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31-18-

April 15, 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: *Complaint regarding misuse of water
Hidden Lakes Estates Homeowners Association
CEN: 262.0 (31-18-02)*

Dear Mr. NeSmith:

As you may recall from previous correspondence, this firm represents Hidden Lakes Estates Homeowners Association (the "Association"). The Association is in receipt of your March 11, 2008 correspondence regarding the on-going issue of whether the Association is misusing water by allowing excessive leakage from the two ponds located in the Hidden Lakes Estates development. Your letter asks the Association to "demonstrate that [it] has either permanently corrected a misuse of water, or is not misusing water".

Understanding the significance and importance of water conservation, the Board of Directors hired Shaw Environmental, Inc. and Paragon Geotechnical, Inc. to survey and test the common area ponds. The Association is in receipt of the *Geophysical Survey Report*, prepared by Shaw, that assesses the subsurface conditions within the two earthen dams on the ponds and a *Memorandum of Preliminary Findings and Conclusions - Evaluation of Pond Seepage*, prepared by Paragon, that presents preliminary results of the seepage evaluation of the earthen dams. The Association also recently received another memorandum from Paragon that states: "As noted in our initial memorandum, we do not believe that the dam's stability is outside of what would be expected for similar types/sizes of structures, nor do we believe that there is an imminent danger of the dam 'failing' or performing differently than it has been until now."

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The initial memorandum from Paragon, referenced in your letter, states, in part, on page eight:

The seepage occurring in the 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 had been completely 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.** (Emphasis added).

Given that all earth dams can be expected to have some water seepage, and given the preliminary conclusions of the independent experts retained by the Association to analyze this matter, it does not appear that there is not an unreasonable loss of water seeping from the earthen dams and, hence, no "misuse of water". This being said, if the Water Control Resources Board has a "standard" for what is considered to be a reasonable loss of water for earthen dams, it would be helpful in assessing the allegations of water misuse. Any guidance from your office would be appreciated.

The final report from Paragon is expected within 30 calendar days. At that time, the Association's Board of Directors believes it would be beneficial if a meeting with you can be arranged to discuss, and hopefully resolve, this outstanding matter. The Association remains committed to protecting water resources and taking those steps necessary to demonstrate that its earthen dams are not seeping an excessive amount of water.

Very truly yours,

BAYDALINE & JACOBSEN LLP



Rod A. Baydaline

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cc: Board of Directors

Hidden Lakes Estates Homeowners Association

**BAYDALINE
& JACOBSEN LLP**

ATTORNEYS AT LAW