



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, W DID 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

Arimol Group, Inc.
Bill Moller

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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.



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).



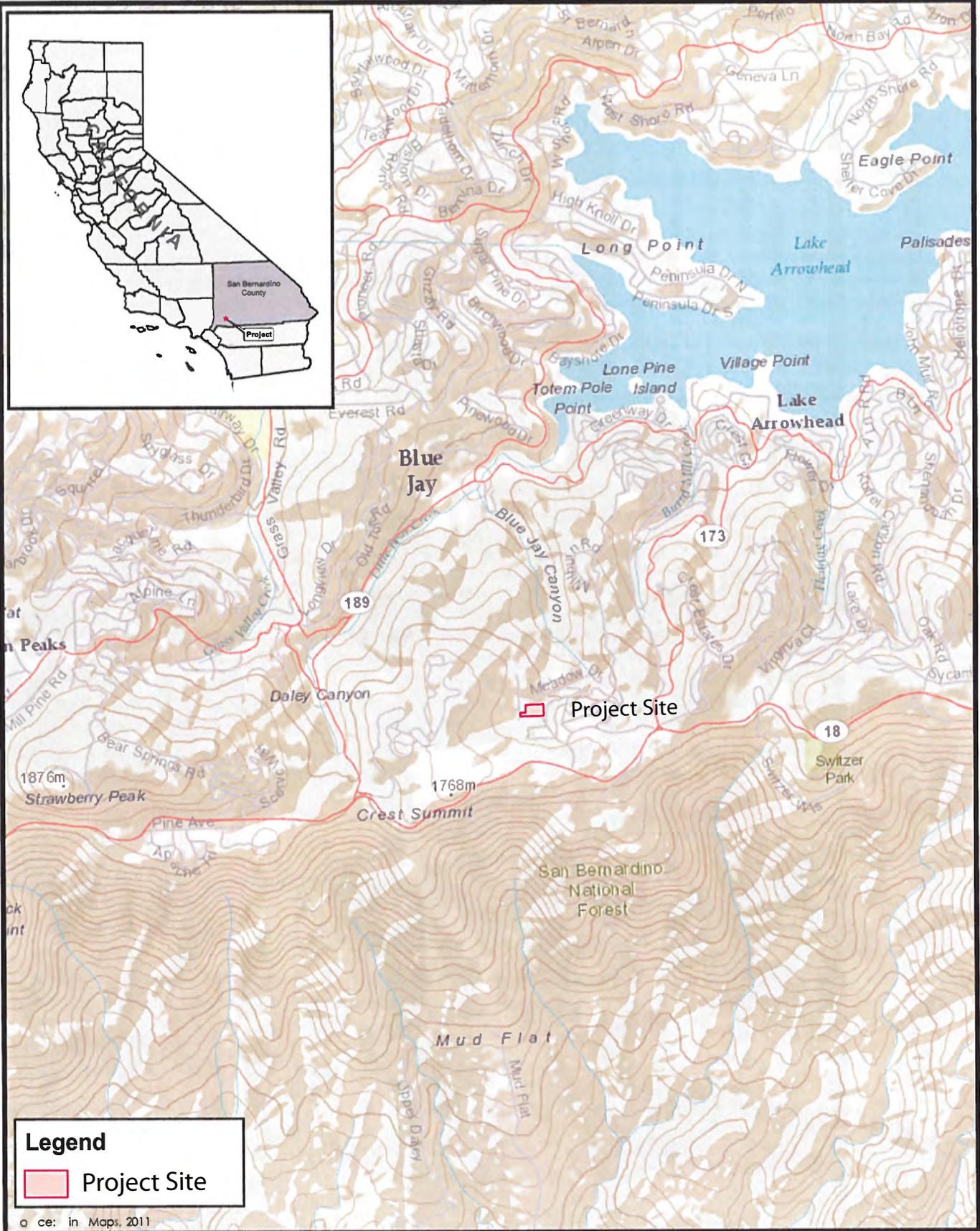
Dated: 10/26/2012

LAURI KEMPER
ASSISTANT EXECUTIVE OFFICER

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

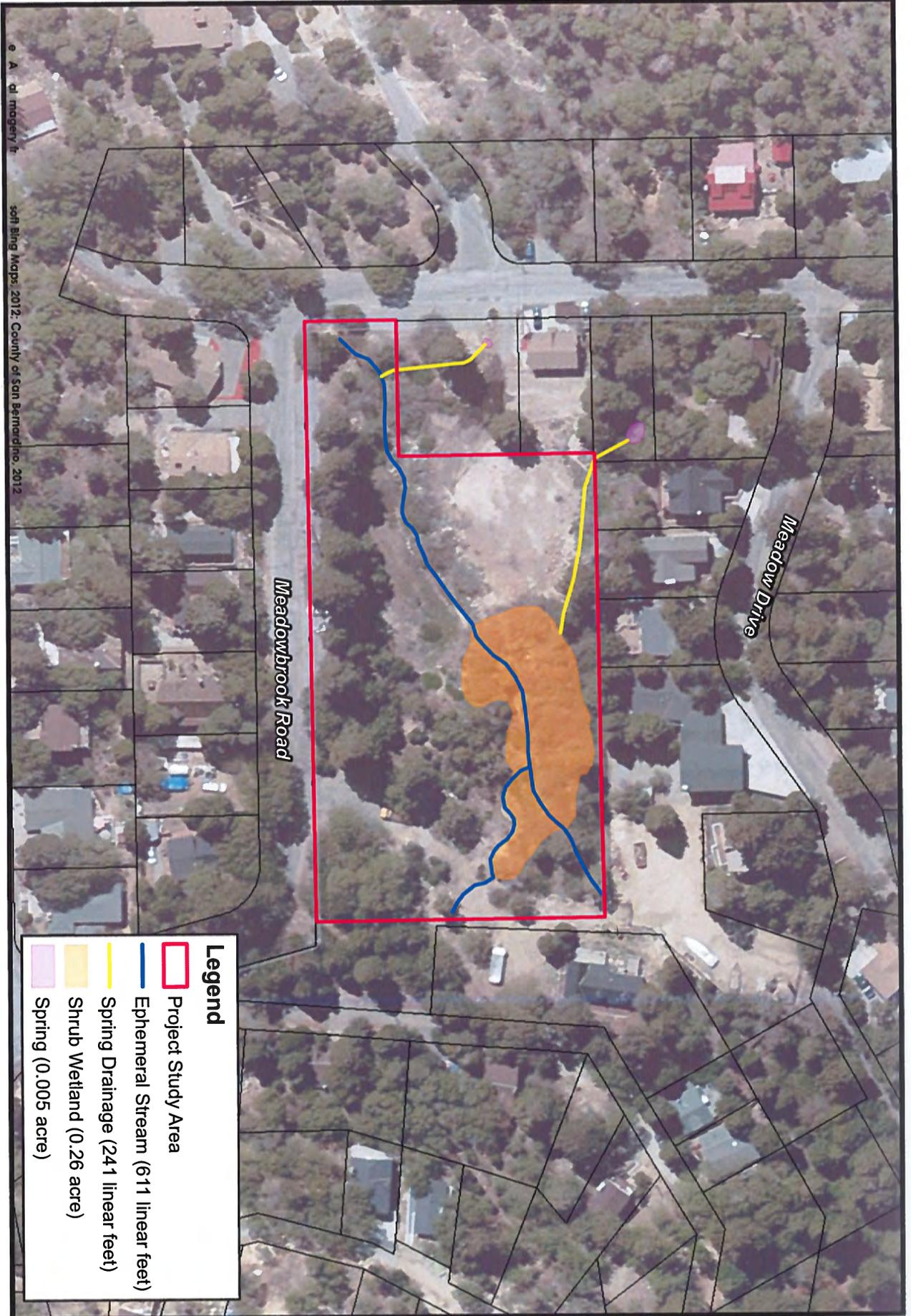


Legend
Project Site

Source: in Maps, 2011



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.

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:

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

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:

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

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		\$ -		\$ -	
	Non-Discharge Violations	Step 3	Per Day Factor	0.8		0.6	
Days			1		1		
Statutory Max per Day			10000.00		10000.00		
Total				\$ 8,000		\$ 6,000	
					\$ -		\$ -
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 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 **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 **5 = Major**
 Select Item **4 = Discharged material poses significant risk**
 Select Item **> 50% of Discharge Susceptible to Cleanup or Abatement**
 Select Item **Major**

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 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

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility of Cleanup or Abatement
 Select Item Deviation from Requirement

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility of Cleanup or Abatement
 Select Item Deviation from Requirement

Select Item Potential Harm for Discharge Violations
 Select Item Characteristics of the Discharge
 Select Item Susceptibility of Cleanup or Abatement
 Select Item Deviation 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)