

# INTERLOCAL AGREEMENT

## TO IMPLEMENT THE LAKE TAHOE TOTAL MAXIMUM DAILY LOAD Water Years 2022-2026

**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 Douglas County (County) and the Nevada Division of Environmental Protection (NDEP). Herein, these entities 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 TMDL- 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 continuously improve 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 initial listing on Nevada's 2002 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, when achieved, is anticipated to indicate reversal of the historic declining clarity trend. It is expected 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 identified 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 indicated 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 pollutant controls are likely 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. (Top) Urban stormwater pollutant load reduction milestone schedule established by the Lake Tahoe TMDL. Shading represents the timeframe under this agreement. 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 shown in Table 2.**

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%	21%	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%

**Table 2. Douglas County baseline pollutant loads provided in WY 2020 Stormwater Program Annual Report.**

Pollutant	FSP	TP	TN
Douglas County baseline load (#/yr)	98,688	410	1586

- G. The Lake Clarity Crediting Program (LCCP) 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 the 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 LCCP (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 LCCP 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 (LCCP)

1. The County will participate in the LCCP. The County will register and verify pollutant controls in accordance with the protocols specified in the current LCCP Handbook version. Improvements to LCCP 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 LCCP in accordance with the LCCP Handbook. County implementation progress will be measured, tracked and assessed in accordance with the protocols contained in the LCCP 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 and should result in commensurate nutrient load reductions shown in Table 3.
  - 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.

**Table 3. Five-year credit milestones (bold) and intermediate annual credit targets and corresponding fine sediment particle and nutrient load reductions. The 2021 credit milestone has been carried over from the 2016-2021 Interlocal Agreement. Credit targets and milestones 2022 through 2026 are based on updated FSP baseline load estimate shown in Table 2.**

Five-year Milestones & Annual Intermediary Targets						
Water Year	<b>2021</b>	2022	2023	2024	2025	<b>2026</b>
Credits	<b>101</b>	101	101	135	135	<b>167</b>
FSP	<b>21%</b>	21%	21%	27.5%	27.5%	<b>34%</b>
TP	<b>14%</b>	14%	14%	17.5%	17.5%	<b>21%</b>
TN	<b>14%</b>	14%	14%	16.5%	16.5%	<b>19%</b>

- 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 Stormwater Program Annual Report. In general, the parties agree that there is substantial flexibility in the Annual Intermediary Targets provided that the five-year milestones are met as scheduled.

4. The County will assess the condition of registered pollutant controls in accordance with the LCCP Handbook. The County, or a qualified third party conducting the condition assessment observations on its behalf, will coordinate with NDEP at least one week prior to any field assessments and invite NDEP to participate. If NDEP staff are unavailable, assessments may be completed without their presence. When joint inspections are performed, the County 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 LCCP adaptively through the TMDL Management System, a transparent and inclusive program improvement process. Any modifications or alterations to LCCP tools and/or protocols will be accomplished in accordance with the procedures described in the TMDL Management System Handbook.

#### 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 30 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 remaining unsatisfactorily addressed comments 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 Nevada and California Urban Implementing Partners. 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. Stormwater Program Annual 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 (a) to meet the annual credit targets and five-year milestones identified in Table 3; and (b) over a five-year planning horizon to meet the anticipated annual credit targets and milestone for the 2027-2031 period (Table 4).

**Table 4. Anticipated credit targets and milestone for the 2027-2031 period to be used for the five-year planning horizon in the fiscal analysis.**

2027-2031 Anticipated Annual Targets & Five-Year Milestone					
Water Year	2027	2028	2029	2030	<b>2031</b>
Credits	167	167	177	177	<b>187</b>
FSP load reduction	34%	34%	36%	36%	<b>38%</b>

2. The report will include the following information:
  - a. Accomplishments Summary – the report shall summarize annual progress towards meeting Table 2 credit targets/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 Table 4 anticipated credit targets. 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 – an estimate of the costs to administer the County’s Tahoe stormwater program and that addresses how pollutant controls are proposed to be implemented, operated, and maintained.
    - i. Budget – an estimate of the total and annualized expenditures necessary to operate and maintain implemented and registered pollutant controls, as well as to design, construct, implement, operate, register, assess, and maintain pollutant controls contained in the five-year SLRP.
    - ii. Finance Plan – identifies and describes anticipated and/or targeted funding sources and/or finance mechanisms to cover the costs associated with the budget estimate. The plan shall identify where financing is inadequate to cover the estimated budget, as well as a discussion of any financing mechanisms that may be explored to allay an identified finance gap.
  - d. 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 2027-2031 Interlocal Agreement.
3. Within 30 days of receipt, NDEP will provide written notification of acceptance or refusal of the Stormwater Program Annual Report. If refused, NDEP will provide a list of items to be resolved for the report to gain acceptance. The County may address comments and resubmit the report within 30 days. NDEP will work with the County to resolve any remaining unsatisfactorily addressed comments within a timeframe agreed upon by the Parties. If the Parties are unable to arrive at a mutually agreeable Annual Report, then either Party may terminate this agreement upon 90 days written notice to the other.

## **V. TERM & UPDATE**

The term of this Agreement shall terminate on September 30, 2026. 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, with or without any amendments prior to the expiration date, then the Parties agree to adhere to the terms and conditions of this Agreement until a subsequent agreement is approved and executed by the Parties. If after 6 months of the termination date the agreement has not been renewed, 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).

## **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 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 target is not met; the County's good faith attempt to perform any commitments; changes or modifications to the LCCP Handbook and/or process that significantly affect the County's planning or implementation ability; economic/budget constraints, feasibility or availability of funding sources, or other impediments; and past performance.
2. If the non-compliance or non-cooperation of a General Improvement District (GID) or other third party (which may include without limitation a GID's failure to perform maintenance or refusal to compensate the County for performing maintenance on its behalf) is identified as a cause preventing the County's performance under this Agreement, then NDEP will assist the County in obtaining the GID's compliance. Should the GID continue to refuse to cooperate, then this agreement will be either (1) renegotiated to remove any compliance targets incorporating the roadways, stormwater, or other facilities within the jurisdiction of the GID,<sup>1</sup> or (2) terminated upon 30 days written notice by either party.
3. 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.
4. 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.

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<sup>1</sup> By way of example, the Parties note that Kingsbury Grade General Improvement District has jurisdiction over 22 miles of roadway. Any FSP load (and associated reduction targets) attributed to those miles under this agreement may be separated out.

5. 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 LCCP 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 LCCP Handbook, it will be handled by progressive elevation within each respective Party's management structure.
4. The NDEP Administrator is NDEP's final decision-making authority for any dispute.



## **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 law, 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.

### DOUGLAS COUNTY REPRESENTATIVE

X Patrick Cates, County Manager  
Name (Printed)



X [Signature]  
Signature

X 11/19/21  
Date

### NEVADA DIVISION OF ENVIRONMENTAL PROTECTION REPRESENTATIVE

X Greg Lovato, Administrator  
Name (Printed)



X [Signature]  
Signature

X 11/3/21  
Date