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June 3, 2008

Via Facsimile (916) 341-5400 and U.S. Mail

Charles NeSmith
Engineering Geologist
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814

Re: *Final Geotechnical Evaluation for
Hidden Lakes Estates Homeowners Association
CEN: 262.0 (31-18-02)*

Dear Mr. NeSmith:

Approximately one month ago we provided you a response to your March 11, 2008 letter regarding whether the Association is misusing water by allowing excessive leakage from the two ponds located within Hidden Lakes Estates development. In our response we advised you of the preliminary findings of Paragon Geotechnical Consulting Engineers. We also advised you that the Association expected a final report from Paragon within the next month. The Association recently received the final report from Paragon, a copy of which is enclosed with this correspondence.

We are also in receipt of the May 13, 2008 letter from James W. Kassel in response to our April 15, 2008 letter in which he states that a misuse of water exists at Hidden Lakes Estates based on the following information:

1. There is a 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

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3. given the above, this seepage of water from the northern lake constitutes a misuse of water.

The Association respectfully disagrees with the conclusion that any seepage of water from the north pond constitutes a misuse of water.

In the final Paragon report, Frederick J. Wentz, Jr. G.E., arrives at certain conclusions following independent field and laboratory testing of the dams at Hidden Lakes Estates. We find the following conclusions of particular importance to the issue of water misuse:

The seepage occurring in the [North] dam embankment and foundation is **not judged to be excessive relative to what would be expected for the as-constructed condition of the embankment and foundation.** If the dam foundation has been stripped of the unsuitable materials, and the bottom of the embankment keyed several feet into firm rock, the seepage at the embankment/foundation interface would probably be somewhat less than currently exists. **However, all earth dams can be expected to have some seepage, and the subject dam does not appear to be performing poorly based on the results of our investigation.** (Page 9, paragraph 2. Emphasis added.)

The claim that seepage from the north dam is negatively impacting lots 71 and 71 is in our judgment, **questionable.** We did not observe obviously wet/saturated ground or standing water during our 4 site visits to lots 71 and 72. Although the ground in the backyard of lot 71 was observed to be quite damp and standing water was observed in an irrigation valve box, the dampness was not out of the ordinary for a well irrigated yard in shallow bedrock terrain. (Page 9, paragraph 5. Emphasis added.)

It is presumed that there was originally a drainage swale of some sort associated with the "meandering drainage easement" shown on the original subdivision plot plan to be located on the property boundary between lots 71 and 72. If so, it appears that the swale has been **substantially filled in; at least in the backyard portions of the lots.** The main purpose of the 12-inch-diameter CMP that appear to run along the property boundary between the lots is presumably to convey overflow from the 16-inch CMP that comes from the pond through the north dam. The inlets/outlets of these culverts should be free of debris, soil, etc. and the ability of the culverts to pass water freely checked. (Page 10, paragraph 2. Emphasis added.)

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As for the south pond, the Paragon final report states, in relevant part: "No obvious signs of seepage or slope instability were observed on the downstream face or toe of the embankment. . . . In summary, the south dam appears to be performing adequately."

The Association has expended considerable time and money on the allegations of water misuse. Independent consultants were hired by the Association to conduct extensive evaluations of the earthen dams. These consultants have not found any seepage from the earthen dams to be "excessive". In fact, the final report from Paragon concluded that the north dam "does not appear to be performing poorly" and the south dam "appears to be performing adequately". To conclude otherwise would be contrary to these independent findings.

As a final note, the Association must respond to Mr. Kassel's basis for arriving at his conclusion of water misuse. First, no proof has ever been provided or established that any seepage from the northern lake is the *cause* of damage alleged by the Woods and Allegras. Second, the property owners in question filled-in the drainage swales that once existed in the meandering drainage easement. Accordingly any damage to those properties must be considered in light of the owners' actions.

The Association's Board of Directors has acted and continues to act in good faith to address and resolve any allegations of water misuse. Upon receipt of the final report from Paragon, the Board is of the opinion that the allegations have been fully investigated by the Association. If, however, upon your review of this letter you believe that a meeting of the parties would be beneficial to ensure this matter is fully resolved, please contact me at (916) 669-3500 to arrange a mutually agreeable meeting date and time.

Very truly yours,

BAYDALINE & JACOBSEN LLP



Rod A. Baydaline

Enclosures

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cc: Board of Directors c/o Frei Real Estate Services

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