

# **EXHIBIT D**

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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

Coordination Proceeding  
Special Title (Rule 1550(b))  
**ANTELOPE VALLEY GROUNDWATER  
CASES**

RICHARD A. WOOD, an individual, on  
behalf of himself and all others similarly  
situated,

Plaintiff,

v.

LOS ANGELES COUNTY  
WATERWORKS DISTRICT NO. 40; et  
al.

Defendants.

Judicial Council Coordination  
Proceeding No. 4408  
(Honorable Jack Komar)

Case No.: BC 391869

**NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS  
SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES**

Date: March 26, 2015  
Time: 10:00 a.m.  
Dept: Room 222

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 26, 2015, at 10:00 a.m., or as soon  
3 thereafter as the matter may be heard, in Room 222, located at 111 North Hill  
4 Street, Los Angeles, California, Richard Wood and Los Angeles County  
5 Waterworks District No. 40 jointly move for preliminary approval of the Small  
6 Pumper Class Settlement.

7 Richard Wood and Los Angeles County Waterworks District No. 40 bring  
8 this motion pursuant to California Rules of Court, Rule 3.769.

9 The Motion is based on this Notice, the Memorandum of Points and  
10 Authorities, the Declaration of Michael D. McLachlan, the various documents  
11 attached thereto, the records and file herein, and on such evidence as may be  
12 presented at the hearing of the Motion.

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14 DATED: March 4, 2015

LAW OFFICES OF MICHAEL D. MCLACHLAN  
LAW OFFICE OF DANIEL M. O'LEARY

15  
16 Michael D.

17 McLachlan

Digitally signed by Michael D.  
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18 By:

MICHAEL D. MCLACHLAN

Attorneys for Plaintiff and the Class

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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3 **I. INTRODUCTION**

4 Plaintiff Richard Wood has entered into a Stipulation of Settlement  
5 (“Agreement”) with Defendants Los Angeles County Waterworks District No. 40  
6 (“District 40”), California Water Service Company, City of Palmdale, Littlerock  
7 Creek Irrigation District, Palm Ranch Irrigation District, Quartz Hill Water  
8 District, and Desert Lake Community Services District (collectively, the “Settling  
9 Defendants”) subject to court approval and other conditions set forth in the  
10 Agreement.<sup>1</sup> By incorporation of the Stipulation for Entry of Judgment and  
11 Physical Solution and its exhibits and appendices (“Stipulation”) into this  
12 Agreement, Richard Wood is also settling with all of the signatory parties to that  
13 Stipulation. Those Parties include Defendants City of Lancaster, Palmdale Water  
14 District, Rosamond Community Services District, and Phelan Pinon Hills  
15 Community Services District, all of whom were Settling Parties in the 2014 partial  
16 Small Pumper Class Settlement. All of these parties are referred to collectively as  
17 the “Settling Parties.” The Agreement is attached as Exhibit 1 to the Declaration  
18 of Michael D. McLachlan.

19 The Agreement and Stipulation, upon which it is founded involve parties  
20 accounting for approximately 99.8% of the current production of the native safe  
21 yield. If approved, this settlement will bring this litigation to a close, and will  
22 cause a permanent physical to be imposed that will cut current groundwater  
23 production by more than 70,000 acre-feet per year, bring the basin in to balance,  
24 and provide for basin-wide management, among many other benefits.

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27 <sup>1</sup> This Agreement does not currently include Defendant North Edwards  
28 Water District because it has not yet agreed to sign. This matter will be resolved  
prior to the preliminary approval hearing.

1 Plaintiff and District 40 request that the court adopt the Order Granting  
2 Preliminary Approval of Class Action Settlement and Directing Notice to the  
3 Class, which would: (i) preliminarily approve the proposed Agreement; (ii)  
4 approve the form of Notice to the Class and authorize dissemination of the  
5 Notice; (iii) set dates and procedures for a fairness hearing on the proposed  
6 Agreement; and (iv) set procedures and deadlines for class members to object to  
7 the Agreement terms (the propose Order will be lodged separately).

## 8 9 **II. THE LITIGATION AND PROPOSED SETTLEMENT**

### 10 **A. History of the Small Pumper Class Action**

11 The court is familiar with the history of this action and the details  
12 surrounding the Small Pumper Class (the “Class”). Briefly, Plaintiff Richard  
13 Wood (“Plaintiff”) filed this action on June 2, 2008 to protect his rights, and  
14 those of other Antelope Valley landowners who have been pumping less than 25  
15 acre feet year (“afy”) of groundwater from the Antelope Valley Groundwater  
16 Basin (“Basin”). Plaintiff filed this action so that he and the members of the Class  
17 could continue to extract groundwater from the Basin for reasonable and  
18 beneficial use. This action was also filed to contest claims of prescriptive rights  
19 asserted by the various Public Water Suppliers. The court certified the Small  
20 Pumper Class Action by Order dated September 2, 2008, in which the court  
21 defined the Small Pumper Class as:

22 All private (i.e., non-governmental) persons and entities  
23 that own real property within the Basin, as adjudicated,  
24 and that have been pumping less that 25 acre-feet per  
25 year on their property during any year from 1946 to the  
26 present. The Class excludes the defendants herein, any  
27 person, firm, trust, corporation, or other entity in which  
28 any defendant has a controlling interest or which is  
related to or affiliated with any of the defendants, and  
the representatives, heirs, affiliates, successors-in  
interest or assigns of any such excluded party. The Class

1 also excludes all persons and entities that are  
2 shareholders in a mutual water company.

3 Notice of the Pendency of the Small Pumper Class Action was sent by first  
4 class mail to all Small Pumper Class Members<sup>2</sup> who could be identified with  
5 reasonable effort on or about July 7, 2009 and a Summary Notice was published  
6 as instructed by the court. The deadline for putative Class Members to exclude  
7 themselves (as extended) ended on December 4, 2009. Throughout this process,  
8 the court made various orders allowing certain parties who had opted-out to  
9 rejoin the Class.

10 **B. Small Pumper Class Settlement Agreement Background**  
11 **And Terms**

12 The Settling Parties commenced settlement negotiations in 2009, which  
13 continued intermittently. As part of those negotiations, various of the Settling  
14 Parties also participated in private mediation before, William Dendy, James  
15 Waldo, and more recently, the Honorable Ronald Robie. As a result of the  
16 extensive negotiations, the parties ultimately agreed upon the terms that form the  
17 Stipulation, attached to the Agreement as “Exhibit A”.

18 Class Counsel believes that the Small Pumper Class Agreement, and the  
19 terms provided therein, are fair to the Class members and all concerned. Several  
20 of the material terms agreed upon in this Agreement are: (1) Settling parties  
21 agree that all claims between and among them are resolved, including the water  
22 rights of each party; (2) one of the nation’s most important defense assets,  
23 Edwards Air Force Base and the associate Plant 42 facilities, will have a defined  
24 and sufficient water supply going forward; (3) the Small Pumper Class has a  
25 right to produce an average of 1.2 acre-feet per year per household, and up to an  
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27 <sup>2</sup> If not defined in this Motion, all capitalized references are defined in the  
28 Settlement Agreement or the Stipulated Judgment. (McLachlan Decl., Ex. 1.)

1 individual household maximum of 3.0 acre-feet per year, free of replacement  
2 assessment; (4) the prescriptive rights of the Settling Defendants, if any, shall not  
3 be exercised to diminish the rights of the Small Pumper Class; (5) provides for a  
4 basin-wide management system through a watermaster, funded by assessments  
5 levied on all groundwater users in the basin; (6) reduces the current pumping by  
6 70,000 acre-feet per year; (7) brings the basin into balance; (8) permits storage  
7 of water in the basin; (8) allows for the transfer of water rights within the basin;  
8 (9) provides for future domestic pumping of residential users, such as Willis Class  
9 members; and (10) all parties have the right to recapture return flows from water  
10 that they have imported into the Basin, among other provisions.

### 11 12 **III. ARGUMENT**

#### 13 **A. Standard For Preliminary Approval**

14 There is an overriding public interest in settling and quieting litigation,  
15 especially class actions. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955  
16 F.2d 1268, 1276, cert. denied, 506 U.S. 953.) Court approval is required before  
17 any action certified as a class action may be settled or compromised and  
18 subsequently dismissed. Cal Rules of Court, Rule 3.769. In deciding whether to  
19 approve a class action settlement, the court has broad discretion to determine  
20 whether a proposed settlement is fair under the circumstances of the case.  
21 (*Mallick v. Superior Ct.* (1979) 89 Cal.App.3d 434, 438.)

22 A class action settlement is approved in accordance with a three-step  
23 process: (1) preliminary approval of the proposed settlement and proposed notice  
24 to settlement class members; (2) dissemination of the notice of the settlement to  
25 class members; and (3) the final approval hearing, at which class members may  
26 voice their opinion about the settlement; it is also at this time that evidence and  
27 argument regarding the fairness, adequacy and reasonableness of the settlement  
28 is presented.

1           The scope of a court’s evaluation during the preliminary hearing stage is  
2 limited. The purpose of the preliminary evaluation is simply to determine  
3 whether the proposed settlement is within the “range of reasonableness” and thus  
4 whether it is appropriate to send notice to the class of the proposed settlement  
5 terms and conditions and schedule a final settlement hearing. At the final  
6 settlement hearing, the court reviews the proposed settlement de novo, and  
7 considers in part the class members’ opinions about the particular settlement.

8           A settlement is presumed fair where: (1) “the settlement is reached through  
9 arm’s length bargaining;” (2) “investigation and discovery are sufficient to allow  
10 counsel and the court to act intelligently;” (3) “counsel is experienced in similar  
11 litigation;” and (4) “the percentage of objectors is small.” (*Wershba v. Apple*  
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45.) A review of these factors  
13 strongly favors preliminary approval of the proposed Settlement in this action.

14           **B.     The Proposed Settlement Agreement Is Well Within The**  
15                   **Range Of Reasonableness And Merits Preliminary**  
16                   **Approval.**

17           The proposed Settlement Agreement is well within the “range of  
18 reasonableness” and thus merits approval. Although Plaintiff Wood and the  
19 Class believe that their claims have merit, they recognize that, proceeding with  
20 this litigation carries considerable risk. It is, therefore, in the best interests of  
21 Plaintiff and the Class to settle with, and receive reasonable and prompt benefits  
22 from, the Settling Defendants.

23           It is elemental that a settlement is a compromise and, thus, does not  
24 ordinarily provide a plaintiff with the full relief or recovery originally sought at  
25 the time the action was filed. (*Wershba, supra*, 91 Cal.App.4th at 250 (“In the  
26 context of a settlement agreement, the test is not the maximum amount plaintiffs  
27 might have obtained at trial on the complaint, but rather whether the settlement  
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1 is reasonable under all of the circumstances.”.) Even under the Agreement,  
2 however, the Class will benefit substantially.

3 The Agreement represents a compromise and allows for dismissal of  
4 Defendants’ prescription claims. It also recognizes the rights of the Class and  
5 allows class members to pump up to 3 acre feet for reasonable and beneficial use  
6 on their overlying land.

7 In sum, given the many risks faced by Plaintiff and the Class in pursuing  
8 this litigation, the Agreement represents a reasonable resolution of otherwise  
9 complex and strongly contested issues. Had the Class not settled, the resolution  
10 of those issues would have resulted in a long and considerably expensive trial.  
11 The Agreement is within the range of reasonableness in light of these  
12 circumstances.

13 **C. The Extent Of Discovery Completed And The Stage Of**  
14 **Proceedings**

15 This Agreement is the result of years of discovery, contested law and  
16 motion proceedings, and several phase of trial, all of which educated counsel on  
17 both sides as to the strengths and weaknesses of their claims. Class Counsel  
18 reviewed and analyzed thousands of pages of documents produced by  
19 Defendants, and have engaged in extensive research in relation to the legal and  
20 factual issues central to Plaintiff’s claims. Class Counsel also has experience in  
21 complex class action litigation. Class Counsel was thus well-informed and  
22 strategically positioned to negotiate an appropriate settlement agreement, which  
23 was negotiated at arms-length over several years’ time.

24 **D. The Proposed Notice Fairly Apprises The Class Members of**  
25 **the Terms Of The Settlement Agreement And Their**  
26 **Options.**

27 Notice of a class action settlement must “present a fair recital of the subject  
28 matter and proposed terms [and provide] an opportunity to be heard to all class

1 members.” (See, e.g. *In re Equity Funding Corp. of America Sec. Litig.* (1979)  
2 603 F.2d 1353, 1361; see also, *Phillips v. Shutts* (1985) 472 U.S. 797, 812.)

3 The proposed Notice (Exhibit 2) apprises the Small Pumper Class  
4 Members of their rights and how their rights may be exercised. The Notice  
5 informs the Small Pumper Class Members of: (i) the persons that qualify as a  
6 member of the Small Pumper Class; (ii) the history of the litigation; (iii) the  
7 terms of the Agreement; (iv) the binding effect of any Judgment; (v) the right of  
8 Small Pumper Class Members to object to any aspect of the Settlement and/or to  
9 appear at the fairness hearing and the procedures and deadlines for doing so;  
10 (vii) the date, time and location of the fairness hearing; and (viii) how to obtain  
11 additional information.

12 The method by which the Notice will be disseminated is also appropriate,  
13 as set forth in Section VI.B of the Agreement. The Settling Defendants have  
14 agreed to send Notice via the United States Postal Service directly to each of the  
15 Class Members (at their last known address), as well as publish a Summary  
16 Notice (Exhibit 3) in three widely read newspapers in the area. These actions  
17 fully comply with all applicable rules and due process requirements. (See *Linder*  
18 *v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 444.) Class Members have previously  
19 been given two opportunities to opt-out of the Class, and so, per instructions of  
20 the Court, the Class members are not permitted to opt-out of this settlement.

#### 21 22 **IV. CONCLUSION**

23 For all of the foregoing reasons, Plaintiff Wood and D40 respectively  
24 request that the Court grant this Motion and: (1) preliminarily approve the  
25 proposed Agreement; (2) approve the Notice and authorize its dissemination; (3)  
26 schedule a fairness hearing on the proposed Agreement; and (4) set forth  
27 procedures and deadlines for Class Members to file objections to the proposed  
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1 Agreement, as set forth in the Proposed Order attached as Exhibit B to the  
2 Agreement.

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4 DATED: March 4, 2015

LAW OFFICES OF MICHAEL D. McLACHLAN  
LAW OFFICE OF DANIEL M. O'LEARY

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8 MICHAEL D. MCLACHLAN  
9 Attorneys for Plaintiff and the Class  
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