

January 24, 2012



**VIA U.S. MAIL**  
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Jeanine Townsend  
Clerk of the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Re: Draft Order WR 2012-XXXX, *In the Matter of the Alleged Waste and Unreasonable Use of Water by Hidden Lakes Estates Homeowners Association*

Dear Ms. Townsend:

The Hidden Lakes Estates (HLE) Homeowners Association (the "Association") is pleased to submit the following comments on the State Water Resources Control Board's ("SWRCB's") January 11, 2012 Draft Order dismissing the complaint in *In the Matter of the Alleged Waste and Unreasonable Use of Water by Hidden Lakes Estates Homeowners Association*.

To begin, the Association thanks the SWRCB and the hearing team for their consideration of the issues and for preparing such a well reasoned and methodically detailed Draft Order. The Association does have the following few technical comments:

1. The Draft Order, page 11, identifies a fountain at the north lake, though the fountain is actually at the south lake. (HLE Ex. 41 (photo 21); HLE Ex. 42 ¶ 17.)
2. The Draft Order, pages 3 and 11–12, makes a fairly detailed analysis of seepage from the north lake in reference to the assumed north lake storage capacity of 7 acre-feet and a combined north–south lake storage capacity of 14 acre-feet. This figure derives from prosecution team witness Mr. Rich's computation of the north lake capacity using a formula he has found reliable:

Rich formula: [maximum lake depth] × [surface area] × [0.65].

Formula applied to north lake:  $10.14 \times 1.15 \times 0.65 = 7.47$  acre-feet

(Reporter's Transcript (RT) at 45 ¶ 21 to 46 ¶ 4.) Not knowing the maximum depth of the north lake, however, Mr. Rich "made a guess" of approximately 10 feet. (RT 46 ¶¶ 5-9.) During cross-examination Mr. Rich conceded that his volume calculation would have been different had he taken the correct lake depth into account. (RT at 47 ¶¶ 5-9.)

Several documents in the hearing record show that the maximum depth of the north lake is approximately 14 feet, not 10. First, the record includes the original engineer-stamped construction drawing for the north lake. (HLE Ex. 2.) The drawing shows the lake bottom's design elevation as 455', the bank elevation as 472', and the "approx. water line EL. 469." (*Id.*) The drawing is stamped "AS BUILT" dated 6/28/78. (*Id.*) Second, an August 18, 2003 letter prepared by Youngdahl Consulting, signed by and including the stamps of two Youngdahl engineers, also identifies the lake's water bottom and top elevations as 455' and 469'. (HLE Ex. 29 at 2.) Third, the hearing record contains a recent topographic survey that shows the approximate elevation of a portion of the north lake bottom and surveyed elevations of the bank and surrounding perimeter. (HLE Ex. 45.) The survey was prepared by licensed land surveyor James L. White. (*Id.*) Although the entire lake area was not identified, the lowest elevation of that portion of the lake depicted on the map is 457.4' with the bank contour at 471.1', indicating a maximum lake depth of at least 13.5'. (*Id.*) There is no survey in the hearing record showing the elevations of the remainder of the north lake or of the south lake.

Applying 14 or 13.5 feet as the maximum depth to Mr. Rich's formula would yield 10.5 or 10.1 acre-feet storage capacity respectively for the north lake, as follows:

Formula applied to north lake with 14' depth:  $14 \times 1.15 \times 0.65 = 10.465$  acre-feet

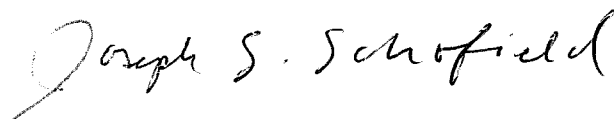
Formula applied to north lake with 13.5' depth:  $13.5 \times 1.15 \times 0.65 = 10.09$  acre-feet

The Association requests that the Final Order's discussion of the lake volume account for the record evidence showing a deeper maximum lake depth than the 10' guessed at by Mr. Rich.

Again, the Association thanks the SWRCB for its thoughtful decision on a complex factual record. We will be pleased to answer any questions that you or your staff may have at the regular board meeting when the Order will be considered for adoption.

Very truly yours,

Downey Brand LLP



Joseph S. Schofield