



# WASHOE COUNTY

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Finance DN

DA SH

Risk Mgmt DA

HR N/A

Comptroller CH

## STAFF REPORT

BOARD MEETING DATE: October 11, 2016

**DATE:** September 12, 2016

**TO:** Board of County Commissioners

**FROM:** Ben Jesch, P.E., Licensed Engineer, CTMRD Program,  
Community Services Department, 954-4635, [bjesch@washoecounty.us](mailto:bjesch@washoecounty.us)  
Kristine R. Klein, P.E. Senior Licensed Engineer, Engineering and Capital  
Projects, Community Services Department, 328-2046, [kklein@washoecounty.us](mailto:kklein@washoecounty.us)

**THROUGH:** Dwayne Smith, P.E., Division Director, Engineering and Capital Projects  
Community Services Department, 328-2043, [desmith@washoecounty.us](mailto:desmith@washoecounty.us)

**SUBJECT:** Presentation regarding the Lake Tahoe Total Maximum Daily Load Program and recommendation to:

- 1) approve the Interlocal Agreement to Implement the Lake Tahoe Total Maximum Daily Load between Washoe County and the Nevada Division of Environmental Protection; and
- 2) direct staff to initiate a preliminary study to address future program costs and funding alternatives [not to exceed \$45,000]. (Commission District 1.)

### SUMMARY

Lake Tahoe is designated as a Water of Extraordinary Aesthetic or Ecologic Value; however, it has experienced a decrease in water clarity over the last 30+ years. The cause of the decrease in water clarity is attributed to the introduction of fine sediment particles, total phosphorus, and total nitrogen in urban stormwater runoff that enters the lake. The Lake Tahoe Total Maximum Daily Load (TMDL) Program is an implementation and verification program established in 2011 to limit the introduction of these pollutants into Lake Tahoe by reducing the amount of untreated stormwater runoff entering the lake.

The Interlocal Agreement to Implement the Lake Tahoe TMDL (Agreement) continues Washoe County's commitment to participate in an urban stormwater pollutant load reduction program at Lake Tahoe with five-year pollutant load reduction milestones. The initial agreement covered the first five-year period and expired on August 15, 2016. The new Agreement covers the next five year milestone period—through year 10 on the following table. The Agreement serves in lieu of a federal regulatory permit, issued by the United States Environmental Protection Agency (USEPA), and allows the Nevada Department of Environmental Protection (NDEP) to oversee Nevada jurisdictions' cooperative implementation of the Lake Tahoe TMDL.

AGENDA ITEM # 5.9.

**Urban stormwater pollutant load reduction milestone schedule established by the Lake Tahoe TMDL**

Five-year Pollutant Load Reduction Milestone Schedule													
MS	5 yr	10 yr	15 yr	20 yr	25 yr	30 yr	35 yr	40 yr	45 yr	50 yr	55 yr	60 yr	65 yr
Year	2016	2021	2026	2031	2036	2041	2046	2051	2056	2061	2066	2071	2076
FSP	10%	20%	34%	38%	41%	45%	48%	52%	55%	59%	62%	66%	71%
TP	7%	14%	21%	23%	26%	28%	31%	33%	36%	38%	41%	44%	46%
TN	8%	14%	19%	22%	25%	28%	31%	34%	37%	40%	43%	46%	50%

MS = milestone; Year = water year in which milestone ends (September 30 of indicated year)

FSP = Fine Sediment Particles; TP = Total Phosphorous; TN = Total Nitrogen.

Percent reductions are from jurisdiction baseline values. Shading represents the timeframe under this agreement.

Washoe County's commitment to achieve the scheduled load reduction milestones will require ongoing implementation of stormwater capital projects, registration of stormwater treatment projects and road operations, and continued maintenance and operations of the facilities reducing stormwater pollutants. Due to dwindling grant funds which have previously provided the bulk of the funding for these efforts, staff recognizes that this commitment will require increasing financial resources directly from Washoe County to fund compliance with each five-year pollutant load reduction milestone during the 65-year TMDL schedule. Recognizing that historic grant funding opportunities will not be available to fund future capital projects, Washoe County needs to evaluate the feasibility of establishing a stormwater utility or other funding mechanism to fund compliance with the long-term requirements of the Lake Tahoe TMDL.

Estimated annual operations and maintenance and program management costs for Fiscal Year 2017 are approximately \$220,000 increasing in Fiscal Year 2018 to approximately \$320,000. Funding for these activities for FY17 is budgeted through a combination of the Roads Fund for sweeping and maintenance activities, the Engineering budget for program management, and the general fund budget for non-grant-funded capital project elements. Funding for FY18 is anticipated to be derived from these same sources.

It is expected that budget requirements for the remaining five-year milestone schedule (FY19-21) will be greater to meet the capital projects needs necessary for the construction of new stormwater quality facilities. Estimates for FY19 through FY21 are \$525,000 per year which include both O&M as well as anticipated capital project costs. The referenced costs are those anticipated under the new Agreement with NDEP, and it should be noted that if the Agreement is not approved or compliance is not maintained, a federal permit, issued by the USEPA, would be put into effect. Costs under a federal permit are anticipated to be 5% to 10% higher due to additional administrative and other associated requirements. To continue implementing stormwater quality facilities necessary to meet future TMDL milestones, it is estimated that Washoe County's Program costs will further escalate to an estimated \$1.3M annually beginning in FY22. For this reason it is recommended that the Board of County Commissioners (Board) direct staff to initiate a preliminary study to address future program costs and funding alternatives.

Washoe County Strategic Objective supported by this item: Economic Development and Diversification.

## **PREVIOUS ACTION**

On July 23, 2013, the Board approved the initial Interlocal Agreement between Washoe County and the Nevada Division of Environmental Protection to implement the Lake Tahoe Total Maximum Daily Load to demonstrate good faith efforts to work together through the cooperative implementation of water quality improvement actions as opposed to a regulatory permit.

## **BACKGROUND**

The Federal Clean Water Act requires states to adopt standards to protect water bodies and water ways across the United States and to monitor and assess the waters to ensure they are not negatively impacted by development or through other use. In 2011, under the Federal Clean Water Act, the USEPA in participation with NDEP and the California Lahontan Regional Water Quality Control Board defined acceptable water quality and lake clarity levels and approved the Lake Tahoe TMDL Report. The overarching goal of the TMDL is to return Lake Tahoe to its historic annual average deep water clarity of 97.4 feet.

Nevada's jurisdictions face a significant challenge to meet the mandatory reductions in the Lake Tahoe TMDL pollutants of concern, especially fine sediment particles. At this stage of TMDL implementation, NDEP and the California Lahontan Regional Water Quality Control Board require documented reductions in fine sediment particles which are transported to Lake Tahoe via urban stormwater runoff; documented reductions in total phosphorus and total nitrogen will be required with a future milestone. Recognizing the importance of and obligations associated with the commitment to restore Lake Tahoe's clarity, Washoe County continues to work with NDEP to develop an approach to reduce the fine sediment particle load.

Adherence to the TMDL under the Agreement requires Washoe County to participate in the Lake Clarity Crediting Program which quantifies, tracks, and reports Washoe County's stormwater load reduction actions and activities. Under the initial Agreement, Washoe County successfully collaborated with the other jurisdictions within in the basin to coordinate catchment registration strategies, participated in the development of the tools required by NDEP to implement the crediting program and establish the benchmark scoring system, and implemented a regional response necessary for required annual stormwater monitoring. Road Rapid Assessment Methodology (Road RAM) was also used to establish a target roadway condition score which will be used to verify Washoe County's credit potential resulting from road operations.

Under the terms of the new Agreement and over the next five years, Washoe County commits to register and verify catchments, roadways, and private party BMPs (best management practices) to receive credits to meet the 2016 and 2021 load reduction milestones. Upon annual verification, Washoe County will be awarded credits by NDEP, confirming the removal of fine sediment particles from urban stormwater prior to discharging to Lake Tahoe.

Staff continues to:

- Make cost saving decisions on the design and implementation of current and future stormwater infrastructure projects;
- Work collaboratively to optimize and recommend alternative road maintenance operational approaches to reduce costs;

- Work collaboratively with other Lake Tahoe jurisdictions to identify alternative funding sources;
- Submit catchment registrations to meet the 2016 milestone; and
- Perform road and best management practices rapid assessment methodology to verify annual performance of stormwater treatment measures.

For the past 30 years Washoe County has worked with the Nevada Division of State Lands, the United States Forest Service, and other partner agencies to secure grants for the design and construction of new stormwater quality and erosion control facilities within the Lake Tahoe Basin. However, the majority of Washoe County’s grant funding has been utilized and new resources are not being allocated to stormwater treatment, leaving the financial burden to local jurisdictions. Washoe County will need to pursue alternative funding opportunities to continue to construct and manage the necessary infrastructure to meet the requirements of the Lake Tahoe TMDL.

**FISCAL IMPACT**

The fiscal impact resulting from participation in the new Agreement will be in the form of additional costs for maintenance and operations, catchment registration and annual verification of load reductions, and stormwater capital projects. Based on Washoe County’s TMDL program management, roadway sweeping and stormwater maintenance, and stormwater capital improvement cost over the last several years, annual program costs for FY17 are estimated to be \$220,000 and for FY18 are estimated to be approximately \$320,000. Funding for these required activities is anticipated to be budgeted through a combination of the Roads Fund for sweeping and maintenance activities, Engineering budget for management, and the general fund budget for non-grant-funded capital project elements. It is expected that budget requirements for FY19 through the end of the new Agreement term (FY21) will be greater to meet the capital projects needs necessary for the construction of new stormwater quality facilities. Estimates for FY19 through FY21 are \$525,000 per year. The annual budget estimates to comply with the new agreement are summarized in the table below.

	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>Total</b>
<b>Estimated Annual Budget</b>	\$ 320,000	\$ 525,000	\$ 525,000	\$ 525,000	\$ 1,895,000

Due to dwindling grant funds which have historically provided the bulk of the capital projects funding, it is estimated that Washoe County’s Program costs will further escalate to an estimated \$1.3M annually beginning in FY22. It should be noted that cost estimates under a federal permit may be 5% to 10% higher to comply with additional requirements and administrative needs.

These estimates represent a significant annual increase over current costs and will likely require the development of alternative sources of funding. Staff believes that funding solutions will result from a combination of approaches, which may include the recommendation for the development of policies that may lead to the initiation of a stormwater utility or other funding sources within the Lake Tahoe basin. To accomplish this staff is requesting the Board’s direction to initiate a preliminary study to address future program costs and funding alternatives. The development of an initial framework is anticipated to be approximate \$45,000, funded through Engineering and Capital Projects approved budget, Cost Centers 105500 and 105501, Fund 710100 Professional Services and 710200 Service Contracts.

**RECOMMENDATION**

It is recommended that the Board of County Commissioners acknowledge the Presentation regarding the Lake Tahoe Total Maximum Daily Load Program, and:

- 1) approve the Interlocal Agreement to Implement the Lake Tahoe Total Maximum Daily Load between Washoe County and the Nevada Division of Environmental Protection; and
- 2) direct staff to initiate a preliminary study to address future program costs and funding alternatives [not to exceed \$45,000].

**POSSIBLE MOTION**

Should the Board of County Commissioners agree with staff's recommendation a possible motion would be: "Move to acknowledge the Presentation regarding the Lake Tahoe Total Maximum Daily Load Program, and:

- 1) approve the Interlocal Agreement to Implement the Lake Tahoe Total Maximum Daily Load between Washoe County and the Nevada Division of Environmental Protection; and
- 2) direct staff to initiate a preliminary study to address future program costs and funding alternatives [not to exceed \$45,000]."

# **Interlocal Agreement to Implement the Lake Tahoe TMDL**

**Board of County  
Commissioners**

**October 11, 2016**

**Community Services Department  
Engineering and Capital Projects Division**

# LAKE TAHOE – TMDL

## LAKE TAHOE – Water of Extraordinary Aesthetic or Ecologic Value

- Problem: Declining Water Clarity Over Last 30 Years
  - Historically - 97 Foot Clarity
  - Recently - 68 Foot Clarity
- Significant Scientific Work has Identified Pollutants in Stormwater Runoff as Primary Cause of Reduced Clarity
- Focus on Fine Sediment Particles (FSP)

# LAKE TAHOE – TMDL

Total Maximum Daily Load (TMDL) – Approved for Lake Tahoe by USEPA in Aug 2011

- ☐ Establishes Maximum Pollutant Load
  - ☐ Goal: Restore 97.4 Foot Lake Clarity Level
- ☐ Jurisdictions Committed to Remove Pollutants in Stormwater
- ☐ Nevada Jurisdictions include Washoe and Douglas Counties, Nevada Dept. of Transportation
- ☐ NDEP Responsible for Oversight of Nevada TMDL



# LAKE TAHOE – TMDL

## **Interlocal Agreement with NDEP**

- Term Through Aug 2021, will continue 5-year renewals ending in 2076**
- Develop Stormwater Load Reduction Plan**
- Participate in Lake Clarity Crediting Program**
- Continue Annual Monitoring and Implement Inspection Program**
- Annual Reporting Program**
- Termination and Funding Out Clauses, but not Meeting Pollution Reduction Goals may Result in Issuance of Federal Permit (NPDES)**

# LAKE TAHOE – TMDL

## FSP Load Reduction Milestone Schedule (Percentage from 2004 Baseline)

	5-Year	10-Year	15-Year	65-Year
			(Clarity Challenge)	(Final Milestone)
	10%	21%	34%	71%

# LAKE TAHOE – TMDL

## Commitments and Actions

- ☐ **Meet Annual Pollutant Load Reduction Goals**
- ☐ **Submit Annual Stormwater Report**
  - **Summarize Annual Program Actions and Load Reductions**
  - **Adjust and Plan for Next 5 Years Actions**
- ☐ **Plan and Construct New Stormwater Infrastructure**
  - **Grant Funding unknown after 2017**
  - **Focus on smaller grants, partnering opportunities, private party BMP's**
- ☐ **Requires Annual Funding for Stormwater Infrastructure, Operation and Maintenance**
  - **WC Leads the Basin on Roadway Operations (abrasive placement and removal, sweeping) <sup>6</sup>**

# LAKE TAHOE – TMDL

## Commitments and Actions – Cont.

- ☐ Costs
  - Current Operation and Maintenance Costs Approximately \$220k
  - Estimate of 2018 Annual Management Costs – Potentially up to \$320K
  - Estimated Future Costs Including CIP – Potentially \$500k+ by 2019
- ☐ Remember - Estimated Program Costs 5% to 10% Higher Under Federal Permit

**NEED: CSD Engineering to Develop a Plan To Identify, Plan, Program, Implement and Fund Necessary Program Costs**

**– Initial Phase Approximately \$45k**

# LAKE TAHOE – TMDL

**Questions?**

# **INTERLOCAL AGREEMENT**

## **TO IMPLEMENT THE**

### **LAKE TAHOE TOTAL MAXIMUM DAILY LOAD**

**WHEREAS**, Lake Tahoe is one of the rare large alpine deepwater lakes in the world with unique transparency, color and clarity, and is designated a Water of Extraordinary Aesthetic or Ecologic Value by the State of Nevada;

**WHEREAS**, degradation of Lake Tahoe's water quality threatens its ecological functions and its value as an outdoor recreational resource, international tourism attraction, and economic asset;

**WHEREAS**, stormwater runoff from urban land uses is the largest source of pollutant loads that impairs Lake Tahoe water quality and the management and control of storm water runoff provides the principal opportunity to control these pollutants;

**WHEREAS**, to restore Lake Tahoe's water quality and clarity to acceptable levels, the United States Environmental Protection Agency (USEPA) approved the Lake Tahoe Total Maximum Daily Load (TMDL) in August 2011. Pursuant to NRS 445A.580, the Lake Tahoe TMDL is a component of the planning process established for restoring impaired water bodies in Nevada, which the Parties believe may be more effectively achieved through the cooperative implementation of water quality improvement actions as opposed to a regulatory permit;

**WHEREAS**, the Parties are public agencies as defined in NRS 277.100(1)(a);

**WHEREAS**, NRS 277.110(2) provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action under the provisions of NRS 277.080 to 277.170, inclusive;

**WHEREAS**, the Parties agree to work together in good faith using a collaborative approach to implement the Lake Tahoe TMDL on a feasible schedule;

**NOW, THEREFORE**, the Parties hereby execute and abide by the terms and conditions contained within this Interlocal Agreement (Agreement).

## **I. PARTIES & ROLES**

- A. The *Parties* to this Agreement are Washoe County (County) and the Nevada Division of Environmental Protection (NDEP). Herein, these entities in sum shall be collectively referred to as the *Parties*. Any singular entity may be referred to as *Party*. The term *Urban Implementing Partners* refers collectively to the implementing entities: Washoe County, Douglas County and the Nevada Department of Transportation (NDOT).
- B. The County will serve as the lead entity for all undertakings related to the planning, execution, financing and coordination of implementation, tracking and reporting of urban load reduction actions within its jurisdiction. The County will communicate, coordinate and cooperate with public and private entities, including other Urban Implementing Partners, in cases where joint management actions are desirable or beneficial. It may be necessary to establish formal agreements with applicable participatory public and private entities to achieve the Purpose (Section III) of this Agreement. At the County's request, NDEP will actively participate in the coordination and establishment of such agreements.
- C. In lieu of issuing a regulatory permit to achieve the goals established for the Lake Tahoe TMDL, NDEP will oversee implementation of the Lake Tahoe TMDL within the State of Nevada via this Agreement while it remains in effect. NDEP will continue to develop and adaptively manage in a transparent and inclusive manner, programs, policies and protocols necessary to track, report, evaluate and demonstrate incremental progress towards achieving the goals established by the TMDL.

## **II. BACKGROUND**

- A. The Federal Clean Water Act requires states to adopt standards to protect beneficial uses designated for waterbodies and to monitor and assess these waters for impairment. Assessment of Lake Tahoe monitoring data prompted its listing on Nevada's List of Impaired Waterbodies for non-attainment of the clarity standard and impairment of the Water of Extraordinary Aesthetic or Ecologic Value beneficial use designation.
- B. Non-attainment of water quality standards requires the development of restoration plans called Total Maximum Daily Loads under the federal Clean Water Act. The Nevada Division of Environmental Protection (NDEP) collaborated with the California Lahontan Regional Water Quality Control Board (Lahontan Water Board) for more than a decade to develop the Lake Tahoe TMDL to address Lake Tahoe's degraded clarity. The USEPA approved NDEP's TMDL on August 16, 2011.
- C. The overarching goal of the TMDL is to return Lake Tahoe to its historic annual average deepwater clarity of 97.4 feet (Numeric Target). The TMDL also established an interim goal termed the "Clarity Challenge" that, if achieved,

would indicate reversal of the historic declining clarity trend. It is anticipated that achieving the 15 year pollutant load reduction milestone in 2026, will result in an annual average clarity of 78 feet as measured over the period from 2026-2031.

- D. The TMDL identifies fine sediment particles (FSP), total phosphorus (TP) and total nitrogen (TN) as the pollutants of concern for deepwater clarity. Each controls the distance that light is able to penetrate into the water column. However, the light scattering effect of FSP less than sixteen micrometers in diameter (<16 µm) was determined to exhibit a greater influence on clarity.
- E. The TMDL analysis indicates that achieving the TMDL goal is possible with substantial pollutant load reductions from the urban stormwater source category. Stormwater runoff from urban land uses is the largest loading source of FSP and phosphorus to the Lake and also the greatest opportunity to reduce loadings of these pollutants. Broader application of conventional urban stormwater treatment will be beneficial; however, implementation of innovative and advanced controls may be necessary to meet TMDL goals. Examples include: alternatives to roadway abrasives applications, advanced roadway sweeping practices and equipment, and enhanced stormwater treatment using biological or chemical processes.
- F. The TMDL establishes five-year pollutant load reduction milestones for the urban stormwater source category as indicated in Table 1, assuming that global climate change, catastrophic events, economic factors, and/or other unavoidable constraints do not adversely affect progress.

**Table 1. Urban stormwater pollutant load reduction milestone schedule established by the Lake Tahoe TMDL. MS = milestone; Year = water year in which milestone ends (September 30 of indicated year); FSP = Fine Sediment Particles; TP = Total Phosphorous; TN = Total Nitrogen. Percent reductions are from jurisdiction baseline values. Shading represents the timeframe under this agreement.**

Five-year Pollutant Load Reduction Milestone Schedule													
MS	5 yr	10 yr	15 yr	20 yr	25 yr	30 yr	35 yr	40 yr	45 yr	50 yr	55 yr	60 yr	65 yr
Year	2016	2021	2026	2031	2036	2041	2046	2051	2056	2061	2066	2071	2076
FSP	10%	20%	34%	38%	41%	45%	48%	52%	55%	59%	62%	66%	71%
TP	7%	15%	21%	23%	26%	28%	31%	33%	36%	38%	41%	44%	46%
TN	8%	16%	19%	22%	25%	28%	31%	34%	37%	40%	43%	46%	50%

- G. The Lake Clarity Crediting Program (Crediting Program) was developed jointly by NDEP and Lahontan Water Board to define standardized protocols for the comprehensive and consistent quantification, tracking and reporting of load reduction actions taken by local governments and state transportation agencies. The program incentivizes Urban Implementing Partners to implement priority controls to meet load reduction targets and provides accountability for the expenditures of public funds on such actions.



### **III. PURPOSE**

The purpose of this Agreement is to formally establish a commitment by each signatory Party to make a collective effort to restore and protect Lake Tahoe's clarity. In identifying the actions and responsibilities of each Party, this Agreement provides the framework for the successful implementation of the Lake Tahoe TMDL, and the attainment of the goals set forth therein, on a feasible schedule. Inherent in the use of this agreement-based approach is the acknowledgement that implementation success is, in part, dependent upon the establishment of a process which cultivates collaboration and cooperation between Washoe County and NDEP.

This Agreement outlines goals, commitments and actions which the Parties agree to pursue in good faith. The Parties understand and agree that, based on all relevant facts and circumstances, if the cooperative approach on which this Agreement is based is unsuccessful in achieving the intended outcomes, NDEP may at any time re-evaluate whether a more regulatory approach to achieving TMDL implementation is warranted.

### **IV. COMMITMENTS & ACTIONS**

The Parties hereby commit to implement the following actions, and abide by the following conditions:

#### **A. Pollutant Controls**

1. The County will prepare and maintain a Stormwater Load Reduction Plan (SLRP) that specifies the priority list of pollutant control actions and projects the County has registered and anticipates registering through the Lake Clarity Crediting Program (Crediting Program; Section IV.B) to meet the credit milestones and targets contained in Table 2. The Parties acknowledge that planning beyond the term of the agreement is needed to ensure future load reduction targets will be met. The SLRP shall be maintained as a five year schedule that is updated and reported as a component of the Annual Stormwater Program Report (Section IV.D).
2. The County will implement, operate, inspect and maintain the pollutant controls identified in the SLRP according to the schedule indicated. The County will oversee and coordinate financing for all aspects of pollutant control implementation including planning and design, construction, and activities related to Crediting Program participation. The County, as an implementing entity, will pursue self-funded and external funding sources to implement the SLRP. The County acknowledges and accepts the responsibility to fund operations and maintenance of the pollutant controls implemented.
3. The Parties acknowledge the implementation of pollutant controls is contingent upon available funding. Should funding allocations be insufficient to implement pollutant controls according to indicated schedule, the County and NDEP will

work together in an attempt to identify and implement a mutually acceptable solution.

**B. Lake Clarity Crediting Program**

1. The County will participate in the Lake Clarity Crediting Program (Crediting Program). The County will register and verify pollutant controls in accordance with the protocols specified in the Crediting Program Handbook and associated stormwater tools. Improvements to Crediting Program protocols or tools will not require adjustments to load reduction estimates or credit schedules of registrations in effect at the time such programmatic changes are made.
2. NDEP will administer the Crediting Program in accordance with the Program Handbook. County implementation progress will be measured, tracked and assessed in accordance with the protocols contained in the Program Handbook. Credits will be awarded to the County for the continued implementation and registration of ongoing, effective pollutant controls that reduce pollutant loads to Lake Tahoe.
3. The County will strive to achieve the five-year credit milestones (milestones) and intermediate annual credit targets (targets) established in Table 2. Attainment of the five-year credit milestones will demonstrate accomplishment of the FSP load reduction milestones established by the TMDL.
  - a. Annual credit targets established for intermediate years are guidelines used for the purpose of demonstrating incremental progress toward attaining five-year milestones and will not be used to determine compliance with this agreement on an annual basis.
  - b. The County may propose an alternate schedule of intermediate credit targets that are better aligned with planned implementation activities and include updates to the intervening goals in the Annual Stormwater Program Report.

**Table 2. Five-year FSP load reduction and associated credit milestones (bold) and intermediate FSP load reduction and associated credit targets established for Washoe County. The water year begins on October 1 and ends September 30 of the year indicated. Credit declarations are reported in the Annual Stormwater Program Report, due on March 15 of the following year.**

Water Year	<b>2016</b>	2017	2018	2019	2020	<b>2021</b>	2022	2023	2024	2025	<b>2026</b>
FSP Load Reduction	<b>10%</b>	12%	15%	17%	19%	<b>21%</b>	23%	25%	28%	31%	<b>34%</b>
Credit Target/ Milestone <sup>1</sup>	<b>104</b>	174	218	247	276	<b>305</b>	334	363	407	450	<b>494</b>

<sup>1</sup> Credit Targets/Milestones for 2016 are based on a Jurisdiction Baseline Load estimate conducted in 2013, while Credit Targets/Milestones for years 2017-2026 are based on revised Jurisdiction Baseline Load estimates produced in 2016.

4. The County will implement an inspection program to assess the condition of registered pollutant controls in accordance with the Crediting Program Handbook. The County, or a qualified third party conducting the condition assessment observations on its behalf, will coordinate with NDEP for their participation during field inspections. During joint inspections, the County, and/or the third party representative thereof, and NDEP will attempt to agree on the measurements to be recorded. The Parties retain the option to record different results if agreement on observations cannot be reached.
5. NDEP, jointly with Lahontan Water Board, will manage the Crediting Program adaptively through the TMDL Management System, a transparent and inclusive program improvement process. Any modifications or alterations to Crediting Program tools and/or protocols will be accomplished in accordance with the procedures described in the TMDL Management System Handbook, the current version of which is available on the [TMDL Online Interface](#).

### C. Stormwater Monitoring

1. The County will implement, either individually or collaboratively, a stormwater monitoring program. At the time of execution of this agreement, Nevada and California Urban Implementing Partners are involved in a collaborative effort to carry out the Implementers Monitoring Program (IMP). Continued implementation of the approved IMP over the term of this agreement (Section V) shall fulfill the County's commitment.
2. The County or its authorized representative will develop and submit an annual electronic report to NDEP for approval that presents, summarizes and interprets the results of the data collected during the previous water year (October 1 – September 30). The monitoring report is due on March 15 each year.
3. Within 30 days of receipt, NDEP will provide written notification of acceptance or refusal of the monitoring report. If refused, NDEP will provide a list of items to be resolved for the monitoring report to gain acceptance. The County or its authorized representative will address comments within 30 days and resubmit the monitoring report for NDEP acceptance. NDEP will work with the County and/or its authorized representative to resolve any comments remaining unsatisfactorily addressed within a timeframe agreed upon by the Parties.
4. The County or its authorized representative may submit proposed adjustments to the approved IMP. NDEP will consider and, within 30 days of receipt, provide written notification of acceptance or refusal of the proposal. NDEP will work with the County toward a mutually agreeable resolution of the issue prompting the proposed adjustment.
5. The Parties acknowledge the scale of the stormwater monitoring program is contingent upon available funding and budget allocations as determined by the governing boards of the respective Urban Jurisdictions. Should funding

allocations become insufficient to implement the approved monitoring plan, an evaluation will be performed to identify where efficiencies may be gained and how the monitoring plan may be scaled to better align with the available level of funding while retaining a minimum level of scientific creditability.

#### D. Annual Stormwater Program Report

1. Each year by March 15, the County will submit to NDEP for acceptance an annual report summarizing the County's stormwater program progress, activities and accomplishments during the previous water year (October 1-September 30). The report shall also document upcoming and planned actions and projects the County anticipates registering over a five-year planning horizon to meet the annual credit targets and five-year credit milestones identified in Table 2. The report will include a fiscal analysis that demonstrates how pollutant controls are proposed to be implemented, operated and maintained.
2. The report will include the following information:
  - a. Accomplishments Summary – the report shall summarize annual progress towards meeting Table 2 credit milestones, including registered catchments and associated credit declarations. If progress is insufficient to meet any credit milestone, an explanation of causes or conditions for the shortfall shall be provided, as well as any modifications to the approach that will ensure the next five-year milestone is met.
  - b. Stormwater Load Reduction Plan (SLRP) – the report will specify the priority list of pollutant controls the County anticipates registering through the Crediting Program over a five year planning horizon to meet the Table 2 credit milestone schedule. Specific content shall include, but is not necessarily limited to the following information:
    - i. A description, geographic location information and timeline of the pollutant controls to be implemented;
    - ii. The estimated load reduction/credit potential associated with implementation of the pollutant controls;
    - iii. Any proposal to update the intermediate credit target schedule that better aligns with planned implementation activities.
  - c. Fiscal Analysis – the report will provide an estimate of the costs to administer the County's Tahoe stormwater program.
    - i. Budget – estimate the total and annualized expenditures necessary to operate and maintain implemented and registered pollutant controls, as well as to design, construct, implement, operate, register, inspect and maintain pollutant controls contained in the five year SLRP.

- ii. Finance Plan – identify and describe anticipated and/or targeted funding sources and/or finance mechanisms to cover the costs associated with the budget estimates. The plan shall identify where financing is not enough to cover the estimated budget, as well as a discussion of future financing mechanisms being explored to allay any identified finance gap.
  - d. Barriers – the report will identify constraints to implementing the pollutant controls identified in the five year SLRP, and/or to meeting established credit milestones, as well as any plans or potential mechanisms to overcome them.
  - e. Baseline discrepancies – the report will provide a tabular summary of registered catchments that tracks and reports the differences in fine sediment particle loading results between the catchment-specific baseline loading estimate performed for the jurisdictional baseline load analysis and baseline scenario conducted for the purposes of registration. This information will be used to update the schedule of annual credit targets and five-year milestones contained in the 2021-2026 Interlocal Agreement.
3. Within 30 days of receipt, NDEP will provide written notification of acceptance or refusal of the Annual Stormwater Program Report. If refused, NDEP will provide a list of items to be resolved for the report to gain acceptance. The County will address comments and resubmit the report within 30 days. NDEP will work with the County to resolve any comments that remain unsatisfactorily addressed within a timeframe agreed upon by the Parties.

## **V. TERM & UPDATE**

The term of this Agreement shall terminate on September 30, 2021. As the anticipated timeframe to achieve the TMDL numeric target is the year 2076, if the Parties fail to approve and execute a renewal of this Agreement, with or without any amendments prior to the termination date, then the Parties agree to use best efforts to comply with the terms and conditions of this Agreement until a subsequent agreement is approved and executed by the Parties. If the Parties fail to approve and execute a subsequent agreement within 6 months of the termination date, NDEP may pursue issuance of a stormwater permit.

## **VI. MODIFICATION**

At any point during this term, the Agreement may be modified with the consent in writing of all signatory Parties. Modifications to the Agreement will not result in a change to or extension of the initial term (Section V) of this Agreement.

## **VII. EVALUATION & CONTINGENCY**

1. NDEP will evaluate the performance of the County and make a determination of whether the commitments set forth in this Agreement are in good faith being met, or whether there exist other causes preventing their performance. Factors that will be considered in the evaluation of performance and/or the need to act on a contingency include but are not limited to: attainment of five-year credit milestones; the degree to which a milestone is not met; the County's good faith attempt to perform any commitments; changes or modifications to the Crediting Program Handbook and process that significantly affect the County's planning or implementation ability; economic, budget allocations, feasibility or availability of funding sources or other impediments; and past performance.
2. If NDEP determines the County has failed to perform its commitments under this Agreement and such failed performance has not been caused by the regulatory action of NDEP itself or by the actions or inactions of another party, NDEP will consider and evaluate the need to implement a more regulatory approach, including but not limited to issuance of a permit. In no event will such failed performance result in liability, loss or penalty other than NDEP's regulation through issuance of a stormwater permit.
3. If lack of available funding or insufficient budget allocations are identified as a primary factor limiting the County's performance or causing the failure of performance and the attainment of credit targets or any other commitment under this Agreement, NDEP may consider extending the implementation timeframe through modification to the load reduction milestone schedule.
4. NDEP will annually evaluate the effectiveness of this Agreement. If the Agreement is determined to be ineffective at achieving its intended purpose, NDEP will consult with the County to determine the reasons for its ineffectiveness and develop recommendations for subsequent revisions to this Agreement.

## **VIII. TERMINATION**

If any Party fails without adequate cause, excuse or justification to abide by any material term of this Agreement, the non-violating Party may give the violating Party a 30 day written notice to cure such failure. Failure to cure shall constitute a breach of this Agreement. If the County is the breaching party, NDEP may then give notice of termination of this Agreement and pursue issuance of a stormwater permit.

## **IX. FUNDING OUT**

Notwithstanding any other provision herein, as required by NRS 244.320 and NRS 354.626, the Parties acknowledge that the participation of the County in this Agreement is contingent upon the appropriation of public funds to support the

commitments and activities described herein and that the Agreement will terminate if the appropriation of funds does not occur.

In this event, immediate written notice of termination will be given and this Agreement shall terminate without penalty, expense or sanction to the County asserting the failure to appropriate public funds necessary to perform under this Agreement. If the Agreement terminates because of the County's failure to appropriate funds or its failure to obtain available funding resources necessary to perform the obligations under this Agreement, NDEP may then pursue issuance of a stormwater permit.

## **X. DISPUTE RESOLUTION**

1. The Parties agree to work together in good faith to address and resolve any issues or dispute.
2. The Crediting Program Handbook contains the communication protocols to resolve disputes that may arise between NDEP and the County.
3. If an issue arises that is not related to the processes described in the Crediting Program Handbook, it will be handled by progressive elevation within each respective Party's management structure.
4. The NDEP Administrator is the final decision making authority for any dispute that is elevated to that level.

## **XI. SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of the Agreement, and to that end the provisions of this Agreement are declared to be severable.

## **XII. RESERVATION OF RIGHTS**

1. Nothing in this Agreement is intended to restrict the authority of any Party to act as provided by statute or regulation.
2. This Agreement is not intended to, and does not create any right, benefit or trust responsibility by any party against the Parties to this Agreement, their respective agencies, officers, or any person.

3. This Agreement is an internal agreement between the Parties and does not confer any right or benefit on any third person or party, private or public.

### **XIII. LIMITATIONS**

Nothing in this Agreement shall be construed to require actions by the Parties which are inconsistent with local, State, or Federal laws and regulations or any court order.

### **XIV. EXECUTION IN COUNTERPARTS**

The Parties may execute this Agreement in counterparts, each of which is deemed an original and all of which constitute only one agreement.

### **XV. ALL WRITINGS CONTAINED HEREIN**

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of the Agreement shall be deemed to exist or to bind the Parties hereto.

### **XVI. SIGNATORIES**

Each undersigned representative to this Agreement certifies that he or she is fully authorized by the Party whom he or she represents to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document.



**WASHOE COUNTY REPRESENTATIVE**

X Kitty K. Jung, Chair, Washoe County Commission  
Name (Printed)

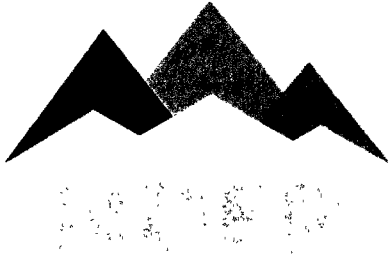


X \_\_\_\_\_  
Signature

X \_\_\_\_\_  
Date

**NEVADA DIVISION OF ENVIRONMENTAL PROTECTION REPRESENTATIVE**

X David Emme, Administrator, NDEP  
Name (Printed)



X \_\_\_\_\_  
Signature

X \_\_\_\_\_  
Date