

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION**

**ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2016-0012**

**IN THE MATTER OF  
SHEILA M. MINER FOR VIOLATION OF CEASE AND DESIST ORDER  
NO. R6T-2015-0002, SPALDING TRACT SUBDIVISION,  
LASSEN COUNTY APN NO. 077-332-42-11**

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Lassen County\_\_\_\_\_

The California Regional Water Quality Control Board, Lahontan Region (Water Board) hereby finds that Sheila M. Miner has violated Water Board Cease and Desist Order (CDO) No. R6T-2015-0002. The Water Board specifically finds:

**BACKGROUND**

1. Sheila M. Miner (Discharger) owns Lassen County Assessor Parcel No. (APN) 077-332-42-11 in the Spalding Tract subdivision located on the west shore of Eagle Lake, approximately 20 miles northwest of Susanville, California.
2. Based upon Lassen County records and/or Spalding Community Services District (District) records, the Discharger owns and/or operates an onsite wastewater disposal system located at the above-referenced parcel. The Discharger's onsite wastewater disposal system permits waste containing nutrients to be discharged, and/or threatens a discharge of waste containing nutrients, to waters within the Eagle Lake basin.

**CHRONOLOGY OF EVENTS**

3. In September 1984, pursuant to Water Code section 13243, the Water Board amended the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) to prohibit the discharge of waste containing nutrients from the Spalding Tract subdivision to surface waters and groundwater of the Eagle Lake basin after September 14, 1989.
4. The Water Board issued Spalding Tract property owners, including Ms. Miner, a Cease and Desist Order in 1991 (CDO No. 6-91-591) providing notice to property owners of the requirement to cease discharges.
5. On October 22, 2007, the District's community sewer system (system) became operational. As a result, there is now an available method for the Spalding Tract subdivision property owners to comply with the above-referenced Basin Plan prohibition.

6. In September 2013, the Water Board attempted to issue a Cease and Desist Order with an updated compliance schedule to Ms. Miner; however, staff was unsuccessful due to Ms. Miner's avoidance of process service.
7. On January 14, 2015, the Water Board adopted and successfully served Ms. Miner CDO No. R6T-2015-0002 for Lassen County APN No. 077-332-42-11, rescinding CDO No. 6-91-591 and establishing a new time schedule for the Discharger to comply with the Basin Plan prohibitions referenced in Finding 3, above.
8. CDO No. R6T-2015-0002 required the Discharger, by July 14, 2015, to either (1) connect her onsite wastewater disposal system to the District's community sewer system, or (2) properly abandon the onsite wastewater disposal system in accordance with Lassen County regulations. Upon completing one of the two activities, the Discharger is required to submit to the Water Board documentation of compliance with the above-referenced Basin Plan prohibition.
9. The Discharger failed to comply with CDO No. R6T-2015-0002, and on August 4, 2015, the Water Board's Prosecution Team issued the Discharger a Notice of Violation citing the ongoing violation.
10. On December 11, 2015, the Assistant Executive Officer issued Complaint No. R6T-2015-0058. The Complaint alleged that the Discharger has violated the requirements of CDO No. R6T-2015-0002 and recommended that the Water Board assess the Discharger an administrative civil liability of **\$1,975**.
11. Ms. Miner was served Complaint No. R6T-2015-0058 and the Water Board's Hearing Procedures on December 13, 2015.
12. On March 10, 2016, in South Lake Tahoe, California, after notice to the Discharger and all other affected persons and the public, the Water Board conducted a public hearing at which evidence was received to consider this Order, and the Discharger and/or her representative(s) had the opportunity to be heard and to contest the allegations in the Complaint.

### **REGULATORY CONSIDERATIONS**

13. The Water Board adopted the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) pursuant to Water Code section 13243. The Basin Plan contains the following prohibition:

"The discharge of waste from the Spaulding [sic] Tract or Stones-Bengard subdivisions with other than a zero discharge of nutrients to any surface waters or ground waters in the Eagle Lake basin is prohibited after September 14, 1989. (Basin Plan, Chapter 4, *Implementation*, Unit/Area-Specific prohibitions for the Eagle Drainage Hydrologic Area at p. 4.1-4.)

14. On January 14, 2015, the Water Board adopted CDO No. R6T-2015-0002, enforcing the above-referenced Basin Plan prohibition.

### VIOLATIONS

15. The Discharger violated CDO No. R6T-2015-0002 by failing to satisfy the requirement to comply with the above-referenced Basin Plan prohibition by July 14, 2015. A review of District records and Water Board records shows the Discharger did not (1) connect her onsite wastewater disposal system to the District's system, or (2) properly abandon the onsite wastewater disposal system in accordance with Lassen County regulations. This violation subjects the Discharger to liability pursuant to Water Code section 13350, subdivision (a).

### CALCULATION OF ADMINISTRATIVE CIVIL LIABILITY

16. Pursuant to Water Code section 13350, subdivision (e), civil liability may be imposed administratively on a daily basis in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs.
17. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Water Board is required to consider the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
18. On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327. The entire Enforcement Policy can be found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)
19. **Maximum Administrative Civil Liability:** Pursuant to Water Code section 13350, subdivision (e)(1), the total maximum administrative civil liability that may be imposed for the violation in this Order is **\$395,000**.
20. **Minimum Administrative Civil Liability:** Pursuant to Water Code section 13350, subdivision (e)(1)(B), the minimum administrative civil liability that must be imposed

for the violation in this Order is **\$7,900**, unless the Water Board makes express findings pursuant to Water Code section 13350, subdivision (f).

21. Water Code section 13350, subdivision (f) states that:

“A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.”

Water Code section 13327 allows for “other factors as justice may require.” The Water Board finds that the minimum statutory liability of \$7,900 is an amount excessive in light of the violations alleged herein and in relation to the cost savings associated with the non-compliance from those violations. Step 7 of Attachment A of the penalty methodology identifies specific factors under Water Code section 13327 that the Water Board considered in determining the liability amount.

On balance, in light of the considerations outlined in Step 7 of Attachment A, the Water Board finds that a lower penalty, less than the minimum amount cited in Finding No. 20, is appropriate.

22. The Enforcement Policy requires that:

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

Revised economic benefit values are reflected in the discussion of economic benefit in Attachment A of this Order. The greater of the two economic benefit values plus ten percent is \$169.40, which is less than the administrative civil liability of \$1,975. The administrative civil liability of \$1,975 satisfies the Enforcement Policy’s economic benefit requirement.

23. **Administrative Civil Liability Determination:** The Water Board has applied the Enforcement Policy’s administrative civil liability methodology (Attachment A) and considered each of the Water Code section 13327 factors based upon information in the record, including testimonies at the public hearing and information described in greater detail in the Complaint and its attachments. The Water Board hereby finds that civil liability should be imposed administratively on the Discharger in the amount of **\$1,975**.

**GENERAL**

24. This Order only resolves liability that the Discharger incurred for violations specifically alleged in the Complaint. This Order does not relieve the Discharger of liability for any violations not alleged in the Complaint. The Water Board retains the authority to assess additional civil liabilities for violations of applicable laws or orders for which civil liabilities have not yet been assessed, or for violations that may subsequently occur.
25. Issuance of this Order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Resources Code sections 21000 et seq.), pursuant to California Code of Regulations (CCR), title 14, section 15321, subdivision (a)(2).
26. Any person aggrieved by this action of the Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and CCR, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing will be provided upon request, and may be found on the Internet at:  
[http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality).

**IT IS HEREBY ORDERED THAT:**

1. Administrative civil liability is imposed upon the Discharger in the amount of **\$1,975**.
2. The Discharger shall submit payment with a cashier's check or money order in the full amount of **\$1,975** payable to the State Water Resources Control Board's Waste Discharge Permit Fund within 30 days of the date this Order is adopted.
3. Should the Discharger fail to make the specified payment to the State Water Resources Control Board's Waste Discharge Permit Fund within the time limit specified in this Order, the Water Board may enforce this Order by applying for a judgment pursuant to Water Code section 13328. The Water Board's Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328 if the criterion specified in this paragraph is satisfied.

I, Patty Z. Kouyoumdjian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region on March 9, 2016.

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Patty Z. Kouyoumdjian  
Executive Officer

## ATTACHMENT A

### ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

The Complaint alleges that Sheila M. Miner (Discharger) failed to comply with Cease and Desist Order No. R6T-2015-0002, issued by the Lahontan Regional Water Quality Control Board (Water Board), which required the Discharger by July 14, 2015, to either connect her onsite wastewater disposal system to the Spalding Community Services District's (District) community sewer system or to properly abandon it in accordance with Lassen County regulations. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Because the Complaint only alleges a non-discharge violation, Step Nos. 1 and 2 of the Enforcement Policy's administrative civil liability methodology are not addressed.

#### Step 3: Initial Liability Determination

The per-day factor for the violation is **0.55**. This factor is determined by a matrix analysis based upon the Potential for Harm and the Deviation from Applicable Requirements.

- a. The Potential for Harm for the violation is determined to be **moderate**. The Discharger's failure to connect her onsite wastewater disposal system to the District's sewer system or to properly abandon it allows waste containing nutrients to be discharged to the groundwater of the Eagle Lake basin. Such discharges, should they occur, can introduce nutrients, such as nitrogen and phosphorus, to the groundwater, which flows into Eagle Lake. Nitrogen and phosphorus can increase algal growth and the rate of eutrophication in Eagle Lake, a closed-basin lake. Increased eutrophication can adversely affect the habitat for the Eagle Lake trout, and other aquatic and terrestrial organisms supported by Eagle Lake. Increased algal growth also has the potential to adversely affect the public's water contact recreation (e.g., wading, swimming, water skiing) and non-contact water recreation (e.g., aesthetic enjoyment) of Eagle Lake.

To prevent these types of adverse impacts to Eagle Lake's beneficial uses, the Water Board amended its *Water Quality Control Plan for the Lahontan Region* (Basin Plan) in September 1984, to prohibit the discharge of waste containing nutrients to the surface waters and groundwater of the Eagle Lake basin beginning September 14, 1989. The Water Board's Cease and Desist Order issued to the Discharger enforces that Basin Plan prohibition. At a minimum, the Discharger's onsite wastewater disposal system presents a threatened discharge of waste containing nutrients that can reasonably be expected to adversely affect Eagle Lake's cold freshwater habitat (COLD), water contact recreation (REC-1), non-contact water recreation (REC-2), and sport fishing (COMM) beneficial uses. It is also reasonable to expect that such impacts are reversible upon ceasing such waste discharges.

Waste discharges from onsite wastewater disposal systems in the Spalding Tract subdivision can also introduce bacteria into the groundwater, which is the local water

supply. Many Spalding Tract subdivision property owners have private wells, and past studies have shown that bacteria levels increase in those private wells when nearby onsite wastewater disposal systems are being used. Bacteria contained in domestic wastewater can adversely affect human health when consumed. Such conditions represent an adverse impact to the Eagle Lake groundwater basin's municipal and domestic supply (MUN) beneficial use. This impact can reasonably be expected to occur when waste discharges from onsite wastewater disposal systems occur. Fortunately, past studies have also shown that this impact is relatively short term in nature when the waste discharge ceases. Therefore, violating the Cease and Desist Order presents a **moderate** threat to beneficial uses that will likely attenuate without acute or chronic effects, once the Discharger has complied with the Cease and Desist Order.

- b. The Deviation from Applicable Requirements to abandon or connect the septic system is **major**. The reason for the **major** designation is that Water Board staff notified the Discharger of her failure to comply with the Cease and Desist Order's July 14, 2015 compliance date in an August 4, 2015 Notice of Violation (NOV). The 2015 construction season has past, and to date, the Discharger has still failed to comply.
- c. There are 79 days of violation for the period beginning July 15, 2015 and ending October 1, 2015, the date of drafting Administrative Civil Liability Complaint No. R6T-2015-0058. The statutory maximum amount per day per violation is \$5,000. Therefore, 79 days of violation at the statutory maximum per day of \$5,000, yields a maximum initial liability of **\$395,000** (79 days x \$5,000/day). Applying the Potential for Harm per-day factor of 0.55 from Table 3, and the statutory maximum liability amount for each day of violation, yields an initial liability of **\$217,250** (0.55 x 79 days of violation x \$5,000 per day).

#### **Step 4: Adjustment Factors**

The Enforcement Policy allows for multi-day violations to be consolidated provided specific criteria are satisfied. The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the initial liability amount: the violator's culpability; the violator's efforts to clean up or cooperate with regulatory authorities after the violation; and the violator's compliance history. After each of these factors is considered for the violations alleged, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

##### **a. Multiple Day Violations**

The Enforcement Policy provides that, for violations lasting more than 30 days, the Water Board may adjust the per-day basis for civil liability if certain findings are made, and if the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The Discharger has failed to comply with her Cease and Desist Order for at least 79 days. The continuance of these violations does not result in an economic benefit that

can be measured on a daily basis. The economic benefit is the delayed cost of having the onsite wastewater disposal system either connected to the District's community sewer system or properly abandoned. Therefore, an adjustment can be made.

The Water Board Prosecution Team (Prosecution Team) recommends applying the alternative approach to civil liability calculation provided by the Enforcement Policy. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, one additional day of violation for each 30-day period. Using this approach, the total number of days is revised to 8 days of violation.

This results in a Revised Initial Liability Amount as follows:

$$\text{Revised Initial Liability} = (0.55) \times (8 \text{ days of violation}) \times (\$5,000) = \mathbf{\$22,000}$$

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case, a Culpability multiplier of **1.5** has been selected for the reasons described below.

Ms. Miner has been aware of the requirements since 1991 when the Water Board issued Cease and Desist Order No. 6-91-591. Beginning in October 2007, Spalding Tract property owners had a readily available means to comply with the Basin Plan prohibition by connecting to the community wastewater disposal system installed by Spalding Community Services District. However, Ms. Miner did not take action to comply at this time. Now, after more than seven years, the Water Board Prosecution Team reminded Ms. Miner once again to connect or properly abandon the wastewater disposal system when it issued Cease and Desist No. R6T-2015-0002 in January 2015.

Since issuing the 2015 Cease and Desist Order, as with the 1991 Cease and Desist Order, the Prosecution Team has not received any communications from Ms. Miner. The lack of communication by Ms. Miner has made it necessary for Water Board staff to use a process server to confirm receipt of critical Water Board communications, as certified mail has been routinely returned as unclaimed. Even after successfully serving the 2015 Cease and Desist Order upon Ms. Miner personally via process service, she has not contacted staff nor made any inquiry regarding how to comply, nor provided any information regarding financial or other hardship that may be preventing her from complying. After providing approximately one-half of a construction season to comply with her 2015 Cease and Desist Order, the Prosecution Team issued an August 4, 2015 Notice of Violation via process service, notifying Ms. Miner that the time to comply with her Cease and Desist Order's requirements without additional enforcement action was running out. In spite of the Prosecution Team's efforts to allow ample time to comply before issuing an administrative civil liability complaint, the Discharger has not contacted the



Prosecution Team nor provided any documentation of hardship or other information related to her failure to comply, nor has she shown any intent to comply. Rather, her active avoidance of process service (associated with proposed 2013 Cease and Desist Order), refusal of certified mail, and inaction suggest Ms. Miner purposefully chose to ignore the requirements in the Water Board's Cease and Desist Order. Circumstances of this nature warrant a greater multiplier for culpability. Therefore, the Prosecution Team recommends assigning a value of 1.5 for Culpability, as values of 1.4 or greater have been reserved for situations where there is evidence of willful or intentional conduct.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.75 and 1.5. A lower multiplier is appropriate for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is appropriate for situations where cleanup and/or cooperation is minimal or absent. In this case, a Cleanup and Cooperation multiplier of **1.5** has been selected for the reasons described below.

In this case, cooperation is not only absent but Ms. Miner has refused receipt of Water Board letters and has intentionally evaded process servers hired by the Water Board to deliver Water Board communications. The Water Board has gone through great lengths and has spent Water Board time and money to serve the 2015 Cease and Desist Order and related Notice of Violation. Apart from Ms. Miner obstructing receipt of Water Board communications, Ms. Miner has refused to comply by connecting or properly abandoning the onsite wastewater disposal system. A value of 1.5 for Cleanup and Cooperation is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a **minimum** multiplier of 1.1 should be used for this factor. In this case, a multiplier of **1.0** has been selected based upon the absence of prior violations of Cease and Desist Order No. R6T-2015-0002. A review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that the violation represents the first set of violations of Cease and Desist Order No. R6T-2015-0002. Therefore, a multiplier of 1.0 is appropriate, and no adjustment to the above liability amount should be made in response to this factor.

**Step 5: Determination of Total Base Liability Amount**

The Total Base Liability for the violation is **\$49,500.00**. The Total Base Liability for the violation is determined by multiplying the Revised Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

Total Base Liability = (Revised Initial Liability) X (Culpability) X (Cleanup/Cooperation) X (History of Violations) = (\$22,000) X (1.5) X (1.5) X (1.0) = **\$49,500.00**.

**Step 6: Ability to Pay and Ability to Continue Business**

The Enforcement Policy provides that if the Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

The Prosecution Team conducted a preliminary asset search of publicly available information. Based upon review of Lassen County Assessor's Office online records and a ParcelQuest web search (Attachment L), the Prosecution Team finds that the Discharger has the ability to pay the proposed liability because she owns the parcels located in Lassen County and listed, below.

Assessor's Parcel No.	County	Property Address	Use Type	Mailing Address	Assessed Total Value	Assessment Year
077-332-42	Lassen	687360 Maple Way	Residential	POB 270822 Susanville, CA	\$23,018	2015
103-112-14	Lassen	645 N Weatherlow St	SF Residential	POB 270822 Susanville, CA	\$20,521	2015
103-231-05	Lassen	1106 Mark St	SF Residential	POB 270822 Susanville, CA	\$56,180	2015
105-263-02	Lassen	125 Alexander Ave	SF Residential	POB 270822 Susanville, CA	\$48,486	2015
139-160-40	Lassen		Vacant	POB 270822 Susanville, CA	\$6,515	2015
139-160-41	Lassen		Vacant	POB 270822 Susanville, CA	\$2,599	2015
139-160-42	Lassen		Vacant	POB 270822 Susanville, CA	\$2,599	2015
139-160-51	Lassen	446445 Spruce Ave	Vacant	POB 270822 Susanville, CA	\$3,906	2015
139-160-52	Lassen	446555 Spruce Ave	Vacant	POB 270822 Susanville, CA	\$3,906	2015
141-110-06	Lassen	Doyle CA 96109	Vacant	POB 270822 Susanville, CA	\$2,963	2015
141-120-12	Lassen		Vacant	POB 270822 Susanville, CA	\$3,170	2015
				<b>TOTAL</b>	<b>\$173,863</b>	

The Water Board has satisfied the initial burden of producing substantial evidence demonstrating the Discharger's ability to pay the proposed liability. During the period provided to submit evidence for a scheduled Water Board hearing, the Discharger may rebut the Prosecution Team's findings and submit documentation to support the assertion of an inability to pay.

Without additional information provided by the Discharger, based on this initial assessment of information, it appears the Discharger does have assets to pay the Total Base Liability determined in Step 5. This initial assessment does not consider Ms.

Miner's total assets and liabilities, including other properties owned outside of Lassen County, income from any rental properties or the amount of outstanding mortgages, if any. Included with the issuance of this Complaint is a document titled, "Financial Documentation Fact Sheet" that specifies the type of information Ms. Miner can provide to rebut the Prosecution Team's assertion that Ms. Miner has the ability to pay the liability determined in Step 5.

### **Step 7: Other Factors as Justice May Require**

The Enforcement Policy provides that if the Water Board believes the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made.

#### **a. Adjustments for Other Factors as Justice May Require**

The Prosecution Team has exercised its discretion in deciding whether to pursue administrative civil liability for violating Cease and Desist Order No. R6T-2015-0002. Doing so is consistent with the Water Board's primary interest to achieve compliance.

The Prosecution Team has determined that the Total Base Liability of \$49,500 as calculated in Step 5, in addition to the minimum statutory liability calculated in Step 9, are excessive in light of the violations alleged herein, and in relation to the cost savings associated with the non-compliance from those violations as well as past Water Board actions in similar enforcement cases. Below are specific factors under Water Code section 13327 that the Prosecution Team considered in determining the proposed liability amount.

- i. **Reducing the days of violation:** The Prosecution Team considered calculating the administrative civil liability based on a reduced number of days of violation. Using a start date of August 4, 2015, the date of the Notice of Violation where staff reminded the Discharger that her property was out of compliance, is consistent with the approach the Prosecution Team used in two similar ACL Complaints issued in 2013. Doing so would reduce the days of violations to 58 days (August 4, 2015 – October 1, 2015). Using 58 days of violation would result in a minimum liability of **\$5,800**, based upon the statutory minimum liability of \$100 per day of violation. Even considering the reduction of the minimum liability based on reducing the days of violation, the Prosecution Team believes this alternative liability amount of \$5,800 is excessive.
- ii. **Other Considerations:** In determining the proposed liability amount, the Prosecution Team considered the following specific factors.
  - a) **Economic Benefit:** As detailed in Step 8, below, the cost savings of non-compliance is \$30 for abandonment or \$154 for connection. While the Enforcement Policy requires the recovery of at least economic benefit plus ten percent, a penalty of either \$33 or \$169.40 is not sufficient to deter non-compliance or create a level playing field among the regulated community. On

the other hand, the Prosecution Team acknowledges the statutory minimum liability amount of \$7,900 is well in excess of the economic benefit of non-compliance.

- b) **Consistency with Similar ACLs:** Administrative civil liability complaints were issued to property owners of the nearby Stones-Bengard subdivision in 1997 for failing either to connect their onsite wastewater disposal systems to the Stones-Bengard community sewer system or to properly abandon them. In the Stones-Bengard cases, the Water Board issued administrative civil liability complaints proposing liability be imposed in the amount of **\$6,500** per non-compliant property. This was the minimum liability that could be imposed for violating cleanup and abatement orders that had been issued 65 days prior to issuing the administrative civil liability complaints. The cleanup and abatement orders had been issued after the Stones-Bengard property owners had been violating their cease and desist orders issued in 1991 for several years. ACL Orders were subsequently issued for this amount.

In 2012 and 2014, the Water Board issued ACL Orders to ten Spalding Tract property owners in amounts ranging from \$106 up to \$1,749 per non-compliant property. The liability amounts imposed were, at least in part, related to the length of time it took the property owners to achieve compliance. These property owners paid their fines in full, and their properties were brought into compliance with the Basin Plan prohibition.

In light of these past enforcement cases (Stones-Bengard and Spalding Tract), which brought about compliance while imposing penalty amounts less than the \$7,900 statutory minimum for this case, the Prosecution Team believes a lower penalty more in line with these past enforcement actions is appropriate to achieve compliance while providing a sufficient level of deterrence, and is not an unreasonably punitive action. Because compliance was achieved in each of these cases, we believe a similar approach in this case is reasonable, and therefore applied it to determine the proposed liability amount discussed below.

- iii. **Proposed Liability Amount:** Water Code section 13350(f) provides that the Water Board may impose civil liability in an amount less than the minimum amount specified where express findings setting forth the reasons for its action based on the specific factors required in Water Code section 13327.

For the reasons specified above, which are based on the specific factors outlined in Water Code section 13327, the Prosecution Team recommends imposing an administrative civil liability in the amount of **\$1,975**. The Prosecution Team believes this amount provides a fair penalty or consequence for the alleged violation as well as a meaningful deterrent against future violations. This amount and approach are consistent with that applied in the last two Spalding Tract ACL Complaints issued in 2013.

**b. Staff Costs**

The Water Board has suspended the practice of adding staff cost into administrative civil liabilities based upon the California State Auditor's findings stated in its 2012-120 Audit Report. Specifically, one of the findings in the Audit Report is that staffing costs in penalty actions for water quality certification violations are, "generally not supported and are inaccurate because of inflated cost rates." (California State Auditor Report 2012-120 State Water Resources Control Board, *It Should Ensure a More Consistent Administration of Water Quality Certification Program*, June 2013). This enforcement action does not involve violations of a 401 Water Quality Certification, as was the focus in Audit Report 2012-120. However, staff believes the justification in the Audit Report still applies to this enforcement action where the staff cost rate has yet to be revised to reflect actual staff salaries and overhead cost for each program. In an abundance of caution, the Water Board, in consultation with the State Water Resources Control Board, has suspended adding staff cost into administrative civil liabilities until the issues identified by the State Auditor can be addressed.

**Step 8: Economic Benefit**

The Enforcement Policy requires that the economic benefit of noncompliance be estimated for any violation. The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation.

The Discharger has realized an economic benefit of noncompliance by failing to either connect or abandon the septic system as required by Cease and Desist Order No. R6T-2015-0002. In order to estimate the economic benefit of noncompliance, Water Board staff previously subpoenaed cost records from contractors who have abandoned individual onsite wastewater disposal systems or connected them to the District's system in the Spalding Tract subdivision. Based upon the subpoenaed data received, the average costs to connect a septic tank to the community wastewater system or to properly abandon a septic system at that time were \$4,210 and \$836, respectively. Since property owners are ultimately required to either connect or abandon their septic tanks, the economic benefit of noncompliance is realized by delaying the connection or abandonment of the system, and thereby delaying expenditure of the cost necessary to do so. In the meantime, the unspent compliance money has been available for other activities. The benefit of noncompliance is estimated by calculating the time value of the delay, net of taxes and considering inflation using U.S. Environmental Protection Agency's BEN model<sup>1</sup>. The economic benefit of noncompliance of delaying septic tank

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<sup>1</sup> USEPA developed the BEN model to calculate the economic benefit a violator derives from delaying and/or avoiding compliance with environmental statutes. Funds not spent on environmental compliance are available for other profit-making activities or, alternatively, a defendant avoids the costs associated with obtaining additional funds for environmental compliance. BEN calculates the economic benefits gained from delaying and avoiding required environmental expenditures such as capital investments, one-time non-depreciable expenditures, and annual operation and maintenance costs.

BEN uses standard financial cash flow and net present value analysis techniques based on generally accepted financial principles. First, BEN calculates the costs of complying on time and of complying late adjusted for inflation and tax deductibility. To compare the on time and delayed compliance costs in a common measure, BEN calculates the present value of both streams of costs, or "cash flows," as of the date of initial noncompliance. BEN

connection beyond July 14, 2015 is an estimated \$154, and the economic benefit of noncompliance of delaying septic tank abandonment beyond July 14, 2015 is an estimated \$30 (Exhibit 1). These estimates use the Employment Cost Index (ECI) for inflation and assume a penalty payment date of March 10, 2016.

### **Step 9: Maximum and Minimum Liability Amounts**

The maximum liability amount the Water Board may assess for the above-referenced violations pursuant to Water Code section 13350, subdivision (e)(1), is \$5,000 per day of violation. Therefore, the maximum liability the Water Board may assess for 79 days of violation (elapsed time since the date of compliance in the Cease and Desist Order) is **\$395,000**.

The minimum liability amount provided in Water Code section 13350, subdivision (e)(1)(B) is \$100 per day. Therefore, the minimum liability the Water Board must assess for 79 days of violation is **\$7,900**, unless specific findings are made supporting a reduction.

The Enforcement Policy also requires that:

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

The economic benefit amount plus ten percent is **\$33.00** for septic tank abandonment and **\$169.40** for connection to the District's system. The Total Base Liability and the Proposed Liability amount, below, are greater than either of these amounts.

### **Step 10: Final Liability Amount**

The Total Proposed Liability Amount is **\$1,975.00** based upon the considerations discussed in detail, above.

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derives these values by discounting the annual cash flows at an average of the cost of capital throughout this time period. BEN can then subtract the delayed-case present value from the on-time-case present value to determine the initial economic benefit as of the noncompliance date. Finally, BEN compounds this initial economic benefit forward to the compliance date if compliance ultimately occurred, or the penalty payment date if compliance still has not occurred or the compliance action was a recurring annual action.

Sheila Miner										
Compliance Action The actions required to have prevented the violation.	One-Time Nondepreciable Expenditure			Annual Cost		Non-Compliance Date	If complied, enter Compliance Date	Cost Index for Inflation	Benefit of Non-compliance	
	Amount	Date <sup>1</sup>	Delayed? <sup>2</sup>	Amount	Date <sup>1</sup>					
<b>Alternative 1:</b> Properly abandon septic system	\$836	1/1/2010	y			7/15/2015		ECI	<b>\$30</b>	
<b>Alternative 2:</b> Connect septic system to sewer	\$4,210	1/1/2010	y			7/15/2015		ECI	<b>\$154</b>	
<b>Totals</b>	<b>N/A</b> <sup>3</sup>								<b>N/A</b> <sup>3</sup>	
							Date of run:	2/11/2016 9:33		
Penalty Payment Date:	3/10/2016		Hearing Date:		3/10/2016					
Income Tax Schedule:	For-Profit									
Source: USEPA BEN Model:	Version 5.5.0		Status:							
Analyst:	MM Ransom									
<sup>1</sup> This is the Date of the cost estimate. When was the cost estimate made?										
<sup>2</sup> Enter "y" if delayed, and "n" if avoided.										
<sup>3</sup> The total does not exist here because the discharger can do either Alternative 1 or Alternative 2.										