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State Water Resources Control Board **SURNAME/FILES**



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
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Arnold Schwarzenegger
Governor

MAY 13 2008

In Reply Refer to:
CEN:262.0(31-18-02)

Rod Baydaline
Baydaline and Jacobsen LLP
895 University Avenue
Sacramento, CA 95825

Dear Mr. Baydaline:

WATER RIGHT COMPLAINT REGARDING ALLEGED WASTE AND UNREASONABLE USE OF STORED WATER AT THE HIDDEN LAKES SUBDIVISION IN PLACER COUNTY

This is in response to your letter dated April 15, 2008 in which you provided comments to my letter of March 11, 2008. You conclude that there is not an unreasonable loss of seepage at Hidden Lakes and thus no misuse of water. You ask for the State Water Resources Control Board's (State Water Board) "standard" for what is considered to be a reasonable loss of water for earthen dams since all dams must have seepage losses.

Title 23, Division 3, Article 22, section 855(b) defines "misuse" as any waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water. Both the State Water Board and the California Supreme Court have determined that the reasonableness of a use of water cannot be determined in the abstract or by some inflexible standard. In determining the reasonableness of water usage, the State Water Board examines the particular facts of each case, guided by pertinent statutes, regulations, prior court decisions, and prior decisions of the Board. (State Water Board Decision WR 1600, at p. 22-23)

At this stage, I have concluded that a misuse of water exists at Hidden Lakes. The reason for my finding of misuse was provided by letter to you dated September 18, 2006, as follows:

1. There is substantial evidence in the complaint record to indicate that water is seeping from the northern lake at the Hidden Lakes subdivision onto the Wood and Allegra properties that serves no beneficial use and has caused, and is causing, damage to these properties;
2. this damage has likely significantly devalued the Wood and Allegra properties; and
3. given the above, this seepage of water from the northern lake constitutes a misuse of water.

When the hearing is scheduled before the State Water Board, the board members will be the administrative body charged with determining if the body of evidence adequately demonstrates that your client's extra seepage losses constitute a misuse of water. The Hidden Lakes Homeowners Association will have an opportunity at that time to present evidence and make arguments to demonstrate that the extra seepage from the North Lake Dam does not cause damage and is not an unreasonable amount of water loss. You indicate that your consultant's final report will be available in 30 days and at that time you would like to meet. I am open to meet with you on this matter any time before a hearing is scheduled.

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California Environmental Protection Agency



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Rod Baydaline
Baydaline and Jacobsen LLP

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If you have any questions concerning this matter, please contact Charles NeSmith at (916) 341-5313, or his supervisor Charles Rich at (916) 341-5377.

Sincerely

ORIGINAL SIGNED BY:

James W. Kassel
Assistant Division Chief

cc: Tony and Donna Wood
Ted and Cheri Allegra
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