

DEPARTMENT OF TRANSPORTATION

DISTRICT 3
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April 30, 2012

VIA E-MAIL (FIRST TRANSMITTAL) AND CONFIRMING U.S.MAIL

State Water Resources Board
Office of Chief Counsel
Attention: Ms. Jeannette L. Bashaw
P.O. Box 100
Sacramento, CA 95812-0100

Re: Petition for Review by California Department of Transportation

Dear Ms. Bashaw:

Pursuant to the instructions posted by the State Water Resources Control Board on its website, this is the original "hard copy" version of the Petition for Review and accompanying exhibits filed by the California Department of Transportation for the March 29, 2012 Order issued by the Lahontan Regional Board.

A copy of the petition and accompanying exhibits is also being mailed directly to the Executive Office for the Lahontan Regional Board.

Very Truly Yours,


JOSEPH C. CAPUTO II, P.E.
Chief, North Region
Division of Engineering

c: Mr. Harold Singer
Executive Officer
Lahontan Regional Board (w/ enclosures)

1 RONALD BEALS, Chief Counsel
2 JEANNE SCHERER, Deputy Chief Counsel
3 DAVID H. McCRAY, Assistant Chief Counsel
4 DONNA M. CLARK, Bar No. 213492
5 1120 N Street (MS 57), P.O. Box 1438
6 Sacramento, CA 95812-1438
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The State of California is exempt from filing fees under Government Code section 6103

6 Attorneys for Petitioner State of California
7 acting by and through the Department of Transportation

8 BEFORE THE

9 STATE WATER RESOURCES CONTROL BOARD

10 **In the Matter of the Petition of**) **PETITION FOR REVIEW BY**
11 **CALIFORNIA DEPARTMENT OF**) **CALIFORNIA DEPARTMENT OF**
12 **TRANSPORTATION FOR REVIEW OF**) **TRANSPORTATION**
13 **CALIFORNIA REGIONAL WATER**) [WATER CODE §13320(a) and
14 **QUALITY CONTROL BOARD,**) 23 CAL.CODE REGS. 2050]
15 **LAHONTAN REGION, ORDER**)
16 **PURSUANT TO WATER CODE**) **[REQUESTED TO BE HELD IN**
17 **SECTION 13267**) **ABEYANCE 23 CAL.CODE REGS.**
18) **§2050.5]**

17 Petitioner California Department of Transportation ("Petitioner") respectfully petitions
18 the State Water Resources Control Board ("State Board") to review the Order pursuant to
19 California Water Code §13267 by the Executive Officer of the Lahontan Regional Quality
20 Control Board, Lahontan Region ("Regional Board") on March 29, 2012, attached hereto as
21 Exhibit A.

22 **A. SUMMARY OF PETITION**

23 On March 29, 2012, the Lahontan Regional Water Resources Control Board issued Order
24 No. R6T-2012-0014 requiring Caltrans to submit a Technical Report (Report) under Water Code
25 § 13267. This requirement is discussed in detail in Section B.4 of this Petition for Review. The
26 monitoring requirements in the Order are in addition to existing monitoring requirements in the
27 current Caltrans MS4 permit or in the expected Revised Draft Caltrans MS4 NPDES dated April
28 27, 2012. A copy of the Order is attached as Exhibit A.

1 The Executive Officer's action in issuing the Order was inappropriate because the Order
2 did not satisfy the necessary criteria listed in Water Code Section 13267(b). The burden of the
3 Report, including costs, does not bear a reasonable relationship to the need for the Report and the
4 benefits to be obtained from the Report. The Executive Officer's action was also improper
5 because the regional board did not provide substantial evidence to support requiring Caltrans to
6 provide the Report.

7 B. PETITION FOR REVIEW

8 1. Name, Address, Phone Number, and Email Address of Petitioner:

9 California Department of Transportation
10 Jody Jones
11 District Director
12 Caltrans District 3
13 703 B. Street, Marysville, CA 95901.
14 Jody Jones@dot.ca.gov. (530) 741-4233.

15 With a copy to:
16 Donna M. Clark
17 California Department of Transportation
18 Legal Division
19 1120 N Street, MS 57
20 Sacramento, CA 95814
21 Donna.Clark@dot.ca.gov
22 (916) 651-3593

23 2. Action of the Lahontan Regional Water Resources Control Board:

24 Order No. R6-2012-0014 to submit a Technical Report in accordance with Section 13267
25 of the California Water Code, Truckee River Water Quality Monitoring Program. A copy of the
26 Order is attached as Exhibit A.

27 3. Date of the Action: March 29, 2012

28 4. Statement of Reasons:

The action was inappropriate for the following reasons:

a. Pursuant to Water Code Section 13267(b), "the burden, including costs, of the
report shall bear a reasonable relationship to the need for the report and the benefits to be
obtained from the report." The Order requires development of an extensive monitoring plan that
includes the following:

1 1) A detailed description of the storm water drainage system, including
2 identification of priority locations where storm water is discharged directly or indirectly to
3 surface waters in the Truckee River Hydrologic Unit (HU). The Truckee River HU includes
4 Bronco Creek, Donner Lake, Gray Creek, Martis Creek, Squaw Creek, and the Truckee River.
5 The Middle Truckee River sediment TMDL also includes the Little Truckee River watershed and
6 upstream portions of the Middle Truckee River extending south to the Lake Tahoe dam outlet at
7 Tahoe City. The regional water board directed Caltrans to map the system and to identify these
8 sites using a system similar to the Natural Environment as Treatment (NEAT) mapping
9 completed by Caltrans for the Lake Tahoe Basin. This is a GIS-based mapping system.

10 2) An accounting for the types of pollutants discharged from those areas
11 with direct and substantial hydraulic connectivity to the surface waters in the Truckee River HU,
12 the quantity of road abrasives and de-icing materials applied in those areas, and the potential
13 effects on the surface waters in the Truckee River HU.

14 3) Consideration of various locations water board staff suggested for
15 developing the plan. Locations suggested by regional board staff include Martis Creek in close
16 proximity to State Route (SR) 267, Donner Creek where it is in close proximity to SR 89 at the
17 Mousehole, the Middle Truckee River where it is in close proximity to SR 89 between Squaw
18 Valley and the Town of Truckee, Truckee Maintenance Station and discharge points to Trout
19 Creek, and newly constructed storm water facilities on Interstate 80. These locations would
20 presumably be those identified in the drainage system mapping required as points of direct or
21 indirect discharges from SR 89, SR 267 and Interstate 80 into surface waters situated in the
22 Truckee River HU. Note there is no specific number of sites Caltrans is required to include in its
23 monitoring plan. This is inconsistent with the specified monitoring sites assigned to Placer
24 County and the Town of Truckee as noted on page 3 of the Order.

25 Caltrans' presence in the adopted Middle Truckee River sediment TMDL is only 0.2 %
26 of the TMDL assessment area. Caltrans estimates the cost to develop and implement the
27 monitoring plan as set out in the Technical Report to be approximately \$2 million. This cost
28 estimate, attached as Exhibit B, includes annual monitoring costs and contract administration

1 costs. The other costs for implementation of NEAT and the Storm Drain System Inventory
2 (SDSI) are one-time costs. The uncertainty of the exact number and location of monitoring sites
3 the regional board expects Caltrans to include in the monitoring plan, along with the
4 implementation of that plan, make a cost estimate difficult. However, as currently understood,
5 this estimate includes the extraordinarily expensive bioassessment monitoring locations even
6 though the sites where the regional board might expect bioassessment monitoring are not
7 identified in the Order. Coupled with the cost, there is the logistical burden of accomplishing
8 this extensive mapping and monitoring plan and developing an implementation schedule.

9 Finally, the Findings portion of the Order, while relying on the Sediment TMDL for the
10 Middle Truckee River, also attempts to justify requiring Caltrans to monitor for "other
11 pollutants" without identifying those pollutants, thus leaving Caltrans without direction as to the
12 specific pollutants required to be included in the monitoring plan. The Findings also assert that
13 the water board requires the information to implement the TMDL and to assess other "potential
14 water quality impacts from the MS4s." Again, there is no identification of the other "water
15 quality impacts" the water board seeks to ascertain, or how those impacts might relate to
16 discharges from the Caltrans highways. The open-ended justification for the Report does not
17 bear a reasonable relationship to the need for the Report and the undefined water quality benefits
18 that might be gained from the Report. Without more specific details on the data the Report is
19 expected to produce, Caltrans is unable to compute the entirety of the burden or the costs.
20 Absent this information, the regional board is unable to prove the burden to Caltrans bears a
21 reasonable relationship to the need for the Report, and the benefits to water quality to be
22 obtained from the Report. Additionally, the vagueness of the Order also makes it difficult for
23 Caltrans to know if it is complying with the Order. Given the limited contribution of Caltrans to
24 the water quality impairment of the Middle Truckee River watershed, specifically to the
25 Sediment TMDL, the cost of developing the monitoring plan and the implementation schedule,
26 combined with the logistical burden of complying with the Order, constitutes unreasonable effort
27 compared to the need for the Report and the benefits to water quality asserted by the regional
28 board in the Order.

1 b. Water Code Section 13267(b) also requires the regional water board to provide
2 Caltrans with a “written explanation with regard to the need for the report and shall identify the
3 evidence that supports requiring the person to provide the reports.” While the reference to the
4 Middle Truckee River TMDL identifies some evidence relating to sediment discharges into this
5 reach of the Truckee River, and notes that the Waste Load Allocation (WLA) assigned to
6 Caltrans includes the Town of Truckee and Placer County under the TMDL, this evidence is
7 insufficient to support monitoring for “other pollutants” as required in Finding 1 of the Order. In
8 conversations between Caltrans and regional board staff, “other pollutants” (still unspecified in
9 the Order) appears to include sodium chloride. There is no evidence in the Order to support this
10 Finding or to support monitoring for this substance. Likewise, the mere identification of the
11 TMDL did not support requiring Caltrans to provide the Report, since the Order did not fully
12 identify the underlying evidence behind the TMDL. Finally, the Truckee River Water Quality
13 Monitoring Plan developed by the Town of Truckee and Placer County was not included with
14 the Order, even though Caltrans is being ordered to provide a Report that similarly characterizes
15 its MS4 within the Truckee River HU.

16 c. Contrary to Finding 38 of the Revised Draft Caltrans MS4 NPDES permit,
17 dated April 27, 2012, the Lahontan Regional Board is attempting to use the Order to secure
18 compliance with a TMDL instead of developing TMDL-specific permit requirements in
19 consultation with Caltrans and the State Water Board. The contemplated use of the permit re-
20 opener requires regional boards to “prepare supporting analyses explaining how the proposed
21 TMDL-specific permit requirements will implement the TMDL and are consistent with the
22 assumptions and requirements of any applicable WLA and, where a BMP-based approach to
23 permit limitations is selected, how the BMPs will be sufficient to implement applicable WLAs.”
24 These TMDL requirements and the supporting analysis would then be incorporated into the
25 permit, after notice and comment, through a permit re-opener. Under the monitoring scheme set
26 out in Section E.2.c.1) of the April 27, 2012, Revised Draft Caltrans MS4 NPDES permit, the
27 monitoring “shall be conducted in two tiers.” The Tier 1 sites, with a 100-site minimum and no
28 maximum, include locations where Caltrans discharges to Areas of Special Biological

1 Significance (ASBS), and “sites in impaired watersheds for which the Department has been
2 assigned a WLA, **and monitoring requirements pursuant to an approved TMDL.**”

3 [Emphasis added.]

4 While Caltrans admits it discharges storm water into the Truckee River HU, and
5 specifically into the waters identified in the Order, and admits it shares a WLA with other point
6 source dischargers, Caltrans was not assigned monitoring requirements pursuant to the EPA-
7 approved TMDL. Instead, according to Table 4.13-TR-4, *Summary of TMDL Target Monitoring*
8 *Requirements*, Caltrans, the Town of Truckee, and Placer County were tasked with developing a
9 municipal monitoring program. The Town of Truckee and Placer County were listed as
10 responsible for developing this municipal monitoring program, and Caltrans was required to
11 coordinate with this effort.

12 Caltrans has coordinated and cooperated with the Town of Truckee, Placer County and
13 the regional water board on this effort. It has discharged its responsibilities under the TMDL,
14 which did NOT include a monitoring requirement. Therefore, the Truckee River TMDL for
15 Sediment is a Tier 2 site under Section E.2.c.1) of the Revised Draft Caltrans MS4 NPDES
16 permit, and “will be prioritized by Caltrans in consideration of the threat to water quality,
17 including the pollutant and its concentration or load, the distance to receiving water, water
18 quality objectives, and any existing impairments in the receiving waters. The prioritized list
19 shall be submitted to the State Water Resources Control Board within 8 months of the adoption
20 of this Order (Permit). The Board will review the prioritized list and may revise it to reflect
21 Regional or State Water Board priorities. **The revised list will be incorporated into this Order**
22 **(Permit) during a permit re-opener.”** [Emphasis added.] Therefore, consistent with Finding
23 38 of the Revised Draft Caltrans MS4 NPDES permit, and Section E.2.c.1), the regional board is
24 required to follow the re-opener process to include the TMDL in the upcoming Caltrans permit
25 and, as a Tier 2 site, the TMDL is subject to the prioritization, review, revision and re-opener
26 process.

27 By issuing the Order the regional board is circumventing the consultation and re-opener
28 process contemplated by the State Water Board and Caltrans. Unlike other MS4 dischargers,

1 Caltrans is a statewide MS4 and to avoid budgetary havoc must be able to consult with the State
2 Water Board and regional boards to develop, to the extent possible, a uniform approach to
3 compliance with similar TMDLs in multiple regional board jurisdictions rather than attempt to
4 satisfy each TMDL separately. Allowing one regional board to prioritize its place in the
5 monitoring site selection process as a Tier 2 listed TMDL in advance of other regional boards
6 and the one-year period set out in Finding 38, and then to avoid the re-opener process, sets a
7 precedent or exception that precludes the consultation and re-opener process. The costs to
8 Caltrans are likely to be excessive and will undermine its ability to comply with other
9 requirements of the permit.

10 Finally, the Truckee River Sediment TMDL has a 20-year compliance goal. Caltrans
11 does not understand the regional board's urgency to issue the Order to Submit the Technical
12 Report. The prioritization process set forth in the Revised Draft Caltrans MS4 NPDES permit,
13 discussed above, will adequately address the regional board's concerns.

14 **5. Manner in Which Party is Aggrieved:**

15 Caltrans is aggrieved by the Order for the reasons cited in Section 4 of this petition. The
16 costs to comply with the Order are unduly burdensome, vague, contrary to the Revised Draft
17 Permit, fail to bear a reasonable relationship to the need for the Technical Report, and are
18 unsupported by the evidence referenced in the Order. Caltrans is severely financially impacted
19 by the economic crisis in California and will be hard pressed to fund all of the requirements set
20 forth in the Revised Permit without being able to prioritize the monitoring sites, and to develop
21 consistent monitoring plans and implement those plans across watersheds with TMDLs for the
22 same type of pollutants. Addressing TMDL-specific monitoring requirements other than through
23 the re-opener process will quickly derail Caltrans' conscientious efforts to meet its statewide
24 obligations under the Clean Water Act.

25 **6. Requested Action:**

26 Caltrans requests the State Water Resources Control Board vacate Order
27 No. R6T-2012-0014.

28 ///

1 **7. Statement of Points and Authorities:**

2 A Statement of Points and Authorities is included as Exhibit C.

3 **8. Notice to the Regional Board:**

4 The petition has been sent to the Executive Officer for the Lahontan Regional Water
5 Quality Control Board by electronic mail simultaneously with submitting this matter to the State
6 Board.

7 **9. Substantive Issues or Objections to the Regional Board:**

8 Caltrans has been involved with the regional board in meetings on the Truckee River
9 TMDL over the last four years, mainly at the Caltrans District 3 level. The regional board issued
10 the Order without prior notice or hearing. Given the current sediment TMDL for the Middle
11 Truckee River HU, Caltrans did not have a monitoring requirement or any other requirement
12 above its normal BMPs for controlling discharges of road sand. Caltrans has cooperated and
13 coordinated with efforts by the Town of Truckee and Placer County in developing a municipal
14 monitoring program. Caltrans has appropriately discharged its responsibilities under the TMDL.

15
16 Dated: April 30, 2012

17
18 RONALD W. BEALS, Chief Counsel
19 JEANNE SCHERER, Deputy Chief Counsel
20 DAVID H. McCRAY, Assistant Chief Counsel

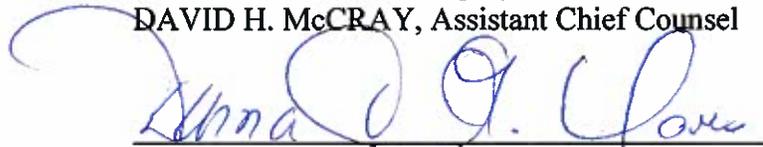
21 
22 DONNA M. CLARK, Deputy Attorney
23 Attorney for the Respondent
24 STATE OF CALIFORNIA, acting by and through
25 the Department of Transportation
26
27
28

EXHIBIT A



Lahontan Regional Water Quality Control Board

MEMORANDUM

TO: Jody Jones, District Director
California Department of Transportation, District 3
703 B. Street
Marysville, CA 95901

FROM: 
Harold J. Singer
Executive Officer
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: March 29, 2012

SUBJECT: ORDER NO. R6T-2012-0014 TO SUBMIT TECHNICAL REPORT IN ACCORDANCE WITH SECTION 13267 OF THE CALIFORNIA WATER CODE, TRUCKEE RIVER WATER QUALITY MONITORING PROGRAM

Background

The California Department of Transportation is regulated as an operator of a Municipal Separate Storm Sewer System (MS4) under Order No. 99-06-DWQ issued by the State Water Resources Control Board (State Water Board). District 3 of the California Department of Transportation (Caltrans) operates the MS4 located within the Truckee River Hydrologic Unit (HU 635.00) along with MS4s operated by Placer County (County) and the Town of Truckee (Town). The County and the Town have developed a coordinated water quality monitoring program (Truckee River Water Quality Monitoring Plan, September 15, 2008) and have been implementing the program over the last several years to evaluate the nature and effects of storm water discharges on surface waters in the watershed. This Order of the California Regional Water Quality Control Board – Lahontan Region (Lahontan Water Board) requires Caltrans to provide a technical report that similarly characterizes its MS4 within the watershed and propose a monitoring program for implementation that evaluates the effects of its discharges to surface waters in the Truckee River Hydrologic Unit downstream from Lake Tahoe.

The State Water Board is currently in the process of reissuing the state-wide Caltrans MS4 permit, which may include monitoring requirements relevant to the Lahontan Region. The requirements specified herein are in addition to monitoring requirements in Order No. 99-06-DWQ or those that may be established in the updated state-wide MS4 permit.

DON JARDINE, CHAIR | HAROLD SINGER, EXECUTIVE OFFICER

2501 Lake Tahoe Blvd., So. Lake Tahoe, CA 96150 | www.waterboards.ca.gov/lahontan

Findings

Pursuant to Water Code section 13267, the Lahontan Water Board may investigate the quality of any waters of the state within its region "in connection with any action relating to any plan or requirement authorized by this division." The need for a technical report pursuant to Water Code section 13267, subdivision (b) must bear a reasonable relationship to the benefits to be obtained from the report. In compliance with Water Code section 13267, subdivision (b), the Lahontan Water Board is providing the following explanation with regard to the need for the report, the evidence that supports the request, and benefits to be obtained from the report. In light of the following facts, the Lahontan Water Board has identified the evidence that supports its request for a technical report in this particular situation.

1. Caltrans controls and operates a system of storm water conveyances and discharge points that contribute pollutants to the Truckee River HU. Sediment and other pollutants could affect the quality of waters within the region and the beneficial uses of the waters in the Truckee River HU.
2. The Lahontan Water Board adopted a Total Maximum Daily Load (TMDL) and implementation plan for sediment reductions in the Middle Truckee River (from the Lake Tahoe dam outlet at Tahoe City to the California/Nevada state line). A waste load allocation (WLA) of 4,936 tons per year total suspended sediment for point sources in the urbanized area, including the MS4s operated by Caltrans, the Town, and the County, was assigned under the TMDL. WLA tracking has not specifically been required to date.
3. The Lahontan Water Board requires information on the location and operation of the storm water discharge system, the water quality characteristics of the discharges, and the effects the discharges may have on receiving water quality as part of implementing the TMDL and to assess other potential water quality impacts from the MS4s. The Town and County are implementing a monitoring program acceptable to the Lahontan Water Board to evaluate the effects from their respective MS4s. Additional information is needed relative to Caltrans' discharges, specifically in other watershed areas potentially affected by its waste discharges that are not currently monitored. The report will be beneficial to account for the effects of Caltrans MS4 discharges within the Truckee River HU, focus storm water control efforts in areas of greatest pollutant loading, and to demonstrate whether water quality standards are being restored and maintained.

Requirement for Comprehensive Storm Water Discharge Monitoring Plan

On March 8, 2012, Lahontan Water Board staff met with staff from the Town, County, and Caltrans to discuss the need and scope of monitoring in the Truckee River watershed. The discussion focused on how Caltrans can supplement the monitoring that is currently being conducted by the Town and County. The Town and County have developed a comprehensive monitoring program and are implementing the plan with certain

modifications acceptable to the Lahontan Water Board. The current monitoring activities include:

1. Discrete tributary monitoring at six sites on Martis Creek,
2. Periodic bioassessments at six tributary sites in Martis Valley,
3. Discrete community level or subwatershed monitoring at five sites representing relatively new development and old development that is not equipped with storm water controls, and
4. Stream flow gauging at the main stem of Martis Creek.

As discussed at the March 8, 2012 meeting, additional monitoring is needed to compliment and address gaps in the current monitoring activities relative to Caltrans' storm water discharges. Pursuant to section 13267 of the Water Code (see attached Fact Sheet), you are directed to submit a proposed monitoring plan and implementation schedule. The plan must include a detailed description of the storm water drainage system, including identification of priority locations where storm water is discharged directly or indirectly to surface waters similar to the Natural Environment as Treatment (NEAT) mapping completed by Caltrans for the Lake Tahoe Basin.

The monitoring plan must focus on those areas where mapping indicates direct and substantial hydraulic connectivity to surface waters, and account for the type of pollutants, the quantity of road abrasives and de-icing materials applied, and the potential effects on surface waters. During our March 8, 2012 meeting, staff suggested potential effluent, receiving water, and/or bioassessment monitoring locations that Caltrans should consider in developing its plan. Locations included:

1. Middle Martis Creek where it is in close proximity to Highway 267,
2. Donner Creek where it is in close proximity to Highway 89 (Mousehole),
3. Middle Truckee River where it is in close proximity to Highway 89 (Between Squaw Valley and the Town of Truckee)
4. Truckee Maintenance Station and discharge points to Trout Creek, and
5. Newly constructed storm water facilities on Interstate 80.

The proposed monitoring plan and implementation schedule must be submitted by June 1, 2012. You may contact Bud Amorfini, Engineering Geologist at (530) 542-5463 or Alan Miller, Senior Water Resource Control Engineer at (530) 542-5430 if you have any questions.

Attachment: Fact Sheet for Submitting Technical Reports under Section 13267

cc (w/o attachment): Bob Costa, Placer County
Jessica Thompson, Town of Truckee
Lisa Wallace, Truckee River Watershed Council
Doug Coleman, Caltrans District 3 Office of Engineering
Walt Shannon/SWRCB, Div. of WQ

EXHIBIT B

Technical Report Cost Estimate

ITEM	COST
TMDL Monitoring	\$850,000.00
SDSI	\$70,000.00
NEAT	\$900,000.00
CT Contract Administration	\$180,000.00
Total:	\$2,000,000.00

EXHIBIT C

1 RONALD W. BEALS, Chief Counsel
JEANNE SCHERER, Deputy Chief Counsel
2 DAVID H. McCRAY, Assistant Chief Counsel
DONNA M. CLARK, State Bar No. 213492
3 1120 N Street (MS 57) P.O. Box 1438
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4 Telephone: (916) 654-2630
Facsimile: (916) 654-6128

5 *The State of California is exempt from filing fees under Government Code section 6103*

6 Attorneys for Petitioner State of California
acting by and through the Department of Transportation

7
8 **BEFORE THE**
9 **STATE WATER RESOURCES CONTROL BOARD**

10 **In the Matter of the Petition of**)
11 **CALIFORNIA DEPARTMENT OF**)
12 **TRANSPORTATION FOR REVIEW OF**) **STATEMENT OF POINTS AND**
13 **CALIFORNIA REGIONAL WATER**) **AUTHORITIES**
14 **QUALITY CONTROL BOARD,**)
15 **LAHONTAN REGION, ORDER**)
16 **PURSUANT TO WATER CODE**)
17 **SECTION 13267**)

17 Petitioner submits the Statement of Points and Authorities in support of its Petition for
18 Review filing pursuant to Water § 13320(a) and 23 Cal. Code Reg. § 2050.

19 **I. Statement of Facts**

20 Petitioner is regulated as the operator of a Municipal Separate Storm Sewer System
21 (MS4) under Order No. 99-06-DWQ issued by the State Water Resources Control Board (State
22 Board). District 3 of the California Department of Transportation (Caltrans) operates 58 miles of
23 highway in the Truckee River Hydrologic Unit (HU) as described in detail in Section 4 of the
24 Petition. The highway system includes 30 miles of Interstate 80 (I-80), 18.5 miles of State Route
25 89, and 9.9 miles of State Route 267. Caltrans also operates two maintenance stations, one on I-
26 80 at Post Mile 27.4 (Floriston) and one in the Town of Truckee.

27 On July 5, 2006, and December 27, 2006, respectively, the Lahontan Regional Water
28 Quality Control Board (Regional Board) designed Placer County, within the Truckee River

1 watershed, and the Town of Truckee as Phase II Small MS4s. On March 21, 2008, Caltrans
2 provided comments on the Truckee River Sediment TMDL. On May 14, 2008, in Resolution
3 R6T-2008-0019, the Regional Board approved an amendment to the Basin Plan for the Lahontan
4 Region to incorporate a Total Maximum Daily Load (TMDL) and TMDL Implementation Plan
5 for Sediment in the Middle Truckee River Watershed located in Placer, Nevada and Sierra
6 Counties. The TMDL was approved by the State Board on March 17, 2009 and subsequently
7 approved by U.S. EPA Region IX.

8 The TMDL assigned a Waste Load Allocation (WLA) to point source dischargers
9 including the Town of Truckee, Placer County within the Truckee River watershed, and to
10 Caltrans. The WLA is a total allocated load for all of the MS4 permit holders and is set at 4,936
11 tons per year. On Table 4.13-TR-4, *Summary of TMDL Target Monitoring Requirements*,
12 Caltrans was tasked with coordinating on the development of a monitoring program in with the
13 Town of Truckee and Placer County, although Caltrans was not named as a Responsible Entity
14 in developing the municipal monitoring program. The TMDL did not assign a monitoring
15 responsibility or requirement to Caltrans. Caltrans was directed to implement the use and
16 recovery of road sand to the maximum extent practicable, and to track and report its use
17 annually. Caltrans tracks the application of abrasives and de-icers annually and the recovery of
18 the abrasives annually. Caltrans has not been required to report the application and recovery of
19 de-icers and abrasives in the Truckee River HU.

20 On March 29, 2012, the regional board issued Order No. R6T-2012-0014 (Order)
21 requiring Caltrans to submit a Technical Report under Water Code § 13267. The Order requires
22 Caltrans to provide a technical report (Report) as discussed in detail in Section B.4 of the
23 Petition for Review. Some of the monitoring requirements set out in the Order exceed
24 monitoring necessary to comply with the Middle Truckee River Sediment TMDL (TMDL) and
25 are in addition to monitoring requirements in the current Caltrans MS4 permit or in the expected
26 Revised Draft Caltrans MS4 NPDES dated April 27, 2012. A copy of the Order is attached as
27 Exhibit A to the Petition.

28 ///

1 addition, the Truckee River HU is far more extensive than the Middle Truckee River as described
2 in Finding 2 of the Order. Therefore, the regional board has failed to produce any evidence in
3 Finding 2 to justify Finding 1 or 3.

4 Finding 3 of the Order states the regional board requires "information on the location and
5 operation of the storm water discharge system" without explaining how this will benefit water
6 quality or providing evidence to support this request. The mere location of a drain inlet or other
7 storm water discharge system feature does little to advance water quality or to assure improved
8 water quality. The cost of accounting for the storm water discharge system location and
9 operation is estimated at \$70,000.00. Absent substantial evidence demonstrating the reasonable
10 relationship between the burden to prepare this portion of the Report, and the need and benefits
11 to be obtained, the request is an abuse of discretion.

12 Moreover, the regional board failed to explain, or to provide substantial evidence, of the
13 need for the NEAT-style mapping to either comply with the TMDL or to assess "other potential
14 water quality impacts" from Caltrans' MS4. As indicated in the Caltrans's cost estimate,
15 attached to the Petition as Exhibit B, the cost of NEAT mapping in the Truckee River HU would
16 be \$900,000.00. The annual monitoring cost is estimated at \$850,000.00 even though it is not
17 clear from the Order how many monitoring sites would be required to comply with the Order.
18 Absent a relationship between the NEAT mapping, a defined quantity of monitoring sites and the
19 extent of the monitoring program at those sites, and substantial evidence to demonstrate how the
20 need and benefits bear a reasonable relationship to the burden of complying with the Order, the
21 Order is an abuse of discretion.

22 As identified in Chapter 4 of the Lahontan Region Basin Plan, Figure 4.1-7, the Truckee
23 River HU contains more than just the Middle Truckee River. The Middle Truckee River, as
24 described by the regional board in the Order and in the TMDL, is the reach of the Truckee River
25 between the outlet of Lake Tahoe and California/Nevada state line. Findings 1 and 3, presented
26 as facts in the Order, mention not only "other pollutants" (not identified in any evidence to
27 support the Findings,) but also "other watershed areas potentially affected by its (Caltrans')
28 waste discharges that are not currently monitored." The scope of the monitoring program

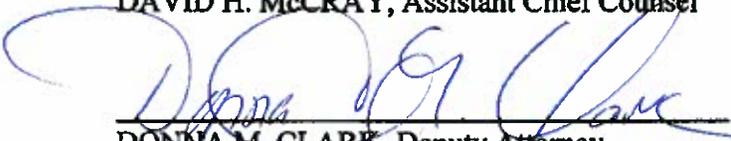
1 appears to be the entire Truckee River HU, and not just to the Middle Truckee River. The Order
2 does not contain evidence of the need for the potential scope of the monitoring as stated in the
3 Findings, or even how the contemplated data collection relates to the TMDL. Is the monitoring
4 to establish a WLA for Caltrans? Is it to identify pollutants not included in the TMDL and not
5 implicated in any water quality impairment in the Truckee River HU? Again, the burden of
6 satisfying the Order does not bear a reasonable relationship to the stated need and benefits to be
7 obtained. The scope of the Order is potentially exhaustive and prohibitively expensive without
8 demonstrating clear benefits to water quality and does not identify the evidence supporting the
9 requirement for the Report.

10 III. Conclusion

11 For the foregoing reasons, the Order is not legally valid. Petitioner asks the State Board
12 to issue an Order vacating the Regional Board's Executive Officer's Order.

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14 Dated: *April 30, 2012*

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