANCE WITH THE NUMERIC BASIN PLAN**  
24 **EFFLUENT LIMITATIONS.**

25 As noted above, the newly issued permit must maintain the existing numeric storm water  
26 effluent limitations as well as the existing effluent limitations implementing the Lake’s  
27 applicable water quality standards. In addition, the monitoring program should be expanded to  
28 assure that representative data from a statistically significant number of stormwater discharge

1 locations is collected that can be compared to the Basin Plan's stormwater limitations and other  
2 applicable standards. As adopted, the permit does not propose any monitoring to determine what  
3 impacts may be resulting from the municipalities' discharges of storm water to near shore areas  
4 of the Lake containing pollutants that threaten or cause violations of the Basin Plan's effluent  
5 limitations and water quality standards.

6 **VI. PETITIONERS ARE AGGRIEVED.**

7 Petitioner League to Save Lake Tahoe and its thousands of members are aggrieved by the  
8 Regional Board's adopting of the inadequate and illegal permit. Petitioner's members frequent  
9 Lake Tahoe's beaches and near-shore waters. By eliminating the numeric effluent limitations for  
10 storm water from the municipal permit and continuing to allow the municipalities to discharge  
11 storm water without adequate monitoring, the Regional Board is allowing pollution to Lake  
12 Tahoe that will exceed the Basin Plan's standards, especially in the near-shore waters, and  
13 adversely affect the League and its members' recreational, aesthetic and conservational interests.

14 **VII. REQUESTED STATE BOARD ACTION, INCLUDING REQUEST FOR**  
15 **HEARING.**

16 Petitioner requests the State Board either to order the Regional Board or take action itself  
17 to amend the Permit to reinstate the Basin Plan's numeric storm water effluent limitations and  
18 supplement the Permit's monitoring requirements to include sufficient monitoring of storm water  
19 discharges in each municipality to document compliance with those limitations.

20 The League requests that the State Board conduct an evidentiary hearing in order to fill in  
21 evidentiary gaps that the League believes were not explored by the Regional Board when it made  
22 its decision. These include the contradiction inherent to the Regional Board's response to  
23 comments that it "has no evidence indicating chronic violations of existing numeric and narrative  
24 water quality objectives at Lake Tahoe" while acknowledging in the same paragraph that studies  
25 referenced by the League "do document elevated turbidity in some locations." The Basin Plan,  
26 of course, does not limit its turbidity and other standards only to "chronic violations," whatever  
27 that term may mean. The State Board should hold a hearing to gather information regarding  
28 existing evidence of violations of the Basin Plan's numeric effluent limitations and near-shore

1 standards as well as the absence of any requirements by the Regional Board for dischargers to  
2 gather such evidence from sampling their discharges. The data gaps also include the data  
3 referenced by staff in its response to comments regarding effluent discharge data from the  
4 municipal dischargers purporting to indicate that the municipalities are not a source of iron.  
5 Staff's response to comments also asserts that the narrative sheen standard for oil and grease is  
6 more stringent than the 2 mg/L numeric limitation included in the Basin Plan, though no  
7 evidence for this statement or the differences in enforcing these limitations is referenced by staff.

8 In its comments, the League did reference a number of relevant studies. However, the  
9 data referenced by staff was not mentioned until the response to the League's comments. The  
10 Fact Sheet did not cite to any data that would have allowed the League and other members of the  
11 public to meaningfully obtain and evaluate such data within the comment timelines provided by  
12 the Regional Board. Accordingly, the State Board should provide for an evidentiary hearing to  
13 assure the permit is based on an adequate record and accurately reflects existing conditions.

14 **VIII. STATEMENT OF COPIES SENT TO THE REGIONAL BOARD AND**  
15 **DISCHARGERS.**

16 Copies of this petition are being sent to the Regional Board and dischargers at the  
17 following e-mail and street addresses.

18 Harold Singer, Executive Officer  
19 California Regional Water  
20 Quality Control Board  
21 Lahontan Region  
22 2501 Lake Tahoe Blvd.  
23 South Lake Tahoe, CA 96150  
24 [HSinger@waterboards.ca.gov](mailto:HSinger@waterboards.ca.gov)

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26 Director of Development Services  
27 City of South Lake Tahoe  
28 Community Development Department  
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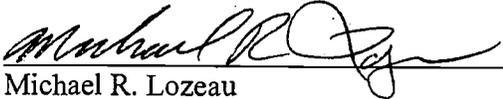
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**IX. ISSUES RAISED BEFORE REGIONAL BOARD.**

The League previously raised each of the issues discussed above to the Regional Board either in writing or in person at the December 6, 2011 Regional Board meeting.

Dated: January 5, 2012

Respectfully submitted,



Michael R. Lozeau  
Lozeau Drury LLP  
Attorneys for Petitioner League to Save  
Lake Tahoe

# EXHIBIT 1

**STATE OF CALIFORNIA**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION**

**ORDER NO. R6T-2011-0101  
NPDES NO. CAG616001**

**UPDATED WASTE DISCHARGE REQUIREMENTS AND NATIONAL  
POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT  
FOR  
STORM WATER/URBAN RUNOFF DISCHARGES FROM EL DORADO  
COUNTY, PLACER COUNTY, AND THE CITY OF SOUTH LAKE TAHOE  
WITHIN THE LAKE TAHOE HYDROLOGIC UNIT**

**FINDINGS**

The California Regional Water Quality Control Board, Lahontan Region (hereinafter referred to as the Water Board) finds that:

**A. Discharger Information and Permit History**

1. The City of South Lake Tahoe (City), El Dorado County, and Placer County discharge storm water/urban runoff to surface waters of the Lake Tahoe Hydrologic Unit (LTHU). These discharges occur within various hydrologic sub-areas (watersheds) throughout the LTHU. The City, El Dorado County, and Placer County are considered Co-Permittees under this National Pollutant Discharge Elimination System (NPDES) Permit and are referred to collectively as "Permittees".
2. These Updated Waste Discharge Requirements and NPDES Permit for Storm Water/Urban Runoff Discharges from El Dorado County, Placer County, and the City of South Lake Tahoe will be referred to throughout this Order as the "Permit."
3. Prior to issuance of this Permit, storm water discharges from the Permit Area were covered under Order No. R6T-2005-0026, adopted by the Regional Water Board on October 12, 2005, which replaced Order No. 6-00-82, adopted by the Regional Water Board on October 12, 2000.
4. The Permittees submitted Reports of Waste Discharge in April 2010 requesting renewal of waste discharge requirements under the National Pollutant Discharge Elimination System (NPDES) program to permit storm water discharges from municipal storm collection, conveyance, and treatment facilities within their jurisdictions.

**B. Permit Area**

1. The jurisdictional areas of the City, El Dorado County, and Placer County that fall within the LTHU are considered the "Permit Area." The Permittees are responsible for all storm water/urban runoff discharges in the Lake Tahoe watershed within the LTHU of their respective City and Counties.
2. Federal, state, regional, or local entities within the Permittees' jurisdictional boundaries and not currently named in this Permit may operate storm drain facilities and/ or discharge storm water to storm drains and receiving waters covered by this NPDES Permit. The Permittees may lack legal jurisdiction over these entities under State and Federal constitutions.

The Water Board will coordinate with these entities not named in this Permit that operate storm drain facilities and/ or discharge storm water to storm drains and receiving waters covered by this NPDES Permit to implement programs that are consistent with the requirements of this Permit.

3. Permittees should work cooperatively to control the contribution from pollutants from one jurisdiction to an adjacent jurisdiction through inter-agency agreements or other formal arrangements.

**C. Nature of Discharge**

1. Municipal point source discharges of runoff from urbanized areas remain a leading cause of impairment of surface waters in California. Urban runoff contains wastes, as defined in the California Water Code, and pollutants, as defined in the federal Clean Water Act, and adversely affects the waters of the State and their designated beneficial uses. The most common pollutant categories in urban runoff within the LTHU include total suspended solids, sediment (due to anthropogenic activities); pathogens (e.g., bacteria, viruses, protozoa); nutrients (e.g., nitrogen and phosphorus); oxygen demanding substances (decaying vegetation, animal waste); oil, grease, and other petroleum hydrocarbons; and trash. In general, the pollutants that are found in municipal storm water runoff can harm human health and aquatic ecosystems.
2. In addition, the high volumes and high velocities of storm water discharged from municipal separate storm sewer systems (MS4s) into receiving waters can adversely impact aquatic ecosystems and stream habitat and cause stream bank erosion and physical modifications. These changes are collectively termed "hydromodification".

3. Lake Tahoe's deep water transparency, as measured by the Secchi disk, has been declining since transparency measurement began in the late 1960's. The Lake Tahoe TMDL Report (November 2010) identifies elevated levels of very fine sediment (particles less than 16 microns) and increased algal growth rates as the causes of transparency loss. Consequently, the primary pollutants of concern for storm water treatment in the LTHU are the number of fine sediment particles (less than 16 microns) and the mass of nutrients that support algal growth (nitrogen and phosphorus).
4. One of the leading sources of very fine sediment particles is roadways. To enhance the safety of motorists in the winter months, the Permittees' winter roadway operations include the application of traction abrasive and deicing materials. If not properly applied and recovered, traction abrasives can be a significant source of the pollutants of concern.
5. Storm water runoff within the Permittees jurisdiction generally flows into pipes and open channels and often passes through pretreatment vaults, treatment basins, and other treatment structures before being discharged to surface waters or land. This Permit describes all storm water management infrastructure maintained by the Permittees as "collection, conveyance, and treatment facilities". For purposes of this Permit, collection, conveyance, and treatment facilities are synonymous with "municipal separate storm sewer systems" or MS4s.

**D. Federal, State and Regional Regulations**

1. The Water Quality Act of 1987 added § 402(p) to the Clean Water Act (CWA) (33U.S.C. § 1251-1387). This section requires the United States Environmental Protection Agency (U.S. EPA) to establish regulations setting forth NPDES requirements for storm water discharges in two phases.
  - a. U.S. EPA Phase I storm water regulations were directed at MS4s serving a population of 100,000 or more, and storm water discharges associated with ten categories of industrial activities, including construction activities disturbing more than five acres. In addition, municipalities whose storm water discharges contribute to violations of water quality standards or is a significant contributor of pollutants to waters of the United States may also be issued a NPDES permit under Phase I. Consequently, some MS4s that serve a population below 100,000, such as the Permittees, were brought into the Phase I program by NPDES permitting authorities.

The Phase 1 regulations were published on November 16, 1990 (55 Fed. Reg. 47990).

- b. U.S. EPA Phase II storm water regulations are directed at storm water discharges not covered in Phase I, including small MS4s (population of less than 100,000) in urbanized areas, small construction projects (less than five acres, but greater than one acre), municipal facilities with delayed coverage under the Intermodal Surface Transportation Efficiency Act of 1991, and other discharges for which the U.S. EPA Administrator or the State determines that the storm water discharge contributes to a violation of a water quality standard, or is a significant contributor of pollutants to waters of the U.S. The Phase II Final Rule was published on December 8, 1999 (64 Fed. Reg. 68722).
2. The CWA allows the U.S. EPA to authorize states with an approved environmental regulatory program to administer the NPDES program in lieu of the U.S. EPA. The State of California is an authorized State. The Porter-Cologne Water Quality Control Act (California Water Code) authorizes the State Water Resources Control Board (State Water Board), through the Regional Water Boards, to regulate and control the discharge of wastes that could affect the quality of waters of the State, including waters of the United States, and tributaries thereto.
3. Under CWA § 303(d), States are required to identify a list of impaired water bodies and develop and implement Total Maximum Daily Loads (TMDLs) for these waterbodies (33 USC § 1313(d)(1)). Lake Tahoe is listed on the CWA § 303(d) impaired water bodies list. On November 16, 2010 the Water Board adopted an amendment to its Water Quality Control Plan to incorporate a TMDL for Lake Tahoe. The amendment was approved by the State Water Board on April 19, 2011 and the TMDL was approved by the United States Environmental Protection Agency on August 17, 2011. The Basin Plan amendment established pollutant load reduction requirements for urban storm water discharges for fine sediment particles, total nitrogen, and total phosphorus. Section IV of this Permit incorporates approved load reduction requirements as effluent limits for municipal storm water discharges in the LTHU and requires the preparation of Pollutant Load Reduction Plans to meet established waste load reduction requirements.
4. This Permit does not constitute an unfunded local government mandate subject to subvention under Article XIII B, Section (6) of the California Constitution for several reasons, including, but not limited to, the following.

First, this Permit implements federally mandated requirements under CWA § 402, subdivision (p)(3)(B)(33 U.S.C. § 1342(p)(3)(B)). This includes federal requirements to effectively prohibit non-storm water discharges and to include such other provisions as the Administrator or the State determines appropriate for the control of such pollutants. The authority exercised under this Permit is not reserved state authority under the Clean Water Act's savings clause (cf. *Burbank v. State Water Resources Control Bd.* (2005) 35 Cal.4<sup>th</sup> 613, 627-628 [relying on 33 U.S.C. § 1370, which allows a state to develop requirements which are not "less stringent" than federal requirements]), but instead, is part of a federal mandate to develop pollutant reduction requirements for municipal separate storm sewer systems. To this extent, it is entirely federal authority that forms the legal basis to establish the permit provisions. (See, *City of Rancho Cucamonga v. Regional Water Quality Control Bd.-Santa Ana Region* (2006) 135 Cal.App.4<sup>th</sup> 1377, 1389; *Building Industry Ass'n of San Diego County v. State Water Resources Control Bd.* (2004) 124 Cal.App.4<sup>th</sup> 866, 882-883.)

Likewise, this Permit implements federally mandated requirements under 303(d) of the CWA and section 122.44(d)(1)(vii)(B) of the Code of Federal Regulations. Specifically, the provisions of this Permit to implement the Lake Tahoe TMDL are federal mandates. The CWA requires TMDLs to be developed for waterbodies that do not meet federal water quality standards (33 U.S.C. § 1313(d)). Once the U.S. EPA or a state develops a TMDL, federal law requires that permits must contain effluent limitations consistent with the assumptions of any applicable waste load allocation. (40 CFR 122.44(d)(1)(vii)(B)).

Second, the Permittees' obligations under this Permit are similar to, and in many respects less stringent than, the obligations of non-governmental dischargers who are issued NPDES permits for storm water discharges. With a few inapplicable exceptions, the Clean Water Act regulates the discharge of pollutants from point sources (33 U.S.C. § 1342) and the Porter-Cologne regulates the discharge of waste (Water Code, § 13263), both without regard to the source of the pollutant or waste. As a result, the "costs incurred by local agencies" to protect water quality reflect an overarching regulatory scheme that places similar requirements on governmental and nongovernmental dischargers. (See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 57-58 [finding that comprehensive workers compensation scheme did not create a cost for local agencies that was subject to state subvention].)

The Clean Water Act and the Porter-Cologne Water Quality Control Act largely regulate storm water with an even hand, but to the extent there

is any relaxation of this even-handed regulation, it is in favor of the local agencies. Except for municipal separate storm sewer systems, the Clean Water Act requires point source dischargers, including discharges of storm water associated with industrial or construction activity, to comply strictly with water quality standards. (33 U.S.C. § 1311(b)(1)(C), *Defenders of Wildlife v. Browner* (1999) 191 F.3d 1159, 1164-1165 [noting that industrial storm water discharges must strictly comply with water quality standards].) As discussed in prior State Water Resources Control Board decisions, in many respects this Permit does not require strict compliance with water quality standards. (SWRCB Order No. WQ 2001-15, p. 7.) The Permit, therefore, regulates the discharge of waste in municipal storm water more leniently than the discharge of waste from non-governmental sources.

Third, the Permittees have the authority to levy service charges, fees, or assessments sufficient to pay for compliance with this Order subject to certain voting requirements contained in the California Constitution. (See California Constitution XIII D, section 6, subdivision (c); see also *Howard Jarvis Taxpayers Association v. City of Salinas* (2002) 98 Cal. App. 4th 1351, 1358-1359.) The ability of a local agency to defray the cost of a program without raising taxes indicates that a program does not entail a cost subject to subvention. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487-488.)

Fourth, the Permittees have requested permit coverage in lieu of compliance with the complete prohibition against the discharge of pollutants contained in federal Clean Water Act section 301, subdivision (a) (33 U.S.C. § 1311(a)). To the extent that the local agencies have voluntarily availed themselves of the permit, the program is not a state mandate. (*Accord County of San Diego v. State of California* (1997) 15 Cal.4th 68, 107-108.) The local agencies' voluntary decision to file a report of waste discharge proposing a program based permit is a voluntary decision not subject to subvention. (See *Environmental Defense Center v. USEPA* (9th Cir. 2003) 344 F.3d 832, 845-848.)

Fifth, the local agencies' responsibility for preventing discharges of waste that can create conditions of pollution or nuisance from conveyances that are within their ownership or control under state law predates the enactment of Article XIII B, Section (6) of the California Constitution.

5. The Water Board adopted a Water Quality Control Plan (Basin Plan) for the Lahontan Region on March 31, 1995. The Basin Plan specifies the beneficial uses of water bodies within the LTHU and contains both narrative and numerical water quality objectives for these waters. The

following beneficial uses identified in the Basin Plan apply to all watersheds covered by this Permit:

- a. Municipal and domestic supply,
  - b. Agricultural supply,
  - c. Water contact recreation,
  - d. Non-contact water recreation,
  - e. Ground water recharge,
  - f. Freshwater replenishment,
  - g. Navigation,
  - h. Commercial and sport fishing,
  - i. Cold freshwater habitat,
  - j. Wildlife habitat,
  - k. Preservation of biological habitats of special significance,
  - l. Rare, threatened, or endangered species,
  - m. Migration of aquatic organisms,
  - n. Spawning, reproduction, and development,
  - o. Water quality enhancement, and
  - p. Flood peak attenuation/flood water storage
6. State Water Board Resolution No. 68-16 contains the state Antidegradation Policy, titled "Statement of Policy with Respect to Maintaining High Quality Waters in California" (Resolution 68-16), which applies to all waters of the state, including ground waters of the state, whose quality meets or exceeds (is better than) water quality objectives. Resolution No. 68-16 is considered to incorporate the federal Antidegradation Policy (40 CFR131.12) where the federal policy applies, (State Water Board Order WQO 86-17). Administrative policies that implement both federal and state antidegradation policies acknowledge that an activity that results in a minor water quality lowering, even if incrementally small, can result in violation of Antidegradation Policies through cumulative effects, for example, when the waste is a cumulative, persistent, or bioaccumulative pollutant.

Federal Antidegradation Policy (40 CFR131.12) states that the State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

- a. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
- b. Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on

the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully.

- c. Where high quality waters constitute an outstanding National resource, including waters of exceptional recreational or ecological significance like Lake Tahoe, that water quality shall be maintained and protected.

The proposed Permit requirements are consistent with both state and federal antidegradation policies. Permittees storm water management and pollutant load reduction plan actions will reduce pollutant loading to Lake Tahoe consistent with established TMDL requirements to maintain and improve water quality.

7. The requirements in this Permit may be more specific or detailed than those enumerated in federal regulations under 40 CFR122.26 or in U.S. EPA guidance. However, the requirements have been designed to implement and be consistent with the federal statutory mandates described in CWA § 402(p)(3)(B)(ii) and (iii) and the related federal regulations. Consistent with federal law, all of the conditions in this permit could have been included in a permit adopted by U.S. EPA in the absence of the in lieu authority of California to issue NPDES permits.

#### **E. Storm Water Management Plans**

1. The 2005 permit (Order R6T-2005-0026) required the Permittees to develop and implement comprehensive, activity-based storm water management programs that include construction, commercial, industrial, and residential site controls coupled with a facilities inspection program and thorough public outreach and education plans. Each Permittee prepared and submitted detailed Storm Water Management Plans (SWMPs) as required.
2. The current SWMPs provide many of the necessary elements for the Permittees' storm water programs. It will be necessary for the Permittees to update and re-submit their current SWMPs to incorporate all requirements in Section III.B of this permit, and to reflect current conditions and planned activities.

**F. Total Maximum Daily Loads – Lake Tahoe**

1. On November 16, 2010 the Water Board adopted Resolution R6T-2010-0058, amending the Basin Plan to incorporate the Total Maximum Daily Load (TMDL) for sediments and nutrients for Lake Tahoe to restore Lake Tahoe to meet the water quality objective for the lake's deep water transparency. The TMDL identified pollutant loads by source category, set load allocations at a basin-wide scale, and identified an implementation plan for restoring Lake Tahoe's deep water transparency.
2. The approved Basin Plan amendment requires the Permittees and the California Department of Transportation (CalTrans) to meet pollutant load reduction requirements specified by the Lake Tahoe TMDL. Pollutant load allocation tables are included in Attachment B of this Permit. The Basin Plan acknowledges that these agencies will likely consider a variety of alternative treatment options, roadway operations practices, and local ordinances to reduce average annual pollutant loads to meet load reduction requirements.
3. The permit incorporates numeric and narrative effluent limitations consistent with 40 CFR 122.44(d) that implement the Lake Tahoe TMDL pollutant load reduction requirements. The approved Basin Plan amendment replaces some of the concentration-based storm water effluent limits with effluent limits expressed as annual average pollutant load reduction requirements for the primary pollutants of concern. The Basin Plan eliminated the application of the concentration-based limit for oil and grease to municipal runoff in deference to the Basin Plan's more stringent receiving water limit. Similarly, the Basin Plan removed the concentration-based iron limit because there is no evidence indicating that urban runoff is a source of iron.
4. The Basin Plan amendment and the Lake Tahoe TMDL require Lake Tahoe basin municipalities and the CalTrans to develop and implement comprehensive Pollutant Load Reduction Plans (PLRPs) to describe how proposed operations and maintenance activities, capital improvements, facilities retrofit projects, ordinance enforcement, and other actions are expected to meet required pollutant load reduction requirements. PLRPs provide the Permittees the opportunity to prioritize pollutant load reduction efforts and target sub-watersheds that generate the highest annual average pollutant loads.
5. Permittees have primarily relied upon state and federal grant sources to fund water quality improvement infrastructure programs and generally use in-house resources for water quality operations and maintenance practices. As of November 2011 there are fewer grant

funds available and economic conditions have negatively impacted local government budgets. Consequently, Permittees will need to effectively prioritize infrastructure and operations expenditures to maximize pollutant load reductions with available funding.

6. The Water Board developed the Lake Clarity Crediting Program (see Attachment D of this Permit) to establish protocols for accounting and tracking pollutant load reductions within the urban environment.
7. The Lake Tahoe TMDL baseline pollutant loading and load reduction requirements are provided as average annual estimates. For consistency with the TMDL requirements, the Lake Clarity Crediting Program uses average annual pollutant load estimates generated by numeric models. Verification of field conditions and water quality monitoring are needed to ensure that on-the-ground, measured variables are in line with model input parameters and that measured pollutant loading is consistent with modeled estimates.
8. On February 9, 2011 the Water Board Executive Officer issued the Permittees and the California Department of Transportation an Order to submit technical reports in accordance with California Water Code Section 13267 requiring the development of jurisdiction-specific baseline load estimates for the Lake Tahoe TMDL pollutants of concern. The submitted baseline pollutant load estimates provide the basis for translating percentage based pollutant load reduction requirements defined by the TMDL into jurisdiction-specific, particle and mass-based pollutant load reduction requirements.
9. The Lake Tahoe TMDL requires new development and re-development project proponents and private property retrofit efforts to first consider opportunities to infiltrate storm water runoff from impervious surfaces. At a minimum, permanent storm water infiltration facilities must be designed and constructed to infiltrate runoff generated by the 20 year, 1-hour storm, which equates to approximately one inch of runoff over all impervious surfaces during a 1-hour period. Infiltrating runoff volumes generated by the 20 year, 1-hour storm may not be possible in some locations due to shallow depth to seasonal groundwater levels, unfavorable soil conditions, or other site constraints such as existing infrastructure or rock outcroppings. In the event that site constraints prohibit opportunities to infiltrate the runoff volume generated by a 20 year, 1-hour storm, project proponents must either (1) meet the numeric effluent limits contained in Basin Plan Table 5.6-1, or (2) document coordination with one of the Permittees or CalTrans to demonstrate that storm water treatment facilities treating private property discharges and public right-of-way storm water are sufficient

to meet the Permittees' or CalTrans'; average annual fine sediment and nutrient load reduction requirements.

10. The Basin Plan amendment and the Lake Tahoe TMDL requires municipalities to annually demonstrate on a catchment (i.e. sub-watershed) basis that no increased loading in fine sediment particle, total nitrogen, and total phosphorus will result from any land-disturbing activity permitted in the catchment. The permit includes a narrative effluent limitation to implement this provision.
11. The approved Basin Plan amendment acknowledges a decline in nearshore water quality as evidenced by increased growth of attached algae. Pollutant load reduction actions taken to implement the Lake Tahoe TMDL, including pollutant load reductions required by this Permit, are anticipated to improve the nearshore environment by decreasing pollutant loads entering the lake. Additional analysis, however, is needed to quantify this benefit and to determine if additional resource management actions are needed to address the nearshore water quality problems. Such analysis is beyond the scope of this permit.

#### **G. Public Notification**

1. The issuance of waste discharge requirements pursuant to California Water Code section 13370 et seq. is exempt from the California Environmental Quality Act in accordance with California Water Code section 13389. *County of Los Angeles et al., v. California Water Boards et al.*, (2006), 143 Cal.App.4th 985.
2. The Water Board has notified the Permittees, and interested agencies and persons of its intent to issue waste discharge requirements for this discharge, and has provided them with an opportunity to make statements and submit their comments.
3. This Permit shall serve as a NPDES permit, pursuant to CWA § 402, and shall take effect 90 days from Order adoption date provided the Regional Administrator of the U.S. EPA has no objections.
4. Pursuant to Cal. Water Code § 13320, any aggrieved party may seek review of this Permit by filing a petition with the State Board within 30 days of the date of adoption of the Permit by the Regional Water Board. A petition must be sent to:

State Water Resources Control Board  
Office of the Chief Counsel  
P.O. Box 100

Sacramento, CA 95812-0100

5. This Permit may be modified or alternatively revoked or reissued prior to its expiration date or any administrative extension thereto, in accordance with 40 CFR 122.41(f) and 122.62.

**IT IS HEREBY ORDERED** that Order No. R6T-2005-0026 is rescinded, and in order to meet the provisions contained in Division 7 of the Cal. Water Code and regulations adopted thereunder, and the provisions of the CWA and regulations adopted thereunder, the Permittees shall comply with the following:

**I. Non-Storm Water Discharges**

- A. The Permittees shall, within their respective jurisdictions, effectively prohibit non-storm water discharges into its collection, conveyance, and treatment facilities and receiving waters, except where such discharges:
  1. Originate from a State, Federal, or other source for which they are preempted from regulating by State or Federal law; or
  2. Are covered by a separate individual or general NPDES permit, or conditional waivers; or
  3. Flows from firefighting activities.
- B. Pursuant to 40 CFR 122.26(d)(2)(iv)(B)(1) the following categories of non-storm water discharges need only be prohibited from entering the Permittees storm water collection, conveyance, and treatment facilities and receiving waters if such categories of discharges are identified by the Permittee (in its SWMP) as a source of pollutants to waters of the United States and the State of California:
  1. Waterline flushing
  2. Landscape irrigation
  3. Diverted stream flows
  4. Rising groundwater
  5. Uncontaminated groundwater infiltration [as defined by 40 CFR 35.2005(20)]
  6. Uncontaminated pumped groundwater
  7. Discharges from potable water sources
  8. Fountain drains
  9. Air conditioning condensation
  10. Irrigation water
  11. Springs
  12. Water from crawl space pumps
  13. Footing drains

14. Lawn watering
15. Individual residential car washing
16. Flows from riparian habitats and wetlands
17. Dechlorinated swimming pool and spa discharges

- C. When a non-storm water discharge category listed above is identified as a source of pollutants to waters of the State, Permittees shall either:
1. Prohibit the discharge category from entering its storm water collection, conveyance, and treatment system; or
  2. Authorize the discharge category and require implementation of appropriate or additional Best Management Practices to ensure that the discharge will not be a source of pollutants; or
  3. Require or obtain coverage under separate Regional or State Water Board permit for the discharge.

## **II. Other Prohibitions**

- A. Unless specifically granted, authorization pursuant to this Permit does not constitute an exemption to applicable discharge prohibitions prescribed in the Basin Plan.
- B. Discharges from the Permittees' collection, conveyance, and treatment facilities that cause or contribute to a violation of narrative or numeric water quality standards or objectives, as listed in Attachment E and F, are prohibited.
- C. Discharges from the Permittees' collection, conveyance, and treatment facilities shall not cause or contribute to a condition of nuisance.
- D. Storm water discharges regulated by this Permit shall not contain a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302.
- E. The removal of vegetation or disturbance of ground surface conditions between October 15 of any year and May 1 of the following year is prohibited. Where it can be shown that granting a variance would not cause or contribute to the degradation of water quality, a variance to the dates stated above may be granted in writing by the Executive Officer.
- F. Discharge of any waste or deleterious material to surface waters of the LTHU is prohibited.

- G. The discharge, or threatened discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials to the surface waters of the LTHU is prohibited.
- H. The discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand and other organic and earthen materials, to lands below the high-water rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe, is prohibited.
- I. The discharge or threatened discharge, attributable to new development in Stream Environment Zones, of solid or liquid waste, including soil, silt, sand, clay, rock, metal, plastic, or other organic, mineral or earthen materials to Stream Environment Zones in the LTHU is prohibited.
- J. Waste discharge prohibitions in this Section do not apply to discharges of stormwater when wastes in the discharge are controlled through the application of management practices or other means and the discharge does not cause a violation of water quality objectives.

### **III. Storm Water Program Implementation**

#### **A. Legal Authority**

1. No later than **March 15, 2013**, Permittees shall establish, maintain, and enforce the necessary legal authority to prohibit, including, but not limited to:
  - a. Illicit connections and illicit discharges to its collection, conveyance, and treatment facilities,
  - b. The discharge of non-storm water to the Permittees' storm water collection, conveyance, and treatment facilities from:
    - (1) Washing or cleaning of gas stations, auto repair garages, or other types of automotive service facilities
    - (2) Mobile auto washing, carpet cleaning, steam cleaning, sandblasting and other such mobile commercial and industrial operations
    - (3) Areas where repair of machinery and equipment which are visibly leaking oil, fluid or antifreeze, is undertaken
    - (4) Storage areas for materials containing grease, oil, or other hazardous substances, and uncovered receptacles containing hazardous materials
    - (5) Swimming pool and hot tubs
    - (6) Industrial/ Commercial areas
    - (7) Concrete truck cement, pumps, tools, and equipment washout

- (8) Spills, dumping, or disposal of materials such as fuel or chemical wastes, batteries, and any other materials which have the potential to adversely impact water quality
  - (9) Trash container leachate
  - (10) Permittee-owned and -operated facilities
2. Permittees shall maintain and enforce adequate legal authority to:
- a. Control through interagency agreement, the contribution of pollutants from one municipal jurisdiction to another
  - b. Require persons within their jurisdiction to comply with conditions in the Permittees' ordinances, permits, or orders (i.e. hold dischargers to its collection, conveyance, and treatment facilities accountable for their contributions of pollutants and flows)
  - c. Remove illicit connections to public storm water collection, conveyance, and treatment facilities
  - d. Control the discharge of spills, dumping, or material disposal other than storm water to public storm water collection, conveyance, and treatment facilities
  - e. Utilize enforcement measures (e.g., stop work orders, notice of violations, fines, referral to City, County, and/ or District Attorneys, etc.) by ordinances, permits, contracts, orders, administrative authority, and civil and criminal prosecution
  - f. Control the quality of storm water runoff from industrial and construction sites
  - g. Carry out all inspections, surveillance and monitoring procedures necessary to determine compliance and non-compliance with permit conditions including the prohibition on illicit discharges.
  - h. Require the use of control measures to prevent or reduce the discharge of pollutants to the maximum extent practicable.
3. No later than **March 15, 2012** each Permittee shall submit a statement certified by its legal counsel as to whether or not the Permittee possesses the legal authority necessary to comply with this Permit. If the Permittee finds that it does not have the necessary legal authority, the statement must identify specific deficiencies.

No later than **March 15, 2013** each Permittee shall submit a statement certified by its legal counsel that the Permittee possesses all necessary

legal authority to comply with this Permit through adoption of ordinances and/ or municipal code modifications. The statement shall include:

- a. Identification of all departments within the jurisdiction that conduct urban runoff related activities and their roles and responsibilities under this Order. Include an up-to-date organization chart specifying these departments and key personnel positions.
- b. Citation of urban runoff related ordinances and the reasons they are enforceable.
- c. Identification of the local administrative and legal procedures available to mandate compliance with urban runoff related ordinances.
- d. Description of how these ordinances or other legal mechanisms are implemented and actions taken can be appealed.
- e. Description of how the municipality can issue administrative orders and injunctions, or if it must go through the court system for enforcement actions.

#### B. Storm Water Management Plans

Federal Regulations (40 CFR 122.26(d)(2)(iv)) require the Permittees to develop and implement a Storm Water Management Plan (SWMP) during the term of this Order. Each Permittee shall amend its SWMP to include components 1-9 below.

Permittees shall submit amended SWMPs for Water Board consideration no later than **March 15, 2013**. The Water Board will circulate the amended SWMPs for public comment and will consider accepting them at a publically noticed meeting.

If no hearing for SWMP acceptance is requested during the public comment period, the Executive Officer may accept the amended SWMPs.

##### 1. Construction Component

Each Permittee shall implement a Construction Component of its SWMP to reduce pollutants in runoff from construction sites that involve more than three cubic yards of soil disturbance during all construction phases. The SWMP shall include a description of procedures for identifying inspection priorities and enforcing control measures. At a minimum the construction component plan shall address the following:

- a. Construction Site Inventory

Permittees shall develop and update, at least annually, a complete inventory of construction sites within its jurisdiction that involve more than three cubic yards of soil disturbance. This requirement is applicable to all construction sites regardless of whether the construction site is subject to the General Construction Permit (Order R6T-2011-0019). The use of a Geographical Information System (GIS) database is highly recommended, but not required.

b. Construction Site Outreach

Permittees shall conduct construction site outreach efforts that include, at a minimum, measures to educate construction site operators about local ordinance and other regulatory requirements and applicable enforcement mechanisms prior to construction commencement.

c. Construction Site Prioritization and Inspection.

Permittees shall develop a prioritization process for its watershed-based inventory (developed pursuant to III.B.1.a above) by threat to water quality. Each construction site shall be classified as a high, medium, or low threat to water quality. In evaluating threat to water quality each Permittee shall consider (1) the magnitude of fine sediment particle discharge potential; (2) site slope; (3) project size and type; (4) stage of construction; (5) proximity and connectivity to receiving water bodies; and (6) any other factors the Permittee deems relevant.

Each Permittee shall conduct construction site inspections for compliance with its ordinances (grading, storm water, etc.), permits (construction, grading, etc.), and discharge prohibitions contained in this Permit in accordance with Section II.B of the Monitoring and Reporting Program (Attachment C). Inspections shall include review of site erosion control and BMP implementation plans. Inspection frequencies and priorities shall be determined by the threat to water quality prioritization.

During the construction season (May 1 through October 15 of each year), each Permittee shall inspect each high priority construction site and all construction projects overseen by the Permittee (e.g. erosion control and storm water treatment projects) at least once per week. Each Permittee shall inspect medium and low priority construction sites at a frequency sufficient to ensure that sediment and other pollutants are controlled and that unauthorized non-storm water discharges are prevented.

d. Construction Site Enforcement

Permittees shall enforce their storm water ordinances and other regulatory mechanisms for all construction sites to maintain compliance with local ordinances and discharge prohibitions contained in this Permit. Permittees shall document any non-compliance with Permit or ordinance requirements and report identified compliance issues as part of their Annual Report as described under Section IV.C of the Monitoring and Reporting Program (Attachment C).

In accordance with the Enforcement Response Plan required under Section III.B.8 of this Permit, each Permittee shall follow up on inspection findings and take actions necessary for construction sites to comply with Permit requirements.

e. Oversight by Others

Permittees may make use of construction site outreach, inspection, and enforcement actions taken by other responsible agencies (such as the Tahoe Regional Planning Agency or the Water Board). If a Permittee chooses to use the efforts of other agencies to meet Permit requirements, Permittees must provide detailed documentation of the outreach, inspection, and/or enforcement action taken by others.

2. Commercial, Industrial, Municipal and Residential Component

Each Permittee shall implement SWMP elements to reduce, to the maximum extent practicable, pollutants in runoff from commercial, industrial, municipal, and residential properties within its jurisdiction. The purpose of this Component is to identify potential pollutant sources, prioritize existing or potential water quality threats associated with different land uses, and provide outreach, education, and enforcement measures to reduce and/or eliminate storm water pollution from these sources.

a. Commercial, Industrial, and Municipal Site Inventory and Prioritization

Each Permittee shall develop and annually update an inventory of high priority commercial, industrial, and municipal activities and pollutant sources. The high priority commercial, industrial, and

municipal site inventory shall consider including the following business types and activities:

- (1) Automobile mechanical repair, maintenance, or cleaning;
- (2) Automobile and other vehicle body repair or painting;
- (3) Retail or wholesale fueling;
- (4) Eating or drinking establishments;
- (5) Mobile carpet, drape or furniture cleaning;
- (6) Concrete mixing or cutting;
- (7) Painting and coating;
- (8) Mobile pool and spa cleaning;
- (9) Snow removal and storage activities;
- (10) Parking areas with more than 30 parking spaces;
- (11) Off-pavement parking and storage yards;
- (12) Municipal maintenance yards.

The use of a Geographical Information System (GIS) database is highly recommended, but not required.

b. Commercial, Industrial, and Municipal Site Outreach

Permittee outreach efforts shall include, at a minimum, educating commercial, industrial, and municipal site operators about local ordinances and other regulatory measure and associated tiered enforcement mechanisms applicable to commercial, industrial, or municipal site runoff problems.

c. Commercial, Industrial, and Municipal Site Inspections

Each Permittee shall implement a program to inspect high priority commercial, industrial, and municipal sites at least once per year in accordance with Section II.C of the Monitoring and Reporting Program (Attachment C).

d. Commercial, Industrial, and Municipal Site Enforcement

Permittees shall enforce their storm water ordinances and other regulatory mechanisms for all commercial, industrial, and municipal sites to maintain compliance with applicable local ordinances and discharge prohibitions contained in this Permit. Permittees shall document any non-compliance with ordinance and/or Permit requirements and report inspection findings as part of their Annual Report as described under Section IV.D of the Monitoring and Reporting Program (Attachment C).

In accordance with the Enforcement Response Plan required under Section III.B.8 of this Permit, each Permittee shall follow up on inspection findings and take actions necessary for commercial, industrial, and municipal sites to comply with Permit and local ordinance requirements.

e. Oversight by Others

Permittees may make use of commercial and industrial site outreach, inspection, and enforcement actions taken by other responsible agencies (such as the Tahoe Regional Planning Agency or the Water Board). If a Permittee chooses to use the efforts of other agencies to meet Permit requirements, Permittees must provide detailed documentation of the outreach, inspection, and/or enforcement action taken by others.

f. Residential Property – Source Identification and Prioritization

Each Permittee shall identify high priority residential areas and activities for targeted outreach and education. At a minimum, these areas/activities should include:

- (1) Automobile repair and maintenance;
- (2) Off-pavement automobile parking;
- (3) Home and garden care activities and product use (pesticides, herbicides, and fertilizers);
- (4) Disposal of household hazardous waste (e.g., paints, cleaning products);
- (5) Snow removal activities

g. Residential Property Outreach and Enforcement

Permittees shall develop and implement a program to target education and outreach efforts toward identified high priority activities. Such outreach program should include coordination with other Lake Tahoe Basin agencies involved with BMP implementation, including but not limited to the Tahoe Resource Conservation District and the Tahoe Regional Planning Agency Erosion Control Team.

In accordance with the Enforcement Response Plan required under Section III.B.8 of this Permit, each Permittee shall take actions necessary for residential sites to comply with Permit and local ordinance requirements.

### 3. Storm Water Facilities Inspection Component

Each Permittee shall develop and implement a comprehensive inspection program to assess the condition of its storm water collection, conveyance and treatment facilities and maintenance needs on a catchment, or sub-watershed basis in accordance with the following requirements, and Section II.A of the Monitoring and Reporting Program (Attachment C).

- a. Each Permittee shall develop and maintain an up-to-date and accurate system map of its collection, conveyance, and treatment facilities.
- b. Each Permittee shall inspect its storm water collection, conveyance and treatment systems at least once annually and maintain a database of inspection findings.
- c. As part of its storm water collection, conveyance, and treatment system inspections, each Permittee shall evaluate and identify potential pollutant sources including but not limited to: private property/residential runoff, commercial site runoff, eroding cut slopes, eroding road shoulders, intercepted groundwater discharges, excessive traction abrasive application, and construction site tracking.
- d. Each Permittee shall document and prioritize identified maintenance needs and perform needed maintenance to ensure storm water systems effectively collect, convey, and treat urban runoff as designed.

### 4. Illicit Discharge Detection and Elimination Component

Permittees shall implement an Illicit Discharge Detection and Elimination Component containing measures to actively seek and eliminate illicit discharges and connections. At a minimum the Illicit Discharge Detection and Elimination Component shall include the following elements:

- a. Each Permittee shall visually inspect all storm water collection, conveyance, and treatment systems at least once annually as described in Section II.A of the Monitoring and Reporting Program (Attachment C) for evidence of illicit discharges, illicit connections, or other sources of non-stormwater discharges.
- b. Each Permittee shall establish and implement a program to investigate and inspect any portion of the storm water collection

and conveyance system that indicates a reasonable potential for illicit discharges, illicit connections, or other sources of non-storm water. Each Permittee shall establish criteria to identify portions of the system where follow-up investigations are needed to determine whether illicit discharges, illicit connections, or other sources of non-storm water have occurred or are likely to occur.

- c. In accordance with the Enforcement Response Plan required under Section III.B.8 of this Permit, each Permittee shall implement and enforce its ordinances, orders, or other legal authority or regulatory mechanism to prevent and eliminate illicit discharges and connections to its storm water collection and conveyance system.
- d. Each Permittee shall promote, publicize and facilitate public reporting of illicit discharges or water quality impacts associated with discharges into or from its storm water collection and conveyance system. Each Permittee shall facilitate public reporting through development and operation of a public hotline. Public hotlines can be Permittee-specific or shared by Permittees. All storm water hotlines should be capable of receiving reports in both English and Spanish 24 hours per day, seven days per week. Permittees shall respond to and resolve each reported incident. Each Permittee shall keep a record of all reported incidents and how each was resolved.

5. New Development and Redevelopment Component

For new development and redevelopment projects, Permittees shall require project proponents to incorporate permanent stormwater treatment facilities that are designed to infiltrate, at a minimum, runoff generated by the 20 year, 1-hour storm, which equates to approximately one inch of runoff over all impervious surfaces during a 1-hour period.

If infiltrating the entire volume of the 20 year, 1-hour storm is not possible at a given new development or redevelopment site, the Permittee shall require project proponents to infiltrate as much runoff as possible and either:

- a. Document how the project proponent will treat runoff to meet the numeric effluent limits described in Table III.B.1 below; or
- b. Document coordination with the project proponent to demonstrate that shared storm water treatment facilities treating private property discharges and public right-of-way storm water are sufficient to meet the municipality's average annual fine sediment and nutrient

load reduction requirements described in Section IV.B of this Permit.

Table III.B.1 – Numeric effluent limits for runoff discharges

<u>Constituent</u>	<u>Units</u>	<u>Land Treatment/ Infiltration Systems</u>	<u>Surface Waters</u>
Total Nitrogen	mg/L as N	5.0	0.5
Total Phosphorus	mg/L as P	1.0	0.1
Turbidity	NTU	200	20
Oil and Grease	mg/L	40	2.0
Total Iron	mg/L	4.0	0.5

6. Public Education Component

Permittees shall implement a public education program using any appropriate media to increase the community's knowledge of the effect of urban runoff on surface waters and the measures the public can take to help control storm water pollution and encourage behavior to reduce pollutant discharges.

7. Municipal Personnel Training and Education Component

Permittees shall ensure that all municipal personnel and contractors responsible for implementing Permit requirements, for operating municipal facilities covered under Section III.B.2 of this Permit, and for conducting inspections required under Section III.B1-5 of this Permit are adequately trained and educated to perform such tasks.

8. Enforcement Response Plan

Each Permittee shall develop and implement a progressive Enforcement Response Plan. The Enforcement Response Plan shall outline how each Permittee will respond to violations (e.g. non-compliance with municipal codes, ordinances, statutes, standards, specifications, permits, and contracts) and describe how Permittees will address repeat and continuing violations through progressively stricter responses to achieve compliance. The Enforcement Response Plans shall describe how each Permittee will implement the enforcement response types listed below.

- a. Verbal Warnings – Verbal warning are primarily consultative in nature. At a minimum, verbal warning shall specify the nature of the violation and describe required corrective actions.

- b. Written Notices – Written notices of violations (NOVs) shall stipulate the nature of the violation and required corrective action with deadlines for taking such actions.
- c. Escalated Enforcement Measures – The Permittees shall have the legal ability to employ any combination of the enforcement actions listed below (or their functional equivalent) and to escalate enforcement response where necessary to correct persistent violations, repeat or escalating violations, or incidents that have the potential to cause significant detrimental impacts to human health or the environment.
  - (1) Citations (with fines) – The Enforcement Response Plan shall indicate when the Permittees will assess monetary fines, which may include civil and administrative penalties.
  - (2) Stop Work Orders – Permittees shall have the authority to issue stop work orders that require construction, industrial, and commercial activities to be halted, except for those activities directed at cleaning up, abating discharge, and installing appropriate BMPs.
  - (3) Withholding of Plan Approvals or Other Authorizations – Where a facility, site, or operation is in violation the Enforcement Response Plan shall address how the Permittee's own approval process affecting the facility, site, or operation's ability to discharge to the Permittee's collection, conveyance, and treatment facilities can be used to abate the violation.
  - (4) Additional Measures – Permittees may also use other escalated measures provided under local legal authorities.

#### 9. Fiscal Analysis

Each Permittee shall conduct a fiscal analysis of its urban runoff management program in its entirety, including development and implementation of both SWMP and Pollutant Load Reduction Plans (IV.C below), along with operations and maintenances costs. This analysis shall, for each fiscal year covered by this Permit, evaluate the expenditures (such as capital, operation and maintenance, education, and administrative expenditures) necessary to achieve Permit compliance. Such analysis shall include a description of the source(s) of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

#### IV. Lake Tahoe Total Maximum Daily Load Implementation – Pollutant Load Reduction Requirements

##### A. Baseline Pollutant Loads

The Lake Tahoe TMDL expresses waste load allocations for the urban upland source, which includes discharges from the Permittee's municipal storm water collection, conveyance, and treatment facilities, as percent reductions from a basin-wide baseline load. The baseline basin-wide pollutant loads for the TMDL reflect conditions as of water year 2003/2004 (October 1, 2003 – September 30, 2004), hereafter referred to as "baseline".

To translate basin-wide urban runoff load reduction requirements into jurisdiction-specific load reduction requirements, the Water Board has required the Permittees to conduct a jurisdiction-scale baseline load analysis as the first step in the TMDL implementation process for the urban pollutant source. Each permittee has completed this analysis, and the submitted baseline pollutant load estimates are the basis for the particle number- and mass-based effluent limits in this Permit (Table IV.B.1).

Permittees will likely gather additional information in the future to enhance the accuracy of the baseline load analysis. Similarly, numeric models used to estimate pollutant loads may be improved over time. Should a Permittee determine that updated load estimation tools or other information are expected to change its baseline pollutant load estimate may request that the Water Board amend its baseline load estimate. Requests for baseline load estimate amendment must include a description of any new information informing the estimate, the magnitude of the proposed adjustment, and a discussion of how the baseline load estimate adjustment will (or will not) change the Permittees Pollutant Load Reduction Plan. Water Board staff will bring all requests to amend Permittee baseline load estimates to the Water Board for consideration.

##### B. Pollutant Load Reduction Requirements and Water Quality-Based Effluent Limits

For the first five year milestone, jurisdiction-specific waste load reduction requirements, incorporated into this Permit as average annual particle number- and mass-based effluent limits (Table IV.B.1), are calculated by multiplying the percentage of reduction required by the urban uplands for each pollutant by each jurisdiction's individual baseline load. Each jurisdiction must reduce fine sediment particle (FSP), total phosphorus (TP), and total nitrogen (TN) loads by 10%, 7%, and 8%, respectively, by **September 30, 2016.**

**Table IV.B.1 – Maximum average annual particle number- and mass-based effluent limits for Fine Sediment Particles (FSP) Total Phosphorus (TP) and Total Nitrogen (TN) to meet the first five year TMDL milestone**

Jurisdiction	Baseline FSP (# of particles)	FSP Allowable Load	Baseline TP (kg)	TP Allowable Load	Baseline TN (kg)	TN Allowable Load
El Dorado County	$2.2 \times 10^{19}$	$2.0 \times 10^{19}$	1043	970	4082	3755
Placer County	$2.6 \times 10^{19}$	$2.3 \times 10^{19}$	1111	1033	4635	4264
City of South Lake Tahoe	$1.9 \times 10^{19}$	$1.7 \times 10^{19}$	789	734	3361	3092

Pollutant load reductions shall be measured in accordance with the processes outlined in the Lake Clarity Crediting Program Handbook (Attachment D). To demonstrate compliance with the average annual fine sediment particle pollutant load reduction requirements outlined in Table IV.B.1, each Permittee must earn and maintain Lake Clarity Credits in accordance with Table IV.B.2 for water year October 1, 2015 to September 30, 2016, and for subsequent water years.

**Table IV.B.2 – Minimum Lake Clarity Credit Requirements**

Jurisdiction	Min. Lake Clarity Credit Requirement*
El Dorado County	220
Placer County	260
City of South Lake Tahoe	190

\*The Lake Clarity Crediting Program Handbook defines one (1) Lake Clarity Credit as equal to  $1.0 \times 10^{16}$  fine sediment particles with a diameter less than 16 micrometers

To ultimately achieve the deep water transparency standard, Permittees shall reduce FSP, TP, and TN loading according to the requirements in the Lake Tahoe TMDL outlined for the "Urban Upland" pollutant source (Attachment B). In accordance with the TMDL, incremental pollutant load reductions will result in attaining the deep water transparency standard by the year 2076.

#### C. Pollutant Load Reduction Plans

Each Permittee shall prepare a detailed plan describing how it expects to meet the pollutant load reduction requirements described in Section IV.B above. Permittees shall submit a plan no later than **March 15, 2013** that shall include, at a minimum, the following elements:

##### 1. Catchment registration schedule

The Pollutant Load Reduction Plan (PLRP) shall include a list of catchments that the Permittee plans to register pursuant to the Lake

Clarity Crediting Program (see Attachment D) to meet load reduction requirements. The list shall include catchments where capital improvement projects have been constructed since May 1, 2004 that the Permittee expects to claim credit for, and catchments where projects will be constructed during this Permit term.

The list may also include catchments where Permittees plan actions other than capital improvements (such as enhanced operations and maintenance). The plan shall describe which catchments the Permittee anticipates it will register for each year of this Permit term.

2. Proposed pollutant control measures

For each catchment in the registration plan, the PLRP shall describe storm water program activities to reduce fine sediment particle, total phosphorus, and total nitrogen loading.

3. Pollutant load reduction estimates

For each catchment in the registration plan (or a catchment subset that provides adequate representation of various land use and management practice variables) Permittees shall provide estimates of both baseline pollutant loading and expected pollutant loading to demonstrate that proposed actions will, over the course of this Permit term, reduce the Permittee's jurisdiction-wide pollutant load by the amounts specified in Section IV.B above. The pollutant load reduction estimate shall differentiate between estimates of pollutant load reductions achieved since May 1, 2004 and pollutant load reductions from actions not yet taken.

4. Load reduction schedule

The PLRP shall describe a schedule for achieving the pollutant load reduction requirements described in Section IV.B above. The schedule shall include an estimate of expected pollutant load reductions for each year of this Permit term based on preliminary numeric modeling results.

5. Annual adaptive management

The PLRP shall include a description of the internal process and procedures to annually assess storm water management activities and associated load reduction progress. The adaptive management discussion shall describe how the Permittee will use information from the previous years' monitoring and implementation efforts to make needed adjustments to ensure compliance with the load reduction requirements specified in Section IV.B.

The Water Board will circulate the submitted PLRPs for public review and will consider PLRP acceptance at a Water Board meeting. Each Permittee's PLRP must be accepted by the Water Board for Permittees to achieve Permit compliance.

D. Land Use Changes and Management Practices

If either land use changes or management practices associated with development or re-development result in a reduction of pollutant loads from the estimated baseline, then this reduction can be counted toward meeting pollutant load reduction requirements. Conversely, actions to eliminate any pollutant load *increase* from these changes will not be counted towards the annual load reduction requirements.

In accordance with the Basin Plan, Permittees must ensure that changes in land use, impervious coverage, or operations and maintenance practices do not increase a catchment's average annual baseline pollutant load.

E. Storm Water Facility Operations and Maintenance

Permittees shall operate and maintain storm water collection, conveyance, and treatment facilities to ensure, at a minimum, that the baseline pollutant loading specified in Table IV.B.1 does not increase.

F. Pollutant Load Reduction Progress

To demonstrate pollutant load reduction progress, each Permittee shall submit a Progress Report by **October 1, 2013**. The Progress Report shall include:

1. A list of erosion control and storm water treatment projects the Permittee completed between the May 1, 2004 and October 15, 2011.
2. Pollutant load reduction estimates for all erosion control and storm water projects and any other load reduction actions up to October 15, 2011. The report shall compare the pollutant load estimates for work completed with the pollutant load reduction requirements described in Section IV.B above.

G. Pollutant Load Reduction Monitoring Requirements

Permittees shall comply with all monitoring and reporting requirements specified in Section I of the attached Monitoring and Reporting Program (Attachment C).

**V. Receiving Water Limitations**

The Permittees shall comply with discharge prohibitions specified in Sections I and II of this Permit through timely implementation of control measures and other actions to reduce pollutants in the discharges in accordance with the Permittees' SWMPs and other requirements of this Permit, including any modifications. The Permittees' SWMPs shall be designed to achieve compliance with the requirements of Sections I and II of this Permit. If exceedances of water quality objectives or water quality standards (collectively, WQS) persist notwithstanding implementation of the SWMPs and other requirements of this Permit, the Permittees shall assure compliance with discharge prohibitions and receiving water limitations in Sections I and II of this Permit by complying with the following procedure:

1. Upon a determination by either the Permittee or the Water Board that discharges are causing or contributing to an exceedance of an applicable WQS, the Permittee shall notify and thereafter submit a report to the Water Board that describes Best Management Practices (BMPs) that are currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants that are causing or contributing to the exceedance of WQSs. The report may be incorporated into the annual report required under Section IV of the Monitoring and Reporting Program (Attachment C) unless the Water Board directs an earlier submittal. The report shall include an implementation schedule. The Water Board may require modifications to the report.
2. Within 30 days following approval of the report described above by the Water Board, the Permittee shall revise its SWMP and monitoring program to incorporate approved modified BMPs that have been and will be implemented, implementation schedule, and any additional monitoring required.
3. Implement the revised SWMP and monitoring program in accordance with the approved schedule.

So long as the Permittee has complied with the procedures set forth above and is implementing its revised SWMP, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Water Board to develop additional BMPs.

**VI. Administrative Provisions**

- A. The Regional Board reserves the right to revise any portion of this Order upon legal notice to, and after opportunity to be heard is given to, all concerned parties.

- B. All terms of the attached Monitoring and Reporting Program (Attachment C) are hereby incorporated by reference as requirements under this Permit.
- C. Each Permittee shall comply with the Standard Provisions, Reporting Requirements, and Notifications contained in Attachment G of this Order. This includes 24 hour/5 day reporting requirements for any instance of non-compliance with this Order as described in section B.6 of Attachment G.
- D. All plans, reports, and subsequent amendments submitted in compliance with this Order shall be implemented immediately (or as otherwise specified) and shall be an enforceable part of this Order upon submission to the Regional Board. All Permittee submittals must be adequate to implement the requirements of this Order.
- E. This Order expires on **December 5, 2016**. The Permittees must file a report of waste discharge in accordance with Title 23, California Code of Regulations, no later than 180 days in advance of such date as application for an updated Municipal NPDES Permit.

The report of waste discharge must include a draft updated Pollutant Load Reduction Plan as outlined in Permit Section IV.C. The updated Pollutant Load Reduction Plan shall describe how each Permittee will meet the pollutant load reduction requirements for the second five-year TMDL implementation period, defined as the ten-year load reduction milestone in Attachment B. Specifically, the updated Pollutant Load Reduction Plans shall demonstrate how each Permittee will reduce baseline fine sediment particle, total nitrogen, and total phosphorus loads by 21 percent, 14 percent, and 14 percent, respectively, by the end of the next permit term.

F. Table of Required Submittals

Permit Submittal	Permit Section	Submittal/Required Completion Date
Analysis of Existing Legal Authority	III.A.4	March 15, 2012
Statement of Legal Authority	III.A.4	March 15, 2013
Amended Storm Water Management Plan	III.B	March 15, 2013
Pollutant Load Reduction Plan	IV.C	March 15, 2013
Pollutant Load Reduction Progress Report	IV.F	October 1, 2013
Report of Waste Discharge and updated Pollutant Load Reduction Plan	VI.D	June 9, 2016

Monitoring and Reporting Program Submittal	Attach. C Section	Submittal/Required Completion Date
Two (2) Catchment Credit Schedules	I.D	March 15, 2012
Storm Water Monitoring Plan	III.C	July 15, 2012
Annual Report	IV	March 15, 2014 and annually thereafter
Development Impact Statement	I.G, IV.I	March 15, 2014 and annually thereafter

I, Harold J. Singer, Executive Officer, do hereby certify that the forgoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on December 6, 2011.

  
HAROLD J. SINGER  
EXECUTIVE OFFICER

- Attachments:
- A. Fact Sheet
  - B. Pollutant Load Allocation Tables
  - C. Monitoring and Reporting Program
  - D. Lake Clarity Crediting Program Handbook V1.0
  - E. Water Quality Objectives
  - F. Compliance with Water Quality Objectives
  - G. Standard Provisions, Reporting Requirements, and Notifications