

Lahontan Regional Water Quality Control Board

October 5, 2017

TO ALL INTERESTED PERSONS AND PARTIES:

Proposed Resolution Authorizing a Supplemental Environmental Project Program Memorandum Of Understanding with the Truckee River Watershed Council, November 15-16, 2017 Lahontan Water Board Meeting, South Lake Tahoe

Enclosed for your information and review is a copy of the above-referenced proposed resolution. At its February 2014 meeting, the Lahontan Regional Water Quality Control Board (Water Board) authorized a region-specific Supplemental Environmental Project Program (SEP Program). The SEP Program includes the Water Board partnering with local organizations to identify and implement projects that may qualify as SEPs. The proposed resolution, if adopted, will authorize a Memorandum of Understanding establishing such a partnership between the Water Board and the Truckee River Watershed Council, in accordance with the adopted SEP Program.

The proposed resolution references projects that the Truckee River Watershed Council submitted for consideration as potential SEPs. Those projects can be viewed at:

<https://www.truckeeriverwqc.org/library/>

On the Website, go to: Assessments, Plans, Reports-Truckee River Watershed Council 2014.2013 Project List

The proposed resolution will be presented at the Water Board's November 15-16, 2017 meeting in South Lake Tahoe, California. Enclosed are background information and materials for the presentation. Please submit any written comments you may have to Lahontan@waterboards.ca.gov by **November 1, 2017**. Please include "Proposed Resolution-Truckee River Watershed Council MOU" in the subject line.

An agenda announcement providing additional information regarding the time and location of the Water Board meeting will be posted approximately two weeks before the Board meeting at:

http://www.waterboards.ca.gov/lahontan/board_info/agenda/2017_schedule.shtml.

Please contact Eric J. Taxer, Water Resource Control Engineer, at (530) 542-5434 (Eric.Taxer@waterboards.ca.gov), or Cathe Pool, Senior Water Resource Control

PETER C. PUMPHREY, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

Engineer, at (530) 542-5460 (Catherine.Pool@waterboards.ca.gov), if you need further information regarding this matter.



Michelle Avila
Office Technician

Enclosures: 1. Proposed Draft Resolution
2. Memorandum of Understanding (Draft)

cc: Cathe Pool, Lahontan Water Board
Eric Taxer, Lahontan Water Board
TRWC Mailing List

EJT/ma/T: TRWC Public Notice
File Under: ECM / WDID 6A001402004

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

RESOLUTION NO. R6T-2017-(PROPOSED)

**LAHONTAN WATER BOARD
SUPPLEMENTAL ENVIRONMENTAL PROJECT PROGRAM
MEMORANDUM OF UNDERSTANDING
WITH THE
TRUCKEE RIVER WATERSHED COUNCIL**

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region (Water Board) finds:

1. The Water Board adopted the “Lahontan Water Board Supplemental Environmental Project (SEP) Program” (Lahontan SEP Program) on February 12, 2014 (Water Board Resolution No. R6T-2014-0014).
2. The Lahontan SEP Program supports establishing partnerships with independent third parties (partner organizations) to (1) identify projects that may qualify for SEPs, (2) manage SEP payments from dischargers, and (3) implement SEPs consistent with the Water Board’s expressed priorities.
3. The Lahontan SEP Program’s criteria for selecting SEP Program partners emphasize a qualifying partner’s broad, watershed-based focus on issues, transparent and broad stakeholder-based project development/selection process, coordination with neighboring watershed efforts and state and federal agencies, and long-term, successful project implementation. The Lahontan SEP Program’s partnership criteria aligns with selection criteria in current state funding programs and laws that promote community-supported, multi-benefit, and collaborative projects.
4. In 1996, the TRWC was formed as a California nonprofit public benefit corporation, which is exempt from taxation under Internal Revenue Code section 501(c)(3). Resolution No. R6T-2014-0014 identifies such organizations as eligible to participate in the Lahontan SEP Program as a partner organization.
5. The Water Board has delayed full implementation of the Lahontan SEP Program until a pilot program with the Truckee River Watershed Council (TRWC) is completed and evaluated. While the pilot program time period has been extended, the pilot program was evaluated, in part, at the Water Board’s July 9, 2015 meeting in South Lake Tahoe, California. The Water Board directed staff to proceed with developing agreements with potential partner organizations.
6. The TRWC submitted an application to become a SEP Program partner organization to the Water Board on December 9, 2016 (Attachment A). Water Board staff

determined that the TRWC met the criteria established by Water Board Resolution No. R6T-2014-0014 for partner organizations.

7. Water Board staff accepted the application on December 9, 2016 and began developing a Memorandum of Understanding (MOU) with the TRWC.
8. The mission of the TRWC is to protect, enhance, and restore the Truckee River watershed. The Truckee River watershed consists of approximately 285,000 acres, located from the Tahoe Dam to the California/Nevada state line. The TRWC collaborates with a broad base of stakeholders around the common goals of water quality and health of biological resources. Over the last 20 years, the TRWC has managed more than 50 large-scale projects resulting in the improvement of 348 public and private green spaces.
9. On September 18, 2017, the TRWC Board of Directors reviewed the draft MOU and authorized its Executive Director to enter into a SEP Program agreement with the Water Board (see Attachment B).
10. The TRWC submitted information on December 9, 2016 a list of 35 potential projects that may be considered eligible as SEPs. The projects are classified as either watershed assessment, project design, or project implementation. The TRWC will be submitting project submittal forms on the 35 projects to Lahontan for consideration. Water board staff will review and accept those projects that satisfy the criteria of the SEP Program identified in Water Board Resolution No. R6T-2014-0014.
11. The Water Board has notified interested parties throughout the Lahontan Region of its intent to adopt this Resolution by posting to a list server and on the Water Board's web site.
12. The Water Board, in a public meeting, heard and considered all comments regarding the Resolution.

THEREFORE, BE IT RESOLVED THAT:

1. The Water Board approves the MOU with the TRWC (Attachment C) to become a SEP Program partner organization.
2. The TRWC will submit project submittal forms for the 35 projects identified in Attachment D for consideration.
3. The Water Board will review and accept those projects that satisfy the Lahontan SEP Program's qualification criteria identified in Water Board Resolution No. R6T-2014-0014.

4. The Water Board directs staff to post the agreement with the TRWC in a prominent location on the Water Board's web site.
5. The Water Board authorizes the Water Board Executive Officer to approve any amendments in the MOU that are still consistent with the SEP Program identified in Water Board Resolution No. R6T-2014-0014.

I, Patty Z. Kouyoumdjian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on November **, 2017.

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

- Attachments:
- A. TRWC Application Cover Letter
 - B. TRWC Resolution, dated September 18, 2017
 - C. Memorandum of Understanding: Lahontan Water Board Supplemental Environmental Project Program with the TRWC
 - D. TRWC's Proposed Project List

EJT/ma/T: TRWC Proposed Draft Resolution
File Under: ECM / WDID 6A001402004

MEMORANDUM OF UNDERSTANDING
LAHONTAN WATER BOARD
SUPPLEMENTAL ENVIRONMENTAL PROJECT PROGRAM
WITH THE
TRUCKEE RIVER WATERSHED COUNCIL

This document shall serve as a Memorandum of Understanding (MOU) by and between the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) and the Truckee River Watershed Council (TRWC). The purpose of the MOU is to establish a list of potential projects that may be implemented pursuant to the Supplemental Environmental Project (SEP) Program approved by Resolution No. R6T-2014-0014 (Lahontan Water Board SEP Program).

In 1996, the TRWC was formed to protect, enhance, and restore the Truckee River watershed. The TRWC brings together a broad base of stakeholders around the common goals of water quality and biological resource health. Over the last 20 years, the TRWC has managed more than 50 large-scale projects resulting in the improvement of 348 public and private green spaces. The TRWC's success is due to its broad community support - \$11.5 million in funding was raised, and over 472,000 volunteers assisted, to successfully complete these restoration projects.

Stakeholder participation consists of over 40 businesses, federal and state agencies, local government, non-profit organizations, and private citizens. The TRWC works through stakeholder committees in a non-confrontational manner, emphasizing collaboration. Projects are screened with 21 criteria based upon water quality, water supply, forest health, and wildlife/fishery impacts. The TRWC has set a target of implementing 50 high-priority restoration projects over the next 10 years within the Truckee River watershed. Of this goal, the TRWC has established a list of 35 potential projects that would be eligible as SEP projects.

The TRWC submitted information on December 9, 2016 demonstrating that it meets the criteria established by the Lahontan Water Board's SEP Program to identify projects that may qualify as SEPs. The TRWC also provided information demonstrating its capacity to implement SEPs pursuant to the criteria established by the Lahontan Water Board SEP Program.

The following terms and conditions of this MOU govern the TRWC's obligations to identify projects that may qualify as SEPs, to use the funds transferred to it by a discharger in accordance with the Lahontan Water Board's authorizing Administrative Civil Liability Order, and to implement SEPs consistent with the Lahontan Water Board SEP Program, all as more particularly described below. This MOU is effective upon its execution by the TRWC and the Lahontan Water Board Executive Officer.

1. The TRWC shall incorporate the SEP Qualification Criteria identified in the Lahontan Water Board SEP Program to identify potential projects that may qualify as a SEP.

This shall be incorporated within the TRWC's stakeholder process used for identifying potential projects.

2. The TRWC shall submit to the Lahontan Water Board Executive Officer on a biannual basis a list of potential projects, if any, that have been identified via its public process that incorporates local stakeholder outreach and input in selecting and prioritizing potential SEP projects. The first such list was submitted **December 9, 2016**, and shall be updated every two (2) years thereafter (by December 31 of even-numbered years) to reflect potential projects that have been added, removed, or completed. Each potential project shall be submitted using the Lahontan Water Board Project Submittal Form (attached to this MOU as Attachment 1) or other form authorized by the Lahontan Water Board Executive Officer. If the TRWC has not identified any changes to be made to the list of potential projects, the bi-annual update shall provide notice that no changes have been made to the existing list of potential projects.
3. When a discharger is under an Order of the Lahontan Water Board to pay an administrative civil liability ("liability") for violations and elects to direct a portion of its liability to fund implementation of a SEP identified on the TRWC's list of potential projects noted in Paragraph 2, above, the TRWC shall enter into a direct agreement with the discharger. The agreement between the TRWC and the discharger shall include the specific language noted within Attachment 2 to the Lahontan Water Board SEP Program (a copy of which is also attached to this MOU as Attachment 2) ("SEP Program Attachment 2"), in addition to whatever additional terms and conditions, upon which the discharger and the TRWC mutually agree.
4. The TRWC shall provide quarterly reports of progress on each SEP to the Designated Lahontan Water Board Representative commencing on the first day of the fiscal quarter after an agreement with a discharger becomes effective and continuing through submittal of the final reports described below. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted. Quarterly reports shall be submitted within 30 days after the end of the fiscal quarter.
5. If the discharger does not provide sufficient liability funds to the TRWC to finance the project, the TRWC is not required to complete the project or provide additional funding to complete the project, which is consistent with the intent of Paragraph 6 of the SEP Program Attachment 2. That paragraph also intends to provide that the discharger is not obligated to provide additional funding beyond the amount of the liability, unless otherwise agreed.
6. Within thirty (30) days after the applicable SEP Completion, the TRWC shall submit a certified statement of completion of the SEP ("Certification of Completion"). The Certification of Completion shall be submitted, under penalty of perjury, to the Designated Lahontan Water Board Representative by a responsible corporate official representing the TRWC. The Certification of Completion shall include the following:
 - a. Certification that the SEP has been completed in accordance with the terms of this MOU, the Lahontan Water Board's Order authorizing the use of the liability to

- fund a SEP, the Lahontan Water Board's SEP Program, and the Policy on Supplemental Environmental Projects. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Lahontan Water Board to evaluate the completion of the SEP and the costs incurred by the TRWC.
- b. Certification documenting the expenditures by the TRWC during the completion period for the SEP. The TRWC's expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the TRWC official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors, such as environmental and information technology contractors or consultants. The certification need not include any costs incurred by the Lahontan Water Board for oversight. The TRWC shall provide any additional information requested by the Designated Lahontan Water Board Representative that is reasonably necessary to verify SEP expenditures.
 - c. Certification that the TRWC obtained all necessary permits and followed all applicable laws and regulations in the implementation of the SEP, including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, the Porter-Cologne Act, and the terms of any permits issued for the SEP.
7. To ensure compliance with CEQA where necessary, the TRWC shall provide the Lahontan Water Board with the following applicable document from the lead agency prior to commencing with the SEP:
- a. Categorical or statutory exemptions relied upon by the CEQA lead agency;
 - b. Negative Declaration if there are no potentially "significant" impacts;
 - c. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
 - d. Environmental Impact Report (EIR).
8. In addition to the Certification of Completion, upon completion of the SEP and at the written request of the Lahontan Water Board Executive Officer, the TRWC and discharger, at the sole cost of one or both such parties, as applicable, shall submit a report prepared by an independent third party(ies), acceptable to the Lahontan Water Board Executive Officer, providing such party's(ies)' professional opinion that the TRWC has expended money in the amounts claimed. The audit report shall be provided to the Designated Lahontan Water Board Representative within three (3) months of notice from the Lahontan Water Board Executive Officer to the TRWC and discharger of the need for an independent third-party financial audit. The audit should not include any costs incurred by the Lahontan Water Board for oversight.

9. Upon the receipt of the final completion report and certificate of completion, and upon TRWC's satisfaction of its SEP obligations under this MOU, any audit requested by the Lahontan Water Board pursuant to Paragraph 8, above, and the Water Board's review and determination that the terms of the Water Board Order authorizing the offset of a portion of a civil penalty to fund a SEP have been completed, the Designated Lahontan Water Board Representative shall send the TRWC and discharger a letter recognizing satisfactory completion of their respective obligations under the terms of each applicable Order authorizing the completion of a SEP.
10. As indicated in the SEP Policy, an Order shall state that the Discharger's failure to pay any required monetary assessment on a timely basis will cancel the provisions for suspended penalties for SEPs and that suspended amount will become immediately due and payable to the State Water Resources Control Board.
11. At any time during which the TRWC is not actively implementing a SEP or performing any applicable post-SEP obligations described in this MOU, either the Lahontan Water Board or TRWC is entitled to terminate this MOU upon thirty (30) days' written notice to the other party.

IT IS SO AGREED.

California Regional Water Quality Control Board – Lahontan Region

By: _____ Date: _____
Patty Z. Kouyoumdjian
Executive Officer

Truckee River Watershed Council

By: _____ Date: _____
Lisa Wallace, Executive Director
Truckee River Watershed Council

Attachment 1: Lahontan Water Board Project Submittal Form

Attachment 2: Template Language for Partner Organization/Discharger Agreements

EJT/ma/T: TRWC Draft MOU
File Under: ECM / WDID 6A001402004

ATTACHMENT 1

**LAHONTAN WATER BOARD SEP PROJECT SUBMITTAL FORM
LAHONTAN WATER BOARD SEP PROGRAM
PROJECT SUBMITTAL FORM**

I. Project Proponent Information

MOU Name	
Name of Primary Contact for MOU	
Mailing Address	
Phone Number	
E-Mail	
Name of Fiscal Agent for Project	
Mailing Address	
Phone Number	
E-Mail	
Other Cooperating Agencies/Organizations/Stakeholders	

(List additional contact information as appropriate)

II. Project Information

Project Title:				
Project Category:	<input checked="" type="checkbox"/> Restoration	<input checked="" type="checkbox"/> Stormwater/Flood Control	<input checked="" type="checkbox"/> Water Supply/Wastewater	<input checked="" type="checkbox"/> Technical Study
Project Priority:	<i>(Indicate High, Medium, or Low Priority)</i>			
Project Description:	<i>(Describe project in 500 characters or less. If project can be implemented in phases, provide a description of each phase in addition to overall project description.)</i>			
Project Location – City and County:	<i>(Include address, latitude, and longitude data as appropriate.)</i>			
Affected Watershed and/or Groundwater Basin:	<i>(Identify surface and ground waters that will benefit from the project. Include Hydrologic Unit Code and/or Groundwater Basin Number.)</i>			
Estimated Project Budget:	<i>(If project can be implemented in phases, provide an estimated budget for each phase, in addition to overall budget)</i>			
Expected Benefits/Improvements to Water Quality and/or Beneficial Uses:	<i>(In 500 characters or less.)</i>			
Estimated Project Duration: (In Months)				
Project Readiness:	<i>(Discuss CEQA status, permit status, landowner agreements, etc. in 500 characters or less)</i>			

III. Optional Project Information

(Discuss all topics that apply, 500 characters or less for each topic.)

Identify Public Health and Safety Concerns Addressed by Proposed Project	
Identify Environmental Health and Safety Concerns Addressed by Proposed Project	
Identify Potential Project Benefits to Other Regional Water Boards or to the State of California	
Identify Other Project Funding Sources, and if Additional Funds Are Needed to Close a Funding Gap	
Identify If Potential SEP Funding May be Used to Leverage Matching Funds	
Identify Environmental Justice Concerns that May Be Addressed by the Project	
Identify Disadvantaged Community Concerns that May Be Addressed by the Project	
Identify Efficiencies That May Be Improved By the Project (e.g., Databases, Automation, System Enhancements, etc.)	
Identify State Water Priorities That the Project Supports. This Can Include Priorities Established by the Lahontan Water Board (Including Triennial Review Priorities), Cal EPA, California Legislature, or the Governor's Office.	<i>(Links to the priorities are listed on following page)</i>

List of Websites for State Water Priorities

Lahontan Water Board priorities:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/index.shtml

State Water Board's Strategic Plan:

http://www.swrcb.ca.gov/water_issues/hot_topics/strategic_plan/2007update.shtml

Cal EPA Strategic Vision Goals:

<http://www.calepa.ca.gov/Publications/Reports/2000/StrategicVis.pdf>

California Legislature:

<http://www.legislature.ca.gov/>

Governor's Office:

<https://www.gov.ca.gov/home.php>

ATTACHMENT 2

TEMPLATE LANGUAGE FOR PARTNER ORGANIZATION/DISCHARGER AGREEMENTS

This document shall serve as a Memorandum of Understanding by and between PARTNER ORGANIZATION (XXX) and DISCHARGER (XXX) for the Supplemental Environmental Project (SEP) authorized by California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) Order No. R6-xxxx-xxx (the Order) and described in detail therein (the Project).

1. Pursuant to the terms of the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order entered into between the Lahontan Water Board Prosecution Team and DISCHARGER, DISCHARGER agrees to donate, and PARTNER ORGANIZATION commits to receive funding in the amount of \$xxx,xxx (Funding) to be utilized for implementation of the Project.
2. As a condition to the donation, PARTNER ORGANIZATION agrees as follows:
 - a. To serve as the Implementing Party for the Project, as detailed in the Order;
 - b. To cooperate with DISCHARGER to meet the SEP requirements set forth in the Order, the terms of which are attached hereto as Exhibit X;
 - c. To return to DISCHARGER any unexpended portion of the Funding to the extent not spent on the Project.
3. PARTNER ORGANIZATION agrees that should it publicize the Project it shall state in a prominent manner that the Project is being funded as part of a settlement of an enforcement action by the Lahontan Water Board against DISCHARGER.
4. This MOU and the parties' relations shall be construed and governed by the laws of the State of California without regard to conflict-of-laws rules or principles.
5. Nothing contained in this MOU shall at any time constitute, be deemed to constitute or be construed to create a relationship among DISCHARGER and PARTNER ORGANIZATION of partnership, joint venture, agency, or any other relationship creating fiduciary, quasi-fiduciary or similar duties and obligation, or that would otherwise subject DISCHARGER and PARTNER ORGANIZATION to joint and several or vicarious liability in favor of any third party.
6. PARTNER ORGANIZATION acknowledges that the Funding is the full extent of DISCHARGER's obligation hereunder and that PARTNER ORGANIZATION is responsible for securing sufficient other resources as may be needed to complete the Project in accordance with the Order in the event the Project cannot be completed with the amount of Funding being provided by DISCHARGER.
7. This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

(SIGNATURE BLOCKS FOR PARTNER ORGANIZATION AND DISCHARGER)