

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

**ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6V-2013-0007**

**IN THE MATTER OF  
ARIMOL GROUP, INC., LAKE ARROWHEAD,  
WDID NO. 6B36CN601729 AND WDID NO. 6B36C363433**

\_\_\_\_\_San Bernardino County\_\_\_\_\_

The California Regional Water Quality Control Board – Lahontan Region (Water Board) hereby finds that Arimol Group, Inc. (Arimol) have violated California Water Code section 13376, Section 301 of the Clean Water Act, waste discharge prohibitions contained in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan), and Cleanup and Abatement Order No. R6V-2012-0008. These violations are a result of unpermitted discharges of waste and fill material to waters of the United States in the Lake Arrowhead watershed. The Water Board specifically finds that:

**BACKGROUND**

1. Arimol Group, Inc. owns and is developing multiple parcels near the intersection of Meadowbrook Road and Cedar Court within the Crest Park neighborhood of Lake Arrowhead, San Bernardino County, California. For the purpose of this Complaint, the parcels identified in the table below are hereafter collectively referred to as the “Site.”

<b>Parcel Address</b>	<b>San Bernardino Co. APN</b>	<b>Approx. Parcel Size</b>
1031 Meadowbrook Rd	0336-134-02-0000	1.8 acres
995 Meadowbrook Rd	0336-134-03-0000	9,000 square feet
977 Meadowbrook Rd	0336-134-05-0000	4,770 square feet
986 Meadowbrook Rd	0336-131-09-0000	7,000 square feet
974 Meadowbrook Rd	0336-131-08-0000	6,390 square feet

The unnamed creeks, springs, and shrub wetland on the Site are surface waters tributary to Lake Arrowhead and eventually Deep Creek, and are waters of the United States. These surface waters and Lake Arrowhead are located within the Deep Creek watershed of the Mojave Hydrologic Unit. The Site’s elevation is approximately 5,600 feet above mean sea level.

## CHRONOLOGY OF EVENTS

2. On October 1, 2011, Arimol and/or its contractors began construction activities at the Site.<sup>1</sup>
3. On October 17, 2011, Water Board staff received a complaint of grading and construction activities, and the filling of two creek channels on the Site. Water Board staff also received a courtesy copy of an email from Joanna Gibson, California Department of Fish and Game (CDFG) staff, to Bill Moller, Arimol representative. CDFG directed Mr. Moller to provide specific information and to cease all activities within CDFG's jurisdiction immediately.
4. On October 18, 2011, Water Board staff contacted Mr. Moller via email and notified him that grading activities disturbing one or more acres of land require coverage under the Statewide General Permit for Discharges of Storm Water Associated with Construction Activity, Order No. 2009-0009-DWQ (Construction General Permit). Staff also notified Mr. Moller that disturbing creek channels on the Site requires permits from the Water Board and CDFG, and possibly from the United States Army Corps of Engineers (Army Corps). At a minimum, staff required immediate protection measures be implemented to prevent sediment or debris from blocking surface flows and/or being carried downstream from the Site.
5. On October 21, 2011, Water Board staff conducted its first Site inspection and observed the following:
  - a. Evidence of unauthorized excavating and filling activities within two separate creeks on the Site. One creek channel had been filled with earthen materials after installing a 36-inch diameter culvert (later identified as a 30-inch diameter culvert) with a concrete headwall and directing creek flows into the culvert. The other creek had been graded to accommodate the new discharge location for the creek that had been realigned and placed in the new culvert.
  - b. Evidence of clearing, grubbing, and grading of an area that would later be identified as a shrub wetland.
  - c. Evidence of land disturbance associated with grading, clearing, grubbing, and excavating at the Site, affecting an area part of a common plan of development equal to or greater than one acre. All of the disturbance was done by a common owner on contiguous properties as part of the expansion of the Serenity Lodge development.
  - d. No evidence of any sediment control or erosion control best management practices (BMPs) in place to reduce or eliminate sediment and other stormwater pollutant discharges to waters of the United States.

---

<sup>1</sup> Source: Notice of Intent submitted dated April 13, 2012

6. On November 21, 2011, Water Board staff issued a Notice of Noncompliance, describing the site conditions observed by staff during its October 21, 2011 inspection. The Notice of Noncompliance also identified the resulting Water Code and federal Clean Water Act violations associated with the observed site conditions, and required the following activities be completed by December 9, 2011.
  - a. Submit verification that a Notice of Intent (NOI) had been filed for coverage under the Construction General Permit;
  - b. Submit a site-specific Storm Water Pollution Prevention Plan (SWPPP);
  - c. Submit documentation that the SWPPP, which is to identify an effective combination of erosion and sediment control BMPs, had been implemented at the Site; and
  - d. Submit a complete Application for Clean Water Act Section 401 Water Quality Certification and/or Waste Discharge Requirements for Projects Involving Discharge of Dredged and/or Fill Material to Waters of the United States.

The Discharger failed to comply with any of these requirements by December 9, 2011.

7. On January 20, 2012, Water Board staff conducted its second Site inspection, meeting with Mr. Moller, his engineer Bryant Bergeson of Kadtec, and CDFG staff members Ms. Gibson and Jeff Brandt. Water Board staff observed the following:
  - a. The Discharger had buried a spring (north spring) originating on San Bernardino County APN 0336-134-05-0000 under a newly constructed house foundation footing. The spring's flow had also been placed within a pipe, diverting the spring's flow into a third creek located adjacent to the Site's northern boundary.
  - b. The Discharger had placed a portion of the open water channel fed by a second spring (south spring) originating on San Bernardino County APN 0336-134-03-000 into a PVC pipe. The PVC pipe discharges to the new culvert staff observed for the first time during its October 21, 2011 inspection.
  - c. The Discharger had failed to implement any effective BMPs, as required by the November 21, 2011 Notice of Noncompliance. Staff repeated its directions to Mr. Moller to install an effective combination of BMPs.
8. Water Board staff conducted two additional site inspections on January 27, 2012 and February 6, 2012. Staff continued to observe inadequate and ineffective best management practices. Staff conveyed its observations to Arimol representatives following each inspection and repeated its direction for Arimol to install and maintain an effective combination of best management practices (BMPs).

9. Following the February 6, 2012 inspection, staff repeated its observation that the project activities involved an acre or more of soil disturbance, and that Arimol was required to obtain coverage under the Construction General Permit. Staff noted that a chance of rain was forecasted for the following day. Staff also began to discuss the matter of restoring the creeks to their original condition.
10. On March 15, 2012, the Water Board issued Cleanup and Abatement Order (Order) No. R6V-2012-0008 to Arimol. The Cleanup and Abatement Order requires Arimol to clean up and abate discharges and threatened discharges of waste earthen materials to surface waters of the Mojave Hydrologic Unit, including restoring all surface waters disturbed during project construction to pre-project conditions. Additionally, the Cleanup and Abatement Order requires the Discharger to fully disclose all elements of the project, the extent of land disturbance that has occurred and will occur as a result of the project, and to obtain coverage under and comply with the Construction General Permit.
11. On March 16, 2012 and April 3, 2012, Water Board staff conducted its fifth and sixth inspections of the Site. Staff observed that housing construction was continuing to occur and that while some BMPs had been installed, many of them had been incorrectly installed or were in need of maintenance, and that additional BMPs were still needed to prevent sediment and other pollutant discharges to waters of the United States. Arimol representatives were informed directly and/or via email of staff's observations, including storm events forecasted to follow the March 16, 2012 inspection and to begin the evening of April 10, 2012 and last through the remainder of the week.
12. On March 23, 2012, Arimol representative, Bill Moller, received a hard copy of Cleanup and Abatement Order No. R6V-2012-0008 via certified mail.
13. On April 10, 2012, Water Board staff sent Mr. Moller an email, acknowledging that the State Water Board had received a NOI for the project on April 9, 2012, and pointed out that the owner name on the NOI was an entity other than the Discharger. Staff urged the Discharger to consult with a qualified SWPPP developer to assist the Discharger with proper selection and installation of appropriate BMPs.
14. On April 13, 2012, the State Water Board accepted a revised Notice of Intent for enrollment under the Construction General Permit. The Notice of Intent stated the project site to be 2.4 acres, of which 0.3 acres would be disturbed. The Storm Water Pollution Prevention Plan (SWPPP) submitted with the Notice of Intent identified the project as including construction of six, single-family residences with concrete driveways for each residence.
15. Water Board staff conducted its seventh and eighth inspections on April 20, 2012 and June 7, 2012, respectively. Staff observed during both inspections that BMPs needed maintenance and that additional BMPs were needed. Staff also observed during the June 7, 2012 inspection that the open water channel for the southern spring had been modified without any permits by replacing the existing pipe with one of slightly longer length, eliminating all of the southern spring's open water channel except for an approximately six- to twelve-inch section.

Arimol representatives were again notified directly (April 20, 2012 inspection) and via email (both inspections) by Water Board staff of staff's observations and of the violation associated with replacing the pipe for the southern spring's open water channel. Staff also informed Arimol representatives that another storm event was forecasted for the week following the April 20, 2012 inspection.

16. On June 20, 2012, Water Board staff issued a Notice of Violation (NOV) for failing to comply with Cleanup and Abatement Order No. R6V-2012-0008. The NOV cited violations of Order Nos. D.1, D.2, D.3, D.5, and D.6. The NOV required the Discharger to immediately and properly implement all SWPPP components, and to submit by June 22, 2012, additional information that Staff believed necessary to complete the technical reports submitted by the Discharger. The NOV also stated that Water Board staff intended to pursue administrative civil liabilities for the violations associated with the project.
17. On July 3, 2012, Water Board staff met with Arimol representatives and consultants. Arimol representatives explained why they did not believe Arimol had violated Order Nos. D.2 and D.3. Following additional review, staff agreed that Arimol had not violated Order Nos. D.2 and D.3. There was additional discussion of the remaining Cleanup and Abatement Order requirements and staff clarified that the deadlines specified by Cleanup and Abatement Order No. R6V-2012-0008 would remain unchanged.

On July 20, 2012, Water Board staff received additional information in response to the NOV. Again, staff found the information incomplete.
18. On August 9, 2012, Water Board staff conducted its ninth Site inspection. Staff, again, observed the need for BMP maintenance.
19. On August 22, 2012, Water Board staff met again with Arimol representatives. At the meeting, staff identified what it believed deficiencies in Arimol's technical report submittals. Staff also informed Arimol representatives that Arimol was going to be authorized to proceed with a limited portion of the surface water restoration plan, in spite of the report deficiencies.
20. On August 29, 2012, Water Board staff issued a letter conditionally authorizing Arimol to begin implementing a portion of the Surface Water Restoration Plan. Arimol was authorized to remove the 30-inch culvert and concrete headwall, and to restore both creeks to their historical alignments and conditions.
21. On September, 21, 2012, Shelby D. Elder of Montgomery and Associates filed a Change of Information into the Stormwater Multi-Application, Reporting and Tracking System (SMARTS) database on behalf of the Discharger. The Change of Information, in part, updated the Total Disturbed Area information from 0.3 acres to 1.97 acres. The 0.3-acre value was reportedly based solely on the land disturbance associated with home construction, and did not take into account the grading, clearing and grubbing, and excavation that has and will occur as a result of the project. The revised value of 1.97 acres better reflects the actual land disturbance

that has occurred, such as the reported 0.26 acres of shrub wetland that was cleared and grubbed, the approximately 610 feet of creek channel that has been filled or graded, and the approximately 400 feet of spring open water channel that has been filled, placed in a pipe, and realigned.

22. On October 11, 2012, Water Board staff conducted its tenth Site inspection. Staff observed that the jute mat BMPs were improperly installed and needed maintenance. These observations were communicated directly to an Arimol representative present during the inspection. Additionally, staff observed that creek restoration activities, as authorized by staff on August 29, 2012, had not been started.

23. On October 26, 2012, the Water Board's Assistant Executive Officer issued Complaint No. R6V-2012-0049 (included by reference and available in the Water Board's files for this case). The Complaint alleges Arimol violated Water Code section 13376, Clean Water Act section 301, Basin Plan waste discharge prohibitions, and Cleanup and Abatement Order No. R6V-2012-0008. The Complaint proposed an administrative civil liability of **\$498,000.00**. The Complaint and its attachments are incorporated by reference.

24. On January 16, 2013, in Barstow, California, after notice to Arimol 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 Arimol, or its representative(s), had the opportunity to be heard and to contest the allegations in the Complaint.

### **REGULATORY CONSIDERATIONS**

25. Section 301 of the Federal Water Pollution Control Act ("Clean Water Act") (33 U.S.C. § 1311 et seq.) prohibits the discharge of pollutants and of dredged and/or fill material to waters of the United States, except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit or Clean Water Act section 404 permit, respectively.

26. Water Code section 13376 requires a person proposing to discharge pollutants or proposing to discharge dredged and/or fill material to waters of the United States to first file a report of waste discharge. Water Code section 13376 also prohibits the discharge of pollutants, dredged, and/or fill materials to waters of the United States, except in accordance with an NPDES permit and/or dredged and fill material permit.

27. 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 waste discharge prohibitions for the Mojave Hydrologic Unit:

- a. "The discharge of waste to surface water in the Mojave Hydrologic Unit that is tributary to the West Fork Mojave River or Deep Creek, above elevation 3,200 feet (approximate elevation of Mojave Forks Dam), is prohibited."
- b. "The discharge of waste to land or water within the following areas is prohibited:
  - (b) The Deep Creek watershed above elevation 3,200 feet"

The Basin Plan defines "waste" to include any waste or deleterious material including, but not limited to, waste earthen materials (such as soil, silt, sand, clay, rock, or other organic or mineral material).

28. Cleanup and Abatement Order No. R6V-2012-0008 , in part, prescribes the following orders:

- a. Forthwith, the Discharger shall submit a Notice of Intent for coverage under the Construction General Permit with the State Water Resources Control Board through the on-line Stormwater Multi-Application, Reporting and Tracking System (SMARTS) for existing and future land disturbance activities subject to the Construction General Permit. (Order No. D.1)
- b. By April 20, 2012, the Discharge shall submit a technical report that describes the development plan for the Site and that describes, illustrates, and quantifies all land disturbance activities that have occurred since the Discharger acquired the Site in 2011, including those disturbances to drainages, springs, and other surface waters, as well as those proposed in the overall, larger, development plan for the Serenity Lodge Expansion Project. (part of Order No. D.5)
- c. By April 26, 2012, the Discharger shall submit a technical report for the Executive Officer's approval (or his/her delegate's approval) that provides a Surface Water Restoration Plan to remove the pipe culvert and headwall and restore the section of the creek that has been placed within the new 30-inch culvert to its natural hydrologic conditions. The plan must also include restoration of the natural drainage channel located on the Site's eastern perimeter and for the two diverted springs located on the western portion of the Site (part of Order No. D.6).

## **VIOLATIONS**

29. Arimol violated Water Code section 13376 and Clean Water Act section 301 by discharging wastes to waters of the United States without filing a report of waste discharge, without a NPDES permit, and without a dredged and/or fill material permit. Arimol discharged fill materials into two creeks, two springs and their open water channels, and a shrub wetland. The effects of such discharges were observed by Water Board staff as follows:

Inspection Date Evidence of Discharge Observed	Affected Surface Water
October 21, 2011	Creek that flowed across the property from the southwest corner to near the southeast corner had been placed in a 30-inch diameter culvert and the creek channel filled with earthen materials.
October 21, 2011	Nearly the full length of the creek that flows from the southeastern corner to the northeastern corner had been excavated/graded.
October 21, 2011	Shrub wetland had been cleared and grubbed.
January 20, 2012	North spring and part of its open water channel is buried beneath concrete house foundation. Spring's flow was placed in a small-diameter pipe, destroying a significant length of the spring's open water channel.
January 20, 2012	South spring's flow placed in small-diameter PVC pipe and its open water channel destroyed.
June 7, 2012	Metal culvert conveying south spring's flow is replaced with a small-diameter PVC pipe longer than the original culvert. The result is additional open water channel is destroyed. All but approximately 6 to 12 inches of the south spring's open water channel has been destroyed.

Each discharge of pollutants and/or dredged and/or fill material to each individual surface water identified in the table above, constitutes an individual violation for a total of six alleged violations. These six violations are subject to administrative civil liability pursuant to Water Code section 13385, subdivisions (a)(1) and (a)(5).

30. Arimol violated the Basin Plan prohibitions cited, above, when it discharged waste to surface waters within the Mojave River Hydrologic Unit that are tributary to Deep Creek at an elevation above 3,200 feet above mean sea level. Such discharges occurred on six different occasions as identified in the Finding No. 30, above. Each discharge event cited above constitutes a violation of the above-referenced Basin Plan prohibitions. These six violations are subject to administrative civil liability pursuant to Water Code section 13385, subdivision (a)(4).

31. The Complaint alleged that Arimol violated Cleanup and Abatement Order No. R6V-2012-0008, as described below.

a. **Violation of Order D.1** – Although the Complaint alleged that Arimol violated Order D.1 of Cleanup and Abatement Order No. R6V-2012-0008 when it failed to submit a Notice of Intent for coverage under the Construction General Permit “forthwith,” the Water Board did not assess an administrative liability for this alleged violation because Arimol filed the Notice of Intent with the State Water Board on April 9, 2012, at the same time its SWPPP was due under the CAO, which was a reasonable interpretation of the Order requirement.

- b. **Violation of Order D.5** – Although the Complaint alleged that Arimol violated Order D.5 of Cleanup and Abatement Order No. R6V-2012-0008 by failing to submit a complete technical report (Development Plan) as required by Order D.5., the Water Board did not assess an administrative civil liability for this violation because Arimol submitted a technical report on April 20, 2012 and a supplement on July 20, 2012.
- c. **Violation of Order D.6** – Although the Complaint alleged that Arimol violated Order D.6 of Cleanup and Abatement Order No. R6V-2012-0008 by failing to submit a complete technical report (Surface Water Restoration Plan) as required by Order D.6., the Water Board did not assess an administrative civil liability for this violation because Arimol submitted a technical report on April 26, 2012 and a supplement on July 20, 2012.

### CALCULATION OF ADMINISTRATIVE CIVIL LIABILITY

- 32. Pursuant to Water Code section 13385, subdivision (a), a discharger is subject to civil liability for violations of section 13376, or an order (e.g., Cleanup and Abatement Order No. R6V-2012-2008) or prohibition issued pursuant to section 13243 (e.g., the Basin Plan), or a requirement of section 301 or 401 of the Clean Water Act. Per Water Code section 13385, subdivision (c), civil liability may be imposed administratively by the Water Board in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. The six violations cited in Finding No. 30, above, are subject to Water Code section 13385.
- 33. Pursuant to Water Code section 13385, subdivision (e) , in determining the amount of any civil liability, the Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
- 34. On November 17, 2009, the State Water Board adopted Resolution 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 13385, subdivision (e) and 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)

35. **Maximum Liability Amount:** Pursuant to Water Code sections 13385, the total maximum administrative civil liability that may be imposed for six discharge violations alleged in the Complaint is **\$60,000**.

Additionally, 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.”

State Water Board and Water Board staff, determined that Arimol has realized an economic benefit of \$573,342, based upon the analysis described in Gerald Horner’s November 21, 2012 memo. Following the Enforcement Policy requirements, such an economic benefit produces a minimum liability amount of **\$630,970**. The Enforcement Policy also recommends that staff costs also be added to the liability. Doing so increases the minimum liability amount to **\$721,800**. However, this minimum liability amount exceeds the statutory maximum liability amount; and, therefore, cannot be used to establish the minimum liability.

36. **Administrative Civil Liability Determination:** The Water Board has applied the administrative civil liability methodology in the Enforcement Policy and considered each of the Water Code section 13385, subdivision (e) 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 Arimol in the amount of **\$60,000**, which falls within the allowable range.

### GENERAL

37. This Order only resolves liability for the violations specifically identified within this Order and the Complaint. This Order does not relieve Arimol of liability for any violations not identified within this Order. The Water Board retains the authority to assess penalties or additional civil liabilities for violations of applicable laws or orders for which penalties or civil liabilities have not yet been assessed, or for violations that may subsequently occur.
38. Issuance of this Order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), pursuant to title 14, California Code of Regulations, section 15321, subdivision (a)(2).
39. 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 California Code of Regulations, 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 petitions 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 Arimol in the amount of **\$60,000**.
2. Arimol shall submit payment with a cashier's check or money order. The check shall be in the amount of **\$60,000** and made payable to the *State Water Resources Control Board's State Water Pollution Cleanup and Abatement Account*. Both checks are due within 30 days of the date this Order is adopted.
3. Should Arimol fail to make the specified payments to the State Water Resources Control Board's Waste Discharge Permit Fund and State Water Pollution Cleanup and Abatement Account 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 January 16, 2013.



---

Patty Z. Kouyoumdjian  
Executive Officer

## **ATTACHMENT B**

### **ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY**

Administrative civil liability may be imposed pursuant to the procedures described in California Water Code section 13323. Administrative Civil Liability Complaint No. R6V-2012-0049 (Complaint) alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

Pursuant to Water Code section 13385, subdivisions (a)(1), (a)(4), and (a)(5), a person who violates Water Code section 13376, a prohibition issued pursuant to Water Code section 13243, or Clean Water Act section 301 or 401, shall be liable civilly. Pursuant to Water Code section 13385, subdivision (c), civil liability may be imposed administratively by the Lahontan Water Board (Water Board) in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and
- (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

Water Code section 13385, subdivision (e) and Water Code section 13327 require the Water Board to consider several factors when determining the amount of civil liability to impose. These factors include:

“...the nature, circumstances, 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 its ability to continue its 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 that justice may require.”

Water Code section 13385, subdivision (e) also requires,

“At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”

On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy provides a calculation methodology for determining administrative civil liability. The calculation methodology includes an analysis of the factors in Water Code section 13385, subdivision (e) and Water Code section 13327, and it enables fair and consistent implementation of the Water Code's liability provisions. Exhibit No. 1 and the following discussion presents the administrative civil liability derived for Arimol Group, Inc. from the Enforcement Policy's administrative civil liability methodology. Exhibit No. 1 is attached and incorporated herein by this reference.

**ALLEGED VIOLATIONS**

The Complaint alleges Arimol Group, Inc. (the Discharger) violated the Clean Water Act and California Water Code at its project site located on Meadowbrook Road in Lake Arrowhead, San Bernardino County. The violations alleged in the Complaint are summarized as follows:

**Table No. 1 - Violations**

<b>Violation No.</b>	<b>Description</b>
1	Discharge of Fill Material to Waters of the U.S. Observed during October 21, 2011 Inspection - Creek No. 1 (ephemeral stream that crosses length of APN 0336-134-02-0000, 1031 Meadowbrook Road)
2	Discharge of Wastes to Waters of the U.S. Observed during October 21, 2011 Inspection - Creek No. 2 (eastern creek) (ephemeral stream channel on eastern portion of APN 0336-134-02-0000, 1031 Meadowbrook Road)
3	Discharge of Fill to Waters of the U.S. Observed during January 20, 2012 Inspection - North Spring (spring originating from APN 0336-134-05-0000, 977 Meadowbrook Road)
4	Discharge of Fill to Waters of the U.S. Observed during January 20, 2012 Inspection. - South Spring (spring originating from APN 0336-134-03-000, 995 Meadowbrook Road)
5	Discharge of Fill to Waters of the U.S. observed during June 7, 2012 Inspection - South Spring (spring originating from APN 0336-134-03-000, 995 Meadowbrook Road)
6	Discharge of Wastes to Waters of the U.S. Observed during October 21, 2011 Inspection – Wetlands (shrub wetland located on APN 0336-134-02-0000, 1031 Meadowbrook Road)

Violation Nos. 1 through 6, above, are discharge violations for purposes of applying the Enforcement Policy's administrative civil liability methodology and are subject to liability pursuant to Water Code section 13385.

**ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY APPLIED**

The following is a discussion of the Enforcement Policy’s administrative civil liability methodology applied to each of the violations alleged in Administrative Civil Liability Complaint No. R6V-2012-0049. The discussion is divided into two major sections. Section I addresses Methodology Step Nos. 1 – 5 for Violation Nos. 1 – 6 (unauthorized discharges to waters of the United States); Section II addresses Methodology Step Nos. 6 – 10 for all of the violations.

**SECTION I**

**Step 1: Potential for Harm for Discharge Violations**

Actual or threatened impacts to beneficial uses are determined using a three-factor scoring system. The three factors include: (a) the harm or potential harm to beneficial uses; (b) the physical, chemical, biological, or thermal characteristics of the discharge; and (c) the susceptibility to cleanup or abatement of the discharge(s). A numeric score is determined for each of the three factors. These scores are then added together to determine a final Potential for Harm score.

**A. Factor 1: Harm or Potential Harm to Beneficial Uses**

Violation Nos. 1 – 6 all involve the unauthorized discharge of waste or fill material to waters of the United States. The surface waters at the Site consist of unnamed minor streams and springs (minor surface waters), and wetlands tributary to Lake Arrowhead within the Upper Mojave Hydrologic Area. The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) designates the following present and potential beneficial uses for minor surface waters and wetlands within the Upper Mojave Hydrologic Area.

**Table No. 2 – Beneficial Uses**

Water Body	Beneficial Uses												
	Municipal and Domestic Supply	Agricultural Supply	Ground Water Recharge	Freshwater Replenishment	Hydropower Generation	Water Contact Recreation	Noncontact Water Recreation	Warm Freshwater Habitat	Cold Freshwater Habitat	Wildlife Habitat	Rare, Threatened, or Endangered Species	Water Quality Enhancement	Flood Peak Attenuation/ Flood Storage
Minor Surface Water	X	x	x		x	x	x	x	X	x			
Minor Wetlands	X	x	x	x		x	x	x	X	x	x	x	x

The Discharger's consultant, PMC, provided the following characterization of the Site's surface waters in a July 20, 2012 document submitted on behalf of the Discharger.

"Based upon a review of historic aerial photographs, two [2] ephemeral streams and one [1] shrub wetland occurred onsite prior to the site activities. The ephemeral stream was characterized by wet meadow vegetation, and the shrub wetland was a nearly homogenous stand of willow [*Salix* spp.]. In addition, two [2] springs occurred on adjacent parcels [977 and 995 Meadowbrook Road], and were also dominated by willow. Both springs drained into the onsite jurisdictional features through open water channels, dominated by wet meadow vegetation."

**Violation Nos. 1, 3, 4, and 5: Discharges of Waste/Fill to Creek No. 1, North Spring, and South Spring** - Violation Nos. 1, 3, 4, and 5 resulted in the destruction of three minor surface waters (one creek, two springs and associated "open water channels") and the riparian habitat, and possibly wetland habitat, they supported. The surface water destruction occurred when the Discharger cleared and grubbed the vegetation associated with these waters, and then filled them with earthen materials (e.g., soil). The Discharger also eliminated the ground water recharge, water contact recreation, noncontact water recreation, warm freshwater habitat, cold freshwater habitat, and wildlife beneficial uses of the affected surface waters by filling the creek (Violation No. 1), by placing two springs beneath new housing structures (Violation Nos. 3 and 4) and by filling the open water channels that connected the springs to the shrub wetland and creek (Violation Nos. 3, 4, and 5). The beneficial uses of the creek were destroyed sometime between October 1, 2011 and October 21, 2011. The beneficial uses of the springs and their open water channels that conveyed their flows to the shrub wetland (north spring) and to the creek (south spring) were destroyed sometime between October 21, 2011 and January 20, 2012, and again for the south spring open water channel, sometime between January 20, 2012 and June 7, 2012. This is a significant amount of time that has passed with these surface waters and their beneficial uses having been eliminated (135 days since June 7, 2012). A significant amount of additional time will pass before they are restored as required by Cleanup and Abatement Order No. R6V-2012-0008 that was issued on March 15, 2012.

The filling of these surface waters resulted in **major harm** to the beneficial uses of the surface waters described above, and linked to Violation Nos. 1, 3, 4, and 5. The Enforcement Policy defines "major" as:

"Major – high threat to beneficial uses (i.e., significant impacts to aquatic life or human health, long term restrictions to beneficial uses (e.g., more than five days), high potential for chronic effects to human or ecological health)"

The water that flowed through the creek and the springs' open water channels has been placed in pipes underground, and the channels filled. These actions have destroyed the above-referenced beneficial uses. The affected sections of creek and open water channels no longer can infiltrate a portion of their flows to recharge the ground water. The affected creek section and open water channels are no longer available to play in (contact recreation) or to enjoy the view and the sound (noncontact water recreation), and they are no longer available to the aquatic life (cold freshwater habitat, warm freshwater habitat) and the terrestrial wildlife (wildlife habitat) they supported. The majority of these surface waters can likely be restored, but it has already been more than a year since their destruction, and it will take time for the aquatic habitat and adjacent riparian habitat to be re-established once the surface waters features are reconstructed. It is unknown to what extent the destroyed beneficial uses will be restored.

Based upon the circumstances described, above, a score of **five (5)** is assigned to Factor 1 of the administrative civil liability methodology for Violations 1, 3, 4, and 5.

**Violation Nos. 2 and 6: Discharges of Wastes to Creek No. 2 (eastern creek) and Shrub Wetland** - Violation Nos. 2 and 6 resulted in (1) the unauthorized disturbance of and waste discharges to the eastern creek, and (2) the significant disturbance/destruction of and waste discharges to the shrub wetland, respectively. The Discharger cleared, grubbed, and graded these surface waters, which removed all riparian and wetland vegetation and destabilized the soils within and adjacent to these surface waters. The Discharger also adversely affected, and possibly destroyed, the ground water recharge, water contact recreation, noncontact water recreation, warm freshwater habitat, cold freshwater habitat, and wildlife habitat beneficial uses of both surface waters by clearing, grubbing, grading, and discharging waste earthen materials into these surface waters. The Discharger also adversely affected, and possibly destroyed, the water quality enhancement, rare, threatened, and endangered species, and flood peak attenuation/flood storage beneficial uses of the shrub wetland through the same activities and discharges. The beneficial uses of the eastern creek and shrub wetland were, at a minimum, adversely affected sometime between October 1, 2011 and October 21, 2011. While these surface waters are showing some signs of recovery (e.g., riparian and wetland vegetation are starting to return), there has been a significant amount of time that has passed since the initial adverse impacts to beneficial uses occurred (294 days, October 21, 2011 – August 9, 2012)<sup>1</sup>. A significant amount of additional time will pass before these surface waters and their beneficial uses will be restored as required by Cleanup and Abatement Order No. R6V-2012-0008.

---

<sup>1</sup> October 21, 2011 is the date of the Water Board inspection eastern creek and shrub wetland disturbance and waste discharges to are observed and documented. August 9, 2012 is the date of the Water Board inspection where shrub wetland and eastern creek vegetation recovery is observed and documented.

The disturbance of and waste discharges to these surface waters resulted in **above moderate** harm to the beneficial uses of the surface waters described, above, and linked to Violation Nos. 2 and 6. The Enforcement Policy defines “above moderate” as:

“Above moderate – more than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary restrictions on beneficial uses (e.g., less than five days), and human or ecological health concerns).”

Clearing, grubbing, and grading the eastern creek and shrub wetland has, at a minimum, removed and/or damaged the soils within these surface waters, adversely affecting aquatic habitat (cold freshwater habitat, warm freshwater habitat) of these surface waters. The once heavily vegetated landscape capable of supporting bird and other wildlife (wildlife habitat) was replaced by a heavily disturbed, barren soil landscape, no longer an enjoyable view (noncontact water recreation) or inviting area to explore (water contact recreation). The grading of these surface waters may have compacted the soils and adversely impacted their ability to infiltrate flows (ground water recharge). Finally, removing the shrub wetland’s vegetation and destabilizing its wetland soils has at a minimum, adversely affected the shrub wetlands water quality enhancement characteristics, its potential habitat for rare, threatened, and endangered species, and its ability to slow and retain peak flows. It is likely that these surface waters will be fully restored over time. Restoring the shrub wetland’s surface water sources and ensuring that surface flow through the wetland remain dispersed, rather than concentrated, will be key elements to fully restoring the shrub wetland and its beneficial uses.

Based upon the circumstances described, above, a score of **four (4)** is assigned to Factor 1 of the administrative civil liability methodology for Violations 2 and 6. A score of five (5) was not selected in this case because the surface waters were not destroyed, as were those associated with Violation Nos. 1, 3, 4, and 5. Additionally, a score of three (3) was not selected because of the length of time that the beneficial uses have been and continue to be adversely affected, and the extent of those adverse impacts.

B. Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

This factor evaluates the degree of toxicity of the discharge by evaluating the physical, chemical, biological, and/or thermal nature of the discharge. Toxicity is the degree to which a substance can damage a living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ. A score between 0 (negligible risk) and 4 (significant risk) is assigned based on a determination of the risk or threat of the discharged material on potential receptors. Potential receptors are those identified considering human, environmental and ecosystem health exposure pathways.

Earthen materials, either as waste discharges or as fill material, in and of themselves, are not generally considered toxic to humans. However, discharging earthen materials into the two creeks and shrub wetland, and burying the two springs and filling their open water channels, destroyed the aquatic organisms living in the surface waters that were filled (Creek No. 1, north and south springs and their open water channels), and likely destroyed a significant portion of the aquatic organism living in the eastern creek and shrub wetland.

Due to the physical characteristics of the earthen materials associated with Violation Nos. 1 – 6, and their ability to smother and subsequently kill aquatic organisms, the characteristics of the discharged material poses an **significant** risk or threat to potential ecological receptors. The Enforcement Policy defines “significant” as:

“Discharged material poses a significant risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material far exceed risk factors or receptor harm is considered imminent).”

The low degree of toxicity of waste earthen materials is not a significant threat to human receptors; however, harm to the aquatic and terrestrial organisms (ecological receptors) supported by the above-referenced surface waters is imminent where earthen materials are discharged into these surface waters as fill or waste. These circumstances warrant a significant level of risk or threat, for which the administrative civil liability methodology assigns a score of 4. Accordingly, a score of **four (4)** is assigned to Factor 2 for Violation Nos. 1 – 6.

C. Factor 3: Susceptibility to Cleanup or Abatement

Pursuant to the Enforcement Policy a score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of one is assigned if less than 50 percent or more of the discharge is susceptible to cleanup or abatement.

More than 50 percent of the discharge is susceptible to cleanup and abatement for Violation Nos. 1 – 6. Creek No. 1, Creek No. 2, and the shrub wetland are susceptible to having all discharged materials being cleaned up and the habitat fully restored. While the north and south spring and portions of their open water channels have been placed beneath two housing structures, when each is considered in its entirety, more than 50 percent should be susceptible to cleanup and restoration. Therefore, a score of **zero (0)** is assigned for Factor 3 for Violations 1 – 6.

D. Final Score for Potential for Harm for Discharge Violations

The Final Score for “Potential for Harm” is achieved by adding the score associated with the above-referenced three factors for each violation. The total score for Violation Nos. 1 – 6 is as follows:

**Table No. 3 – Potential for Harm Final Scores**

<b>Violation No.</b>	<b>Final Score</b>
1	9
2	8
3	9
4	9
5	9
6	8

**Step 2: Assessment for Discharge Violations**

Water Code section 13385, subdivision (c), allows civil liability to be assessed on a daily basis and on a per gallon basis for any amount discharged but not cleaned up in excess of 1,000 gallons. Civil liability may be assessed in an amount up to \$10,000 per day of violation, and up to \$10 per gallon discharged but not cleaned up in excess of 1,000 gallons.

The Enforcement Policy provides that the initial liability amount shall be determined on a per day and a per gallon basis using the Potential for Harm score from Step 1 in conjunction with the Extent of Deviation from the Requirement of the violation (See Enforcement Policy, Table Nos. 1 and 2.).

**A. Extent of Deviation from the Requirement**

Section 301 of the Federal Water Pollution Control Act (“Clean Water Act”) (33 U.S.C. § 1311 et seq.) and Water Code section 13376 prohibit the discharge of pollutants and of dredged and/or fill material to waters of the United States, except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit or Clean Water Act section 404 permit, respectively.

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 waste discharge prohibitions for the Mojave Hydrologic Unit:

- a. “The discharge of waste to surface water in the Mojave Hydrologic Unit that is tributary to the West Fork Mojave River or Deep Creek, above elevation 3,200 feet (approximate elevation of Mojave Forks Dam), is prohibited.”
- b. “The discharge of waste to land or water within the following areas is prohibited:
  - (b) The Deep Creek watershed above elevation 3,200 feet”

The Basin Plan defines “waste” for purposes of waste discharge prohibitions to include any waste or deleterious material including, but not limited to, waste earthen materials (such as soil, silt, sand, clay, rock, or other organic or mineral material) and any other waste as defined in the California Water Code section 13050, subdivision (d).

The Discharger discharged earthen fill materials to Creek No. 1, and the north and south springs and their open water channels without applying for and receiving any NPDES or dredge and/or fill discharge permit. The Discharger discharged waste earthen materials to Creek No. 2 and the shrub wetland without any NPDES or dredge and/or fill discharge permit. All of these surface waters are waters of the United States.

The purpose of such permits is to minimize or reduce pollutant and dredge and/or fill discharges to waters of the United States and to reduce or eliminate adverse effects of such discharges. If the Discharger had applied for such permits, Water Board staff would have worked diligently with the Discharger to avoid, minimize, and mitigate the discharges described above, as state and federal policies require. Additionally, the purpose of the above-referenced Basin Plan prohibitions is to prevent waste discharges, such as those that occurred with Creek No. 2 and the shrub wetland, in order to protect the high quality waters and the beneficial uses supported by such waters. The majority, if not all, of the surface water impacts described above, would have been avoided if the Discharger had applied for and received the appropriate Water Board and other environmental agency permits, prior to beginning the project.

Thus the above-referenced discharges of earthen fill material and waste earthen materials are **major deviations** from prescribed requirements. The Enforcement Policy defines “major deviation” as:

“The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions.”

The Discharger did not make any attempts to apply for Water Board permits or to comply with Basin Plan prohibitions prior to beginning the project. The Discharger resisted obtaining coverage under the State Water Board’s NPDES General Permit for Storm Water Discharges Associated with Construction Activity (Construction General Permit) after being informed of the requirement to do so. The Discharger continued with activities resulting in the discharge of fill material to waters of the United States after being informed that such activity was prohibited without the appropriate permits. The Discharger’s actions demonstrate a disregard for the above-referenced requirements. As a result of the Discharger’s disregard, five surface waters were either filled or had waste earthen materials discharged into them, rendering the above-referenced requirements ineffective in their essential functions.

Accordingly, based upon the Potential for Harm scores and the major deviation from the requirements, the per-gallon and per-day factors for the discharges associated with Violation Nos. 1 – 6 are as follows:

**Table No. 4 – Per-Gallon/Per-Day Factors**

<b>Violation No.</b>	<b>Factor</b>
1	0.8
2	0.6
3	0.8
4	0.8
5	0.8
6	0.6

Initial Amount of Liability

For Violation Nos. 1 – 6, the initial base liability amount is calculated by:

$$\text{(Per Day Factor) X (Number Of Days Of Violation) X (Maximum Per Day Liability)} \\ = \text{Initial Base Liability}^2$$

Based upon the scores and factors discussed above, information provided in the Complaint, and the above-referenced equation, the Initial Base Liabilities for Violation Nos. 1 – 6 are as follows:

**Table No. 5 – Initial Base Liabilities**

<b>Violation No.</b>	<b>Initial Base Liability</b>
1	\$8,000
2	\$6,000
3	\$8,000
4	\$8,000
5	\$8,000
6	\$6,000

**Step 3: Per Day Assessments for Non-Discharge Violations**

Violation Nos. 1 – 6 are discharge violations. Step 3 is therefore not applicable to Violation Nos. 1 – 6.

**Step 4: Adjustment Factors**

The Enforcement Policy describes three factors related to the violator’s conduct that should be considered for modification of the amount of initial liability: 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 involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

---

<sup>2</sup> Lahontan Water Board staff is not incorporating the per gallon factor into the Initial Base Liability amounts as allowed by Water Code section 13385, subdivision (c). The reason for this is that staff does not have adequate data to accurately determine the volume of fill and waste materials discharged to waters of the United States.

A. 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.

For Violation Nos. 1, 2 and 6, which occurred sometime between October 1, 2011 and October 21, 2011, the Discharger should have known that permits were required to discharge fill and wastes to waters of the United States. However, Water Board staff does not have any evidence to support a finding that the Discharger knowingly violated Basin Plan prohibitions and requirements to obtain NPDES and dredge and/or fill discharge permits. Therefore, a culpability factor of **1.3** has been selected for Violation Nos. 1, 2, and 6.

For Violation Nos. 3, 4, and 5, which occurred sometime after Water Board staff's October 21, 2011 inspection, the Discharger was informed by Water Board staff that NPDES and dredge and/or fill permits were required for discharging fill and pollutants to waters of the United States. Staff's initial notification to the Discharger on this matter was provided in an October 18, 2011 e-mail (Exhibit No. 2), which informed the Discharger's representative, Bill Moller, of the requirements to obtain coverage under the Construction General Permit and a dredge and/or fill discharge permit. Staff's e-mail followed an October 17, 2011 e-mail from California Department of Fish and Game<sup>3</sup> (CDFG) staff, Joanna Gibson, to Mr. Moller informing him of CDFG's permitting requirements for the project and directing Mr. Moller to "cease all activities within the Department's jurisdiction immediately." (Exhibit No. 3)

Mr. Moller acknowledged receipt of both CDFG's and Water Board staff's above-referenced e-mails in his October 18, 2011 e-mail to Water Board staff. Mr. Moller states his willingness to resolve any issues staff feels need to be corrected.

Water Board staff issued a Notice of Non-Compliance on November 21, 2011, in response to staff's observations of the Site during its October 21, 2011 inspection. Staff, again informed Mr. Moller of the need to obtain coverage under the Construction General Permit and to apply and obtain a dredge and/or fill discharge permit. In spite of these notifications, the Discharger performed additional activities that resulted in the discharge of fill material to the north spring and south spring and their open water channels (first observed during January 20, 2012 inspection and addition fill discharges to the south spring's open water channel observed during June 7, 2012 inspection).

Mr. Moller explained that the initial discharges of fill to the two springs and their open water channels were for protecting the foundations of the two new housing structures he was constructing. He later explained the second discharge of fill material to the south spring's open water channel was in response to a truck backing over the culvert where the spring flow daylight. Neither the Discharger nor its representative contacted Water Board staff prior to these discharge incidents, and

---

<sup>3</sup> On January 1, 2013, California Department of Fish and Game became the California Department of Fish and Wildlife.

the Discharger did not obtain required permits prior to initiating these discharges. Additionally, the Discharger did not obtain coverage under the Construction General Permit until April 13, 2012, despite repeated Water Board staff direction to do so. Based upon these circumstances, a culpability factor of **1.4** has been selected for Violation Nos. 3, 4, and 5.

B. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 and 1.5. A lower multiplier is for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is for situations where cleanup and/or cooperation is minimal or absent. In this case, a Cleanup and Cooperation multiplier of **1.5** is applied to Violation Nos. 1 - 6.

This case started when Water Board staff received and responded to a complaint that the Discharger was developing the site, including filling surface waters. The Complainant was concerned about the amount and type of unauthorized disturbance. Staff has made a significant effort to return the Discharger to compliance with applicable water quality protection laws and regulations, including at least ten inspections, multiple meetings, and numerous e-mails and notices, and issuing a Cleanup and Abatement Order.

As discussed above, the Discharger continued to discharge fill materials to waters of the United States without appropriate permits even after being directed to cease such activities by Water Board staff and two other agencies (CDFG and San Bernardino County) until appropriate permits were obtained. Those notices were initially issued beginning with CDFG's on October 17, 2011, followed by staff's notice on October 18, 2011, and then San Bernardino County's on October 14, 2011. In spite of these and additional notices, evidence of additional discharges of fill to waters of the United States was observed as recently as June 7, 2012. A Cleanup and Abatement Order had to be issued, in part, to stop any additional unauthorized discharges, and to begin the restoration process for the surface waters that had already been adversely affected by unauthorized discharges of fill and waste. Even after the Cleanup and Abatement Order was issued, the Discharger poured a concrete patio over a portion of, or within very close proximity to, the south spring's open water channel that had previously been destroyed, but was targeted for restoration. While this action does not prevent restoration, it certainly impedes restoration efforts and is another example of how the Discharger continued to progress with its project, regardless of the impacts to surface waters and water quality/environmental protection laws and regulations.

In addition, despite significant effort and guidance on the part of the Water Board staff and the Dept. of Fish and Game, the Discharger has failed to submit an acceptable surface water restoration plan. The Discharger's past submitted plans are at best inadequate and at worst a tactical move to avoid penalties associated with failing to restore the area. To date the Discharger has not made any substantial sign that restoration of this area will be performed expeditiously or without continued need for oversight and possible enforcement.

C. 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 an absence of prior violations by the Discharger.

A review of the California Integrated Water Quality System (CIWQS), the Storm Water Multiple Application and Report Tracking System (SMARTS), and Water Board files shows no history of prior violations by Arimol Group, Inc., and, therefore, a factor of 1.0 is applicable for Violation Nos. 1 – 6.

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

Total Base Liability Amount is determined by multiplying the initial liability amounts for each violation from Step 2 by the adjustment factors from Step 4:

$$(\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History}) = \text{Total Base Liability}$$

Based upon the adjustment factors for Step 4, the Total Base Liabilities for Violation Nos. 1 – 6 are as follows:

**Table No. 6 – Total Base Liabilities, Violation Nos. 1 - 6**

<b>Violation No.</b>	<b>Total Base Liability</b>
1	\$15,600
2	\$11,700
3	\$16,800
4	\$16,800
5	\$16,800
6	\$11,700
<b>Total Base Liability for Violation Nos. 1 - 6</b>	<b>\$89,400</b>

**SECTION II**

**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 Amount, or to assess the effect of the Total Base Liability Amount on the violator’s ability to continue in business, then the Total Base Liability Amount may be adjusted.

Water Board staff has enough information to suggest that the Discharger has the ability to pay the Total Base Liability, so that the burden of rebutting this presumption shifts to the Discharger. The Discharger purchased the parcels shown in the two tables below in 2011. The first table shows the parcels that are the subject of the Complaint and the second table shows those parcels that are in close proximity to the parcels that are the subject of the Complaint.

**Table No. 9 – Property Values of Parcels Identified in the Complaint**

				County Assessor Tax Roll Values	
Address	APN	Use	Zone	2012	2011
1031 Meadowbrook Rd	0336-134-02	Vacant	Commercial	\$79,968	\$94,117
995 Meadowbrook Rd	0336-134-03	Vacant	Residential	\$18,000	\$31,372
986 Meadowbrook Rd	0366-131-09	Vacant	Residential	\$15,609	\$26,143
977 Meadowbrook Rd	0366-134-05	Vacant	Residential	\$9,500	\$16,732
974 Meadowbrook Rd	0366-131-08	Vacant	Residential	\$12,954	\$26,143
<b>Total Value</b>				<b>\$136,031</b>	<b>\$194,507</b>

\*Parcel owned by Meadowbrook Cedar, Inc.

Source: San Bernardino County Online Property Information Management System. 10/4/2012

**Table No. 10 – Property Values of Other Parcels Owned by the Discharger**

				County Assessor Tax Roll Values	
Address	APN	Use	Zone	2012	2011
Meadowbrook Rd	0336-121-25	Camp	Commercial	\$1,479,000	\$2,141,696
985 Meadowbrook Rd	0336-134-04	SFR	Residential	\$102,000	\$324,182
Meadowbrook Rd	0366-132-01	Vacant	Residential	\$18,972	\$31,372
1006 Meadowbrook Rd	0366-132-02	SFR	Residential	\$40,800	\$42,875
Meadowbrook Rd	0366-132-03	Vacant	Residential	\$15,300	\$26,143
1010 Meadowbrook Rd	0336-136-01	SFR	Residential	\$71,400	\$220,000
Jewel Drive, Crestline	0339-192-10	Vacant	Residential	\$8,160	\$16,732
<b>Total Value</b>				<b>\$1,735,632</b>	<b>2,803,000</b>

SFR – Single Family Residence

Source: San Bernardino County Online Property Information Management System. 10/4/2012

Given the above assets, it appears the Discharger has the ability to pay the Total Base Liability Amount.

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

The Enforcement Policy provides that if the Water Board believes that 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, evidence-supported findings are made. Additionally, the staff costs for investigating the violation should be added to the liability amount.

**A. Adjustments for Other Factors as Justice May Require**

The Water Board Prosecution Team has determined that the proposed liability amount is appropriate. Therefore, no adjustment is being made for other factors as justice may require.

**B. Adjustment for Staff Costs**

The cost of Water Board Prosecution Staff investigation to date is \$90,300, based on 602 hours of staff time at an hourly rate of \$150. There is an additional cost of \$524 associated with student assistants’ time of 27 hours at an hourly rate of \$18 to \$20. As a result, the Total Base Liability Amount is recommended to be adjusted upward by **\$90,824**, bringing the adjusted Total Base Liability Amount to **\$180,224**.

### **Step 8: Economic Benefit**

The Enforcement Policy directs the Water Board to determine any economic benefit of the violations based upon the best available information. The Enforcement Policy suggests that the Water Board compare the economic benefit amount to the adjusted Total Base Liability Amount and ensure that the adjusted Total Base Liability Amount is, at a minimum, 10 percent greater than the economic benefit amount. Doing so should create a deterrent effect and will prevent administrative civil liabilities from simply becoming the cost of doing business.

Arimol Group, Inc. derived substantial economic benefit by failing to apply for all necessary permits prior to beginning construction activities at the Site. Placing a creek in a culvert and filling the creek channel, grading within another creek channel, clearing and grading a shrub wetland, and altering two springs and the open water channels that connected them to one of the creeks and to the shrub wetland, would have required a Clean Water Act Section 401 Water Quality Certification (401 Certification) and a California Environmental Quality Act (CEQA) analysis. Mitigation for the surface water impacts and losses would have been included as a 401 Certification requirement. Additionally, the Discharger should have obtained coverage under the Construction General Permit, including developing and implementing a SWPPP, prior to beginning the project. Finally, the CDFG has informed the Discharger that it is necessary for the Discharger to obtain CDFG's authorization for many of the activities that have occurred through CDFG's Streambed Alteration Permitting Program.

Water Board staff estimates that by not obtaining all appropriate permits and approvals prior to beginning construction, the Discharger was positioned to shorten its project schedule and have six new structures available to generate revenue by six months to twelve months earlier than if it had obtained required permits/authorizations.

The challenge of performing an economic benefit analysis has also been increased by the Discharger's changing story regarding the purpose of the project. Water Board staff has had to run two variations of its economic benefits analysis to cover two different project scenarios. The first scenario is related to the Discharger's story that each of the six structures, four of which are very near completion, is a separate single family residential project unrelated to the Serenity Lodge facility. The structures were reportedly being constructed with the purpose of renting them. The second scenario is that the six structures are accommodations for families or groups using the Serenity Lodge. This scenario is supported by Mr. Moller's statements made during staff's January 20, 2012 inspection, which were again repeated to staff on October 11, 2012 by Mr. Rabun, the Discharger's representative, during another inspection. This scenario is further supported by information on the Discharger's web site.

Water Board staff is providing the results of the economic benefits analysis associated with the second scenario. This scenario is supported by more recent statements from the Discharger's representative, staff observations, and the Discharger's web site content. This scenario generally includes the following cost analysis:

- **Revenue** generated from renting the six structures as accommodations for the Serenity Lodge for the minimum of six months the Discharger's project schedule would have been shortened by avoiding the multi-agency permitting process.

- **Avoided costs** associated with the 401 Certification and CEQA review processes. Through these processes, the Discharger would have been required to develop a surface water mitigation plan, develop a CEQA document and go through the CEQA review process, and pay permitting fees. Based upon consultation with CDFG staff, the typical cost associated with this project and its impacts is estimated to be \$250,000.
- **Delayed costs** associated with implementing a mitigation plan for the surface water impacts associated with this project. CDFG staff has conveyed to Water Board staff that CDFG would require a 3:1 mitigation ratio for the surface water losses and damages this project has had to date. Based upon information provided by the Discharger's consultant, PMC, in its July 20, 2012 document, and a review of aerial photography, Water Board staff estimates that there have been approximately 0.6 acres of surface water impacts. A 3:1 mitigation ratio would require 1.8 acres of surface water mitigation. CDFG staff estimates that on-site surface water mitigation cost approximately \$150,000 per acre. This results in an estimated mitigation cost for the project of \$270,000. The Discharger is required by the Cleanup and Abatement Order to restore the surface water impacts. As of October 22, 2012, restoration activities have not started. For purposes of the economic benefits analysis, staff estimates surface water restoration activities will be completed by June 1, 2013.
- **Delayed costs** associated with permitting fees for obtaining coverage under the Construction General Permit, including development of a SWPPP.

Staff estimates the economic benefit to be **\$573,342**. The economic benefit plus ten percent is **\$630,970**.

Water Board staff has evaluated the effect of the economic benefit on the adjusted Total Base Liability Amount. The adjusted Total Base Liability Amount is greater than the economic benefit plus ten percent. Therefore, no adjustment to the Total Base Liability Amount is necessary in response to the economic benefit.

### **Step No. 9: Maximum and Minimum Liability Amounts**

The maximum liability amount the Water Board may assess administratively pursuant to Water Code sections 13268 for the six violations alleged by the Complaint is **\$60,000**. This value is based upon the following:

- Violation Nos. 1 – 6 each being subject up to \$10,000 per day of violation (\$60,000) pursuant to Water Code section 13385, subdivision (c).

Additionally, 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.”

Therefore, the minimum liability amount the Water Board must assess based upon economic benefit **\$573,342**, identified in Step 8, plus 10 percent, for an initial minimum liability amount of **\$630,970**. The Enforcement Policy also recommends that staff costs also be added to the liability. Doing so increases the minimum liability amount to **\$721,800**.

The adjusted Total Base Liability Amount and the minimum liability amount established by the Enforcement Policy exceed the statutory maximum liability amount. Therefore, the adjusted Total Base Liability Amount will be reduced to the statutory maximum liability amount of **\$60,000**.

**Step 10: Final Liability Amount**

The Total Proposed Liability Amount is **\$60,000** based upon the considerations discussed in detail, above.