

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

**MEETING OF JULY 16-17, 2014
SOUTH LAKE TAHOE**

ITEM: 6

SUBJECT: PUBLIC HEARING – CONSIDERATION OF AN ADMINISTRATIVE CIVIL LIABILITY (ACL) ORDER FOR MARK JOHNSON FOR VIOLATING CEASE AND DESIST ORDER NO. R6T-2011-0069, SPALDING TRACT SUBDIVISION, LASSEN COUNTY, APN 077-351-27-11

CHRONOLOGY: September, 1984 Adopted a Basin Plan amendment incorporating waste discharge prohibitions for the Eagle Lake basin, which become effective September 14, 1989.

May 10, 1991 Adopted an original set of Cease and Desist Orders for Spalding Tract property owners who have on-site wastewater disposal systems.

September 14, 2011 Issued a Cease and Desist Order that required Mark Johnson to comply with the Basin Plan prohibition by November 10, 2011.

July 3, 2013 The Assistant Executive Officer issued a Notice of Violation to Mark Johnson, alleging Mr. Johnson has not complied with the September 2011 Cease and Desist Order.

November 19, 2013 The Assistant Executive Officer issued an ACL Complaint to Mark Johnson, alleging Mr. Johnson has not complied with the September 2011 Cease and Desist Order. The Complaint proposed an ACL of \$3,050 for the alleged violation.

February 13, 2014 Conducted a public hearing on a proposed ACL Order in South Lake Tahoe. The Water Board took evidence but decided to postpone final disposition of this matter until its July 16-17, 2014 board meeting, allowing Mr. Johnson additional time to come into compliance.

March 6, 2014 The Executive Officer issued a letter to Mr. Johnson describing the postponement of final disposition and revising the hearing procedures.

May 14, 2014	Mr. Johnson properly abandoned the septic tank.
June 12, 2014	The Assistant Executive Officer revised the proposed ACL from \$3,050 to \$137.50 for the alleged violation.

ISSUE: Should the Lahontan Water Board affirm the administrative civil liability in the proposed administrative civil liability order; adopt an administrative liability for some other amount; decline to adopt some or all of the proposed administrative civil liability order; or refer the matter to the California Attorney General?

DISCUSSION: In September 1984, the Lahontan Water Board amended the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) to prohibit the discharge of waste containing nutrients from the Spalding Tract to groundwaters and surface waters of the Eagle Lake basin. All such discharges were to cease after September 14, 1989. The Basin Plan prohibition states:

The discharge of waste from the Spaulding [sic] Tract or Stones-Bengard subdivisions with other than a zero discharge of nutrients to any surface waters or ground waters in the Eagle Lake basin is prohibited after September 14, 1989.

The Lahontan Water Board has, in prior orders, taken the position that on-site wastewater disposal systems (e.g., septic tank/leachfield systems, outhouse – unless to a holding tank) discharge waste that contains nutrients to the ground. Additionally, the Lahontan Water Board has made findings that use of such disposal systems results in the transport of nutrients to the groundwater in violation of the above-referenced Basin Plan prohibition and that the presence of such disposal systems on properties within the Spalding Tract subdivision constitutes, at a minimum, a threatened discharge in violation of the Basin Plan prohibition.

In 1991, the Lahontan Water Board adopted Cease and Desist Orders for most Spalding Tract property owners requiring them to comply with the Basin Plan prohibition by ceasing their wastewater discharges to on-site wastewater disposal systems within a specified time period. The compliance schedule was based, in part, on the Eagle Lake Community Services District constructing and operating a community wastewater system. The Orders also contained a contingency compliance schedule to address the scenario where the community wastewater system was not completed by the anticipated date.

The Spalding Community Services District (District) constructed a community wastewater system that became operational in October 2007. This wastewater system is a readily available method for Spalding Tract property owners to comply with the Basin Plan prohibition.

Many Spalding Tract property owners complied within two years of the District's system becoming operational. On June 10, 2009, the Lahontan Water Board rescinded the majority of the Cease and Desist Orders adopted in 1991, in response to the majority of Spalding Tract property owners coming into compliance with the above-referenced Basin Plan prohibition. However, a number of Spalding Tract property owners continued to violate the Basin Plan prohibition, and on September 14, 2011, the Lahontan Water Board adopted a new Cease and Desist Order for Mr. Johnson. The new Cease and Desist Order reflected current ownership and established a new compliance schedule, requiring Mr. Johnson to comply with the Basin Plan prohibition by November 10, 2011. Mr. Johnson could comply with the Basin Plan prohibition by submitting documentation that he had connected his on-site wastewater disposal system to the District's system, or documentation that he had properly abandoned his on-site wastewater disposal system pursuant to Lassen County regulations.

The Lahontan Water Board Prosecution Team issued Mr. Johnson an ACL Complaint on November 19, 2013, for allegedly failing to either connect his on-site wastewater disposal system to the District's system or failing to properly abandon his on-site wastewater disposal systems pursuant to Lassen County regulations. The Water Board conducted a February 13, 2014 public hearing on the ACL Complaint and decided to postpone final disposition on the ACL to the July 2014 Board meeting.

Mr. Mark Johnson properly abandoned the septic tank on May 14, 2014. Consequently, the Lahontan Water Board Prosecution Team revised its proposed ACL amount from \$3,050 to \$137.50, which is the economic benefit plus 10 percent. The Prosecution Team believes the \$137.50 is consistent with the Board's past ACL fines for the Spalding Tract violations (see Enclosure 3).

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	Enclosure Description	Bates Number
1	Proposed Administrative Civil Liability	6-7
	Prosecution Team Written Material for Consideration (these documents were sent to the parties on November 19, 2013 and will be available for viewing at the July 2014 Board meeting in hard copy; a hard copy can be sent upon request and an electronic PDF of the material is viewable and downloadable at: http://www.waterboards.ca.gov/lahtontan/water_issues/programs/enforcement/docs/johnson_acl/johnson_acl_complaint.pdf)	Not Included in packet (see weblink to the left)
2	Postponement of Final Disposition and Revised Hearing Procedures	6-23
3	Prosecution Team's Revised Recommendation	6-31

ENCLOSURE 1

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Lahontan Regional Water Quality Control Board

M E M O R A N D U M

TO: Patty Z. Kouyoumdjian, Executive Officer
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

Kim Niemeyer, Staff Counsel
STATE WATER RESOURCES CONTROL BOARD, OFFICE OF CHIEF COUNSEL

FROM: Lauri Kemper, Assistant Executive Officer
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: January 17, 2014

RE: PROSECUTION TEAM’S PROPOSED ADMINISTRATIVE CIVIL LIABILITY ORDER FOR MARK JOHNSON, SPALDING TRACT SUBDIVISION, EAGLE LAKE, LASSEN COUNTY APN 077-351-27-11

Attached is the Lahontan Regional Water Board (Water Board) Prosecution Team’s Proposed Administrative Civil Liability Order for Spalding Tract property owner, Mark Johnson. Copies of the Proposed Order are also being provided to Mark Johnson and interested parties. Please include the Proposed Order in the February 12-13, 2014 meeting agenda package for the Water Board members’ consideration.

Attachment: Administrative Civil Liability Order No. R6T-2014-(Proposed), Johnson

cc (w/enc): Spalding Tract ACL, Mailing List, Johnson

File Under: Spalding Tract-Mark Johnson, APN 077-351-27-11

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2014-(PROPOSED)

**IN THE MATTER OF
MARK JOHNSON FOR VIOLATION OF CEASE AND DESIST ORDER
NO. R6T-2011-0069, SPALDING TRACT SUBDIVISION,
LASSEN COUNTY APN NO. 077-351-27-11**

Lassen County

The California Regional Water Quality Control Board, Lahontan Region (Water Board) hereby finds that Mark Johnson has violated Water Board Cease and Desist Order (CDO) No. R6T-2011-0069. The Water Board specifically finds:

BACKGROUND

1. Mark Johnson (Discharger) owns Lassen County Assessor Parcel No. (APN) 077-351-27-11 in the Spalding Tract subdivision located on the west shore of Eagle Lake, approximately 20 miles northwest of Susanville, California.
2. Based upon Lassen County records and/or Spalding Community Services District (District) records, the Discharger owns and/or operates an onsite wastewater disposal system located at the above-referenced parcel. The Discharger's onsite wastewater disposal system permits waste containing nutrients to be discharged, and/or threatens a discharge of waste containing nutrients, to waters within the Eagle Lake basin.

CHRONOLOGY OF EVENTS

3. In September 1984, pursuant to Water Code section 13243, the Water Board amended the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) to prohibit the discharge of waste containing nutrients from the Spalding Tract subdivision to surface waters and groundwater of the Eagle Lake basin after September 14, 1989.
4. On October 22, 2007, the District's community sewer system (system) became operational. As a result, there is now an available method for the Spalding Tract subdivision property owners to comply with the above-referenced Basin Plan prohibition.
5. On September 14, 2011, the Water Board adopted CDO No. R6T-2011-0069 against the Discharger for his onsite wastewater disposal system located at Lassen County APN No. 077-351-27-11.

6. CDO No. R6T-2011-0069 requires the Discharger, by November 10, 2011, to either (1) connect his onsite wastewater disposal system to the District's community sewer system, or (2) properly abandon the onsite wastewater disposal system in accordance with Lassen County regulations. Upon completing one of the two activities, the Discharger is required to submit to the Water Board documentation of compliance with the above-referenced Basin Plan prohibition.
7. The Discharger failed to comply with CDO No. R6T-2011-0069, and on July 3, 2013, the Water Board's Prosecution Team issued the Discharger a Notice of Violation citing the ongoing violation.
8. On November 19, 2013, the Assistant Executive Officer issued Complaint No. R6T-2013-0093. The Complaint alleged that the Discharger has violated the requirements of CDO No. R6T-2011-0069 and recommended that the Water Board assess the Discharger an administrative civil liability of **\$3,050**.
9. On February 13, 2014, in South Lake Tahoe, California, after notice to the Discharger and all other affected persons and the public, the Water Board conducted a public hearing at which evidence was received to consider this Order, and the Discharger and/or his representative(s) had the opportunity to be heard and to contest the allegations in the Complaint.

REGULATORY CONSIDERATIONS

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

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

11. On September 14, 2011, the Water Board adopted CDO No. R6T-2011-0069, enforcing the above-referenced Basin Plan prohibition.

VIOLATIONS

12. The Discharger violated CDO No. R6T-2011-0069 by failing to satisfy the requirement to comply with the above-referenced Basin Plan prohibition by November 10, 2011. A review of District records and Water Board records shows the Discharger did not (1) connect his onsite wastewater disposal system to the District's system, or (2) properly abandon the onsite wastewater disposal system in accordance with Lassen County regulations. This violation subjects the Discharger to liability pursuant to Water Code section 13350, subdivision (a).

CALCULATION OF ADMINISTRATIVE CIVIL LIABILITY

13. Pursuant to Water Code section 13350, subdivision (e), civil liability may be imposed administratively on a daily basis in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs.
14. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Water Board is required to consider the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
15. On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327. The entire Enforcement Policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf
16. **Maximum Administrative Civil Liability:** Pursuant to Water Code section 13350, subdivision (e)(1), the total maximum administrative civil liability that may be imposed for the violation in this Order is **\$3,610,000**.
17. **Minimum Administrative Civil Liability:** Pursuant to Water Code section 13350, subdivision (e)(1)(B), the minimum administrative civil liability that must be imposed for the violation in this Order is **\$72,200**, unless the Water Board makes express findings pursuant to Water Code section 13350, subdivision (f).
18. Water Code section 13350, subdivision (f) states that:
- “A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.”

Water Code section 13327 allows for “other factors as justice may require.” The Water Board finds that the minimum statutory liability of \$72,200 is an amount excessive in light of the violations alleged herein and in relation to the cost savings associated with the non-compliance from those violations. Step 7 of Attachment A of the penalty methodology identifies specific factors under Water Code section 13327 that the Water Board considered in determining the liability amount.

On balance, in light of the considerations outlined in Step 7 of Attachment A, the Water Board finds that a lower penalty, less than the minimum amount cited in Finding No. 17, in the amount of \$3,050 is appropriate to achieve compliance while providing a sufficient level of deterrence.

19. 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.”

The Complaint cites the economic benefit of violating CDO No. R6T-2011-0069 as \$533 (economic benefit derived from the delayed cost of connecting to the District’s system). The economic benefit plus ten percent is \$586, which is less than the alternative minimum administrative civil liability of \$3,050, established in the Complaint. The alternative minimum administrative civil liability of \$3,050 satisfies the Enforcement Policy’s economic benefit requirement.

20. Administrative Civil Liability Determination: The Water Board has applied the Enforcement Policy’s administrative civil liability methodology (Attachment A) and considered each of the Water Code section 13327 factors based upon information in the record, including testimonies at the public hearing and information described in greater detail in the Complaint and its attachments. The Water Board hereby finds that civil liability should be imposed administratively on the Discharger in the amount of **\$3,050**.

GENERAL

21. This Order only resolves liability that the Discharger incurred for violations specifically alleged in the Complaint. This Order does not relieve the Discharger of liability for any violations not alleged in the Complaint. The Water Board retains the authority to assess additional civil liabilities for violations of applicable laws or orders for which civil liabilities have not yet been assessed, or for violations that may subsequently occur.
22. Issuance of this Order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), pursuant to California Code of Regulations (CCR), title 14, section 15321, subdivision (a)(2).

23. Any person aggrieved by this action of the Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and CCR, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing will be provided upon request, and may be found on the Internet at:
http://www.waterboards.ca.gov/public_notices/petitions/water_quality.

IT IS HEREBY ORDERED THAT:

1. Administrative civil liability is imposed upon the Discharger in the amount of **\$3,050**.
2. The Discharger shall submit payment with a cashier's check or money order in the full amount of **\$3,050** payable to the State Water Resources Control Board's Waste Discharge Permit Fund within 30 days of the date this Order is adopted.
3. Should the Discharger fail to make the specified payment to the State Water Resources Control Board's Waste Discharge Permit Fund within the time limit specified in this Order, the Water Board may enforce this Order by applying for a judgment pursuant to Water Code section 13328. The Water Board's Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328 if the criterion specified in this paragraph is satisfied.

I, Patty Z. Kouyoumdjian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region on February 13, 2014.

Patty Z. Kouyoumdjian
Executive Officer

Attachment A: Administrative Civil Liability Methodology

File Under: Spalding Tract File, Johnson, APN No. 077-351-27-11

ATTACHMENT A

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

The Complaint alleges that the Discharger failed to comply with a cease and desist order CDO issued by the Lahontan Regional Water Quality Control Board (Water Board), which required the Discharger by November 10, 2011, to either connect the Discharger's onsite wastewater disposal system to the Spalding Community Services District's (District) community sewer system or to properly abandon the Discharger's onsite wastewater disposal system, in accordance with Lassen County regulations. For the purpose of applying the Enforcement Policy's administrative civil liability (ACL) methodology, the alleged violation is a non-discharge violation. Because the Complaint only alleges a non-discharge violation, Step Nos. 1 and 2 of the Enforcement Policy's ACL methodology are not addressed.

Step 3: Initial Liability Determination

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

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

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

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

- b. The Deviation from Applicable Requirements to abandon or connect the septic system is **major**. The reason for the **major** designation is that Water Board staff notified the Discharger of his failure to comply with the CDO's November 10, 2011 compliance date in a July 3, 2013 Notice of Violation (NOV). The NOV was issued after the Discharger had approximately 1.5 construction seasons to comply with the CDO's requirement to either connect the Discharger's onsite wastewater disposal system to the District's community sewer system or to properly abandon the Discharger's onsite wastewater disposal system, if appropriate. The remainder of the 2013 construction season has past, and to date, the Discharger has still failed to comply.

There was ample time to satisfy the requirements of the CDO since its adoption. The District's community sewer system has been available to connect to since October 2007; however, the Discharger failed to connect or properly abandon his onsite wastewater disposal system and subsequently was issued a CDO in September 2011. The Discharger has now had an additional two full construction seasons since the CDO was issued to comply with its requirements, but has not.

- c. There are 722 days of violation for the period beginning November 11, 2011 and ending November 1, 2013, the date of drafting ACL Complaint No. R6T-2013-0093. The statutory maximum amount per day per violation is \$5,000. Therefore, 722 days of violation at the statutory maximum per day of \$5,000, yields a maximum initial liability of **\$3,610,000** (722 days x \$5,000/day). Applying the Potential for Harm per-day factor of 0.55 from Table 3, and the statutory maximum liability amount for each day of violation, yields an initial liability of **\$1,985,500** (0.55 x 722 days of violation x \$5,000 per day).

Step 4: Adjustment Factors

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

a. Multiple Day Violations

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

The Discharger has failed to comply with his CDO for at least 722 days. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the delayed cost of having the onsite wastewater disposal system either connected to the District's community sewer system or properly abandoned, if appropriate. Therefore, an adjustment can be made.

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

This results in a Revised Initial Liability Amount as follows:

$$\text{Revised Initial Liability} = (0.55) \times (30 \text{ days of violation}) \times (\$5,000) = \mathbf{\$82,500}$$

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case, a Culpability multiplier of **1.3** has been selected for the reasons described below:

The Prosecution Team has exercised its discretion in deciding whether to pursue ACL for violating the CDO. Doing so is consistent with the Water Board's primary interest to achieve compliance. The Prosecution Team diligently worked with property owners towards meeting the compliance objective. After providing approximately 1.5 construction seasons to comply, the Prosecution Team issued a July 3, 2013 Notice of Violation (NOV), notifying the Discharger that the time to comply with his CDO requirements without additional enforcement action was running out. In spite of the Prosecution Team's efforts to allow ample time to comply before issuing an ACL complaint, the Discharger has not provided the Prosecution Team with any information indicating any hardship related to the failure to comply or shown any intent to comply.

The Prosecution Team does not have any evidence of willful or intentional negligence in this matter. Therefore, the Prosecution Team does not recommend assigning a value of 1.4 or greater for Culpability, as these values have been reserved for situations where there is evidence of willful or intentional negligence. However, given the lack of response by the Discharger in spite of the amount of time given to comply and notification of the Prosecution Team's intent to pursue administrative civil liability, a value of 1.3 for Culpability is appropriate.

c. Adjustment for Cleanup and Cooperation

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

The Discharger has not cooperated with the Water Board on this issue. The Discharger's representative did contact the Prosecution Team by phone after receiving the July 3, 2013 NOV to report that the Discharger thought he had complied with the CDO. The Prosecution Team explained that the Water Board had no records supporting the Discharger's claim. The Prosecution Team went on to explain the Discharger's compliance options and how to demonstrate compliance.

The Prosecution Team has not observed any attempt by the Discharger to comply nor has it received any compliance documentation since the above-referenced phone conversation. Additionally, neither the Discharger nor his representative has contacted the Prosecution Team since the above-referenced phone conversation to discuss why compliance has not occurred or why compliance documentation has not been provided. The lack of effort to comply with the CDO, or even to communicate with the Prosecution Team regarding the reason why compliance has not occurred, warrants a value of 1.5.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a **minimum** multiplier of 1.1 should be used for this factor. In this case, a multiplier of **1.0** has been selected based upon the absence of prior violations of CDO No. R6T-2011-0069. A review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that the violation represents the first violation of CDO No. R6T-2011-0069. Therefore a multiplier of 1.0 is appropriate, and no adjustment to the above liability amount should be made in response to this factor.

Step 5: Determination of Total Base Liability Amount

The Total Base Liability for the violation is **\$160,875.00**. The Total Base Liability for the violation is determined by multiplying the Revised Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

Total Base Liability = (Revised Initial Liability) X (Culpability) X (Cleanup/Cooperation) X (History of Violations) = (\$82,500) X (1.3) X (1.5) X (1.0) = **\$160,875.00**.

Step 6: Ability to Pay and Ability to Continue Business

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

The Discharger owns the parcel of land listed below.

Assessor's Parcel No.	County	Property Address	Use Type	Mailing Address	Assessed Total Value	Assessment Year
077-351-27	Lassen	687-225 Hemlock Way Susanville, CA	Recreational	368 Green Valley Rd Scotts Valley, CA	\$15,277	2013
				TOTAL	\$15,277	

Without additional information provided by the Discharger, based on this initial assessment of information available in the public record, it appears the Discharger does not have assets to pay the Total Base Liability determined in Step 5. However, it appears the Discharger does have assets to pay the Proposed Liability identified below.

Step 7: Other Factors as Justice May Require

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

a. Adjustments for Other Factors as Justice May Require

As shown in Step 9, below, \$72,200 is the minimum statutory liability that shall be assessed unless express findings are made supporting a reduction. The Prosecution Team has determined that this amount is excessive in light of the violations alleged herein and in relation to the cost savings associated with the non-compliance from those violations. Below are specific factors under Water Code section 13327 that the Prosecution Team considered in determining the proposed liability amount.

- i. **Reducing the days of violation:** The Prosecution Team considered calculating the ACL based on a reduced number of days of violation. Using a start date of July 3, 2013, the date of the NOV where Water Board staff reminded the Discharger that his property was out of compliance, would reduce the days of violations to 122 days (July 3, 2013 – November 1, 2013). Using 122 days of violation would result in a minimum liability of **\$12,200**, based upon the statutory minimum liability of \$100 per day of violation. Even considering the reduction of the minimum liability based on reducing the days of violation, the Prosecution Team believes this liability amount of \$12,200 is excessive.
- ii. **Other Considerations:** In determining the proposed liability amount, the Prosecution Team considered the following specific factors.
 - a) **Economic Benefit:** As detailed in Step 8, below, the cost savings of non-compliance is \$533. While the Enforcement Policy requires the recovery of at least economic benefit plus ten percent, a penalty of \$586 is not sufficient to deter non-compliance or create a level playing field among the regulated community. On the other hand, the Prosecution Team acknowledges the minimum liability amount of \$72,200 is well in excess of the economic benefit of non-compliance and unreasonably punitive.

- b) **Property Values of Property Owned:** Water Board staff reviewed Lassen County Assessor's Office records for the properties whose owners are subject to the ACL for the failure to either connect his onsite wastewater disposal system to the District's sewer system or to properly abandon it.¹ County records for the year 2013 show that the properties range in value from \$15,277 to \$63,981. These properties have an average value of \$32,022. Relative to the value of the Discharger's Spalding Tract property, the minimum statutory liability of \$72,200 is excessive.
- c) **Consistency with Similar ACL Orders Previously Adopted:** ACL complaints were issued to property owners of the nearby Stones-Bengard subdivision in 1997 for failing to either connect their onsite wastewater disposal systems to the Stones-Bengard community sewer system or to properly abandon them. In the Stones-Bengard cases, the Water Board issued ACL complaints proposing assessed liability be imposed in the amount of **\$6,500** per non-compliant property. This was the minimum liability that could be imposed for violating cleanup and abatement orders (CAO) that had been issued 65 days prior to issuing the ACL complaints. The CAOs had been issued after the Stones-Bengard property owners had been violating their CDO issued in 1991 for several years. ACL Orders were subsequently issued for this amount.

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

In light of these past enforcement cases (Stones-Bengard and Spalding Tract) which brought about compliance while imposing a penalty amount significantly less than the \$72,200, the Prosecution Team believes that a lower penalty, more in line with these past enforcement cases, is appropriate to achieve compliance while providing a sufficient level of deterrence.

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

For the reasons specified above, which are based on the specific factors outlined in Water Code section 13327, the Prosecution Team recommends imposing an ACL in the amount of **\$3,050**. While this proposed liability amount is below the statutory minimum liability of \$72,200, the Prosecution Team believes this amount provides a fair penalty or consequence for the alleged violation as well as a meaningful deterrent against future violations.

¹ As of the date of drafting the Complaint, November 1, 2013, there were three property owners failing to comply with their Cease and Desist Orders.

b. Staff Costs

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

Step 8: Economic Benefit

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

The Discharger has realized an economic benefit of noncompliance by failing to connect to the District's system as required by CDO No. R6T-2011-0069. In order to estimate the economic benefit of noncompliance, Water Board staff subpoenaed cost records from contractors who have connected properties to the District's system in the Spalding Tract subdivision. Based upon the subpoenaed data, the average cost to connect to the District's system is \$4,210. The economic benefit of noncompliance is realized by delaying connection to the District's system. This is estimated by calculating the time value of the delay, net of taxes and inflation using U.S. Environmental Protection Agency's BEN model². The economic benefit of noncompliance of delaying connection to the District's system by November 11, 2011 is \$533. This assumes compliance is completed by December, 31, 2013, a penalty payment date of March 14, 2014, a discount/interest rate of 6.9%, and the Employment Cost Inflation Index.

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 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.

Step 9: Maximum and Minimum Liability Amounts

The maximum liability amount the Water Board may assess for the above-referenced violations pursuant to Water Code section 13350, subdivision (e)(1), is \$5,000 per day of violation. Therefore, the maximum liability the Water Board may assess for 722 days of violation (elapsed time since the date of compliance in the cease and desist order) is **\$3,610,000**.

The minimum liability amount provided in Water Code section 13350, subdivision (e)(1)(B) is \$100 per day. Therefore, the minimum liability the Water Board must assess for 722 days of violation is **\$72,200** unless specific findings are made supporting a reduction.

The Enforcement Policy also requires that:

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

The economic benefit amount plus ten percent is **\$586**. The Total Base Liability and the Proposed Liability amounts are both greater than \$586.

Step 10: Final Liability Amount

The Total Proposed Liability Amount is **\$3,050** based upon the considerations discussed in detail, above.

ENCLOSURE 2

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Lahontan Regional Water Quality Control Board

March 6, 2014

Mark Johnson
368 Green Valley Road
Scotts Valley, CA 95066-3022

POSTPONEMENT OF FINAL DISPOSITION ON PROPOSED ADMINISTRATIVE CIVIL LIABILITY ORDER, SPALDING TRACT SUBDIVISION, EAGLE LAKE, LASSEN COUNTY APN 077-351-27-11

At its February 13, 2014 hearing, the Lahontan Regional Water Quality Control Board (Water Board) voted to postpone taking final action on whether to issue to you a final administrative civil liability for either not connecting your wastewater disposal system to the community sewer system or properly abandoning your disposal system. The Water Board postponed its final disposition on the matter until its tentatively scheduled board meeting for July 9-10, 2014, in South Lake Tahoe. In making the postponement, the Water Board expressed its desire for you to bring your property into compliance by no later than **May 30, 2014**.

Please inform the Water Board **by June 2, 2014** when you have either 1) connected your on-site wastewater disposal system to the Spalding Community Services District community sewer system, or 2) properly abandoned your on-site wastewater disposal system in accordance with Lassen County regulations.

At the July hearing, the Water Board may decide to either issue the fine as recommended in the Proposed liability order, issue no fine, increase or decrease the amount of the fine, or refer the matter to the California Attorney General.

The enclosed Hearing Procedures provides information and a deadline on the type of response requested from you and how the July hearing will be conducted.

If you have any additional questions or concerns regarding this matter, please contact one of the Advisory Team members: Douglas F. Smith DFSmith@waterboards.ca.gov (530) 542-5453, Kimberly Niemeyer KNiemeyer@waterboards.ca.gov (916) 341-5547, or me at PZKouyoumdjian@waterboards.ca.gov (530) 542-5412.


PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Enclosures: Hearing Procedures July 2014

cc: Lauri Kemper, Assistant Executive Officer, Lahontan Water Board
David Boyers, Office of Enforcement, State Water Board
Chris Gallagher, General Manager/Spalding Community Services District
Virginia Bruce/Spalding Community Services District
Alan Jones, Director/Lassen County Environmental Health Department
Kenneth Bunch/Lassen County Assessor
Maurice Anderson/Lassen County Building Department

Lahontan Regional Water Quality Control Board

March 6, 2014

**NOTICE OF CONTINUED HEARING
AND DEADLINE FOR
SUBMITTING EVIDENCE AND COMMENTS**

In February of this year, you received an Administrative Civil Liability Complaint (Complaint) regarding your property in the Spalding Tract, Eagle Lake, Lassen County. The Complaint proposes that the California Regional Water Quality Control Board, Lahontan Region (Water Board) impose liability on you for your alleged failure to comply with Cease and Desist Order (CDO) No. R6T-2011-0069. That Order required that you either (1) connect your onsite wastewater disposal system to the Spalding Tract Community Services District's community sewer system, or (2) properly abandon the onsite wastewater disposal system in accordance with Lassen County regulations.

The Water Board considered a proposed order that would have issued liability against you during its regularly scheduled meeting on February 13, 2014 in South Lake Tahoe. The Water Board took evidence and closed the hearing, but decided to postpone final disposition of this matter until its July 16-17, 2014 board meeting, allowing you additional time to come into compliance. At the July hearing, the Water Board may decide to either issue the fine as recommended in the Proposed liability order, issue no fine, increase or decrease the amount of the fine, or refer the matter to the California Attorney General.

Please read this Notice of Hearing carefully. You must respond by the date in this Notice or the Water Board may not accept your response to the Complaint. A summary of the required submittal is as follows:

DATE DUE	NATURE OF THE SUBMITTAL
June 2, 2014	Submit written evidence of compliance with CDO No. R6T-2011-0069, demonstrating either (1) connection of your wastewater system to the District's community sewer system, or (2) proper abandonment of your wastewater system per Lassen County regulations.

Nature of Hearing

The evidence that is being put forward to justify the imposition of the liability has previously been submitted to you. A copy of the complaint and the proposed order that was presented to the Water Board for consideration is available at:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/enforcement/docs/johnson_acl/johnson_acl_complaint.pdf

[Please contact Douglas F. Smith at DFSmith@waterboards.ca.gov (530) 542-5453 if you need that information mailed to you.]

You were given the opportunity to present a written response to the allegations made in the Complaint, including providing any additional evidence you wanted the Water Board to consider, and to present an oral summary of that information to the Water Board at its February meeting. Because that hearing was closed, and you did not provide any information at that time, you will be limited to providing information solely about whether you have complied with the CDO by either connecting to the CSD or abandoning the wastewater system consistent with the requirements of the Lassen County.

As described in the hearing notice sent out November 20, 2013 for the February 13, 2014 hearing, at which this matter was first heard, the continued hearing (which is an adjudicative proceeding), will be governed by the regulations codified in Title 23, California Code of Regulations (CCR), Division 3. These regulations provide that, with certain exceptions, adjudicative proceedings will be conducted in accordance with sections 800-805 of the Evidence Code and section 11513 of Chapter 5 of the Government Code (Other provisions of Chapter 5 of the Government Code do not apply to adjudicative proceedings before the Regional Water Boards). A copy of those regulations and Chapter 4.5 of the Administrative Procedures Act, section 11513 of the Government Code and sections 801-805 of the Evidence Code can be found at http://www.waterboards.ca.gov/laws_regulations/.

Submittal of Evidence / Comments

As indicated above, you will have an opportunity to submit evidence of your compliance to the Water Board Executive Officer no later than 5:00 p.m. on Monday, June 2, 2014. This is the only additional information that the Water Board will accept at this time.

Please email the material electronically to the following individuals:

Water Board Advisory Team members:

Douglas F. Smith at DFSmith@waterboards.ca.gov
Patty Z. Kouyoumdjian at PZKouyoumdjian@waterboards.ca.gov
Kimberly M. Niemeyer at KNiemeyer@waterboards.ca.gov

Water Board Prosecution Team members:

Lauri Kemper at LKemper@waterboards.ca.gov
David Boyers at DBoyers@waterboards.ca.gov
Scott Ferguson at SFerguson@waterboards.ca.gov
Lisa Scorallo at LScorallo@waterboards.ca.gov

In the email subject line, write the phrase "Comment Letter – Spalding Proposed ACL". If your submittal cannot be emailed, you must submit one original and 11 hard copies of the original (double sided and three-hole punched) to the Water Board Executive Office, Patty Z. Kouyoumdjian at the following address, either by facsimile (530) 544-2271 or by surface mail/courier:

Patty Z. Kouyoumdjian, Executive Officer
Lahontan Regional Water Quality Control Board
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96151

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, Douglas F. Smith, Supervising Geologist, and Kim Niemeyer, Staff Counsel. Members of the Prosecution Team are: Lauri Kemper, Assistant Executive Officer, Chuck Curtis, Supervising Engineer, Scott Ferguson, Senior Engineer, Lisa Scorable, Engineering Geologist, David Boyers, Staff Counsel. 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

You and your representatives, any member of the Water Board Prosecution Team 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 the proposed Complaint between you, anyone representing you, any member of the Prosecution Team 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 others (if written) or made in a manner open to all others (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among you, your representative, the Prosecution Team or any interested person are not ex parte contacts.

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ENCLOSURE 3

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Lahontan Regional Water Quality Control Board

M E M O R A N D U M

TO: Patty Z. Kouyoumdjian, Executive Officer
Lahontan Regional Water Quality Control Board



FROM: Lauri Kemper, Assistant Executive Officer
Lahontan Regional Water Quality Control Board

DATE: June 12, 2014

SUBJECT: JULY 16-17, 2014 BOARD MEETING, UPDATED COMPLIANCE STATUS FOR MARK JOHNSON, SPALDING TRACT SUBDIVISION, EAGLE LAKE, LASSEN COUNTY APN 077-351-27-11

The Lahontan Regional Water Quality Control Board's (Water Board) Prosecution Team is submitting updated compliance information and supporting evidence in preparation for the Lahontan Water Board's July 16-17, 2014 meeting. This is the meeting the Water Board selected for continuing to consider Administrative Civil Liability Complaint No. R6T-2013-0093 (Complaint). The Water Board's Assistant Executive Officer issued the Complaint to Mark Johnson on November 19, 2013 for allegedly violating Cease and Desist Order No. R6T-2011-0069. The Cease and Desist Order required Mr. Johnson to comply with a waste discharge prohibition contained in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) by either connecting his onsite wastewater disposal system to the Spalding Community Services District's wastewater collection system or by abandoning the onsite wastewater disposal system in accordance with Lassen County regulations by November 10, 2011.

The Water Board conducted a public hearing regarding the Complaint at its February 12-13, 2014 meeting and postponed taking final action upon the Complaint, allowing Mr. Johnson additional time to comply with the Cease and Desist Order. On May 19, 2014, the Lassen County Environmental Health Department certified that on May 14, 2014, Mr. Johnson properly abandoned his onsite wastewater disposal system at Lassen County Assessor's Parcel No. 077-351-27-11, in accordance with Lassen County regulations. The Lassen County certification (Attachment A) documents that Mr. Johnson is now in compliance with the Basin Plan. .

Prosecution Team Recommendation

This memorandum also provides the Prosecution Team's updated recommendation for Administrative Civil Liability Complaint No. R6T-2013-0093. For the Water Board's consideration, the Prosecution Team is reducing its proposed liability amount from \$3,050 to \$137.50, based upon Mr. Johnson achieving compliance. Making such an adjustment is consistent with the State Water Board's Water Quality Enforcement Policy and the Prosecution Team's response to other Spalding Tract property owners satisfying their Cease and Desist Order requirements after being issued administrative civil liability complaints in April 2012.

In 2012, the Prosecution Team adjusted its proposed liability amount down to the economic benefit of noncompliance (delay cost analysis) plus 10 percent plus staff costs. Since 2012, the Water Board has suspended the practice of adding staff cost into administrative civil liabilities based upon the California State Auditor's findings stated in its 2012-120 Audit Report. Therefore, the Prosecution Team's adjusted liability amount for Mr. Johnson is solely economic benefit plus 10 percent. The basis for the Water Board's most recent liability against a Spalding Tract property owner (Ormachea, February 2014) was also economic benefit plus 10 percent. The Prosecution Team has also provided a table identifying the liability amounts the Water Board has imposed upon Spalding Tract property owners beginning in 2012 (Attachment B).

Attachment C provides the results of the economic benefit analysis for Mr. Johnson's case, conducted by Gerald Horner, Senior Economist with the State Water Resource Control Board. Mr. Johnson has realized a calculated economic benefit of noncompliance of \$125 as a result of delaying compliance with Cease and Desist Order No. R6T-2011-0069 until May 14, 2014. The economic benefit plus 10 percent totals **\$137.50**. The Prosecution Team respectfully requests the Water Board consider adoption of this adjusted liability amount for Mr. Johnson. Please include this memorandum and its attachments in the Water Board's July 16-17, 2014 agenda package.

Attachments: A. Lassen County Environmental Health Dept. May 19, 2014 Certification
B. Water Board Spalding Tract ACL Decisions (2012-2014)
C. Economic Benefit Results, Johnson (May 29, 2014)

Cc: Mailing List for Johnson ACL

Scoralle, Lisa@Waterboards

From: Alan Jones <AJones@co.lassen.ca.us>
Sent: Monday, May 19, 2014 12:25 PM
To: Scoralle, Lisa@Waterboards
Subject: 077-351-27 Mark Johnson
Attachments: 1462_001.pdf

Lisa, this is the Mark Johnson letter. Alan

Alan A. Jones, MA, REHS, Director
Lassen County Environmental Health Department
1445 Paul Bunyan Road
Susanville, CA 96130
(530) 251-8528



LASSEN COUNTY
Health and Social Services Department
ADMINISTRATION • 1445 Paul Bunyan Road • Susanville, CA 96130 • (530) 251-8128

■ ENVIRONMENTAL HEALTH/
PUBLIC HEALTH
1445 Paul Bunyan Road
Susanville, CA 96130
(530) 251-8528/Fax 251-2668

□ Community Social Services Lassen
Works
720 Richmond Road
Susanville, CA 96130
(530) 251-8152

□ PUBLIC GUARDIAN
720-A Richmond Rd
Susanville, CA 96130
(530) 251-8337

□ Behavioral Health
555 Hospital Lane
Susanville, CA 96130
(530) 251-8108 / 8112

□ Veterans Services Office
1205 Main Street
Susanville, CA 96130
(530) 251-8192

May 19, 2014

Scott Ferguson, Chief-Enforcement Unit
California Regional Water Quality Control Board
2501 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

Re: Certification of abandonment of septic system in Spalding Tract, Assessor's parcels 077-351-27 Spalding Tract Block 65, lots 4, 5, 6, & 64.

Dear Mr. Ferguson:

On May 14, 2014 the Lassen County Environmental Health Department inspected the abandonment of the septic system on Assessor's parcels 077-351-27 Spalding Tract Block 65, lots 4, 5, 6, & 64. The Lassen County Environmental Health Department certifies that the septic tank on the above mentioned parcel was abandoned as per Lassen County requirements.

If you have any questions, or if you need further information, please contact me at the Lassen County Environmental Health Department at 530-251-8528.

Sincerely,

Kenneth Korver, M.D.
Lassen County Health Officer

Alan A. Jones, REHS, Director
Lassen County Environmental Health Department

Cc: Mark Johnson; Spalding Community Services District

Attachment B – Water Board Spalding Tract ACL Decisions (2012-2014)

Board Meeting	Party	Comply by Board meeting?	Response to NOV/CDO/ACL?	Proposed ACL	PT final proposal	Board Decision
July 2012	Estes	Yes, connected 6/1/2012	Yes, testified at hearing on hardship	\$16,490	\$1,367	\$136
July 2012	Helmer	Yes, abandoned 5/10/2012	Yes, submitted letter of hardship	\$16,490	\$1,063	\$106
July 2012	NANCO	No		\$16,490	\$16,490	Postponed
July 2012	Naylor	Yes, connected 6/7/2012	Yes, submitted evidence and testified at hearing on hardship	\$16,490	\$16,490	\$137
July 2012	Neil	Yes – 2 properties No – 4 properties	None	\$16,490 x 6 properties	\$68,722	Postponed
July 2012	Robinson	No	Yes, sent letter requesting postponement	\$16,490 x 2 properties	\$32,980	Postponed
July 2012	Sutton	Yes, connected May 31, 2012	Yes, daughter submitted hardship letter	\$16,490	\$1,367	\$136
July 2012	Winters	No	Yes, testified at hearing on hardship and no use	\$16,490	\$16,490	Postponed
Oct 2012	NANCO	No	None	\$16,490	\$16,490	\$1,749
Oct 2012	Neil	Yes – 2 properties 6/27/2012 Yes – 1 property 8/3/2012 Yes – 1 property 8/22/2012 No – 2 properties	None	\$16,490 x 6 properties	\$32,980	\$132 x 2 \$368 \$370 <u>\$1,749 x 2</u> \$4,500
Oct 2012	Robinson	Yes, contractor completed hook ups within days after board mtg	Yes, submitted email about scheduled hook ups by local contractor	\$16,490 x 2 properties	\$32,980	\$430 x 2 = \$860
Oct 2012	Winters	Yes, abandoned 9/20/2012	None	\$16,490	\$16,490	\$213
Feb 2014	Johnson	No	Yes, nephew submitted info on uncle's hardship	\$3,050	\$3,050	Postponed
Feb 2014	Ormachea	No, but sold property in December 2013	Yes, daughter submitted info for father	\$3,050	\$3,050	\$559
July 2014	Johnson	Yes, abandoned 5/19/2014	Yes, provided verbal updates when called for status	\$3,050	\$137.50	To be determined

BEN Results

Version 4.7.0

Mark Johnson	Abandon on site wastewater disposal system
<u>Present Values as of Noncompliance Date (NCD),</u>	<u>11-Nov-2011</u>
A) On-Time Capital & One-Time Costs	\$863
B) Delay Capital & One-Time Costs	\$759
C) Avoided Annually Recurring Costs	\$0
D) Initial Economic Benefit (A-B+C)	\$104
E) Final Econ. Ben. at Penalty Payment Date,	
<u>18-Jul-2014</u>	<u>\$125</u>

For-Profit (not C-Corp.) w/ CA tax rates

Average Discount/Compound Rate	6.9%
Average Discount/Compound Rate Calculated By:	BEN
Compliance Date	14-May-2014

Capital Investment:

Estimated Cost of Capital Equipment	\$0
Capital Investment Delayed Not Avoided	
Cost Estimate Date	N/A
Cost Index for Inflation: N/A	
Consider Future Replacement (Useful Life)	N/A (N/A)

One-Time, Nondepreciable Expenditure:

Estimated Cost	\$836
One-Time Expenditure Delayed Not Avoided	
Cost Estimate Date	01-Jan-2010
Cost Index for Inflation: Employment Cost Index	
Tax Deductible?	N

Annually Recurring Costs:

Estimated Cost	\$0
Cost Estimate Date	N/A
Cost Index for Inflation: N/A	

D:\GHorner\Documents\Enforcement\ATP-BNC\Spalding Tract\BEN4.7.0JohnsonAbandon110713.xls]Input

5/29/2014 9:10