

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2012-0046

**IN THE MATTER OF
NAYLOR, MITCHELL CREIG & GINGER JT FOR VIOLATION OF CEASE AND
DESIST ORDER NO. R6T-2009-0109, SPALDING TRACT SUBDIVISION,
LASSEN COUNTY APN 077-401-11-11**

Lassen County

The California Regional Water Quality Control Board – Lahontan Region (Lahontan Water Board) hereby finds that Naylor, Mitchell Creig & Ginger JT has violated Lahontan Water Board Cease and Desist Order No. R6T-2009-0109. The Lahontan Water Board specifically finds that:

BACKGROUND

1. Naylor, Mitchell Creig & Ginger JT (Discharger) owns Lassen County Assessor Parcel No. 077-401-11-11 in the Spalding Tract subdivision located on the west shore of Eagle Lake, approximately 20 miles northwest of Susanville, California.
2. Based upon Lassen County records and/or Spalding Community Services District (District) records, the Discharger had owned and/or operated an on-site wastewater disposal system located at the above-referenced parcel prior to June 7, 2012. The Discharger's on-site wastewater disposal system permitted waste containing nutrients to be discharged, and/or threatened a discharge of waste containing nutrients, to waters within the Eagle Lake basin prior to June 7, 2012.

CHRONOLOGY OF EVENTS

3. In September 1984, pursuant to Water Code section 13243, the Lahontan Water Board amended the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) to prohibit the discharge of wastes containing nutrients from the Spalding Tract subdivision to surface waters and groundwater of the Eagle Lake basin after September 14, 1989.
4. On October 22, 2007, the District's community sewer system (system) became operational. As a result, there is now an available method for the Spalding Tract subdivision property owners to comply with the above-referenced Basin Plan prohibition.

5. On October 14, 2009, the Lahontan Water Board adopted Cease and Desist Order No. R6T-2009-0109 against the Discharger for its on-site wastewater disposal system located at Lassen County APN No. 077-401-11-11.
6. Cease and Desist Order No. R6T-2009-0109 requires the Discharger, by December 31, 2009, to either (1) connect its on-site wastewater disposal system to the District's community sewer system, or (2) properly abandon its on-site wastewater disposal system in accordance with Lassen County regulations. Upon completing one of the two activities, the Discharger is required to submit to the Lahontan Water Board documentation of compliance with the above-referenced Basin Plan prohibition.
7. The Discharger failed to comply with Cease and Desist Order No. R6T-2009-0109 and on June 28, 2011, the Lahontan Water Board's Prosecution Team issued the Discharger a Notice of Violation citing the ongoing violation.
8. On April 20, 2012, the Assistant Executive Officer issued Complaint No. R6T-2012-0026. The Complaint alleges that the Discharger has violated the requirements of Cease and Desist Order No. R6T-2009-0109. The Complaint proposes administrative civil liability of **\$16,490**. The Complaint and its attachments are attached to this Order and incorporated by reference (Attachment A).
9. On June 20, 2012, Lahontan Water Board staff received information from the District documenting that the Discharger had connected its on-site wastewater disposal system to the District's system on June 7, 2012. An excerpt of the District's June 20, 2012 correspondence with Lahontan Water Board staff is attached to this Order and incorporated by reference (Attachment B).
10. On July 11, 2012, in South Lake Tahoe, California, after notice to the Discharger and all other affected persons and the public, the Lahontan Water Board conducted a public hearing at which evidence was received to consider this Order and the Discharger or its representative(s), had the opportunity to be heard and to contest the allegations in the Complaint.

REGULATORY CONSIDERATIONS

11. 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 prohibition:

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

12. On October 14, 2009, the Lahontan Water Board adopted Cease and Desist Order No. R6T-2009-0109, enforcing the above-referenced Basin Plan prohibition.

VIOLATIONS

13. The Discharger violated Cease and Desist Order No. R6T-2009-0109 by failing to satisfy the requirement to comply with the above-referenced Basin Plan prohibition by December 31, 2009. A review of District records and Lahontan Water Board records shows the Discharger did not connect its on-site wastewater disposal system to the District's system until June 7, 2012. This violation subjects the Discharger to liability pursuant to Water Code section 13350, subdivision (a).

CALCULATION OF ADMINISTRATIVE CIVIL LIABILITY

14. Pursuant to Water Code section 13350, subdivision (e)(1), civil liability may be imposed administratively on a daily basis in an amount not to exceed five thousand dollars (\$5,000) for each day in which the violation occurs.
15. Pursuant to Water Code section 13327, in determining the amount of civil liability, the Lahontan Water Board is required to take into account the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
16. On November 17, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13327. The entire Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

17. **Maximum Administrative Civil Liability:** Pursuant to Water Code section 13350, subdivision (e)(1), the total maximum administrative civil liability that may be imposed for the violation in this Order is **\$4,160,000**.

18. **Minimum Administrative Civil Liability:** Pursuant to Water Code section 13350, subdivision (e)(1)(B), the minimum administrative civil liability that must be imposed for the violation in this Order is **\$83,200**, unless the Lahontan Water Board makes express findings pursuant to Water Code section 13350, subdivision (f).

19. Water Code section 13350, subdivision (f) states that:

“A regional board shall not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.”

Water Code section 13327 allows for “other factors as justice may require.” The Lahontan Water Board hereby finds that a reduced penalty is appropriate based upon statements at the hearing and information in the record and because the Discharger has complied with the Basin Plan prohibition as of June 7, 2012, which justifies imposing a liability less than the minimum amount cited in Finding No. 18, above.

20. **Administrative Civil Liability Determination:** Complaint No. R6T-2012-0026 recommends an administrative civil liability of **\$16,490**, based upon the Lahontan Water Board Prosecution Team’s application of the Enforcement Policy’s administrative civil liability methodology. The Discharger has come into compliance with the Basin Plan prohibition since the Complaint was issued. The Lahontan Water Board hereby finds that complying with the Basin Plan prohibition justifies reducing, but not eliminating, the liability amount from that recommended by the Complaint. The reduced liability reflects the Lahontan Water Boards primary objective of achieving compliance with the Basin Plan prohibition, while creating an incentive to comply for other Spalding Tract property owners who continue to violate the Basin Plan prohibition and Cease and Desist Orders that have been issued to them.

21. The Lahontan Water Board has applied the Enforcement Policy’s administrative civil liability methodology and considered each of the Water Code 13327 factors based upon information in the record, including statements and testimonies at the public hearing, information described in greater detail in the Complaint and its attachments, and the Discharger complying with the Basin Plan prohibition beginning June 7, 2012. The Lahontan Water Board hereby finds that civil liability should be imposed administratively on the Discharger in the amount of **\$137**. This amount is based upon “other factors as justice may require,” as discussed in Finding 19, above.

GENERAL

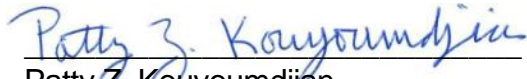
22. This Order only resolves liability that the Discharger incurred for violations specifically alleged in the Complaint. This Order does not relieve the Discharger of liability for any violations not alleged in the Complaint. The Lahontan Water Board retains the authority to assess additional civil liabilities for violations of applicable laws or orders for which civil liabilities have not yet been assessed, or for violations that may subsequently occur.
23. Issuance of this Order is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), pursuant to California Code of Regulations, title 14, section 15321, subdivision (a)(2).
24. Any person aggrieved by this action of the Lahontan Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday or State holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing will be provided upon request, and may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

IT IS HEREBY ORDERED THAT:

1. Administrative civil liability is imposed upon the Discharger in the amount of **\$137**.
2. The Discharger shall submit payment with a cashier's check or money order in the full amount of **\$137** payable to the State Water Resources Control Board's Waste Discharge Permit Fund within 30 days of the date this Order is adopted.
3. Should the Discharger fail to make the specified payment to the State Water Resources Control Board's Waste Discharge Permit Fund within the time limit specified in this Order, the Lahontan Water Board may enforce this Order by applying for a judgment pursuant to Water Code section 13328. The Lahontan Water Board's Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328 if the criterion specified in this paragraph is satisfied.

I, Patty Z. Kouyoumdjian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region on July 11, 2012.



Patty Z. Kouyoumdjian
Executive Officer

July 27, 2012
Date

Attachments:

- A. ACL Complaint No. R6T-2012-0026 (and attachments)
- B. Excerpt from June 20, 2012 Spalding Tract Community Services District's electronic mail and attachment to Lahontan Water Board staff