



Lahontan Regional Water Quality Control Board

February 15, 2023

Tahoe Keys Marina and Yacht Club, LLC
c/o Porter Simon Law Offices
Attn: Brian Hanley, Esq.
40200 Truckee Airport Road, Suite 1
Truckee, CA 96161
hanley@portersimon.com

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7017 1450 0001 3058 2930**

WITHDRAWAL OF SETTLEMENT OFFER NO. R6T-2022-0056, AND ISSUANCE OF REVISED SETTLEMENT OFFER NO. R6T-2023-0003: OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM, TAHOE KEYS MARINA, EL DORADO COUNTY

I am withdrawing Settlement Offer No. R6T-2022-0056, issued to the Tahoe Keys Marina and Yacht Club, LLC on December 7, 2022 and am issuing this Revised Settlement Offer No. R6T-2023-0003.

I understand that you represent the former owners of the Tahoe Keys Marina and Yacht Club, LLC (hereafter referred to as "Discharger"). The Discharger was enrolled under the *General Waste Discharge Requirements and National Pollutant Discharge Elimination System Permit for Storm Water Runoff Associated with Marina Operations in the Lake Tahoe Hydrologic Unit*, Board Order No. R6T-2016-0038 (Marina General Permit). The Tahoe Keys Marina and Yacht Club, LLC was also enrolled in the previous Marina General Permit, Order No. R6T-2011-0024.

This letter notifies the Discharger of the alleged violations identified by review of the Discharger's Annual Monitoring Reports for the period of November 1, 2011 through December 31, 2021. This letter also allows the Discharger to participate in the Lahontan Regional Water Quality Control Board's (Water Board's) Expedited Payment Program to address mandatory minimum penalties (MMPs) that must be assessed pursuant to California Water Code section 13385.

NOTICE OF VIOLATION

A Notice of Violation (NOV) was issued to the Discharger on August 9, 2022. The NOV contained a list of alleged effluent violations due to the Tahoe Keys Marina's stormwater discharges that took place between November 1, 2011 and October 31, 2021. The

PETER C. PUMPHREY, CHAIR | MICHAEL R. PLAZIAK, PG, EXECUTIVE OFFICER

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proposed MMPs associated with these alleged violations was \$90,000. As allowed by the NOV, representatives of the Discharger discussed the alleged violations with Water Board staff and provided evidence to remove some of the alleged violations in writing on October 28, 2022 and on November 23, 2022. During a discussion on November 29, 2022, Water Board staff agreed that certain discharges of storm water flowed to land instead of into Lake Tahoe. Discharges to land are not subject to MMPs, and therefore Water Board staff agreed to revise the listing of violations. Water Board staff also agreed to extend the period of review through December 31, 2021. No additional MMPs were identified. The final Record of Violations (ROV) is found as Enclosure 1. The proposed MMPs associated with these alleged violations is \$42,000.

STATUTORY LIABILITY

Subdivisions (h) and (i) of California Water Code section 13385 require the assessment of a MMP of three thousand dollars (\$3,000) for specified serious and chronic effluent limit violations. The Discharger is also subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) per violation for each day in which the violation occurs, plus ten dollars per gallon discharged by not cleaned up in excess of 1,000 gallons. These MMPs and discretionary administrative civil liabilities may be assessed by the Water Boards beginning with the date that the violations first occurred. The formal enforcement action that the Water Boards uses to assess such liability is an administrative civil liability complaint, although the Water Boards may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to twenty-five thousand dollars (\$25,000) per violation. In addition, the Superior Court may assess up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER TO PARTICIPATE IN EXPEDITED PAYMENT PROGRAM

The Discharger can avoid the issuance of a formal enforcement action and settle the alleged violations identified in the enclosed ROV by participating in the Expedited Payment Program. Details of the proposed settlement are described below and addressed in the enclosed documents.

To promote resolution of these violations, the Lahontan Regional Water Quality Control Board makes this Conditional Offer. The Discharger may accept this offer, waive its right to a hearing, and pay the MMP of \$42,000.00 for the violations described in the enclosed ROV. If the Discharger elects to do so, subject to the conditions below, the Lahontan Water Board will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified above and in the attached ROV. Accordingly, the Lahontan Water Board will forego issuance of a formal administrative complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in the enclosed ROV. The Expedited Payment Program does not address or resolve

liability for any violation that is not specifically identified, above, regardless of the date that the violation occurred.

RESPONSE TO OFFER

Please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing; (proposed) Order" (Acceptance and Waiver) on or before **March 15, 2023**.

CONDITIONS FOR WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Lahontan Water Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Upon receipt of the signed Acceptance and Waiver, staff will publish a notice of the proposed resolution of the violations.

If no comments are received within the 30-day comment period, and unless there are new material facts that become available to the Water Board, the Lahontan Water Board Executive Officer will execute the Acceptance and Waiver as a stipulated order assessing the uncontested MMP amount pursuant to Water Code section 13385.

If, however, significant comments are received in opposition to the settlement, this offer may be withdrawn. In that case, the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn, and the violations will be addressed in an evidentiary hearing. At the hearing, the Discharger will be free to make arguments as to the alleged violations, and the Discharger's agreement to accept this conditional offer will not in any way be binding or used as evidence against the Discharger. The Discharger will be provided with further information on the hearing.

In the event the Acceptance and Waiver is executed by the Lahontan Water Board Executive Officer, full payment of the assessed amount shall be due within thirty (30) calendar days after the Lahontan Water Board Executive Officer's action. In accordance with Water Code section 13385(n)(1), funds collected for violations of effluent limitations pursuant to section 13385 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the **\$42,000.00** liability shall be paid by cashiers or certified check for **\$42,000.00** and made out to the "*State Water Pollution Cleanup and Abatement Account*". Failure to pay the full penalty within the required period may subject the Discharger to further liability.

All responses to this Conditional Offer shall be submitted via email to both Lahontan@waterboards.ca.gov and to Wendy Wyels at wendy.wyels@waterboards.ca.gov. Please include "Tahoe Keys Marina and Yacht Club Expedited Payment Letter" in the transmittal email's subject line.

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c/o Porter Simon Law Offices

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Should you have any questions about this Conditional Offer, please contact Wendy Wyels at wendy.wyels@waterboards.ca.gov.



Ben Letton, P.G.
Assistant Executive Officer

Enclosures:

- 1. Record of Violations**
- 2. Acceptance of Conditional Resolution and Waiver of Right to Hearing**

cc (w/encl):

Regional Board Members
Michael Plaziak, Executive Officer/Lahontan Water Board
Elizabeth Bert, Counsel, Office of Chief Counsel, State Water Board
Catherine Hawe, Counsel, Office of Enforcement, State Water Board
Wendy Wyels, Office of Enforcement, State Water Board

ENCLOSURE 1
FINAL RECORD OF VIOLATIONS FOR ASSESSING MANDATORY MINIMUM PENALTIES
TAHOE KEYS MARINA, EL DORADO COUNTY

Based on a review of Annual Monitoring Reports with data from November 1, 2011 through December 31, 2021. Mandatory penalties are only considered for the locations which discharged directly to surface water.

Item	Annual Report	Date	Parameter	Permit Limit	Parameter Concentration; Location	Remark/ Penalty Amount	CIWQS
<i>Order No. R6T-2011-0024; adopted April 13, 2011</i>							
1*	2011-2012	3/14/2012	Total Iron	0.5 mg/L	0.68 mg/L at TKM-B	2/\$0	1012116
2*	2011-2012	3/14/2012	Total Nitrogen	0.5 mg/L	0.65 mg/L at TKM-B	2/\$0	1101954
3*	2011-2012	3/14/2012	Turbidity	20 NTU	55 NTU at TKM-B	2/\$0	1012117
4*	2011-2012	3/14/2012	Grease and Oil	2.0 mg/L	98 mg/L at TKM-B	1/\$3,000	1012118
5*	2011-2012	3/14/2012	Turbidity	20 NTU	65 NTU at TKM-K outlet	3/\$3,000	1064927
6*	2011-2012	3/14/2012	Total Nitrogen	0.5 mg/L	1.0 mg/L at TKM-K outlet	1/\$3,000	1064926
7*	2011-2012	3/14/2012	Total Iron	0.5 mg/L	4.7 mg/L at TKM-K outlet	1/\$3,000	1012119
8	2012-2013	7/25/2013	Turbidity	20 NTU	110 NTU at TKM-E	2/\$0	1065851
9*	2012-2013	7/25/2013	Total Nitrogen	0.5 mg/L	5.2 mg/L at TKM-E	1/\$3,000	1065854
10*	2012-2013	7/25/2013	Total Iron	0.5 mg/L	5.4 mg/L at TKM-E	1/\$3,000	1065855
11*	2012-2013	7/25/2013	Oil and Grease	2.0 mg/L	5.9 m/L at TKM-E	1/\$3,000	1012120
12*	2012-2013	7/25/2013	Total Phosphorus	0.1 mg/L	0.22 mg/L at TKM-E	1/\$3,000	1012121
13	2013-2014	1/29/2014	Turbidity	20 NTU	53 NTU at DI-E	2/\$0	1101957
14	2013-2014	1/29/2014	Total Iron	0.5 mg/L	3.4 mg/L at DI-E	1/\$3,000	1101960
15	2013-2014	5/20/2014	Total Nitrogen	0.5 mg/L	0.51 mg/L at DI-E	2/\$0	1101959
	2014-2015	No discharge to surface water; no MMPs					
	2015-2016	No discharge to surface water; no MMPs					
<i>Order No. R6T-2016-0038; effective November 1, 2016</i>							

Item	Annual Report	Date	Parameter	Permit Limit	Parameter Concentration; Location	Remark/ Penalty Amount	CIWQS	
	2016-2017	8/6/2017	Turbidity	20 NTU	20.6 NTU at Storm #3B/Basin Outlet	2/\$0	1065982	
	2016-2017	8/6/2017	Total Nitrogen	0.5 mg/L	1.2 mg/L at Storm #3B/Basin Outlet	1/\$3,000	1042443	
	2016-2017	8/6/2017	Total Iron	0.5 mg/L	6.0 mg/L at Storm #3B/Basin Outlet	1/\$3,000	1042444	
	2017-2018	No discharge to surface water; no MMPs						
	2018-2019	No discharge to surface water; no MMPs						
	2019-2020	No discharge to surface water; no MMPs						
	2020-2021	10/22/2021	Turbidity	20 NTU	26.5 NTU at SL-2	2/\$0	1101992	
	2020-2021	10/22/2021	Total Iron	0.5 mg/L	0.72 mg/L at SL-2	1/\$3,000	1101993	
	2020-2021	10/22/2021	Total Nitrogen	0.5 mg/L	6.8 mg/L at SL-2	1/\$3,000	1101994	
	2020-2021	10/22/2021	Total Phosphorus	0.1 mg/L	0.39 mg/L at SL-2	1/\$3,000	1101995	

*Violation previously alleged in Order No. R6T-2016-0065. This Order was not settled and therefore the violations are carried over into this penalty calculation.

Remarks:

1. Serious violation: Group 1 pollutants (Total Nitrogen, Total Phosphorus, Total Iron, Oil and Grease) that exceed the effluent limitation by 40% or more.
2. Chronic violation not subject to MMPs: the violation falls within the first three violations within a 180-day period.
3. Chronic violation subject to MMPs: Four or more violations within a 180-day period.

Summary:

Category 1 violations: 13
 Chronic violations subject to MMPs: 1
 Chronic violations not subject to MMPs: 8

14 MMP violations x \$3,000 = \$42,000 penalty (includes the \$24,000 previously assessed in Order No. R6T-2016-0065)

Note 1: The Discharger has changed the nomenclature for the sampling locations over the years. The sample collected at the outlet of the infiltration basin is described as either "TKM-K outlet" or "Storm #3B/basin outlet". The sample collected at the drop inlet by Barn B, the boat maintenance/service building, is variously described as "TKM-E", "DI-E", "TKM-BB", "TKM-Boat Barn (E)", "DI Area E", "SL-2", and "TK-2".

Note 2: This table does not include sampling data from the locations which discharged to land for all or part of the time between November 1, 2011 and December 31, 2021, because those discharges are not subject to MMPs. For reference, the Water Boards' case file contains correspondence between the Discharger and Board staff demonstrating the locations which at times discharged to land and at other times discharged to water. Water Board staff agreed to remove certain matters from a prior version of the ROV that were determined to be discharges to land. The violations listed in the ROV table above or otherwise removed by the Water Board staff from a prior version of the ROV as discharges to land (not subject to MMPs) are based on Board staff's review of all sampling data submitted for the time period in which Discharger was the owner/operator of the Tahoe Keys Marina.

Date: 13Feb2023



Lahontan Regional Water Quality Control Board

ENCLOSURE 2

ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT TO HEARING; ORDER

Tahoe Keys Marina and Yacht Club, LLC
c/o Porter Simon Law Offices
Attn: Brian Hanley, Esq.
40200 Truckee Airport Road, Suite 1
Truckee, CA 96161
hanley@portersimon.com

Settlement Offer No. R6T-2023-0003

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board), Tahoe Keys Marina and Yacht Club, LLC (hereinafter referred to as "Discharger") hereby accepts the "Offer to Participate in Expedited Payment Program" and waives the right to a hearing before the Lahontan Water Board to dispute the allegations of violations described in the Record of Violations (ROV), which is incorporated herein by reference.

The Discharger agrees that the ROV shall serve as a complaint pursuant to Division 7, Chapter 5, Article 2.5 of the California Water Code (Water Code) and that no separate complaint is required for the Lahontan Water Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Discharger agrees to pay the penalties required by Water Code section 13385 in the sum of **\$42,000.00** (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that otherwise might be assessed for the violations or matters described in the ROV, including the notes, summary and remarks. The Discharger understands that this Acceptance and Waiver waives its right to contest the allegations in the ROV and the amount of civil liability for such violations.

The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation or matter that is not described in the ROV. The ROV includes all alleged violations based on staff's review of all sampling data submitted to

demonstrate compliance with the applicable effluent limitations during the Discharger's ownership and operation of the Tahoe Keys Marina.

PETER C. PUMPHREY, CHAIR | MICHAEL R. PLAZIAK, PG, EXECUTIVE OFFICER

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Upon execution by the Discharger, the completed Acceptance and Waiver shall be submitted via email to both Lahontan@waterboards.ca.gov and to Wendy Wyels at wendy.wyels@waterboards.ca.gov. Please include "Tahoe Keys Marina and Yacht Club Expedited Payment Letter" in the transmittal email's subject line.

The Discharger understands that federal regulations set forth at title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Water Boards to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Lahontan Water Board Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that causes the Lahontan Water Board Executive Officer to question the Expedited Payment Amount, the Lahontan Water Board Executive Officer will execute the Acceptance and Waiver.

The Discharger understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Lahontan Water Board to resolve the violations set forth in the ROV may be withdrawn. In that circumstance, the Discharger will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Lahontan Water Board. For such a liability hearing, the Discharger understands that this executed Acceptance and Waiver will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger further understands that once the Acceptance and Waiver is executed by the Lahontan Water Board Executive Officer, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with Water Code section 13385(n)(1), funds collected for violations of effluent limitations pursuant to section 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the \$42,000.00 liability shall be paid by a cashier or certified check for \$42,000.00, made out to the "*State Water Pollution Cleanup and Abatement Account*," referencing the number of this Settlement Offer.

The payment must be submitted to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch 1001 I Street, 18th Floor, Sacramento, California 95814, no later than thirty (30) days after the date the Acceptance and Waiver is executed by the Lahontan Water Board Executive Officer.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

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Tahoe Keys Marina and Yacht Club, LLC

By:  02-21-2023
(Signed Name) (Date)

KIM M. PLENCZER MANAGER
(Printed or typed name) (Title)

IT IS SO ORDERED PURSUANT TO WATER CODE SECTION 13385

Date: _____

By: _____
MICHAEL R. PLAZIAK
EXECUTIVE OFFICER