

1 **MICHAEL T. FIFE (State Bar No. 203025)**
2 **BRADLEY J. HERREMA (State Bar No. 228976)**
3 **BROWNSTEIN HYATT FARBER SCHRECK, LLP**
4 **21 East Carrillo Street**
5 **Santa Barbara, California 93101**
6 **Telephone No: (805) 963-7000**
7 **Facsimile No: (805) 965-4333**

8 **Attorneys for:** B.J. Calandri, John Calandri, John Calandri as Trustee of the John and B.J. Calandri
9 2001 Trust, Forrest G. Godde, Forrest G. Godde as Trustee of the Forrest G. Godde Trust, Lawrence
10 A. Godde, Lawrence A. Godde and Godde Trust, Kootenai Properties, Inc., Gailen Kyle, Gailen
11 Kyle as Trustee of the Kyle Trust, James W. Kyle, James W. Kyle as Trustee of the Kyle Family
12 Trust, Julia Kyle, Wanda E. Kyle, Eugene B. Nebeker, R and M Ranch, Inc., Edgar C. Ritter Paula
13 E. Ritter, Paula E. Ritter as Trustee of the Ritter Family Trust, Trust, Hines Family Trust , Malloy
14 Family Partners, Consolidated Rock Products, Calmat Land Company, Marygrace H. Santoro as
15 Trustee for the Marygrace H. Santoro Rev Trust, Marygrace H. Santoro, Helen Stathatos, Savas
16 Stathatos, Savas Stathatos as Trustee for the Stathatos Family Trust, Dennis L. & Marjorie E.
17 Groven Trust, Scott S. & Kay B. Harter, Habod Javadi, Eugene V., Beverly A., & Paul S. Kindig,
18 Paul S. & Sharon R. Kindig, Jose Maritorena Living Trust, Richard H. Miner, Jeffrey L. & Nancee J.
19 Siebert, Barry S. Munz, Terry A. Munz and Kathleen M. Munz, Beverly Tobias, Leo L. Simi, White
20 Fence Farms Mutual Water Co. No. 3., William R. Barnes & Eldora M. Barnes Family Trust of
21 1989, Del Sur Ranch, LLC, Healy Enterprises, Inc., John and Adrienne Reca, Sahara Nursery, Sal
22 and Connie L. Cardile, Gene T. Bahlman, **collectively known as the Antelope Valley Ground**
23 **Water Agreement Association ("AGWA")**

24 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
25 **FOR THE COUNTY OF SANTA CLARA**

26 **ANTELOPE VALLEY**
27 **GROUNDWATER CASES**

) Judicial Council Coordination Proceeding
) No. 4408

28 Included Actions:

) **Santa Clara Case No. 1-05-CV-049053**
) Assigned to The Honorable Jack Komar

29 Los Angeles County Waterworks District No.
30 40 v. Diamond Farming Co. Superior Court of
31 California County of Los Angeles, Case No. BC
32 325 201 Los Angeles County Waterworks
33 District No. 40 v. Diamond Farming Co.
34 Superior Court of California, County of Kern,
35 Case No. S-1500-CV-254-348Wm. Bolthouse
36 Farms, Inc. v. City of Lancaster Diamond
37 Farming Co. v. City of Lancaster Diamond
38 Farming Co. v. Palmdale Water Dist. Superior
39 Court of California, County of Riverside,
40 consolidated actions, Case No. RIC 353 840,
41 RIC 344 436, RIC 344 668

) **MOTION TO DECERTIFY SMALL**
) **PUMPERS' CLASS**

) **Date: May 6, 2009**
) **Time: 9:00 AM**
) **Department: Santa Clara Superior Court,**
) **Dept. 17C**

1 The Antelope Valley Groundwater Agreement Association (“AGWA”) hereby moves the
2 Court to decertify the Wood Class, also known as the Small Pumpers Class. In the alternative,
3 AGWA moves the Court to modify the class definition so that the class only includes small domestic
4 water users, those using approximately an acre-foot or less.

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6 This motion is based on the Class’ lack of a community of interest, as a class representative
7 cannot be found whose claims or defenses are typical of the class.

8 **I. BACKGROUND AND SUMMARY**

9 On September 2, 2008, the Court certified a class of small pumpers based on a motion filed
10 on behalf of Richard Wood as the putative class representative. The class as certified includes the
11 owners of any real property within the Antelope Valley Basin that have pumped some amount of
12 water, but no more than 25 acre-feet in any year between 1946 and the present.

13 The Court never held an evidentiary hearing regarding whether certification of this class was
14 appropriate. Thus, no evidence was presented and there have been no findings by the Court as to the
15 historical water use on the parcels owned by class members. It is therefore unknown what portion of
16 the class will be composed of parcels that have had historic annual water use of an acre-foot or less
17 as compared to parcels where historical annual water use exceeded one acre-foot.

18 In recent filings, the Small Pumpers Class has indicated that it believes that the class
19 comprises small domestic users of water. In fact, the Class’ filings make clear that Class Counsel,
20 Mr. McLachlan, and the class representative, Mr. Richard Wood, believe that the class’ interests are
21 adverse to those of agricultural water users in the Basin. This issue was a subject of discussion at the
22 April 24, 2009 Case Management Conference and no resolution was reached.¹

23 It is clear that the Class, as defined, almost certainly contains members whose water use is
24 for strictly domestic water use and other members whose use supports irrigated agriculture upon
25 their parcels. A domestic residence in the Antelope Valley uses approximately one acre-foot of

26
27 ¹ A transcript of this hearing is not yet available, but given the short time before the class notice is
28 prepared.

1 water per year.² It is extraordinarily unlikely that a small domestic user could use anything even
2 close to 25 acre-feet of water in a year. It is much more likely that agricultural operations are
3 underway on any parcel where water use is greater than one acre-foot. This means that the Small
4 Pumpers Class as certified contains *both* domestic water users and agricultural water users.

5 **II. THE CLASS AS CERTIFIED HAS NO COMMUNITY OF INTEREST**

6 A class action may be sustained when there is: (1) an ascertainable class, and (2) a well-
7 defined community of interest in the questions of law or fact. (*Linder v. Thrifty Oil Co.* (2000) 23
8 Cal.4th 429, 435; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809; *Daar v. Yellow Cab Co.*
9 (1967) 67 Cal.2d 695, 704.) In other words, if a class can be described, the members of the class
10 must be substantially similarly situated. Whether a well-defined community of interest exists is an
11 inquiry independent from evaluating whether there is an ascertainable class. (See, e.g., *Block v.*
12 *Major League Baseball* (1998) 65 Cal.App.4th 538, 542.) The existence of a well-defined
13 community of interest is necessary in order to ensure that the class action, if certified, will produce a
14 benefit for the court and the proposed class. (*Hicks v. Kaufman and Broad Home Corp.* (2001) 89
15 Cal.App.4th 908, 914.)

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17
18 Three distinct factors compose a “community of interest”: (1) predominant common
19 questions of law or fact, (2) class representatives whose claims or defenses are typical of those of the
20 members of the class, and (3) class representatives that can adequately represent the class as a whole.
21 (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470.) Each factor must be independently
22 satisfied and the absence of any of them will defeat the attempted certification of a class action. (*Id.*
23 (emphasis added).) Here, there is no adequate community of interest because all three factors cannot
24 be satisfied.
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26

27 ² Antelope Valley households, with two adults and two children and a medium to large yard, use an
28 average of 6,266 gallons of water per week, or roughly one acre-foot per year. (Antelope Valley East
Kern Water Agency, “Water Facts,” <http://www.ayek.org/faq.html>.)

1 To ensure that the class representatives are similarly situated to class members they purport
2 to represent, their claims must be “typical” of the class. (*Classen v. Weller* (1983) 145 Cal.App.3d
3 27, 45-6.) Claims that are particular to the class representatives to the exclusion of other members of
4 the class do not constitute typicality. (*Hart v. Alameda County* (1999) 76 Cal.App.4th 766, 775-76.)
5 As shown by the statements of Richard Wood and Class counsel, the class representative’s claims
6 and defenses are not typical of the class, and there are not claims and defenses typical of those of all
7 class members, as the class definition includes members whose interests are adverse to one another.
8 Mr. Wood is not an adequate class representative and neither could any member of the class fill this
9 role.

10 **A. The Class Members’ Claims and Defenses are Inconsistent**

11 On September 2, 2008, the Court issued its order certifying the Small Pumpers Class, which
12 is defined as “[a]ll private (i.e., non-governmental) persons and entities that own real property within
13 the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year on their
14 property during any year from 1946 to the present.” Mr. Wood was appointed as the representative
15 of the Class and Mr. McLachlan, along with Mr. Daniel O’Leary, was appointed as counsel for the
16 Class.
17

18 Class counsel have stated – and it is assumed that this is also the position of the Class
19 representative – that the Class is primarily intended to represent small domestic users, as “the vast
20 majority of the Small Pumpers Class members are single family residential users who are outside the
21 available public water supply network, and hence must rely upon their own pumping of groundwater
22 to exist on their land.” (See Declaration of Richard Wood in Support of Motion for Appointment of
23 Expert , ¶¶ 2-4; Richard Wood’s Renewed Motion for Appointment of Expert, p.5.) As described
24 above, based on the Class definition’s inclusion of owners of property upon which between one and
25 twenty-five acre-feet have historically annually been pumped, the Class – in addition to domestic
26 water users –contains agricultural water users, and may include users of water in unknown amounts
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28

1 for untold other purposes.

2 On this basis, it appears that there are not claims and defenses typical of all of these class
3 members, evidenced by the repeated statements and assertions of Mr. Wood and Mr. McLachlan.

4 Class Counsel has stated:

5
6 It should be no secret that as this matter progresses, the small pumper,
7 who has a statutory priority vis-à-vis his or her residential use as
8 compared to the farmer, will want to point his finger at the farmers as
9 the real source of problem (if one is actually shown to exist)....

10 (Richard Wood's Reply Brief in Support of Renewed Motion for Appointment of Expert filed April
11 16, 2009, page 5, lines 11-14; See also Wood Class Filing dated February 25, 2009 page 5, lines 11-
12 14..) If the interests of the small residential users within the Small Pumpers Class are not aligned
13 with agricultural interests, there is a conflict among the members of the Class. If the small
14 residential users may wish to point "point fingers" at agricultural users within the Basin as the source
15 of any problems that may be found, they will be pointing at their fellow Class members.

16 Taken as a whole, Counsel's statements make it quite clear that the class representative
17 believes that his interests are adverse to the agricultural interests of many of his own fellow class
18 members under the class definition.

19 **B. Richard Wood Cannot Adequately Represent the Class**

20 In addition to the requirement of typical claims and defenses, a class must have a
21 representative that can adequately represent the class as a whole. (*Richmond v. Dart Indus., Inc.*, 29
22 Cal.3d at 470.) The adequacy of representation turns on whether the class representative "vigorously
23 and tenaciously protected the interests of the class." (*Simons v. Horowitz* (1984) 151 Cal.App.3d
24 834, 846.) This requires that the representative be an actual interested member of the purported
25 class. (*Howard Gunty Profit Sharing Plan v. Superior Court* (2001) 88 Cal.App.4th 572, 579-80;
26 *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 464 (class representative must assert all
27 claims reasonably expected to be raised by members of the class).) Antagonism between class
28

1 members in particular may defeat adequacy of representation. (*Id.* at 471; see also *In re Beer*
2 *Distribution Antitrust Litigation* (1998) 188 F.R.D. 549, 554.)

3 In a letter to the court dated May 14, 2008, Class Counsel endorsed Richard Wood as class
4 representative, "...reserving of course the possibility that some small number of members of this
5 yet-to-be-defined class may have interests not fully in line with his." Now that such a clash of
6 interests is apparent, the Class Action Complaint's factual allegation that Richard Wood claims are
7 typical of other members of the class has not proven true. (See Richard A. Wood Class Action
8 Complaint, ¶ 19, p.7.) Since Richard Wood has repeatedly declared that there is direct antagonism
9 between himself and agricultural parties, there cannot be adequate representation of the agricultural
10 interests of other members of the Small Pumpers Class. Because no evidentiary hearing was ever
11 held prior to the certification of the class, it is unknown what portion of the class is composed on
12 parcels who water use has been between 1 and 25 acre-feet per year. Based on the absence of typical
13 claims and defenses among the members of the Class, it is unclear whether *any* adequate Class
14 representative could be found.
15
16

17 **III. THE SMALL PUMPERS CLASS SHOULD BE DECERTIFIED FOR WANT OF A**
18 **COMMUNITY OF INTEREST**
19

20 A class cannot be sustained absent a community of interest. Decertification may be ordered
21 at any time. (*Grogan-Beall v. Ferdinand Roten Galleries, Inc.* (1982) 133 Cal.App.3d 969, 977.) A
22 dispute over the propriety of a class requires the court to evaluate the factors necessarily involved in
23 the particular action. (*Rose v. Medtronics, Inc.* (1980) 107 Cal.App.3d 150, 154-155; see also
24 *D'Amico v. Sitmar Cruises, Inc.* (1980) 109 Cal.App.3d 323.) If there are no claims and defenses
25 common to the Class members, and without an adequate representative, there is no community of
26 interest. (See, e.g., *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809.) Since there is no
27 community of interest and Richard Wood is an inadequate class representative, the class should be
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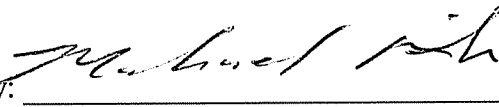
1 decertified.

2
3 **IV. CONCLUSION**

4 For all of the foregoing reasons, AGWA respectfully requests the Court to decertify the
5 Small Pumpers Class, or, in the alternative, modify the class definition so that the class only includes
6 small domestic water users, those using approximately an acre-foot or less.

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10 Dated: April 30, 2009

BROWNSTEIN HYATT FARBER SCHRECK,
LLP

11
12
13 By: 

14 MICHAEL T. FIFE
15 BRADLEY J. HERREMA
16 ATTORNEYS FOR AGWA

BROWNSTEIN HYATT FARBER SCHRECK, LLP
21 East Carrillo Street
Santa Barbara, CA 93101

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BROWNSTEIN HYATT FARBER SCHRECK, LLP
21 East Carrillo Street
Santa Barbara, CA 93101

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PROOF OF SERVICE

**STATE OF CALIFORNIA,
COUNTY OF SANTA BARBARA**

I am employed in the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action; my business address is: 21 E. Carrillo Street, Santa Barbara, California 93101.

On April 30, 2009, I served the foregoing document described as:

MOTION TO DECERTIFY WOOD CLASS

on the interested parties in this action.

By posting it on the website at 4:00 p.m. on April 30, 2009.
This posting was reported as complete and without error.

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

Executed in Santa Barbara, California, on April 30, 2009.

MARIA KLACHKO-BLAIR
TYPE OR PRINT NAME


SIGNATURE