

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

In the matter of:)

**LOS ANGELES DEPARTMENT)
OF WATER AND POWER)**

**Order No. R6V-2015-0018
(Proposed)**

**Settlement Agreement and
Stipulation for Entry of Order; Order
(Proposed)**

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation”) is entered into by and between the California Regional Water Quality Control Board, Lahontan Region Prosecution Staff (“Prosecution Staff”) and the City of Los Angeles Department of Water and Power (“LADWP”) (collectively “Parties”) and is presented to the Lahontan Regional Water Quality Control Board (“Lahontan Water Board”) for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. As a condition of its State Water Resources Control Board (“State Water Board”) licenses, LADWP implemented and maintains a sediment bypass system for its diversion structure on Lee Vining Creek (“Structure”) in Mono County. LADWP’s activities on Lee Vining Creek are mandated and regulated by State Water Board Orders WR 98-05 and WR 98-07, which amended Decision 1631.
2. The Structure is intended to ensure good condition of the downstream fishery. Operation of the Structure results in sediment bypass. However, during drought conditions, sediment accumulates and the Structure must be cleared from time to time to allow the Structure to continue to serve its environmental function.
3. In August 2014, LADWP started staging and delivering equipment to clear accumulated sediment from, and repair portions of, the Structure (the “Lee Vining Creek Project”). At the time, LADWP believed that it was not required to seek a permit from Lahontan Water Board for the project because the work was routine maintenance, was required by prior State Water Board Orders, and complied with the Routine Maintenance Agreement between LADWP and the California Department of Fish and Wildlife, dated August 20, 2008.

4. On August 29, 2014, Lahontan Water Board staff informed LADWP that the Lee Vining Creek Project required Clean Water Act section 401 water quality certification ("401 Water Quality Certification") and requested that LADWP submit a 401 Water Quality Certification application. LADWP believed that the Lee Vining Creek Project was routine maintenance that was exempt from Clean Water Act sections 401 and 404 requirements.

5. On September 10, 2014, Lahontan Water Board staff requested LADWP to submit an application for 401 Water Quality Certification for the proposed work in Lee Vining Creek. Lahontan Water Board staff stated that they would work with LADWP to obtain a long-term maintenance permit ("General Permit") for such work in the future.

6. On September 17, 2014, LADWP informed Lahontan Water Board staff of its intent to monitor water quality throughout the Lee Vining Creek Project and submitted a list of Best Management Practices ("BMPs") it would implement to protect water quality and maintain beneficial uses.

7. On September 18, 2014, Lahontan Water Board staff conducted a site inspection of the Lee Vining Creek Project. Lahontan Water Board staff witnessed activities in and disturbance to Lee Vining Creek below the ordinary high water mark ("OHWM"). Lahontan Water Board staff observed the following: 1) the placement of new permanent rock rip-rap and recently poured concrete below Lee Vining Creek's OHWM; and 2) an increase in turbidity downstream from the work area, as shown, below:

	Field Results	Lab Results
Upstream Turbidity	1 NTU	0.28 NTU
Downstream Turbidity	5 NTU	0.82 NTU

8. On September 25, 2014, Lahontan Water Board staff sent a Notice of Violation (the "NOV") and an inspection report which detailed the above observations. The NOV cited violations of the California Water Code ("Water Code") and the *Water Quality Control Plan for the Lahontan Region* ("Basin Plan").

9. The Prosecution Staff alleges that LADWP violated the Water Code and Basin Plan as follows:

- a. Violation 1: LADWP violated Water Code section 13376 and/or Clean Water Act section 301 by discharging rock rip rap, concrete, and earthen materials below the OHWM of Lee Vining Creek, portions of which are considered a water of the United States, without obtaining a dredge or fill material discharge permit and/or waste discharge permit from the Lahontan Water Board. Violation No. 1 occurred on eight different days during the period beginning on September 12, 2014 and ending on October 25, 2014.
- b. Violation 2: LADWP violated the Basin Plan through its work within Lee Vining Creek and on the Structure, which caused an increase in turbidity

greater than 10 percent above background natural levels, as shown in Paragraph 7, above. The Basin Plan establishes a narrative Water Quality Objective for turbidity that limits increases in turbidity caused by projects and/or waste discharges to 10 percent above natural levels. Violation No. 2 occurred on September 18, 2014, which represents a single day of violation.

10. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The Prosecution Staff considered and followed the methodology set forth in the Enforcement Policy for Violation Nos. 1 and 2, as shown in Exhibit A, which is attached hereto and incorporated by reference as though fully set forth herein.

11. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and present this Stipulation to the Lahontan Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the NOV except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

12. To resolve the proposed liability associated with the alleged violations expressed herein without formal administrative proceedings, the Parties have agreed that LADWP will pay \$95,000 ("Settlement Amount"). Pursuant to Enforcement Policy section VI.B (Settlement Considerations), the Parties agree to this Settlement Amount in consideration of hearing and/or litigation risks and the additional considerations discussed below in Paragraph 13. The Parties agree that LADWP will expend \$52,000 of the Settlement Amount toward a Supplemental Environmental Project ("SEP") as set forth below and in LADWP's SEP Proposal (Exhibit B). LADWP shall pay the remaining Settlement Amount of \$43,000 to the *State Water Pollution Cleanup and Abatement Account* in stipulated penalties.

13. **Additional Settlement Considerations:** The Parties agree to the following additional terms in entering this Stipulation:

- a. The Parties will work cooperatively to expedite the development and issuance of a General Permit for LADWP's maintenance and/or construction activities within the Lahontan Region.
- b. LADWP will assume the role of "Lead Agency" under the California Environmental Quality Act ("CEQA") for purposes of the above-referenced General Permit.

- c. The total Settlement Amount of \$95,000 is a result of the Prosecution Staff's negotiations with LADWP pursuant to Government Code section 11415.60 and Page 22 of the Enforcement Policy. Due to recent administrative considerations, staff costs are not being recovered as part of this settlement.

Section III: Stipulations

The Parties incorporate Paragraphs 1 through 13 by this reference, as if set forth fully herein, stipulate to entry of the Order set forth below ("Order"), and recommend that the Lahontan Water Board issue the Order to effectuate the settlement:

14. **Administrative Civil Liability:** LADWP hereby agrees to the imposition of an administrative civil liability totaling **\$95,000** as set forth in Paragraph 12 of Section II herein. Within thirty (30) days of the effective date of the Order, LADWP agrees to remit FORTY-THREE THOUSAND DOLLARS (\$43,000) by check, payable to the *State Water Pollution Cleanup and Abatement Account* and shall indicate on the check the number of the Order. LADWP shall send the original signed check to the State Water Resources Control Board, attention: Accounting, P.O. Box 100, Sacramento, CA 95812-0100, and shall send a copy to Lauri Kemper, Assistant Executive Officer, Lahontan Regional Water Quality Control Board, 2501 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150. The Parties further agree that the remaining \$52,000 of this administrative civil liability shall be suspended pending completion of a SEP as outlined in this Stipulation and the Order.

15. **Supplemental Environmental Project:** The Parties agree that \$52,000 of the stipulated administrative civil liability shall be suspended pending completion of the SEP described in this paragraph and Exhibit B.

a. SEP Definitions:

- i. "Designated Lahontan Water Board Representative" – the representative from the Lahontan Water Board responsible for oversight of the SEP. The contact information for this representative will be determined by the Lahontan Water Board Executive Officer and will be transmitted to LADWP.
- ii. "Implementing Party" – the independent third party with whom LADWP has contracted or otherwise engaged to implement the SEP.
- iii. "Milestone Requirement" - a requirement with an established time schedule for meeting/ascertaining certain identified measurement of completed work. Upon the timely and successful completion of each Milestone Requirement, an amount of liability will be permanently suspended or excused as set forth in the SEP Description below. Except for the final milestone, the amount of liability suspended for any portion of a SEP cannot exceed the projected costs of performing that portion of the SEP.

- iv. "SEP Completion Date" – The date in which the SEP will be completed in its entirety.
- b. **SEP Description:** LADWP will contribute \$52,000 ("SEP Amount") to the United States Forest Service ("USFS" or "Implementing Party) to complete four restoration projects (collectively referred to as the "SEP") in the Owens River watershed. The Parties agree that this Stipulation includes performance of these four Milestone Requirements:
- i. **Witcher Creek Stabilization Project:** The project will: stabilize the hydraulic grade of Witcher Creek and create areas for floodplain attenuation and meadow restoration; provide short term benefit to and protection of downstream properties from increased erosion and storm water runoff in the Round Valley Fire burn area (near Bishop, California); and provide longer term benefits to water quality by slowing flows, enhancing the wetland/meadow surrounding the creek, managing sediment loads, and increasing the potential for groundwater recharge. The project cost is \$30,000. Background information on the project and detailed implementation plans are provided in the SEP Proposal included herein as Exhibit B.
 - ii. **Round Valley Fire Area Seed Collection and Planting Project:** Native seeds and seedlings will be used to revegetate upland and riparian areas within the Round Valley Fire burn area. The project will provide short and long term benefits to water quality, habitat, and the public in general by using native vegetation to stabilize the areas impacted by the fire. The project cost is \$7,000. Background information on the project and detailed implementation plans are provided in the SEP Proposal included herein as Exhibit B.
 - iii. **Mammoth Creek Parking Area Vegetation Restoration Project:** Areas within the Owens River watershed are negatively affected by high vehicular traffic and recreation. The project will restore riparian lands and limit parking near the Mammoth Creek to a smaller existing disturbed area. The project cost is \$8,000. Background information on the project and detailed implementation plans are provided in the SEP Proposal included herein as Exhibit B.
 - iv. **Mammoth Creek Road Re-Route and Stream Stabilization Project:** The project will reduce point source sedimentation and increase water quality benefits by allowing riparian vegetation to reestablish. The project cost is \$7,000. Background information on the project and detailed implementation plans are provided in the SEP Proposal included herein as Exhibit B.
- c. **SEP Policy:** The SEP meets the qualification criteria as specified in the State Water Board's Policy on Supplemental Environmental Projects, February 3, 2009 ("SEP Policy"), as follows:

- i. Orders containing a SEP that exceeds 50 percent of the total adjusted monetary assessment, must be approved by the Director of the State Water Board, Office of Enforcement ("Director"). The SEP Amount exceeds 50 percent of the total adjusted monetary assessment by \$4,500. Consistent with the SEP Policy, the Lahontan Water Board notified the Director of LADWP's SEP Proposal. The notification detailed the proposed SEP, the reasons why the Lahontan Water Board accepts the SEP in lieu of monetary liability payment, and the exceptional circumstances that justify exceeding the recommended percentage limit. The Director approved the adjusted assessment, finding a compelling justification for the proposed SEP as provided in the Director of Office of Enforcement's Determination of Compelling Justification included herein as Exhibit C.
 - ii. The SEP is not otherwise required of LADWP by any rule or regulation of any federal, state, or local entity, and the SEP is not mitigation to offset the impacts of LADWP project(s).
 - iii. The SEP benefits ground water or surface water quality and beneficial uses of waters of the State because the SEP will provide watershed restoration in the Inyo National Forest within the Owens River watershed.
 - iv. The SEP meets the nexus criteria because the SEP reduces existing and future sediment discharges to surface waters. A strong geographic nexus also exists between the area impacted by the alleged violations and the benefits to beneficial uses the SEP will enhance.
 - v. The SEP does not directly benefit the Lahontan Water Board, its members, its staff, or family of members or staff.
- d. **SEP Completion Date:** The SEP shall be completed in its entirety no later than September 21, 2016 ("SEP Completion Date"). If other circumstances beyond the reasonable control of LADWP and/or the Implementing Party prevent completion of the SEP by that date, the Executive Officer, or the Executive Officer's designee, may extend the SEP Completion Date. LADWP must send its request for an extension in writing with the necessary justification to the Executive Officer.
- e. **Representations and Agreements:** LADWP understands that its promise to implement the SEP described herein and Exhibit B is a material condition of this Stipulation. LADWP represents: 1) it will fund the SEP Amount as described in this Stipulation; 2) it will provide certifications and written reports to the Lahontan Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP, and 3) it will guarantee implementation of the SEP by remaining liable for the SEP Amount in

accordance with Paragraph 15, subsections (k) and (l). LADWP agrees that the Lahontan Water Board has the right to require an audit of the funds expended by it to implement the SEP.

- f. **Publicity:** If LADWP or its agents or subcontractors or the Implementing Party publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the project is being, or has been, undertaken as part of the settlement of an enforcement action by the Lahontan Water Board against LADWP.
- g. **Progress Reports and Inspections:** LADWP and/or the Implementing Party shall permit inspection of the SEP by Lahontan Water Board staff or its third party oversight staff at any time without notice. LADWP and/or the Implementing Party shall provide quarterly progress reports as follows:

QUARTERLY PROGRESS REPORTS	DUE DATE
First Progress Report	February 1, 2016
Second Progress Report	June 1, 2016

- h. **Certification of Completion:** No later than 15 days after the SEP Completion Date, LADWP 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 and the State Water Resources Control Board's Division of Financial Assistance, and signed by a responsible official representing LADWP. The Certification of Completion shall include the following:
 - i. Certification that the SEP, including each Milestone Requirement, has been completed in accordance with the terms of this Stipulation including Exhibit B. 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 LADWP and/or the Implementing Party.
 - ii. Certification documenting the expenditures by LADWP and the Implementing Party during the completion period for the SEP. In making such certification, the officials may rely upon normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. LADWP shall provide any additional information requested by Lahontan Water Board

staff or its third party oversight staff that is reasonably necessary to verify SEP expenditures.

- iii. Certification, under penalty of perjury, that LADWP and/or Implementing Party followed all applicable environmental 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, and the Porter-Cologne Act. LADWP (or the Implementing Party on behalf of LADWP) shall, before the SEP implementation date, consult with other interested State agencies regarding potential impacts of the SEP. Other interested State agencies include, but are not limited to, the California Department of Fish and Wildlife. To ensure compliance with CEQA, where necessary, LADWP and/or the Implementing Party shall provide the Lahontan Water Board with the following documents from the lead agency;

1. Categorical or statutory exemption;
2. Negative Declaration if there are no "significant" impacts;
3. Mitigated Negative Declaration if there are potential "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts; or
4. Environmental Impact Report ("EIR") if there are "significant" impacts.

- i. **Third Party Audit:** If Lahontan Water Board staff obtains information that causes it to reasonably believe that LADWP or Implementing Party has not expended money in the amounts claimed by LADWP or Implementing Party, or has not adequately completed any of the work in the SEP, Lahontan Water Board staff may require, and LADWP shall submit, at its sole cost, a report prepared by an independent third party acceptable to Lahontan Water Board staff providing such party's professional opinion that LADWP and/or the Implementing Party has expended money in the amounts claimed by LADWP. In the event of such an audit, LADWP and the Implementing Party agree that they will provide the third-party auditor with access to all documents, excluding confidential and/or privileged documents, which the auditor requests. Such information shall be provided to Lahontan Water Board Staff within three months of the completion of LADWP's SEP obligations.
- j. **Lahontan Water Board Acceptance of Completed SEP:** Upon LADWP's satisfaction of its obligations under this Stipulation, the completion of the SEP, and any audits, Lahontan Water Board staff will issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of LADWP and/or the Implementing Party under this Stipulation.
- k. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP:** In the event that LADWP is not able to demonstrate to the reasonable satisfaction of Lahontan Water Board staff that it and/or the Implementing Party has spent the entire SEP Amount for the completed SEP,

LADWP shall pay the difference between the SEP Amount and the amount LADWP can demonstrate was actually spent on the SEP, as an administrative civil liability. Payment shall be made to the *State Water Pollution Cleanup and Abatement Account* in accordance with the procedures set forth in Paragraph 14 of Section III herein.

- I. **Failure to Complete the SEP:** If the SEP is not fully implemented within the SEP Completion Date required by this Stipulation or there has been a material failure to satisfy a Milestone Requirement, the Designated Lahontan Water Board Representative shall issue a "Notice of Violation." As a consequence, LADWP shall be liable to pay the entire suspended Administrative Civil Liability or some portion thereof less the value of the completion of any Milestone Requirements. Unless otherwise ordered, LADWP shall not be entitled to any credit, offset, or reimbursement from the Lahontan Water Board for expenditures made on the SEP prior to the date of the Notice of Violation by the Lahontan Water Board. The amount of the suspended liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Lahontan Water Board, or its delegee. Upon determination by the Lahontan Water Board, or its delegee, of the amount assessed for failure to fully implement the SEP, the amount assessed shall be paid within 30 days after the service of the Lahontan Water Board's determination. Payment shall be made to the *State Water Pollution Cleanup and Abatement Account* in accordance with the procedures set forth in Paragraph 14 of Section III herein. In addition, LADWP shall be liable for the Lahontan Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy LADWP's obligations to implement the SEP.

16. **Lahontan Water Board is Not Liable:** Neither the Lahontan Water Board members nor the Lahontan Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by LADWP, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and the Order, nor shall the Lahontan Water Board, its members or staff be held as parties to or guarantors of any contract entered into by LADWP, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

17. **LADWP's Covenant Not to Sue:** LADWP covenants not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to the alleged violations addressed by this Stipulation and the Order or the SEP.

18. **Compliance with Applicable Laws:** LADWP understands that payment of administrative civil liability in accordance with the terms of this Stipulation and the Order or compliance with the terms of this Stipulation and the Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged

herein may subject them to further enforcement, including additional administrative civil liability.

19. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

20. **Matters Addressed by Stipulation:** Upon adoption by the Lahontan Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein. The provisions of this Paragraph are expressly conditioned on the full payment of the stipulated penalty amounts, in accordance with Paragraph 14 and completion of the SEP as specified in Paragraph 15.

21. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Lahontan Regional Board to enforce any provision of this Stipulation shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Order. The failure of the Prosecution Staff or Lahontan Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulation.

22. **LADWP's Settling Denial of Liability:** In settling this matter, LADWP does not admit to any of the findings in this Stipulation or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance, provided, LADWP agrees that in the event of any future enforcement actions by the Lahontan Water Board, the Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385.

23. **Public Notice:** The Lahontan Water Board Assistant Executive Officer posted for public comment a Notice of Proposed Settlement for resolution of LADWP's alleged violations at the Settlement Amount on April 24, 2015, fulfilling the 30-day notice and comment period requirement for a proposed settlement of a State enforcement action. The Parties agree that this Stipulation and proposed Order, as signed by the Parties, will be noticed for at least 10-days prior to being presented to the Lahontan Water Board for adoption. If the Lahontan Water Board Assistant Executive Officer or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Stipulation to the Lahontan Water Board for adoption as an Order by settlement, the Parties agree to meet and confer concerning any such objections and comments, and may agree to revise or adjust the Stipulation as necessary or advisable under the circumstances. Alternatively, the Assistant Executive Officer may unilaterally declare this Stipulation void and decide not to present the Order to the Lahontan Water Board. LADWP agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

24. **Interpretation:** This Stipulation shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

25. **No Oral Modification:** This Stipulation shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved the Lahontan Water Board.

26. **Integration:** This Stipulation constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided herein.

27. **If the Stipulation Does Not Take Effect:** In the event that this Stipulation does not take effect because it is not approved by the Lahontan Water Board, or its delegate, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Lahontan Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive the following objections:

- a. Objections related to prejudice or bias of any of the Lahontan Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Lahontan Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

28. **Waiver of Hearing:** LADWP has been informed of the rights provided by California Water Code section 13323, subdivision (b), and hereby waives its right to an evidentiary hearing before the Lahontan Water Board prior to the adoption of the Order. This Stipulation and the Order will be heard as a settlement agreement before the Lahontan Water Board, but the hearing will not be an evidentiary hearing.

29. **Waiver of Right to Petition or Appeal:** LADWP hereby waives its right to petition the Lahontan Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to the California Superior Court and/or any California appellate level court.

30. **No Third Party Benefits:** Nothing in this Stipulation shall be deemed to create any rights in favor of, or to inure to the benefit of, any persons, who are not a signatory

to this Stipulation (third party), or to waive or release any defense or limitation against third party claims.

31. **Necessity for Written Approvals:** All approvals and decisions of the Lahontan Water Board under the terms of this Stipulation shall be communicated to LADWP in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Lahontan Water Board regarding submissions or notices shall be construed to relieve the LADWP of its obligation to obtain any final written approval required by this Stipulation or the Order.

32. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

33. **Authority of Executive Officer to Extend Due Dates:** The Executive Officer or the Executive Officer's delegee may extend any of the due dates in this Stipulation upon the joint request of the Parties. Such extensions must be in writing.

34. **Effective Date:** The obligations in this Stipulation are effective and binding only upon the entry of an Order by the Lahontan Water Board which incorporates the terms of this Stipulation.

35. **Severability:** This Stipulation is severable; should any provision be found invalid the remainder shall remain in full force and effect.

36. **Counterpart Signatories:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

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

By: 
Lauri Kemper
Assistant Executive Officer

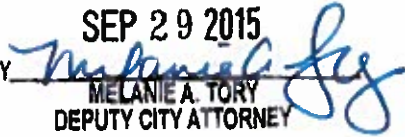
Date: October 5, 2015

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Los Angeles Department of Water and Power

By: 
Marcie Edwards
General Manager

APPROVED AS TO FORM AND LEGALITY
MICHAEL N. FEUER, CITY ATTORNEY

SEP 29 2015
BY 
MELANIE A. TORY
DEPUTY CITY ATTORNEY

Date: 10-2-15

Order of the Regional Water Board

37. This Order incorporates the foregoing Stipulation.


38. In accepting the foregoing Stipulation, the Lahontan Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385(e). The Lahontan Water Board's consideration of these factors is based upon information obtained by the Lahontan Water Board staff in investigating Violation Nos. 1 and 2 or otherwise provided to the Lahontan Water Board.

39. This is an action taken for the protection of the environment and to enforce the laws and regulations administered by the Lahontan Water Board. The Lahontan Water Board finds that issuance of this Order is exempt from the provisions of CEQA (Public Resources Code, sections 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061(b)(3), 15306, 15307, 15308, and 15321. This Order includes a work plan to implement a SEP in the Lahontan Region. To the extent this Order requires earth disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Lahontan Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Lahontan Water Board will conduct the necessary and appropriate environmental review prior to approval of the applicable plan. LADWP will bear the costs, including the Lahontan Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, LADWP and a consultant acceptable to the Lahontan Water Board shall enter into a memorandum of understanding with the board regarding such costs prior to undertaking any environmental review.

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


Patty Z. Kouyoumdjian
Executive Officer

Date: October 6, 2015

Exhibits:

- A. ACL Penalty Methodology
- B. SEP Proposal
- C. Director of Office of Enforcement's Determination of Compelling Justification

EXHIBIT A

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

EXHIBIT A

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

Lee Vining Creek Diversion Structure Unauthorized Discharges of Dredge and Fill Materials to Waters of the United States

There are two categories of violation, one involving multiple days of violation, resulting from Los Angeles Department of Water and Power's (LADWP) discharging dredge and fill materials to waters of the United States without a dredge/fill material discharge permit. The unauthorized discharges occurred as a result of LADWP's Lee Vining Creek Diversion Structure Project. The sources of information for the analysis, below, are Lahontan Water Board staff's observations during its September 18, 2014 site inspection, LADWP's Application for Clean Water Act section 401 Water Quality Certification (submitted November 7, 2014, after project completion), and the U.S. Army Corps of Engineers December 16, 2014 Nationwide Permit Verification.

Violation 1: **Water Code section 13376/Clean Water Act section 301** – LADWP discharged rock rip rap, concrete, and earthen materials below the ordinary high water mark (OHWM) of Lee Vining Creek, a water of the United States, without obtaining a dredge or fill material discharge permit and/or waste discharge permit from the Lahontan Water Board.

Violation 2: **Basin Plan Prohibition** – LADWP's work within Lee Vining Creek on September 18, 2014 caused between an approximately 300 - 500 percent increase in turbidity, which violates the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) prohibition against discharges that cause a narrative water quality objective to be exceeded. The Basin Plan establishes a narrative water quality objective for turbidity that limits increases in turbidity caused by projects and/or waste discharges to 10 percent above natural levels.

Lahontan Water Board staff has evidence that Violation No. 1 occurred on eight different days during the period beginning on September 12, 2014 and ending on October 25, 2014. Each day that an unauthorized discharge of dredged or fill materials occurred below the OHWM of Lee Vining Creek, including within portions of the diversion structure, represents an individual day of violation of Water Code section 13376 and/or Clean Water Act section 301. Lahontan Water Board staff has evidence that Violation No. 2 occurred on September 18, 2014, which represents a single day of a violation of the above-referenced Basin Plan prohibition. Each violation is independently subject to administrative civil liability of up to \$10,000 per day of violation, pursuant to Water Code 13385.

Following is the justification for the values inserted into the ACL Methodology Calculator (attached).

Violation 1a – Discharge without Dredge/Fill Permit (Water Code section 13376/Clean Water Act section 301): Rock Rip Rap (September 18, 2014)

Potential for Harm, Factor 1 – Harm or Potential Harm to Beneficial Uses:

The Basin Plan identifies the following beneficial uses for Lee Vining Creek:

Municipal and Domestic Supply	Agricultural Supply*
Groundwater Recharge	Freshwater Replenishment
Hydropower Generation	Water Contact Recreation
Non-Contact Water Recreation	Commercial and Sportfishing
Cold Freshwater Habitat	Wildlife Habitat
Spawning, Reproduction, and Development	

*Agricultural Supply is only identified for waters upstream of the diversion structure.

“**Minor (1)**” was selected due to the limited extent of waters and aquatic habitat affected by the unauthorized discharge of rock fill (80 cubic yards) below Lee Vining Creek’s OHWM. Lahontan Water Board staff did not observe any significant adverse effects during its September 18, 2014 inspection. However, placing the unwashed rock onto the creek bed has the potential to adversely affect several of Lee Vining Creek’s beneficial uses as identified above, and as discussed below.

- **Non-Contact Water Recreation (REC-2):** Dust blowing off the rock as it dropped into place indicates the rock was not washed prior to placement. The unwashed rock and disturbance to the creek bed subject to flow likely resulted in the observed and documented increase in turbidity. Increases in turbidity reduce water clarity. Many local residents and visitors enjoy viewing clear-flowing Sierra Nevada mountain creeks and streams, such as Lee Vining Creek. Reducing water clarity can adversely affect the aesthetic experience for those hiking or driving by waters they expect to be clear, and thus, adversely affect the REC-2 beneficial use. However, the increase in turbidity in this case was minor (field results: from 1 NTU to 5 NTU; lab results: from 0.28 NTU to 0.82 NTU), and likely had little effect on the REC-2 beneficial use due to the minor decrease in water clarity caused by placing rip rap within a flowing portion of Lee Vining Creek.
- **Commercial and Sportfishing (COMM):** Lahontan Water Board staff observed numerous fish (rainbow and brown trout inhabit Lee Vining Creek) in the project area during the September 18, 2014 inspection. There were no measures/structures in place to isolate project activities from flowing waters and the fish that Lahontan Water Board staff observed during the inspection. These conditions potentially exposed the fish that were in close proximity to the project site to injury and/or death. Fish injuries and/or mortality due to project activities would reduce fish populations and represent an adverse impact to the COMM beneficial use. Additionally, increases in turbidity levels can affect fish feeding behavior. Fish rely, in part, upon sight to locate food. When turbidity levels increase to the point of inhibiting a fish’s

ability to see its food, it also inhibits the fish's ability to see bait or a fishing lure. Therefore, activities such as placing unwashed rock in flowing waters has the potential to increase turbidity levels to the point of inhibiting a fish's ability to see bait or a lure, adversely affecting the COMM beneficial use.

The absence of any observations of fish injury, mortality, or diminished ability to see food sources, bait, or a lure during Lahontan Water Board staff's September 18, 2014 inspection does not mean that such adverse impacts failed to occur, nor does the lack of such observations diminish the potential for such harm. Such adverse impacts could have occurred before, during, or after Lahontan Water Board staff's inspection, but at a level that could not be or was not measured, quantified, or observed. The potential for such adverse impacts is low, given the limited area affected by rock rip rap placement, fish mobility during such activity remaining high, and the resulting turbidity levels, which remained low.

- **Cold Freshwater Habitat (COLD):** The cold freshwater habitat beneficial use includes, but is not limited to, preserving and enhancing aquatic habitats, vegetation, fish, and wildlife, including invertebrates. As discussed above, placing the rock rip rap within the flowing waters of Lee Vining Creek exposed the fish that Lahontan Water Board staff observed during the September 18, 2014 inspection to potential injury and/or mortality. Placing the rock below Lee Vining Creek's OHWM also potentially buried and destroyed invertebrate habitat. Aquatic invertebrates provide a food source to fish inhabiting Lee Vining Creek and destroying invertebrate habitat can adversely affect fish growth, health and survivability. Fish injury and/or mortality, and invertebrate habitat destruction with its potential impacts to fish growth, health, and survivability, all represent adverse impacts to the COLD beneficial use. The absence of any observations of fish injury, mortality, or damage and/or destruction of invertebrate habitat during Lahontan Water Board staff's September 18, 2014 inspection does not mean that such adverse impacts failed to occur, nor does the lack of such observations diminish the potential for such harm. Such adverse impacts could have occurred before, during, or after Lahontan Water Board staff's inspection, but at a level that could not be or was not measured, quantified, or observed. The potential for and extent of such impacts is low and limited, respectively, given the very limited area of Lee Vining Creek affected by rock rip rap placement.
- **Wildlife Habitat (WILD):** As discussed above, placing the rock below Lee Vining Creek's OHWM has the potential to destroy invertebrate habitat. In addition to fish, aquatic invertebrates provide food sources for other organisms, such as birds that inhabit or visit Lee Vining Creek and its surrounding habitat. Destroying invertebrate habitat by placing rock below Lee Vining Creek's OHWM has the ability to adversely affect a food source for birds and other animals; and therefore, represents an adverse impact upon the WILD beneficial use. However, such impact was likely minor given the limited extent of potential invertebrate habitat disturbed/destroyed by placing the rock rip rap below Lee Vining Creek's OHWM.

- **Spawning, Reproduction, and Development (SPWN):** Lee Vining Creek supports a trout fishery, including brown trout that spawn in the fall. Placing the rock rip rap below Lee Vining Creek's OHWM could have destroyed spawning habitat during or just prior to the brown trout spawning season. Additionally, the potential adverse impacts to invertebrate habitat and populations and their effect upon fish food sources can also affect early fish development. The absence of any observations of damage and/or destruction of spawning habitat and/or invertebrate habitat during Lahontan Water Board staff's September 18, 2014 inspection does not mean that such adverse impacts failed to occur, nor does the lack of such observations diminish the potential for such harm. Such adverse impacts could have occurred before, during, or after Lahontan Water Board staff's inspection, but at a level that could not be or was not measured, quantified, or observed. The potential for and extent of such impacts is low and limited, respectively, given the very limited area of Lee Vining Creek affected by rock rip rap placement.

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“**Moderate Risk (2)**” was selected due to the ability of rock rip rap and the fine sediment (dust) particles on the rock rip rap to smother spawning and invertebrate habitat. Aquatic invertebrate populations and fish eggs are not highly mobile and are therefore susceptible to the smothering characteristic of rock rip rap and fine sediment discharged into creek habitats. Adversely affecting these beneficial uses can lead to other beneficial uses, such as COMM, COLD, and WILD, being adversely impacted.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“**50 Percent or Greater (0)**” was selected, as more than 50 percent of the unauthorized rock fill and fine sediment (dust) is susceptible to cleanup (i.e., could be removed).

Potential for Harm, Factor 4 – Deviation from Requirement:

“**Major**” was selected as LADWP's actions resulted in an unauthorized discharge and rendered the requirement to obtain a dredge/fill permit and/or waste discharge permit prior to discharging dredge or fill materials and/or wastes to waters of the United States and the requirement to obtain 401 Water Quality Certification ineffective by disregarding the requirement, even though Lahontan Water Board staff repeatedly brought the issue to LADWP's attention. While LADWP staff explained reasons why it believed such a permit was not required, LADWP staff could not/would not provide Lahontan Water Board staff documentation confirming LADWP staff's position when requested to do so by Lahontan Water Board staff.

Additional Factor, Culpability:

“**1.4**” was selected, as it is clearly LADWP's responsibility to obtain all necessary permits for projects conducted on its facilities. Lahontan Water Board staff repeatedly

brought it to LADWP staff's attention that a 401 Water Quality Certification or other Lahontan Water Board permit was required for the project. In spite of Lahontan Water Board staff's repeated requests to either submit documentation supporting LADWP staff's initial position that a 401 Water Quality Certification was not required, or to submit an application for 401 Water Quality Certification, LADWP went forward with its project without doing either. Additionally, the U.S. Army Corps of Engineers (Army Corps) issued a Nationwide Permit Verification Letter, dated December 16, 2014, providing after-the-fact authorization for the project under Nationwide Permit (NWP) Nos. 13 and 33, indicating that a dredge/fill permit was actually required for the project triggering the requirement to also obtain 401 Water Quality Certification. Both NWPs required project applicants to obtain individual 401 Water Quality Certification from the Lahontan Water Board, as the State Water Board has not adopted a Technically Conditional 401 Water Quality Certification for these two permits, among others.

LADWP had enough time to submit documentation supporting its position, but did not. Given that the project was underway on September 18, 2014, despite LADWP staff statements on September 17, 2014 that no work other than biological surveys were underway, it may have been more difficult to submit an application for and to obtain 401 Water Quality Certification prior to beginning project construction. This set of circumstances lends support to the real possibility that LADWP willfully decided to proceed without obtaining all necessary permits. Therefore, LADWP failed to exercise ordinary care in conducting its in-stream work.

Additional Factor, Cleanup and Cooperation:

"1.5," the maximum value was selected given the lack of cooperation prior to and following the unauthorized discharge of rock fill into Lee Vining Creek, and the project in general. As discussed above, Lahontan Water Board staff repeatedly attempted to engage LADWP staff in an effort to ensure that LADWP had all necessary Lahontan Water Board permits. LADWP did not submit an application for 401 Water Quality Certification until November 7, 2014. This was 10 days following project completion on October 28, 2014, 43 days following Lahontan Water Board staff's September 25, 2014 Notice of Violation ordering LADWP to submit the application immediately, and 70 days following Lahontan Water Board staff's August 29, 2014 verbal notification to LADWP staff that a 401 Water Quality Certification was required for the project.

This failure to seek and obtain 401 Water Quality Certification also followed on-going discussions occurring for more than a year prior to the Lee Vining Creek Diversion Structure Project between Lahontan Water Board and LADWP staff regarding the Lahontan Water Board's 401 Water Quality Certification Program. Lahontan Water Board staff has clearly explained the types of project requiring 401 Water Quality Certification or other Lahontan Water Board permits during these discussions.

Additional Factor, History of Violations:

"1" was selected, as Lahontan Water Board staff has not been able to document similar

incidents, based upon a review of the California Integrated Water Quality System database.

Violation 1b - Discharge without Dredge/Fill Permit (Water Code section 13376/Clean Water Act section 301): Concrete (September 12, 2014, October 7, 2014, and October 20, 2014)

Potential for Harm, Factor 1 – Harm or Potential Harm to Beneficial Uses:

“**Minor (1)**” was selected based upon the lack of best management practices to isolate the areas for the new concrete low splash walls (10 cubic yards of concrete, September 12, 2014), weir walls (24 cubic yards of concrete, October 7, 2014), and downstream aprons (18 cubic yards of concrete, October 20, 2014), from creek flows during the concrete pours, and until the concrete could cure to the point it no longer presented a threatened waste discharge to Lee Vining Creek downstream of the diversion structure. The areas for the low splash walls, weir walls, and downstream aprons appear to be located within the diversion structure itself, but are also partially or totally located below Lee Vining Creek’s OHWM. **The lack of isolation measures increases the potential for concrete waste discharges from within the diversion structure to creek waters either upstream or downstream of the structure. However, the use of concrete forms helps reduce the potential for such discharges and associated harm to beneficial uses.**

Lahontan Water Board staff has greater concern regarding the September 12, 2014 and October 20, 2014 concrete pours for the low splash walls and downstream aprons, respectively. **Staff’s concerns regarding the September 12, 2014 concrete pour rise from the fact that the creek above and below the diversion structure had not been isolated from project activities on/within the diversion structure. The failure to isolate the project area from the flowing creek significantly increased the potential for a concrete discharge to creek waters. Lahontan Water Board staff’s concerns regarding the October 20, 2014 concrete pour rise from the absence of any statement within the Construction Supervisor’s Log regarding the location of the pour. The Construction Supervisor’s Log specifically states “not in streambed” for the September 12, 2014 pour, and states “within the structure” for the October 7, 2014 pour. There is no similar statement in the Construction Supervisor’s Log for the October 20, 2014 pour. A concrete discharge to the creek could have caused the same adverse impacts to the COMM, COLD, WILD, and SPWN beneficial uses, as discussed above. Such impacts would occur as a result of the smothering (fine particles) and potentially hazardous (high pH) characteristics of concrete, and would likely be greater in severity, than those associated with the unauthorized rock rip rap placement below Lee Vining Creek’s OHWM. The absence of Lahontan Water Board staff observations of concrete discharges to creek waters and/or habitat during its September 18, 2014 inspection does not diminish the potential for such discharges and their associated potential adverse impacts to beneficial uses. The potential for such harm is partially reduced since most, if not all, of the concrete pour activities occurred within the diversion structure, and the diversion structure had been isolated from creek flows by the time the October 20, 2014 pour occurred.**

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“Above Moderate Risk (3)” was selected due to concrete’s ability to more completely smother invertebrate and spawning habitat than rock rip rap, and concrete’s high pH levels. The fine particle characteristic of wet concrete creates a much greater threat to the COLD, WILD, and SPWN beneficial uses than the rock and dust particles discussed above. Concrete is able to more completely cover invertebrate and spawning habitat, compared to rock that has specific contact points with the creek bed. An even greater threat to COMM, COLD, and WILD beneficial uses is concrete’s high pH characteristic. Concrete could introduce waste with pH levels near or potentially exceeding hazardous waste designation levels, which creates a direct threat to the fish that Lahontan Water Board staff observed in very close proximity to project activities, and other aquatic organisms inhabiting Lee Vining Creek upstream and downstream of the diversion structure. A concrete discharge to the creek, depending upon the discharge volume and creek flow conditions, creates substantial concern regarding receptor protection.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“50 Percent or Greater (0)” was selected, as more than 50 percent of the unauthorized concrete fill is susceptible to cleanup (i.e., could be removed).

Potential for Harm, Factor 4 – Deviation from Requirement:

“Major” was selected for the same reason provided for Violation 1a, above.

Additional Factor, Culpability:

“1.4” was selected for the same reasons provided for Violation 1a, above.

Additional Factor, Cleanup and Cooperation:

“1.5,” the maximum value was selected for the same reasons provided for Violation 1a, above.

Additional Factor, History of Violations:

“1” was selected for the same reason provided for Violation 1a, above.

Violation 1c - Discharge without Dredge/Fill Permit (Water Code section 13376/Clean Water Act section 301): Concrete Blocks (September 19, 2014)

Potential for Harm, Factor 1 – Harm or Potential Harm to Beneficial Uses:

“Minor (1)” was selected due to the limited extent of waters and aquatic habitat (approximately 1,000 square feet) temporarily affected by the unauthorized placement

of concrete blocks immediately adjacent to the diversion structure's upstream apron, but below Lee Vining Creek's OHWM. Placing the concrete blocks on the creek bed to form the upstream coffer dam would have temporarily smothered any existing invertebrate and spawning habitat. Placing the concrete blocks on the creek bed would have also likely increased turbidity levels similar to those created by the September 18, 2014 unauthorized discharge of rock rip rap within Lee Vining Creek. Therefore, it is reasonable to expect that any adverse impacts to REC-2, COMM, COLD, WILD, and SPWN beneficial uses would have been similar to those potential impacts discussed for Violation 1a, above.

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“**Minor Risk (1)**” was selected for the same reason provide for Violation 1a, above. Cured concrete blocks do not present the same threat level to potential receptors that fresh concrete does. Cured concrete blocks would have characteristics more similar to the rock and fine dust particles discussed, above.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“**50 Percent or Greater (0)**” was selected, as 100 percent of the unauthorized concrete blocks placed below Lee Vining Creek's OHWM were removed.

Potential for Harm, Factor 4 – Deviation from Requirement:

“**Major**” was selected for the same reason provided for Violation 1a, above.

Additional Factor, Culpability:

“**1.4**” was selected for the same reasons provided for Violation 1a, above.

Additional Factor, Cleanup and Cooperation:

“**1.5,**” the maximum value was selected for the same reasons provided for Violation 1a, above.

Additional Factor, History of Violations:

“**1**” was selected for the same reason provided for Violation 1a, above.

Violation 1d - Discharge without Dredge/Fill Permit (Water Code section 13376/Clean Water Act section 301): Earthen Materials (September 19, 2014, September 25, 2014, October 21, 2014, and October 25, 2014)

“**Moderate (3)**” was selected due to the greater extent of waters and aquatic habitat affected by the unauthorized discharges of earthen materials below Lee Vining Creek's

OHWL, upstream and downstream of the diversion structure. On September 19, 2014, approximately 112 cubic yards of sediment that had accumulated on the diversion structures upstream apron was discharged into Lee Vining Creek, upstream of the concrete block coffer dam. The Army Corps' December 16, 2014 Nationwide Permit Verification indicates that the material was initially used to further support the upstream concrete block coffer dam, and then "was graded to the original contours of the stream channel" after the upstream coffer dam was removed. The upstream coffer dam was removed on October 25, 2014, according to the Construction Supervisor's Log.

On September 25, 2014, the downstream coffer dam was constructed, using 40.4 cubic yards of earthen materials. The coffer dam covered approximately 4,900 square feet of creek bed, according to the Army Corps' December 16, 2014 Nationwide Permit Verification. The material used to construct the downstream coffer dam was "adjacent streambed material," as identified by the Army Corps' December 16, 2014 Nationwide Permit Verification. LADWP's application is unclear regarding the source of the material used to construct the downstream coffer dam. On October 21, 2014, the downstream coffer dam was "regraded under water at the site" according to the Construction Supervisor's Log.

LADWP does not identify the creek area affected by each of these four unauthorized discharge events. Therefore, it is difficult, at best, to understand the areal extent of these discharges. However, it is likely that the amount of earthen material placed across a minimum of two locations below Lee Vining Creek's OHWL has had significant impacts to beneficial uses. The same five beneficial uses (REC-2, COMM, COLD, WILD, AND SPWN) discussed in Violation 1a, above, have been affected, but likely to a much more significant level than identified in Violation 1a, above, because of the type of material discharged.

- **Non-Contact Water Recreation (REC-2):** Redistributing 112 cubic yards of earthen material upstream of the diversion structure and 40.4 cubic yards of earthen material downstream of the diversion structure likely created significantly higher turbidity levels than those observed by Lahontan Water Board staff during its September 18, 2014 site inspection. Neither LADWP's application nor the Army Corps' Nationwide Permit Verification identify any measures taken to mitigate or reduce the effects of redistributing the earthen materials within the creek. The downstream coffer dam was removed prior to the upstream coffer dam, thus, removing any settling potential for suspended sediment generated by redistributing 112 cubic yards of earthen material upstream of the diversion structure. Anticipated turbidity levels generated by such activities would have definitely been noticed by anyone hiking or driving adjacent to Lee Vining Creek below the diversion structure. The adverse impact to the REC-2 beneficial use would have been significantly greater than that associated with placing the 80 cubic yards of unwashed rock into Lee Vining Creek.
- **Commercial and Sportfishing (COMM):** The potential for adverse impacts to the fish that Lahontan Water Board staff observed during its September 18, 2014

inspection is significantly greater during earthen fill discharge and redistribution events than those associated with the conditions discussed in Violation 1a, above. The amount of earthen materials discharged into Lee Vining Creek and then "regraded under water" likely created turbidity levels that would have adversely affected fish's ability to see bait or a lure. The suspended sediment concentrations could have been high enough to cause fish tissue damage. Fish could have also been injured or killed during the actual discharge or regrading of the earthen materials. There is a significant potential that the unauthorized earthen materials discharges had such effects upon fish species in the area, which represents at a minimum, a moderate adverse impact to the COMM beneficial use. It is unknown how long such impacts would persist.

- **Cold Freshwater Habitat (COLD):** As discussed in Violation 1a, above, the COLD beneficial use includes, but is not limited to, preserving and enhancing aquatic habitats, vegetation, fish, and wildlife, including invertebrates. Discharging the quantities of earthen materials associated with the upstream apron and downstream coffer dam, and then regrading the material likely resulted in a significant amount of creek bed disturbance and damage. Invertebrate habitat was undoubtedly disturbed and subsequently buried. Over time, invertebrates will recolonize these areas, but a food source for fish has likely been temporarily reduced by the unauthorized earthen material discharges to Lee Vining Creek. The likely reduction in food source may have adversely affected fish growth, health, and survivability as Lee Vining Creek fish populations were preparing for winter conditions. Fish injury and/or mortality, and invertebrate habitat destruction with its potential impacts to fish growth, health, and survivability, all represent adverse impacts to the COLD beneficial use. It is likely that adverse impacts to the COLD beneficial use occurred as a result of the unauthorized earthen material discharges to Lee Vining Creek. Such impacts likely occurred on a localized level for an unknown time period.
- **Wildlife Habitat (WLD):** As discussed above, discharging and redistributing earthen materials below Lee Vining Creek's OHWM likely destroyed invertebrate habitat. In addition to fish, aquatic invertebrates provide food sources for other organisms, such as birds that inhabit or visit Lee Vining Creek and its surrounding habitat. Destroying invertebrate habitat by discharging and grading earthen materials below Lee Vining Creek's OHWM likely adversely affected a food source for birds and other animals; as they were preparing for winter conditions. Such conditions represent at a minimum, a moderate adverse impact upon the WILD beneficial use, given the strong probability of resource damage over a significant area resulting from the unauthorized earthen material discharges.
- **Spawning, Reproduction, and Development (SPWN):** Lee Vining Creek supports a trout fishery, including brown trout that spawn in the fall. The creek bed disturbance associated with the unauthorized earthen material discharges would have likely destroyed any existing brown trout redds and the eggs that would have been in them. The discharge activities would have also likely disrupted any spawning activity in the creek near the diversion structure. Additionally, the potential

adverse impacts to invertebrate habitat and populations and their effect upon fish food sources can also affect early fish development. These are likely effects associated with the unauthorized earthen material discharges and represent, at a minimum, moderate adverse impacts to the SPWN beneficial use. It is unknown what the long-time, if any, impacts will be to the spawning, reproduction, and early development of the brown trout and other fish species near the project area.

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“**Moderate Risk (2)**” was selected due the smothering characteristic the earthen materials can have on invertebrate populations and spawning habitat. Aquatic invertebrate populations and fish eggs are not highly mobile and are therefore susceptible to the smothering characteristic of creek bed and other earthen materials discharged into creek habitats.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“**50 Percent or Greater (0)**” was selected, as more than 50 percent of the unauthorized earthen material fill (dust) was susceptible to cleanup prior to the December 2014 storm events (i.e., could be removed).

Potential for Harm, Factor 4 – Deviation from Requirement:

“**Major**” was selected for the same reason provided for Violation 1a, above.

Additional Factor, Culpability:

“**1.4**” was selected for the same reasons provided for Violation 1a, above.

Additional Factor, Cleanup and Cooperation:

“**1.5,**” the maximum value was selected for the same reasons provided for Violation 1a, above.

Additional Factor, History of Violations:

“**1**” was selected for the same reason provided for Violation 1a, above.

Violation 2 – Violation of a Basin Plan Prohibition (September 18, 2014)

Potential for Harm, Factor 1 – Harm or Potential Harm to Beneficial Uses:

“**Minor (1)**” was selected given the low levels of turbidity. Based upon field data, the turbidity increased from 1 NTU to 5 NTU, comparing sampling results from upstream

and downstream of the project area. While this represents a 500 percent increase with the potential for harm (water quality objective limits increases to 10 percent), 5 NTU does not present an appreciable harm to beneficial uses given its low level and limited period.

Potential for Harm, Factor 2 – The Physical, Chemical, Biological or Thermal Characteristics of the Discharge:

“Minor Risk (1)” was selected due to the ability of fine sediment to smother spawning and invertebrate habitat. The fine sediment on the unwashed rock placed within the creek and the fine creek bed sediment that was likely re-suspended during the unauthorized rock placement have the ability to smother creek bed habitat further downstream. As discussed above, COLD, WILD, and SPWN beneficial uses can all be adversely affected by the fine sediment’s smothering (physical) characteristic. However, the unauthorized rock fill discharge poses only a minor threat to potential receptors given the limited area affected and limited amount of rock placed below Lee Vining Creek’s OHWM.

Potential for Harm, Factor 3 – Susceptibility to Cleanup or Abatement:

“1” was selected, as none of the re-suspended creekbed sediments nor the fine sediment on the rock being placed into the creek was susceptible to cleanup or abatement.

Potential for Harm, Factor 4 – Deviation from Requirement:

“Major” was selected as LADWP’s actions rendered the requirement to comply with the Basin Plan prohibition ineffective by disregarding the requirement. LADWP failed to take any steps, such as isolating the work area for rock slope protection from flowing waters or washing the rock to remove fine sediment and prevent it from being discharged to the creek. It is fortunate that the impact of LADWP’s failures were minor during Lahontan Water Board staff’s inspection; however, the lack of impact does not decrease LADWP’s disregard of the Lahontan Water Board’s Basin Plan prohibition.

Additional Factor, Culpability:

“1.3” was selected. LADWP is clearly responsible for implementing measures to maintain compliance with the Lahontan Water Board’s regulations and standards, with or without proper permits in hand. To that end, LADWP did provide a list of best management practices to be used during the project. Cofferdams and a temporary diversion around the work area to prevent the discharge of silt was identified for this project, but not implemented when LADWP was placing rock into the creek. LADWP’s Water Operations Labor Supervisor, Mr. Lee Powell, discussed with Lahontan Water Board staff plans to install two coffer dams and to isolate the work area from creek flows, but doing so was scheduled for the following week and prior to removing accumulated sediment on the upstream side of the diversion structure. Concrete repair

work was also to occur following installation of the coffer dam system; however, Lahontan Water Board staff observed during its inspection that concrete repair work had already started without the coffer dams in place. The failure to install identified measures intended to isolate the work area from creek flows could have been an oversight or scheduling error, rather than an intentional act to avoid the challenges and efforts to do so. As stated, above, LADWP staff intended to install the coffer dams the following week. Therefore, 1.3 was selected to reflect LADWP's known responsibility to comply with the Lahontan Water Board's regulations and standards, but delayed BMP implementation leading to the violation.

Additional Factor, Cleanup and Cooperation:

"1.5," the maximum value was selected given the lack of cooperation prior to the project in general, which likely contributed to the violation. Lahontan Water Board staff would have emphasized the need to isolate the project area during the entire project period, in addition to washing the rock prior to placement. Implementing these and other measures would have likely been made conditions of approval.

Additional Factor, History of Violations:

"1" was selected, as Lahontan Water Board staff has not been able to document similar incidents, based upon a review of the California Integrated Water Quality System database.

Determination of Total Base Liability Amount:

The Total Base Liability Amount is determined by adjusting the initial liability amount by the adjustment factors analyzed above. The Total Base Liability Amount for Violation Nos. 1 and 2 is \$118,942.29. The attached ACL Methodology Calculator explains this calculation in greater detail.

Ability to Pay:

No adjustment was made, as LADWP has the ability through its rate structure to pay the Total Base Liability Amount of \$118,942.29.

Economic Benefit:

LADWP to date has realized, at a minimum, a \$294 economic benefit. This is the difference between the 401 Water Quality Certification fee due (\$1,391) and the amount (\$1,097) LADWP submitted with its 401 Water Quality Certification application. This represents the minimum economic benefit realized by LADWP. Lahontan Water Board staff may have required additional mitigation measures if the project had been properly permitted.

Maximum and Minimum Liability Amounts:

A person who violates Water Code section 13376, a Basin Plan prohibition, or a requirement of Clean Water Act section 301, shall be liable civilly in accordance with Water Code section 13385. The maximum liability the Lahontan Water Board may assess pursuant to Water Code section 13385(c) is ten dollars (\$10) per gallon discharged but not cleaned up minus the first 1,000 gallons plus ten thousand dollars (\$10,000) for each day in which the violation occurs. Therefore, the maximum liability the Lahontan Water Board may assess for Violation Nos. 1 and 2 is \$569,360.

Water Code section 13385(e) establishes the derived economic benefit as a minimum liability. The Enforcement Policy further requires that:

The adjusted Total Base Liability shall be at least 10 percent higher than the Economic Benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

Therefore, the Minimum Liability Amount for Violation Nos. 1 and 2 is \$323.40.

The attached ACL Methodology Calculator explains the above calculations in greater detail.

Final Liability Amount:

The total calculated civil liability amount in this matter is \$118,942.29. The attached ACL Methodology Calculator explains this calculation in greater detail.

Instructions:
 1. Select Potential Items for Discharge Violations
 2. Select Characteristics of the Discharge
 3. Select Susceptibility Classifications
 4. Select Decision from Standard
 5. Click "Examine Item & per Callout/Day"
 6. Enter Values into the Values Highlighted Fields.

Select Item 1 = None
 Select Item 2 = Discharge (penalty given above violation)
 Select Item 3 = 25% of Discharge (penalty given above violation)
 Select Item 4 = 50% of Discharge (penalty given above violation)
 Select Item 5 = 75% of Discharge (penalty given above violation)
 Select Item 6 = 100% of Discharge (penalty given above violation)

Select Item 1 = None
 Select Item 2 = Discharge (penalty given above violation)
 Select Item 3 = 25% of Discharge (penalty given above violation)
 Select Item 4 = 50% of Discharge (penalty given above violation)
 Select Item 5 = 75% of Discharge (penalty given above violation)
 Select Item 6 = 100% of Discharge (penalty given above violation)

Select Item 1 = None
 Select Item 2 = Discharge (penalty given above violation)
 Select Item 3 = 25% of Discharge (penalty given above violation)
 Select Item 4 = 50% of Discharge (penalty given above violation)
 Select Item 5 = 75% of Discharge (penalty given above violation)
 Select Item 6 = 100% of Discharge (penalty given above violation)

Select Item 1 = None
 Select Item 2 = Discharge (penalty given above violation)
 Select Item 3 = 25% of Discharge (penalty given above violation)
 Select Item 4 = 50% of Discharge (penalty given above violation)
 Select Item 5 = 75% of Discharge (penalty given above violation)
 Select Item 6 = 100% of Discharge (penalty given above violation)

Discharge Name(s)	Violation 1a-CWC 33278	Violation 1b-CWC 33278	Violation 1c-CWC 33278	Violation 1d-CWC 33278	Violation 1e-CWC 33278
Step 1 Potential Item Factor (Characteristics Item)	1.000	1.000	1.000	1.000	1.000
Step 2 Per Gallon Factor (Characteristics Item)	15.000	15.000	15.000	15.000	15.000
Step 3 Per Day Factor (Characteristics Item)	3.251	3.251	3.251	3.251	3.251
Step 4 Total Days Multiple Day Violation Reduction	1.4	1.4	1.4	1.4	1.4
Step 5 Initial Amount of the AQL	3,431.40	3,431.40	3,431.40	3,431.40	3,431.40
Step 6 Culmity	4,803.98	4,803.98	4,803.98	4,803.98	4,803.98
Step 7 Other Factors as Justice May Require	1.5	1.5	1.5	1.5	1.5
Step 8 Minimum Liability Amount	171,270.00	171,270.00	171,270.00	171,270.00	171,270.00
Step 9 Maximum Liability Amount	7,226.94	7,226.94	7,226.94	7,226.94	7,226.94
Step 10 Final Liability Amount	118,942.28	118,942.28	118,942.28	118,942.28	118,942.28

Penalty Day Range Generator

Start Date of Violation: 9/18/14
 End Date of Violation: 9/18/14
 Maximum Days From (Steps 2 & 3): 1
 Minimum Days From (Steps 2 & 3): 1
 Days: 1
 Days: 1

Select Item	W-9-Minor
Select Item	U-2-Changed Employment Status, Full
Select Item	S-0-Of-Charge-Responsible-Change-of
Select Item	Minor

Select Item	0-6-0-0-0-0-0-0-0-0-0-0-0-0-0-0
Select Item	U-2-Changed Employment Status, Full
Select Item	S-0-Of-Charge-Responsible-Change-of
Select Item	Minor

Select Item	0-6-0-0-0-0-0-0-0-0-0-0-0-0-0-0
Select Item	U-2-Changed Employment Status, Full
Select Item	S-0-Of-Charge-Responsible-Change-of
Select Item	Minor

Select Item	0-6-0-0-0-0-0-0-0-0-0-0-0-0-0-0
Select Item	U-2-Changed Employment Status, Full
Select Item	S-0-Of-Charge-Responsible-Change-of
Select Item	Minor

Select Item	0-6-0-0-0-0-0-0-0-0-0-0-0-0-0-0
Select Item	U-2-Changed Employment Status, Full
Select Item	S-0-Of-Charge-Responsible-Change-of
Select Item	Minor

Select Item	0-6-0-0-0-0-0-0-0-0-0-0-0-0-0-0
Select Item	U-2-Changed Employment Status, Full
Select Item	S-0-Of-Charge-Responsible-Change-of
Select Item	Minor

	Worksheet 7	Worksheet 8	Worksheet 9	Worksheet 10
Worksheet 2-Change Profitation				
10,000				
180,00				
110,00				
200,00				
200,00				
10,000.00				

EXHIBIT B
SEP PROPOSAL

Los Angeles



Department of Water & Power

ERIC GARCETTI
Mayor

Commission
MEL LEVINE, *President*
WILLIAM W. FUNDERBURK JR., *Vice President*
JILL BANKS BARAD
MICHAEL F. FLEMING
CHRISTINA E. NOONAN
BARBARA E. MOSCHOS, *Secretary*

MARCIE L. EDWARDS
General Manager

June 25, 2015

Mr. Scott Ferguson
Enforcement Officer
Lahontan Region
California Regional Water Quality Control Board
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Attention: Ms. Lauri Kemper, Lahontan Region Assistant Executive Officer

Dear Mr. Ferguson:

Subject: Detailed Supplemental Environmental Project for the Lee Vining Settlement

Please find enclosed the detailed Supplemental Environmental Project (SEP) for the Lee Vining settlement (Exhibit A) for your final review and approval. At the request of the Lahontan Regional Water Quality Board Members (Board) at the Board meeting held on June 11, 2015, the Lahontan Regional Water Quality Board staff (LahRWQCB) and the Los Angeles Department of Water and Power (LADWP) met via a phone conversation on June 19, 2015, to further discuss possible local Supplemental Environmental Projects (SEP).

After review and further evaluation of local projects, it was mutually agreed that the list of projects presented by the United States Forest Service (USFS) provided immediate benefits to the local community and met the requirements of the SEP policy.

The proposed SEP is intended to fund activities that are currently shovel ready and will benefit local areas within the Owens Valley. The projects include removal of debris and stabilization of gabions in the Witcher Creek, which were impacted by the Round Valley fire, seed collection and planting in fire areas, particularly where there is off-highway vehicle traffic, and restoration of vegetation in highly trafficked areas in and around Mammoth Creek.

Los Angeles Aqueduct Centennial Celebrating 100 Years of Water 1913-2013

111 N. Hope Street, Los Angeles, California 90012-2607 Mailing address: Box 51111, Los Angeles, CA 90051-5700
Telephone: (213) 367-4211 www.LADWP.com

Mr. Scott Ferguson

Page 2

June 25, 2015

We appreciate working with you and your staff and look forward to continuing our collaborative relationship.

If you have any questions regarding this SEP, please feel free to contact Ms. Katherine Rubin, Manager of Wastewater Quality and Compliance at (213) 367-0436.

Sincerely,



Mark J. Sedlacek
Director, Environmental Affairs

KR:rs

Enclosure

c/enc: Ms. Mayumi Okamoto, Legal Counsel, SWRCB
Mr. Paul D. Ciccarelli, Legal Counsel, SWRCB
Ms. Lauri Kemper, LahRWQCB
Ms. Patrice Copeland, LahRWQCB
Ms. Jan Zimmerman, LahRWQCB
Mr. Todd Ellsworth, USFS
Mr. Louis Molina, Mono County
Ms. Julie Riley, Legal Counsel, LADWP
Ms. Michelle Lyman, Legal Counsel, LADWP
Ms. Melanie Tory, Legal Counsel, LADWP
Ms. Nancy Sutley, LADWP
Mr. Jim Yannotta, LADWP
Ms. Katherine Rubin, LADWP

1. Description of the SEP

LADWP proposes to contribute \$52,000 dollars to the United States Forest Service ("USFS"), the implementing Party, for the following projects located in the Owens Watershed:

- a. Witcher Creek Gabion Stabilization;
- b. Round Valley Fire Area Seed Collection and Planting;
- c. Mammoth Creek Parking Area Vegetation Restoration; and
- d. Mammoth Creek Road Re-Route and Stream Stabilization.

The projects will assist with USFS' restoration and erosion stabilization efforts in the Round Valley Fire areas. In addition, the projects will enhance the implementation of erosion control measures, thereby lessening impacts and restoring beneficial uses to the drainage areas.

2. Background

On February 6, 2015, a wind-driven fire broke out in Round Valley, near the border of Inyo and Mono Counties in the Paradise and Swall Meadows neighborhoods. The fire burned approximately 7,000 acres, damaged several homes and outbuildings, and destroyed trees, bushes, and other vegetation as it swept along nearby creeks and ditches. Swall Meadows is home to the migrating mule deer, is the predominant pinyon-juniper sagebrush habitat, and contains several permanent and seasonal streams. The eponymous meadow has wetter-habitat vegetation such as Jeffrey pines, willows, stream and bog orchids, and remnant trees from old commercial apple orchards. There is an easement in the Swall Meadows that secures a 104 acre meadow area to protect and benefit the migrating mule deer.

The projects included in the SEP will benefit the entire Watershed area by reducing erosion debris that would otherwise be flushed into surface water runoff created by storm events and by re-vegetating areas that are critical for the mule deer. In addition, the projects will assist in the restoration of the beneficial uses of drainage areas.

3. Project Overviews

a. Witcher Creek Gabion Stabilization

The Round Valley Fire burned in and around Witcher Creek. As a result, gabion structures that stabilized the creek and provided erosion control were damaged. Gabions are also used for fish screens within a small stream, and can be configured as stepped weirs for flood control and energy dissipation within a creek. The USFS has determined that the gabions must be rehabilitated, and in some cases enhanced, to function properly.

This project will cost approximately \$30,000.

b. Round Valley Fire Area Seed Collection and Planting

Vegetated areas within the fire area have been damaged and are vulnerable to off-highway vehicle traffic. The USFS has determined that these areas should be reseeded to limit the growth of cheat grass and other invasive plants.

This project will cost approximately \$7,000.

c. Mammoth Creek Parking Area Vegetation Restoration

Within the Owens Watershed, there are areas where there is high vehicular traffic and recreation that need restoration. Road 04S102B is located east of old Highway 395 adjacent to Mammoth Creek. This area is highly popular for local residences to park and recreate around Mammoth Creek. It has expanded to the point of impacting Mammoth Creek and associated riparian vegetation. The area has a parking lot that needs restoration to prevent vehicles from parking outside of the designated area and onto vegetation. The soil bordering the parking area will also be restored to promote infiltration. This project will reduce sedimentation into Mammoth Creek and increase the riparian vegetation along the Creek.

This project will cost approximately \$8,000.

d. Mammoth Creek Road Re-Route and Stream Stabilization

Erosion has caused the diversion of Mammoth Creek onto a dirt road (Road #03S09) that is frequently used. The affected area now conveys the majority of stream flow for about 150 feet. The affected road section is now the main stream channel and carries the bulk of the flow in Mammoth Creek. Travel by motorized vehicles on this section is hazardous when peak flows occur, and during base flows the channel is impacted when vehicles travel up or down the channel. Over time, stream flows have eroded the steep bank on the north end where the road leaves the channel and the stream makes an abrupt turn to the east. USFS placed a gate on the northern entry to keep motorists from attempting to drive on the flooded road section. Since the gate was installed, vehicle users have created an unauthorized trail by-pass (about 350 feet long) around the flooded road section and gate into riparian vegetation and across Murphy Gulch. Murphy Gulch is usually a dry channel except in years of heavy snow runoff or from large rain events. Riparian vegetation and soil erosion impacts have occurred as a result of the unauthorized route. On the southern entry to the creek, about 2,000 square feet of riparian vegetation consisting of willow and wild rose has been removed as a result of vehicle impacts. Further, the stream continues to erode the bank along the road bed because it makes a sharp bend onto the road and there is high shear stress on the bank. Stream bank erosion and riparian vegetation impacts have increased over the years and the site is in a downward trend in terms of stability.

This project will utilize the footprint of the existing unauthorized route as much as possible to create a new section of road. This will minimize impacts to existing soil and riparian vegetation, and also address the erosion concern. Once completed, mulch bare soil area with local materials (duff, slash, branches, brush and rock) to protect soil from erosion and retain soil moisture to aid in vegetative recovery.

This project will cost approximately \$7,000.

For more detailed information on the above projects, please refer to Attachment 1.

4. Project Goals and Water Quality Benefits of the SEP

Water quality and soil productivity are at risk in the aftermath of a fire. Due to the loss of native vegetative cover, larger volumes of water are allowed to runoff across bare soils with increased velocity, causing erosion and water quality issues in the drainage areas within the fire areas and downstream. In addition, as a result of the fire, water repellency is increased of varying degrees, reducing water infiltration and increasing runoff. Loss of soil and vegetation results in a loss of water control, increasing the risk of flooding and debris flow downstream, which in turn impacts water quality. In addition, if re-seeding of native vegetation is not done, invasive species are allowed to grow and take over which impacts critical food sources for the wildlife such as the migrating mule deer. The SEP addresses some of the critical erosion, sediment, and vegetation problems in the Owens Watershed, and will repair and enhance the beneficial uses for existing habitat and recreational purposes.

5. Public Benefits of the SEP

The residents and visitors of the community will benefit from the projects by protecting water quality and restoring drainage areas. The projects also will enhance the habitat for wildlife and better support the migrating mule deer.

6. Key Personnel Involved in the Projects

Todd Ellsworth Project Manager, USFS
American Conservation Experience
Federal Highways

7. Financing the SEP

LADWP and USFS intend to enter into a memorandum of understanding, under which LADWP will agree to pay USFS the SEP amount of \$52,000, and USFS will agree to complete the aforementioned projects in the manner, and within the time period, shown below and/or prescribed by the Lahontan Regional Water Quality Control Board.

8. Project Implementation and Completion Deadlines

Implementation and completion deadlines are as follows:

- a. Witcher Creek Gabion stabilization – Evaluations are on-going currently
Proposed Start implementation - Fall 2015,
Proposed Completion - end of November 2015
- b. Seed Collection and Planting
Start implementation - Fall 2015 and on going to Spring 2016, as needed.
Planting native grasses and bitter brush.
- c. Mammoth Creek Parking area

Start implementation – September 2015
Revegetation to begin late October – duration 1 – 2 weeks seeding uplands,
grasses, sagebrush. In riparian areas planting willow cuttings and aspen trees
Completion – October 2015
- d. Mammoth Creek Road Re-routing
Start implementation – September 2015
Revegetation on creek to include willows
Completion – November 2015

9. Maintenance Plan Beyond the SEP-funded Period

The SEP will not require maintenance by LADWP beyond the project period.

Supplement Environmental Project (SEP)
Los Angeles Department of Water and Power

1. Witcher Creek Gabion stabilization

- a. Witcher Creek burned in the Round Fire. Old gabion structures were discovered east of road 04S54 in Witcher Creek. The gabions are in need of maintenance and in some cases enhancement. The Forest plans on evaluating the needs in the very near future and completing the necessary environmental documentation based on the inventory and needs.

Based on the United State Forest Service (USFS) preliminary assessment this project could cost up to \$30,000. It is anticipated that this project will be implemented fall of 2015 and/or summer 2016. Partnerships include American Conservation Experience (ACE).

2. Round Valley Fire Area Seed Collection and planting

- a. USFS will contract seed collection of various species that occur in the fire area. The nursery at White Mountain Research station would grow the seedlings for planting next spring. The nursery has a limited number of plants that the USFS can plant this fall. Planting will occur in areas vulnerable to Off-Highway Vehicle (OHV) traffic to limit cheat grass or other invasive plants and areas of critical deer winter range (bitterbrush).

This project could cost up to \$7,000. The Eastern Sierra Land Trust is interested in partnering with the USFS to re-establish critical native vegetation in the fire area. The USFS will implement this project fall of 2015 and potentially spring 2016.

3. Mammoth Creek Parking area

Background:

The road (04S102B) is located east of old Highway 395 adjacent to Mammoth Creek. This area is highly popular for local residences to park and recreate around Mammoth Creek. It has expanded to the point of impacting Mammoth Creek and associated riparian vegetation. 04S102B was designated as a route in the 2009 Travel Management Environmental Impact Statement (EIS), subsequently the need for restoration action in the expanded areas of the route was identified in the Upper Owens/Bishop Creek Unauthorized Route Restoration Categorical Exclusion (CE) in 2014.

This project will reduce sedimentation into Mammoth Creek and increase the riparian vegetation along the Creek.

This project is in partnership with Federal Highways, and others. This project would cost \$8,000 (Partnership funds will be used for the remainder of the cost).

Supplement Environmental Project (SEP)
 Los Angeles Department of Water and Power


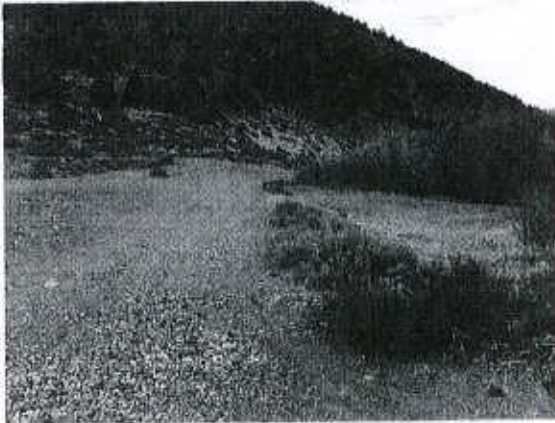
The USFS has developed the following actions and treatments for this project:

1. Narrow and define parking area


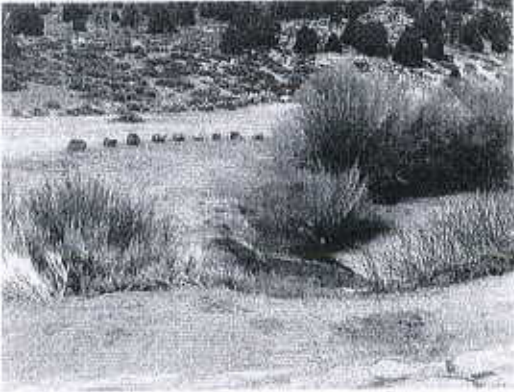
- Subsoil compacted areas to allow for infiltration and reduce runoff into Mammoth Creek. Place boulders to narrow the footprint of the parking area allowing for adequate parking. Once completed, mulch bare soil area with local materials (duff, slash, branches, brush and rock) to protect soil from erosion and retain soil moisture to aid in vegetative recovery.
- Place restoration signs to inform public about the project and prevent trespass.

2. Stabilize stream banks:

- Place large boulders defining the parking areas to prevent vehicle traffic from entering the channel.
- Transplant willow cuttings from nearby plants within wetted soil perimeter of the creek. Re-vegetation of the bank with willow or other local riparian species to aid with stabilization and restoration.

	
<p>Caption: Area proposed for narrowing and subsoiling. Access to the gauging station will remain.</p>	<p>Caption: Project area looking east. Mammoth Creek is in the right hand part of the picture.</p>

Supplement Environmental Project (SEP)
Los Angeles Department of Water and Power

	
<p>Caption: Project area looking west.</p>	<p>Caption: Project area looking from old Hwy. 395 to the North East. Willow plantings in bare areas along Mammoth Creek</p>

4. Mammoth Creek Road Re-Route and Stream Stabilization Project

Background and Existing Condition:

Mammoth Creek Road (Road #03S09) is located along Mammoth Creek between Highway 395 to the north east and Old Mammoth Road in the Town of Mammoth Lakes to the southwest. A section of the road near the Murphy Gulch / Mammoth Creek confluence has been damaged due to Mammoth Creek being diverted onto the road, channeling the majority of stream flow onto the road for approximately 150 feet. The affected road section is now the main stream channel and carries the bulk of the flow in Mammoth Creek. Travel by motorized vehicles on this section is hazardous when peak flows occur, and during base flows the channel is impacted when vehicles travel up or down the channel. Over time, stream flows have eroded the steep bank on the north end where the road leaves the channel and the stream makes an abrupt turn to the east. A gate was placed by the Forest Service on the northern entry to keep motorists from attempting to drive on the flooded road section.

Since the gate was installed, vehicle users have created an unauthorized trail by-pass (about 350 feet long) around the flooded road section and gate into riparian vegetation and across Murphy Gulch (see attached map). Murphy Gulch is usually a dry channel except in years of heavy snow runoff or from large rain events. Riparian vegetation and soil erosion impacts have occurred as a result of the unauthorized route. On the southern entry to the creek, about 2,000 square feet of riparian vegetation consisting of willow and wild rose has been removed as a result of vehicle impacts. Further, the stream continues to erode the bank along the road bed because it makes a sharp bend

Supplement Environmental Project (SEP)
Los Angeles Department of Water and Power

onto the road and there is high shear stress on the bank. Stream bank erosion and riparian vegetation impacts have increased over the years and the site is in a downward trend in terms of stability.

This project is in partnership with Caltrout, Federal Highways and others. Cost of this project would be \$7,000 (Partnership funds will be used for the remainder of project costs).



Proposed Treatments:

The USFS developed the following actions and treatments to address the needs:

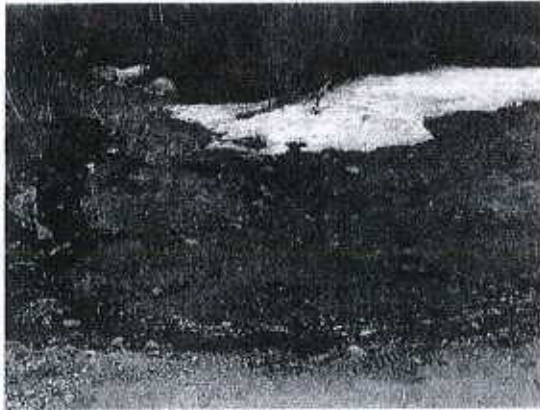
3. Create a re-route of Mammoth Creek road:
 - a. Utilize the footprint of the existing unauthorized route as much as possible to minimize impacts to existing soil and riparian vegetation. The route will be moved upslope (10 – 20 feet) out of riparian vegetation where possible and practical into adjacent uplands in dry and drained soils.
 - b. No soil excavation will occur for any restoration activity or creation of the re-route.
 - c. Total disturbance updated to 0.5 acre on October 27, 2014 after additional field determination. Soil disturbance would be in the form of vegetation removal only.
 - d. Where the route crosses the Murphy Gulch drainage, incorporate road design features such as a swale or rolling dips to minimize runoff onto the road and direct flow into the existing gulch.
 - e. Approximately 500 square feet of upland vegetation would be removed to locate the road re-route footprint.
 - f. Removed upland vegetation will be used a mulch for restoration areas.
 - g. A base of geotextile fabric covered with gravel and soil material would be placed over existing soil (cap) to form a road base to protect sensitive soil and to provide drainage. The road base material would be brought from a nearby source (Airport Pit materials). Imported gravel is estimated to be 50-75 cubic yards. The gravel will be brought to the site with trucks and the material would be spread by a front end loader and backhoe.
 - h. Sections of the unauthorized route not utilized for the re-route are to be mulched with native materials to discourage trespass and to aid with vegetative recovery.
 - i. The length of the re-route is approximately 350 feet.
 - j. After re-route construction, place a line of large boulders along the downstream edge of the route to prevent trespass into the bare soil area along the southern entry to the creek (old road route). Once completed, mulch bare soil area with local materials (duff, slash, branches, brush and rock) to protect soil from erosion and retain soil moisture to aid in vegetative recovery.

Supplement Environmental Project (SEP)
 Los Angeles Department of Water and Power

- k. Place restoration signs to inform public about the project and prevent trespass.
- 4. Remove Forest Service gate.
- 5. Stabilize eroded stream banks:
 - Install boulder rip rap and geo-textile cloth on eroded stream banks on the north end of the channel. Large rip-rap (up to 3 foot diameter) would be placed to reduce the sharp angle at the channel turn from its current 90 degree angle to a more gradual 20-30 degrees to reduce soil erosion and direct flow downstream instead of straight into the streambank. An estimated amount of 20-30 cubic yards of large boulder fill would be placed by a large backhoe, on top of geotextile cloth.
 - Place large boulders on the road to prevent vehicle traffic from entering the channel.
 - Transplant willow cuttings from nearby plants within wetted soil perimeter of the creek.
 - Re-vegetation of the bank around the riprap with willow or other local riparian species will aid with stabilization and restoration.

	
<p>Caption: Mammoth Creek Road intercepted by Mammoth Creek. Looking west</p>	<p>Caption: Project area looking southeast. We propose to riprap the bend, remove the gate and plant willow and other appropriate riparian species.</p>

Supplement Environmental Project (SEP)
Los Angeles Department of Water and Power



Caption:
Close-up of the bend where riprap and willow planting are proposed.



Caption:
Overview of project area looking west. Note: reroute is in the right section of the photo.

EXHIBIT C

**DIRECTOR OF OFFICE OF ENFORCEMENT'S
DETERMINATION OF COMPELLING JUSTIFICATION**

Director of Office of Enforcement's Determination of Compelling Justification for the City of Los Angeles Department of Water and Power's Proposed Supplemental Environmental Project in Excess of Fifty Percent of Administrative Civil Liability

WHEREAS; The City of Los Angeles Department of Water and Power ("LADWP") and the California Regional Water Quality Control Board, Lahontan Region Prosecution Staff ("Prosecution Staff") have proposed a Settlement Agreement and Stipulation for Entry of Order ("Stipulated Order") to resolve alleged water quality violations by LADWP; and

WHEREAS; The Stipulated Order includes a Supplemental Environmental Project ("SEP") whereby LADWP would fund watershed restoration projects in the Inyo National Forest within the Owens River watershed, allowing the United States Forest Service ("Implementing Party") to complete high priority projects that benefit water quality; and

WHEREAS; The value of the proposed SEP exceeds 50 percent of the total proposed administrative civil liability under the Stipulated Order; and

WHEREAS; The State Water Resources Control Board's February 3, 2009 Policy on Supplemental Environmental Projects ("SEP Policy") governs the consideration and approval of SEPs by the State Water Resources Control Board ("State Board") and California's Regional Water Quality Control Boards ("Regional Boards"); and

WHEREAS; The SEP Policy defines SEPs as projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, and at the time they are included in the resolution of an Administrative Civil Liability ("ACL") action, are not otherwise required of the discharger; and

WHEREAS; The SEP Policy provides that a SEP shall only consist of measures that go above and beyond the otherwise applicable legal obligations of a discharger; and

WHEREAS; Unless otherwise required by law, the SEP Policy requires any order imposing a SEP to state that, if the SEP is not fully implemented in accordance with the terms of the order and, if any costs of Water Board oversight or auditing are not paid, the Water Board is entitled to recover the full amount of the suspended penalty, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim milestone; and

WHEREAS; The SEP Policy requires that a SEP must directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State, including, but not limited to, by enhancing or creating pollution prevention or reduction; and

WHEREAS; The SEP Policy provides additional SEP criteria to be considered, including, but not limited to, whether the SEP directly benefits the area where the harm occurred, whether the entity identified as responsible for completing the SEP has the institutional stability and capacity

to complete the SEP, and whether the SEP proposal includes, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project; and

WHEREAS; The SEP Policy requires that there must be a nexus between the violation(s) and the SEP. In other words, there must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP; and

WHEREAS; All orders that include a SEP must: (1) Include or reference a scope of work, including a budget; (2) require periodic reporting on the performance of the SEP by the discharger so that the Regional Boards are able to monitor the timely and successful completion of the SEP; (3) include a time schedule for implementation with single or multiple milestones and that identifies the amount of liability that will be permanently suspended or excused upon the timely and successful completion of each milestone; (4) contain or reference performance standards and identified measures or indicators of performance in the scope of work; (5) specify that the discharger is ultimately responsible for meeting these milestones, standards, and indicators; and (6) require that whenever the discharger, or any third party with whom the discharger contracts to perform a SEP, publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a Water Board enforcement action (collectively hereinafter the "Procedural Requirements"); and

WHEREAS; Unless otherwise permitted by statute, the SEP Policy provides that no settlements shall be approved by the Water Boards that fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment against the discharger, absent compelling justification; and

WHEREAS; If a Regional Board proposes an order containing a SEP that exceeds 50 percent of the total adjusted monetary assessment, that Regional Board shall affirmatively notify the Director of the Office of Enforcement of the State Water Board of that proposal; and

WHEREAS; Upon request from a Regional Board or the State Board, the Director of the Office of Enforcement shall determine whether exceptional circumstances provide compelling justification for exceeding the SEP Policy's 50 percent limit of the total adjusted monetary assessment against the discharger on SEPs; and

WHEREAS; On August 20, 2015, the California Regional Water Quality Control Board, Lahontan Region ("Lahontan Water Board"), did affirmatively notify the Director of the Office of Enforcement of its proposal to approve a SEP in excess of 50 percent of the total adjusted monetary assessment proposed in the Stipulated Order.

THEREFORE; I have considered the facts and information submitted by LADWP, as well as those contained in the administrative record for this proceeding and hereby make the following findings:

- 1) The SEP proposed by LADWP is consistent with the SEP Policy because;
 - a) The surface waters within the Owens River watershed are high quality waters that support fisheries and recreational activities, and are part of a water supply system that

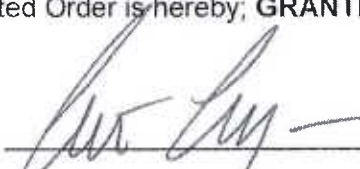
provides high quality water to millions of Californians and supports agricultural production in the Owens Valley.

- b) The SEP, comprised of four watershed restoration projects, enhances the beneficial uses of the water of the State, directly benefits the quality of surface waters, and enhances and creates pollution prevention because;
 - i. The Witcher Creek Stabilization Project and Round Valley Fire Area Seed Collection and Planting Project will address ongoing and potential erosion in the area directly affected by the Round Valley Fire that burned nearly 7,000 acres. These projects will reduce ongoing sedimentation that will likely increase due to the fire in Witcher Creek, and potential increases in sedimentation in Lower Rock Creek, that left unaddressed, could adversely affect the fisheries, recreational activities, and agricultural infrastructure that depends upon high quality waters.
 - ii. The Mammoth Creek Parking Area Vegetation Restoration Project and the Mammoth Creek Road Re-Route and Stream Stabilization Project address ongoing erosion adjacent to and within Mammoth Creek. Mammoth Creek is a high quality surface water that supports fisheries and recreational activities, and is part of the Owens Valley/Los Angeles Aqueduct water supply system supporting Southern Californians.
- c) Sediment management provides a benefit to the public at large by reducing the likelihood of discharges to the waters of the State.
- d) The Lahontan Water Board cannot otherwise legally require LADWP to complete the activities in the proposed SEP.
- e) The SEP goes above and beyond the otherwise applicable obligation of LADWP because the Lahontan Water Board cannot compel the four watershed restoration projects planned and prioritized by the Implementing Party.
- f) The Stipulated Order specifically states that the monetary liabilities associated with the SEP are suspended pending completion of project milestones ("Milestone Requirements"), and that if the SEP is not fully implemented the Lahontan Water Board will be entitled to recover the full amount of the suspended penalty less any liability amount permanently suspended or excused based on timely and successful completion of Milestone Requirements.
- g) The SEP provides a direct benefit to those enjoying the beneficial uses of the surface waters in the Owens River watershed, the watershed adjacent to the Mono Basin where the alleged violations occurred.
- h) LADWP has the institutional stability and capacity to complete the SEP.

- i) The alleged violations to be resolved by the settlement relate to sediment management and discharge activities associated with LADWP's maintenance of a sediment bypass system for its diversion structure on Lee Vining Creek. There is a direct nexus between the nature of the alleged violations to be resolved by the settlement and the restoration projects because the SEP reduces existing and future sediment discharges to surface waters. There is also a strong geographic nexus between the area impacted by the alleged violations and the benefits to beneficial uses the SEP will enhance.
 - j) The SEP satisfies all of the SEP Policy's Procedural Requirements.
- 2) Exceptional circumstances provide compelling justification for approving a SEP in excess of 50 percent of the total liability in this case because;
- a) The restoration projects included in the SEP were identified through the Mono-Owens Integrated Watershed Planning Group and/or the Implementing Party as being high priority projects to benefit water quality and watersheds.
 - b) The Owens Watershed receives limited state grant funding for watershed restoration and needs additional funding to complete priority projects that will provide a significant benefit to the region.
 - c) The Implementing Party is committed to commence the restoration projects in October 2015 and needs \$52,000 to ensure it can finance and complete the projects by September 2016.
 - d) LADWP and the Prosecution Staff have agreed that LADWP will pay \$95,000 to resolve the proposed liability associated with the alleged violations. The SEP amount, \$52,000, is \$4,500 or approximately fifty-five percent more than the total proposed administrative civil liability under the Stipulated Order.

Based on the foregoing; the Lahontan Water Board's request to approve LADWP's proposed SEP in excess of 50 percent of the total proposed civil liability for the violations alleged in the Stipulated Order is hereby; **GRANTED**

By:

 9/14/15

Cris Carrigan, Director
Office of Enforcement
State Water Resources Control Board