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County of Santa Clara
Superior Court
of
County of Santa Clara

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State Water Resources Control Board

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

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13 **QUAIL LODGE, INC., CVR HSGE, LLC,**
and BAY LAUREL, LLC,
14 Plaintiffs and Petitioners,
15
16 v.
17 **STATE WATER RESOURCES CONTROL**
BOARD, and DOES 1-30, inclusive,
18
19 Defendants and
Respondents.

Lead # 110w163328

Case No. 110CV183439

**STIPULATION STAYING CASE AND
TOLLING STATUTE OF LIMITATIONS**

By Fax

21 Petitioner/Plaintiffs Quail Lodge, Inc., Baylaurel, LLC, and CVR HSGE, LLC (collectively
22 "Petitioners") and Respondent/Defendant State Water Resources Control Board ("State Water
23 Board") (collectively "Parties"), by and through their respective counsel, hereby state as follows:

24 WHEREAS, on October 20, 2009, the State Water Board issued Order WR 2009-
25 0060 against California-American Water Company ("Cal-Am"), finding, inter alia, that Cal-Am
26 had not complied with certain provisions of State Water Board Order 95-10 and was violating
27 Water Code section 1052;

1 WHEREAS, Condition No. 2 of Order WR 2009-0060 provides, in part, that Cal-Am
2 shall not divert water from the Carmel River for new service connections or for any increased use
3 of water at existing service addresses resulting from a change in zoning or use;

4 WHEREAS, Monterey Peninsula Water Management District (MPWMD) filed a
5 Petition for Writ of Mandate challenging Order WR 2009-0060 because the terms of Order WR
6 2009-0060 affects MPWMD's management of the water for the Monterey Peninsula;

7 WHEREAS, Petitioners filed a Petition for Reconsideration of Order WR 2009-0060
8 on the ground that Condition No. 2 adversely affects the unused water credits from MPWMD that
9 may be used for receiving water from Cal-Am;

10 WHEREAS, the State Board denied Petitioners' Petition for Reconsideration of Order
11 WR 2009-0060;

12 WHEREAS, Petitioners filed a Petition for Writ of Mandamus and Complaint for
13 Injunctive Relief challenging the State Water Board's adoption of Order WR 2009-0060;

14 WHEREAS, the Parties desire to terminate Petitioners' case without prejudice.

15 THEREFORE, the Parties enter into this Stipulation and agree as follows:

16 1. Petitioners' case shall be stayed for 120 days from the date this Stipulation is
17 executed. If, during this 120-day period, MPWMD adopts an ordinance tolling the expiration of
18 the water credits held by Petitioners for the period Order WR 2009-0060 is in effect, Petitioners
19 will dismiss their Petition for Writ of Mandamus and Complaint for Injunctive Relief without
20 prejudice.

21 2. If MPWMD rescinds the ordinance tolling the expiration of Petitioners' credits
22 (either on its own initiative or as required by a court as a result of an action challenging the
23 ordinance) during the time Order WR 2009-0060 is in effect, the statute of limitations for any
24 cause of action or claim pled in Petitioners' Petition for Writ of Mandamus and Complaint for
25 Injunctive Relief shall be tolled for a period commencing February 3, 2012, and continuing until
26 90 days after MPWMD takes final action rescinding the ordinance. If the ordinance is amended
27 to extend expiration of Petitioners' credits for a period less than the entirety of the time in which
28 Order WR 2009-0060 is in effect, the statute of limitations for any cause of action or claim pled

1 in Petitioners' Petition for Writ of Mandamus and Complaint for Injunctive Relief shall be tolled
2 from February 3, 2012, until 90 days after MPWMD takes final action amending the ordinance.

3 3. Petitioner Quail Lodge will diligently pursue water right application 30149 and
4 will file a change petition to enable Cal-Am to serve Quail Lodge after the expiration of Order
5 WR 2009-0060. If the State Water Board denies the application or petition or imposes conditions
6 unacceptable to Quail Lodge (either as part of the State Water Board's initial approval or as
7 modified by the State Water Board or required by a court if another party seeks administrative
8 reconsideration or judicial review) and Quail Lodge files a petition for writ of mandate
9 challenging the State Water Board's action on the application or change petition within the period
10 provided under Water Code section 1126, the statute of limitations shall be tolled as to Quail
11 Lodge only (not CVR HSGE, LLC and Baylaurel, LLC) for a period commencing February 3,
12 2012, and continuing until the date on which Quail Lodge files the petition for writ of mandate
13 challenging the State Water Board's action on the water right application or change petition.

14 4. This Stipulation shall expire at the end of an Initial Term of four years from the
15 date the Parties executed this Stipulation. To the extent this Stipulation remains in effect to the
16 end of the Initial Term, this Stipulation will automatically renew for an additional two years,
17 unless Petitioners, jointly or individually, or the State Water Board elects not to renew the
18 Stipulation. This paragraph is intended to comply with Code of Civil Procedure section 360.5,
19 which permits successive tolling agreements to be executed in order to extend a tolling period
20 beyond four years. To elect not to renew the Stipulation, Petitioners or the State Board must
21 provide the other Parties with written notice of their intent to terminate the Stipulation at least 30
22 days prior to the date of expiration.

23 5. Before any Petitioner initiates a civil action under Paragraphs 2 or 3 above, the
24 Petitioner(s) that intends to initiate a civil action will first provide the other Parties with 60 days'
25 written notice of the intention to initiate such action. The Parties shall meet and confer during the
26 60-day period in a good-faith attempt to resolve the concerns giving rise to Petitioner(s) intent to
27 initiate the civil action. The written notice will provide: (a) a detailed explanation of why the
28 Petitioner(s) intends to initiate such action, and (b) express whether the Petitioner(s) expects to,

1 between providing notice and the first 30 days the action is on file with the Court, (i) move the
2 Court, ex parte, for any reason, (ii) seek a temporary restraining order, preliminary injunction, or
3 stay, or (iii) seek an alternative writ.

4 6. The State Water Board does not waive any defense that existed prior to February
5 3, 2012, or any defense responding to claims beyond those alleged in the Petitioners' Petition for
6 Writ of Mandamus and Complaint for Injunctive Relief.

7 7. This Stipulation does not constitute any admission or acknowledgment on the part
8 of any of the Petitioners that any statute of limitations is applicable to any civil action for judicial
9 review of the Order or that any such statute limitations has run.

10 8. This Stipulation does not constitute an admission by the State Water Board that the
11 claims alleged in Petitioners' case were timely filed.

12 9. Any future civil action for judicial review of Order WR 2009-0060 or the State
13 Water Board's denial of the application or change petition, or any amendments thereto or
14 enforcement thereof, will be filed in the Superior Court of the State of California, for the County
15 of Santa Clara.

16 10. The undersigned representatives of the Parties certify that they are fully
17 authorized to enter into the terms and conditions of this Stipulation and to execute and bind the
18 Party or Parties they represent.

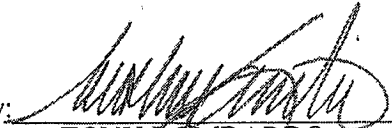
19 11. Except as set out in this Stipulation, the Parties retain all rights they may
20 otherwise have.

21 12. This Stipulation runs only to the benefit of the Parties.

22 13. This Stipulation may be executed in counterparts and by facsimile.

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Dated: 5/31/12

By: 
TONY LOMBARDO
Lombardo and Associates
Attorneys for Quail Lodge,
CVR HSGE, LLC and Baylaurel, LLC

Dated: _____

By: _____
TIFFANY YEE
Office of the Attorney General
Attorneys for State Water Resources
Control Board

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Dated: _____

By: _____

TONY LOMBARDO
Lombardo and Associates
Attorneys for Quail Lodge,
CVR HSGE, LLC and Baylaurel, LLC

Dated: June 1, 2012

By:  _____

TIFFANY YEE
Office of the Attorney General
Attorneys for State Water Resources
Control Board

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Quail Lodge, Inc., et al. v. State Water Board, et al.**
Case No.: **110CV183439**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 4, 2012, I served the attached **STIPULATION STAYING CASE AND TOLLING STATUTE OF LIMITATIONS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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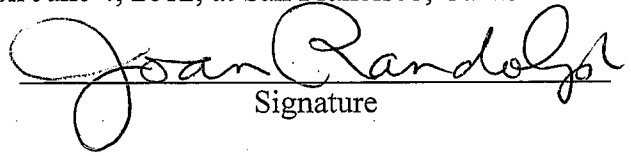
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 4, 2012, at San Francisco, California.

Joan Randolph
Declarant


Signature

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