

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

**MEETING OF JANUARY 16-17, 2013
Barstow**

ITEM: 6

SUBJECT: PUBLIC HEARING - CONSIDERATION OF AN ADMINISTRATIVE CIVIL LIABILITY (ACL) ORDER TO ARIMOL GROUP, INC. FOR VIOLATING CALIFORNIA WATER CODE SECTION 13376, VIOLATING A LAHONTAN BASIN PLAN PROHIBITION, AND FAILURE TO COMPLY WITH CLEANUP AND ABATEMENT ORDER NO. R6V-2012-0008, LAKE ARROWHEAD, SAN BERNARDINO COUNTY

CHRONOLOGY: March 15, 2012 Lahontan Water Board Assistant Executive Officer issued Cleanup and Abatement Order (CAO) No. R6V-2012-0008 to Arimol Group, Inc.

October 26, 2012 Lahontan Water Board Assistant Executive Officer issued ACL Complaint No. R6T-2012-0049 to Arimol Group, Inc., for several alleged violations including alleged violations of CAO No. R6V-2012-0008.

ISSUE: Should the Lahontan Water Board affirm the administrative civil liability of \$498,000 or some other amount, or decline to adopt any liability, or refer the matter to the California Attorney General?

DISCUSSION: Arimol Group, Inc. owns and is developing five parcels near the intersection of Meadowbrook Road and Cedar Court within the Crest Park neighborhood of Lake Arrowhead, San Bernardino County, California. The five parcels together total about 2.4 acres in size, with one parcel comprising about 1.8 acres of that total. For the purpose of this item, the parcels will be referred to collectively as the "Site."

Arimol Group, Inc. began construction activities at the Site on October 1, 2011, according to the Notice of Intent to comply with the State Water Board Construction General Permit Order

No. 2006-0003-DWQ filed by Arimol's representative on April 13, 2012.

On October 17, 2011, Lahontan Water Board staff received a complaint concerning grading and construction activities and the filling of two creek channels on the Site. Upon receipt of the complaint, Lahontan Water Board staff immediately contacted Arimol's representative about the complaint.

From October 21, 2011 through October 11, 2012, Lahontan Water Board staff conducted ten Site inspections and met numerous times with Arimol Group's representative to discuss various aspects of the construction activities, including implementation of best management practices.

The Lahontan Water Board Prosecution Team alleges that Arimol Group, Inc. committed several violations:

- i. Violation of Clean Water Act section 301 and California Water Code section 13376 by discharging wastes to waters of the United States without filing a report of waste discharge, without an NPDES permit, and without a dredged and/or fill material permit.
- ii. Violation of waste discharge prohibitions contained in the Water Quality Control Plan for the Lahontan Region, which prohibits the discharge of waste to land or surface water above an elevation 3,200 feet in the Deep Creek watershed of the Mojave Hydrologic Unit.
- iii. Violation of CAO No. R6V-2012-0008 by failing to submit a Notice of Intent "forthwith" for coverage under the State Water Board General Construction Permit Order No. 2006-0003-DWQ, by failing to submit a complete development plan by April 20, 2012, and by failing to submit a complete surface water restoration plan by April 26, 2012 for the Lahontan Water Board's Executive Officer approval.

If the Lahontan Water Board determines that Arimol Group Inc. violated the above-referenced laws, regulations, and that a civil liability is appropriate, the civil liability amount is determined by using the appropriate provisions of Section VI of the State Water Board Enforcement Policy (see Enclosure 5 for this item).

The evidentiary material for the Lahontan Water Board to consider consists of the individual written material and objections each submitted by the Lahontan Water Board Prosecution Team and by Arimol Group Inc. The evidentiary material is listed in the following table of enclosures.

RECOMMENDATION:

The Lahontan Water Board Advisory Team will make a recommendation on the proposed administrative civil liability order at the close of the hearing.

ENCLOSURE: Proposed Administrative Civil Liability Order

Enclosure	Description	Bates Number
1	Proposed ACL for Arimol Group, Inc.	6-4
	Prosecution Team's Evidence and Exhibits Water Board Advisory Team received this on November 29, 2012, and is located in the white binder at the front following the tab labeled, "Prosecution". These documents are viewable and downloadable at: http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/arimol_acl.shtml	Not Included in packet (see weblink to the left)
	Arimol Group's Written Evidence and Exhibits Water Board Advisory Team received this on December 21, 2012, and is located in the white binder following the tab labeled, "Defense". These documents are viewable and downloadable at: http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/arimol_acl.shtml	Not Included in packet (see weblink to the left)
2	CAO No. R6V-2012-0008 issued to Arimol Group, Inc.	6-17
3	ACL Complaint No. R6T-2012-0049 issued to Arimol Group, Inc.	6-30
4	Various procedural requests and/or objections submitted from Arimol and the Prosecution Team to the Advisory Team, including the Advisory Team responses, between November 15, 2012 and December 28, 2012, in chronological order with oldest on top.	6-82
5	Water Quality Enforcement Policy, Section VI	6-108
6	Hearing Procedures	6-122

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6V-2013-(PROPOSED)

**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, and failure to comply with orders to obtain coverage under the State Water Resources Control Board's (State Water Board) National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction Activities and failure to submit complete technical reports, as required by Cleanup and Abatement Order No. R6V-2012-0008. The Lahontan 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."

Parcel Address	San Bernardino Co. APN	Approx. Parcel Size
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

2. 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

3. On October 1, 2011, Arimol and/or its contractors began construction activities at the Site.¹
4. 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.
5. 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.
6. 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 equal to or greater than one acre.

¹ Source: Notice of Intent submitted dated April 13, 2012

- 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.
7. 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.
8. 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.

9. Water Board staff conducted two additional site inspections on January 27, 2012 and February 6, 2012. Staff continued to observed 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).

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 to complete the incomplete 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.

18. On July 20, 2012, Water Board staff received additional information in response to the NOV. Again, staff found the information incomplete and Arimol in violation of the Cleanup and Abatement Order.

19. On August 9, 2012, Water Board staff conducted its ninth Site inspection. Staff, again, observed the need for BMP maintenance.

20. On August 22, 2012, Water Board staff met again with Arimol representatives. At the meeting, staff identified the continuing 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.

21. 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.

Staff took this action to minimize additional temporal losses of surface waters and beneficial uses, even though the overall Surface Water Restoration Plan remained incomplete. The letter also identified in detail the remaining information the Discharger needed to submit to complete the reports required by Order Nos. D.5 and D.6 of Cleanup and Abatement Order No. R6V-2012-0008.

22. 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.

23. 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.

24. 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 proposes an administrative civil liability of **\$498,000.00**. The Complaint and its attachments are incorporated by reference.

25. On January 16 and 17, 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

26. 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.
27. 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.
28. 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).

29. 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

30. 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).

31. 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).
32. Arimol violated Cleanup and Abatement Order No. R6V-2012-0008, as described below.
- a. **Violation of Order D.1** – 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” (immediately). Arimol filed the Notice of Intent with the State Water Board on April 9, 2012, 24 days following the Cleanup and Abatement Order’s adoption date, and 16 days following the date Arimol representatives received the Cleanup and Abatement Order. These 16 days of violations are subject to administrative civil liability pursuant to Water Code section 13350, subdivision (a)(1). (Note that the Notice of Intent was filed 174 days after Water Board staff first notified Arimol of the need to file the NOI.)
 - b. **Violation of Order D.5** – 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. Arimol submitted a technical report on April 20, 2012 and a supplement on July 20, 2012. However, these two documents fail to provide the information required by Cleanup and Abatement Order No. R6V-2012-0008.

The requirement to submit the technical report was made pursuant to Water Code section 13267, and each day following April 20, 2012 that Arimol failed to submit a complete technical report constitutes a day of violation of Water Code section 13267. There are 182 days of violation for the period beginning April 21, 2012 and ending October 19, 2012 (the date the Complaint was drafted). These 182 days of violation are subject to administrative civil liability pursuant to Water Code section 13268, subdivision (b)(1).
 - c. **Violation of Order D.6** – 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. Arimol submitted a technical report on April 26, 2012 and a supplement on July 20, 2012. However, these two documents fail to provide the information required by Cleanup and Abatement Order No. R6V-2012-0008.

The requirement to submit the technical report was made pursuant to Water Code section 13267, and each day following April 26, 2012 that Arimol failed to submit a complete technical report constitutes a day of violation of Water Code section 13267. There are 176 days of violation for the period beginning April 27, 2012 and ending October 19, 2012. These 176 days of violations are subject to administrative civil liability pursuant to Water Code section 13268, subdivision (b)(1).

CALCULATION OF ADMINISTRATIVE CIVIL LIABILITY

33. 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.
34. Pursuant to Water Code section 13268, subdivision (b), any person failing or refusing to furnish technical or monitoring program reports as required by an order issued by the Water Board pursuant to Water Code section 13267, subdivision (b), may be liable in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violations occurs. The violations cited in Finding Nos. 32.b and 32.c are subject to Water Code section 13268.
35. Pursuant to Water Code section 13350, subdivision (a), a discharger is subject to civil liability for violation of an order or prohibition issued by the State or Regional Water Board (e.g., Basin Plan, Cleanup and Abatement Order No. R6V-2012-2008). Per Water Code section 13350, subdivision (e), civil liability may be imposed administratively by the Water Board in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs. The violations cited in Finding No. 32.a are subject to Water Code section 13350.
36. Pursuant to Water Code section 13385, subdivision (e) and section 13327, 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.

37. 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

38. **Maximum Liability Amount:** Pursuant to Water Code sections 13268, 13350 and 13385, the total maximum administrative civil liability that may be imposed for the violations alleged in this Complaint is **\$498,000.00**.

39. **Minimum Liability Amount:** Water Code section 13350, subdivisions (e)(1)(A) and (e)(1)(B) establish minimum liabilities for conditions where:

(A) There is a discharge and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) There is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

In this case, there have been multiple discharges of waste to waters of the United States, for which, in part, Cleanup and Abatement Order No. R6V-2012-0008 was issued. The violation associated with failing to submit a Notice of Intent forthwith (i.e., discharging without a permit) is subject to civil liability under Water Code section 13350, and therefore, is subject to this minimum liability requirement. There are 16 days of violation of Cleanup and Abatement Order No. R6V-2012-0008 associated with this, producing a minimum liability amount for this violation of **\$8,000** (\$500 x 16 days of violation). The violations associated with failing to submit two complete technical reports involve 182 days and 176 days of violation of an order issued by the Water Board, respectively. These are non-discharge related violations and produce minimum liability amounts of **\$18,200** (\$100 x 182 days of violation) and **\$17,600** (\$100 x 176 days of violation), respectively. The total minimum liability amount associated with three Cleanup and Abatement Order violations is **\$43,800** pursuant to Water Code section 13350, subdivisions (e)(1)(A) and (e)(1)(A).

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 \$543,181, based upon the analysis described in Attachment B of Administrative Civil Liability Complaint No. R6V-2012-0049. Following the Enforcement Policy requirements, such an economic benefit produces a minimum liability amount of **\$597,500**. The Enforcement Policy also recommends that staff costs also be added to the liability. Doing so increases the minimum liability amount to **\$688,324**. However, this minimum liability amount exceeds the statutory maximum liability amount; and, therefore, cannot be used to establish the minimum liability.

40. 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) and 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 Arimol in the amount of **\$498,000**, which falls within the allowable range.

GENERAL

41. This Order only resolves liability that Arimol incurred for the violations specifically identified within this Order. 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.
42. 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).
43. 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

IT IS HEREBY ORDERED THAT:

1. Administrative civil liability is imposed upon Arimol in the amount of **\$498,000**.
2. Arimol shall submit payment with two cashier's checks or money orders. The first check shall be in the amount of \$16,000 and made payable to the *State Water Resources Control Board's Waste Discharge Permit Fund*. The second check shall be in the amount of **\$482,000** 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 17, 2013.

Patty Z. Kouyoumdjian
Executive Officer

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

CLEANUP AND ABATEMENT ORDER NO. R6V-2012-0008

SMARTS NF NO. 6B36CN601729

**REQUIRING ARIMOL GROUP, INC. TO CLEAN UP AND ABATE THE DISCHARGE
AND THREATENED DISCHARGE OF WASTE EARTHEN MATERIALS TO
SURFACE WATERS OF THE MOJAVE HYDROLOGIC UNIT**

_____San Bernardino County_____

The California Regional Water Quality Control Board, Lahontan Region (herein after Water Board) finds that:

A. FINDINGS

1. Arimol Group, Inc. owns a 1.8-acre parcel located at the northeast corner of Meadowbrook Road and Cedar Court within the Crest Park neighborhood of Lake Arrowhead, San Bernardino County, California. For the purpose of this Order, Arimol Group, Inc. is hereafter referred to as the "Discharger," and the property located at the northeast corner of Meadowbrook Road and Cedar Court is hereafter referred to as the "Site."
2. The unnamed creeks and springs on the Site are surface waters that are tributary to Lake Arrowhead and eventually Deep Creek, and are waters of the state. 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. Lake Arrowhead and its tributaries are waters of the state and United States.
3. The Discharger has graded and disturbed soils at the site, filling in a natural creek by culverting it, thereby causing and threatening to cause unauthorized discharges to waters of the state and United States.
4. On October 17, 2011, Water Board staff received a complaint that the Discharger had filled a natural creek channel on the Site by placing a metal pipe culvert in the creek bed and burying the pipe with soil. See Attachment A (map of site).
5. On October 18, 2011, Water Board staff contacted the Discharger's representative, President of Arimol Group, Inc., Bill Moller, and informed him that the disturbed soils at the Site posed a threat to water quality. Staff instructed Mr. Moller to provide immediate protection for the culvert inlets and outlets to prevent sediment or debris from blocking the flow and/or being discharged from the Site.
6. Water Board staff inspected the site on October 21, 2011. Staff observed a corrugated metal pipe culvert buried below grade along the southern portion of the Site (consistent with the complaint received), a new concrete headwall at the culvert inlet, and what appeared to be recently placed rock rip-rap at the culvert outlet. Staff

also observed the unauthorized discharge of waste earthen materials to and disturbance of a natural drainage channel along the eastern perimeter of the Site. Water Board staff discerned that the majority of the 1.8-acre site appeared to be rough-graded and all vegetation was recently removed except for several large trees remaining around the perimeter of the Site. No sediment or erosion control best management practices (BMPs) to prevent sediment from discharging into the waterways were observed for the disturbed soils or at the inlet and outlet of the culvert at the time of the inspection.

7. Pursuant to California Water Code sections 13261 and 13399.33, Water Board staff issued a written Notice of Non-Compliance to the Discharger on November 21, 2011. The Notice of Non-Compliance cited violations for the discharge of waste to waters of the state as well as failure to obtain coverage under the Statewide General Permit for Discharges of Storm Water Associated with Construction Activity, Order No. 2009-009-DWQ (Construction General Permit) for land disturbance activities over an area greater than one acre. The Notice of Non-Compliance directed the Discharger to take the following actions by December 9, 2011: 1) file a Notice of Intent for coverage under the Construction General Permit; 2) submit a signed copy of a site-specific Stormwater Pollution Prevention Plan (SWPPP) to Water Board staff; 3) provide proof that an effective combination of erosion and sediment control BMPs are implemented at the site; and 4) submit to Water Board staff a complete Application for Clean Water Act Section 401 Water Quality Certification.
8. On December 6, 2011, the Discharger submitted to Water Board staff a response to the Notice of Non-Compliance. The response contested claims in the Notice of Non-Compliance and did not include an Application for Clean Water Act section 401 Water Quality Certification. The response also included a Plot Plan which showed the proposed development of the Site with a single multi-story residential structure and associated infrastructure. The Plot Plan also showed a 30-inch pipe culvert in the same general alignment as the existing culvert.
9. On January 20, 2012, Water Board staff met on-site with the Discharger's representative, Mr. Moller, the Discharger's Engineer of Record, Mr. Bryant Bergeson, and staff from the California Department of Fish and Game, to inspect and document the current condition of the Site and to discuss the project development plans for the Site.
 - a. Mr. Moller explained that the project Site and the nearby Serenity Lodge were both recently acquired by the Discharger and that the intent of the project is to expand the existing Serenity Lodge facility. Mr. Moller further explained that the Site is comprised of multiple parcels (five total) and that each will be developed separately under grading permits to be issued by San Bernardino County for single-family residential use. According to Mr. Moller, San Bernardino County had already issued one grading permit for a structure that was under construction at the time of the inspection.

- b. Mr. Moller stated that the total area of disturbance for brush clearance at the Site is less than one acre, but cumulatively, disturbance for grading and vegetation clearing for the five parcels combined is greater than one acre. Additionally, Mr. Moller stated that willows made up “90 percent” of the brush that had been cleared from the Site. Mr. Moller also reported that two springs have been identified in the western portion of the Site, and that he directed the diversion of both to accommodate the current development plans for the Site.
 - c. At the time of the inspection, Water Board staff informed Mr. Moller that the development of the five contiguous parcels for the greater benefit of expanding the existing Serenity Lodge facility constituted a “plan of common development” and thereby a combined disturbed area of greater than one acre triggers the applicability of the Construction General Permit.
 - d. Water Board staff observed improperly installed sediment and erosion BMPs. Straw waddles in the southern portion of the Site were not staked. Silt fencing was placed around the downslope edge of the active construction area. The silt fencing was improperly installed (tacked on the downslope side of the stake) and in need of maintenance. No other sediment or erosion control BMPs were implemented on the Site, but were clearly necessary. Water Board staff informed Mr. Moller that the existing BMPs were still inadequate to effectively stabilize the Site and prevent waste discharges to surface waters and from the Site. Water Board staff advised Mr. Moller that rain was forecasted within 24 hours and that additional sediment and erosion control BMPs must be installed prior to that rain event to effectively stabilize disturbed soils, particularly at the inlet and outlet of the culvert, in an effort to prevent additional sediment discharging to surface waters and from the Site.
10. On January 27, 2012, Water Board staff conducted a follow-up inspection of the Site to document its conditions and to evaluate compliance with the verbal directive to implement an effective combination of BMPs at the Site. At the time of inspection, the straw waddles observed during the January 20, 2012 inspection had been staked to the ground, but were still improperly installed in accordance with industry practice (not properly staked or trenched in, and lacked sufficient overlap between waddles to provide continuous coverage). The placement of the straw waddles alone was ineffective in providing sediment and erosion control for the amount of disturbed area observed at the Site. In addition, no BMPs were observed at either the culvert inlet or outlet and significant areas of disturbed soil were still present without any effective combination of erosion and sediment control BMPs. The BMPs did not comply with the General Construction Permit.
11. In an email to Mr. Moller dated January 27, 2012, Water Board staff informed Mr. Moller that the Site still presented a significant threat to water quality due to the unstable soil conditions. Water Board staff again identified the areas of disturbed soil that the Discharger still needed to address with a combination of BMPs that

would effectively stabilize the soils and/or prevent an unauthorized discharge of waste earthen materials to surface waters and from the Site. Staff again directed the Discharger to implement an effective combination of erosion and sediment control BMPs to stabilize the entire site by February 3, 2012, or within 24 hours prior to a forecasted rain event, whichever comes first.

B. REGULATORY AUTHORITY

12. Water Code section 13304, subdivision (a) states:

“Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts....

Upon failure of any person to comply with the cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”

13. “Pollution” is defined by Water Code section 13050, subdivision (l)(1) as,

“an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

- (A) The waters for beneficial uses;
- (B) Facilities which serve these beneficial uses.”

14. The *Water Quality Control Plan for the Lahontan Region* (“Basin Plan”).

- a. The Basin Plan contains the following waste discharge prohibitions for the Mojave Hydrologic Unit:
 - (1) “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.”
 - (2) “The discharge of waste to land or water within the Deep Creek watershed above elevation 3,200 feet is prohibited.”

- b. "Waste" is defined in the Basin Plan 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).
 - c. The surface waters on the Site are tributary to Lake Arrowhead, and by the Tributary Rule, have the same beneficial uses as those specified by the Basin Plan for Lake Arrowhead. The beneficial uses of the on-site surface waters in part include: municipal and domestic supply (MUN), groundwater recharge (GWR), water contact recreation (REC-1), non-contact water recreation (REC-2), commercial and sportfishing (COMM), warm freshwater habitat (WARM), cold fresh water habitat (COLD), and wildlife habitat (WILD).
15. California Water Code section 13376 requires a person who discharges to navigable waters of the United States to first file a report of waste discharge in compliance with Water Code section 13260. Obtaining coverage under the Construction General Permit complies with Water Code section 13260.
16. The federal Water Pollution Control Act ("Clean Water Act") (33 U.S.C. § 1311 et seq.) requires a discharger to have section 401 certification by the Water Board for filling in any waters of the United States.
17. Findings 6, 9 and 10 identify site conditions that are the result of discharging waste (earthen materials), or threatening to discharge waste, to surface waters within the Deep Creek watershed of the Mojave Hydrologic Unit above an elevation of 3,200 feet. The affected surface waters are waters of the state and tributary to waters of the United States. These waste discharges and threatened waste discharges to waters of the state and United States violate the above-referenced Basin Plan prohibitions, California Water Code section 13376, and the Clean Water Act. The Water Board is therefore authorized to issue a Cleanup and Abatement Order pursuant to Water Code section 13304 requiring cleanup of the waste discharges and abatement of the impacts of the waste discharges.
18. Water Code section 13267, subdivision (b) states:
- "In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge, waste outside of its region that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring these reports, the regional board shall provide the person with a written explanation with regard to the need for

the reports, and shall identify the evidence that supports requiring that person to provide the reports.” The Water Board is therefore authorized to require monitoring and reporting to identify measures to protect water quality and restore beneficial uses.

19. The technical reports required by this Order are necessary to identify the corrective actions necessary to prevent additional waste discharges to surface waters and additional loss of beneficial uses. Additionally, the technical reports are necessary to identify measures necessary to clean up the waste discharges cited above and restore the beneficial uses of the on-site surface waters that have been adversely affected by unauthorized grading, filling, and diversion activities.

20. California Environmental Quality Act (CEQA) Compliance. Issuance of this Order is an enforcement action taken by a regulatory agency and, in part, requires stream habitat restoration. The Order requires earth disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and the prevention of erosion. This Order and the activities required by this Order are exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, section 21000 et seq.) pursuant to California Code of Regulations, Chapter 3, title 14, section 15321, subdivision (a)(2).

C. Violations

21. **Basin Plan:** The disturbed soil conditions described in Findings 6, 9, and 10 have, and continue to have, the ability under runoff conditions to create sediment-laden discharges to the on-site surface waters and surface waters downstream. Such discharges constitute waste discharges to surface waters that have the ability to alter the water quality of those and other downstream surface waters to a degree that unreasonably affects the waters for both beneficial uses as specified in the *Water Quality Control Plan for the Lahontan Region* (“Basin Plan”). Further, these waste discharges to surface waters violate Basin Plan waste discharge prohibitions described in Finding No. 10. Increased sedimentation and turbidity can result in increased treatment and/or maintenance costs for downstream users (MUN) such as Lake Arrowhead Community Services District (District), who withdraws and treats water from Lake Arrowhead to provide drinking water to the local area. Sediment-laden storm water discharges to and the resulting turbidity within surface waters can also affect the aesthetic enjoyment (REC-2) of the surface waters. Additionally, the increase in sedimentation associated with fill materials and sediment-laden storm water discharges can adversely impact stream invertebrate habitat through the deposition of silts (COLD), and adversely affect food sources and feeding habitats for fish and other organisms (WILD). The current site conditions constitute a threatened discharge of waste to waters and a threatened condition of pollution. Therefore, the Water Board is authorized to issue a Cleanup and Abatement Order pursuant to Water Code section 13304 requiring the Discharger to take remedial actions intended to abate the conditions that present a threat to discharge wastes to waters of the state and create a condition of pollution.

22. **Water Code Section 13376:** The Discharger violated Water Code section 13376 because it failed to have coverage under the Construction General Permit for its discharges of waste to surface waters tributary to navigable waters of the United States. The Discharger failed to file any report of waste discharge consistent with Water Code section 13260.

23. **Clean Water Act:** The Discharger violated the Clean Water Act by failing to have a section 401 certification before filling in the creek on the Site.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code sections 13304 and 13267, the Discharger shall clean up and abate discharges and threatened discharges in violation of the Basin Plan prohibitions for the Mojave Hydrologic Unit, and shall comply with the other reporting provisions of this Order:

D. ORDERS

1. 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 online Stormwater Multi-Application, Reporting and Tracking System (SMARTS) or existing and future land disturbance activities subject to the Construction General Permit. The SMARTS system can be accessed at: <https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp>.
2. By **April 13, 2012**, the Discharger shall prepare and submit to the Water Board's Victorville office a signed copy of a site-specific Storm Water Pollution Prevention Plan (SWPPP) developed for the Serenity Lodge Expansion Project. The SWPPP shall be prepared in accordance with the guidelines contained in the Construction General Permit. In part, the SWPPP shall include detailed descriptions and illustrations of the BMPs necessary to stabilize all disturbed soils on the Site and to prevent sediment-laden storm water discharges off the Site or into surface waters.
3. By **April 13, 2012**, the Discharger shall implement the SWPPP. The SWPPP shall be continually updated, as necessary, so that it remains an effective tool to prevent sediment-laden discharges and must remain in effect until coverage under the Construction General Permit has been terminated by the Water Board.
4. By **April 20, 2012**, the Discharger shall provide a technical report identifying the SWPPP elements that have been implemented. The technical report shall also include photographs showing all SWPPP elements that have been implemented on the Site, including correct installation of sediment and erosion control BMPs that will effectively prevent sediment-laden discharges to surface waters and from the Site.
5. By **April 20, 2012**, the Discharger 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. The report shall include, but not be limited to, the following:

- a. A scaled site plan illustrating the location and extent of all waters of the State (surface waters) on the Site, both prior to installation of the pipe culvert and after installation of the pipe culvert. The scaled site plan shall also identify the extent and types of vegetation associated with those surface waters prior to and following installation of the pipe culvert.
 - b. A full, technically accurate description of the development plan for the Site and associated environmental impacts to date, both temporary and permanent, including impacts to areas outside of the surface waters. The description shall include, but not be limited to, the following:
 - i. Locations and dimensions of existing and proposed structures or fill within waters of the State such as culverts, gabions, rock-slope protection/rip-rap, wing walls, dikes, cofferdams, and excavations.
 - ii. Direct or indirect changes in streambed slope, cross-sectional dimension or area, vegetation, and/or surfacing.
 - iii. Changes in drainage patterns and potential impacts to on-site and downstream surface waters.
 - iv. The location and dimension of all associated access roads, work staging areas, and related infrastructure.
 - v. Temporary or permanent dewatering or water diversions.
 - vi. Pre- and post-construction storm water management and pollution control measures; and construction methods, schedule, and phasing plan. Maps, figures, and engineered drawings should be included, as appropriate.
6. 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 western portion of the Site. The technical report shall provide, at a minimum, the following information.
- a. A detailed description and illustration (scaled design plans) of the measures proposed to restore the characteristics (e.g., channel width, length, depth, and sinuosity/alignment; channel slope/hydraulic grade line, channel substrate, vegetation within and adjacent to the surface waters) of the above-referenced surface waters to preconstruction conditions. Aerial or other photographs of pre-construction conditions (date-stamped or other date-verification methodology) shall also be included with this plan element.

- b. A detailed description and illustration (scaled design plans) of the measures proposed to divert any flows within the surface waters during soil-disturbing restoration activities and until the restoration sites have been stabilized and can accept flow without discharging sediment-laden water off the Site.
 - c. A detailed description and illustration (scaled design plans) of the measures proposed to temporarily stabilize the restoration areas until permanent stabilization measures (e.g., vegetation, rock-slope protection/rip rap) effectively stabilize the restoration areas.
 - d. A detailed description and illustration (scaled design plans) of the measures proposed to reestablish the vegetation that has been removed from within and adjacent to the above-referenced surface waters. This plan element will include, but not be limited to, the following:
 - i. For each of the above-referenced surface waters, a list of native plant species to reestablish the vegetation species that has been removed. The list will include relative percentages for each species.
 - ii. A detailed description of soil preparation activities (e.g., removing compacted soils; adding soil amendments such as compost, top soil, etc.).
 - iii. Seeding rates and plant spacing for each of the above-referenced surface waters.
 - iv. Interim and final success criteria for each of the above-referenced surface waters. The criteria shall include, but not be limited to, percent live vegetative cover, total cover, vegetative species diversity, and vegetative species composition. Satisfying the final success criteria shall be based upon no augmentation or artificial irrigation activities occurring for the previous year. Success criteria may be based upon proposed reference sites accepted in writing by Water Board staff. If reference sites are proposed as the basis for the success criteria, then the proposed reference sites must be identified and fully characterized with respect to the proposed criteria. Any other method of developing success criteria must also be fully described and its applicability to the restoration activities justified.
 - v. A detailed description of assessment methodologies and schedule for implementing them in order to evaluate progress towards satisfying interim and final success criteria. Each surface water restoration site will be assessed, at a minimum, annually for a minimum of five years, unless a reduction in the monitoring period is authorized in writing by the Water Board.
7. By **June 29, 2012**, commence implementation of the Surface Water Restoration Plan, as accepted by the Water Board.

8. By **November 30, 2012**, submit a technical report certifying that the Surface Water Restoration Plan has been implemented as accepted by the Water Board. Any deviations from the accepted Surface Water Restoration Plan shall be identified and the reason(s) for such deviations shall be provided. Scaled as-built plans shall also be provided with this report.
9. Beginning **November 30, 2013**, and annually thereafter, submit a technical report that provides the results of restoration site assessment discussed in Requirement No. 6.d.v, above. Corrective actions shall be proposed and included in these technical reports when restoration activities fail to satisfy any interim or final success criteria.

E. REPORTING REQUIREMENTS

1. **Signatory Requirements.** All reports required under this Cleanup and Abatement Order shall be signed and certified by the Discharger or by a duly authorized representative of the Discharger and submitted to Water Board staff. A person is a duly authorized representative of the discharger only if: (1) the authorization is made in writing by the Discharger and (2) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).
2. **Certification.** Include the following signed certification with all reports submitted pursuant to this Order:

"I certify under penalty of perjury under the laws of the State of California that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons directly responsible for gathering the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
3. **Report Submittals.** All technical reports required under this Order shall be submitted to:

California Regional Water Quality Control Board – Lahontan Region
14440 Civic Drive, Suite 200
Victorville, CA 92392

F. NOTIFICATIONS

1. **Cost Recovery.** Pursuant to Water Code section 13304, the Water Board is entitled to, and may seek, reimbursement for all reasonable costs actually

incurred by the Water Board to investigate unauthorized discharges of wastes and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial actions required by this Order.

2. **Requesting Administrative Review by the State Water Board.** Any person aggrieved by an action of the Water board that is subject to review as set forth in Water Code section 13320, subdivision (a), may petition the State Water Resources Control Board (State Water Board) to review the action. Any petition must be made 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 within 30 days of the date the action was taken, except that if the thirtieth day following the date the action was taken fall on a Saturday, Sunday, or state holiday, then the State Water Board must receive the petition by 5:00 p.m. on the next business day. Copies of the law and regulation applicable to filing petitions may be found on the internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality/index.shtml or will be provided upon request.
3. **Modifications.** Any modification to this Order shall be in writing and approved by the Executive Officer, including any potential extensions. Any written extension request by the Discharger shall include justification for the delay.
4. **Enforcement Notification.** Failure to comply with the requirements of this Cleanup and Abatement Order may result in additional enforcement action, which may include pursuing administrative civil liability pursuant to Water Code sections 13268, 13350, and/or 13385, or referral to the Attorney General of the State of California for such legal action as she may deem appropriate.
5. **No Limitation of Water Board Authority.** This Order in no way limits the authority of this Water Board to institute additional enforcement actions or to require additional investigation and cleanup of the site consistent with the Water Code. This Order may be revised as additional information becomes available.

Ordered by:


LAURI KEMPER
ASSISTANT EXECUTIVE OFFICER

Dated:

March 14, 2012

- Attachments A: Map of Site
B: Water Code section 13267 Fact Sheet

TOPOGRAPHIC SURVEY

Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

October 8, 2008

What does it mean when the regional water board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged...waste that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires".

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

Providing the required information in a technical report is not an admission of guilt or responsibility. However, the information provided can be used by the regional water board to clarify whether a given party has responsibility.

Are there limits to what the regional water board can ask for?

Yes. The information required must relate to an actual or suspected discharge of waste, and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The regional water board is required to explain the reasons for its request.

What if I can provide the information, but not by the date specified?

A time extension can be given for good cause. Your request should be submitted in writing, giving reasons. A request for a time extension should be made as soon as it is apparent that additional time will be needed and preferably before the due date for the information.

Are there penalties if I don't comply?

Depending on the situation, the regional water board can impose a fine of up to \$1,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information is guilty of a misdemeanor and may be fined as well.

What if I disagree with the 13267 requirement and the regional water board staff will not change the requirement and/or date to comply?

Any person aggrieved by this action of the Regional 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, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the date of the 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 may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

Claim of Copyright or other Protection

Any and all reports and other documents submitted to the Regional Board pursuant to this request will need to be copied for some or all of the following reasons: 1) normal internal use of the document, including staff copies, record copies, copies for Board members and agenda packets, 2) any further proceedings of the Regional Board and the State Water Resources Control Board, 3) any court proceeding that may involve the document, and 4) any copies requested by members of the public pursuant to the Public Records Act or other legal proceeding.

If the discharger or its contractor claims any copyright or other protection, the submittal must include a notice, and the notice will accompany all documents copied for the reasons stated above. If copyright protection for a submitted document is claimed, failure to expressly grant permission for the copying stated above will render the document unusable for the Regional Board's purposes, and will result in the document being returned to the discharger as if the task had not been completed.

If I have more questions, who do I ask?

Requirements for technical reports normally indicate the name, telephone number, and email address of the regional water board staff person involved at the end of the letter.

¹ All code sections referenced herein can be found by going to www.leginfo.ca.gov. Copies of the regulations cited are available from the Regional Board upon request.

Lahontan Regional Water Quality Control Board

October 26, 2012

Arimol Group, Inc.
Attn: Bill Moller
P.O. Box 44
Torrance, CA 90507

CERTIFIED MAIL: 7009 0820 0001 6638 9359

Arimol Group, Inc.
Attn: Bill Moller
4173 Maritime Road
Rancho Palos Verdes, CA 90275

CERTIFIED MAIL: 7009 0820 0001 6638 9366

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R6T-2012-0049 FOR ARIMOL GROUP, INC., LAKE ARROWHEAD – SAN BERNARDINO COUNTY, WDID NO. 6B36C363433

Enclosed please find Administrative Civil Liability Complaint No. R6T-2012-0049 issued pursuant to California Water code sections 13268, 13350, and 13385, alleging violations by Arimol Group, Inc. (Discharger) of state and federal water quality laws, Cleanup and Abatement Order No. R6V-2012-0008, and the *Water Quality Control Plan for the Lahontan Region*. The violations are the result of the unauthorized discharge of fill and waste to waters of the United States within the Lake Arrowhead watershed. The violations are also the result of failing to file a Notice of Intent and supporting documents and complete technical reports as required by Cleanup and Abatement Order No. R6V-2012-0008. The Complaint proposes that the Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) assess an administrative civil liability against the Discharger in the amount of \$498,000 pursuant to California Water Code sections 13268, 13350, and 13385. Also enclosed is a Waiver of Hearing form for this matter.

Unless waived, a hearing before the Lahontan Water Board or a Lahontan Water Board Hearing Panel (Hearing Panel) will be held on this Complaint pursuant to Water Code section 13323. At the hearing, the Lahontan Water Board will consider whether to impose administrative civil liability (as proposed in the Complaint or for a different amount), decline the administrative civil liability, or refer the matter to the Attorney General for judicial enforcement.

The Discharger may contest the proposed administrative civil liability at the hearing or, in the alternative, may waive its right to the hearing. Should the Discharger choose to waive its right to a hearing, an authorized agent must sign the enclosed Waiver of Hearing form and return it to the Lahontan Water Board's South Lake Tahoe office by **5:00 p.m. on November 30, 2012**. If the Lahontan Water Board does not receive the

waiver and full payment of the liability by this date and time, the matter will be heard before the Lahontan Water Board or a Hearing Panel within 90 days of the Complaint's issuance date.

Public hearing procedures informing all parties of how they will need to prepare for the hearing and how the hearing will be conducted are being developed and will be mailed to you soon. An agenda containing the date, time, and location of the hearing will be mailed to you and interested parties at least 10 days prior to the hearing date.

If you have any questions regarding this matter, please contact Lisa Scorallo at (530) 542-5452, or Scott C. Ferguson at (530) 542-5432.

A handwritten signature in blue ink that reads "Lauri Kemper". The signature is fluid and cursive, with the first name "Lauri" and last name "Kemper" clearly distinguishable.

Lauri Kemper, P.E.
Assistant Executive Officer

Enclosures: 1. Administrative Civil Liability Complaint No. R6V-2012-0049
 2. Waiver of Hearing Form

cc (w/enc): Arimol Group, Inc. Mailing List

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

In the Matter of)	
Arimol Group, Inc.,)	COMPLAINT NO. R6V-2012-0049
San Bernardino County,)	FOR
WDID NO. 6B36CN601729 and)	ADMINISTRATIVE CIVIL LIABILITY
WDID NO. 6B36C363433)	

ARIMOL GROUP, INC. IS HEREBY GIVEN NOTICE THAT:

1. As a result of filling and altering multiple surface waters, and failing to submit compliant technical reports and to implement corrective actions as required by Cleanup and Abatement Order No. R6V-2012-0008, Arimol Group, Inc. (Discharger) is herein alleged to have violated provisions of the California Water Code and federal Clean Water Act, for which the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) may impose administrative civil liabilities pursuant to Water Code sections 13268, 13350, and 13385. This Administrative Civil Liability Complaint (Complaint) is issued under authority of Water Code section 13323.
2. Unless waived, a hearing on this Complaint will be held before the Lahontan Water Board on January 9-10, 2013, tentatively in Barstow, California. At the hearing, the Lahontan Water Board will consider whether to affirm, reject, or modify the proposed civil liability, or refer the matter to the Attorney General's Office for recovery of judicial liability. The Discharger or its representative will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability. An agenda for the meeting will be available at http://www.waterboards.ca.gov/lahontan/board_info/agenda not less than 10 days before the hearing date.
3. The Discharger can waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form. If this matter proceeds to hearing, the Lahontan Water Board's Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through the hearing.

FACTUAL BASIS FOR THE ALLEGED VIOLATIONS

4. 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."

Parcel Address	San Bernardino Co. APN	Approx. Parcel Size
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

A vicinity map showing the Site's general location and an aerial photo of the site are attached hereto as Attachment A, and incorporated herein by this reference.

5. 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.
6. On October 1, 2011, the Discharger and/or its contractors began construction activities at the Site.¹
7. On October 17, 2011, Lahontan Water Board staff received a complaint of grading and construction activities, and the filling of two creek channels on the Site.
8. On October 17, 2011, Lahontan 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, Discharger representative. CDFG directed Mr. Moller to provide certain information and to cease all activities within CDFG's jurisdiction immediately.
9. On October 18, 2011, Lahontan 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 Lahontan 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.

¹ Source: Notice of Intent dated April 13, 2012

10. On October 21, 2011, Lahontan 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 equal to or greater than one acre.
- d. No evidence of any sediment control or erosion control best management practices (BMPs) in place to reduce or eliminate sediment and other storm water pollutant discharges to waters of the United States.

11. On November 21, 2011, Lahontan 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.

12. On January 20, 2012, Lahontan 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. Lahontan 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 observed improperly installed straw waddles adjacent to the length of land disturbance near the Site's southern boundary. No culvert inlet protection had been installed. The new rock-slope protection around the culvert outlet was incomplete and placed in an ineffective manner. Staff repeated its directions to Mr. Moller to install an effective combination of BMPs.
13. On January 27, 2012, Lahontan Water Board staff conducted its third Site inspection. Staff informed Mr. Moller via email that the BMPs observed on the Site continued to be inadequate and ineffective. The email repeated staff's early direction to implement effective BMPs to stabilize the entire site. The email specified that such BMPs were to be implemented by February 3, 2012, or within 24 hours of a forecasted rain event, whichever occurred first.
14. On February 6, 2012, Lahontan Water Board staff conducted its fourth Site inspection, meeting with Mr. Bergeson. Staff discussed with Mr. Bergeson, and notified Mr. Moller via email, that the observed BMPs continued to be inadequate. Specific areas needing immediate action were discussed with Mr. Bergeson and identified in the email to Mr. Moller. Staff also reiterated that the project involves land disturbance affecting an area equal to or greater than one acre, and that the Discharger was to start the NOI process forthwith, including developing and submitting a SWPPP.

Staff also informed Mr. Moller through its email that restoring the creeks to their original condition would not require a permitting action under Section 401 of the Clean Water Act. However, any deviations from original conditions (e.g., modified alignment) would require a Lahontan Water Board permit and be subject to the California Environmental Quality Act (CEQA) review process. A chance of precipitation was predicted to occur in the area for the following day, requiring immediate action.

15. On March 15, 2012, the Lahontan Water Board issued Cleanup and Abatement Order (Order) No. R6V-2012-0008 to the Discharger. The Cleanup and Abatement Order requires the Discharger 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.
16. On March 16, 2012, Lahontan Water Board staff conducted its fifth Site inspection, walking the Site with the Site Manager, Bobby Rabun. Staff observed the following:
- a. New construction/excavation for foundation footings had occurred on the western portion of the Site. This work was within approximately 30 feet of the culvert's concrete headwall and immediately adjacent to the south spring that had been diverted.
 - b. Unprotected stockpiled soil is located along the top of the eastern creek channel near the recently installed culvert's outlet. Stockpile needed to be removed, but more immediately cover BMPs (e.g., plastic sheeting) needed to be implemented. Straw waddle/fiber roll BMPs also needed to be installed at the top of the slopes above the creek channel to prevent slope erosion and sediment and debris discharges to the creek.
 - c. Straw waddles/fiber rolls were not trenched in and staked, and their ends did not overlap. Straw waddles/fiber rolls on the along the Site's southern boundary were crushed and need to be replaced and installed correctly (i.e., trenched in, staked, overlapping ends).
 - d. Silt fencing was incorrectly installed. Bottom of silt fencing was not trenched in (e.g., silt fence on the Site's southern boundary had sections where the bottom of the fence was suspended 10-12 inches above the ground), and the fence was tacked to the down-slope side of stakes, where it is more easily torn off the stakes.

Staff's observations and directives were provided in an email to Mr. Moller that day. Staff expressed in the email that it was imperative to install and maintain BMPs as directed to, especially in light of a forecasted storm event.

17. On March 23, 2012, the Discharger received Cleanup and Abatement Order No. R6V-2012-0008 via certified mail.

18. On April 3, 2012, Lahontan Water Board staff conducted its sixth Site inspection.

Staff observed the following:

- a. The plastic sheeting installed on the eastern creek's banks needed to be anchored with sand or gravel bags, rather than the rocks that were being used. The rocks could rip and tear the plastic sheeting making it ineffective.
- b. Straw waddles/fiber rolls or silt fencing still needed to be installed at the top of the eastern creek's banks to prevent slope erosion and sediment and debris discharges into the creek.
- c. Some straw waddles/fiber rolls previously installed near the eastern creek needed to be reinstalled to maintain sheet flow conditions. Current configuration was concentrating flows into a single point of discharge, which will cause erosion.
- d. Straw waddles/fiber rolls still needed to be trenched in, staked, and their ends overlapped. The straw waddles/fiber rolls along the Site's southern boundary were still crushed and still needed to be replaced and properly reinstalled.

19. On April 10, 2012, Lahontan Water Board staff sent Mr. Moller an email, acknowledging that the State Water Resources Control Board (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.

The email also identified the multiple BMP deficiencies and maintenance needs staff observed during its April 3, 2012 site inspection. Staff also provided recommendations for correcting the BMP deficiencies and encouraged Mr. Moller to take immediate action to correct them and to maintain existing BMPs in light of the storm event that was forecasted for that evening and the remainder of the week.

20. On April 10, 2012, the Discharger informed Lahontan Water Board staff via email that Montgomery & Associates had been hired to prepare and implement a SWPPP and to submit the NOI for the Site by April 13, 2012.

21. On April 13, 2012, the Discharger sent a letter to Lahontan Water Board staff outlining the steps the Discharger and its consultant intended to take in response to the Cleanup and Abatement Order. The Discharger also requested a meeting or conference call with Lahontan Water Board staff the following week "to discuss a reasonable schedule" to understand and complete the tasks required in the Cleanup and Abatement Order.

22. On April 13, 2012, the Discharger's NOI for coverage under the Construction General Permit was accepted by the State Water Board. The NOI, as accepted by the State Water Board on April 13, 2012, identifies Arimol Group, Inc. as the property owner and contractor/developer, Gerald Montgomery of Montgomery & Associates as the Site contact and the Qualified SWPPP Developer, and Mr. Moller as the Legally Responsible Person. The NOI identifies October 1, 2011 as the date construction began. The NOI shows the Site to be 2.4 acres in size, of which 0.3 acres will be disturbed.
23. The SWPPP, which was submitted with the NOI, states the project consists of constructing six, single-family residences on the Site, with concrete driveways to each residence.
24. On April 20, 2012, Lahontan Water Board staff conducted its seventh Site inspection. Mr. Moller and his representative were present for this inspection. Staff observed the following:
- a. A signed copy of the project SWPPP was available on-site, and most of the BMPs outlined therein, had been implemented.
 - b. Plastic sheeting needed to be better anchored and secured with gravel bags, rather than using rocks that could rip and tear the plastic sheeting.
 - c. Straw waddle/fiber rolls needed maintenance on the southern portion of the Site. Additionally, straw waddle/fiber rolls up-gradient of the creek on the Site's eastern boundary needed to be reinstalled to disperse surface flows. The current straw waddle/fiber roll configuration at this location was concentrating surface flows and causing erosion through what had been the shrub wetland.
- Staff identified for Mr. Moller those BMPs that needed maintenance and provided recommendations for BMP improvements, which Mr. Moller agreed to complete by April 23, 2012. Staff also informed Mr. Moller that another storm event was forecasted for the following week and reminded him that BMPs need to be inspected and maintained, particularly prior to and following storm events. Staff sent Mr. Moller an email later that day documenting the BMP deficiencies and recommendations that had been discussed during the inspection.
25. On June 7, 2012, Lahontan Water Board staff conducted its eighth Site inspection. John Gomes, the Discharger's Site Representative, accompanied staff on this inspection. Staff observed the following:
- a. The pipe from which the south spring surfaced (corrugated metal pipe) had been replaced with a PVC pipe that extended further down-gradient than the original pipe. This action eliminated the south spring's entire open water channel, except for a short six to twelve inch long section.
 - b. Plastic sheeting on and above the eastern creek's banks needed to be replaced, as it was deteriorating and would soon become a nuisance, rather than an effective BMP.

- c. Stockpiled/disturbed soils were located immediately adjacent to the eastern creek without any BMPs.
 - d. Some straw waddles/fiber rolls needed maintenance where they had degraded and/or had been buried with soil.
 - e. Silt fencing at several locations needed maintenance.
 - f. Hydraulic oils and asphalt emulsion were observed at the Site and being stored in containers on bare ground without any containment BMPs.
 - g. Secondary containment for portable toilet needed maintenance.
26. On June 11, 2012, Lahontan Water Board staff notified Mr. Moller via email of the violations observed during its June 7, 2012 inspection. Staff identified the BMP inadequacies observed during the inspection, including three that needed immediate attention. Staff also required Mr. Moller to submit a written explanation addressing the additional disturbance to the south spring's open water channel.
27. On June 14, 2012, Lahontan Water Board staff received an email from Mr. Moller stating that the three BMP inadequacies had been addressed on June 12, 2012, and that the additional disturbance of the south spring and its open water channel had occurred when a truck backed over the original corrugated metal pipe.
28. On June 20, 2012, Lahontan 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.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 to complete the inadequate technical reports submitted by the Discharger. The NOV also stated that Lahontan Water Board staff intended to pursue administrative civil liabilities for the violations associated with the project.
29. On July 3, 2012, Lahontan Water Board staff met with the Discharger and its representatives. At the meeting, staff discussed the requirements of, and maintained the deadlines specified by, Cleanup and Abatement Order No. R6V-2012-0008. Staff also reiterated that administrative civil liabilities would be forthcoming.
30. On July 20, 2012, Lahontan Water Board staff received additional information in response to the NOV. Again, staff found the information incomplete and the Discharger in violation of the Cleanup and Abatement Order.
31. On August 9, 2012, Lahontan Water Board staff conducted its ninth Site inspection. Staff observed the following:
- a. Plastic sheeting on and above the eastern creek's banks needed to be replaced as it continued to deteriorate.

- b. Opened five-gallon containers of hydraulic oil were stored on rubber mats, but lacked secondary containment.
 - c. Straw bales located on the creek banks immediately upstream of the concrete headwall were beginning to structurally break down and needed to be replaced.
32. On August 20, 2012, Lahontan Water Board staff sent an email to Mr. Montgomery (copied to Mr. Moller), the Discharger's Qualified SWPPP Developer, identifying the BMP deficiencies observed during the August 9, 2012 inspection. Staff also requested rainfall data for the Site to determine if the Site had experienced the heavy rains other areas in the San Bernardino Mountains had recently experienced. The storm activity had caused flash flooding and debris flows in portions of the San Bernardino Mountains.
33. On August 22, 2012, Lahontan Water Board staff met again with the Discharger and its representatives. At the meeting, staff identified the continuing deficiencies in the Discharger's technical report submittals. Staff also informed the Discharger that the Discharger was going to be authorized to proceed with a limited portion of the surface water restoration plan, in spite of the report deficiencies
34. On August 29, 2012, Lahontan Water Board staff issued a letter conditionally authorizing the Discharger to begin implementing a portion of the Surface Water Restoration Plan. The Discharger was authorized to remove the 30-inch culvert and concrete headwall, and to restore both creeks to their historical alignments and condition.
- Staff took this action to minimize additional temporal losses of surface waters and beneficial uses, even though the overall Surface Water Restoration Plan remained incomplete. The letter also identified in detail the remaining information the Discharger needed to submit to complete the reports required by Order Nos. D.5 and D.6 of Cleanup and Abatement Order No. R6V-2012-0008.
35. On September, 21, 2012, Shelby D. Elder of Montgomery and Associates filed a Change of Information into the 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.
36. On October 11, 2012, Lahontan Water Board staff conducted its tenth Site inspection. Staff met with Site Manager, Mr. Rabun. Staff observed that the jute mat BMPs were improperly installed and needed maintenance. This information was provided to Mr. Rabun. Additionally, staff observed that creek restoration activities, as authorized by staff on August 29, 2012, had not been started.

APPLICABLE PROHIBITIONS AND REQUIREMENTS

37. 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.
38. 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 a NPDES permit and/or dredged and fill material permit.
39. The Lahontan 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).

40. 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)

ALLEGED VIOLATIONS

41. The Discharger 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. The Discharger 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 Lahontan 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 – 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).

42. The Discharger violated the Basin Plan prohibitions cited in Finding No. 38, 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. 40, 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).
43. The Discharger violated Cleanup and Abatement Order No. R6V-2012-0008, as described below.

- a. **Violation of Order D.1** – The Discharger violated Order D.1 of Cleanup and Abatement Order No. R6V-2012-0008 when it failed to submit a NOI for coverage under the Construction General Permit “forthwith” (immediately). The Discharger filed the NOI with the State Water Board on April 9, 2012, 24 days after following the Cleanup and Abatement Order’s adoption date, and 16 days following the date the Discharger received the Cleanup and Abatement Order. These 16 days of violations are subject to administrative civil liability pursuant to Water Code section 13350, subdivision (a)(1).
- b. **Violation of Order D.5** – The Discharger 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 Discharger submitted a technical report on April 20, 2012, and a supplement on July 20, 2012. However, these two documents fail to provide the information required by Cleanup and Abatement Order No. R6V-2012-0008.

The Discharger has yet to submit a complete technical report as of October 19, 2012, the date this Complaint was drafted. The requirement to submit the technical report was made pursuant to Water Code section 13267, and each day following April 20, 2012 the Discharger fails to submit a complete technical report, constitutes a day of violation of Water Code section 13267. There are 182 days of violation for the period beginning April 21, 2012 and ending October 19, 2012. These 182 days of violation are subject to administrative civil liability pursuant to Water Code section 13268, subdivision (b)(1).

- c. **Violation of Order D.6** – The Discharger 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 Discharger submitted a technical report on April 26, 2012, and a supplement on July 20, 2012. However, these two documents fail to provide the information required by Cleanup and Abatement Order No. R6V-2012-0008.

The Discharger has yet to submit a complete technical report as of October 19, 2012, the date this Complaint was drafted. The requirement to submit the technical report was made pursuant to Water Code section 13267, and each day following April 26, 2012 the Discharger fails to submit a complete technical report, constitutes a day of violation of Water Code section 13267. There are 176 days of violation for the period beginning April 27, 2012 and ending October 19, 2012. These 176 days of violations are subject to administrative civil liability pursuant to Water Code section 13268, subdivision (b)(1).

44. Pursuant to Section N of the Construction General Permit, and section 309 (c) (4) of the Clean Water Act, any person who knowingly makes any false material statement, representation or certification in any application, records, report, plan or other document filed or requirements be maintained under this chapter, upon conviction, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

The NOI that the Discharger submitted on April 13, 2012 (Exhibit 1 of Attachment B), was signed by a Legally Responsible Person under penalty of law. In the NOI, the Discharger falsely represented that the project included a total land disturbance area of only 0.3 acres. In truth, the total soil disturbance for the entire project is much greater than 0.3 acres. This fact was later verified when a Change of Information was filed with the SMARTS database on September 21, 2012, which identified 1.97 acres of land disturbance.

The original land disturbance area represented in the April 13, 2012 NOI was based primarily on the footprint of six buildings only. It failed to account for land disturbance associated with clearing and grubbing the majority of the 1.8-acre parcel, land disturbance activities associated with constructing driveways, pathways, and patios, equipment access, staging areas, and other areas that the Discharger knew or should have known would involve soil disturbance and should have been included in the NOI.

At this time, Lahontan Water Board staff is not pursuing any criminal prosecution for submitting the false material statement described above. Staff does retain its right to pursue such enforcement action in the future.

WATER CODE SECTIONS UPON WHICH ADMINISTRATIVE CIVIL LIABILITY IS BEING ASSESSED FOR THE ALLEGED VIOLATIONS

45. 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 subdivision (c), civil liability may be imposed administratively by the Lahontan 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. 40, above, are subject to Water Code section 13385.

46. Pursuant to Water Code section 13268, subdivision(b), any person failing or refusing to furnish technical or monitoring program reports as required by an order issued by the Water Board pursuant to Water Code section 13267, subdivision (b), may be liable in an amount that shall not exceed one thousand dollars (\$1,000) for each day in which the violations occurs. The violations cited in Finding Nos. 41.c and 41.d are subject to Water Code section 13268.
47. Pursuant to Water Code section 13350, subdivision (a), a discharger is subject to civil liability for violation of an order or prohibition issued by the State or Regional Water Board (e.g., Basin Plan, Cleanup and Abatement Order No. R6V-2012-2008). Per subdivision (e), civil liability may be imposed administratively by the Lahontan Water Board in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs. The violations in Findings in 41.a. and 41.e are violations subject to Water Code section 13350.
48. Pursuant to section 309 (c) (4) of the Clean Water Act, submittal of a false material statement is subject to a fine of up to \$10,000 plus imprisonment of up to 2 years or both upon conviction.

FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

49. Pursuant to Water Code section 13385, subdivision (e) and section 13327, 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.
50. 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

51. The required factors have been considered for the violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in Attachment B.

MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

52. Pursuant to Water Code sections 13268, 13350 and 13385, the total maximum administrative civil liability that may be imposed for the violations alleged in this Complaint is **\$498,000.00**, as described in Attachment B.

53. Pursuant to Water Code section 13350, subdivision (e)(1)(A), the statutory minimum amount of administrative civil liability that must be imposed is **\$187,000.00**.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY AMOUNT

54. Based on consideration of the above facts, the applicable law, and after applying the administrative civil liability methodology as described in Attachment B, the Assistant Executive Officer of the Lahontan Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$498,000.00**.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

55. Issuance of this Complaint 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, subsection (a)(2).



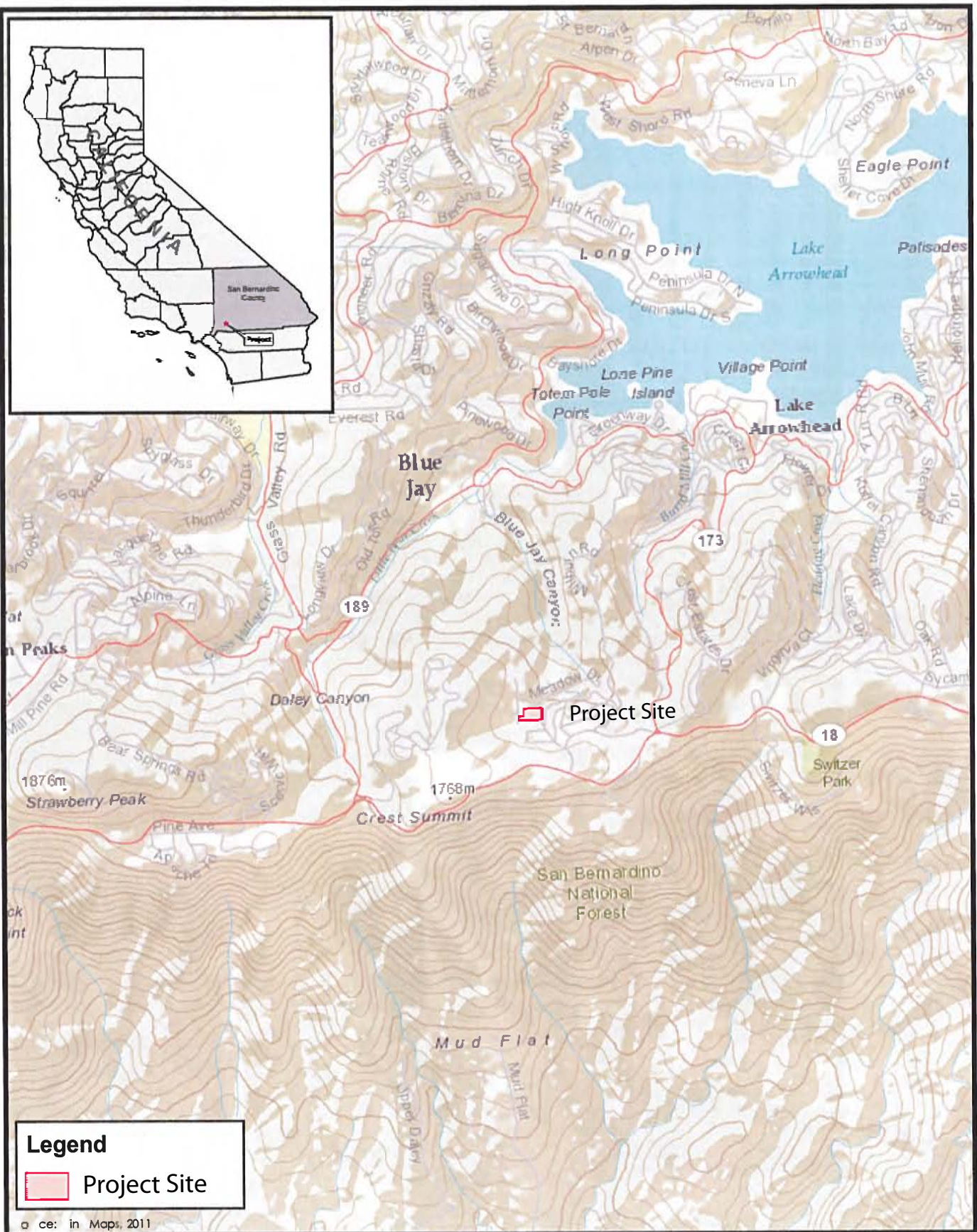
LAURI KEMPER
ASSISTANT EXECUTIVE OFFICER

Dated: 10/26/2012

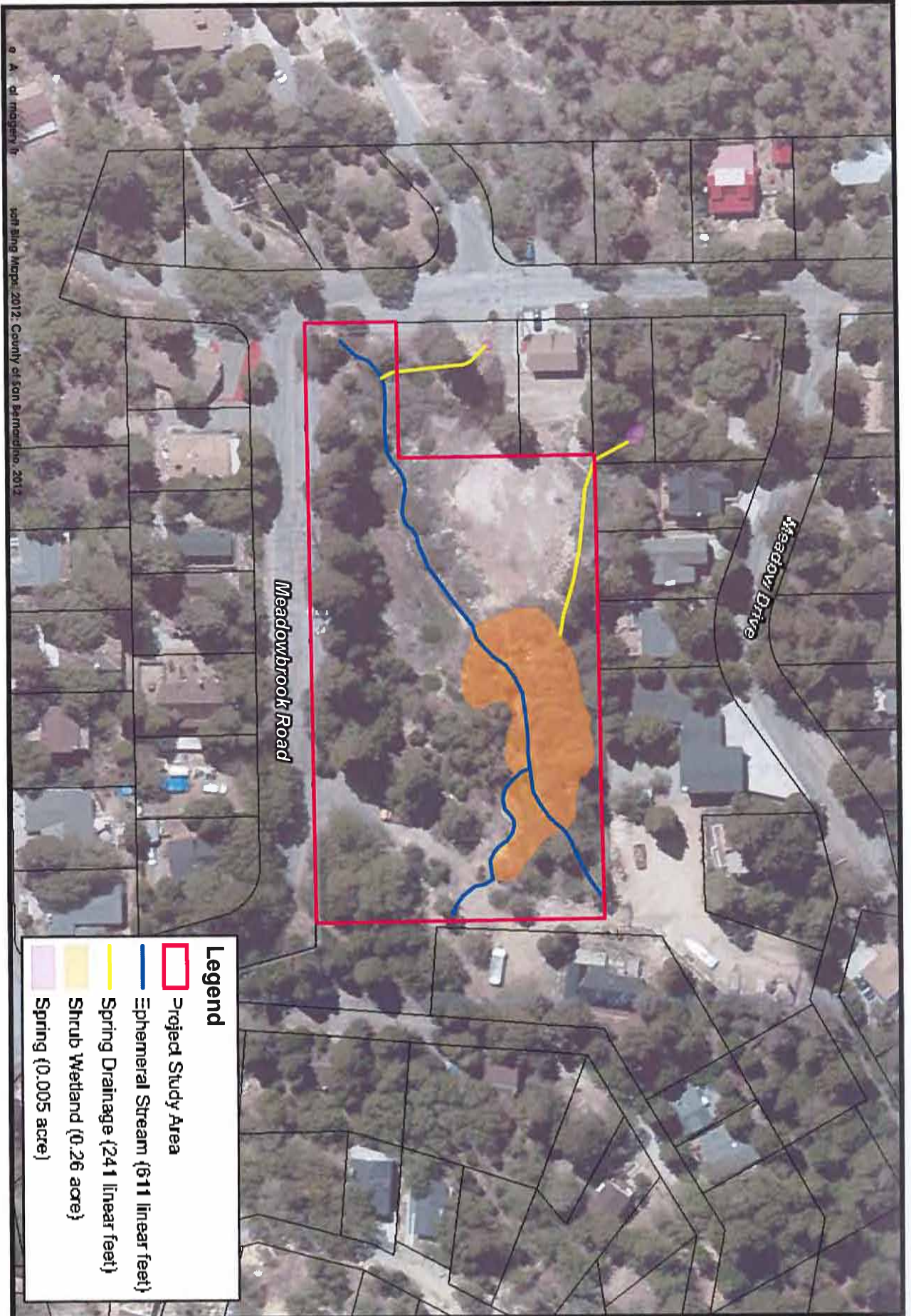
Attachments: A. Vicinity Map and Site Map with Historical Surface Waters
 B. Administrative Civil Liability Methodology

ATTACHMENT A

VICINITY MAP AND SITE MAP WITH HISTORICAL SURFACE WATERS



ATTACHMENT A - VICINITY MAP



ATTACHMENT A - SITE MAP WITH HISTORICAL SURFACE WATERS



ATTACHMENT B

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

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 13268, subdivision (a)(1), any person failing or refusing to furnish technical or monitoring program reports as required by an order issued by a regional board pursuant to Water Code section 13267, subdivision (b), may be liable civilly. Pursuant to Water Code section 13268, subdivision (b)(1), the Lahontan Regional Water Quality Control Board (Lahontan Water Board) may impose civil liability administratively in an amount not to exceed one thousand dollars (\$1,000) for each day in which a violation occurs.

Pursuant to Water Code section 13350, subdivision (a), a person who violates a cleanup and abatement order issued by the State Water Resources Control Board (State Water Board) or a regional board shall be liable civilly. Pursuant to Water Code section 13350, subdivision (e)(1), the Lahontan Water Board may impose civil liability administratively in an amount not to exceed five thousand dollars (\$5,000) for each day in which a violation occurs.

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 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 Lahontan 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

Violation No.	Description
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)
7	Violation of Cleanup and Abatement Order No. R6V-2012-0008, Order No. D.1 (Submit a Notice of Intent (NOI) forthwith)
8	Violation of Cleanup and Abatement Order No. R6V-2012-0008, Order No. D.5 (Submit a technical report identifying full extent of past and planned development)
9	Violation of Cleanup and Abatement Order No. R6V-2012-0008, Order No. D.6 (Submit a technical report providing a Surface Water Restoration Plan)

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. Violations 7 through 9 are non-discharge violations for purposes of applying the Enforcement Policy's administrative civil liability methodology and are subject to liability pursuant to Water Code sections 13268 or 13350.

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 three 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. 1 – 5 for Violation Nos. 7 – 9; and Section III 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)¹. 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.

¹ 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

Violation No.	Final Score
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 Lahontan 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, Lahontan 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 Lahontan 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 Lahontan 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

Violation No.	Factor
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

Violation No.	Initial Base Liability
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.

² 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, Lahontan 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 Lahontan Water Board staff's October 21, 2011 inspection, the Discharger was informed by Lahontan 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 (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 Lahontan Water Board staff's above-referenced e-mails in his October 18, 2011 e-mail to Lahontan Water Board staff. Mr. Moller states his willingness to resolve any issues staff feels need to be corrected.

Lahontan 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 additional 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 daylighted. Neither the Discharger nor its representative contacted Lahontan Water Board staff prior to these discharge incidents, and 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 Lahontan 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 Lahontan 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 Lahontan 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 Lahontan 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 Lahontan 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

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

SECTION II

Step 1: Potential for Harm for Discharge Violations

Violation Nos. 7 – 9 are non-discharge violations. Step 1 is therefore not applicable to Violation Nos. 7 – 9.

Step 2: Assessment for Discharge Violations

Violation Nos. 7 – 9 are non-discharge violations. Step 2 is therefore not applicable to Violation Nos. 7 – 9.

Step 3: Per Day Assessments for Non-Discharge Violations

This factor is determined by a matrix analysis based upon the Potential for Harm and the Deviation from Applicable Requirements.

Violation No. 7: Failure to Submit Notice of Intent for Coverage Under Construction General Permit Forthwith –

- a. The Potential for Harm for Violation No. 7 is determined to be **moderate**. The Enforcement Policy defines “moderate” as:

“Moderate – The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.”

Lahontan Water Board staff was routinely directing the Discharger to implement an effective combination of Best Management Practices (BMPs) to prevent or reduce pollutant discharges to the surface waters on the Site following each inspection prior to the Discharger obtaining coverage under the Construction General Permit. The Discharger’s efforts to implement an effective combination of BMPs improved, and staff’s direction to the Discharger focused more on correct BMP installation and maintenance, once the Discharger obtained Construction General Permit coverage. The Discharger’s failure to initially comply with Order D.1 of the Cleanup and Abatement Order presented a continuing and substantial threat to beneficial uses since the Discharger did not begin implementing an effective combination of BMPs to protect water quality on a site that had multiple surface waters. The Site conditions were highly disturbed, and without effective BMPs, the threat of sediment-laden storm water discharges to the Site’s surface waters was significant, as was the associated potential for harm to beneficial uses.

- b. The Deviation from Requirement is determined to be **major**. The Enforcement Policy defines “major” 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 had been informed of the need to obtain coverage under the Construction General Permit beginning October 18, 2011, and again in a November 21, 2011 Notice of Non-Compliance. The need to issue a Cleanup and Abatement Order with a requirement to obtain coverage under the Construction General Permit, and then violation of this requirement for a period of 16 days³ following receipt of the Cleanup and Abatement Order, shows the Discharger’s disregard for the requirement. A primary function of the requirement is to develop and implement a Storm Water Pollution Prevention Plan (SWPPP), which in part, results in implementing and maintaining an effective combination of BMPs. By failing to submit a Notice of Intent, which includes developing and submitting a SWPPP by a qualified professional, the requirement was rendered ineffective.

³ Cleanup and Abatement Order No. R6V-2012-0008 was issued on March 15, 2012. Lahontan Water Board files indicate that the Discharger received the Cleanup and Abatement Order on March 23, 2012. The Discharger complied with Order D.1 on April 10, 2012. Staff is using a conservative violation period of 16 days, which allows for a day (March 24, 2012) to comply with Order D.1 following receipt of the Cleanup and Abatement Order.

- c. The Enforcement Policy's Table 3 provides three factors to select from for **moderate** potential for harm and **major** deviation from requirement: 0.4, 0.55, and 0.7. Staff finds the highest level (**0.7**) is appropriate. The reason for selecting the highest level is again linked to the Discharger's persistent resistance to obtain coverage under the permit, and to deploy an effective combination of BMPs that finally began to occur after the Discharger obtain coverage. It is no coincidence that Lahontan Water Board staff started to observe efforts to deploy an effective combination of BMPs following the Discharger obtaining Construction General Permit coverage, which required a qualified professional to develop and implement a SWPPP.

Violation No. 8: Failure to Submit a Technical Report Identifying Existing and Proposed Site Development and Full Extent of Associated Project Impacts –

- a. The Potential for Harm for Violation No. 8 is determined to be **major**. The need for the information identified by Order D.5 of the Cleanup and Abatement Order is critical to identify and understand the full extent of environmental impacts that have already occurred, so that an acceptable surface water restoration plan can be prepared and implemented. Additionally, the information is critical to identify the Discharger's future plans, so that the opportunity to restore the surface waters already affected and/or destroyed are not impeded, and that there are no additional surface water losses or adverse impacts. According to a July 20, 2012 document prepared and submitted by the Discharger's consultant, PMC, there have already been an estimated⁴ 0.26 acres of shrub wetland impacts, 0.005 acres of spring habitat losses, 611 linear feet of ephemeral creek channel losses or significant impacts, and 399 linear feet of spring open water channel losses. Staff is also aware that the Discharger has plans to construct two additional structures, and the remaining amount of developable land on APN 0336-134-02-0000 is limited, but has yet to be fully defined. There is a very high potential for additional harm to beneficial uses until pre-project and existing surface water resources are fully identified, and future development elements are fully understood so that additional surface water impacts can be avoided.
- b. The Deviation from Requirement is determined to be **major**. The Enforcement Policy defines "moderate" as:

"The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved."

The Discharger has submitted part of the information required by Order D.5 of the Cleanup and Abatement Order. The Discharger was most recently notified of this situation in a Lahontan Water Board staff October 19, 2012 Notice of Violation. While the Discharger has provided estimated surface water impacts to date, and partial descriptions and illustrations of existing and proposed development, staff is still waiting for the estimates to be field verified, and for a full description, quantification, and illustration of existing and proposed development.

⁴ PMC staff estimated surface water impacts based upon comparing current conditions to aerial photographs. Lahontan Water Board staff is not aware of or in possession of any field verification of pre-project and exiting surface water conditions/locations, or current extent of surface water impacts.

Until the Discharger provides the remaining information, efforts to begin implementing an acceptable surface water restoration plan, as is required by Order D.7 to begin by June 29, 2012, will continue to be limited, at best. Additionally, existing surface waters remain at risk of new and/or additional damage or destruction. The Discharger's failure to comply with this requirement has rendered this requirement's essential function and that of two other requirements, ineffective.

- c. The Enforcement Policy's Table 3 provides three factors to select from for **major** potential for harm and **major** deviation from requirement: 0.7, 0.85, and 1. Staff finds the middle level (**0.85**) is appropriate. This value acknowledges the Discharger's submittals, while also acknowledging the length of time it continues to take the Discharger to comply with the requirement, and the level of support Lahontan Water Board staff has provided the Discharger.

Violation No. 9: Failure to Submit a Surface Water Restoration Plan Designed to Restore the Site's Surface Waters to Pre-Project Conditions –

- a. The Potential for Harm for Violation No. 8 is determined to be **major**. The need to develop and submit an acceptable surface water restoration plan is critical to restoring the beneficial uses of the surface waters that once dominated the Site's landscape and to preventing any additional surface water losses. A key element to the restoration plan will be restoring the surface flow of the north spring, which in the past, was the primary surface water source for the shrub wetland. Placing this water source in a pipe and diverting it will have additional impacts upon the health of the shrub wetland. The potential for additional adverse impacts to the shrub wetland increase with each day restoration efforts for the north spring's open water channel are delayed because the Discharger does not submit an acceptable restoration plan. There is a very high potential for additional harm to beneficial uses.
- b. The Deviation from Requirement is determined to be **major**. After receipt and correction of several deficient plans, the Discharger has finally submitted part of the information required by Order D.6 of the Cleanup and Abatement Order, but has failed to comply with the remaining elements. Specifically, there are four other surface waters whose proposed restoration has yet to be found acceptable. The Discharger was notified of this situation in staff's October 19, 2012 Notice of Violation and in several follow-up correspondence from Lahontan Water Board staff and staff from the CDFG. Because of the Discharger's unwillingness or sheer lack of ability to follow directions provided, the Discharger has failed to perform any restoration of the site, which is required by Order D.7 of the Cleanup and Abatement Order, and as a result has avoided all penalties associated with violation of D.7, which effectively renders two parts of the order ineffective. These penalties total approximately \$450,000. The essential function of requirement D.6 of the Cleanup and Abatement Order is to facilitate restoration of the site. In light of the Discharger's failure to comply with the requirement, the requirement has been rendered ineffective in its essential function, restoration of the site.
- c. The Enforcement Policy's Table 3 provides three factors to select from for **major** potential for harm and **major** deviation from requirement: 0.7, 0.85, and 1. Staff finds the middle level (**0.85**) is appropriate. This value acknowledges the Discharger's submittals, while also acknowledging the length of time it continues to take the Discharger to comply with the requirement, and the level of support Lahontan Water Board staff has provided the Discharger.

Initial Amount of Liability

For Violation Nos. 7 - 9, the initial base liability amount is calculated by:

$$\begin{aligned} & (\text{Per Day Factor}) \times (\text{Number Of Days Of Violation}) \times \\ & (\text{Maximum Per Day Liability}) = \text{Initial Base Liability} \end{aligned}$$

The Initial Base Liabilities for Violation Nos. 7 – 9 are as follows:

Table 7 – Initial Base Liabilities for Violation Nos. 7 - 9

Violation No.	Per Day Factor	Days of Violation	Maximum Per Day Liability	Initial Base Liability
7	0.70	16	\$5,000	\$56,000
8	0.85	182	\$1,000	\$154,700
9	0.85	176	\$1,000	\$149,600

Step 4: Adjustment Factors

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 No. 7, the Discharger should have known and been prepared to comply with the requirement to submit a Notice of Intent, forthwith, as required by Cleanup and Abatement Order No. R6V-2012-0008. Lahontan Water Board staff had already on multiple occasions, beginning on October 18, 2011, informed the Discharger of its responsibility to obtain coverage under the Construction General Permit. Mr. Moller has disputed the purpose of the project and the amount of land disturbance associated with it. However, staff reported that its January 20, 2012 inspection, Mr. Moller stated that the project consisted of several new single family residences and related infrastructure associated with the expansion of Serenity Lodge. While the land disturbance on APN 0336-134-02-000 likely equals or exceeds one acre by itself, the additional land disturbance on the other parcels that make up the Site definitely exceeds one acre. Since the January 20, 2012 inspection, Mr. Moller's story regarding the purpose of the new housing structures has changed with him stating they were individual rental housing units. However, at staff's October 11, 2012 inspection, Discharger representative Bobby Rabun stated that the four new housing units located on the Site were constructed by Mr. Moller and were for Serenity Lodge. They do not have kitchens and are not stand-alone residences. Additionally, on September 21, 2012, the Discharger's Qualified SWPPP Developer filed a Change of Information into the SMARTS database that revised the land disturbance area from 0.3 acres to 1.97 acres, clearly exceeding the one acre threshold. Based upon these circumstances, a culpability factor of 1.4 has been selected for Violation No. 7.

For Violation Nos. 8 and 9, the Discharger is responsible for its actions and for the products its consultants prepare and submit on the Discharger's behalf. The technical reports that are the subject of Violation Nos. 8 and 9 were due April 20, 2012 and April 26, 2012, respectively. The Cleanup and Abatement Order clearly identifies the required content and purpose for each report. In spite of these conditions and the Lahontan Water Board staff's efforts to assist the Discharger, staff has yet to receive two acceptable reports that satisfy the Order Nos. D.5 and D.6 of the Cleanup and Abatement Order.

The original reports were prepared by the Discharger's consultants and submitted on time. Lahontan Water Board staff reviewed both reports and identified several deficiencies. Staff issued a Notice of Violation on June 20, 2012, which identified the deficiencies in each report in addition to other Cleanup and Abatement Order violations. Staff subsequently met with the Discharger and its consultants to review the Notice of Violation and the report deficiencies. The Discharger's consultants submitted another report dated July 20, 2012 to address the deficiencies in both reports. Staff reviewed the July 20, 2012 report and identified some of the same deficiencies it had identified in the Notice of Violation and during its subsequent meeting with the Discharger. Staff informed the Discharger of the recurring report deficiencies, met with the Discharger, has reviewed additional submittals by the Discharger, and as recently as October 19, 2012, had to inform the Discharger again of recurring report deficiencies. A result of the Discharger's failure to submit two complete technical reports is that restoration activities for the Site's surface waters have yet to start.

It is unclear why the Discharger has yet to provide two complete technical reports in light of the Cleanup and Abatement Order's clearly stated requirements regarding content and purpose, and staff's efforts to assist the Discharger. The Discharger, while relying upon consultants to assist it with preparing the required technical reports, is ultimately responsible for complying with the Cleanup and Abatement Order. Staff does not have any evidence regarding the Discharger's intent as it relates to these violations. However, the fact remains that the Discharger is responsible for its actions or inactions that are the cause of Violation Nos. 8 and 9. Therefore, a culpability factor of **1.3** has been selected for Violation Nos. 8 and 9.

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. 7 and a Cleanup and Cooperation multiplier of **1.4** is applied to Violation Nos. 8 – 9.

The Discharger did not file a Notice of Intent and supporting documents to obtain coverage under the Construction General Permit until after the Lahontan Water Board issued a Cleanup and Abatement Order. Even then, the information regarding the amount of land disturbance associated with the project was significantly under-reported, and not corrected until September 21, 2012.

Additionally, the Discharger has been less than forthcoming with the actual purpose and extent of the project, as was most recently demonstrated during the October 11, 2012 inspection. As discussed above, Mr. Rabun stated during the October 11, 2012 inspection that the four new housing structures were associated with the Serenity Lodge, re-confirming that the land disturbance activities on the individual parcels are part of a larger development plan, whose land disturbance definitely exceeds the one acre threshold for needing to obtain coverage under the Construction General Permit. So, while the Discharger has cooperated with staff by allowing multiple site inspections, the Discharger has been less than cooperative with obtaining the appropriate permits for the project and with providing information regarding the purpose and extent of the project.

Additionally, the Discharger has yet to comply with the reporting requirements of Cleanup and Abatement Order No. R6V-2012-0008, which are intended to identify the full extent of existing and proposed project elements, their impacts to surface waters, and preparing and implementing a surface water restoration plan. To the Discharger's credit, it submitted the original reports on time and has made efforts to submit supplemental information following meetings in a timely manner. However, the fact remains that the Discharger has yet to submit two acceptable reports providing the information clearly identified by the Cleanup and Abatement Order, a subsequent Notice of Violation, additional letters commenting upon supplements to the original reports, and at least two meetings to discuss the reports' deficiencies. The supplemental information the Discharger has provided in many cases conflicts with previous submittals and continues to be incomplete. It has now been six months since the original reports have been submitted, and the Discharger continues its failure to submit acceptable reports and restoration activities have yet to start, even though the Cleanup and Abatement Order requires the Discharger to start implementing an acceptable restoration plan by June 29, 2012.

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 Lahontan 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. 7 – 9.

Step 5: Determination of Total Base Liability

Total Base Liability Amount is determined by multiplying the initial liability amounts for each violation from Step 3 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. 7 – 9 are as follows:

Table No. 8 – Total Base Liabilities, Violation Nos. 7 - 9

Violation No.	Total Base Liability
7	\$117,600
8	\$281,554
9	\$272,272
Total Base Liability for Violation Nos. 7 - 9	\$671,426

The Total Base Liability for Violation Nos 1 – 9 is **\$760,826**.

SECTION III

Step 6: Ability to Pay and Ability to Continue Business

The Enforcement Policy provides that if the Lahontan 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.

Lahontan 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
Total Value				\$136,031	\$194,507

*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
Total Value				\$1,735,632	2,803,000

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 Lahontan 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 Lahontan 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 Lahontan 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 **\$851,650**.

Step 8: Economic Benefit

The Enforcement Policy directs the Lahontan Water Board to determine any economic benefit of the violations based upon the best available information. The Enforcement Policy suggests that the Lahontan 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. Lahontan 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.

Lahontan 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 Lahontan 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, Lahontan 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 **\$543,181**. The economic benefit plus ten percent is **597,500**.

Lahontan 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 Lahontan Water Board may assess administratively pursuant to Water Code sections 13268, 13350, and 13385, for the nine violations alleged by the Complaint is **\$498,000**. 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).
- Violation No. 7 being subject up to \$5,000 per day of violation with sixteen days of violation (\$80,000) pursuant to Water Code section 13350, subdivision (e)(1).
- Violation Nos. 8 and 9 each being subject up to \$1,000 per day of violation, with 182 days (\$182,000) and 172 days (\$172,000) of violation, respectively, pursuant to Water Code section 13268, subdivision (b).

Water Code section 13350, subdivisions (e)(1)(A) and (e)(1)(B) establish minimum liabilities for conditions where:

(A) There is a discharge and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.

(B) There is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the violation occurs.

In this case, there have been multiple discharges of waste to waters of the United States, for which, in part, Cleanup and Abatement Order No. R6V-2012-0008 was issued. Violation No. 7 is subject to civil liability under Water Code section 13350, and therefore, is subject to this minimum liability requirement. There are 16 days of violation of Cleanup and Abatement Order No. R6V-2012-0008 associated with Violation No. 7, producing a minimum liability amount for Violation No. 7 of **\$8,000**. Violation Nos. 8 and 9 constitute 182 days and 176 days of violation of an order issued by the Lahontan Water Board, respectively. This produces minimum liability amounts of **\$18,200** and **\$17,600**, respectively. The total minimum liability amount associated with Violation Nos. 7 - 9 is **\$43,800** pursuant to Water Code section 13350, subdivisions (e)(1)(A) and (e)(1)(A).

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 Lahontan Water Board must assess based upon economic benefit **\$543,181**, identified in Step 8, plus 10 percent, for an initial minimum liability amount of **\$597,500**. The Enforcement Policy also recommends that staff costs also be added to the liability. Doing so increases the minimum liability amount to **\$688,324**.

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 **\$498,000**.

Step 10: Final Liability Amount

The Total Proposed Liability Amount is **\$498,000** based upon the considerations discussed in detail, above.

Exhibit No. 1: Administrative Civil Liability Methodology Spreadsheet

Exhibit No. 2: October 18, 2012 Electronic Mail from Jan Zimmerman to Bill Moller

Exhibit No. 3: October 17, 2012 Electronic Mail from Joanna Gibson to Bill Moller

EXHIBIT NO. 1 - ARIMOL GROUP, INC. ADMINISTRATIVE CIVIL LIABILITY PENALTY CALCULATOR

Instructions

- 1. Select Potential Harm for Discharge Violations
- 2. Select Characteristics of the Discharge
- 3. Select Susceptibility to Cleanup or Abatement
- 4. Select Deviation from Standard
- 5. Click "Determine Harm & per Gallon/Day..."
- 6. Enter Values into the Yellow highlighted fields

Select Item	5 = Major
Select Item	4 = Discharged material poses significant risk
Select Item	> 50% of Discharge Susceptible to Cleanup or Abatement
Select Item	Major

Select Item	4 = Above Moderate
Select Item	4 = Discharged material poses significant risk
Select Item	> 50% of Discharge Susceptible to Cleanup or Abatement
Select Item	Major

Discharger Name/ID:

ARIMOL GROUP, INC.

			Violation 1 - Creek No. 1		Violation 2 - Creek No. 2	
Discharge Violations	Step 1	Potential Harm Factor (Generated from Button)	9		8	
	Step 2	Per Gallon Factor (Generated from Button)	0.8		0.6	
		Gallons				
		Statutory / Adjusted Max per Gallon (\$)				
		Total		\$ -		\$ -
		Per Day Factor (Generated from Button)	0.8		0.6	
		Days	1		1	
		Statutory Max per Day	10000.00		10000.00	
		Total		\$ 8,000		\$ 6,000
	Non-Discharge Violations	Step 3	Per Day Factor			
Days						
Statutory Max per Day						
Total				\$ -		\$ -
Initial Amount of the ACL				\$ 8,000.00		\$ 6,000.00
Add'l Factors	Step 4	Culpability	1.3	\$ 10,400.00	1.3	\$ 7,800.00
		Cleanup and Cooperation	1.5	\$ 15,600.00	1.5	\$ 11,700.00
		History of Violations	1	\$ 15,600.00	1	\$ 11,700.00
Step 5	Total Base Liability Amount			\$ 760,826.00		
Step 6	Ability to Pay & to Continue in Business		1	\$ 760,826.00		
Step 7	Other Factors as Justice May Require		1	\$ 760,826.00		
	Staff Costs	\$ 90,824	\$ 851,650.00			
Step 8	Economic Benefit		\$ 543,181	\$ 851,650.00		
Step 9	Minimum Liability Amount		\$ 688,324			
	Maximum Liability Amount		\$ 498,000			
Step 10 Final Liability Amount				\$ 498,000.00		

EXHIBIT NO. 1 - ARIMOL GROUP, INC. ADMINISTRATIVE CIVIL LIABILITY PENALTY CALCULATOR

Select Item5 = Major

Select Item4 = Discharged material poses significant risk

Select Item> 50% of Discharge Susceptible to Cleanup or Abatement

Select ItemMajor

Select Item5 = Major

Select Item4 = Discharged material poses significant risk

Select Item> 50% of Discharge Susceptible to Cleanup or Abatement

Select ItemMajor

Select Item5 = Major

Select Item4 = Discharged material poses significant risk

Select Item> 50% of Discharge Susceptible to Cleanup or Abatement

Select ItemMajor

Violation 3 - North Spring		Violation 4 - South Spring (January 20, 2012)		Violation 5 - South Spring (June 7, 2012)	
9		9		9	
0.8		0.8		0.8	
	\$ -		\$ -		\$ -
0.8		0.8		0.8	
1		1		1	
10000.00		10000.00		10000.00	
	\$ 8,000		\$ 8,000		\$ 8,000
	\$ -		\$ -		\$ -
	\$ 8,000.00		\$ 8,000.00		\$ 8,000.00
1.4	\$ 11,200.00	1.4	\$ 11,200.00	1.4	\$ 11,200.00
1.5	\$ 16,800.00	1.5	\$ 16,800.00	1.5	\$ 16,800.00
1	\$ 16,800.00	1	\$ 16,800.00	1	\$ 16,800.00

EXHIBIT NO. 1 - ARIMOL GROUP, INC. ADMINISTRATIVE CIVIL LIABILITY PENALTY CALCULATOR

Select Item4 = Above Moderate

Select Item4 = Discharged material poses significant risk

Select Item> 50% of Discharge Susceptible to Cleanup or Abatement

Select ItemMajor

Select ItemPotential Harm for Discharge Violations

Select ItemCharacteristics of the Discharge

Select ItemSusceptibility of Cleanup or Abatement

Select ItemDeviation from Requirement

Select ItemPotential Harm for Discharge Violations

Select ItemCharacteristics of the Discharge

Select ItemSusceptibility of Cleanup or Abatement

Select ItemDeviation from Requirement

Select ItemPotential Harm for Discharge Violations

Select ItemCharacteristics of the Discharge

Select ItemSusceptibility of Cleanup or Abatement

Select ItemDeviation from Requirement

Violation 6 - Shrub Wetland		Violation 7 - CAO, Order D.1 (NOI)		Violation 8 - CAO, Order D.5 (Development/Impacts Report)		Violation 9 - CAO, Order D.6 (Restoration Plan)	
8							
0.6							
	\$ -		\$ -		\$ -		\$ -
0.6		0		0		0	
1							
10000.00							
	\$ 6,000		\$ -		\$ -		\$ -
		0.7		0.85		0.85	
		16		182		176	
		\$ 5,000		\$ 1,000		\$ 1,000	
	\$ -		\$ 56,000.00		\$ 154,700.00		\$ 149,600.00
	\$ 6,000.00		\$ 56,000.00		\$ 154,700.00		\$ 149,600.00
1.3	\$ 7,800.00	1.4	\$ 78,400.00	1.3	\$ 201,110.00	1.3	\$ 194,480.00
1.5	\$ 11,700.00	1.5	\$ 117,600.00	1.4	\$ 281,554.00	1.4	\$ 272,272.00
1	\$ 11,700.00	1	\$ 117,600.00	1	\$ 281,554.00	1	\$ 272,272.00

Exhibit No. 2 -

October 18, 2012 Electronic Mail from Jan Zimmerman to Bill Moller

On Oct 18, 2011, at 10:11 AM, Jan Zimmerman <JZimmerman@waterboards.ca.gov> wrote:

Mr. Moller,

On October 17, 2011, Lahontan Regional Water Quality Control Board staff received a complaint regarding recent grading activities at your site located on Meadow Brook Road in Lake Arrowhead. Please be advised that construction activities that disturb more than one acre of land (or those projects that are part of a larger common plan of development that cumulatively is greater than one acre) are required to be covered under the Statewide General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit Order No. 2009-0009-DWQ). Information regarding the Construction General Permit and the requirements, including preparation and implementation of a site-specific Stormwater Pollution Prevention Plan (SWPPP), can be found on the State Water Resources Control Board website at http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml. Coverage under the Construction General Permit must be obtained electronically through the online SMARTS system, which can be accessed at http://www.waterboards.ca.gov/water_issues/programs/stormwater/databases.shtml#const_db. Keep in mind that new State regulations require that only qualified and certified individuals prepare and implement the components of the SWPPP. Specific questions regarding the Construction General Permit can be directed to Mary Dellavalle in our office at 760/241-7365, mdellavalle@waterboards.ca.gov.

In addition, it appears that your grading and vegetation clearing has disturbed at least two natural drainage channels that traverse your property. Impacts to natural drainage channels (grading and infilling) and culvert installation changes the dynamics of the flows (hydromodification), which often results in impacts to water quality both upstream and downstream. Any grading, infilling, or disturbance to a surface water (streambed alteration type activities) triggers a permitting action through the Regional Water Board in addition to any permitting action that may be required by the California Department of Fish and Game. Also, if the surface waters are tributary to a water of the U.S., for example Lake Arrowhead, such disturbance would also likely trigger a permitting action through the Army Corps of Engineers under section 404 of the federal Clean Water Act. Information regarding permitting requirements for projects that impact surface waters can be found on our website at http://www.waterboards.ca.gov/lahontan/water_issues/programs/clean_water_act_401/index.shtml. Specific questions regarding these types of projects should be directed to me, Jan Zimmerman, at 760/241-7376.

I intend to inspect your site this week to observe current site conditions and to discern whether any permitting requirements are warranted for your project. In the interim, we recommend at minimum that you provide immediate protection for the culvert inlets and outlets on your property so that flow is maintained through the pipe (and not diverted) and to prevent sediment or debris from blocking flows and/or being carried downstream from your site.

If you have any questions, please do not hesitate to contact either myself or my supervisor, Patrice Copeland (760/241-7404; pcopeland@waterboards.ca.gov).

Thank you.

Jan M. Zimmerman, PG
Engineering Geologist
Lahontan Regional Water Quality Control Board

Phone: 760/241-7376
Fax: 760/241-7308
jzimmerman@waterboards.ca.gov

Exhibit No. 3 –

October 17, 2012 Electronic Mail from Joanna Gibson to Bill Moller

>>> Joanna Gibson <JGIBSON@dfg.ca.gov> 10/17/2011 12:56 PM >>>
Mr. Moler,

The Department of Fish and Game (Department) was recently made aware of grading activities on your property at 1031 Meadowbrook Road, Lake Arrowhead, CA. You indicated that the San Bernardino County Fire Department inspected the property and directed you to clear all brush within 100-feet of all buildings? Please provide me with a copy of this directive. Also, please provide the name and contact information for the person who authorized grading of the entire property from the County of San Bernardino.

The Department understands that grading activities may have encroached on ephemeral streams on the property. Please note that Section 1602 of the California Fish and Game Code requires an entity or person to notify the Department and obtain an agreement prior to conducting a project that may impact a lake, river, stream, drainage, or other watercourse and associated riparian vegetation (please note that the presence of water does not determine the Department's jurisdiction). Please go to the following link to read more about our Lake and Streambed Alteration Program: <http://www.dfg.ca.gov/habcon/1600/>.

Please cease all activities within the Department's jurisdiction immediately. After I have received the requested information I will contact you to arrange a site visit.

If you have any questions, please contact me.

Joanna Gibson
Environmental Scientist
CA Department of Fish and Game
Inland Deserts Region

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the Arimol Group, Inc. (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R6T-2012-0049 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

☐ ***(Check here if the Discharger waives the hearing requirement and will pay the liability.)***

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Discharger will remit payment for the civil liability imposed in the total amount of **four hundred ninety-eight thousand dollars (\$498,100)** by check that references "ACL Complaint No. R6T-2012-0049" made payable in the amount of **\$498,000** to the "*State Water Pollution Cleanup and Abatement*." Payment must be received by the Regional Water Board by **5:00 p.m. on November 30, 2012** or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by the State Water Resources Control Board's Water Quality Enforcement Policy expires. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

STEPHEN MONTELEONE
(1886-1962)

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Scott R. Lane, Esq.

November 15, 2012

OUR FILE NUMBER
16670

Via Email and Federal Express

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**RE: In the Matter of Arimol Group, Inc., San Bernardino County
WDID Nos. 6B36CN601729 and 6B36C363433
Administrative Civil Liability Complaint No. R6V-2012-00049**

OBJECTIONS TO HEARING PROCEDURES

TO THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION:

ARIMOL GROUP, INC. hereby objects to the Hearing Procedures, dated November 6, 2012:

1. Objection is made to the Hearing Procedures (page 5) to the extent they limit ARIMOL GROUP, INC. to a mere 45 minutes in order to "present evidence, cross-examine witnesses, and provide a closing statement" in response to the voluminous and highly detailed Administrative Civil Liability Complaint at issue in this proceeding. In view of the substantial monetary penalty sought by the Prosecution Team, the significant number of witnesses and documents anticipated to be presented at the

Arimol's Objections to Hearing Procedures
Page 2 of 3

hearing, and the complex factual and legal issues involved in this matter, ARIMOL GROUP, INC., will require additional time to properly present a full and complete defense to the charges, and respectfully contends and requests that 6 hours should be granted to ARIMOL GROUP, INC., to present its defense at the hearing of this matter.

2. Objection is made to the Hearing Procedures (pages 5 – 7) because they impose an expedited schedule requiring ARIMOL GROUP, INC., to procure, review, and analyze all evidence against it and then prepare its defense in the form of written evidence, exhibits, expert and percipient testimony, legal and technical arguments and analysis, in a mere three weeks. In contrast, the Prosecution Team has had the luxury of having months to prepare its case against ARIMOL GROUP, INC., and has no doubt had ample time to interview witnesses, retain experts, review documents, and frame the legal and factual issues in support of its prosecution. The extensive nature of the Prosecution Team's preparation is demonstrated by the detailed and fact-intensive 15 page single spaced Administrative Civil Liability Complaint, which included approximately 30 additional pages of attachments. In view of the substantial monetary penalty sought by the Prosecution Team, the significant number of witnesses and documents anticipated to be presented at the hearing, and the complex factual and legal issues involved in this matter, ARIMOL GROUP, INC., will require additional time to properly present a full and complete defense to the charges, and respectfully contends and requests that 60 days should be granted to ARIMOL GROUP, INC., to present its written submission in connection with this matter.

3. Objection is made to the Hearing Procedures setting hearing dates on January 16-17, 2013 as that date will not accommodate the request for additional time identified in the preceding paragraph of these objections.

4. Objection is made to the Hearing Procedures because they are vague and ambiguous and unclear as to whether the procedures set forth in California Code of Regulations, title 23, sections 648(b), 648.5 and 648.5.1 are included in the Hearing Procedures or not. ARIMOL GROUP, INC. requests and demands the inclusion of sections 648(b), 648.5 and 648.5.1 in the Hearing Procedures and objects to the Hearing Procedures, or interpretation thereof, which purports to exclude the aforementioned procedures as a violation of due process.

5. Objection is made to the failure to the Hearing Procedures to incorporate California Code of Regulations, title 23, section 649.6, regarding the issuance of subpoenas and subpoenas duces temum. In view of the substantial monetary penalty sought by the Prosecution Team, the significant number of factual witnesses (some of whom are members of the Prosecution Team) and documents anticipated to be presented at the hearing, ARIMOL GROUP, INC., requests the opportunity to subpoena witnesses and documents prior to the hearing of this matter.

6. Objection is made to the failure to the Hearing Procedures to incorporate California Code of Regulations, title 23, section 648.6, "Alternative Dispute Resolution." In view of the substantial monetary penalty sought by the Prosecution Team, the significant number of witnesses and documents anticipated to be presented at the hearing, as well as the availability of the administrative, judicial and appellate review process which could extend a final resolution of this matter for several more years, it would be a more efficient and equitable use of the parties' resources to resolve this matter through an


Arimol's Objections to Hearing Procedures
Page 3 of 3

alternative dispute resolution procedure such as mediation, settlement conference or non-binding arbitration.

7. ARIMOL GROUP, INC. asserts the right to have a court reporter at any hearings.

Respectfully submitted,

MONTELEONE & McCRORY, LLP

By: 
SCOTT R. LANE
Attorneys for Arimol Group, Inc.

SRL:hn

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November 15, 2012

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Via Email and Federal Express

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**RE: In the Matter of Arimol Group, Inc., San Bernardino County
WDID Nos. 6B36CN601729 and 6B36C363433
Administrative Civil Liability Complaint No. R6V-2012-00049**

REQUEST FOR ADR OR SETTLEMENT CONFERENCE

TO THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION:

Pursuant to California Code of Regulations, title 23, section 648.6, "Alternative Dispute Resolution," ARIMOL GROUP, INC. hereby requests that this dispute be referred to mediation or nonbinding arbitration, with ARIMOL GROUP, INC.'s preference being mediation.

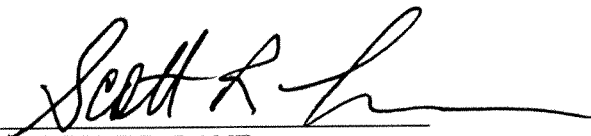
LAW OFFICES
MONTELEONE & McCRORY, LLP

Arimol's Request for Pre-Hearing Conference
Page 2 of 2

Alternatively, and separate and apart from the aforementioned provision, ARIMIOL GROUP, INC. requests the parties voluntarily agree to (1) a mediation before a neutral mediator or (2) a settlement conference/meeting without a neutral mediator, as per the preference of the Water Board.

Respectfully submitted

MONTELEONE & McCRORY, LLP

By: 
SCOTT R. LANE
Attorneys for Arimol Group, Inc.

SRL:hn

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November 15, 2012

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Via Email and Federal Express

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**RE: In the Matter of Arimol Group, Inc., San Bernardino County
WDID Nos. 6B36CN601729 and 6B36C363433
Administrative Civil Liability Complaint No. R6V-2012-00049**

REQUEST FOR PRE-HEARING CONFERENCE

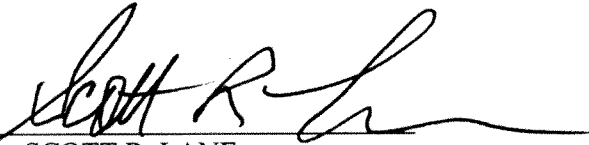
TO THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION:

Pursuant to the Hearing Procedures, dated November 6, 2012, page 7, ARIMOL GROUP, INC., respectfully requests a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15 in order to address the matters described in Government Code section 11511.1. AMIROL GROUP, INC. requests the following issues be discussed at this conference: (1) exploration of settlement possibilities; (2) preparation of stipulations; (3) clarification of issues; (4) identifying and limiting the number of witnesses; (5) objections to proffers of evidence; (6) ordering the presentation of evidence and cross-examination; (7) rulings regarding the issuance of subpoenas; (8) scheduling the

submission of written briefs and schedules for the commencement and conduct of the hearing; (9) exchanging witness lists and exhibits or documents to be offered in evidence at the hearing; and (10) exploring the use of alternative dispute resolution mechanisms.

Respectfully submitted,

MONTELEONE & McCRORY, LLP

By: 

SCOTT R. LANE

Attorneys for Arimol Group, Inc.

SRL:hn

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Lahontan Regional Water Quality Control Board

November 20, 2012

Scott R. Lane, Esq.
Monteleone & McCrory, LLP
725 South Figueroa Street, Suite 3200
Los Angeles, CA 90017-5446

Dear Mr. Lane,

The Advisory Team received your letter of November 15, 2012. I wanted to address your objections and requests as soon as possible so that we can continue to move forward.

First, I am willing to hold a pre-hearing conference after the Thanksgiving holiday, but in the meantime, would encourage as a first step that you contact the Prosecution Team to begin settlement negotiations. I believe that such a step would be more fruitful, and would preserve any confidentiality afforded during settlement negotiations. Discussions with the Water Board's advisors and the Prosecution Team would not be considered confidential settlement negotiations.

Second, **I am partially approving your request for additional time to present your case.** I am willing to extend the time for you and the Prosecution Team to present their cases to 90 minutes each. In addition to your 90 minutes, you will have time to respond to Water Board member questions; none of that time for responses to Water Board member questions counts against your allotted time. With Water Board questions, I anticipate that this hearing would likely last about 4 hours, and from our experience that is sufficient for parties to present their case. Although the Administrative Civil Liability Complaint is roughly 50 pages and the proposed liability amount may be substantial, the factual and legal issues are not any more complex than what the Water Board generally handles during hearings. Nonetheless, if you would like to present to me additional information of why you believe that the issues and facts of this case necessitate six times the amount of time usually allocated to a party, I am willing to consider that information.

Please note that the structure of an administrative hearing is much different than a courtroom trial, and in general is much less time-intensive. Unlike a court hearing where you are limited to direct or cross-examination, here your witnesses are able to directly address the Water Board. Similarly, because you submit all of your evidence in advance of the hearing, and because the Water Board is somewhat familiar with the arguments and the evidence by the time of the hearing, the parties generally use the hearing to summarize their arguments, as opposed to walking through their case and submitting each piece of evidence. Similarly, evidentiary objections should be handled in advance of the hearing. I am hoping that with this better understanding of the Water Board administrative hearings, you will agree that six hours to put on your hearing is unnecessary. If at the hearing you run out of time, you could request the Board Chair for additional time.

As to your second and third objections, **I am denying that request for additional time to prepare your case and a later hearing date.** You reference having only “a mere three weeks” to prepare, which is inconsistent with the hearing procedures. Currently, you are not required to submit evidence, including all of your legal and technical arguments or analysis, until December 21, which is five weeks away. Although you will not obtain the Prosecution Team’s evidence until December 3, you already have the basis of their complaint – all of their technical and legal arguments. The only thing that you do not have are some of the specific documents referenced. It is very likely, however, that your client already has much of this same information. Five weeks to prepare your case for the Board is sufficient.

As to your fourth objection, **I am clarifying that 648.5 and 648.5.1 apply to the hearing.** Section 648.5 sets out the order of proceeding that will generally be followed, and allows cross-examination, and section 648.5.1 specifies that the proceeding will be conducted in accordance with the provisions and rules set forth in Government Code 11513, and allows hearsay evidence subject to that provision. **I am denying your request for the inclusion of sections 648(b).** I am not clear what you are asking for. If there are requirements and processes that you want to request be included as part of the hearing procedures, I will consider your specific requests.

As to your fifth objection, **you do have the ability to request the Board to issue a subpoena or subpoenas *duces tecum* for attendance at a proceeding and for production of documents, or you may, as the attorney of record for a party, issue the subpoena.** Pursuant to section 11450.40, your client would be responsible for mileage and fees.

As to your sixth objection, **to the extent that you are requesting that this dispute be sent to ADR at this time, I am denying that request.** If, however, you believe that settlement is possible, I encourage you to contact the Prosecution Team and engage in settlement negotiations. If settlement is not possible, then the Water Board intends to hear this matter at its January Board meeting. I would consider future request for ADR if you are able to identify specific reasons why ADR would be more appropriate for this particular dispute.



PATTY Z. KOUYOUMDJIAN
Executive Officer

c/ec: Kimberly Niemeyer, Staff Counsel, State Water Resources Control Board
Lauri Kemper, AEO, Lahontan Regional Water Quality Control Board
Anna Kathryn Benedict, Staff Counsel, State Water Resources Control Board
Bill Moller, Arimol Group, Inc.
Interested Persons

Enclosure (3): Arimol’s Objections to Hearing Procedures
Arimol’s Request for Pre-Hearing Conference
Arimol’s Request for ADR or Settlement Conference

STEPHEN MONTELEONE
(1886-1962)

MONTELEONE & McCRORY, LLP

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(714) 565-3184

Scott R. Lane, Esq.

November 21, 2012

OUR FILE NUMBER
16670

Via Email

Patty Kouyoumdjian
Executive Officer
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Lahontan Region
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South Lake Tahoe, CA 96150
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Office of Chief Counsel
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Fax (916) 341-5199

**RE: In the Matter of Arimol Group, Inc., San Bernardino County
WDID Nos. 6B36CN601729 and 6B36C363433
Administrative Civil Liability Complaint No. R6V-2012-00049**

SUPPLEMENTAL OBJECTIONS TO HEARING PROCEDURES

TO THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION:

ARIMOL GROUP, INC. hereby further objects to the Hearing Procedures, dated November 6, 2012, based on new information received since the submission of its original objections:

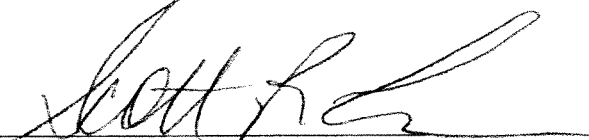
1. On November 7, 2012, ARIMOL GROUP, INC. sent Public Records Act requests seeking document pertinent to its defense in this matter. Per the Hearing Procedures, on November 15, 2012, ARIMOL GROUP submitted its Objections to Hearing Procedures. Thereafter, on November 16, 2012, the Water Board informed it would not be able to make requested documents available until

Arimol's Objections to Hearing Procedures
Page 2 of 2

December 7, 2012 for, among other reasons, vacations of Water Board personnel. On November 20, 2012, Executive Officer Kouyoumdjian responded to ARIMOL GROUP's objections, denying any extension of time for the December 21, 2012 deadline or the hearing date. The delayed responsiveness to the Public Records Act request heightens the burdens on ARIMOL GROUP and negatively affects the time ARIMOL GROUP has to defend itself. ARIMOL GROUP objects to the December 21, 2012 deadline (requesting it be extended to a date in January) and objects to the hearing dates in January, 2013 on the grounds that failure to do will violate ARIMOL GROUP rights to due process.

Respectfully submitted,

MONTELEONE & McCRORY, LLP

By: 

SCOTT R. LANE

Attorneys for Arimol Group, Inc.

SRL:hn

Copy:

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Assistant Executive Officer
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Lahontan Regional Water Quality Control Board

November 27, 2012

Scott R. Lane, Esq.
Monteleone & McCrory, LLP
725 South Figueroa Street, Suite 3200
Los Angeles, CA 90017-5446

Dear Mr. Lane:

The Advisory Team has reviewed your letter of November 21, 2012, identifying supplemental objections to the hearing procedures. The "new information" that you submit as basis for renewing your objection is that the Water Board has indicated that it cannot fully respond to your Public Records Act (PRA) request until December 7, 2012. I do not believe that this December 7 date for the material you requested in your PRA in any way prejudices your ability to provide a defense for your client nor violates your client's due process rights. According to the hearing procedures sent out previously, the Prosecution Team was already under obligation to provide to you their evidence to support the allegations in their October 26, 2012 complaint by December 3, 2012. As previously described, we believe that this is sufficient time in which to prepare your defense, particularly because the complaint issued to your client October 26, 2012 contains all of the basis for the civil liability. In addition, many of the documents identified as the Prosecution Team's basis for the complaint are available online, if your client does not already have copies of them.



PATTY Z. KOUYOUMDJIAN
Executive Officer

c/ec: Kimberly Niemeyer, Staff Counsel, State Water Resources Control Board
Lauri Kemper, AEO, Lahontan Regional Water Quality Control Board
Anna Kathryn Benedict, Staff Counsel, State Water Resources Control Board
Bill Moller, Arimol Group, Inc.
Interested Persons

Enclosure: Arimol's Supplemental Objections to Hearing Procedures

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Scott R. Lane, Esq.

December 20, 2012

OUR FILE NUMBER
16670

Via Email

Patty Kouyoumdjian
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**RE: In the Matter of Arimol Group, Inc., San Bernardino County
WDID Nos. 6B36CN601729 and 6B36C363433
Administrative Civil Liability Complaint No. R6V-2012-00049**

**WRITTEN EVIDENTIARY OBJECTIONS TO EVIDENCE
AND PROPOSED WITNESS TESTIMONY SUBMITTED BY THE
PROSECUTION TEAM
(HEARING PROCEDURES, PG. 1, ITEM D.4.)**

TO THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION:

ARIMOL GROUP, INC. hereby submits its written evidentiary objections to evidence and
proposed witness testimony submitted by the prosecution team.

Arimol's Objections to Hearing Procedures
Page 2 of 3

1. The prosecution team failed to provide the qualifications of expert witnesses as required by the Hearing Procedures, pg. 5, paragraph 4 (at bottom of page). Accordingly, expert opinions should be prohibited by prosecution team witnesses.

2. The prosecution team failed to identify the estimated time required by each witness it identified as required by Hearing Procedures, pg. 5, paragraph 3 (at bottom of page).

3. The prosecution team's inclusion of exhibits by reference in Section V of its written submission fails to clearly identify the documents and their location in violation of Hearing Procedures, pg. 5, paragraph 1 (at bottom of the page) and fails to identify "the specific file folder or other exact location" where the exhibit can be found or the particular portions on which the prosecution team relies. (California Code of Regulations, title 23, Section 648.3).

4. The prosecution team's use of exhibits by reference also violates due process and is unfair and impermissible for the following reasons. When the prosecution team made its submission in late November, 2012, it knew that Arimol had submitted a Public Records Act request on November 7, 2012 – almost a full month earlier. (See attached). Yet, despite relying on these records in the prosecution team's written submission, the Water Board informed Arimol that it would not be able to produce records responsive to the Public Records Act Request until December 7, 2012. (See attached). Water Board staff did not produce any records or otherwise communicate with Arimol about their status by December 7, 2012. On December 17, 2012, Arimol inquired and Water Board staff (Anna-Kathryn Benedict) indicated they could not be made available until December 19, 2012 – 2 days before Arimol's written submissions were due on December 21, 2012. Arimol objects to any documentary evidence that was not attached to the prosecution team's written submission because the Water Board's conduct in delaying the production has prejudiced Arimol's ability to defend itself.

4. Separately, Arimol objects to proceeding with a hearing in January because its due process rights have been violated by the foregoing circumstances in that Arimol has been deprived of the right to review the evidence purportedly against it in time to make use of it effectively in Arimol's written submissions or at the hearing. Ms. Kouyoumdjian's November 27, 2012 letter indicated that the December 7, 2012 Public Records Act production date does not prejudice Arimol. (See Attached). However, that target date was not kept met by the Water Board staff. The December 19, 2012 production date does indeed prejudice Arimol and the objection is hereby renewed.

Respectfully submitted,

MONTELEONE & McCRORY, LLP

By: 

SCOTT R. LANE

Attorneys for Arimol Group, Inc.

SRL:hn

Arimol's Objections to Hearing Procedures
Page 3 of 3

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State Water Resources Control Board

December 26, 2012

VIA E-MAIL AND U.S. MAIL

Ms. Patty Kouyoumdjian
Executive Officer
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Ms. Kimberly Niemeyer
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State Water Resources Control Board
Office of Chief Counsel
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Kim.Niemeyer@waterboards.ca.gov

**RE: Administrative Civil Liability Complaint No. R6V-2012-0049,
Issued to Arimol Group, Inc.-Lake Arrowhead
RESPONSE TO ARIMOL GROUP, INC.'S EVIDENTIARY OBJECTIONS**

TO THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION:

The Prosecution Team hereby submits its response to Arimol Group, Inc.'s evidentiary objections to evidence and proposed witness testimony in the above-referenced matter.

1. The Prosecution Team has not designated any witness as an expert and therefore Arimol Group, Inc.'s objections are moot.
2. The Prosecution Team submits that the hearing guidelines and related rulings on Arimol Group, Inc.'s objections set forth that each side will be provided 1.5 hours for its presentation, including all witness testimony. The Prosecution Team has yet to finalize the time needed for each witness. At this time the Prosecution Team can only say that each witness will not exceed the time provided. The evidence material presented by the Prosecution Team provides information as to the material to be presented and the relevance of the witness testimony. The Prosecution Team submits that Arimol Group, Inc. has not been prejudiced by the Prosecution Team's omission. Of note, Arimol Group, Inc. did not identify the estimated time it requires

for its witnesses, presumably because like the Prosecution Team, it has yet to finalize the time needed for each witness.

3. The Prosecution Team has incorporated by reference the documents listed in Section V of its evidentiary packet. These documents were also identified and/or requested in Arimol Group, Inc.'s Public Records Act request. On November 21, 2012, in response to Arimol Group, Inc.'s Public Records Act request, staff counsel for the prosecution team informed Arimol Group, Inc. that these records were located in the South Lake Tahoe and Victorville Regional Board Offices. There are no specific file folders as there is only one "file" for the matter. Unlike civil litigation the files are not broken down by category, such as pleading, discovery, correspondence and/or legal research file. Therefore, the Prosecution Team has complied with the hearing procedures regarding inclusion of exhibits by reference.
4. Although Arimol Group, Inc. has already submitted this argument to the Board and received its response, the Prosecution Team will respond again.

At the outset it is important to note that the Prosecution Team believes Arimol Group, Inc. has all of the relevant documents in its possession, custody and/or control. Many of the categories of documents sought in the Public Records Act, attached to this correspondence, are either in Arimol Group's possession, generated by Arimol Group, Inc. or its consultants, or publically available to Arimol Group, Inc. This is supported by Arimol Group, Inc.'s submission of evidence.

The documents responsive to the Public Records Act Request were available for review on December 7, 2012. Arimol Group, Inc.'s contention that the Water Board's staff failed to meet its target date with respect to production is unfounded and untrue.

On November 16, 2012 counsel for the Regional Water Board sent a response to Arimol Group, Inc.'s Public Records Act Request. In its response, counsel stated that the documents would be compiled and a determination as to responsiveness would be made on December 7, 2012. In response to the November 21, 2012 letter and the hearing procedures, counsel for Arimol Group, Inc. wrote the board stating that the Regional Water Board had informed Arimol Group, Inc. it would not be able to make the requested documents available until December 7, 2012. This correspondence is attached to this correspondence. As such, counsel for Arimol Group, Inc. argued that it needed an extension of time for the submission of evidence or the hearing date. Arimol Group, Inc. argued that these records were crucial to its case.

Despite how crucial Arimol Group, Inc. claimed these documents were to its case, counsel for Arimol Group, Inc. waited until December 17, 2012 to contact the Water Board to discuss copying and/or inspection of the records. Given how important Arimol Group, Inc. claimed these documents were, it is a wonder why it waited until 10 days after the documents were available to set up a time for copying and inspection.

Therefore, any delay in Arimol Group, Inc.'s receipt of the file is the sole fault of Arimol Group, Inc. and as such should not result in additional time for the discharger. Such ruling might encourage this type of behavior as a strategy with respect to pushing back hearing dates and allowing a discharger additional time to present its case. The Regional Water Board staff has not engaged in any activity that has deprived Arimol Group, Inc. of its right to review evidence and submits that any prejudice Arimol Group, Inc. has been subjected to is of its own doing.

Sincerely,



Anna Kathryn Benedict
Senior Staff Counsel
Office of Enforcement

cc: Via email only

Lahontan Regional Water Quality Control Board

Mr. Chuck Curtis
CCurtis@waterboards.ca.gov

Mr. Scott Ferguson
SFerguson@waterboards.ca.gov

Ms. Lisa Scorallo
LScorallo@waterboards.ca.gov

Ms. Jan Zimmerman
JZimmerman@waterboards.ca.gov

Mr. Mike Plaziak
MPlaziak@waterboards.ca.gov

Ms. Patrice Copeland
PCopeland@waterboards.ca.gov

Scott R. Lane
lane@mmlawyers.com

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Scott R. Lane, Esq.

November 7, 2012

OUR FILE NUMBER

16670

Via Email and Federal Express

Regional Board Records Management Office
Attn: Kathy Minsky
California Regional Water Quality Control Board
Lahontan Region
2501 Lake Tahoe Boulevard
South Lake Tahoe, California 96150
SLT_Records@waterboards.ca.gov

6B36C363433

Regional Board Records Management Office
Attn: Robin Coale
California Regional Water Quality Control Board
Lahontan Region
14440 Civic Drive, Suite 200
Victorville, California 92392
VVL_Records@waterboards.ca.gov

RE: Public Records Act Request

To Whom It May Concern:

We represent Arimol Group, Inc. ("Arimol"). We submit this Public Records Act Request on behalf of Arimol.

As used herein, the term "WATER BOARD" refers to the California Regional Water Quality Control Board, Lahontan Region and any of its employees, representatives or consultants. In using the term WATER BOARD, we do not intend to limit that definition to the following persons, but we instead wish to emphasize the following persons so you do not omit them in your search for all applicable records: Jan Zimmerman, Patrice Copeland, Mike Plaziak, Lauri Kemper, Scott Ferguson, Chuck Curtis, Mary Dellavalle, and Lisa Scorallo.

Public Records Act Request
Page 2 of 4

As used herein the term PROPERTY refers to 1031 Meadowbrook Road, 995 Meadowbrook Road, 977 Meadowbrook Road, 986 Meadowbrook Road, and/or 974 Meadowbrook Road, Lake Arrowhead, California.

In this Public Records Act request, reference to any public agency or organizations includes entities' employees and representatives. The term "between" means to or from, whether the direct sender, direct recipient, or carbon copy recipient, and whether the sole recipient or one of many.

In requesting these records, Arimol is entitled to records in all formats and places, not merely those items which remain in existence on the personal computers of particular individuals.

Please produce the following records:

1. All internal written communications (including email and attachments) between or amongst any one or more WATER BOARD employee, representative or consultant related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
2. All written communications (including email and attachments) between the WATER BOARD and the California Department of Fish and Game related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
3. All written communications (including email and attachments) between the WATER BOARD and the County of San Bernardino, Land Use Services Department (email suffix @lus.sbcounty.gov) related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
4. All written communications (including email and attachments) between the WATER BOARD and the Crestline-Lake Arrowhead Water Agency related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012 (including but not limited to communications to or from the email addresses clawal@verizon.net or clawa2@verizon.net or the persons Jennifer Spindler, Roxanne Holmes, or Bruce Risher.)
5. All written communications (including email and attachments) between the WATER BOARD and Albert A. Webb Associates (email suffix @webbassociates.com) related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.

6. All written communications (including email and attachments) between the WATER BOARD and US Army Corp of Engineers (including but not limited to Shannlon L. Pankratz related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
7. All written communications (including email and attachments) between the WATER BOARD and Kadtec (including but not limited bryant2662@yahoo.com) related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
8. All written communications (including email and attachments) between the WATER BOARD and Arimol and/or Bill Moller (mollacorp@aol.com, mollabolla@yahoo.com,) related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
9. All written communications (including email and attachments) between the WATER BOARD and the State Water Resources Control Board related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
10. All written communications (including email and attachments) between the WATER BOARD and any media organization, newspaper or news reporter related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
11. Any and all records of meetings, meeting minutes or notes taken during meetings related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
12. Any and all records of telephone conversations or notes taken during telephone conversations related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
13. Any and all internal WATER BOARD reports or summaries of findings, conclusions, recommendations or occurrences related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.
14. All written communications (including email and attachments) between the WATER BOARD and any individual or organization opposing or purporting to oppose Serenity Lodge or any other existing or prospective sober living home or alcohol / drug treatment facility in Lake Arrowhead related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.

Public Records Act Request
Page 4 of 4

15. All written communications (including email and attachments) to or from the WATER BOARD related to the PROPERTY or Arimol between September 1, 2011 and October 25, 2012.

If you have any questions or concerns, please do not hesitate to contact the undersigned. It is our intention to be flexible in the means and method of producing these records to eliminate any unnecessary time and costs for the public agency or Arimol. For example, electronic copies of email in their native format, so long as accessible to the requester, are acceptable and preferred. We look forward to discussing the most effective means of receiving a *timely* production of these records.

Very truly yours,

MONTELEONE & McCRORY, LLP

By:


SCOTT R. LANE

SRL:hn

Coale, Robin@Waterboards

From: Scott Lane <lane@mmlawyers.com>
Sent: Wednesday, November 07, 2012 4:43 PM
To: Minsky, Kathy@Waterboards; Coale, Robin@Waterboards
Subject: Arimol Group Inc. Public Records Act Request
Attachments: Arimol Group Inc. Public Records Act Request.pdf

Dear Ms. Coale, Ms. Minsky or whomever else it may concern:

Attached please find a Public Records Act Request on Behalf of Arimol Group Inc.

Scott R. Lane
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(213) 612-9930fax
lane@mmlawyers.com



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

November 21, 2012

VIA EMAIL AND U.S. MAIL

Mr. Scott R. Lane
Monteleone & McCrory, LLP
725 South Figueroa Street, Suite 3200
Los Angeles, California 90017-5446
lane@mmlawyers.com

RE: PUBLIC RECORDS ACT REQUEST REGARDING ARIMOL GROUP, INC.

Dear Mr. Lane:

This letter is in response to your above-referenced Public Records Act request dated November 7, 2012. You have requested a substantial amount of documents, many of which are more easily and readily accessible by your client. I would ask that we set a time to meet and confer regarding your request so as to more efficiently provide you the requested documents.

Staff has determined that the Lahontan Regional Water Quality Control Board (Regional Water Board) has records that are responsive to your request. The Regional Water Board intends to provide you all records in its possession responsive to your request that are not exempt from disclosure under the Public Records Act. Regional Water Board staff is proceeding diligently to respond to your request, but this process will take some time because of the need for Regional Water Board staff to review the records to determine which are responsive and which may be exempt. It is anticipated that a portion of the documents which you are requesting will be exempt from disclosure pursuant to one or more of the following exemptions to the Public Records Act:

Attorney-Client Privilege

Public Records Act section 6254, subdivision (k), incorporates confidentiality privileges set forth elsewhere in the law. The attorney-client privilege is contained in Evidence Code section 954 and protects confidential communications between the attorney and the client. In *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, the California Supreme Court held that section 6254, subdivision (k), expressly exempts from disclosure matters privileged under the Evidence Code, which includes the attorney-client privilege.

Attorney Work Product

Code of Civil Procedure section 2018.030 exempts from disclosure the work product of an attorney. The attorney work product exception exempts from disclosure any writing that reflects an attorney's impressions, conclusions, opinion, legal research, or legal theories that are maintained as confidential. It also is incorporated into the Public Records Act by section 6254, subdivision (k). (*County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 833.)

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Investigative Records

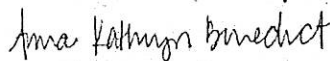
Government Code section 6254, subdivision (f), expressly exempts "records of compliant to, or investigation conducted by, or records of intelligence information . . . or investigatory or security files compiled by . . . state or local agency for . . . law enforcement, or licensing purposes." In the case of *Dick Williams v. Superior Court* (1993) 5 Cal.4th 337, the California Supreme Court ruled that investigation documents do not lose their exempt status due to a failure to prosecute, or the close of an investigation.

Deliberative Process Privilege

Section 6254, subdivision (a), of the California Public Records Act exempts documents from disclosure when such documents would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.

The timing of your request is such that some staff who manage the potentially responsive documents are out of the office due to the holidays. In addition, the documents are kept, in the ordinary course of business, at both the South Lake Tahoe and Victorville Regional Water Board offices. Staff estimates that it can have the documents compiled and make a determination concerning which of its responsive records are disclosable by December 7, 2012. The Regional Water Board charges \$0.10/page to copy records in response to public records act requests. However, given the large quantity of documents, we would ask that you facilitate copying/scanning the documents yourself or through a service.

Sincerely,



Anna Kathryn Benedict
Senior Staff Counsel
Office of Enforcement

cc: (Via email only)

Lahontan Regional Water Quality Control Board

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any investigation and the Office of Enforcement will seek input from the Regional Water Board enforcement staff in the development of any resulting enforcement action. Such action may be brought before the State Water Board or the Regional Water Board, as may be deemed appropriate for the particular action. The decision as to where to bring the enforcement action will be discussed with the affected Regional Water Board enforcement staff. Enforcement actions requiring compliance monitoring or long-term regulatory follow-up will generally be brought before the appropriate Regional Water Board.

V. COORDINATION WITH OTHER REGULATORY AGENCIES

A. Hazardous Waste Facilities

At hazardous waste facilities where the Regional Water Board is the lead agency for corrective action oversight, the Regional Water Board shall consult with Department of Toxics Substance Control (DTSC) to ensure, among other things, that corrective action is at least equivalent to the requirements of the Federal Resource, Conservation, and Recovery Act (RCRA).

B. Oil Spills

The Water Boards will consult and cooperate with the Office of Spill Prevention and Response at the Department of Fish and Game (OSPR) for any oil spill involving waters under the jurisdiction of OSPR.

C. General

The Water Boards will work cooperatively with other local, state, regional, and federal agencies when violations, for which the agency itself is not responsible, occur on lands owned or managed by the agency. Where appropriate, the Water Boards will also coordinate enforcement actions with other agencies that have concurrent enforcement authority.

VI. MONETARY ASSESSMENTS IN ADMINISTRATIVE CIVIL LIABILITY (ACL) ACTIONS

A. Penalty Calculation Methodology

As a general matter, where, as in the California Water Code, a civil penalty structure has been devised to address environmental violations, civil penalties do not depend on proof of actual damages to the environment. Courts in reviewing similar environmental protection statutes have held that a plaintiff need not prove a loss before recovering a penalty; instead, the defendant must demonstrate that the penalty should be less than the statutory maximum. In certain cases, a strong argument can be made that consideration of the statutory factors can support the statutory maximum as an appropriate penalty for water quality violations, in the absence of any other mitigating evidence. Moreover, as discussed below, the Porter-Cologne Act requires that certain civil liabilities be set at a level that accounts for any "economic benefit or savings" violators gained through their violations. (Wat. Code, § 13385, subd. (e).) Economic benefit or savings is a factor to be considered in determining the amount of other civil liabilities. (Wat. Code, § 13327.) The Water Boards have powerful liability provisions at their disposal which the Legislature and the public expect them to fairly and consistently implement for maximum enforcement impact to address, correct, and deter water quality violations.

While it is a goal of this Policy to establish broad consistency in the Water Boards' approach to enforcement, the Policy recognizes that, with respect to liability determinations, each Regional Water Board, and each specific case, is somewhat unique. The goal of this section is to provide a consistent approach and analysis of factors to determine administrative civil liability. Where violations are standard and routine, a consistent outcome can be reasonably expected using this Policy. In more complex matters, however, the need to assess all of the applicable factors in liability determinations may yield different outcomes in cases that may have many similar facts.

Liabilities imposed by the Water Boards are an important part of the Water Boards' enforcement authority. Accordingly, any assessment of administrative civil liability, whether negotiated pursuant to a settlement agreement or imposed after an administrative adjudication, should:

- Be assessed in a fair and consistent manner;
- Fully eliminate any economic advantage obtained from noncompliance;¹
- Fully eliminate any unfair competitive advantage obtained from noncompliance;
- Bear a reasonable relationship to the gravity of the violation and the harm to beneficial uses or regulatory program resulting from the violation;
- Deter the specific person(s) identified in the ACL from committing further violations; and
- Deter similarly situated person(s) in the regulated community from committing the same or similar violations.

The liability calculation process set forth in this chapter provides the decision-maker with a methodology for arriving at a liability amount consistent with these objectives. This process is applicable to determining administratively-adjudicated assessments as well as those obtained through settlement. In reviewing a petition challenging the use of this methodology by a Regional Water Board, the State Water Board will generally defer to the decisions made by the Regional Water Boards in calculating the liability amount unless it is demonstrated that the Regional Water Board made a clear factual mistake or error of law, or that it abused its discretion.

The following provisions apply to all discretionary administrative civil liabilities (ACLs). Mandatory Minimum Penalties (MMPs) required pursuant to California Water Code section 13385, subdivisions (h) and (i), are discussed in Chapter VII.

General Approach

A brief summary of each step is provided immediately below. A more complete discussion of each step is presented later in this section.

Step 1. *Potential for Harm for Discharge Violations* – Calculate Potential for Harm considering: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement.

¹ When liability is imposed under California Water Code § 13385, Water Boards are statutorily obligated to recover, at a minimum, all economic benefit to the violator as a result of the violation.

Step 2. *Per Gallon and Per Day Assessments for Discharge Violations* – For discharges resulting in violations, use Table 1 and/or Table 2 to determine Per Gallon and/or Per Day Assessments. Depending on the particular language of the ACL statute being used, either or both tables may be used. Multiply these factors by per gallon and/or per day amounts as described below. Where allowed by code, both amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

Step 3. *Per Day Assessments for non-Discharge Violations* – For non-discharge violations, use Table 3 to determine per day assessments. Multiply these factors by the per day amount as described below. Where allowed by the California Water Code, amounts for these violations should be added to amounts (if any) for discharge violations from Step 2, above. This becomes the initial amount of the ACL for the non-discharge violations.

Step 4. *Adjustment Factors* – Adjust the initial amounts for each violation by factors addressing the violator's conduct, multiple instances of the same violation, and multiple day violations.

Step 5. *Total Base Liability Amount* – Add the adjusted amounts for each violation from Step 4.

Thereafter, the Total Base Liability amount may be adjusted, based on consideration of the following:

Step 6. *Ability to Pay and Ability to Continue in Business* – If the ACL exceeds these amounts, it may be adjusted downward provided express findings are made to justify this.

Step 7. *Other Factors as Justice May Require* – Determine if there are additional factors that should be considered that would justify an increase or a reduction in the Total Base Liability amount. These factors must be documented in the ACL Complaint. One of these factors is the staff costs of investigating the violations and issuing the ACL. The staff costs should be added to the amount of the ACL.

Step 8. *Economic Benefit* – The economic benefit of the violations must be determined based on the best available information, and the amount of the ACL should exceed this amount. (Note that the Economic Benefit is a statutory minimum for ACLs issued pursuant to California Water Code section 13385.)

Step 9. *Maximum and Minimum Liability Amounts* - Determine the statutory maximum and minimum amounts of the ACL, if any. Adjust the ACL to ensure it is within these limits.

Step 10. *Final Liability Amount* – The final liability amount will be assessed after consideration of the above factors. The final liability amount and significant considerations regarding the liability amount must be discussed in the ACL Complaint and in any order imposing liability.

STEP 1 - Potential for Harm for Discharge Violations

Calculating this factor is the initial step for discharge violations. Begin by determining the actual or threatened impact to beneficial uses caused by the violation using a three-factor scoring

system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the discharge's susceptibility to cleanup or abatement for each violation or group of violations.

Factor 1: Harm or Potential Harm to Beneficial Uses

The evaluation of the potential harm to beneficial uses factor considers the harm that may result from exposure to the pollutants or contaminants in the illegal discharge, in light of the statutory factors of the nature, circumstances, extent and gravity of the violation or violations. The score evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

0 = Negligible - no actual or potential harm to beneficial uses.

1 = Minor - low threat to beneficial uses (i.e., no observed impacts but potential impacts to beneficial uses with no appreciable harm).

2 = Below moderate – less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).

3 = Moderate - moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects).

4 = 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 5 days), and human or ecological health concerns).

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

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

The characteristics of this discharge factor are scored based on the physical, chemical, biological, and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material, as outlined below. For purposes of this Policy, “potential receptors” are those identified considering human, environmental and ecosystem health exposure pathways.

0 = Discharged material poses a negligible risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are benign and will not impact potential receptors).

1 = Discharged material poses only minor risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material are relatively benign or are not likely to harm potential receptors).

- 2 = Discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).
- 3 = Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and /or there is substantial concern regarding receptor protection).
- 4 = 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).

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the violator.

Final Score – “Potential for Harm”

The scores for the factors are then added to provide a Potential for Harm score for each violation or group of violations. The total score is used in the “Potential for Harm” axis for the Penalty Factor in Tables 1 and 2. The maximum score is 10 and the minimum score is 0.

STEP 2 - Assessments for Discharge Violations

For violations of NPDES permit effluent limitations, the base liability should be established by calculating the mandatory penalty required under Water Code section 13385(h) and (i). The mandatory penalty should be adjusted upward where the facts and circumstances of the violation warrant a higher liability.

This step addresses per gallon and per day assessments for discharge violations. Generally, it is intended that effluent limit violations be addressed on a per day basis only. Where deemed appropriate, such as for a large scale spill or release, both per gallon and per day assessments may be considered.

Per Gallon Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 1 below to determine a Per Gallon Factor for the discharge. Except for certain high-volume discharges discussed below, the per gallon assessment would then be the Per Gallon Factor multiplied by the number of gallons subject to penalty multiplied by the maximum per gallon penalty amount allowed under the California Water Code.

TABLE 1 - Per Gallon Factor for Discharges

	Potential for Harm									
Deviation from Requirement	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, construction deadline, etc.) that was violated. The categories for **Deviation from Requirement** in Table 1 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

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

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of its adverse impact on the effectiveness of the most significant requirement.

High Volume Discharges

The Water Boards shall apply the above per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved. Since the volume of sewage spills and releases of stormwater from construction sites and municipalities can be very large for sewage spills and releases of municipal stormwater or stormwater from construction sites, a maximum amount of \$2.00 per gallon should be used with the above factor to determine the per gallon amount for sewage spills and stormwater. Similarly, for releases of recycled water that has been treated for reuse, a maximum amount of \$1.00 per gallon should be used with the above factor. Where reducing these maximum amounts results in an inappropriately small penalty, such as dry weather discharges or small volume discharges that impact beneficial uses, a higher amount, up to the maximum per gallon amount, may be used.

Per Day Assessments for Discharge Violations

Where there is a discharge, the Water Boards shall determine an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement of the violation. These factors will be used in Table 2, below, to determine a Per Day Factor for the violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. Generally, it is intended that effluent limit violations be addressed on a per day basis. Where deemed appropriate, such

as for a large scale spill or release, it is intended that Table 2 be used in conjunction with Table 1, so that both per gallon and per day amounts be considered under Water Code section 13385. Where there is a violation of the permit not related to a discharge incident, Step 3/Table 3 below should be used instead.

TABLE 2 - Per Day Factor for Discharges										
	Potential for Harm									
Deviation from Requirement	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.150	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

The categories for **Deviation from Requirement** in Table 2 are defined as follows:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

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

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

The Water Boards shall apply the above per day factor to the maximum per day amounts allowed under statute for the violations involved. Where allowed by code, both the per gallon and the per day amounts should be determined and added together. This becomes the initial amount of the ACL for the discharge violations.

STEP 3 - Per Day Assessments for Non-Discharge Violations

The Water Boards shall calculate an initial liability factor for each non-discharge violation, considering Potential for Harm and the extent of deviation from applicable requirements. These violations include, but are not limited to, the failure to conduct routine monitoring and reporting, the failure to provide required information, and the failure to prepare required plans. While these violations may not directly or immediately impact beneficial uses, they harm or undermine the regulatory program. The Water Boards shall use the matrix set forth below to determine the initial liability factor for each violation. The per day assessment would then be the Per Day Factor multiplied by the maximum per day amount allowed under the California Water Code. For multiple day violations, please refer to the Adjustment Factors in Step 4, below.

Table 3 shall be used to determine the initial penalty factor for a violation. The Water Boards should select a penalty factor from the range provided in the matrix cell that corresponds to the appropriate Potential for Harm and the Deviation from Requirement categories. The numbers in parenthesis in each cell of the matrix are the midpoints of the range.

TABLE 3 - Per Day Factor

Deviation from Requirement	Potential for Harm		
	Minor	Moderate	Major
Minor	0.1	0.2	0.3
	(0.15)	(0.25)	(0.35)
	0.2	0.3	0.4
Moderate	0.2	0.3	0.4
	(0.25)	(0.35)	(0.55)
	0.3	0.4	0.7
Major	0.3	0.4	0.7
	(0.35)	(0.55)	(0.85)
	0.4	0.7	1

The categories for **Potential for Harm** in Table 3 are:

Minor – The characteristics of the violation present a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.

Moderate – The characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.

Major – The characteristics of the violation present a particularly egregious threat to beneficial uses, and/or the circumstances of the violation indicate a very high potential for harm. Additionally, non-discharge violations involving particularly sensitive habitats should be considered major.

The categories for **Deviation from Requirement** in Table 3 are:

Minor – The intended effectiveness of the requirement remains generally intact (e.g., while the requirement was not met, there is general intent by the discharger to follow the requirement).

Moderate – The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).

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

For requirements with more than one part, the Water Boards shall consider the extent of the violation in terms of the adverse impact on the effectiveness of the most significant requirement.

For any given requirement, the Deviation from Requirements may vary. For example, if a facility does not have a required response plan or has not submitted a required monitoring report, the deviation would be major. If a facility has a prepared a required plan or submitted the required monitoring report, but significant elements are omitted or missing, the deviation would be moderate. If a facility has a required plan or submitted the required monitoring report with only minor elements missing, the deviation would be minor.

STEP 4 – Adjustment Factors

Violator's Conduct Factors

There are three additional factors that should be considered for modification of the amount of the initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. Not all factors will apply in every liability assessment.

TABLE 4 – Violator's Conduct Factors

Factor	Adjustment
Culpability	Discharger's degree of culpability regarding the violation. Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations. A first step is to identify any performance standards (or, in their absence, prevailing industry practices) in the context of the violation. The test is what a reasonable and prudent person would have done or not done under similar circumstances. Adjustment should result in a multiplier between 0.5 to 1.5 , with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior.
Cleanup and Cooperation	Extent to which the discharger voluntarily cooperated in returning to compliance and correcting environmental damage, including any voluntary cleanup efforts undertaken. Adjustment should result in a multiplier between 0.75 to 1.5 , with the lower multiplier where there is a high degree of cleanup and cooperation, and higher multiplier where this is absent.
History of Violations	Prior history of violations. Where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this.

After each of the above 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.

Multiple Violations Resulting From the Same Incident

By statute, certain situations that involve multiple violations are treated as a single violation per day, such as a single operational upset that leads to simultaneous violations of more than one pollutant parameter. (Water Code § 13385, sub. (f)(1).) For situations not addressed by statute, a single base liability amount can also be assessed for multiple violations at the discretion of the Water Boards, under the following circumstances:

- a. The facility has violated the same requirement at one or more locations within the facility;
- b. A single operational upset where violations occur on multiple days;
- c. The violation continues for more than one day;

- d. When violations are not independent of one another or are not substantially distinguishable. For such violations, the Water Boards may consider the extent of the violation in terms of the most egregious violation;
- e. A single act may violate multiple requirements, and therefore constitute multiple violations. For example, a construction dewatering discharge to a dewatering basin located on a gravel bar next to stream may violate a requirement that mandates the use of best management practices (BMPs) for sediment and turbidity control, a requirement prohibiting the discharge of soil silt or other organic matter to waters of the State, and a requirement that temporary sedimentation basins be located at least 100 feet from a stream channel. Such an act would constitute three distinct violations that may be addressed with a single base liability amount.

If the violations do not fit the above categories, each instance of the same violation shall be calculated as a separate violation.

Except where statutorily required, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Multiple Day Violations

For violations that are assessed a civil liability on a per day basis, the initial liability amount should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. For these cases, the Water Board must make express findings that the violation:

- a. Is not causing daily detrimental impacts to the environment or the regulatory program;
- b. Results in no economic benefit from the illegal conduct that can be measured on a daily basis; or,
- c. Occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

If one of the above findings is made, an alternate approach to penalty calculation for multiple day violations may be used. In these cases, the liability shall not be less than an amount that is calculated based on an assessment of the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation. For example, a violation lasting sixty-two (62) days would accrue a total of 8 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, and 60. Similarly, a violation lasting ninety-nine (99) days would accrue a total of 9 day's worth of violations, based on a per day assessment for day 1, 5, 10, 15, 20, 25, 30, 60, and 90.

STEP 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount will be determined by adding the amounts above for each violation, though this may be adjusted for multiple day violations as noted above. Depending on the statute controlling the liability assessment for a violation, the liability can be assessed as either a per day penalty, a per gallon penalty, or both.

STEP 6 – Ability to Pay and Ability to Continue in Business

If the Water Boards have sufficient financial information necessary 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, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

The ability of a discharger to pay an ACL is determined by its revenues and assets. In most cases, it is in the public interest for the discharger to continue in business and bring its operations into compliance. If there is strong evidence that an ACL would result in widespread hardship to the service population or undue hardship to the discharger, the amount of the assessment may be reduced on the grounds of ability to pay. For a violation addressed pursuant to California Water Code section 13385, the adjustment for ability to pay and ability to continue in business can not reduce the liability to less than the economic benefit amount.

If staff anticipates that the discharger's ability to pay or ability to continue in business will be a contested issue in the proceeding, staff should conduct a simple preliminary asset search prior to issuing the ACL complaint. Staff should submit a summary of the results (typically as a finding in the Complaint or as part of staff's initial transmittal of evidence to the discharger), in order to put some evidence about these factors into the record for the proceeding and to give the discharger an opportunity to submit additional financial evidence if it chooses. If staff does not put any financial evidence into the record initially and the discharger later contests the issue, staff may then either choose to rebut any financial evidence submitted by the discharger, or submit some financial evidence and provide an opportunity for the discharger to submit its own rebuttal evidence. In some cases, this may necessitate a continuance of the proceeding to provide the discharger with a reasonable opportunity to rebut the staff's evidence. As a general practice, in order to maintain the transparency and legitimacy of the Water Boards' enforcement programs, any financial evidence that the discharger chooses to submit in an enforcement proceeding will generally be treated as a public record.

STEP 7 – Other Factors As Justice May Require

If the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this. Examples of circumstances warranting an adjustment under this step are:

- a. The discharger has provided, or Water Board staff has identified, other pertinent information not previously considered that indicates a higher or lower amount is justified.
- b. A consideration of issues of environmental justice indicates that the amount would have a disproportionate impact on a particular disadvantaged group.
- c. The calculated amount is entirely disproportionate to assessments for similar conduct made in the recent past using the same Enforcement Policy.

Costs of Investigation and Enforcement Adjustment

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. These costs may include the cost of investigating the violation, preparing the enforcement action, participating in settlement negotiations, and putting on a hearing, including any expert witness expenses. Such costs are the total costs incurred by

the Water Boards enforcement or prosecution staff, including legal costs that are reasonably attributable to the enforcement action. Costs include the total financial impact on the staff of the Water Board, not just wages, and should include benefits and other indirect overhead costs.

STEP 8 – Economic Benefit

The Economic Benefit Amount shall be estimated for every violation. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. In cases where the violation occurred because the discharger postponed improvements to a treatment system, failed to implement adequate control measures (such as BMPs), or did not take other measures needed to prevent the violations, the economic benefit may be substantial. Economic benefit should be calculated as follows:

- a. Determine those actions required to comply with a permit or order of the Water Boards, an enforcement order, or an approved facility plan, or that were necessary in the exercise of reasonable care, to prevent a violation of the Water Code. Needed actions may have been such things as capital improvements to the discharger's treatment system, implementation of adequate BMPs, or the introduction of procedures to improve management of the treatment system.
- b. Determine when and/or how often these actions should have been taken as specified in the order or approved facility plan, or as necessary to exercise reasonable care, in order to prevent the violation.
- c. Estimate the type and cost of these actions. There are two types of costs that should be considered; delayed costs and avoided costs. Delayed costs include expenditures that should have been made sooner (e.g., for capital improvements such as plant upgrades and collection system improvements, training, development of procedures and practices) but that the discharger is still obligated to perform. Avoided costs include expenditures for equipment or services that the discharger should have incurred to avoid the incident of noncompliance, but that are no longer required. Avoided costs also include ongoing costs such as needed additional staffing from the time determined under step "b" to the present, treatment or disposal costs for waste that cannot be cleaned up, and the cost of effective erosion control measures that were not implemented as required.
- d. Calculate the present value of the economic benefit. The economic benefit is equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of noncompliance. This calculation should be done using the USEPA's BEN ²computer program (the most recent

² 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 derives these values by discounting the annual cash flows at an
(Continued)

version is accessible at <http://www.waterboards.ca.gov/plnspols/docs/wqplans/benmanual.pdf>) unless the Water Board determines, or the discharger demonstrates to the satisfaction of the Water Board, that, based on case-specific factors, an alternate method is more appropriate for a particular situation. However, in more complex cases, such as where the economic benefit may include revenues from continuing production when equipment used to treat discharges should have been shut down for repair or replacement, the total economic benefit should be determined by experts available from the Office of Research Planning and Performance or outside experts retained by the enforcement staff.

- e. Determine whether the discharger has gained any other economic benefits. These may include income from continuing production when equipment used to treat discharges should have been shut down for repair or replacement.

The Water Boards should not adjust the economic benefit for expenditures by the discharger to abate the effects of the unauthorized conduct or discharge, or the costs to come into or return to compliance. In fact, the costs of abatement may be a factor that demonstrates the economic extent of the harm from the violation and, therefore, may be a factor in upwardly adjusting any monetary liability as a benefit from noncompliance. The discharger's conduct relating to abatement is appropriately considered under "cleanup and cooperation" liability factor.

The Economic Benefit Amount should be compared to the adjusted Total Base Liability Amount. The adjusted Total Base Liability Amount 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.

STEP 9 – Maximum and Minimum Liability Amounts

For all violations, the statute sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. The maximum and minimum amounts for each violation must be determined for comparison to the amounts being proposed, and shall be described in any ACL complaint and in any order imposing liability. Where the amount proposed for a particular violation exceeds the statutory maximum, the amount must be reduced to that maximum. Similarly, the minimum statutory amount may require raising the amount being proposed unless there is a specific provision that allows assessment below the minimum. In such cases, the reasons for assigning a liability amount below this minimum must be documented in the resolution adopting the ACL.

STEP 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

The administrative record must reflect how the Water Board arrived at the final liability amount. In particular, where adjustments are made to the initial amount proposed in the ACL complaint, the record should clearly reflect the Water Board's considerations, as the staff report or complaint may not reflect those considerations, or for any adjustments that are made at hearing

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 penalty payment date at the same cost of capital to determine the final economic benefit of noncompliance.

that are different from those recommended in the ACL complaint or that further support the final liability amount in the administrative civil liability order.

B. Settlement Considerations

The liabilities resulting from the above methodology are for adoption by the Water Boards after formal administrative proceedings. The calculated liabilities may be adjusted as a result of settlement negotiations with a violator. It is not the goal of the Enforcement Policy to address the full range of considerations that should be entertained as part of a settlement. It is appropriate to adjust the administrative civil liabilities calculated pursuant to the methodology in consideration of hearing and/or litigation risks including: equitable factors, mitigating circumstances, evidentiary issues, or other weaknesses in the enforcement action that the prosecution reasonably believes may adversely affect the team's ability to obtain the calculated liability from the administrative hearing body. Ordinarily, these factors will not be fully known until after the issuance of an administrative civil liability complaint or through pre-filing settlement negotiations with an alleged violator. These factors shall be generally identified in any settlement of an administrative civil liability that seeks approval by a Water Board or its designated representative.

Factors that should not affect the amount of the calculated civil liability sought from a violator in settlement include, but are not limited to, the following:

1. A general desire to avoid hearing or minimize enforcement costs;
2. A belief that members of a Water Board will not support a proposed liability before that Water Board has considered the specific merits of the enforcement case or a similar case;
3. A desire to avoid controversial matters;
4. The fact that the initiation of the enforcement action is not as timely as it might have been under ideal circumstances (timeliness of the action as it affects the ability to present evidence or other timeliness considerations are properly considered); or
5. The fact that a water body affected by the violation is already polluted or impaired.

Except as specifically addressed in this Policy, nothing in this Policy is intended to limit the use of Government Code 11415.60

C. Other Administrative Civil Liability Settlement Components

In addition to a reduction of administrative civil liabilities, a settlement can result in the permanent suspension of a portion of the liability in exchange for the performance of a Supplemental Environmental Project (see the State Water Board's Water Quality Control Policy on Supplemental Environmental Projects) or an Enhanced Compliance Action (see Section IX).

As far as the scope of the settlement is involved, the settlement resolves only the claims that are made or could have been made based on the specific facts alleged in the ACL complaint. A settlement shall never include the release of any unknown claims or a waiver of rights under Civil Code section 1542.

**California Regional Water Quality Control Board
Lahontan Region**

**HEARING PROCEDURES
CONSIDERATION OF ADOPTION OF AN
ADMINISTRATIVE CIVIL LIABILITY ORDER
TO**

**ARIMOL GROUP, INC.
LAKE ARROWHEAD, SAN BERNARDINO COUNTY**

HEARING SCHEDULED FOR JANUARY 16-17, 2013

IMPORTANT

Please read these hearing procedures carefully. Failure to comply with the deadlines and other requirements contained herein may result in the exclusion of your documents and/or testimony.

- A. The California Regional Water Quality Control Board, Lahontan Region (Water Board) must receive the following information no later than 5:00 p.m. on Friday, **November 16, 2012**:
 - 1. Written requests from persons requesting designated party status.
 - 2. Written objections to these hearing procedures.
- B. The Water Board must receive written objections to requests for designated party status no later than 5:00 p.m. on Friday, **November 23, 2012**.
- C. The Water Board must receive from the Prosecution Team submission of evidence, witness lists, including summary of proposed testimony and qualifications of any expert witness, no later than 5:00 p.m. on Monday, **December 3, 2012**.
- D. The Water Board must receive the following information no later than 5:00 p.m. on Friday, **December 21, 2012**:
 - 1. Written non-evidentiary policy statements from interested persons.
 - 2. Written requests from designated parties or interested persons for additional time for presentation at the hearing.
 - 3. Submission of evidence, witness lists, including summary of proposed testimony and qualifications of any expert witness, from all designated parties, except the Prosecution Team.
 - 4. Written evidentiary objections (if any) to evidence and proposed witness testimony submitted by the Prosecution Team.
- E. The Water Board must receive from all of the designated parties (including Prosecution Team) written evidentiary objections (if any) to evidence or testimony submitted by all of the designated parties on December 21, 2012, no later than 5:00 p.m. on Friday, **January 4, 2013**.

- F. The Water Board must receive from the Prosecution Team, written rebuttal evidence or testimony no later than 5:00 p.m. on Friday, **January 4, 2013**.
- G. The Water Board must receive from all of the other designated parties, besides the Prosecution Team, written evidentiary objections (if any) to rebuttal evidence submitted by the Prosecution Team no later than 5:00 p.m. on Friday, **January 11, 2013**.

All submittals must be on 8 ½ x 11" size (including attachments and figures), must be in a legible font no smaller than 11-point size, and shall be submitted electronically in a searchable pdf format that does not exceed 10 megabytes in size. In addition to the original, 15 hard copies of each submittal must be sent to the Executive Officer by the due date specified above. Each hard copy must be three hole punched and all pages must be sized 8 ½ x 11." Each e-mail submittal must have the e-mail subject line, "Arimol ACL Hearing." In addition to submitting the information to the Executive Officer, all designated parties must provide a copy of the materials to the Primary Contacts for all other designated parties.

Background

On October 26, 2012, Assistant Executive Officer of the Water Board issued Arimol Group, Inc. an Administrative Civil Liability Complaint No. R6T-2012-0049 (Complaint) pursuant to California Water code sections 13268, 13350, and 13385, alleging violations of state and federal water quality laws, Cleanup and Abatement Order No. R6V-2012-0008, and the *Water Quality Control Plan for the Lahontan Region*. The Complaint alleges that the violations are the result of the unauthorized discharge of fill and waste to waters of the United States within the Lake Arrowhead watershed, and proposes a liability in the amount of \$498,000. The Water Board will consider imposing liability during its regularly scheduled meeting on **January 16-17, 2013** in Barstow.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the proposed ACL complaint. At the hearing, the Water Board will consider whether to adopt the proposed assessment, modify it, or reject it. If it adopts an assessment the Water Board will issue an ACL Order.

The public hearing on **January 16-17, 2013** will commence at a time and location as announced in the Water Board meeting agenda. An agenda for the meeting will be available on the Water Board's web page at <http://www.waterboards.ca.gov/lahontan/> no later than **January 4, 2013**.

Hearing Procedures

The hearing will be conducted in accordance with these hearing procedures or as they may be amended. A copy of the general procedures governing adjudicatory hearings before the Water Board may be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with California Code of Regulations, title 23, section 648, subdivision (d), any procedure not provided by these Hearing Procedures is deemed waived. Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to this hearing, except as provided in these Hearing Procedures and the California Code of Regulations, title 23, section 648 subdivision (b).

The Water Board's Advisory Team must receive any objections to these hearing procedures no later than 5:00 p.m. on Friday, **November 16, 2012** or they will be considered waived. Procedural objections about the matters contained in this notice will not be entertained at the hearing. Further, except as otherwise stipulated, any procedure not specified in this hearing notice will be deemed waived pursuant to section 648(d) of Title 23 of the California Code of Regulations, unless a timely objection is filed.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Water Board, staff or others, at the discretion of the Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Water Board Prosecution Team
- (2) Arimol Group, Inc.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5:00 p.m. on Friday, **November 16, 2012** to Patty Kouyoumdjian, Water Board Executive Officer and one copy to Kimberly Niemeyer, Advisory Team counsel, at the addresses provided below. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Water Board affect the person), the contact information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted no later than 5:00 p.m. on Friday, **November 23, 2012**.

Primary Contacts

For the Water Board (Advisory Team):

Originals and specified number of copies of all documents to:	And one copy to:
Patty Kouyoumdjian Executive Officer Regional Water Quality Control Board, Lahontan Region 2501 Lake Tahoe Boulevard South Lake Tahoe, CA 96150 Patty.Kouyoumdjian@waterboards.ca.gov Phone (530) 542-5412 Fax (530) 544-2271	Kimberly Niemeyer Staff Counsel State Water Resources Control Board, Office of Chief Counsel 1001 I Street Sacramento, CA 95814 Kim.Niemeyer@waterboards.ca.gov Phone (916) 341-5547 Fax (916) 341-5199

For Water Board Staff (Prosecution Team):

One copy of all documents to both:	
Lauri Kemper Assistant Executive Officer Regional Water Quality Control Board, Lahontan Region 2501 Lake Tahoe Boulevard South Lake Tahoe, CA 96150 Lauri.Kemper@waterboards.ca.gov Phone (530) 542-5460 Fax (530) 544-2271	Anna Kathryn Benedict Staff Counsel State Water Resources Control Board, Office of Enforcement 1001 I Street Sacramento, CA 95814 AnnaKathryn.Benedict@waterboards.ca.gov Phone (916) 322-3227 Fax (916) 341-5896

One copy of all documents to both:	
Arimol Group, Inc. Attn: Bill Miller P.O. Box 44 Torrance, CA 90507 mollabolla@yahoo.com	Arimol Group, Inc. Attn: Bill Moller 4173 Maritime Road Rancho Palos Verdes, CA 90275 mollacorp@aol.com

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Water Board (Prosecution Team) have been separated from those who will provide advice to the Water Board (Advisory Team). Members of the Advisory Team are: Patty Kouyoumdjian, Executive Officer; Doug Smith, Supervising Engineering Geologist; Alan Miller, Senior Water Resources Control Engineer (WRCE); Cindy Wise, WRCE, and Kimberly Niemeyer, Staff Counsel. Members of the Prosecution Team are: Lauri Kemper, Assistant Executive Officer; Chuck Curtis, Manager, Cleanup and Enforcement Division; Scott Ferguson, Senior WRCE; Lisa Scorallo, Engineering Geologist; Mike Plaziak, Supervising Engineering Geologist; Patrice Copeland, Senior Engineering Geologist; Jan Zimmerman, Engineering Geologist; and Anna Kathryn Benedict, Staff

Counsel, State Water Resource Control Board, Office of Enforcement. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Water Board in other, unrelated matters, but they are not advising the Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of this matter between a member of a designated party or interested person on the one hand, and a Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined forty-five minutes (45) to present evidence, cross-examine witnesses, and provide a closing statement; and each interested person shall have five (5) minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team no later than 5:00 p.m. on Friday, **December 21, 2012**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Evidence, Exhibits and Policy Statements

The following information must be submitted in advance of the hearing:

1. All written evidence and exhibits that the designated party would like the Water Board to consider. Evidence and exhibits already in the public files of the Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

In conformance with the procedures set out on page 2, the Prosecution Team must submit to Patty Kouyoumdjian, Water Board Executive Officer, an original and 15 hard copies, and one electronic copy (in searchable pdf format, if possible) all of the information identified above no later than 5:00 p.m. on Monday, **December 3, 2012**. In addition, one hard copy and one electronic copy should be sent to Kimberly Niemeyer, Staff Counsel, each primary contact for the Prosecution Team, and each primary contact(s) for other designated parties, as specified in the section above identifying primary contacts.

No later than 5:00 p.m. on Friday, **December 21, 2012**, the remaining designated parties shall submit an original, 15 hard copies, and one electronic copy (in searchable pdf format, if possible) of the information to Patty Kouyoumdjian, Water Board Executive Officer, in conformance with the procedure set out on page 2. In addition, one hard copy and one electronic copy should be sent to Kimberly Niemeyer, Staff Counsel, each primary contact for the Prosecution Team, and each primary contact(s) for other designated parties, as specified in the section above identifying primary contacts.

The Prosecution Team has the opportunity to submit rebuttal evidence or testimony. This material shall be submitted no later than 5:00 p.m. on Friday, **January 4, 2013**. The original, 15 hard copies and one electronic copy (in searchable pdf format, if possible) of the material must be submitted to Patty Kouyoumdjian, Water Board Executive Officer, in conformance with the procedure set out on page 1. In addition, one hard copy and one electronic copy should be sent to Kimberly Niemeyer, Staff Counsel, each primary contact for the designated parties, as specified in the section above identifying primary contacts.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but no later than 5:00 p.m. on Friday, **December 21, 2012**. If over 10 pages, including attachments, this information should be sent to Patty Kouyoumdjian in conformance with the procedure on page 2. If less than 10 pages, the non-evidentiary policy statements may be sent either in hard copy or electronically. Comments should also be sent to Kimberly Niemeyer, Staff Counsel, each primary contact for the Prosecution Team, and each primary contact(s) for other designated parties, as specified in the section above identifying primary contacts. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, section 648.4, the Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other timely submitted written material. A written and electronic copy of such material that Designated Parties or Interested Persons intend to present at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Objections

The Water Board Advisory Team (original to Patty Kouyoumdjian, Executive Officer, and one copy to Kimberly Niemeyer, Staff Counsel) must receive all written objections to the evidence or testimony submitted by the Prosecution Team no later than 5:00 p.m. on Friday, **December 21, 2012**. Objections by the Prosecution Team and other designated parties to evidence or testimony submitted by designated parties the other designated parties must be received no later than 5:00 p.m. on **January 4, 2013**. Any objections to rebuttal evidence or testimony submitted by the Prosecution Team must be received no later than 5:00 p.m. on Friday, **January 11, 2013**. Written objections must also be sent to the other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections (if any) and when that action will be taken.

Request for Pre-hearing Conference


A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, as early as practicable.

Evidentiary Documents and File

The Proposed Order and related evidentiary documents are on file and may be inspected or copied at the Water Board offices at 2501 Lake Tahoe Boulevard, South Lake Tahoe or 14440 Civic Drive, Suite 200, Victorville. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Water Board Chair.

Questions

Questions concerning these hearing procedures may be addressed to Patty Kouyoumdjian, Executive Officer, at (530) 542-5412 or Kimberly Niemeyer, Staff Counsel, at (916) 341-5547 or at the addresses shown above.



Patty Kouyoumdjian
Executive Officer

DATE: _____ November 6, 2012

T:_Agenda Items\2013\January\Arimol Hearing Procedures