

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

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2012-0052

**IN THE MATTER OF
ROBINSON, GARY L. FOR VIOLATION OF
CEASE AND DESIST ORDER NOS. R6T-2009-0115 and R6T-2009-0116,
SPALDING TRACT SUBDIVISION, LASSEN COUNTY APN NOS. 077-200-02-11 and
077-200-03-11**

Lassen County

The California Regional Water Quality Control Board – Lahontan Region (Water Board) hereby finds that Robinson, Gary L. has violated Water Board Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116. The Water Board specifically finds:

BACKGROUND

1. Robinson, Gary L. (Discharger) owns Lassen County Assessor Parcel Nos. 077-200-02-11 and 077-200-03-11 in the Spalding Tract subdivision located on the west shore of Eagle Lake, approximately 20 miles northwest of Susanville, California.
2. Based upon Lassen County records and/or Spalding Community Services District (District) records, the Discharger owns and/or operates on-site wastewater disposal systems located at the above-referenced parcels. The Discharger's on-site wastewater disposal systems permit waste containing nutrients to be discharged, and/or threaten a discharge of waste containing nutrients, to waters within the Eagle Lake basin.

CHRONOLOGY OF EVENTS

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

5. On October 14, 2009, the Water Board adopted Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116 against the Discharger for its on-site wastewater disposal systems located at Lassen County APN Nos. 077-200-02-11 and 077-200-03-11.
6. Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116 require the Discharger, by December 31, 2009, to either (1) connect its on-site wastewater disposal systems to the District's community sewer system, or (2) properly abandon its on-site wastewater disposal systems in accordance with Lassen County regulations. Upon completing one of the two activities, the Discharger is required to submit to the Water Board documentation of compliance with the above-referenced Basin Plan prohibition.
7. The Discharger failed to comply with Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116 and on June 28, 2011, the 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-2012-0028. On April 30, 2012, the Complaint was resent with all attachments included. The Complaint alleges that the Discharger has violated the requirements of Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116. The Complaint proposes administrative civil liability of **\$32,980**. The Complaint and its attachments are attached to this Order and incorporated by reference (Attachment A).
9. On July 11, 2012, in South Lake Tahoe, California, after notice to the Discharger and all other affected persons and the public, the Water Board conducted a public hearing at which evidence was received to consider this Order and the Discharger or its representative(s), had the opportunity to be heard and to contest the allegations in the Complaint. After that hearing the Water Board postponed a final disposition to enable property owners to take full advantage of the summer construction season to bring properties into compliance. The July hearing was continued on October 10-11, 2012, in South Lake Tahoe, California, after notice to the Discharger and other affected persons and the public to take information about whether the properties had been brought into compliance.
10. On October 2, 2012, the Prosecution Team received correspondence from Eagle Lake Construction (October 5, 2012 Memorandum from Lauri Kemper, Assistant Executive Officer to Patty Kouyoumdjian, Executive Officer, Attachment C – October 2, 2012 electronic mail from Tammy Leroy to Lisa Scorable)¹ stating that Eagle Lake Construction received a deposit from Gary Robinson to begin work connecting the septic tanks on his two commercial properties, APNs 077-200-02-11 (Osprey Lodge) and 077-200-02-11 (Lakeview Inn). On October 3, 2012, the Prosecution Team received additional correspondence from Eagle Lake Construction

¹ This Memorandum was accepted into the record at the October 10, 2012 board meeting.

(Attachment D – October 3, 2012 electronic mail from Tammy Leroy to Lisa Scorallo) stating that Eagle Lake Constriction anticipates the septic tank for APN 077-200-02-11 (Osprey Lodge) being delivered by October 11, 2012, and that the connection process for both parcels should be completed by October 17, 2012.

REGULATORY CONSIDERATIONS

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

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

12. On October 14, 2009, the Water Board adopted Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116, enforcing the above-referenced Basin Plan prohibition.

VIOLATIONS

13. The Discharger violated Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116 by failing to satisfy the requirement to comply with the above-referenced Basin Plan prohibition by December 31, 2009. Although the Discharger is making progress towards connecting to the District, as of the October 10, 2012 board meeting, the Discharger had not yet connected his two commercial properties. This delay in compliance with the Cease and Desist Orders 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), 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 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 for each Cease and Desist Order violated.**

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 for each Cease and Desist Order violated**, unless the 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 Water Board hereby finds that a reduced penalty is appropriate based on information in the record and statements made at the hearing, including that the Discharger has taken steps to comply with the Basin Plan prohibition and that the commercial properties have been closed since 2006, as described in Step 7 of the Administrative Civil Liability Methodology (attached hereto), which justifies imposing a liability less than the minimum amount cited in Finding No. 17, above.

20. The Enforcement Policy requires that:

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

The economic benefit of violating Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116, is the delayed cost savings of connecting to the District. These are delayed costs because the Discharger is still obligated to come into compliance. In a Memorandum provided by the Assistant Executive Officer to the Executive Officer dated October 5, 2012, the Prosecution Team provided information that the delayed cost of connecting to the District is approximately \$381, based on an assumed compliance date of December 31, 2012. This amount was determined by Gerald Horner, Senior Economist with the State Water Resources Control Board.² The economic benefit plus 10% is \$419.

21. Administrative Civil Liability Determination: The Water Board has applied the Enforcement Policy’s administrative civil liability methodology and considered each of the Water Code section 13327 factors based upon information in the record, including statements at the public hearings on July 11 and October 10, 2012, and the Discharger progressing towards compliance with the Cease and Desist Orders. The Water Board hereby finds that civil liability should be imposed administratively on the Discharger in the amount of **\$430 for each Cease and Desist Order violated**, for a total liability of **\$860**. This amount is based upon “other factors as justice may require,” as discussed in Finding 19 above, and falls within the allowable range.

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 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).

² This Memorandum was accepted into the record at the October 10, 2012 hearing.

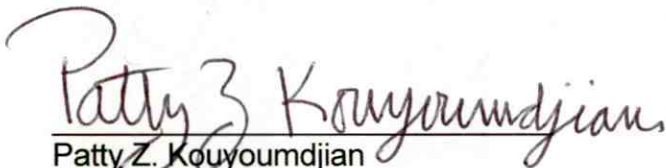
24. Any person aggrieved by this action of the Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday or State holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing 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 **\$860**.
2. The Discharger shall submit payment with a cashier's check or money order in the full amount of **\$860** payable to the State Water Resources Control Board's Waste Discharge Permit Fund within 30 days of the date this Order is adopted.
3. Should the Discharger fail to make the specified payment to the State Water Resources Control Board's Waste Discharge Permit Fund within the time limit specified in this Order, the Water Board may enforce this Order by applying for a judgment pursuant to Water Code section 13328. The Water Board's Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328 if the criterion specified in this paragraph is satisfied.

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


Patty Z. Kouyoumdjian
Executive Officer

Attachment: ACL Complaint No. R6T-2012-0028

ATTACHMENT C

ADMINISTRATIVE CIVIL LIABILITY METHODOLOGY

The Complaint alleges that the Discharger failed to comply with multiple cease and desist orders issued by the Lahontan Water Board (Water Board), which required the Discharger by December 31, 2009, to either connect the Discharger's on-site wastewater disposal systems to the Spalding Community Services District's (District) community sewer system or to properly abandon the Discharger's on-site wastewater disposal systems, in accordance with Lassen County regulations. For the purpose of applying the Enforcement Policy's administrative civil liability methodology, the alleged violation is a non-discharge violation. Because the Complaint only alleges a non-discharge violation, Step Nos. 1 and 2 of the Enforcement Policy's administrative civil liability methodology are not addressed.

Step 3: Initial Liability Determination

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

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

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

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

- b. The Deviation from Applicable Requirements to abandon or connect the septic system is **major**. The reason for the **major** designation is that Water Board staff notified the Discharger of its failure to comply with the cease and desist orders' December 31, 2009 compliance date in a June 28, 2011 Notice of Violation (NOV). The NOV was issued after the Discharger had had approximately 1.5 construction seasons to comply with the cease and desist orders' requirement to either connect the Discharger's on-site wastewater disposal systems to the District's community sewer system or to properly abandon the Discharger's on-site wastewater disposal systems, if appropriate. It was not until October of 2012 that the Discharger made progress towards compliance with connecting to the District, but had not yet completed connection as of the October 10, 2012, Water Board meeting.

There has been ample time to satisfy the requirements of the cease and desist orders since their adoption. The District's community sewer system has been available to connect to since October 2007; however, the Discharger failed to connect or properly abandon the Discharger's on-site wastewater disposal systems and subsequently was issued cease and desist orders in October 2009. The Discharger has now only recently begun to comply with their requirements by progressing with its connection to the District.

- c. There are 832 days of violation for the period beginning January 1, 2010 and ending April 11, 2012, the date of drafting Administrative Civil Liability Complaint No. R6T-2012-0028. The statutory maximum amount per day per violation is \$5,000 for each cease and desist order the Discharger has violated. Therefore, 832 days of violation at the statutory maximum per day of \$5,000, yields a maximum initial liability of **\$4,160,000** (832 days x \$5,000/day) for each cease and desist order the Discharger has violated. Applying the Potential for Harm per-day factor of 0.55, and the statutory maximum liability amount for each day of violation, yields an initial liability of **\$2,288,000** (0.55 x 832 days of violation x \$5,000 per day) for each cease and desist order the Discharger has violated.

Step 4: Adjustment Factors

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

a. Multiple Day Violations

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

The Discharger has failed to comply with its cease and desist orders for at least 832 days. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the delayed cost of having the on-site wastewater disposal systems either connected to the District's community sewer system or properly abandoned, if appropriate. Therefore, an adjustment can be made.

The Water Board Prosecution Team recommended applying the alternative approach to civil liability calculation provided by the Enforcement Policy. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period. Using this approach, the total number of days is revised to 33 days of violation.

This results in a Revised Initial Liability Amount as follows:

Revised Initial Liability = $(0.55) \times (33 \text{ days of violation}) \times (\$5,000) = \mathbf{\$90,750}$ (for each cease and desist order the Discharger has violated).

b. Adjustment for Culpability

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

The Water Board's Prosecution Team has exercised significant discretion in deciding whether to pursue administrative civil liability for violating the cease and desist orders. Doing so is consistent with the Prosecution Team's message to the Water Board and to the community in 2009 that its primary interest was compliance,

and that the Prosecution Team understood some were facing various hardships and would work with property owners towards meeting its compliance objective. After providing approximately 1.5 construction seasons to comply, the Prosecution Team issued a June 28, 2011 Notice of Violation to property owners that had yet to comply with their 2009 cease and desist orders, notifying them that time to comply with the cease and desist orders' requirements without additional enforcement action was running out. In spite of the Prosecution Team's efforts to allow ample time to comply and to notify the Discharger of a pending administrative civil liability complaint, it was not until October 2012 that the Discharger began making substantial progress towards connecting to the District.

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

c. Adjustment for Cleanup and Cooperation

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

The Discharger did not cooperate initially with the Water Board on this issue. Even after Water Board staff issued the June 28, 2011 NOV, the Prosecution Team did not observe any attempt by the Discharger to comply. The lack of effort to comply with the cease and desist orders, or even to communicate with the Prosecution Team regarding the reason why compliance has not occurred, until October warrants a value of 1.5.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a **minimum** multiplier of 1.1 should be used for this factor. In this case, a multiplier of **1.0** has been selected based upon the absence of prior violations of Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116. A review of the California Integrated Water Quality System (CIWQS) and Water Board files shows that the violations represent the first violations of Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116. Therefore a multiplier of 1.0 is appropriate, and no adjustment to the above liability amount should be made in response to this factor.

Step 5: Determination of Total Base Liability Amount

The Total Base Liability for the violation is **\$176,962.50** for each cease and desist order the Discharger has violated. The Total Base Liability for the violation is determined by multiplying the Revised Initial Liability by the multipliers associated with each of the Adjustment Factors discussed above.

Total Base Liability = (Revised Initial Liability) X (Culpability) X (Cleanup/Cooperation) X (History of Violations) = (\$90,750) X (1.3) X (1.5) X (1.0) = **\$176,962.50 (for each cease and desist order the Discharger has violated).**

Step 6: Ability to Pay and Ability to Continue Business

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

In this case, the Water Board Prosecution Team has sufficient information to suggest the Discharger has the ability to pay the proposed liability. The Discharger owns the parcel(s) of land, listed below:

Assessor's Parcel Number	County	Property Address	Assessed Total Value	Assessment Year
077-200-02-11	Lassen	687-015 Acacia Way	\$432,319	2011
077-200-03-11	Lassen	N/A	\$618,391	2011
531-0220-010	Alameda	42011 Boscell Road	\$4,438,919	2011
531-0220-011	Alameda	42027 Boscell Road	\$2,011,601	2011
830-17-058	Santa Clara	2560 Bridle Path Drive	\$1,731,307	2011
		TOTAL	\$9,232,537.00	

Given the above assets, it appears the Discharger has the ability to pay the proposed liability.

Step 7: Other Factors as Justice May Require

The Enforcement Policy provides that if the 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 findings are made. Additionally, the staff costs for investigating the violation and preparing the Complaint should be added to the liability amount.

a. Adjustments for Other Factors as Justice May Require

The statutory minimum liability amount for violations under Water Code section 13350 is \$100 per day of violation, unless the regional water board makes express findings setting forth the reasons for its action based upon its consideration of the factors set forth in Water Code section 13327. Based on the date of compliance in

the cease and desist orders, days of violations began accruing on January 1, 2010. At the statutory minimum liability of \$100 per day, and a total of 832 days of violation, the result is a minimum liability of **\$83,200**. The Prosecution Team has determined that, in this case, even the minimum liability amount is inappropriate. Staff finds this amount to be an excessive liability for the violations alleged herein, and inappropriate for the following reasons.

Water Board staff reviewed Lassen County Assessor's Office records for the properties whose owners are subject to the administrative civil liability for the failure to either connect their on-site wastewater disposal system to the District's sewer system or to properly abandon it. County records for the year 2012 show that the properties range in value from \$17,119 to \$618,391. Two of these properties with the highest values are commercial properties, with values consistent with commercial uses and related improvements (i.e., hotel, restaurant). The remaining properties have an average value of \$73,574. Based on these data alone, the Prosecution Team determined that the minimum statutory liability of \$83,200 is excessive relative to the value of most of the properties whose owners continue to violate their 2009 Cease and Desist Orders. Without any further assessment, the minimum liability appears inappropriate and excessive for its intended purpose.

Additionally, the Prosecution Team's June 28, 2011 Notice of Violation notified the Discharger of the Prosecution Team's intent to issue administrative civil liability complaints and bring them before the Water Board at its November 9-10, 2011, Board Meeting. In a continuing effort to encourage compliance, the Prosecution Team stated in the Notice of Violation that it would consider withdrawing the complaint if the Discharger complied with the cease and desist orders prior to the November 9-10, 2011 Board meeting date. The Prosecution Team has consistently stated that compliance has been its primary goal, and the Notice of Violation was providing one last chance to comply with the cease and desist orders without facing additional enforcement action in the form of civil liability.

The Prosecution Team recommended using November 9, 2011 as the basis for developing a more appropriate liability amount, as it is the date the Prosecution Team informed the Discharger that compliance was to be achieved, or imposing administrative civil liability would be pursued. Attachment D provides a methodology spreadsheet based upon November 9, 2011 as the deadline for compliance. The resulting number of days of violations totals 155 days (November 9, 2011 – April 11, 2012). 155 days of violation would result in a minimum liability of **\$15,500** for each cease and desist order the Discharger has violated, based upon the statutory minimum liability of \$100 per day of violation.

Administrative civil liability complaints were issued to property owners of the nearby Stones-Bengard subdivision in 1997 for failing to either connect their on-site wastewater disposal systems to the Stones-Bengard community sewer system or to properly abandon them. In the Stones-Bengard cases, the Water Board issued administrative civil liability complaints proposing that the owners be assessed liability in the amount of **\$6,500**. This was the minimum liability that could be imposed for violating cleanup and abatement orders that had been issued 65 days prior to issuing the administrative civil liability complaints. The cleanup and abatement

orders had been issued after the Stones-Bengard property owners had been violating their cease and desist orders issued in 1991 for several years. The liability amount of \$15,500 for each cease and desist order that has been violated still represents an amount that is excessive for the unique circumstances, including the fact that the commercial properties have not been in use since 2006 and that the Discharger has made progress towards connecting to the District.

b. Staff Costs

The Water Board Prosecution Team staff time incurred to prepare administrative civil liability complaints and supporting information for 25 Spalding Tract subdivision properties is estimated to be 165 hours. Based on an average cost to the State of \$150 per hour, the total staff cost is estimated to be \$24,750. Staff finds it appropriate to spread these costs equitably by dividing the total staff cost equally for each of the 25 properties. On this basis, the Prosecution Team proposed assessing a cost of \$990 for each property. Even though the Enforcement Policy recommends adding such costs to the liability amount, the Water Board finds here that doing so would result in an excessive penalty. As a result, the Adjusted Total Base Liability is not recommended to be adjusted upward by **\$990**, bringing the total proposed liability to **\$430** for each cease and desist order the Discharger has violated.

Step 8: Economic Benefit

The Enforcement Policy directs the Water Board to determine any Economic Benefit Amount of the violation based upon the best available information. The Enforcement Policy suggests that the Water Board compare the Economic Benefit Amount to the Adjusted Total Base Liability and ensure that the Adjusted Total Base Liability 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.

The Discharger has realized an economic benefit by failing to connect or abandon the Discharger's on-site wastewater disposal systems to the District, as required by Cease and Desist Order Nos. R6T-2009-0115 and R6T-2009-0116. In order to estimate the economic benefit, Water Board staff subpoenaed records from contractors who have connected and/or properly abandoned on-site wastewater disposal systems in the Spalding Tract subdivision. Based upon a review of the contractor records, the average cost for a property owner to connect an on-site wastewater disposal system to the District's community sewer system is \$4,210. For delayed costs, the savings would be the potential interest earned on the delayed costs. Therefore, the economic benefit amount realized by Dischargers for delaying connection into the District is the interest on the \$4210. These are delayed costs because the Discharger is still obligated to come into compliance. The Prosecution Team submitted a Memorandum on October 5, 2012, identifying the economic benefit realized by the Discharger for delaying connection to the District as \$381, based on an assumed compliance date of December 31, 2012. This amount was calculated by Gerald Horner, State Economist with the State Water Resources Control Board. The Adjusted Total Base Liability Amount is greater than 110 percent of the estimated economic benefit amounts, and therefore no adjustment is necessary.

Step 9: Maximum and Minimum Liability Amounts

The maximum liability amount the Water Board may assess for the above-referenced violations pursuant to Water Code section 13350, subdivision (e)(1), is \$5,000 per day of violation. Therefore, the maximum liability the Water Board may assess for 832 days of violation (elapsed time since the date of compliance in the cease and desist orders) is **\$4,160,000** for each cease and desist order the Discharger has violated.

The minimum liability amount provided in Water Code section 13350, subdivision (e)(1)(B) is \$100 per day. However, 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 specific factors discussed in Step 7 above yield an alternative minimum liability amount of **\$430 per property**.

The Enforcement Policy also requires that:

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

The economic benefit amount (\$381) plus ten percent is **\$419**, which is less than the alternative statutory minimum cited above and the Total Proposed Liability Amount.

Step 10: Final Liability Amount

The Proposed Liability Amount is **\$430** for each cease and desist order the Discharger has violated, based upon the considerations discussed in detail, above. The Discharger has violated two cease and desist orders resulting in a Total Proposed Liability Amount of **\$860**.