



**MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT**

**HAND  
DELIVERED**

**RECEIVED**

APR 7 2009

**MPWMD**

5 HARRIS COURT, BLDG. G  
POST OFFICE BOX 85  
MONTEREY, CA 93942-0085 • (831) 658-5601  
FAX (831) 644-9558 • <http://www/mpwmd.dst.ca.us>

Please **PRINT OR TYPE** all information. **Applications must be received within twenty-one (21) days after an appealable decision has been made pursuant to District Rule 70.** To be considered for an appeal hearing, please submit a completed application and include a non-refundable processing fee (\$250 for less than half acre-foot of water, \$500 for half - one acre-foot of water, and \$750 for more than one acre-foot of water, plus \$70.00 an hour for more than 10 hours of staff time); other information as necessary which may include 5 years of water records from purveyor. The Board will support or deny your appeal based on the pertinent information you have provided. Submission of an incomplete application may constitute grounds for denial of your request.

**APPLICATION FOR APPEAL**

APPLICANT INFORMATION

1. Applicant's Full Name: GARY E. WIEGAND  
Mailing Address: 50 MIRAMONTE RD  
City: CARMEL VALLEY State: CA Zip: 93924  
Phone Number(s): Work ( 831 ) 238-6236 Home ( 831 ) 659-5035
2. Name of Agent(s) to Represent Applicant: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number(s): Work ( \_\_\_\_\_ ) \_\_\_\_\_ Home ( \_\_\_\_\_ ) \_\_\_\_\_

PROPERTY INFORMATION

1. Full Name of Property Owner: COLT LANE LLC  
Mailing Address: 50 MIRAMONTE RD  
City: CARMEL VALLEY State: CA Zip: 93924  
Phone Number(s): Work ( 831 ) 238-6236 Home ( 831 ) 659-5035
2. Property Address: 25993 COLT LANE  
City: CARMEL VALLEY State: CA Zip: 93924
3. Assessor's Parcel Number: 416 - 122 - 018
4. Property Area: Acres: 10 Square Feet: — Other: \_\_\_\_\_
5. Past Land Use: VACANT
6. Present Land Use: VACANT
7. Proposed Land Use: SINGLE FAMILY RESIDENTIAL  
Existing buildings? Yes \_\_\_\_\_ No
- Types of uses and square footage: N/A

## STATEMENT OF APPEAL REQUEST

\*If additional space is needed for response to any question, please continue on a separate piece of paper and attach it to the back of this application.

1. From which rule(s) or staff's decision(s) are you requesting an appeal?

HIDDEN HILLS CONNECTION MORATORIUM DATED 3/20/09. (LETTER BY DARBY FURNESS 3/23/09)

2. Do you feel the rule or staff's decision is applicable in most cases, or do you believe it should be revoked or changed?

APPLICABLE IF ~~APPLIED~~ APPLIED FAIRLY & UNIFORMLY. PLEASE SEE ATTACHED LETTER FOR FURTHER EXPLANATION.

3. What were the circumstances surrounding your decision to appeal?

PLEASE SEE ATTACHED LETTER TO MPWMD DATED 4/06/09

4. Please state the special circumstances that distinguish your application from all others which are subject to enforcement of this process.

PLEASE SEE ATTACHED LETTER.

5. What difficulties or hardships would result if your appeal request is denied?

EXTREME LOSS OF PROPERTY VALUE & INABILITY TO CONSTRUCT MY RESIDENCE.

6. What specific action are you requesting that the Board take?

RESCIND HIDDEN HILLS CONNECTION MORATORIUM & REBALANCE P.R.C. SO THAT ALL USER IN BISHOP & HIDDEN HILLS UNIT HAVE SAME ALLOCATION OF WATER. P.R.C. FOR HIDDEN HILLS IS 0.482 AFY & FOR BISHOP IT IS 0.65 AFY.

7. Please indicate if you intend to make a statement at the appeal hearing, and list the names of any other individuals who may speak on your behalf.

YES.

**PROJECT INFORMATION**

\*If additional space is needed for response to any questions, please continue on a separate piece of paper and attach it to the back of this application.

- 1. Type of Project:  New Construction  Remodel/Addition
- 2. Proposed New Use: (Please refer to the District's current Fixture Unit/Use Category sheet for assistance with this question.)  
 Residential No. Dwellings 1 Total No. Fixture Units (Residential Only) \_\_\_\_\_  
 Commercial/Industrial/Governmental  
Type of Use: \_\_\_\_\_ Square Footage: \_\_\_\_\_  
Other (Specify): \_\_\_\_\_

3. Current Zoning Classification:

LDR/S

4. Name of the water company which services the property:

CAU-AM

5. Do you feel this project will use less water than that calculated by the District? If so, please explain how much you believe the project will use, and the basis on which you make this assumption.

THIS QUESTION NOT APPLICABLE - PLEASE SEE ATTACHED LETTER TO DARRY FLURY (4/06/09) FOR EXPLANATION OF APPEAL.

6. Has this project been approved by the local jurisdiction? If so, please list or attach a copy of all conditions which have been imposed on the project. (Attach a copy of these conditions and approvals received.)

NO - IN PROCESSING WITH MONTEREY COUNTY FOR SINGLE FAMILY RESIDENCE

7. Does the applicant intend to obtain a municipal or county building permit for the project within ninety (90) days following the granting of a water connection permit? If not, when will water be needed at the site?

YES

\*\*\*\*\*  
I declare under penalty of perjury that the information in the application and on accompanying attachments is correct to the best of my knowledge and belief.

Gary E. Leonard  
Signature of Applicant

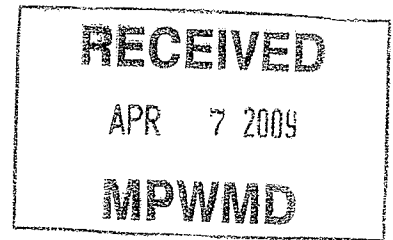
4/07/09 MRWMD - MONTEREY, CA  
Date/Location

NOTE TO APPLICANT: You may attach written findings for the Board to review and consider in support of the action you have requested.

**Official Use Only**

Fee Received 4-7-09 Receipt No. 22974  
Check No. 2832 Bank Routing No. 321173603  
Received by [Signature]

Gary Wiegand  
50 Miramonte Road  
Carmel Valley, CA 93924



April 6, 2009

Mr. Darby Fuerst, General Manager  
Monterey Peninsula Water Management District  
5 Harris Court, Bldg. G  
P.O. Box 85  
Monterey, CA 93942-0085

Subject: Hidden Hills Unit of California-American Water Distribution System  
Suspension of Receipt of Applications for New or Intensified water Use

Dear Mr. Fuerst:

I am an owner of a lot of record located in the Hidden Hills Unit of California-American Water (CAW) Distribution System (hereinafter referred to as HHWDS). More particularly, this lot is APN 416-122-018-000, located at 25993 Colt Lane. I am in processing with the Monterey County Planning Department to construct a single-family residence on this lot.

This letter serves as my appeal of your decision to suspend receipt of applications for new or intensified water use in the HHWDS as detailed in your March 20, 2009 letter to Craig Anthony of CAW. Hereinafter I refer to this decision as the connection moratorium. I realize that, in accordance with Monterey Peninsula Water Management District (District) Rule 40-D, your decision is directed to CAW, the Owner and Operator of this distribution system, and that the appeal of your decision is supposed to come from CAW and it is my understanding from discussions with Mr. Anthony that CAW will file an appeal with the District. However, I am compelled to protest your decision as I have far more at stake than CAW consequent to this decision. CAW will continue to sell water to Hidden Hills customers regardless of the outcome of their appeal and is currently in the process of filing for higher rates in the HHWDS. As a rule, as consumption decreases, CAW rates increase so that that CAW profits from operating this system do not decrease. On the other hand, if the connection moratorium stands, I suffer a great economic hardship. It is evident from your July 29, 2008 "courtesy letter" to CAW and their weak response and lack of remedial action that CAW is not very concerned about the consequences of this moratorium.

My appeal of the connection moratorium is based on the following circumstances and questions that I do not believe were considered or answered by the District:

1. The moratorium is based on arbitrary limits that apparently have no basis in fact or logic. The District has based its determination of the authorized Pro Rata Expansion Capacity (PREC) on numbers that the District apparently cannot verify or justify. As

SUBMITTED BY APPLICANT

detailed in your March 20, 2009 letter to CAW, at the current average annual production rate for each connection, only 441 of the permitted 477 connections can be served with the existing annual production limit of 229.9 acre-feet. However, the District cannot verify or justify how the system capacity limit of 229.9 acre-feet or the expansion capacity limit of 477 connections was determined. I have been told that these were the numbers that Cal-Am supplied or put on their application when they applied for the HHWDS distribution permit from the District after acquiring the system from the former Carmel Valley Mutual Water Co. (CVMWC) in 1994. How was this production limitation established? Why is the PREC for Hidden Hills residents substantially less than the PREC for Pasadera residents? How many lots were there in the HHWDS when Cal-Am purchased it and how many new lots have been created that are served by CAW. These are questions that the District is unable to answer.

2. Since CAW acquired the HHWDS in 1994, the District has permitted water connections to allow for the subdivision of parcels so that one lot of record in 1994 is now subdivided into several parcels each with its own water connection. My lot and others in Hidden Hills are now denied water connections while the District permitted the subdivision of lots and allowed these additional connections. How does the District justify this action?
3. The HHWDS draws water from the Laguna Seca subarea of the Seaside Groundwater Basin as does the Bishop Unit of CAW that serves the Pasadera subdivision. However, the system capacity limit is higher and the connection limit is lower for the Bishop system resulting in a much higher authorized PREC value for the Bishop system. So, there is no moratorium on connections for lots in Pasadera that were created about twelve years ago, but there is a moratorium on connections for lots in Hidden Hills in that were created over forty years ago because the lots in Pasadera were given a higher allotment of water than those in Hidden Hills. This is completely unjust and greatly diminishes the value the lot that I own in Hidden Hills and precludes me from building on the property unless customers in HHWDS decrease their water use by over 8% and bring the system back into balance.
4. How did the number of connections in the HHWDS go from 436 in June 2006 to 420 in July 2006 and to 439 in November 2006? Why does the District need to use an average number of connections in determining the PREC? Apparently, the District and CAW do not know how many connections there are in the HHWDS so how can these numbers be relied upon to impose a moratorium when these numbers are so obviously flawed?
5. District figures state that CAW is exported approximately 1,250 AFY for Water Years 2003 through 2007 from the Seaside Basin to customers in the main CAW system that do not overlie the Seaside Basin. Why has the District allowed this exportation of water from the Seaside Basin that includes the Laguna Seca Subarea to non-overlying

users? If there is a shortage water in the Seaside / Laguna Seca Basin this exportation should be prohibited.

6. The authorized PREC established for the HHWDS is ostensibly intended to ensure that there is water for all lots of record. However, when system use exceeds the PREC, the penalty is imposed on the owners of the lots that are using no water instead of being imposed on the customers who are using more than their equitable share of water. How does this ensure that lots of record have access to their fair share of water? How does this moratorium encourage conservation by existing customers?

7. District Rule 40-E-1 requires the District Board of Directors to provide notice and hold a public hearing to consider an adjustment to the System Limits for systems that have not exceeded their System or Expansion Capacity Limit, but have exceeded their PREC on more than one occasion. The PREC Monthly Tracking Form for HHWDS prepared by the District indicates that the PREC was exceeded in January and February 2005 and then in almost every month since November 2005 while the System Limit has never been exceeded. Was this public meeting noticed and held and were the System Limits modified in accordance with this rule?

Possible actions to remove this moratorium discussed by the District and CAW are to repair leaking pipes and encourage conservation by existing customers. Neither of these solutions is mandatory. As long as customers pay their CAW water bills they can use and/or waste as much water as they want. The District cannot require that CAW fix leaks or that their customers decrease their water consumption. The District does however, penalize landowners who are using no water at all. It would be interesting to see how well this punitive action by the District would hold up in court.

District Rule 40-D-1 requires the owner or operator of the distribution system to prepare and implement a plan to bring the system back into balance by taking measures including installation of low water use plumbing fixtures, removal of turf/landscape acreage and modifying rate structures. Note that CAW is the owner and operator of the HHWDS, not the owner of the lots that are using the water and CAW cannot install plumbing fixture or remove turf from any of these lots.

The California Public Utilities Commission (CPUC) regulates CAW and modification of rates requires CPUC approval and as I noted above, tiered rates have limited influence on promoting conservation. If the District is in favor of limiting irrigated turf as a measure to promote water conservation, why doesn't the District impose and enforce rules that apply to the lot owners rather than the system owner?

I contend that a much simpler and more equitable solution is to balance the PREC values of all users within the Laguna Seca Subarea. In other words allocate the same amount of water to all lots and require that all customers use no more than the PREC amount and

enforce this requirement. It is not enough to simply apply a conservation rate schedule since wealthy people will buy as much water as they want.

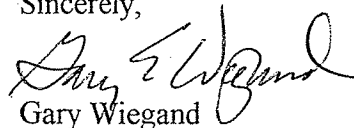
If users in the Hidden Hills, Bishop and Ryan Ranch units were required to landscape with only drought tolerant plants and were forbidden to have irrigated turf there would be plenty of water for all lots. The District should be focusing its rule-making and enforcement efforts on limiting irrigation, not on depriving people of a minimal amount of water so as to be able to build on their property. Penalizing owners of vacant lots of record while allowing continued watering of lawns appears to be an effort to control growth, not to promote water conservation.

I presently live in a rented house on a one-acre parcel on Miramonte Road in Carmel Valley where our water use for 2007 and 2008 averaged only 0.20 AFY (average of 179 GPD). We are committed to building a residence on the Colt Lane lot that is even more conservative of water consuming less than one-half of the PREC amount for HHWDS.

Please note that I have no intention of sitting idly while waiting for CAW and the District to rectify this system PREC imbalance that is the result of an inherently inequitable water allocation scheme, poor accounting and shoddy system operation. Neither of these entities is really concerned about this moratorium as neither is affected by it. I, however, am greatly affected and will pursue every available remedy to remove this moratorium.

I would appreciate an opportunity to meet with District staff to discuss the water situation in Hidden Hills and to develop rules that are fair and equitable and will have a significant impact on reducing water use and extending our limited water resources. Please call me at (831) 238-6236.

Sincerely,



Gary Wiegand

c: Dave Potter, MRWMD

MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT

5 Harris Ct. Bld G, P.O. Box 85, Monterey, CA 93940 Ph: (408) 658-5600 Fax: (408) 644-9560

Receipt Number: 22974

Date: April 7, 2009

\*\*\*\*\* RECEIPT \*\*\*\*\*

Description	Amount Paid
Appeals Application	250.00
=====	=====
*** TOTAL ***	250.00
=====	=====

Receipt Account                      Transaction    90-7360  
Receipt info: Hiddens Hills

\*\*\*\*\* PAYMENT FROM: \*\*\*\*\*  
 Name            Wiegand                      Gary  
 Company       RE: Hiddens Hills  
 Street #        50 St. Name Miramonte Road      PO Box #  
 City            Carmel Valley      State CA              Zip 93924-  
 \*\*\*\*\*

4/7/09  
( Dated-I )


[Signature]  
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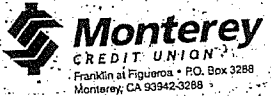
GARY E. WIEGAND  
SUSAN A. DIXON  
50 MIRAMONTE ROAD, PH. 659-5035  
CARMEL VALLEY, CA 93924

90-7360/3211  
801492984

2832

Date 4/07/09

Payable order of M.P.WMD \$ 250.00  
TWO HUNDRED FIFTY and no/100 Dollars  Security Features Included. Details on Back.



for 4/7/09: Appeal

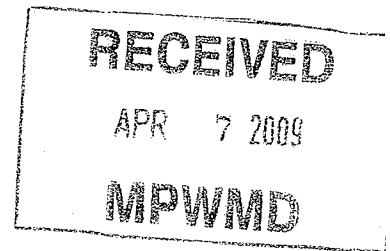
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HAND  
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Monterey Peninsula Water Management District

DISCLOSURE STATEMENT  
(EX PARTE COMMUNICATIONS)

Name or description of project, action, etc.: HIDDEN HILLS MORATORIUM (3-20-09)

Names and addresses of all persons authorized to communicate with the Board of Directors on this matter:

Name	Address
<u>GARY WIEGAND</u>	<u>50 MIRAMONTE RD. CARMEL CA 93924</u>

This *Disclosure Statement* is completed in my capacity as  the Applicant for matter referenced in the first line, or as  an authorized Agent of the Applicant. My signature evidences I am duly authorized to act on behalf of all individuals and/or entities that have an ownership interest in this matter (exceptions shall be noted by checking this box  and providing a complete explanation as an attachment to this *Disclosure Statement*).

I understand this *Disclosure Statement* is required to list the names and addresses of all persons authorized to communicate with the Directors of the Water Management District on this matter. I further understand and agree to revise and amend this *Disclosure Statement* whenever any other person is authorized to communicate regarding this matter. Oral disclosure of agents shall not satisfy this requirement.

I understand and agree that failure to disclose the name of individuals who shall communicate with the District Board Members on behalf of the applicant shall subject the matter referenced above to immediate review and denial. Further, I understand that if denial is based on failure of either the applicant or of an authorized agent of the applicant to comply with these disclosure requirements, no request for approval of an identical or similar matter shall be granted for a period of twenty-four (24) months from the date this matter is denied.

I declare the foregoing to be true and correct of my own personal knowledge. I have signed this form this 7<sup>th</sup> day of APRIL, 2009. This form is signed in the City of MONTEREY, State of CALIFORNIA.

GARY E. WIEGAND  
Name (print)  
Gary E. Wiegand  
Signature