

## STAFF REPORT

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### **CONSIDER BOUNDARY LINE AND EASEMENT AGREEMENTS BETWEEN THE STATE, ACTING BY AND THROUGH THE STATE LANDS COMMISSION AND CERTAIN PROPERTY OWNERS AT DONNER LAKE**

#### **PARTIES:**

State of California, acting by and through the State Lands Commission

All those property owners along the shore of Donner Lake listed in Exhibit A, attached (collectively known as the "Property Owners")

#### **INTRODUCTION:**

In November 2016, a group of Donner Lake property owners filed suit against the Commission through a recently formed corporation known as SOS Donner Lake. The Nevada County Superior Court case, *SOS Donner v. California State Lands Commission*, challenged the Commission's jurisdiction over Donner Lake and the boundary between State-owned sovereign land and the privately owned uplands. The proposed Boundary Line and Easement Agreements (Agreements) will settle this litigation, settle the underlying boundary disputes, and bring finality and certainty to an area that has been in contention since the 1970s. The proposed Agreements will fix the elevation of the low-water mark that serves as the boundary between State-owned fee land in the bed of Donner Lake and the privately owned adjoining uplands. The Agreements will also fix the elevation of the high-water mark that delineates the landward extent of the Public Trust easement. The upland owners will also acknowledge the navigability of Donner Lake, thus confirming the State's ownership of the lakebed. To effectuate the Agreements, the Commission and Property Owners will mutually grant quitclaim deeds that will confirm the parties' respective ownership. The Agreements are attached as Exhibit B.

The Agreements affect lands located in section 18 of Township 17 North, Range 16 East, Mount Diablo Meridian; and sections 13 and 14 of Township 17 North, Range 15 East, Mount Diablo Meridian, near the town of Truckee, Nevada County; in and adjoining Donner Lake. Additionally, a few parcels on the south shore of Donner Lake extend into Placer County, requiring a second and nearly identical agreement limited to this handful of parcels to be recorded with Placer

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County. The Agreements are authorized by Public Resources Code section 6357. The lands involved (Subject Area) are depicted, for reference purposes only, in Exhibit C.

### **BACKGROUND:**

Upon its admission to the United States of America on September 9, 1850, the State of California (State), by virtue of its sovereignty under the Equal Footing Doctrine of the Constitution of the United States, received in trust for the people of California all right, title, and interest in the beds of natural and navigable lakes within its boundaries for certain Public Trust purposes including but not limited to commerce, navigation, and fisheries.

Donner Lake is a naturally occurring lake located near the town of Truckee in Nevada County. Donner Lake is about 2.7 miles long, 0.6 mile wide, and 382 feet deep. Most of the waterfront parcels are occupied by residences, the majority of which have boat docks extending into the lake.

#### Historic and Current Disputes at Donner Lake

For many decades, private landowners along the shore of Donner Lake have disputed the State's ownership of the lakebed and, in the alternative, the boundaries of State ownership. In the 1970s staff conducted extensive historical research and analysis to determine that 5933.8 feet elevation<sup>1</sup> was the low-water line and 5935.8 feet elevation was the high-water line at Donner Lake. Staff surveyed the entire lake to locate and map these boundaries. In March 1977, Stephen and Edith Brandenburger filed suit against the Commission in Nevada County Superior Court. The case of *Brandenburger v. State* challenged the State's ownership of the bed of Donner Lake and challenged the boundaries of State ownership. After nearly a decade in Nevada County Superior Court, the *Brandenburger* case was dismissed with no ruling on the merits. During the pendency of the *Brandenburger* case, the *Lyon*<sup>2</sup> and *Fogerty*<sup>3</sup> decisions, regarding Clear Lake and Lake Tahoe, respectively, determined that the low-water mark was the boundary of State ownership and that the State retained a Public Trust easement between the high- and low-water marks. Over the next several decades, compliance with the Commission's lease efforts at Donner Lake remained low.

In 2014, the Town of Truckee declined to issue building permits to residents for work on their docks below the elevation of 5933.8 where the State asserted the boundary between private and public lands was located. Through 2014 and

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<sup>1</sup> All elevations refer to the National Geodetic Vertical Datum of 1929.

<sup>2</sup> *State of California v. Superior Court (Lyon)* (1981) 29 Cal. 3d 210.

<sup>3</sup> *State v. Superior Court of Placer County (Fogerty)* (1981) 29 Cal.3d 240.

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2015, various individuals and groups contacted staff, claiming Donner Lake was not navigable for the purposes of State ownership, that the boundary of State jurisdiction should be at 5924 feet elevation<sup>4</sup>, or that the State could not assert jurisdiction over Donner Lake without the court first ruling that Donner Lake is owned by the State and then setting the boundaries of State ownership. Staff reviewed the presented evidence and arguments and disagreed with these assertions.

Donner Lake residents formed a corporation known as SOS Donner Lake and retained counsel. Commission staff met with representatives of SOS Donner and continued to evaluate their claims through 2015 and 2016. Despite the ongoing discussions, SOS Donner filed suit against the Commission in November 2016.

### Settlement and Boundary Line Agreement

The Commission and SOS Donner Lake both retained experts to study Donner Lake to better understand the historic levels of Donner Lake and the impacts of artificial influences on the boundary between State-owned land and private upland. These studies and the ongoing exchange of information eventually resulted in a settlement agreement between staff and SOS Donner. In early 2018, the parties negotiated a conditional settlement agreement to the litigation that, among other considerations, required participation by a majority of the lakefront property owners in a boundary line agreement. The remainder of the conditions are set forth in the settlement agreement. Although SOS Donner is the plaintiff in the underlying litigation, SOS Donner, the corporation, does not own any waterfront property at Donner Lake. To be in the best interests of the State, the proposed settlement must bring finality to the underlying boundary disputes.

The Commission considered and approved this conditional settlement in closed session at its April 19, 2018 and June 21, 2018 Commission meetings. At that time, the settlement agreement was conditional on SOS Donner's performance of several conditions. It could have prejudiced the Commission's position in potential litigation if it had been considered in open session. The settlement agreement is presented for public inspection as Exhibit D now that the potential for prejudice has been reduced. The court stayed the litigation while the parties completed drafting the Agreements and the required number of participant signatures were obtained.

To reduce the complexity of this multiparty boundary line agreement, the parcels in public ownership were not included in these Agreements. These areas are currently used as parks, public piers, a public beach area, and a public boat launch. The public agency-owned parcels will be addressed in the future. There

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<sup>4</sup> 5924 feet elevation is the level of the very bottom of the lowest gate in the current dam. There are no records of the lake naturally draining this low.

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are also a few parcels in the northwestern portion of the lake where a retaining wall and fill have existed for many years. These parcels will require additional analysis and will be addressed separately. Finally, there was a prior boundary line agreement in the northeastern part of the lake. This area is not eligible for participation because the boundary is already defined and certain at that location. There are 210 remaining parcels around the lake eligible to participate in these Agreements. The Commission required participation by the owners of at least 168 parcels, comprising 80 percent of the private ownership of lakefront properties.

In August 2019, SOS Donner informed staff it has exceeded the minimum number of required participants to the Agreements. Staff now presents the Agreements for the Commission's consideration.

### **STAFF ANALYSIS AND RECOMMENDATION:**

#### **Authority:**

Public Resources Code sections 6005, 6107, 6216, 6301, 6357; Civil Code sections 670 and 830.

#### **Public Trust and State's Best Interests:**

On navigable inland lakes that are not subject to tidal influence, like Donner Lake, the State holds title to bed of the lake up to the low-water mark.<sup>5</sup> Although this rule<sup>6</sup> is simple to state, determining the location of the low-water mark is among the most complex tasks staff performs. The State received title to its sovereign lands at statehood. However, the current configuration of a waterway may not be the same as it was at statehood. Where gradual changes are attributable to natural processes such as erosion or accretion unaffected by human influence, the boundaries of State ownership remain ambulatory and adjust with the waterway. Conversely, the boundaries of State ownership are not altered by artificial influences such as fill, dredging, or construction of a dam. Instead, the boundary of State ownership will be the location of the low-water mark immediately prior to the artificial influence. As part of the effort to determine the location of the low-water mark prior to the artificial influence, staff must research the configuration of a waterway at statehood and track the changes through time to determine when an artificial influence becomes the dominant and proximate cause of a change and

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<sup>5</sup> Civil Code sections 670 and 830. See also *State of California v. Superior Court (Lyon)* (1981) 29 Cal.3d 210.

<sup>6</sup> This brief staff report is not a complete recitation of water boundary law. For more information see the Commission's website at <https://www.slc.ca.gov/water-boundaries/> and Public Access Guide for more information.

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then determine the precise configuration of the waterway just prior to this change.<sup>7</sup>

The earliest available surveys of Donner Lake were conducted from 1865-1867 by the U.S. General Land Office (GLO). These early surveys of large land tracts were never intended to precisely delineate the boundaries between public and private ownership. Additionally, the construction of modern roads and development of the area over the intervening 150 years has altered the landscape and made it difficult to identify with certainty many of the original rocks and trees used as survey monuments. These obstacles made it difficult to form an accurate picture of Donner Lake's original configuration and compare it to its present condition.

The GLO survey was the only available survey before the lake was dammed. Staff is aware of dams on Donner Lake as early as 1867. Every other survey of Donner Lake has been performed after some structure controlled the outfall of the lake. Thus, all surveys done after 1867 are open to the critique that they do not depict Donner Lake in its natural condition.

The early timber dams are believed to be part of local logging operations rather than water storage projects. As such, staff believes that the timber dams did not significantly impact the high- or low-water levels of the lake. Although there have been at least two timber dams at various points in history, the modern concrete dam was completed in 1928. It is this dam that controls the lake elevation today. The 1928 water storage project placed the concrete dam 0.25 mile downstream from the natural lip of the lake and cut a new outlet channel several feet lower than the natural outlet. Staff believes the concrete dam allowed the operator to hold the lake near the historic high-water line and the dredging of the lake lip and outlet channel lowered the low-water line from the historic natural conditions.

SOS Donner interpreted the available survey information, historical evidence, and certain geological evidence to assert that the natural low-water level of Donner Lake was at 5924 feet elevation. Commission staff together with consultants examined survey information, forest conditions, geological evidence, and hydrological evidence and concluded that the current high-water level is similar to the historical level and the low-water level has been artificially lowered from historic conditions.

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<sup>7</sup> *Cal. ex rel. State Lands Com v. Superior Court* (1995) 11 Cal.4th 50.

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There are no verifiable records documenting the elevation of the natural water levels at Donner Lake predating the 1928 water storage project. This makes it difficult to compare the modern elevation of the lake with last natural elevations to determine whether the levels have changed, when they changed, or how they changed. The available evidence is subject to different interpretations. Despite significant expenditure on consultants and studies, the parties were unable to determine the water levels before human influence with clarity and certainty.

After extensive analysis, it was determined that current conditions would provide the most credible and acceptable basis for setting the boundary of public and private ownership at Donner Lake. Although this analysis is not typically applied, the particular facts here supported this decision. In addition to challenges with determining the water levels prior to artificial influence discussed above, Donner Lake has been operated in the same manner for 90 years. The water levels at the lake are unlikely to change in the future due to deed restrictions on the water levels and the adjacent shoreline development. The current conditions are also very close to where staff believes, based on its research, the natural levels of the lake were prior to artificial influence.

The U.S. Geological Survey installed a water level gauge at Donner Lake in 1989. Based on 30 years of daily readings, staff and SOS Donner were able to agree that the low-water line at Donner Lake is currently 5928 feet elevation, and the high-water line is 5935.7 feet elevation. These elevations correspond very closely with the earliest available survey work that used modern elevations. These surveys were all performed around the time of the 1928 dam project and support the fact that Donner Lake has likely been operated at consistent levels for the last 90 years.

Based on the extensive research conducted by both sides, the best available evidence supports a low-water line of 5928 feet elevation and a high-water line of 5935.7 feet elevation at Donner Lake.

Public Resources Code section 6357 authorizes the Commission to establish the low-water mark and high-water mark by agreement with the upland owner. The location of these water lines is then fixed through a boundary line agreement.

The proposed Agreements fix the elevation used to determine the location of both the high- and low-water marks but leaves the location of these lines subject to natural processes. Donner Lake has been operated in a consistent manner for the last 90 years. Deed restrictions prohibit the dam

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operator from raising the lake level above 5935.8 feet elevation. This restriction protects the roads and residential development around the lake from flooding. Similarly, the low-water level of the lake must be maintained to avoid destroying fish habitat. Because of these restrictions, the fact that Donner is a lake rather than a river, and the fact that Donner will continue to be artificially controlled, the proposed Agreements will fix the boundaries at an elevation that is appropriate both now and into the foreseeable future.

Additionally, Public Resources Code section 6357 has been interpreted to require evidence that: (1) a reasonable attempt to locate the true boundary line has been made and (2) the proposed agreement is based on those attempts. The Agreements meet these criteria.

The proposed Agreements do not involve the sale or exchange of State sovereign land and do not involve terminating the Public Trust Easement between the high- and low-water marks. Commission staff and the Attorney General's Office have reviewed the proposed Agreements and believe all necessary legal elements have been met to effectuate the Agreements. The Agreements will bring finality to the title disputes at Donner Lake and the participants acknowledge the State's ownership of the lake below the low-water mark.

**Recommendation:**

For the reasons detailed throughout this staff report, staff believes the proposed Agreements meet the required legal elements and are in the best interests of the State. As such, staff recommends that the Commission approve the Agreements, in substantially the form on file at the Commission's Sacramento Office and attached as Exhibit B, and authorize its execution and the execution and recordation of all documents necessary to implement it.

Staff also recommends the Commission delegate to the Executive Officer the authority to amend the Agreements to include additional eligible parcels should they submit executed and notarized copies of the Agreements and their vesting deeds prior to the date the Agreements are delivered to the Governor's Office for signature.

At the time this staff report was prepared, the Commission has approximately 64 active leases and two pending lease applications at Donner Lake. Most of these parcels are eligible for participation in the Agreements and the owners have chosen to do so. Should the Commission authorize the Agreements, staff will have to determine

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whether these lessees participated in the Agreements and reevaluate their leases. In some cases, the piers will no longer extend onto State land and the leases should be terminated. In other cases, some leases will have to be amended to reflect the newly established boundary. These lease terminations and adjustments will also require voiding rent invoices and reviewing or adjusting annual rent. Staff recommends that the Commission delegate to the Executive Officer the authority to execute all actions necessary to terminate or modify leases and void or modify annual rent as necessary to bring the existing leases at Donner Lake into compliance with the Commission's action to approve the Agreements where such lessees have participated in the Agreements. Staff also recommends this delegation become effective once the Agreements are approved and executed by the Governor's Office, and that the Executive Officer is granted authority to make the effective date of her actions concurrent with the Commission's approval of the Agreements, namely October 24, 2019.

**OTHER PERTINENT INFORMATION:**

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to land along the State's inland and coastal waterways.
2. Staff recommends that the Commission find that approval of the proposed Agreements is exempt from the requirements of the California Environmental Quality Act (CEQA) as a statutorily exempt project. The project is exempt because it involves settlement of a title boundary dispute. The Agreements are part of a settlement for the case of SOS Donner Lake v. State of California in which a group of Donner Lake residents challenged the navigability of Donner Lake and the boundary of State sovereign lands.
3. Authority: Public Resources Code section 21080.11 and California Code of Regulations, title 14, section 15282, subdivision (f).

**EXHIBITS:**

- A. Donner Lake Boundary Line Agreements Received by September 6, 2019
- B. Form of Boundary Line Agreements
- C. Depiction of Subject Area
- D. Litigation Settlement Agreement



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**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

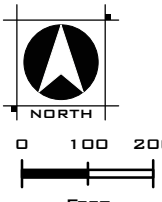
Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11 and California Code of Regulations, title 14, section 15282, subdivision (f), settlement of a title and boundary dispute.







**AUTHORIZATION:**

1. Approve and authorize the execution, acknowledgment, and recordation of the Agreements on behalf of the Commission, in substantially the form of the copy of such Agreements on file with the Commission and attached here as Exhibit B; and direct the staff of the Commission and/or the Office of the California Attorney General to take all necessary or appropriate action on behalf of the Commission to carry out the Agreements.
2. Authorize the Executive Officer to amend the Agreements to include additional eligible parcels and parties should they submit executed and notarized copies of the Agreements and their vesting deeds prior to the date the Agreements are delivered to the Governor's Office.
3. Authorize the Executive Officer to terminate or modify leases at Donner Lake where the upland owner has participated in the Agreements and take other administrative actions such as modifying annual rent or voiding invoices to bring existing leases in line with the Commission's approval of the Agreements, contingent on the Governor's approval and execution of the Agreements, with an effective date of such actions being October 24, 2019.



**SOS DONNER LAKE**  
MEMBERSHIP MAP  
SEPTEMBER 2019



-  BLA Received (184)
-  BLA Mailed (223)
-  Common Lots (211)
-  Common Lot Members (160)
-  Non Members (53)
-  Parcels-Nevada/Placer

NOTES:  
Map shows those contributions from  
lakefront property owners only.

## DONNER LAKE



# EXHIBIT B

## BOUNDARY LINE AND EASEMENT AGREEMENT

Between the State of California Acting by and through the California State Lands Commission and Those Property Owners Identified in Exhibit A, on Donner Lake, Town of Truckee, County Of Nevada, California

This Boundary Line and Easement Agreement (“AGREEMENT”) is entered into between (a) the State of California (“STATE”), acting by and through the California State Lands Commission; (b) all those property owners, and their successors-in-interest, along the shore of Donner Lake who have executed this AGREEMENT in counterpart (collectively, “PROPERTY OWNERS”); and (c) SOS Donner Lake (“SOS DONNER”), an association of property owners along the waterfront of Donner Lake. The PROPERTY OWNERS are summarized by name, address, and parcel number in Exhibit A. The STATE, PROPERTY OWNERS, and SOS DONNER, hereafter collectively referred to in the singular as “PARTY” and plural as “PARTIES”, enter this AGREEMENT on the following terms and conditions:

### RECITALS

1. This AGREEMENT concerns certain lands in section 18 of Township 17 North, Range 16 East, Mount Diablo Meridian; and sections 13 and 14 of Township 17 North, Range 15 East Mount Diablo Meridian, within the Town of Truckee, County of Nevada, State of California; in and adjoining Donner Lake. This area is shown on the plat attached as Exhibit B and is referred to as the SUBJECT AREA.
2. Upon being admitted to the Union on September 9, 1850, and by virtue of its sovereignty, California received fee title in trust to the beds of all navigable waterways. Pursuant to Civil Code sections 670 and 830 and *State v. Superior Court (Lyon)*, (1980) 29 C3d 210, fee title in such beds of navigable non-tidal waterways extends landward to the elevation of the ordinary low-water (“OLW”). The *Lyon* court held that these same waterways are subject to the common law Public Trust for commerce, navigation, fisheries, recreation, and conservation of natural resources (“PUBLIC TRUST”) up to the elevation of the ordinary high-water (“OHW”).
3. All elevations in this Agreement are listed in National Geodetic Vertical Datum of 1929 (“NGVD 1929”), unless otherwise specified.
4. SOS DONNER, an association of waterfront property owners, filed the civil case of *SOS Donner Lake v. State of California*, Nevada County Superior Court case number TCU16-6532 on November 22, 2016. In that litigation, SOS DONNER asserts that Donner Lake is not navigable for title purposes and that the STATE has no ownership interest in the bed of the lake. Alternately, SOS

DONNER contends that the OLW at Donner Lake prior to artificial influence is 5924 feet elevation.

5. The STATE contends that Donner Lake is navigable for title purposes and that the elevation of the OLW, prior to artificial influences, is 5933.8 feet.
6. The PARTIES agree that the water level at Donner Lake has been artificially influenced since at least 1867. Human modifications to the lake include dredging of the outlet channel and construction of multiple dams, including the concrete dam installed in 1928 that remains in use. Despite exhaustive research, the PARTIES are unable to locate accurate water level records that predate human modification of Donner Lake. As a result, it is unclear what the elevations of the OLW and OHW were prior to artificial influences.
7. The PARTIES further agree that the water level at Donner Lake has fluctuated in a regular and predictable manner for many decades. The United States Geological Survey ("USGS") installed an electronic gauge at Donner Lake and maintains daily water elevation records from 1989 to present. These records reflect the longstanding seasonal water fluctuations at Donner Lake, as the lake is currently managed.
8. In 1974, the STATE entered into a boundary line agreement impacting a small area on the northeast portion of Donner Lake. This boundary line agreement was recorded in the official records of Nevada County in Book 702, pages 502-522. The area covered by that boundary line agreement will not be impacted by this AGREEMENT.
9. Other than the small area covered by that 1974 agreement, the true and correct property ownership boundary along the shore of Donner Lake between the STATE and private property owners has not been previously established.
10. The PARTIES desire to bring finality to the longstanding title and boundary disputes at Donner Lake. At the conclusion of this AGREEMENT the STATE will own in fee the bed of Donner Lake below elevation 5928 and the PROPERTY OWNERS will own the lands in fee above elevation 5928 subject to the PUBLIC TRUST below the OHW at 5935.7 feet elevation.
11. The STATE, by approval of item # \_\_\_\_\_ at its meeting of \_\_\_\_\_, has approved this AGREEMENT.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals and the covenants, conditions, and terms contained in this AGREEMENT, the PARTIES mutually agree, and quitclaim as follows:

## **I. Agreement Authorized by Law**

- A. The STATE is authorized by Division 6 of the California Public Resources Code, and in particular Section 6357, to establish the OHW and OLW of any swamp, overflowed, marsh, tide, or submerged lands of the STATE, by agreement, or action to quiet title whenever it is deemed expedient or necessary.
- B. The PARTIES agree that establishment of the OHW and OLW through this AGREEMENT is expedient within the meaning of Public Resources Code 6357. This AGREEMENT brings finality to long-standing boundary disputes around Donner Lake.
- C. The PARTIES agree that using the current conditions of Donner Lake to set the OHW and OLW at certain locations is reasonable and appropriate in this situation and supported by law.
- D. Based on research and analysis, the PARTIES agree that the best available evidence of the OLW and OHW at Donner Lake postdating the installation of the dam in 1928 are the records maintained by the USGS. Based on the USGS data, the average low-water elevation from 1989 to present is 5928.04 feet elevation (hereafter rounded to the nearest tenth of a foot or 5928.0 feet elevation). The average high-water elevation from 1989 to present is 5935.7 feet elevation.

## **II. Navigability of Donner Lake**

Donner Lake is navigable for title purposes. The STATE acquired the bed of Donner Lake upon admission to the Union in 1850 as stated in Civil Code section 670. The landward boundary of this fee title ownership is the ordinary low-water mark (the point at which the OLW intersects the shore) pursuant to Civil Code section 830. Donner Lake is subject to the PUBLIC TRUST up to the OHW.

## **III. Location of the Ordinary Low-Water Mark and Ordinary High-Water Mark**

- A. The common boundary between the STATE'S and PROPERTY OWNERS' underlying fee interest shall be the OLW which is hereby established as lying at elevation 5928 NGVD 1929, except in areas that have been filled or in areas where the STATE and the upland property owner have previously entered into a boundary line agreement or title settlement agreement.
- B. The landward extent of the Public Trust easement shall be the OHW which is hereby established as elevation 5935.7 NGVD 1929, except in areas that have been filled or in areas where the STATE and the upland property owner have previously entered into a boundary line agreement or title settlement agreement.

- C. The elevations of 5928 and 5935.7 that establish the OLW and OHW shall remain fixed under this AGREEMENT. However, the physical locations where these elevations intersect the shore of the lake remain ambulatory under California statutory and decisional law as it exists on the date of this AGREEMENT.
- D. In November 2018, the STATE surveyed the contours of the OLW and OHW where possible. This survey work has been provided to SOS DONNER and is on file at the Sacramento Office of the California State Lands Commission.
- E. Once this AGREEMENT has been fully executed by all PARTIES, executed by the Governor of California, and recorded, the STATE shall record a record of survey depicting the location of the OLW and OHW at the time of the November 2018 survey.

#### **IV. Public Trust Easement**

The area between the OLW of 5928.0 feet elevation and OHW of 5935.7 feet elevation is subject to a PUBLIC TRUST easement in favor of the STATE. This PUBLIC TRUST easement permits public access, navigation, fishing and lake related recreational uses such as bathing, swimming, and open space, as described in the case of *State of California v. Superior Court of Lake County (Lyon)*, 29 Cal. 3d 210, 229-231, and as may be permitted by applicable law.

#### **V. Quitclaims of the PARTIES**

- A. Each of the individual PROPERTY OWNERS, in consideration of the covenants described herein, by execution of this AGREEMENT, hereby remises, releases, and quitclaims to the STATE all present claim, right, title, estate, lien, and interest in Donner Lake lakeward (below the agreed upon boundary line of 5928.0 feet elevation) of the OLW.
- B. Excepting the Public Trust easement existing between the OHW and OLW and subject to the terms and conditions set forth herein; in consideration of the covenants described herein, STATE hereby remises, releases, and quitclaims to the PROPERTY OWNERS all fee title, claim, right, title, and estate in the PROPERTY OWNER's parcel landward (above the agreed upon boundary line of 5928.0 feet elevation) of the OLW.

#### **VI. Acceptance of Conveyances and Consent to Recording**

- A. By execution of this AGREEMENT, PROPERTY OWNERS accept the conveyance herein and consent to the recordation of this AGREEMENT and other documents executed pursuant to this AGREEMENT.

- B. By execution of the attached Certificate of Acceptance and Consent to Recording (Exhibit C), the STATE accepts the herein described conveyance and hereby consents to the recordation of this AGREEMENT and other documents executed pursuant to this AGREEMENT. The STATE further agrees to hold the conveyance of the lands below elevation 5928.0 as sovereign in character subject to the PUBLIC TRUST.

## **VII. Optional Judicial Confirmation of Validity of Agreement.**

At its own discretion, any PARTY may elect to obtain a judicial confirmation of this AGREEMENT and its title pursuant to Code of Civil Procedure sections 760.010 through 764.080.

- A. If a PARTY chooses to do so, the electing PARTY shall file a complaint within 60 days of execution of this AGREEMENT by all PARTIES and the Governor of the State of California, or the right to such confirmation shall be waived. Each PARTY shall cooperate with the other in obtaining such a confirmatory judgment. Each PARTY shall bear their own costs in seeking a judicial confirmation of this AGREEMENT.
- B. If a court of competent jurisdiction enters a judgment that becomes final, finding and declaring that this AGREEMENT or any of the conveyances pursuant to it are invalid, and should that determination be upheld on final appeal (if one is filed), the PARTIES agree that the AGREEMENT shall no longer be effective for any purpose, and that the PARTIES shall re-convey to their respective grantors under this AGREEMENT each and every interest conveyed as a result of this AGREEMENT so as to return the PARTIES to the positions they were in prior to the execution of this AGREEMENT.
- C. Upon entry of any judgment confirming the validity of the settlement embodied in this AGREEMENT, each PARTY shall be deemed to have waived any right to appeal from the judgment. A judgment declaring the AGREEMENT invalid may be appealed by any PARTY.

## **VIII. Exchange of Documents**

The PARTIES shall implement this AGREEMENT in the following manner:

- A. SOS DONNER will contract with Bender Rosenthal Incorporated ("BRI") for the depositing, processing, and recording of all documents necessary to effectuate this AGREEMENT. When this AGREEMENT has been executed by the STATE and by the requisite number (specified in Paragraph C below) of PROPERTY OWNERS, it shall be recorded. SOS DONNER has agreed to bear the costs of processing in a separate agreement.

- B. PROPERTY OWNERS desiring to enter into this AGREEMENT shall execute and notarize a counterpart signature page. BRI will obtain the vesting deed for each parcel where the PROPERTY OWNER has executed a signature page and attach the deed to the signature page.
- C. This AGREEMENT shall stay open until August 1, 2019, whereupon the STATE will consider, at the first available properly noticed public meeting of the California State Lands Commission, the approval of this AGREEMENT, provided: (i) at least one hundred and sixty-three (163) PROPERTY OWNERS, or their successors in interest, who have not previously agreed to the above stated location of the OLW and the OHW or other boundary line with the STATE, have executed this AGREEMENT; and (ii) SOS DONNER has provided the STATE with \$40,000 toward the actual costs of the survey work necessary to implement this AGREEMENT. The STATE, in its sole discretion, may extend this August 1, 2019 deadline by up to one calendar year by providing written notice to SOS DONNER and BRI. Once this AGREEMENT is approved at a regularly noticed meeting of the California State Lands Commission, the STATE will execute the AGREEMENT. The STATE shall then submit this AGREEMENT to the Office of the Governor for the Governor's approval and signature pursuant to Public Resources Code section 6107.
- D. Recordation of Documents: Upon obtaining all necessary signatures, the STATE shall deliver to BRI a fully-executed AGREEMENT. BRI shall record this AGREEMENT in Nevada County against the PROPERTY OWNER's properties. PROPERTY OWNERS may obtain copies of the AGREEMENT from BRI and other designated agents of the PARTIES. The original AGREEMENT shall be returned to the STATE after recordation.
- E. The PARTIES shall agree upon such other escrow instructions as are necessary for the recordation of this AGREEMENT.

#### **IX. SALE BY PROPERTY OWNER PRIOR TO CLOSE OF ESCROW**

- A. In the event a PROPERTY OWNER desires to transfer his/her/its/their property after executing this AGREEMENT and prior to this AGREEMENT being recorded, the PROPERTY OWNER hereby agrees to:
  - i. Notify SOS DONNER, the STATE, and BRI at the addresses specified in paragraph X(R) below; and
  - ii. Notify any prospective purchaser that this AGREEMENT is in the process of being completed;



- B. In the event a PROPERTY OWNER has transferred his/her/its/their property prior to the close of escrow, the PROPERTY OWNER'S parcel will not be included in this AGREEMENT, and the parcel will not count toward the 163 PROPERTY OWNER requirement of paragraph VIII(C) above unless the new owner of the transferred property also consents to this AGREEMENT, executes a counterpart signature page, and otherwise performs all requirements of this AGREEMENT.

## **X. ADDITIONAL PROVISIONS**

### **A. Further Assurances**

So long as authorized by applicable laws to do so, the PARTIES will perform such other acts, and execute, acknowledge and deliver all further conveyances and other instruments that may be necessary to fully assure the other PARTIES all of the respective properties, rights, titles, interests, estates, remedies, powers, and privileges to be conveyed or provided for by this AGREEMENT.

### **B. Execution before a Notary Public**

All signatures of the PARTIES to this AGREEMENT shall be acknowledged before a Notary Public, and a certificate of acknowledgment shall be attached to this AGREEMENT and other documents to allow them to be recorded in the Office of the Recorder of Nevada County, California.

### **C. Counterparts**

This AGREEMENT may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original and as if all of the PARTIES to the aggregate counterparts had signed the same instrument.

### **D. Duty to Defend**

In addition to the deposit stated in Paragraph VIII(C) above, SOS DONNER shall deposit \$50,000 with the STATE. This deposit shall be maintained for 1 year following the recording of this AGREEMENT. In the event this AGREEMENT is challenged, the STATE may use these funds to pay the reasonable attorney fees and costs the STATE incurs defending this AGREEMENT. If this AGREEMENT is not challenged during the one-year period provided by Public Resources Code section 6341, then the funds shall be returned to SOS DONNER. If this AGREEMENT is challenged, and if the costs of defending the AGREEMENT exceed the \$50,000 maintained in the escrow account, the PARTIES shall negotiate in good faith to share equally the costs of further defending this AGREEMENT. If the PARTIES are unable to negotiate such an agreement, the STATE shall have no duty to defend this AGREEMENT.

#### **E. No Admission or Effect if Agreement Not Made Effective**

In the event this AGREEMENT does not become effective for any reason, nothing herein shall constitute, or be construed as, an admission by any PARTY or evidence concerning the location of boundaries, physical character, or character of title to or interest in the SUBJECT AREA depicted in Exhibit B or the lands involved in this AGREEMENT.

#### **F. No Effect on Other Lands**

The provisions of this AGREEMENT do not constitute, nor are they to be construed as, an admission by any PARTY or evidence concerning the boundaries, physical character, or character of title to or interest in any lands outside the SUBJECT AREA depicted in Exhibit B.

#### **G. Impacts of Physical/Climate Changes or Future Development**

If Donner Lake rises above the OHW, the land covered by these waters will be subject to the navigational easement described in *People ex rel. Baker v. Mack* (19 cal.App.3d 1040) and cases following it for so long as the land is inundated. Nothing in this section limits any applicable rights of the PARTIES pursuant to California Civil Code section 1015.

Nothing in this AGREEMENT obligates STATE to protect or cause to be protected any privately-owned uplands from inundation by floods, erosion, or storm events. Further, STATE shall not in any manner be liable to the owners of upland properties within the SUBJECT AREA for failure to provide protection against inundation or other harm from floods, erosion, or storm events.

#### **H. Exemptions**

This AGREEMENT and the conveyances provided herein are exempt from: 1) the Subdivision Map Act pursuant to Government Code section 66412(e); 2) the California Environmental Quality Act pursuant to Public Resources Code section 21080.11; and 3) the Property Acquisition Law pursuant to Government Code section 15853(c).

#### **I. Binding Agreement**

All the terms, provisions, and conditions of this AGREEMENT shall be binding upon and inure to the benefit of the respective successors and assigns of the PARTIES.

**J. Allocation of Costs and Expenses**

All expenses, fees, costs and expenses of any attorney, engineer or other person employed or retained by a PARTY in connection with the transaction underlying this Agreement shall be borne by that PARTY, unless otherwise agreed to herein.

**K. Modification**

No modification, amendment, or alteration of this AGREEMENT shall be valid unless in writing and signed by all PARTIES to this AGREEMENT, or their successors or assigns.

**L. No Effect on Other Government Jurisdiction**

This AGREEMENT does not exempt the PARTIES from the regulatory, environmental, land use or other jurisdiction of any federal, state, local, or other government entity.

**M. Agreement for Compromise and Settlement**

It is expressly understood by the PARTIES that the provisions set forth in this AGREEMENT have been agreed upon for purposes of compromising and settling the respective disputed title interests of the PARTIES in the SUBJECT AREA.

**N. Purpose to Perfect Title**

The right, title and interest of the STATE in the lands above the OLWM and the right, title and interest of PROPERTY OWNERS in the LANDS below the OLWM are quitclaimed by the respective PARTIES to the other solely for the purpose of perfecting title to the disputed lands within the SUBJECT AREA and, accordingly, for tax assessment purposes, the quitclaims and easement do not involve a change in ownership pursuant to section 62(b) of the California Revenue and Taxation Code.

**O. Headings**

The title headings of the sections of this AGREEMENT are inserted for convenience only and shall not be considered in construing this AGREEMENT.

**P. Effective Date**

This AGREEMENT becomes effective only after it has been executed by all of the PARTIES, the Governor of the State of California, and recorded in the Office of the Recorder for the County of Nevada.

## **Q. Delivery**

In any instance where “delivery” is called for under this AGREEMENT, the delivery shall be by same-day physical delivery or through United States Postal Service Certified Mail or equivalent service.

## **R. Notifications**

All notices required or permitted by this Agreement shall be deemed to have been given seventy-two (72) hours after the notice is deposited with the United States Postal Service, as registered or certified mail with postage prepaid. Notices shall be addressed to the STATE and SOS DONNER at the address set forth below. Additionally, SOS DONNER shall, through BRI, shall serve as the agent for service of notice to the PROPERTY OWNERS. Any notice given in any other fashion shall be deemed to have been given when actually received by the addressees. Should the STATE, SOS DONNER, or BRI change its address, it shall give notice to the other entities listed below:

California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202  
Attn: Legal Division

SOS Donner Lake  
5429 Tufts Street  
Davis, CA 95618  
[sosdonner@sbcglobal.net](mailto:sosdonner@sbcglobal.net)

Bender Rosenthal Incorporated  
c/o Lindy Lee  
2825 Watt Avenue, Suite 200  
Sacramento, CA 95821  
(916) 978-4900

## **XI. Exhibits**

All preliminary recitals of and exhibits to this Agreement (Exhibits A through C) are hereby incorporated by reference. The exhibits to this Agreement are as follows:

- Exhibit A – List of Affected Assessor’s Parcel Numbers
- Exhibit B – Depiction of the SUBJECT AREA
- Exhibit C – Certificate of Acceptance and Consent to Recording

To witness this AGREEMENT, a duly authorized officer of THE STATE and SOS DONNER has executed it below on the date below each signature.

**STATE OF CALIFORNIA  
STATE LANDS COMMISSION**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

JENNIFER LUCCHESI  
EXECUTIVE OFFICER

Approved as to form:

Xavier Becerra  
Attorney General  
State of California

By: \_\_\_\_\_

NICOLE RINKE  
Deputy Attorney General

**SOS DONNER**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
SOS DONNER

Approved as to form:

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IN APPROVAL WHEREOF

I, Gavin Newsom, Governor of the State of California, have set my hand and caused the seal of the State of California to be affixed hereto pursuant to Section 6107 of the Public Resources Code of the State of California.

Given under my hand at the City of Sacramento this \_\_\_\_\_ day of \_\_\_\_\_  
in the year Two Thousand and Nineteen.

---

GAVIN NEWSOM  
GOVERNOR

Attest:

---

ALEX PADILLA  
SECRETARY OF STATE

Countersigned:

---

JENNIFER LUCCHESI  
EXECUTIVE OFFICER  
STATE LANDS COMMISSION

## Boundary Line and Easement Agreement

### Counterpart Signature Page

I, \_\_\_\_\_ [name] am the/an owner of record for the property at \_\_\_\_\_ [address], listed as Assessor's Parcel Number \_\_\_\_\_. A copy of the deed for this property is attached hereto. If this property is held by a trust or other entity, I affirmatively represent that I am a duly authorized agent to bind this entity to this agreement. By executing this counterpart signature page, I consent to all the terms and conditions of the Boundary Line and Easement Agreement Between the State of California Acting by and through the California State Lands Commission and Those Property Owners Identified in Exhibit A, on Donner Lake, Town of Truckee, County Of Nevada, California.

#### PROPERTY OWNER:

#### PROPERTY INFORMATION

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
[Street Address]  
Truckee, CA 96161

Name: \_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

\_\_\_\_\_  
Assessor's Parcel Number

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

**ATTACH DEED  
ATTACH ACKNOWLEDGMENT**



## Exhibit A – List of Affected Parcels

PROPERTY OWNERS Participating in Boundary Line Agreement

[This portion to be filled in once we have the list of the persons joining the BLA.]

Exhibit B

Depiction of Subject Area

[this page to be replaced with exhibit]

Exhibit C – Certificate of Acceptance and Consent to Recording

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Warren Crunk  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

STATE OF CALIFORNIA  
OFFICIAL BUSINESS  
Document entitled to free recordation  
pursuant to Government Code  
Section 27383

Above Space For Recorder's Use

Nevada County APNs:

**CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING**

Government Code 27281

This is to certify that the STATE OF CALIFORNIA, acting by and through the CALIFORNIA STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby accepts any and all right, title and interest in real property conveyed by, and consents to the recordation of the QUITCLAIM, found in paragraph V(B) on page 4 of the attached Boundary Line and Easement Agreement), from \_\_\_\_\_ Nevada County, dated \_\_\_\_\_, \_\_\_\_\_

The said interests in real property are accepted by the STATE OF CALIFORNIA, in its sovereign capacity in trust for the people of the state, as real property of the legal character of submerged lands.

This acceptance and consent to recording is executed by and on behalf of the STATE OF CALIFORNIA by the CALIFORNIA STATE LANDS COMMISSION, acting pursuant to law, as approved by its Minute Item No. \_\_\_\_ of its public meeting on \_\_\_\_\_, by its duly authorized undersigned officer.

CALIFORNIA STATE LANDS COMMISSION

Dated: \_\_\_\_\_

By: \_\_\_\_\_

JENNIFER LUCCHESI  
EXECUTIVE OFFICER

## **BOUNDARY LINE AND EASEMENT AGREEMENT**

Between the State of California Acting by and through the California State Lands Commission and Those Property Owners Identified in Exhibit A, on Donner Lake, Town of Truckee, County Of Placer, California

This Boundary Line and Easement Agreement ("AGREEMENT") is entered into between (a) the State of California ("STATE"), acting by and through the California State Lands Commission; (b) all those property owners, and their successors-in-interest, along the shore of Donner Lake who have executed this AGREEMENT in counterpart (collectively, "PROPERTY OWNERS"); and (c) SOS Donner Lake ("SOS DONNER"), an association of property owners along the waterfront of Donner Lake. The PROPERTY OWNERS are summarized by name, address, and parcel number in Exhibit A. The STATE, PROPERTY OWNERS, and SOS DONNER, hereafter collectively referred to in the singular as "PARTY" and plural as "PARTIES", enter this AGREEMENT on the following terms and conditions:

### **RECITALS**

1. This AGREEMENT concerns certain lands in section 18 of Township 17 North, Range 16 East, Mount Diablo Meridian; and sections 13 and 14 of Township 17 North, Range 15 East Mount Diablo Meridian, within the Town of Truckee, County of Placer, State of California; in and adjoining Donner Lake. This area is shown on the plat attached as Exhibit B and is referred to as the SUBJECT AREA.
2. This AGREEMENT impacts certain parcels along the south western shore of Donner Lake where the lots are within both Placer and Nevada Counties. A separate Boundary Line Agreement is also being filed in Nevada County. The PARTIES agree that it is in their mutual best interests to also file this AGREEMENT in Placer County to provide adequate notice of the rights impacted by this AGREEMENT.
3. Upon being admitted to the Union on September 9, 1850, and by virtue of its sovereignty, California received fee title in trust to the beds of all navigable waterways. Pursuant to Civil Code sections 670 and 830 and *State v. Superior Court (Lyon)*, (1980) 29 C3d 210, fee title in such beds of navigable non-tidal waterways extends landward to the elevation of the ordinary low-water ("OLW"). The *Lyon* court held that these same waterways are subject to the common law Public Trust for commerce, navigation, fisheries, recreation, and conservation of natural resources ("PUBLIC TRUST") up to the elevation of the ordinary high-water ("OHW").
4. All elevations in this Agreement are listed in National Geodetic Vertical Datum of 1929 ("NGVD 1929"), unless otherwise specified.

5. SOS DONNER, an association of waterfront property owners, filed the civil case of *SOS Donner Lake v. State of California*, Nevada County Superior Court case number TCU16-6532 on November 22, 2016. In that litigation, SOS DONNER asserts that Donner Lake is not navigable for title purposes and that the STATE has no ownership interest in the bed of the lake. Alternately, SOS DONNER contends that the OLW at Donner Lake prior to artificial influence is 5924 feet elevation.
6. The STATE contends that Donner Lake is navigable for title purposes and that the elevation of the OLW, prior to artificial influences, is 5933.8 feet.
7. The PARTIES agree that the water level at Donner Lake has been artificially influenced since at least 1867. Human modifications to the lake include dredging of the outlet channel and construction of multiple dams, including the concrete dam installed in 1928 that remains in use. Despite exhaustive research, the PARTIES are unable to locate accurate water level records that predate human modification of Donner Lake. As a result, it is unclear what the elevations of the OLW and OHW were prior to artificial influences.
8. The PARTIES further agree that the water level at Donner Lake has fluctuated in a regular and predictable manner for many decades. The United States Geological Survey ("USGS") installed an electronic gauge at Donner Lake and maintains daily water elevation records from 1989 to present. These records reflect the longstanding seasonal water fluctuations at Donner Lake, as the lake is currently managed.
9. In 1974, the STATE entered into a boundary line agreement impacting a small area on the northeast portion of Donner Lake. This boundary line agreement was recorded in the official records of Nevada County in Book 702, pages 502-522. The area covered by that boundary line agreement will not be impacted by this AGREEMENT.
10. Other than the small area covered by that 1974 agreement, the true and correct property ownership boundary along the shore of Donner Lake between the STATE and private property owners has not been previously established.
11. The PARTIES desire to bring finality to the longstanding title and boundary disputes at Donner Lake. At the conclusion of this AGREEMENT the STATE will own in fee the bed of Donner Lake below elevation 5928 and the PROPERTY OWNERS will own the lands in fee above elevation 5928 subject to the PUBLIC TRUST below the OHW at 5935.7 feet elevation.
12. The STATE, by approval of item # \_\_\_\_\_ at its meeting of \_\_\_\_\_, has approved this AGREEMENT.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the foregoing recitals and the covenants, conditions, and terms contained in this AGREEMENT, the PARTIES mutually agree, and quitclaim as follows:

### **I. Agreement Authorized by Law**

- A. The STATE is authorized by Division 6 of the California Public Resources Code, and in particular Section 6357, to establish the OHW and OLW of any swamp, overflowed, marsh, tide, or submerged lands of the STATE, by agreement, or action to quiet title whenever it is deemed expedient or necessary.
- B. The PARTIES agree that establishment of the OHW and OLW through this AGREEMENT is expedient within the meaning of Public Resources Code 6357. This AGREEMENT brings finality to long-standing boundary disputes around Donner Lake.
- C. The PARTIES agree that using the current conditions of Donner Lake to set the OHW and OLW at certain locations is reasonable and appropriate in this situation and supported by law.
- D. Based on research and analysis, the PARTIES agree that the best available evidence of the OLW and OHW at Donner Lake postdating the installation of the dam in 1928 are the records maintained by the USGS. Based on the USGS data, the average low-water elevation from 1989 to present is 5928.04 feet elevation (hereafter rounded to the nearest tenth of a foot or 5928.0 feet elevation). The average high-water elevation from 1989 to present is 5935.7 feet elevation.

### **II. Navigability of Donner Lake**

Donner Lake is navigable for title purposes. The STATE acquired the bed of Donner Lake upon admission to the Union in 1850 as stated in Civil Code section 670. The landward boundary of this fee title ownership is the ordinary low-water mark (the point at which the OLW intersects the shore) pursuant to Civil Code section 830. Donner Lake is subject to the PUBLIC TRUST up to the OHW.

### **III. Location of the Ordinary Low-Water Mark and Ordinary High-Water Mark**

- A. The common boundary between the STATE'S and PROPERTY OWNERS' underlying fee interest shall be the OLW which is hereby established as lying at elevation 5928 NGVD 1929, except in areas that have been filled or in areas where the STATE and the upland property owner have previously entered into a boundary line agreement or title settlement agreement.

- B. The landward extent of the Public Trust easement shall be the OHW which is hereby established as elevation 5935.7 NGVD 1929, except in areas that have been filled or in areas where the STATE and the upland property owner have previously entered into a boundary line agreement or title settlement agreement.
- C. The elevations of 5928 and 5935.7 that establish the OLW and OHW shall remain fixed under this AGREEMENT. However, the physical locations where these elevations intersect the shore of the lake remain ambulatory under California statutory and decisional law as it exists on the date of this AGREEMENT.
- D. In November 2018, the STATE surveyed the contours of the OLW and OHW where possible. This survey work has been provided to SOS DONNER and is on file at the Sacramento Office of the California State Lands Commission.
- E. Once this AGREEMENT has been fully executed by all PARTIES, executed by the Governor of California, and recorded, the STATE shall record a record of survey depicting the location of the OLW and OHW at the time of the November 2018 survey.

#### **IV. Public Trust Easement**

The area between the OLW of 5928.0 feet elevation and OHW of 5935.7 feet elevation is subject to a PUBLIC TRUST easement in favor of the STATE. This PUBLIC TRUST easement permits public access, navigation, fishing and lake related recreational uses such as bathing, swimming, and open space, as described in the case of *State of California v. Superior Court of Lake County (Lyon)*, 29 Cal. 3d 210, 229-231, and as may be permitted by applicable law.

#### **V. Quitclaims of the PARTIES**

- A. Each of the individual PROPERTY OWNERS, in consideration of the covenants described herein, by execution of this AGREEMENT, hereby remises, releases, and quitclaims to the STATE all present claim, right, title, estate, lien, and interest in Donner Lake lakeward (below the agreed upon boundary line of 5928.0 feet elevation) of the OLW.
- B. Excepting the Public Trust easement existing between the OHW and OLW and subject to the terms and conditions set forth herein; in consideration of the covenants described herein, STATE hereby remises, releases, and quitclaims to the PROPERTY OWNERS all fee title, claim, right, title, and estate in the PROPERTY OWNER's parcel landward (above the agreed upon boundary line of 5928.0 feet elevation) of the OLW.

## **VI. Acceptance of Conveyances and Consent to Recording**

- A. By execution of this AGREEMENT, PROPERTY OWNERS accept the conveyance herein and consent to the recordation of this AGREEMENT and other documents executed pursuant to this AGREEMENT.
- B. By execution of the attached Certificate of Acceptance and Consent to Recording (Exhibit C), the STATE accepts the herein described conveyance and hereby consents to the recordation of this AGREEMENT and other documents executed pursuant to this AGREEMENT. The STATE further agrees to hold the conveyance of the lands below elevation 5928.0 as sovereign in character subject to the PUBLIC TRUST.

## **VII. Optional Judicial Confirmation of Validity of Agreement.**

At its own discretion, any PARTY may elect to obtain a judicial confirmation of this AGREEMENT and its title pursuant to Code of Civil Procedure sections 760.010 through 764.080.

- A. If a PARTY chooses to do so, the electing PARTY shall file a complaint within 60 days of execution of this AGREEMENT by all PARTIES and the Governor of the State of California, or the right to such confirmation shall be waived. Each PARTY shall cooperate with the other in obtaining such a confirmatory judgment. Each PARTY shall bear their own costs in seeking a judicial confirmation of this AGREEMENT.
- B. If a court of competent jurisdiction enters a judgment that becomes final, finding and declaring that this AGREEMENT or any of the conveyances pursuant to it are invalid, and should that determination be upheld on final appeal (if one is filed), the PARTIES agree that the AGREEMENT shall no longer be effective for any purpose, and that the PARTIES shall re-convey to their respective grantors under this AGREEMENT each and every interest conveyed as a result of this AGREEMENT so as to return the PARTIES to the positions they were in prior to the execution of this AGREEMENT.
- C. Upon entry of any judgment confirming the validity of the settlement embodied in this AGREEMENT, each PARTY shall be deemed to have waived any right to appeal from the judgment. A judgment declaring the AGREEMENT invalid may be appealed by any PARTY.

## **VIII. Exchange of Documents**

The PARTIES shall implement this AGREEMENT in the following manner:

- A. SOS DONNER with contract with Bender Rosenthal Incorporated ("BRI") for the depositing, processing, and recording of all documents necessary to effectuate this AGREEMENT. When this AGREEMENT has been executed by



the STATE and by the requisite number (specified in Paragraph C below) of PROPERTY OWNERS, it shall be recorded. SOS DONNER has agreed to bear the costs of processing in a separate agreement.

- B. PROPERTY OWNERS desiring to enter into this AGREEMENT shall execute and notarize a counterpart signature page. BRI will obtain the vesting deed for each parcel where the PROPERTY OWNER has executed a signature page and attach the deed to the signature page.
- C. This AGREEMENT shall stay open until August 1, 2019, whereupon the STATE will consider, at the first available properly noticed public meeting of the California State Lands Commission, the approval of this AGREEMENT in conjunction with the separate Boundary Line Agreement impacting the parcels in Nevada County. The Nevada County Boundary Line Agreement requires: (i) participation by at least one hundred and sixty-three (163) PROPERTY OWNERS, or their successors in interest, who have not previously agreed to the above stated location of the OLW and the OHW or other boundary line with the STATE; and (ii) SOS DONNER has provided the STATE with \$40,000 toward the actual costs of the survey work necessary to implement this AGREEMENT. The STATE, in its sole discretion, may extend this August 1, 2019 deadline by up to one calendar year by providing written notice to SOS DONNER and BRI. Once this AGREEMENT is approved at a regularly noticed meeting of the California State Lands Commission, the STATE will execute the AGREEMENT. The STATE shall then submit this AGREEMENT to the Office of the Governor for the Governor's approval and signature pursuant to Public Resources Code section 6107.
- D. Recordation of Documents: Upon obtaining all necessary signatures, the STATE shall deliver to BRI a fully-executed AGREEMENT. BRI shall record this AGREEMENT in Placer County against the PROPERTY OWNER's properties. PROPERTY OWNERS may obtain copies of the AGREEMENT from BRI and other designated agents of the PARTIES. The original AGREEMENT shall be returned to the STATE after recordation.
- E. The PARTIES shall agree upon such other escrow instructions as are necessary for the recordation of this AGREEMENT.

#### **IX. SALE BY PROPERTY OWNER PRIOR TO CLOSE OF ESCROW**

- A. In the event a PROPERTY OWNER desires to transfer his/her/its/their property after executing this AGREEMENT and prior to this AGREEMENT being recorded, the PROPERTY OWNER hereby agrees to:
  - i. Notify SOS DONNER, the STATE, and BRI at the addresses specified in paragraph X(R) below; and

ii. Notify any prospective purchaser that this AGREEMENT is in the process of being completed;

- B. In the event a PROPERTY OWNER has transferred his/her/its/their property prior to the close of escrow, the PROPERTY OWNER'S parcel will not be included in this AGREEMENT, and the parcel will not count toward the 163 PROPERTY OWNER requirement of paragraph VIII(C) above unless the new owner of the transferred property also consents to this AGREEMENT, executes a counterpart signature page, and otherwise performs all requirements of this AGREEMENT.

## **X. ADDITIONAL PROVISIONS**

### **A. Further Assurances**

So long as authorized by applicable laws to do so, the PARTIES will perform such other acts, and execute, acknowledge and deliver all further conveyances and other instruments that may be necessary to fully assure the other PARTIES all of the respective properties, rights, titles, interests, estates, remedies, powers, and privileges to be conveyed or provided for by this AGREEMENT.

### **B. Execution before a Notary Public**

All signatures of the PARTIES to this AGREEMENT shall be acknowledged before a Notary Public, and a certificate of acknowledgment shall be attached to this AGREEMENT and other documents to allow them to be recorded in the Office of the Recorder of Placer County, California.

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This AGREEMENT may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original and as if all of the PARTIES to the aggregate counterparts had signed the same instrument.

### **D. Duty to Defend**

In addition to the deposit stated in Paragraph VIII(C) above, SOS DONNER shall deposit \$50,000 with the STATE. This deposit shall be maintained for 1 year following the recording of this AGREEMENT. In the event this AGREEMENT is challenged, the STATE may use these funds to pay the reasonable attorney fees and costs the STATE incurs defending this AGREEMENT. If this AGREEMENT is not challenged during the one-year period provided by Public Resources Code section 6341, then the funds shall be returned to SOS DONNER. If this AGREEMENT is challenged, and if the costs of defending the AGREEMENT exceed the \$50,000 maintained in the escrow account, the PARTIES shall

negotiate in good faith to share equally the costs of further defending this AGREEMENT. If the PARTIES are unable to negotiate such an agreement, the STATE shall have no duty to defend this AGREEMENT.

**E. No Admission or Effect if Agreement Not Made Effective**

In the event this AGREEMENT does not become effective for any reason, nothing herein shall constitute, or be construed as, an admission by any PARTY or evidence concerning the location of boundaries, physical character, or character of title to or interest in the SUBJECT AREA depicted in Exhibit B or the lands involved in this AGREEMENT.

**F. No Effect on Other Lands**

The provisions of this AGREEMENT do not constitute, nor are they to be construed as, an admission by any PARTY or evidence concerning the boundaries, physical character, or character of title to or interest in any lands outside the SUBJECT AREA depicted in Exhibit B.

**G. Impacts of Physical/Climate Changes or Future Development**

If Donner Lake rises above the OHW, the land covered by these waters will be subject to the navigational easement described in *People ex rel. Baker v. Mack* (19 cal.App.3d 1040) and cases following it for so long as the land is inundated. Nothing in this section limits any applicable rights of the PARTIES pursuant to California Civil Code section 1015.

Nothing in this AGREEMENT obligates STATE to protect or cause to be protected any privately-owned uplands from inundation by floods, erosion, or storm events. Further, STATE shall not in any manner be liable to the owners of upland properties within the SUBJECT AREA for failure to provide protection against inundation or other harm from floods, erosion, or storm events.

**H. Exemptions**

This AGREEMENT and the conveyances provided herein are exempt from: 1) the Subdivision Map Act pursuant to Government Code section 66412(e); 2) the California Environmental Quality Act pursuant to Public Resources Code section 21080.11; and 3) the Property Acquisition Law pursuant to Government Code section 15853(c).

**I. Binding Agreement**

All the terms, provisions, and conditions of this AGREEMENT shall be binding upon and inure to the benefit of the respective successors and assigns of the PARTIES.

**J. Allocation of Costs and Expenses**

All expenses, fees, costs and expenses of any attorney, engineer or other person employed or retained by a PARTY in connection with the transaction underlying this Agreement shall be borne by that PARTY, unless otherwise agreed to herein.

**K. Modification**

No modification, amendment, or alteration of this AGREEMENT shall be valid unless in writing and signed by all PARTIES to this AGREEMENT, or their successors or assigns.

**L. No Effect on Other Government Jurisdiction**

This AGREEMENT does not exempt the PARTIES from the regulatory, environmental, land use or other jurisdiction of any federal, state, local, or other government entity.

**M. Agreement for Compromise and Settlement**

It is expressly understood by the PARTIES that the provisions set forth in this AGREEMENT have been agreed upon for purposes of compromising and settling the respective disputed title interests of the PARTIES in the SUBJECT AREA.

**N. Purpose to Perfect Title**

The right, title and interest of the STATE in the lands above the OLWM and the right, title and interest of PROPERTY OWNERS in the LANDS below the OLWM are quitclaimed by the respective PARTIES to the other solely for the purpose of perfecting title to the disputed lands within the SUBJECT AREA and, accordingly, for tax assessment purposes, the quitclaims and easement do not involve a change in ownership pursuant to section 62(b) of the California Revenue and Taxation Code.

**O. Headings**

The title headings of the sections of this AGREEMENT are inserted for convenience only and shall not be considered in construing this AGREEMENT.

**P. Effective Date**

This AGREEMENT becomes effective only after it has been executed by all of the PARTIES, the Governor of the State of California, and recorded in the Office of the Recorder for the County of Placer.

**Q. Delivery**

In any instance where “delivery” is called for under this AGREEMENT, the delivery shall be by same-day physical delivery or through United States Postal Service Certified Mail or equivalent service.

**R. Notifications**

All notices required or permitted by this Agreement shall be deemed to have been given seventy-two (72) hours after the notice is deposited with the United States Postal Service, as registered or certified mail with postage prepaid. Notices shall be addressed to the STATE and SOS DONNER at the address set forth below. Additionally, SOS DONNER shall, through BRI, shall serve as the agent for service of notice to the PROPERTY OWNERS. Any notice given in any other fashion shall be deemed to have been given when actually received by the addressees. Should the STATE, SOS DONNER, or BRI change its address, it shall give notice to the other entities listed below:

California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202  
Attn: Legal Division

SOS Donner Lake  
5429 Tufts Street  
Davis, CA 95618  
[sosdonner@sbcglobal.net](mailto:sosdonner@sbcglobal.net)

Bender Rosenthal Incorporated  
c/o Lindy Lee  
2825 Watt Avenue, Suite 200  
Sacramento, CA 95821  
(916) 978-4900

## **XI. Exhibits**

All preliminary recitals of and exhibits to this Agreement (Exhibits A through C) are hereby incorporated by reference. The exhibits to this Agreement are as follows:

Exhibit A – List of Affected Assessor's Parcel Numbers

Exhibit B – Depiction of the SUBJECT AREA

Exhibit C – Certificate of Acceptance and Consent to Recording

To witness this AGREEMENT, a duly authorized officer of THE STATE and SOS DONNER has executed it below on the date below each signature.

**STATE OF CALIFORNIA**  
**STATE LANDS COMMISSION**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

JENNIFER LUCCHESI  
EXECUTIVE OFFICER

Approved as to form:

Xavier Becerra  
Attorney General  
State of California

By: \_\_\_\_\_

NICOLE RINKE  
Deputy Attorney General

**SOS DONNER**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
SOS DONNER

Approved as to form:

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IN APPROVAL WHEREOF

I, Gavin Newsome, Governor of the State of California, have set my hand and caused the seal of the State of California to be affixed hereto pursuant to Section 6107 of the Public Resources Code of the State of California.

Given under my hand at the City of Sacramento this \_\_\_\_ day of \_\_\_\_\_  
in the year Two Thousand and Nineteen.

---

GAVIN NEWSOME  
GOVERNOR

Attest:

---

ALEX PADILLA  
SECRETARY OF STATE

Countersigned:

---

JENNIFER LUCCHESI  
EXECUTIVE OFFICER  
STATE LANDS COMMISSION



## Boundary Line and Easement Agreement

### Counterpart Signature Page

I, \_\_\_\_\_ [name] am the/an owner of record for the property at \_\_\_\_\_ [address], listed as Assessor's Parcel Number \_\_\_\_\_. A copy of the deed for this property is attached hereto. If this property is held by a trust or other entity, I affirmatively represent that I am a duly authorized agent to bind this entity to this agreement. By executing this counterpart signature page, I consent to all the terms and conditions of the Boundary Line and Easement Agreement Between the State of California Acting by and through the California State Lands Commission and Those Property Owners Identified in Exhibit A, on Donner Lake, Town of Truckee, County Of Placer, California.

#### PROPERTY OWNER:

#### PROPERTY INFORMATION

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
[Street Address]  
Truckee, CA 96161

Name: \_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

\_\_\_\_\_  
Assessor's Parcel Number

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

**ATTACH DEED**  
**ATTACH ACKNOWLEDGMENT**

## Exhibit A – List of Affected Parcels

### PROPERTY OWNERS Participating in Boundary Line Agreement

[This portion to be filled in once we have the list of the persons joining the BLA. An example is shown below]

<b>Street Address</b>	<b>City</b>	<b>Zipcode</b>	<b>APN</b>	<b>Property Owner</b>
13475 DONNER PASS RD	TRUCKEE	96161	18-364-19	TAGGART, STEVEN L
13499 DONNER PASS RD	TRUCKEE	96161	18-364-18	MOODY, TOD C
13505 DONNER PASS RD	TRUCKEE	96161	18-364-21	TRUSTMAN, DAVID ALAN
13509 DONNER PASS RD	TRUCKEE	96161	18-364-22	TRUSTMAN, DAVID A
13457 DONNER PASS RD	TRUCKEE	96161	18-364-14	RAYNOR, LEIGHTON J
13467 DONNER PASS RD	TRUCKEE	96161	18-364-13	NORTH DELTA ORCHARDS LLC
13439 DONNER PASS RD	TRUCKEE	96161	18-364-11	MORSE, ANDREW W
13449 DONNER PASS RD	TRUCKEE	96161	18-364-10	BEALE, LYNDEN T

Exhibit B

Depiction of Subject Area

[this page to be replaced with exhibit]

Exhibit C – Certificate of Acceptance and Consent to Recording

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Warren Crunk  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

STATE OF CALIFORNIA  
OFFICIAL BUSINESS  
Document entitled to free recordation  
pursuant to Government Code  
Section 27383

Above Space For Recorder's Use

Placer County APNs:

**CERTIFICATE OF ACCEPTANCE AND CONSENT TO RECORDING**

Government Code 27281

This is to certify that the STATE OF CALIFORNIA, acting by and through the CALIFORNIA STATE LANDS COMMISSION, an agency of the STATE OF CALIFORNIA, hereby accepts any and all right, title and interest in real property conveyed by, and consents to the recordation of the QUITCLAIM, found in paragraph V(B) on page 4 of the attached Boundary Line and Easement Agreement), from \_\_\_\_\_ Placer County, dated \_\_\_\_\_, \_\_\_\_\_

The said interests in real property are accepted by the STATE OF CALIFORNIA, in its sovereign capacity in trust for the people of the state, as real property of the legal character of submerged lands.

This acceptance and consent to recording is executed by and on behalf of the STATE OF CALIFORNIA by the CALIFORNIA STATE LANDS COMMISSION, acting pursuant to law, as approved by its Minute Item No. \_\_\_\_ of its public meeting on \_\_\_\_\_, by its duly authorized undersigned officer.

CALIFORNIA STATE LANDS COMMISSION

Dated: \_\_\_\_\_

By: \_\_\_\_\_

JENNIFER LUCCHESI  
EXECUTIVE OFFICER

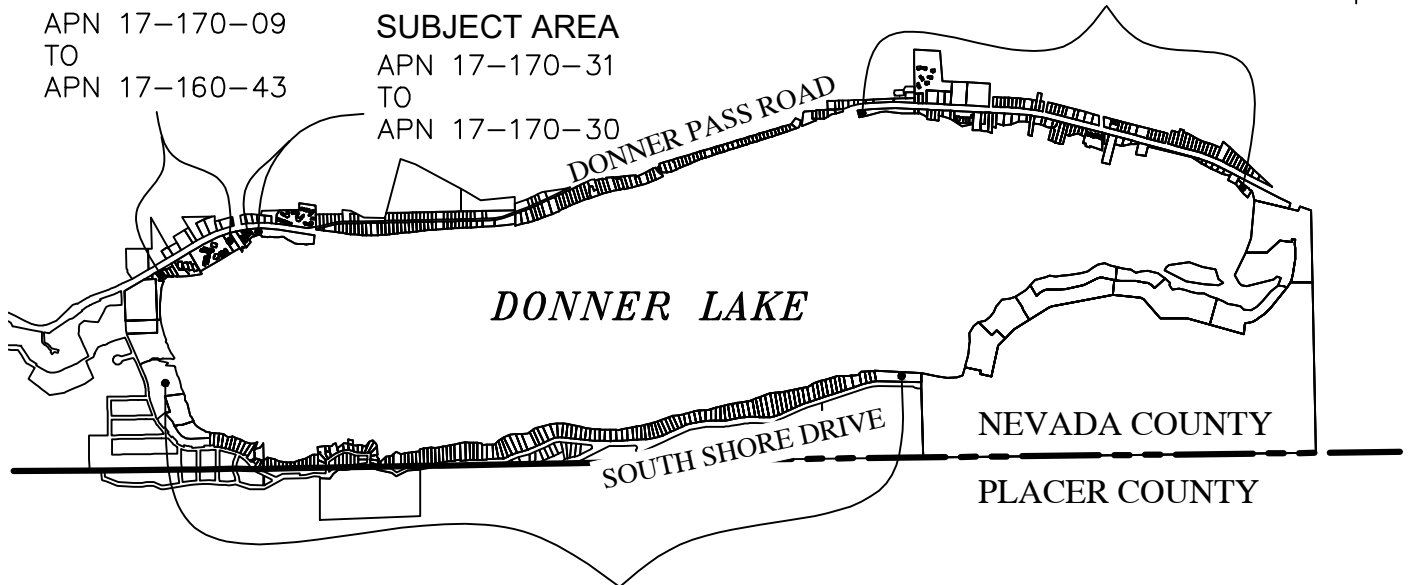
NO SCALE

## SITE

SUBJECT AREA  
APN 18-400-07  
TO  
APN 17-320-02

SUBJECT AREA  
APN 17-170-09  
TO  
APN 17-160-43

SUBJECT AREA  
APN 17-170-31  
TO  
APN 17-170-30



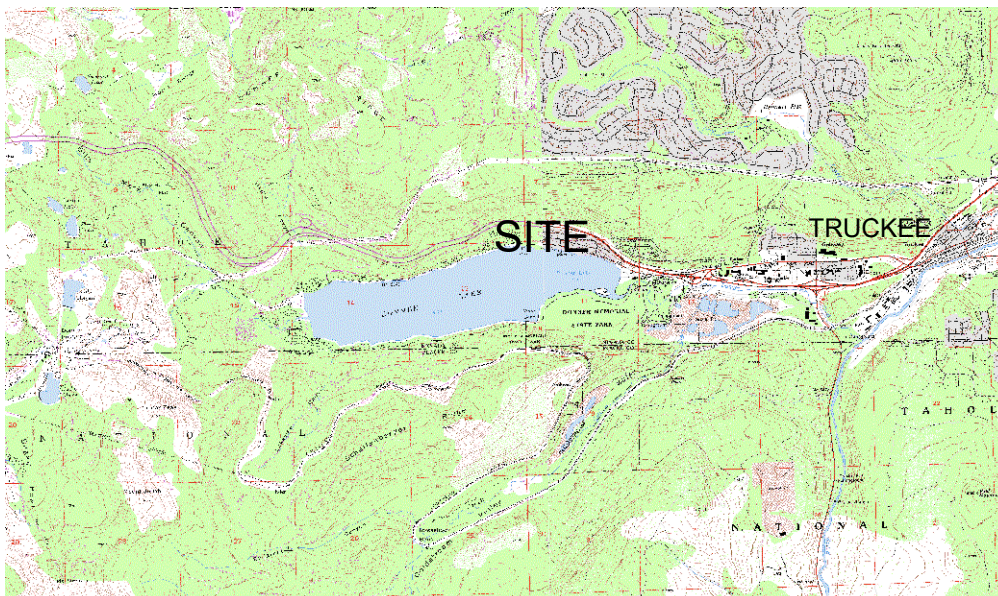
SUBJECT AREA  
APN 17-210-08  
TO  
APN 17-360-05

\*APN'S SHOWN ARE FOR NEVADA COUNTY

## DONNER LAKE, TRUCKEE

NO SCALE

## LOCATION



MAP SOURCE: USGS QUAD

## EXHIBIT C

BOUNDARY LINE AND  
EASEMENT AGREEMENT  
NEVADA & PLACER COUNTIES



DJF 10/15/19

## EXHIBIT D

### LITIGATION SETTLEMENT AGREEMENT

THIS LITIGATION SETTLEMENT AGREEMENT ("Agreement") is entered into between SOS Donner Lake ("SOS Donner") and the California State Lands Commission (the "Commission;" collectively referred to as "the parties") in relation to and as settlement of *SOS Donner v. California State Lands Commission*, Nevada County Superior Court, Case No. TCU16-6532, based on the following terms and conditions.

### RECITALS

The parties enter into this Agreement with reference to and in acknowledgment of the following facts:

- A. SOS Donner is a non-profit corporation that does not itself own property on the shores of Donner Lake, but represents that a majority of such property owners are members of SOS Donner.
- B. SOS Donner filed a complaint for declaratory relief against the Commission on November 22, 2016, challenging, in part, the navigability of Donner Lake and the Commission's asserted boundary between state and private ownership on Donner Lake.
- C. Pursuant to California Civil Code Section 830, except where the grant under which a land is held indicates a different intent, lands abutting a non-tidal, non-navigable lake extend to the middle of the lake; whereas lands abutting a non-tidal, navigable lake extend to the low-water mark of the lake.
- D. The State Lands Commission completed a boundary study in 1976 concluding that Donner Lake, Nevada County, California, ("Donner Lake") is navigable and that the ordinary high-water mark was at 5935.8 feet elevation and that the ordinary low-water mark at Donner Lake was at an elevation of 5933.8 feet prior to artificial influences.
- E. The subsequent ruling of *State v. Superior Court (Lyon)*, (1980) 29 Cal. 3d 210, confirmed that the state ownership extends to the low-water mark on non-tidal navigable water bodies.
- F. The parties have met multiple times over the years and conducted extensive analysis as to the historic and current conditions on Donner Lake. The additional research and legal analysis conducted by both sides has highlighted the difficulty in accurately determining the ordinary low-water mark at Donner Lake prior to artificial influences.
- G. The parties have stayed the underlying litigation to pursue settlement negotiations to seek resolution of the underlying litigation.

**AGREEMENT**

Now, therefore, in consideration of the foregoing recitals and the terms contained in this Agreement, which are each agreed upon by the parties and incorporated herein, and for other good and valuable consideration, the parties mutually agree as follows:

1. Cooperation in Seeking Property Owner Concurrence: SOS Donner agrees to provide the Commission with the Assessor Parcel Number(s) and publicly available contact information for all lakefront property owners on Donner Lake within 30 days of execution of this Agreement. To the extent that SOS Donner has additional contact information to effectuate the proposed Boundary Line Agreement(s) ("BLA(s)"), including but not limited to names, alternate addresses, and email addresses, SOS Donner will also provide the Commission with that information. SOS Donner also agrees to distribute the proposed BLA(s) and to seek concurrence from the lakefront property owners on Donner Lake to enter into a BLA(s) as described herein with the Commission resolving the boundary between private and public ownership on their parcels.
2. The Boundary Between Public and Private Ownership: Contingent upon the conditions precedent set forth in Paragraph 4 of this Agreement, BLA(s) that conform with Paragraph 3 of this Agreement, will become effective and thereafter control the boundary between private and public ownership for those shoreline parcels for which a BLA(s) is executed and recorded.
3. The Boundary Line Agreement: The parties will jointly develop a form BLA, which the Commission will approve in form prior to distribution to the public. The parties will seek to use one master BLA that the property owners will individually execute. The parties may also agree to use separate BLAs for individual parcels. The BLA(s) will confirm the following terms:
  - a. Donner Lake is a navigable lake for title purposes pursuant to California Civil Code Section 830.
  - b. The boundary between state and private ownership is the ordinary low-water mark.
  - c. The ordinary low-water mark is at an elevation of 5928.0 feet elevation, National Geodetic Vertical Datum 1929 (NGVD29).
  - d. The ordinary high-water mark is at an elevation of 5935.7 feet elevation, NGVD29 datum.

- e. A public trust easement on behalf of the public exists between the ordinary low-water mark and the ordinary high-water mark.
- f. Although the boundary between state and private ownership and the boundary of the public trust easement will be based on the specified elevations, the BLA will reference a survey of the low-water and high-water elevations that the Commission intends to complete in the fall of 2018/winter of 2019
- g. The BLA(s) will run with the land and be recorded against the title for the underlying parcels.
- h. The BLA(s) will be subject to approval by the Commission at a properly noticed public meeting and will not be effective until executed by the Governor of California and recorded in the official records of Nevada County.

4. Conditions Precedent:

- a. Survey Costs: The Commission will not execute the BLA(s) until SOS Donner provides the Commission with a \$40,000 deposit toward the actual costs of completing the survey described in paragraph 3.f of this Agreement. The parties will cooperatively ensure the survey work is done cost effectively and efficiently, and any unused portion of the deposit shall be returned to SOS Donner.
  - b. Time for Performance: The property owners for at least 80% of the shoreline parcels on Donner Lake, excluding any parcels already subject to a pre-existing BLA or in public ownership, must execute the BLA(s) prior to August 1, 2019. If this 80% concurrence is not met on or before August 1, 2019, this Agreement will be void and of no effect. The parties may, however, seek to amend or extend the Agreement as they each deem appropriate in accordance with Paragraph 7 of this Agreement.
  - c. Commission/Governor Approval: Once the conditions of this paragraph have been satisfied, the Commission will at its next reasonably available public meeting, consider approval of the BLA(s). Once approved, the Commission will seek the Governor's signature.
  - d. Recording: Once the BLA(s) are approved by the Commission and signed by the Governor, SOS Donner and/or the individual signatories shall within 30 days record the BLA(s) with the County Recorder's Office against the individual subject parcels.
5. Dismissal with Prejudice: Dismissal with Prejudice: Within 10 calendar days of Paragraph 4 of this Agreement being satisfied, SOS Donner shall file a dismissal of its



complaint, in its entirety, with prejudice. Until the matter is dismissed, or this Agreement becomes void in accordance with Paragraph 4.b, the litigation should remain stayed. The parties will cooperate in requesting such a stay from the Court.

6. Costs and Attorneys' Fees: Other than the survey costs described in Paragraph 4.a of this Agreement, the parties each agree to bear their own costs, fees, and expenses related to the underlying litigation and fulfillment of this Agreement.
7. Amendment: This Agreement may be amended by the parties with a written amendment signed by both parties.
8. No Admission of Liability: Nothing in this Agreement shall be construed as an admission by any party of any fact, liability, or wrongdoing in connection with the underlying litigation.
9. Reservation of Rights: If the terms of this Agreement are not fully satisfied, the parties reserve all rights to pursue any and all claims and defenses related to the underlying litigation.
10. No Effect on Other Governmental Jurisdictions: This Agreement does not exempt the parties from the regulatory, environmental, land use or other jurisdiction of any federal, state, local or other governmental entities. Within 10 calendar days of Paragraph 4 and 5 of this Agreement being satisfied, the parties will jointly notify the Town of Truckee of the BLA(s).
11. Environmental Review: This Agreement is exempt from environmental review under the California Environmental Quality Act pursuant to California Public Resources Code section 21080.11 and Title 14 California Code of Regulations section 15282(f). This Agreement is also outside the scope of the Subdivision Map Act pursuant to California Government Code section 66412(e).
12. Counterparts: This Agreement may be executed in counterparts, all of which, when taken together, shall constitute a fully executed original.
13. Entire Agreement: This Agreement constitutes the final and exclusive settlement agreement between the parties. Any prior or contemporaneous agreement, representations, negotiations, or understanding of the parties are hereby superseded and merged herein.
14. Cooperation: Each party agrees to cooperate in the execution and performance of this Agreement.

Litigation Settlement Agreement: *SOS Donner v. California State Lands Commission*, Nevada County Superior Court, Case No. TCU16-6532

15. Authorization: Each person signing this Agreement warrants that he or she has the authority and capacity to execute and deliver this Agreement on behalf of the party he or she represents, and that upon full execution this Agreement will become binding upon that party and its heirs, successors and assigns.

16. Effective Date: This Agreement shall become effective once executed by all parties.

IN WITNESS WHEREOF, by the following signatures, the parties understand and agree to execute this Agreement under the terms set forth herein:

DATED: July 18, 2018

The California State Lands Commission

By:   
Mark A. Meier  
Chief Counsel

Approved as to Form:

Xavier Becerra  
Attorney General  
State of California

By: \_\_\_\_\_  
Nicole U. Rinke  
Deputy Attorney General

DATED: July \_\_, 2018

SOS Donner

By: \_\_\_\_\_  
Jim Fletter, President

Approved as to Form:

Attorney for SOS Donner

By: \_\_\_\_\_  
John Briscoe/Peter Prows/Gregg Lien

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Attorney General  
State of California

By: \_\_\_\_\_

Nicole U. Rinke  
Deputy Attorney General

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SOS Donner

By:  \_\_\_\_\_

Jim Fletter, President

Approved as to Form:

Attorney for SOS Donner

By: \_\_\_\_\_

John Briscoe/Peter Prows/Gregg Lien

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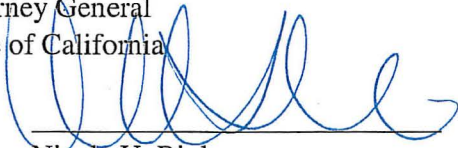
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Attorney General  
State of California

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Nicole U. Rinke  
Deputy Attorney General

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By: \_\_\_\_\_  
Jim Fletter, President

Approved as to Form:

Attorney for SOS Donner

By: \_\_\_\_\_  
John Briscoe/Peter Prows/Gregg Lien

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Attorney General  
State of California

By: \_\_\_\_\_  
Nicole U. Rinke  
Deputy Attorney General

DATED: July \_\_, 2018

SOS Donner

By: \_\_\_\_\_  
Jim Fletter, President

Approved as to Form:

Attorney for SOS Donner

By:  18 July 2018  
John Briscoe/Peter Prows/Gregg Lien