



# State Water Resources Control Board



## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ www.waterrights.ca.gov

**Arnold Schwarzenegger**  
Governor

**Linda S. Adams**  
Secretary for  
Environmental Protection

**JUL 13 2006**

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

Chris Egan (Porter, Scott, Weiberg, and Delehant)  
Hidden Lakes Estates Homeowners Association  
P.O. Box 41099  
Sacramento, CA 95841-0099

Tony and Donna Wood, Ted and Cheri Allegra  
7884 Jon Way  
Granite Bay, CA 95746

Dear Messrs Egan, Wood, and Allegra

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

Complaint Unit Staff (Staff) of the State Water Resources Control Board, Division of Water Rights (Division) have completed an investigation of the subject water right complaint (see enclosed report). Staff conclude that:

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

Please review the enclosed report and submit any comments to the report and to Staff's conclusions within 30 days of the date of this letter. Staff will review these comments and then determine whether or not to amend the report and conclusions. Staff will then recommend to Division management appropriate action to resolve the complaint.

If you have any questions concerning this matter please contact me at (916) 341-5313.

Sincerely

ORIGINAL SIGNED BY

Charles NeSmith

Engineering Geologist

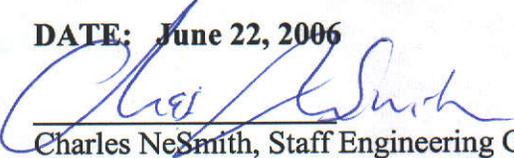
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**California Environmental Protection Agency**

## MEMORANDUM

DATE: June 22, 2006

  
Charles NeSmith, Staff Engineering Geologist

FROM: DIVISION OF WATER RIGHTS  
STATE WATER RESOURCES CONTROL BOARD

SUBJECT: WATER RIGHT COMPLAINT REGARDING ALLEGED WASTE AND UNREASONABLE USE OF STORED WATER AT LINDA CREEK, TRIBUTARY TO DRY CREEK, PLACER COUNTY

### BACKGROUND

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) received a water right complaint dated April 26, 2005 from Tony and Donna Wood, and Ted and Cheri Allegra (Complainants) against the Hidden Lakes Estates Homeowners Association (Respondent) located in Granite Bay near Folsom Lake (Figure 1). Complainants allege that the lower lake at Hidden Lakes Estates leaks to such an extent that it constitutes waste or unreasonable use of water. Specifically, Complainants assert that, according to the records held by the water provider (San Juan Water District), the two reservoirs lost over 6.1 million gallons of water between August 8, 2003 and October 9, 2003. Additionally Complainants noted that, according to Respondent's own records of February 1990, the Association board determined that the lakes were leaking at a rate of 57,087 gallons per day. Finally, Complainants allege that the leaks from the reservoirs are causing property damage to adjacent parcels. Complainants argue that the above constitutes waste or unreasonable use (misuse) of the water resources of California.

Respondent submitted an answer to the complaint dated May 16, 2005 denying that the lakes have been leaking severely for the past several years, and contending that Complainants calculations regarding lake leakage are in error. Furthermore, Respondent argues that Complainants did not account for substantial evaporation or the use of water from the lakes via a 12-station sprinkler system used to irrigate the surrounding landscape. Respondent acknowledges that lake seepage is a naturally occurring condition but disagrees that the leakage has caused identifiable damage to Complainants properties.

### HISTORY<sup>1</sup>

Hidden Lakes is comprised of 199 custom homes on large home sites. The first homes were built in 1977 and most homes were completed by 1990. The community property includes

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<sup>1</sup> Based on the information provided by Complainant.



Figure 1: Location of the “Hidden Lakes” subdivision reservoirs.

two small lakes, each about 1 acre in area, constructed for the purpose of recreation and scenic enhancement. The north lake drains into the south lake via a man made channel and the south lake overflows into a manmade drainage that spills into Linda Creek. A berm constructed on its northern side, adjacent to Complainants properties, contains the north lake.

The first indication in the complaint record that seepage from the lakes was becoming a concern is contained in an April 5, 1990 memo to Marty Parker, Chairman of the Lakes and Landscaping committee from resident Paul Dahman. Mr. Dahman noted that it has been necessary for "some time" to add "make-up" water to the lakes in excess of that lost by evaporation. Mr. Dahman calculated that the combined monthly seepage loss from both lakes was 51,750 cubic feet (387,090 gallons).

The Hidden Lakes Estates BOD newsletter from the President dated December 31, 1990 indicates that the community is "now faced with the need to seal the lake bottoms to reduce seepage."

What appears to be an attachment (to the August 11, 1992 minutes of a Board of Directors (BOD) meeting) entitled "Projects Requiring/Requesting Funding in Excess of Present Budget Parameters" includes a section acknowledging that the lakes have been known to be leaking for many years and that "this may be the source of water infiltration in some properties adjoining the lakes" and that "this issue needs to be addressed and funded at some point in the future." Hidden Lakes Estates received an estimate dated July 9, 2001 from Thunder Mountain Enterprises, Inc. for the installation of a pond liner for the upper pond.

The May 8, 2003 BOD meeting minutes record Complainant Wood's presentation to the BOD that he is experiencing excessive moisture at the rear of his property and that landscaping professionals that he had hired to investigate reported to him that they believed the water is coming from the lakes behind his property. Complainant Allegra also informed the BOD that he was also experiencing excessive moisture on his property.

Complainant Wood hired John C. Youngdahl P.E. to conduct additional investigations into the source of excessive water on his property. Mr. Youngdahl prepared an investigation report dated August 18, 2003. His conclusion was that the primary source of the water observed is seepage from the adjacent lake.

On January 12, 2005 the Department of Water Resources Division of Safety of Dams inspected the Hidden Lakes berm in response to a public inquiry of leakage from the berm. The Field Engineer observed seepage at the toe of the north berm but noted that it did not threaten the integrity of the berm. The Department determined that the small size of the berm placed it outside the jurisdiction of the Department and thus did not take any further action.

The Division received the subject water right complaint on April 26, 2005 and an answer to the complaint on May 18, 2005. Complaint Unit staff conducted a field investigation of the site on July 14, 2005 and met with both Complainants and Respondent. Staff initially met

with representatives for the Respondent who showed staff the two lakes (Figure 2). Staff then met with complainant Tony Wood and his representatives. Mr. Wood showed staff the areas near his home that are saturated with water and the drainage system he had installed to mitigate the problem. The photos taken by staff are shown and described below. Representatives of the San Juan Water District (District) were also present during the field investigation.

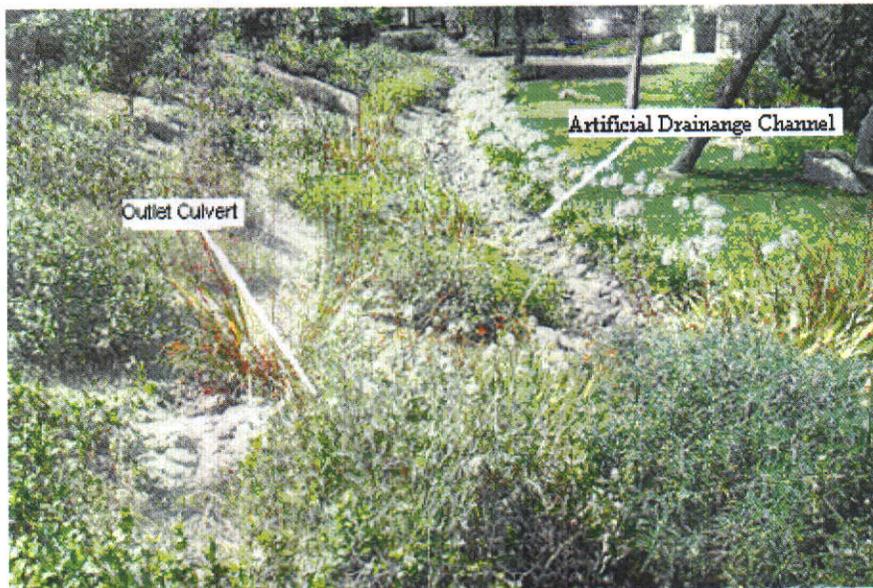
The District sent a letter to the HOA dated August 12, 2005, regarding their observations during the field investigation. In the letter the District agreed with the conclusions of the Youndahl report stating "licensed Engineers have conducted water analysis and geotechnical evaluations and concluded that the water on the neighboring properties is from the homeowners lake." Furthermore the District explained in the letter that, in response to an HOA assertion that the water might be from a leaking District pipes, the



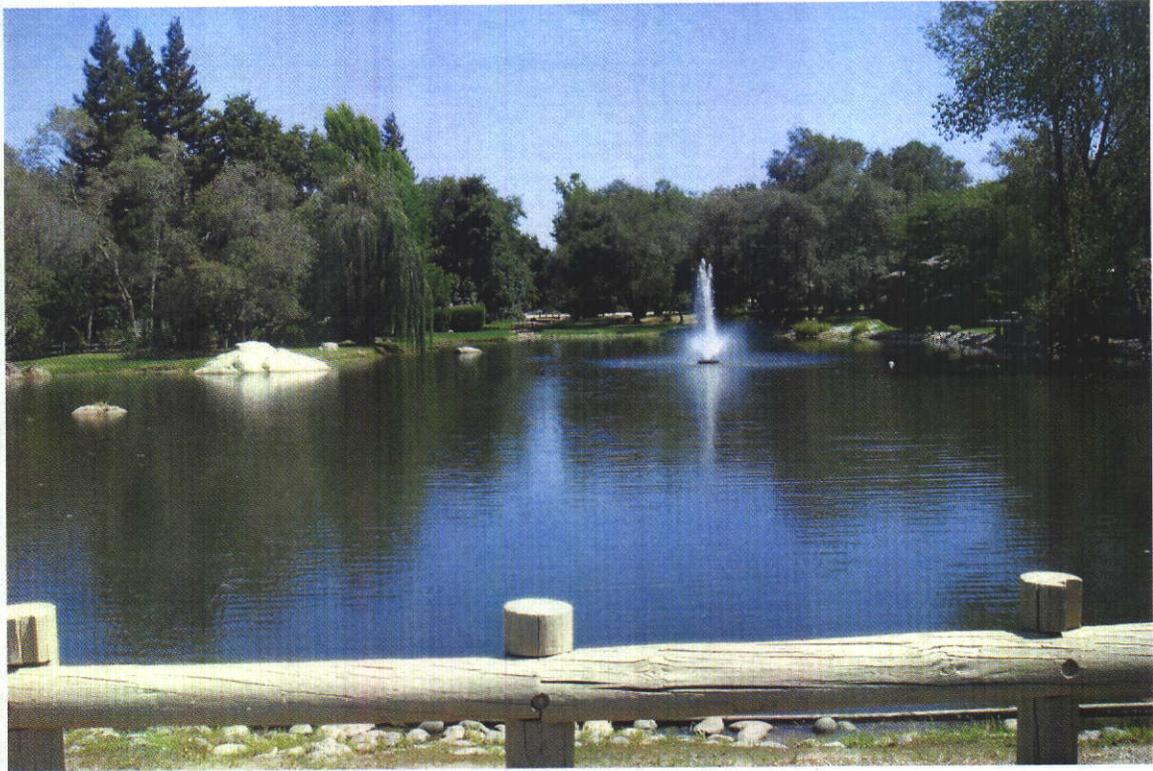
**Figure 2: USGS Aerial photo of the Hidden Lakes reservoirs. The location of Complainants properties and the berm for the north lake are indicated.**



**Photo 1: Outlet pipe from the south lake.**



**Photo 2: Outlet pipe from South Lake looking downstream.**



**Photo 3: South Lake**



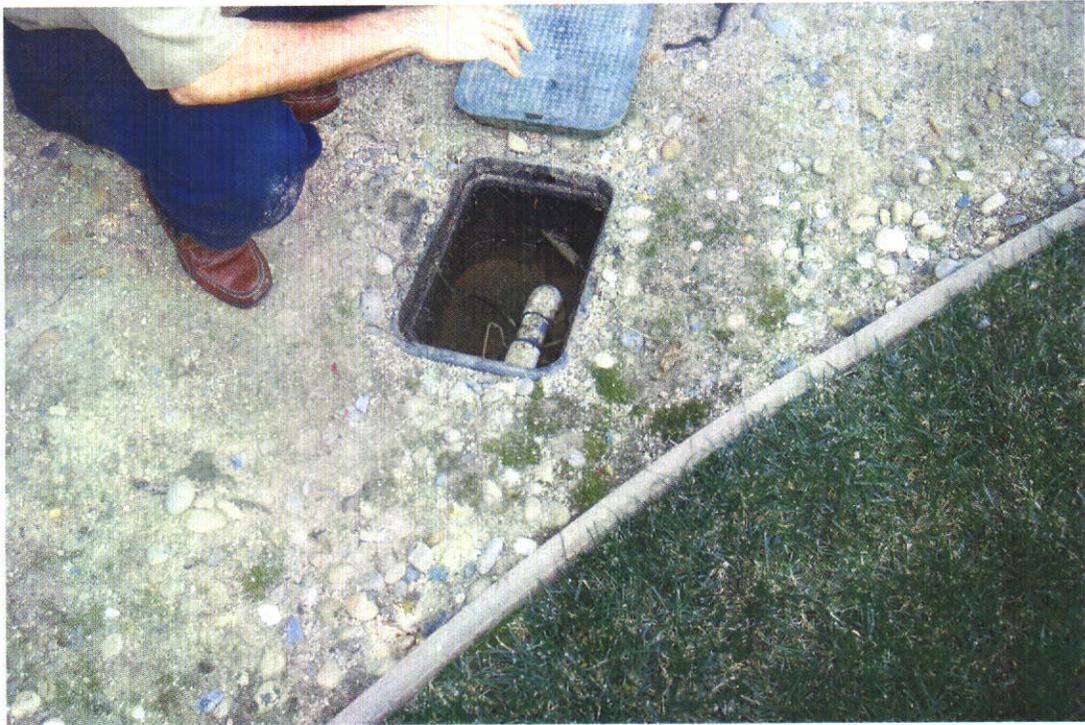
**Photo 4: Inlet from Stormwater System North Lake**



**Photo 5: Close-up of Inlet from Street Drainage**



**Photo 6: Drain on Wood property.**



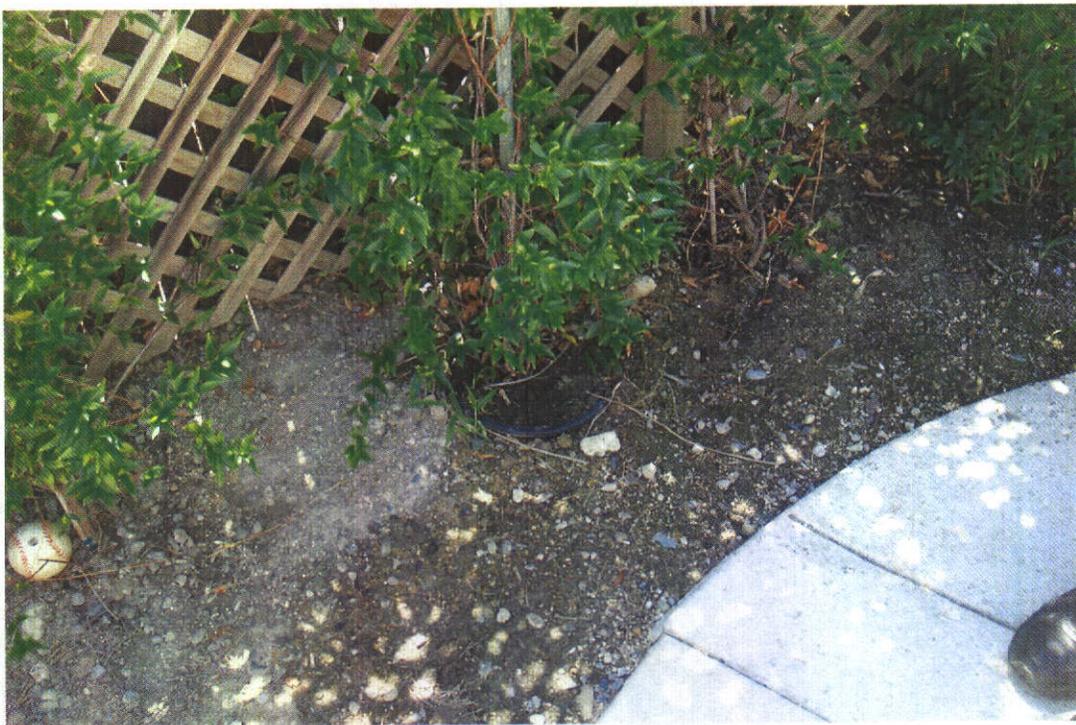
**Photo 7: Underground drainage piping on Wood property**



**Photo 8: Saturated ground on Wood property**



**Photo 9: Saturated ground on Wood property, and wet fence**



**Photo 10: Saturated ground on Wood property**



**Photo 11: Standing water in street drainage system on Jon Way. Rust indicates former flooding.**



**Photo 12: Granite boulders indicate the type of material that underlies the lakes.**

District hired Hughes Utilities Services to conduct a leak detection test on all District pipes in the area and the test results indicated no leaks. Citing District Ordinance 11.1.1, the District requested the HOA to provide a copy of the HOA action plan for eliminating the seepage of water from the lake onto neighboring property. The District never received the plan.

In 2004, Complainants filed two joint lawsuits seeking monetary claims regarding leakage from the upper lake and both were settled out-of-court in the late fall of 2005. The settlements explicitly excluded claims for "willful injury to the property of another or any violations of law, whether willful or negligent." As such the settlements had no effect on the water right complaint.

To address the lawsuits, Respondent hired hydrogeologist John H. Humphrey to conduct his own geotechnical investigations into the source of the water on Complainants properties. Mr. Humphrey prepared a report dated October 12, 2005, and a follow-up water level monitoring report dated April 6, 2006. Mr. Humphrey concluded that the upper lake is leaking and also calculated the leak rate to be about 3 to 4 gallons per minute.

By letter dated May 9, 2006 to Respondent, counsel for Complainant stated that both lawsuits were settled in the late fall of 2005 without prejudice to the water right complaint.

## **GEOTECHNICAL INVESTIGATIONS**

Complainant Wood first noticed unusual conditions on his property during the summer of 2002 when his lawn remained green over the summer even though there was no irrigation during that period. The following spring Complainant Wood noted wet and swampy conditions and hence installed additional drainage, landscape, and hardscape. However, standing water and swampy conditions remained in the rear of the backyard and easterly side yard and limited use of the back yard and precluding improvements. Areas where landscaping improvements were made required the installation of numerous surface drains to divert areas of standing water. A subsurface "French Drain" was also installed along the southerly boundary of the property to dry out the near surface soil. During installation of this drain, standing water was encountered less than 1 foot below grade.

Complainants then hired Youngdahl Consulting Inc. to conduct a geotechnical investigation into the source of the excessive water on the property. Mr. Youngdahl initially visited the site in August 2003 and reported very wet soils in the south portion of the yard and noted that the sump was operating with a near continual discharge of water at the outlet. Mr. Youngdahl also observed that the drain appeared to be only partially successful in intercepting subsurface water flow onto the property. Mr. Youngdahl had the landscaping contractor auger three shallow monitoring wells to gauge subsurface water elevations and conditions.

As part of the geotechnical investigation Youngdahl and Associates reviewed County records, aerial photos, subdivision construction plans, and BOD meeting minutes. Additionally they took ground water level measurements from the three monitoring wells that the landscapers installed. In their August 18, 2003 report, Youngdahl Consulting Inc.

concluded "the primary source of the water observed is seepage from the adjacent lake.....our rough measurements of groundwater levels within the exploration points show a hydraulic gradient to the north indicating that the lake is the source of the subsurface water."

HTA Science and Engineering conducted a shallow ground water assessment associated with the upper lake berm in September 2005 and again in March 2006 at the request of Complainants. HTA reported its findings in a letter to Complainant Wood dated April 6, 2006. The investigation involved installation of two 3 ft deep monitoring wells and five 1-inch diameter piezometers from 9 feet to 12 feet below grade. The purpose of this investigation was to see the relationship of the water in the adjacent lake to the ground water levels in Complainant's backyards. HTA concluded that, based on the flow lines drawn from the well and piezometer data, the "Lake water has the hydrostatic potential to flow through and under the berm into the Wood / Allegra properties. The flow lines demonstrate the potential flow to be most significant approaching the western and eastern portions of the properties."

In response to litigation by Complainant against Respondent, Respondent hired Jack Humphrey of Hydmet Inc. to conduct his own investigation (and testify as to his findings) into potential leakage from the lake adjacent to Complainants properties. Mr. Humphrey estimated seepage from both lakes by calculating a monthly water balance for the lakes for average annual conditions of precipitation, evaporation and runoff and reported his findings in a letter dated October 12, 2005 to John J. Fritsch, Esq at the Law Offices of David F. Beach, P.C. Mr. Humphrey concluded that the average annual water balance calculation showed that the observed seepage loss was 2.0 ac-ft measured at Jon Way. Mr. Humphrey's statements in his deposition to the Placer County Superior Court were consistent with the results of his water balance calculations.

In his October 12 letter Mr. Humphrey listed several alternatives for reducing lake seepage, including lining the pond bottom and/or berm with either bentonite, a bentonite / PVC combination, or a geosynthetic liner.

## **ANALYSIS**

Complainants assert that in February 1990 the BOD determined that the lakes were leaking at a minimum rate of 57,087 gallons per day. Furthermore Complainants contend that, based on District account records, one of the two lakes lost over 6.1 million gallons between August 8, 2003 and October 9, 2003 (68 gpm) and 3.3 million gallons between May 31, 2002 and August 15, 2002 (30 gpm). Complainants argue that the above seepage losses constitute waste and unreasonable use of water and have damaged and devalued Complainants properties.

Respondent counters that, with respect to the first allegation, Complainants calculation amounts to 20,836,755 gallons per year and that the HOA was obviously not using this much water. With respect to the second allegation, Respondent asserts that these calculations are in error due to the "units used" in making the calculations. Furthermore, Respondent contends,

Complainants did not account for substantial evaporation and for feeding lake water to a 12-sprinkler irrigation system. Respondent acknowledges that lake seepage is a naturally occurring condition but disagrees that the seepage has caused an identifiable damage to Complainants properties.

Complaint Unit Staff (Staff) concur with Respondent that the specific arguments detailed by Complainants in the complaint are either in error or weak. The estimated seepage rate contained in the 1990 memo was 51,750 cubic feet per month, or about 387,090 gallons per month. Complainants apparently erred in their conversion of cubic feet into gallons. Additionally, Complainants apparently did not consider all sources of water loss (i.e. irrigation and evaporation) or made some other error in estimating that seepage losses were 6.1 million gallons over a 2-month period (about 68 gallons per minute). This number is also excessively high and thus not a reasonable estimate. However, as explained below, in consideration of all the information contained within the entire complaint record, Staff agree with Complainant that seepage from the upper lake constitutes misuse because it has damaged and thus likely devalued Complainants properties while serving no beneficial use.

There are only three possible sources for the subsurface water that has collected on Complainants properties: (1) a broken water line; (2) a natural spring; or (3) seepage from the lake. The San Juan Water District's investigation established that none of their water lines were responsible for the water. Although it is possible that a natural spring is the cause, no evidence was submitted by the Respondent to support this contention. Such a spring would have been easily observed prior to construction of the north lake and prior to development of Complainants' properties. Aerial photos prior to development of the subdivision might also provide evidence of a spring. However, no such evidence was submitted.

Given the above, seepage from the lake is the most likely source of the water and this is supported by substantial evidence in the complaint record. The results of all of the geotechnical investigations and field observations by professionals conducted to date, including the one conducted for the HOA, indicate the subsurface water is from seepage from the lake. After visiting the site Staff believe there is no reason to doubt the conclusions of these reports given the proximity of the lake to Complainants properties, the nature of the soils and bedrock underlying the lake, and most importantly, the fact that there is no other likely source for the water.

Although Respondent acknowledges lake seepage is a "naturally occurring condition", Respondent disagrees with Complainants that seepage is the source of the water that is damaging Complainants properties. However, there is no evidence in the complaint record to support this claim, and overwhelming evidence (as noted above) to reject it in favor of Complainants allegation.

## **CONCLUSION**

Staff recognizes that some seepage is to be expected from any unlined water containment facility, especially one overlying porous soils and fractured bedrock as is the case in the subject complaint. As long as the seepage is not excessive or does not cause harm it is

accepted as incidental to storage. However, such storage facilities are rarely located such that the water level in the storage pond is above and adjacent to developed property

Substantial evidence in the complaint record supports Complainants assertion that seepage of water from the northern lake at the Hidden Lakes subdivision onto Complainants properties serves no beneficial use and has caused, and is causing, damage to complainants properties as listed in the complaint. This damage has likely significantly devalued Complainants properties. As such, this seepage of water from the north lake constitutes a misuse of water.

### **RECOMMENDATION**

Respondent's consultant, Jack Humphrey, listed several "lake seepage reduction alternatives" in his October 12 report, these include: (1) Bentonite application on the north lake berm; (2) Bentonite cover on the entire north lake bottom; (3) Combination of bentonite and PVC plastic liner; or (4) Geosynthetic liners of various types. Staff recommends that Respondent be required by the Division to provide a plan of action that will address and correct the misuse of water. This plan should clearly identify:

1. the remedial measures to be taken;
2. the timeframe under which the remedial measures will be implemented;
3. the method of financing the remedial measure; and,
4. a monitoring plan that identifies how the success of the remedial measures will be evaluated.

If Respondent rejects this staff recommendation, staff recommends pursuing appropriate enforcement action.