

1 DOWNEY BRAND LLP
JOSEPH S. SCHOFIELD (Bar No. 224448)
2 621 Capitol Mall, 18th Floor
Sacramento, CA 95814-4731
3 Telephone: (916) 444-1000
Facsimile: (916) 444-2100
4 jschofield@downeybrand.com

5 Attorneys for Respondent

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BEFORE THE

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STATE WATER RESOURCES CONTROL BOARD

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IN THE MATTER OF:

**CLOSING BRIEF OF HIDDEN LAKES
ESTATES HOMEOWNERS
ASSOCIATION**

12

**Alleged Waste and Unreasonable Use of
Water by the Hidden Lakes Estates
Homeowners Association**

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1 **I. INTRODUCTION**

2 In 2005, complainants amicably resolved a lawsuit against the Hidden Lakes
3 Estates Homeowners Association (HOA) regarding seepage which they alleged entered
4 their property from the HOA’s small aesthetic lake. In exchange for a cash settlement,
5 complainants dismissed the suit with prejudice, and bound themselves to fully and forever
6 release all claims against the HOA. Trying to circumvent the settlement agreement,
7 complainants urged the State Water Resources Control Board (State Board) to prosecute
8 the HOA, hoping to repackage their former lawsuit as an administrative complaint against
9 the unreasonable use of water. This disguised trespass action is a misuse of State Board
10 process, and it is based on a bald mischaracterization of the HOA’s northern lake dam: as
11 the evidence amply demonstrates, the earthen dam functions as it should and the seepage
12 is within the expected range for this type of construction. Moreover, any water seeping
13 from the lake passes into a longstanding easement across complainants’ property, which
14 they or their predecessors have wrongly interfered with by filling it in and building
15 improvements in it. The State Board should dismiss the complaint, leaving the
16 complainants with the compensation they already received from the settlement agreement.

17 **II. FACTUAL BACKGROUND**

18 The HOA operates two interconnected lakes. Each is maintained by an earthen
19 dam. The HOA purchases water from the San Juan Water District to fill the lower-
20 elevation southern lake. When water is high in the southern lake (e.g., due to rain), excess
21 water flows over an outfall to a nearby creek. The northern lake is filled by a pump that
22 carries water up from the southern lake. When water in the northern lake is high, the
23 excess flows over a weir and back down to the southern lake. (HOA Exhibit (HLE) 42 ¶¶
24 4, 7.) Both dams have some seepage. (HLE 16 at 10-11.) Seepage from the northern lake
25 dam passes into the backyards of complainants, together with water from other sources.
26 The subdivision drainage system was designed to use natural swales (easements), and one
27 such easement exists along complainants’ property line. (HLE 42 ¶ 13; HLE 3; PT 20 at
28 4-6) But instead of having a steady sloping gradient toward the street as shown on the

1 recorded easement map (PT 20 at 4-6), complainants or their predecessors filled in the
2 easement (*id.* at 6-9). This sharply contrasts with other area homeowners, who keep their
3 easements as the open canals they were intended to be. (*Id.* at 2-3; HLE 42 ¶ 13.)

4 III. ISSUES / DISCUSSION

5 The Hearing Notice identified two key issues: (1) Does a misuse of water exist at the
6 lake? (2) If so, what corrective actions should be required? The HOA responds as follows.

7 A. There Is No Misuse of Water at the Northern Lake.

8 In his summation, the Hearing Officer identified three fundamental questions related to
9 the first issue: (1) Does the lake leak water onto complainants lots (Lots 71 and 72, or the
10 “Lots”)? (2) If so, does the leakage exceed that for a typical lake of similar attributes? (3) If so,
11 does that amount rise high enough to consider it an unreasonable use of water under Article 10,
12 Section 2 of the California Constitution? (Record of Testimony (RT) 183:15 to 184:2.)

13 1. Northern Lake Dam Has Some Seepage.

14 Regarding the Hearing Officer’s first question, the dam has some seepage. The dam is an
15 unlined earthen dam. (HLE 16 at 1.) Most, if not all, unlined earthen dams leak. (RT 14:12-13;
16 35:16-25; 144:10-11; Prosecution Team Exhibit (PT) 8 at 2; HLE 19 at 7:17; HLE 44 at 2:8.)

17 2. Northern Lake Seepage Is Typical for an Earthen Dam.

18 Regarding the second question, however, the evidence conclusively demonstrates that the
19 seepage occurs at a rate that is typical of earthen dams. The claim should thus be dismissed.

20 The only technical evaluation of the dam material was performed by Paragon Engineering.
21 Paragon drilled four deep borings into the center of the dam (plus one each on either side of the
22 dam), and conducted field and laboratory tests of the boring material to determine the dam’s
23 compaction and permeability. (HLE 16 at 2-4, 7-8; 44 at 14-23; RT 141:12 to 142:25.)
24 Paragon’s geotechnical engineer, Mr. Wentz, has extensive experience related to earth dam
25 design, construction, and inspection. (HLE 52.) At the hearing, he testified that the standard
26 minimum soil compaction rate for earthen dams is 90 percent. (RT at 143:5-6.) The tests show
27 that the soils in the northern dam exceed this amount and are compacted to about 91 percent,
28 though Mr. Wentz testified that the actual rate is probably even a few percentage points higher

1 because soils are loosened slightly as they are extracted for testing. (RT at 143:7-16.) The soil
2 tests show that the dam is “well-compacted” and the soil compaction is “adequate.” (RT at
3 143:4-5, 16.) Paragon’s tests also demonstrate that the soils are *less permeable* than expected for
4 soils that are compacted to a 90-91% rate. (HLE 16 at 8; *see also* HLE 44 at 3:22-23; RT 143:21-
5 24.) Based on these tests, Mr. Wentz testified:

6 In my judgment, the seepage through the dam is not excessive for the type of
7 structure. Rather, the *seepage is consistent or even somewhat low compared to*
8 *what would be expected* with the measured level of compaction of the
9 embankment soils. All earth dams seep, and this one does not appear to be
10 performing poorly.

11 (HLE 44 ¶ 9 (emphasis added).)

12 Paragon also took monthly readings of the water levels at four locations in and adjacent to
13 the northern dam for about 34 months. (HLE 51.) These readings show seepage through the dam
14 is stable, rising and falling only with local precipitation events. (RT at 146:19 to 147:12.)

15 Paragon also collected some readings from the Lots, but only for about 5 months due to limited,
16 inconsistent access by the Lot owners. (*Id.*; RT at 72:10-17; 140:22 to 141:1; HLE 16 at 4; HLE
17 23-27.) Although limited, these data suggest that higher-groundwater elevations on the Lots are
18 similarly driven by precipitation events and local irrigation, not seepage. (RT 147:13 to 148:9.)

19 The only direct measurement of the annual *quantity* of seepage outflow through the dam
20 was by hydrologist Dr. Humphrey, PhD, PE. (PT 8 at 1.) Complainants collect water on the Lots
21 and pump it out toward the street. Dr. Humphrey assumed that all water pumped off the Lots was
22 from dam seepage, and he measured off-Lot pumping at 1.23 gallons per minute (2 acre-feet per
23 year (AFY)). (*Id.*; PT 9 at 13 (“observed seepage loss was 2.0 ac-ft measured at Jon Way”).) Dr.
24 Humphrey’s use of a single measurement and extrapolating it to compute annual seepage outflow
25 appears reasonable given that Paragon’s measurements show water levels in the dam are steady
26 except during and after precipitation events. If anything, 2 AFY would be *overestimate* dam
27 seepage because the measurement includes *all* water being removed from the Lots, with no
28 adjustment to account for water deriving from other local sources such as irrigation.¹ (PT 8 at 1-

¹ There are multiple sources of the water on the Lots: direct precipitation, storm- and subsurface-overflow (RT 36:19 to 39:9, 129:24 to 131:24; HLE 16 at 9-10, 43 at 3:1-4), perched groundwater (HLE 44 ¶ 12), direct irrigation (HLE 19 at 2:15-16; HLE 54 at 39:16-23, 41:22-23 (describing installation of new irrigation system on Lot 71)),

1 2.) Dr. Humphrey's measurements are confirmed by repeated visual observations by a
2 neighborhood resident. (HLE 42 at 6:10-13 (outflow at Jon Way is equal to "amount of water
3 flowing from a low-flow sink faucet").) Dr. Humphrey's report states: "Some seepage is
4 expected and *even desirable for earth dams*. Seepage losses of up to 1" per month (2.1 AF) are
5 considered good." (PT 8 at 2 (emphasis added).) Given that the seepage through the dam was
6 measured at 2 AF, the rate of loss would be considered "good" by Dr. Humphrey's standard.

7 Prosecution witness Mr. Rich found seepage through the northern dam was 6.05 AFY.
8 (PT 21 at 2.) But he did not take into account, and was not aware of, the actual measurements
9 taken by Dr. Humphrey. (RT at 51:13 to 52:11.) Mr. Rich also unreasonably attributed all losses
10 from both lakes (other than evaporation) to only the northern lake dam. Thus, some of the water
11 he attributed to the northern lake dam should instead have been attributed to (1) irrigation of 1.5
12 acres of landscaping (RT at 43:14-23, 125:5 to 127:12; HLE 35, 42 ¶ 4, 50), (2) seepage through
13 southern lake dam, which is of similar construction to—and has measured water elevation levels
14 similar to those of—the northern lake dam (RT at 176:19 to 179:19, 181:14 to 182:4; HLE 16 at
15 10-11); (3) overflow into the local drainage (HLE 42 at 3:3-4), (4) evaporation due to a fountain
16 that runs during all daylight hours (RT 51:3-12; HLE 42 at 4:18-19), (5) uptake by local
17 vegetation (RT 49:14-19), and (6) seepage to groundwater (*compare* PT 8 at 2 (Humphrey's
18 attributing other reservoir losses to groundwater seepage). In calculating the percentage of
19 northern lake seepage, Mr. Rich also inaccurately estimated lake depth at 10', instead of using the
20 14' depth shown in applicable records and maps. (RT 45:17 to 47:9; PT 7 at 2; HLE 2 at 2.) He
21 conceded his calculation of lake storage would need to be recalculated to account for this
22 difference in depth. (RT 47:5-9.)

23 3. The Seepage Is Not an Unreasonable Use of Water.

24 Even though the northern lake dam's seepage is occurring at a reasonable level typical for

25 overflow from neighbors' irrigation (RT 90:14-16; HLE 16 at 9-10), leakage from hot tub and pool (RT 178:20 to
26 179:16), and seepage from the northern lake. Complainants' consulting hydrologist-engineer, Dr. Thompson,
27 arranged for laboratory tests of various constituent levels of the water in the northern lake and of the water occurring
28 on Lots 71 and 72. The results show that some components are higher in the lake water and lower in the Lots' water,
while others are lower in the lake water and higher in the Lots' water. (HLE 49 at 4 to 7.) These laboratory tests are
consistent with the presence of water sources other than just seepage from the lake. (*Id.*; RT 99:15 to 101:19.)

1 an earthen dam, there has been some suggestion that the seepage should nonetheless be
2 considered a “misuse” of water and regulated by the State Board. After investigating the
3 complaint, Division of Water Rights staff prepared a memorandum concluding that the seepage is
4 unreasonable solely because of alleged damage to complainants’ property. (PT 9 at 14-15.) This
5 approach is untenable because complainants have already accepted a cash settlement fully and
6 permanently compensating them for all past and future alleged damage to their property from
7 seepage through the dam. The alleged physical damage has been the subject of a lawsuit, was
8 settled between the parties, and is therefore not an appropriate matter for resolution by the State
9 Board. Moreover, drainage easements authorize flow across complainants’ property. To the
10 extent that the “unreasonable use” in this case is premised on a finding of alleged damage to
11 complainants’ property, the State Board should take into account that such damage has been
12 permanently mitigated through a cash settlement and dismiss the complaint.

13 **a. Settlement Agreement Resolved All Claims of Damage to**
14 **Complainants’ Property.**

15 In 2004, complainants sued the HOA for various claims related to the alleged seepage,
16 and sought an injunction to stop it. (HLE 57 at 8:21 to 9:6.) In 2005, however, complainants
17 executed a settlement agreement with the HOA forever compensating them, and their successors
18 and assigns, for any damages they may ever claim from water allegedly seeping through the
19 northern lake dam. The settlement agreement states:

20 In exchange for the unallocated payment of \$ _____ on behalf of defendant Hidden
21 Lakes Estates Homeowners Association . . . , Plaintiffs [owners of Lots 71 and 72],
22 for and *on behalf of themselves, their heirs, . . . successors, [and] assigns . . .*
23 *hereby release and discharge* Hidden Lakes Estates Homeowners Association . . . ,
24 *from any and all claims, demands, causes of action, obligations, damages and*
25 *liabilities of any kind and nature whatsoever, whether in law or in equity, which*
26 *either party ever had, now has, or may in the future arising from the claims*
27 *asserted in the operative complaint and predecessor complaint . . . except as*
28 *limited by the provisions of Civil Code § 1668.*

25 (HLE 5 at 1-2 (emphasis added), ¶ 6.) The agreement was further intended to “fully and finally
26 and forever settle and to release any and all matters, disputes, and differences, known or
27 unknown, suspected or unsuspected, which do now exist, may exist, may have existed, or may
28 exist in the future which arise out of, directly or indirectly, from the” alleged seepage. (*Id.* at 2.)

1 The water right complaint that instituted this action was brought by the Woods and
2 Allegras (PT 9 at 1; HLE 57), both of whom signed the settlement agreement (HLE 5 at 6). The
3 Wood property is now owned by the Delaneys (Allegra 15 at 1), who as the Woods' successors
4 are bound by the terms of the agreement (HLE 5 at 1-2). Notably both complainants had actual
5 notice of the moisture on their respective Lots before purchasing. (RT 89:10-12; 85:14-17.)

6 During the Hearing, complainants' counsel suggested that despite the settlement
7 agreement, the HOA somehow has "an obligation to repair and remediate this [seepage]." (RT
8 96:3-10.) This position is unfounded. As described above, the complainants settled all damage
9 and injunction claims related to past, present and future seepage, in exchange for a cash
10 settlement, with no requirement to remediate the seepage. (*See generally* HLE 5.) If
11 complainants' position were true, the HOA would lose all benefit from the settlement agreement.

12 Complainants' counsel also suggested that the settlement agreement is invalid due to Civil
13 Code Section 1668. His argument was apparently that if the dam is causing an unreasonable use
14 of water, then the settlement agreement cannot be said to have properly compensated the parties
15 for alleged damage due to seepage. This is an inaccurate reading of Section 1668. Section 1668
16 concerns only those contracts "which have *for their object*, directly or indirectly, *to exempt*
17 *anyone from responsibility for his own fraud, or willful injury to the person or property of*
18 *another, or violation of law*, whether willful or negligent, are against the policy of the law." The
19 settlement agreement's obvious purpose was not to exempt the HOA from responsibility for fraud
20 or willful injury or violation of the law, but to fully compensate the complainants, permanently,
21 for the alleged ongoing injuries claimed in their lawsuit. (HLE 5.)

22 Regarding private disputes such as the alleged damage of property, as long as a contract
23 release is clear in what it is releasing, it will be upheld against past and future action, *even if the*
24 *underlying conflict was tortious or involved negligence. Baker Pacific Corp. v. Suttles*, 220
25 Cal.App.3d 1148, 1153 (1990); *Madison v. Superior Court*, 203 Cal.App.3d 589, 598 (1988). It
26 would be difficult to imagine a clearer release of future liability than the settlement agreement.
27 (HLE 5 at 1-2.)

1 **b. The Seepage Occurs in an Established Drainage Easement Across**
2 **Complainants' Property.**

3 Two drainage easements run along complainants' mutual property line, and were created
4 in part to ensure proper removal of the community drainage, including water deriving from the
5 northern lake. One of the easements is shown as a "meandering drainage easement" on the
6 subdivision maps filed with Placer County. (HLE 3.) The easement moves from the center of the
7 northern lake dam, and continues to the street at the front of the Lots. (*Id.*) This easement is
8 described in more detail in Prosecution Team Exhibit 20, pages 2-5. The other easement is a
9 private drainage easement and also runs along the property line to the street (HLE 4 at 1). This
10 "implied" easement arose pursuant to the common law when the subdivision developer built the
11 reservoir (in 1978) and then sold the Lots, which were built between 1979/1980 and 1988. (HLE
12 14; HLE 42 at 3:5-11; RT 127:13-22.) The creation and establishment of this separate drainage
13 easement is described in more detail in Prosecution Team Exhibit 20, pages 5-6.

14 The complainants and/or their predecessors in interest have filled in the easement(s) with
15 fill material, trees, a fence, pools, a play structure, planter boxes, and concrete walks. (PT 20 at
16 6-9.) These encroachments are the property allegedly being damaged. (*See, e.g.*, RT 73:15-20.)
17 Under the doctrine of unclean hands, people cannot seek redress for the damage they cause.

18 **c. Damage on Complainants' Property Is Highly Questionable.**

19 The record does not demonstrate clear injury to complainants' property. At best, the
20 record has conflicting statements regarding moisture on the Lots. The Lots' owners testified to
21 unwanted sogginess in their yards. But other owners in the subdivision who visited the Lots did
22 not observe that sogginess. (RT 161:7-21.) Consultants tended to find no moisture or limited
23 areas of moisture. Mr. Wentz testified: "During the four site visits we made to Lots 71 and 72 in
24 the spring of 2007, we did not observe obviously wet or saturated ground." (HLE 44 at 4:19-20.)
25 Mr. Stephens' sworn declaration states he observed firm ground and no sogginess, but found
26 much evidence that the Lots had just been irrigated by sprinklers. (HLE 19 at 3:14 to 5:10, 6:8-
27 16.) Dr. Humphrey reported: "No wet areas were observed in yards in June-August 2005 visits."
28

1 (PT 8 at 1.) Complainants' expert Dr. Thompson found some soggy areas of "limited size" (HLE
2 49 at 2; RT 102:4-12), but that was during wintertime site visits (HLE 49 at 2 fn.2).

3 Complainants' landscaper stated in a sworn deposition that one year after he had installed a
4 French drain on the Wood property (Lot 71), he walked the previously boggy areas in the yard
5 and found them no longer boggy or squishy. (Allegra 6 at 62:21 to 65:2, 62:10-12, 62:25 to 63:2;
6 HLE 54 at 34:23-24.) Photographs also show no standing water. (HLE 41 #2 to #5, 19.) In
7 addition, the record shows that alleged excess moisture on the Lots occurs throughout the
8 subdivision far from the lake, suggesting strongly that any damage is more likely due to other
9 factors, such as shallow bedrock and rolling topography. (HLE 43 at 2-5; RT 129:9 to 133:14.)

10 **d. State Board Jurisdiction Does Not Extend to Actions to Address**
11 **Alleged Physical Damage to Private Property.**

12 To the extent that this case involves and considers alleged damage to the complainants'
13 private property, it should be dismissed as beyond the jurisdiction of the State Board. The State
14 Board's authority to prohibit the unreasonable use of water derives from Article 10, Section 2 of
15 the California Constitution. The purpose of this section is to ensure the State's waters are put to
16 reasonable beneficial use, and not wasted. (*Meridian, Ltd. v. San Francisco*, 13 Cal.2d 424, 449
17 (1939); *Gin S. Chow v. City of Santa Barbara*, 217 Cal. 673, 700 (1933); *see also* Wells A.
18 Hutchins, *The California Law of Water Rights* (1956) at 13-14.) The State Board has authority to
19 enforce Article 10, Section 2. (Water Code § 275.) But neither provision was intended to
20 authorize the State Board to consider private trespass actions that happen to involve water.

21 **B. The Dam Does Not Result in a Waste of Water.**

22 **1. The HOA's Water Is Used for Beneficial Purposes.**

23 The assertion that seepage through the northern lake dam is unlawful as a non-beneficial
24 use is simply false. The purpose of the HOA's lakes is to serve as an aesthetic resource in the
25 community, provide a recreational fishery, and foster a migratory bird population. (HLE 42 ¶¶
26 15-17.) These are beneficial uses of water under California law. (*See* Water Code § 1243; 23
27 CCR §§ 666, 668; RT 35:4-15.) Prosecution Team witness Mr. Nesmith recognized that water is
28 put into the lakes to achieve the above beneficial purposes, not to seep. (RT 36:1-7.) In his staff

1 investigation report, Mr. Nesmith also recognized that seepage incident to storage is acceptable
2 unless excessive or harmful. (RT 9 at 14-15.) As described above in Section III.A.2, the seepage
3 through the dam is typical for an earthen dam, and thus cannot be considered excessive. As also
4 described above, any harm allegedly resulting from seepage flows through established easements
5 and moreover has already been fully compensated by the settlement agreement. In addition, any
6 seepage ultimately flows through local creeks and contributes to the Sacramento River north of its
7 confluence with the American River, and is available for beneficial use by the City of Sacramento
8 and water users taking supply from the Delta. (RT 60:11-23.)

9 **2. Northern Lake Dam Seepage Does Not Constitute a Waste of Water.**

10 Mr. Rich testified that the northern lake loses 85% of its total volume each year as seepage
11 through the dam, and as such constitutes a waste of water. This figure is sharply contradicted by
12 the record in this case. First, Mr. Rich miscalculated the volume of the northern lake. (*See*
13 Section III.A.2 above.) Second, his calculations did not include the volume of the southern lake,
14 even though the two lakes are operated together and water circulates between them regularly.
15 (*Id.*) Third, he ignored the actual measured quantity of water, which is one third his estimate of
16 dam seepage. (*Id.*) Fourth, he unreasonably attributed all losses from both lakes (other than
17 evaporation) to just seepage from the northern lake dam, ignoring several other substantial losses.
18 (*Id.*) Unlike Dr. Humphrey, who provided a relatively detailed water budget and actual
19 measurements to show a loss of 2 AFY in seepage through the northern lake dam (PT 8 at 1-2),
20 Mr. Rich produced no detailed calculations to support his calculations (*see* PT 21 at 2).

21 **3. Purported HOA Impacts to American River Supply Are Illusory.**

22 A red herring in this case is that allegedly excessive water losses from the northern lake
23 should be considered a waste of water because of shortages in Folsom Lake and the American
24 River. First, as demonstrated in detail above, the northern lake dam does not leak excessively.
25 Second, during dry years, the HOA's water supplier, San Juan Water District (San Juan),
26 dedicates a supply to Folsom Lake and uses groundwater as a substitute source of supply. (HLE
27 47.) In fact, San Juan is even exploring a pilot project to transfer water from Folsom to southern
28 California during dry periods. (*Id.*) Finally, the HOA is a careful steward of its water resources.

1 The HOA retained an expert to report on water management, implemented many of the
2 recommendations, installed improvements to reduce water loss, and installed meters to separately
3 track irrigation and lake water. (RT 125:4 to 126:12; 134:4 to 135:14.) By contrast, the
4 allegation that the HOA violated San Juan’s water use rules is not supported by the evidence.
5 (RT 62:21 to 63:23; HLE 48.)

6 **4. Due Process Concerns Regarding Waste Allegations**

7 During the years the complaint has been pending, Division of Water Rights staff focused
8 not on the waste of water per se, but on the impact of seepage on the complainants. (See PT 9.)
9 This fact is also reflected in the detailed history described in the Nov. 4, 2009 Notice for this
10 proceeding. The first accusations that the HOA has allegedly “wasted” water materialized in
11 January 2010, as part of the testimony for this proceeding. (PT 21.) If the complaint were
12 sustained on the ground of a waste of water, it would constitute a violation of the due process
13 provisions of the U.S. and California Constitutions for lack of adequate notice to the HOA.

14 **C. Possible Remediation of Seepage**

15 The record contains several possible ways to remediate the seepage. The most feasible
16 would appear to be an engineered French drain to capture water and pump it either into the
17 northern lake or out to the street. This method would be more cost effective than lining the
18 reservoir and could be modified over time to increase effectiveness. (HLE 44 ¶ 17.) There are
19 French drains on the Lots now, but they were designed and built by landscapers, not engineers.
20 (HLE 54; RT 90:17 to 92:2.) As shown in the record and described thoroughly above, however,
21 there are numerous factors other than dam seepage that affect the presence of water on the Lots,
22 including other water sources, topography, bedrock, and the blocked easement. If the State Board
23 orders remediation, it should strongly consider conditioning any such work on the Lot owners’
24 making significant financial contributions to the project, authorizing the work to be done on their
25 property, and/or removing all fill and improvements from the easement on their property.
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DATED: March 22, 2010

DOWNEY BRAND LLP

By: 

JOSEPH S. SCHOFIELD
Attorneys for Respondent

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 621 Capitol Mall, 18th Floor, Sacramento, California, 95814-4731. On March 22, 2010, I served the within document(s):

**CLOSING BRIEF OF HIDDEN LAKES ESTATES
HOMEOWNERS ASSOCIATION**

BY ELECTRONIC MAIL: by transmitting the document(s) listed above via electronic mail to all parties listed to receive electronic service at the electronic mail address set forth on the Service List.

DIVISION OF WATER RIGHTS PROSECUTION TEAM
c/o David Rose
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
DRose@waterboards.ca.gov

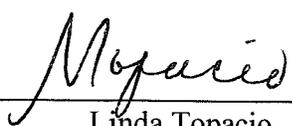
BY ELECTRONIC MAIL: by transmitting the document(s) listed above via electronic mail to all parties listed to receive electronic service at the electronic mail address set forth on the Service List.

TED ALLEGRA
c/o Glenn W Peterson
2267 Lava Ridge Ct., Ste. 210
Roseville, CA 95661
gpeterson@mpwlaw.net

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 22, 2010, at Sacramento, California.



Linda Topacio