

**Agenda Item No. 6**  
**Consideration of Administrative Civil Liability**  
**for Sheila M. Miner,**  
**Spalding Tract, Eagle Lake,**  
**Lassen County APN 077-332-42-11**

Scott C. Ferguson, P.E.  
Supervising Water Resource Control Engineer  
Lahontan Regional Water Quality Control Board  
March 9, 2016

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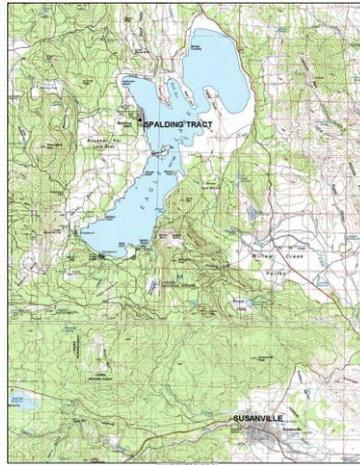
## Presentation Overview

- History
- Evidence of Violation
- Progressive Enforcement
- Administrative Civil Liability (ACL) Complaint
- Recommendation

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## Site Vicinity

- West shore of Eagle Lake
- Approximately 20 miles northwest of Susanville, CA



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## 1984 Basin Plan Amendment

### Eagle Drainage Hydrologic Area 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.”

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## History-Spalding Tract

- 1991: Over 600 CDOs issued.
- Oct. 2007: Spalding community wastewater system is operational.
- June 2008: 13267 Letters
- Oct. 2009: About 500 properties in compliance.
- 2009-2015: Progressive Enforcement  
CDO → NOV → ACL

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## Evidence of Violation

- Lassen Co. records show onsite wastewater disposal system on property.
- Spalding CSD records do not show the property connected to community wastewater system.
- Water Board staff have not received a Lassen Co. Certificate of Abandonment.

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## Enforcement Actions

- June 2008: 13267 Order
- Sept. 2013: Unsuccessful process service for proposed CDO.
- January 2015: Successfully issued and served CDO.
- August 2015: Served Notice of Violation.
- Dec. 2015: Issued ACL Complaint No. R6T-2015-0058

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## Considerations

- Property owner had ample time to comply.
- Property owner given ample warning ACL was imminent.
- No effort to comply.

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## ACL Methodology

(State Board Enforcement Policy)

- Steps 1 and 2 do not apply.
- Step 3 - Non-Discharge Violation
  - Per day factor: 0.55
  - Maximum daily factor: \$5,000
  - Days of violation: 7/15/2015 – 10/1/2015 = 79 days
  - Initial liability:  $(0.55) \times (5,000) \times (79) = \$217,250$
  - **Multiple day violations alternative:** 79 days → 8 days
  - **Revised initial liability:**  $(0.55) \times (5,000) \times (8) = \$22,000$

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## ACL Methodology

(State Board Enforcement Policy)

- Step 4 – Additional Factors
  - Culpability: 1.5
  - Cleanup and Cooperation: 1.5
  - History of Violations: 1.0
- Step 5 – Determine Base Liability Amount
  - $(\$22,000) \times (1.5) \times (1.5) \times (1.0) = \$49,500$

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# ACL Methodology

(State Board Enforcement Policy)

- Step 6 – Ability to Pay
  - Property value (2015): \$173,683
  - Discharger appears to have adequate assets to pay liability.
  - Discharger has not submitted any information to rebut Prosecution Team’s assertion.
  - No recommended reduction in liability based upon ability to pay.

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# ACL Methodology

(State Board Enforcement Policy)

- Step 7 – Other Factors as Justice May Require
  - Days of violation: 79 days
  - WC 13350 statutory minimum: \$100/day of violation  
(79 days) x (\$100/day) = \$7,900

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## Step 7 – Other Factors (Prior Eagle Lake ACLs)

### May 1997

- \$6,500 (2)

### Considerations

Initiated compliance after hearing.  
(Stones-Bengard Subdivision)

### July 2012 Spalding ACLs

- \$106-\$137 (4)

Complied prior to hearing.

### Oct. 2012 Spalding ACLs

- \$213
- \$430
- ❖ **\$1,749**

Complied between July and October hearings.  
Initiated compliance prior to October hearing.  
**Initiated compliance after October hearing.**

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## Step 7 – Other Factors (Prior Eagle Lake ACLs)

### Feb. 2014 Spalding ACL

- \$559

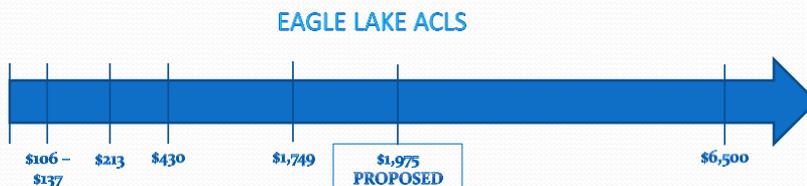
### Considerations

Did not comply prior to selling property.

### July 2014 Spalding ACL

- \$137.50

Complied between February and July hearings.



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## ACL Methodology

(State Board Enforcement Policy)

- Step 8 – Economic Benefit
  - Average cost to connect: \$4,210
  - Time value of delaying cost to connect: \$154.00
  - Economic benefit + 10 percent = \$169.40
- Step 9 – Maximum/Minimum Liability
  - Max: \$5,000/day x 79 days = \$395,000
  - Min: \$100/day x 79 days = \$7,900  
or less with expressed findings.

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## ACL Methodology

(State Board Enforcement Policy)

- Step 10 – Final Liability Amount (Proposed)
  - Violation Period (79 days) x (\$25/day) = **\$1,975**
- Expressed Finding for Liability Reduction
  - Consistent with prior Eagle Lake ACLs

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## Authority

- Water Code Section 13350
  - Provides authority for adopting ACLs
  - Identifies conditions under which ACLs can be adopted
    - Violation of Cease and Desist Order
  - Identifies factors used to determine liability amount
  - Identifies criteria for imposing liability less than statutory minimum (\$100/day of violation)

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## Reasons for Adopting

- Fair enforcement
- Consistent enforcement
- No effort to comply
- Deterrent to future violations

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## Recommendation

**Adopt ACL Order as Proposed**  
**Liability Amount**  
**\$1,975**

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