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**EXEMPT FROM FILING FEES
UNDER GOVERNMENT CODE
SECTION 6103**

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13 DISTRICT NO. 40

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

16 **ANTELOPE VALLEY GROUNDWATER CASES**

Included Actions:

17 Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., Superior Court of
18 California, County of Los Angeles, Case No. BC
325201;

19 Los Angeles County Waterworks District No. 40 v.
Diamond Farming Co., Superior Court of
20 California, County of Kern, Case No. S-1500-CV-
254-348;

21 Wm. Bolthouse Farms, Inc. v. City of Lancaster,
22 Diamond Farming Co. v. City of Lancaster,
Diamond Farming Co. v. Palmdale Water Dist.,
23 Superior Court of California, County of Riverside,
Case Nos. RIC 353 840, RIC 344 436, RIC 344 668

24 Rebecca Lee Willis v. Los Angeles County
Waterworks District No. 40, et al., Superior Court
25 of California, County of Los Angeles, Case No.
BC364553;

26 Richard Wood v. Los Angeles County Waterworks
27 District No. 40, et al., Superior Court of California,
County of Los Angeles, Case No. BC391869
28

Judicial Council Coordination
Proceeding
No. 4408

CLASS ACTION

Santa Clara Case No. 1-05-CV-049053
Assigned to the Honorable Jack Komar

**REPLY IN SUPPORT OF LOS
ANGELES COUNTY
WATERWORKS DISTRICT NO.
40'S MOTION TO AMEND
JUDGMENT *NUNC PRO TUNC*;
DECLARATION OF JEFFREY V.
DUNN**

Date: May 25, 2016
Time: 9:00 a.m.
Dept.: Room 222 (LASC)

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The Wood Class submitted the only objection to Los Angeles County Waterworks District
4 No. 40's ("District No. 40") request for a *nunc pro tunc* order to correct clerical mistakes in the
5 judgment entered on December 28, 2015. Specifically, the two class actions were omitted from
6 the caption page. The Wood Class does not oppose the requested correction, but argues that the
7 judgment should not be amended *nunc pro tunc* because doing so may impact the Wood Class'
8 ability to recover costs. Such impact, if any, is not a proper factor for the Court's consideration
9 and the motion should be granted.

10 **II. THE COURT SHOULD ISSUE A NUNC PRO TUNC ORDER BECAUSE THE**
11 **OMISSION OF THE CLASS ACTIONS WAS A CLERICAL MISTAKE**

12 There is no dispute here as to whether the judgment was intended to include the two class
13 actions. The omission of the class actions from the caption page was merely a clerical mistake.
14 Case law is clear that a *nunc pro tunc* order is appropriate to correct a judgment that inadvertently
15 omits the name of the person against whom the judgment has been rendered. (*Russ v. Smith*
16 (1968) 264 Cal.App.2d 385, 390-91.) The Wood Class does not offer any contrary authority; nor
17 does it offer any evidence that the omission was not a clerical mistake.

18 Rather, the Wood Class contends that in the absence of a *nunc pro tunc* order, the
19 amendment will affect appellate and post-trial deadlines; consequently, the Wood Class argues
20 that the omission cannot be "clerical in nature" and a *nunc pro tunc* order is not appropriate.
21 (Opposition at 2:6-11.) This circular argument would, in effect, deny the courts of their inherent
22 authority to issue *nunc pro tunc* orders and defeat the purposes of these orders – to avoid
23 unintentional adjustments to post-judgment deadlines when correcting clerical mistakes.

24 A *nunc pro tunc* order or judgment is one entered as of a time prior
25 to the actual entry, so that it is treated as effective at the earlier
26 date. This retroactive entry is an exercise of inherent power of the
27 court, the object being to do justice to a litigant whose rights are
28 threatened by a delay that is not the litigant's fault. . . . The

1 function of a nunc pro tunc order is merely to correct the record of
2 the judgment and not to alter the judgment actually rendered—not
3 to make an order now for then, but to enter now for then an order
4 previously made. The question presented to the court on a hearing
5 of a motion for a nunc pro tunc order is: What order was in fact
6 made at the time by the trial judge? . . . An order made nunc pro
7 tunc should correct clerical error by placing on the record what was
8 actually decided by the court but was incorrectly recorded. It may
9 not be used as a vehicle to review an order for legal or judicial error
10 by correcting the order in order to enter a new one.

11 (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 852 [citations and quotation marks
12 omitted].)

13 Here, all parties understand the judgment to apply to the two class actions. Most
14 importantly, the two classes understand that the judgment applies to them. In fact, the Willis
15 Class has already submitted its notice of appeal; and the Wood Class has repeatedly
16 acknowledged that it is subject to the judgment. (See generally, Willis Class’ Notice of Appeal at
17 www.scefiling.org/document/document.jsp?documentId=121325, Wood Class’ Motion for
18 Award of Attorney Fees, Costs and Incentive Award at [www.scefiling.org/document/
19 document.jsp?documentId=120331](http://www.scefiling.org/document/document.jsp?documentId=120331) & Wood Class’ Motion for Order Setting Parameters for
20 Termination of Small Pumper Class Counsel’s Appointment as Class Counsel at
21 www.scefiling.org/document/document.jsp?documentId=122347 [“The Judgment contains
22 necessary provisions for protecting the Small Pumpers interests, including specific notice
23 provisions for the Class”].)

24 **III. POST-DATING THE JUDGMENT WOULD NEGATIVELY IMPACT THE**
25 **MANAGEMENT OF THE GROUNDWATER BASIN**

26 To the extent the Court takes into consideration the impact of a *nunc pro tunc* order on the
27 Wood Class, the Court should also consider the impact on the Antelope Valley groundwater basin
28 and the other parties if a *nunc pro tunc* order is not issued.

1 The court-adopted physical solution (“Physical Solution”) contains various deadlines that
2 are triggered by the entry date of the judgment. If the judgment is not amended *nunc pro tunc*,
3 implementation of the key elements of the Physical Solution would be delayed and the
4 groundwater basin would be negatively impacted. (*See e.g.*, Declaration of Jeffrey V. Dunn
5 (“Dunn Decl.”), Ex. “A” at §§8 [Rampdown], 12 [Movement of Production Facilities], 18.5.8
6 [Adjustment to Native Safe Yield], 18.5.11 [Adjustment of Return Flow Percentages] & 18.5.17
7 [Filing of Annual Report].) Under the Physical Solution, the parties are to reduce their water
8 production starting from the third calendar year after the entry of the judgment. (Dunn Decl., Ex.
9 A at §§8.2 & 8.3.) Unless a *nunc pro tunc* order is issued, parties will not be required to reduce
10 their production until 2019 – a full year after the current “rampdown” schedule. Such continuing
11 unrestricted pumping will have significant adverse impact to the groundwater basin, especially if
12 the current drought condition continues.

13 As evidence presented during prior phases of trial show, the Antelope Valley groundwater
14 basin has been in a state of overdraft for more than sixty years. Continuing overdraft diminishes
15 the available water supply and the parties’ ability to exercise their water rights in the future.
16 Equity and the balance of justice require the issuance of the *nunc pro tunc* order.

17 **IV. THE NUNC PRO TUNC ORDER DOES NOT IMPACT THE WOOD CLASS’**
18 **ABILITY TO RECOVER COSTS**

19 As stated in the Opposition, “[t]he issue [of a *nunc pro tunc* order] is important to the
20 Small Pumper Class for one reason” – the recovery of its costs. (Opposition at 3:25.) The Wood
21 Class believes that unless the judgment is post-dated, it may not be able to recover costs because
22 Rules of Court, Rule 3.1700 requires memorandum of costs to be filed within fifteen days of the
23 service of the notice of entry or 180 days after entry of judgment. (Opposition at 4:4-15.)

24 It is unreasonable to risk continuing overdraft of a groundwater basin for an additional
25 year so that the Wood Class can potentially recover its costs, especially since: (1) the Wood Class
26 made no showing of why it did not submit the memorandum of costs in January 2016; and (2) the
27 Wood Class has not requested a date for the Court to hear its recovery request.
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Moreover, even if the Court post-dates the amended judgment, the Wood Class already missed the deadline set forth in Rule 3.1700. The Judgment Approving Small Pumper Class Action Settlements (“Wood Class Judgment”), which is not subject to District No. 40’s motion, was signed by the Court on December 23, 2015 and filed by the Wood Class counsel and entered by the Court on December 28, 2015. (See Wood Class Judgment, available at www.scefiling.org/document/document.jsp?documentId=119090.) Post-dating the judgment will not impact the entry date of the Wood Class Judgment, which resolved the Wood Class action.

As the *nunc pro tunc* order will not affect the applicable deadline under Rule 3.1700, the Wood Class’ sole reason to oppose the motion is not grounds to deny the motion.

V. CONCLUSION

For the reasons stated above and in the motion, District No. 40 respectfully requests the Court grant the motion.

Dated: May 18, 2016

BEST BEST & KRIEGER LLP

By: 

ERIC L. GARNER
JEFFREY V. DUNN
WENDY Y. WANG
Attorneys for Defendant
LOS ANGELES COUNTY
WATERWORKS DISTRICT NO. 40

DECLARATION OF JEFFREY V. DUNN

I, Jeffrey V. Dunn declare:

1. I have personal knowledge of the facts below, and if called upon to do so, I could testify competently thereto in a court of law.

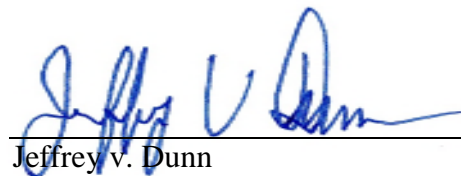
2. I am an attorney licensed to practice law in the State of California. I am a partner of Best, Best & Krieger LLP, attorneys of record for Los Angeles County Waterworks District No. 40 (“District No. 40”).

3. Attached as Exhibit “A” are true and correct copies of excerpts from Exhibit A of the Judgment entered on December 28, 2015, with relevant portions highlighted.

4. Attached as Exhibit “B” is a true and correct copy of the Wood Class’ Motion for Order Setting Parameters for Termination of Small Pumper Class Counsel’s Appointment as Class Counsel, posted to the Court’s website on March 9, 2016 and is publically available at www.scefiling.org/filingdocs/5577/95024/145831_MotionxforxOrderxTerminatingxClassxCounselxObligations.pdf.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 18th day of May, 2016, at Los Angeles, California.



Jeffrey v. Dunn

EXHIBIT A

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

Coordination Proceeding Special Title
(Rule 1550(b))

**ANTELOPE VALLEY
GROUNDWATER CASES**

Judicial Council Coordination Proceeding No.
4408

Santa Clara Case No.: 1-05-CV-049053

Judge: The Honorable Jack Komar, Dept. 17

**[PROPOSED] JUDGMENT AND PHYSICAL
SOLUTION**

1 **7.4 Water Rights.** A Physical Solution for the Basin based upon a declaration
2 of water rights and a formula for allocation of rights and obligations is necessary to implement
3 the mandate of Article X, section 2 of the California Constitution. The Physical Solution requires
4 quantifying the Producers’ rights within the Basin in a manner which will reasonably allocate the
5 Native Safe Yield and Imported Water Return Flows and which will provide for sharing Imported
6 Water costs. Imported Water sources are or will be available in amounts which, when combined
7 with water conservation, water reclamation, water transfers, and improved conveyance and
8 distribution methods within the Basin, will be sufficient in quantity and quality to assure
9 implementation of the Physical Solution. Sufficient information and data exists to allocate
10 existing water supplies, taking into account water rights priorities, within the Basin and as among
11 the water users. The Physical Solution provides for delivery and equitable distribution of
12 Imported Water to the Basin.

13 **8. RAMPDOWN**

14 **8.1 Installation of Meters.** Within two (2) Years from the entry of this
15 Judgment all Parties other than the Small Pumper Class shall install meters on their wells for
16 monitoring Production. Each Party shall bear the cost of installing its meter(s). Monitoring or
17 metering of Production by the Small Pumper Class shall be at the discretion of the Watermaster,
18 subject to the provisions of Paragraph 5.1.3.2.

19 **8.2 Rampdown Period.** The “Rampdown Period” is seven Years beginning
20 on the January 1 following entry of this Judgment and continuing for the following seven (7)
21 Years.

22 **8.3 Reduction of Production During Rampdown.** During the first two Years
23 of the Rampdown Period no Producer will be subject to a Replacement Water Assessment.
24 During Years three through seven of the Rampdown Period, the amount that each Party may
25 Produce from the Native Safe Yield will be progressively reduced, as necessary, in equal annual
26 increments, from its Pre-Rampdown Production to its Production Right. Except as is determined
27 to be exempt during the Rampdown period pursuant to the Drought Program provided for in
28

1 Paragraph 8.4, any amount Produced over the required reduction shall be subject to Replacement
2 Water Assessment. The Federal Reserved Water Right is not subject to Rampdown.

3 **8.4 Drought Program During Rampdown for Participating Public Water**

4 **Suppliers.** During the Rampdown period a drought water management program (“Drought
5 Program”) will be implemented by District No. 40, Quartz Hill Water District, Littlerock Creek
6 Irrigation District, California Water Service Company, Desert Lake Community Services District,
7 North Edwards Water District, City of Palmdale, and Palm Ranch Irrigation District,
8 (collectively, "Drought Program Participants”), as follows:

9 **8.4.1** During the Rampdown period, District No. 40 agrees to purchase
10 from AVEK each Year at an amount equal to 70 percent of District No. 40's total annual demand
11 if that amount is available from AVEK at no more than the then current AVEK treated water rate.
12 If that amount is not available from AVEK, District No. 40 will purchase as much water as
13 AVEK makes available to District No. 40 at no more than the then current AVEK treated water
14 rate. Under no circumstances will District No. 40 be obligated to purchase more than 50,000
15 acre-feet of water annually from AVEK. Nothing in this Paragraph affects AVEK’s water
16 allocation procedures as established by its Board of Directors and AVEK’s Act.

17 **8.4.2** During the Rampdown period, the Drought Program Participants
18 each agree that, in order to minimize the amount of excess Groundwater Production in the Basin,
19 they will use all water made available by AVEK at no more than the then current AVEK treated
20 water rate in any Year in which they Produce Groundwater in excess of their respective rights to
21 Produce Groundwater under this Judgment. During the Rampdown period, no Production by a
22 Drought Program Participant shall be considered excess Groundwater Production exempt from a
23 Replacement Water Assessment under this Drought Program unless a Drought Program
24 Participant has utilized all water supplies available to it including its Production Right to Native
25 Safe Yield, Return Flow rights, unused Production allocation of the Federal Reserved Water
26 Rights, Imported Water, and Production rights previously transferred from another party.
27 Likewise, no Production by a Drought Program Participant will be considered excess
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1 Groundwater Production exempt from a Replacement Water Assessment under this Drought
2 Program in any Year in which the Drought Program Participant has placed water from such
3 sources described in this Paragraph 8.4.2 into storage or has transferred such water to another
4 Person or entity.

5 **8.4.3** During the Rampdown period, the Drought Program Participants
6 will be exempt from the requirement to pay a Replacement Water Assessment for Groundwater
7 Production in excess of their respective rights to Produce Groundwater under this Judgment up to
8 a total of 40,000 acre-feet over the Rampdown Period with a maximum of 20,000 acre-feet in any
9 single Year for District No. 40 and a total of 5,000 acre-feet over the Rampdown Period for all
10 other Drought Program Participants combined. During any Year that excess Groundwater is
11 produced under this Drought Program, all Groundwater Production by the Drought Program
12 Participants will be for the purpose of a direct delivery to customers served within their respective
13 service areas and will not be transferred to other users within the Basin.

14 **8.4.4** Notwithstanding the foregoing, the Drought Program Participants
15 remain subject to the Material Injury limitation as provided in this Judgment.

16 **8.4.5** Notwithstanding the foregoing, the Drought Program Participants
17 remain subject to a Balance Assessment as provided in Paragraph 9.3 of this Judgment.

18 **9. ASSESSMENTS.**

19 **9.1 Administrative Assessment.** Administrative Assessments to fund the
20 Administrative Budget adopted by the Watermaster shall be levied uniformly on an annual basis
21 against (1) each acre foot of a Party's Production Right as described in Paragraph 5.1, (2) each
22 acre foot of a Party's right to Produce Imported Water Return Flows as determined pursuant to
23 Paragraph 5.2, (3) each acre foot of a Party's Production for which a Replacement Water
24 Assessment has been imposed pursuant to Paragraph 9.2, and (4) during the Rampdown, each
25 acre foot of a Party's Production in excess of (1)-(3), above, excluding Production from Stored
26 Water and/or Carry Over water, except that the United States shall be subject to the
27 Administrative Assessment only on the actual Production of the United States. During the
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1 **11.1 Notice of Increase of Production Under Federal Reserved Water**

2 **Right.** After the date of entry of this Judgment, the United States shall provide the Watermaster
3 with at least ninety (90) days advanced notice if Production by the United States is reasonably
4 anticipated to increase more than 200 acre-feet per Year in a following 12 month period.

5 **11.2 Water Substitution to Reduce Production by United States.** The United

6 States agrees that maximizing Imported Water is essential to improving the Basin’s health and
7 agrees that its increased demand can be met by either increasing its Production or by accepting
8 deliveries of Imported Water of sufficient quality to meet the purpose of its Federal Reserved
9 Water Right under the conditions provided for herein. Any Party may propose a water
10 substitution or replacement to the United States to secure a reduction in Groundwater Production
11 by the United States. Such an arrangement would be at the United States’ sole discretion and
12 subject to applicable federal law, regulations and other requirements. If such a substitution or
13 replacement arrangement is agreed upon, the United States shall reduce Production by the amount
14 of Replacement Water provided to it, and the Party providing such substitution or replacement of
15 water to the United States may Produce a corresponding amount of Native Safe Yield free from
16 Replacement Water Assessment in addition to their Production Right.

17 **12. MOVEMENT OF PUBLIC WATER SUPPLIERS PRODUCTION**
18 **FACILITIES.**

19 **12.1 No Requirement to Move Public Water Suppliers’ Production Wells.**

20 One or more of the Public Water Suppliers intend to seek Federal or State legislation to pay for
21 all costs related to moving the Public Water Suppliers Production wells to areas that will reduce
22 the impact of Public Water Supplier Production on the United States’ current Production wells.

23 **The Public Water Suppliers shall have no responsibility to move any Production wells until**
24 **Federal or State legislation fully funding the costs of moving the wells is effective or until**
25 **required to do so by order of this Court which order shall not be considered or made by this Court**
26 **until the seventeenth (17th) Year after entry of this Judgment.** The Court may only make such an

27 order if it finds that the Public Water Supplier Production from those wells is causing Material
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1 Injury. The Court shall not impose the cost of moving the Public Water Supplier Production
2 Facilities on any non-Public Water Supplier Party to this Judgment.

3 **13. FEDERAL APPROVAL.** This Judgment is contingent on final approval by the
4 Department of Justice. Such approval will be sought upon final agreement of the terms of this
5 Judgment by the settling Parties. Nothing in this Judgment shall be interpreted or construed as a
6 commitment or requirement that the United States obligate or pay funds in contravention of the
7 Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law. Nothing in this
8 Judgment, specifically including Paragraphs 9.1, 9.2 and 9.3, shall be construed to deprive any
9 federal official of the authority to revise, amend, or promulgate regulations. Nothing in this
10 Judgment shall be deemed to limit the authority of the executive branch to make
11 recommendations to Congress on any particular piece of legislation. Nothing in this Judgment
12 shall be construed to commit a federal official to expend federal funds not appropriated by
13 Congress. To the extent that the expenditure or advance of any money or the performance of any
14 obligation of the United States under this Judgment is to be funded by appropriation of funds by
15 Congress, the expenditure, advance, or performance shall be contingent upon the appropriation of
16 funds by Congress that are available for this purpose and the apportionment of such funds by the
17 Office of Management and Budget and certification by the appropriate Air Force official that
18 funding is available for this purpose, and an affirmative obligation of the funds for payment made
19 by the appropriate Air Force official. No breach of this Judgment shall result and no liability
20 shall accrue to the United States in the event such funds are not appropriated or apportioned.

21 **14. STORAGE.** All Parties shall have the right to store water in the Basin pursuant to
22 a Storage Agreement with the Watermaster. If Littlerock Creek Irrigation District or Palmdale
23 Water District stores Imported Water in the Basin it shall not export from its service area that
24 Stored Water. AVEK, Littlerock Creek Irrigation District or Palmdale Water District may enter
25 into exchanges of their State Water Project “Table A” Amounts. Nothing in this Judgment limits
26 or modifies operation of preexisting banking projects (including AVEK, District No. 40, Antelope
27 Valley Water Storage LLC, Tejon Ranchcorp and Tejon Ranch Company, Sheep Creek Water
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1 Replacement Water and apply subsequent assessments towards the costs of such pre-purchases.
2 The Watermaster Engineer shall reasonably and equitably actively manage the Basin to protect
3 and enhance the health of the Basin.

4 **18.5.8 Water Quality.** The Watermaster Engineer shall take all
5 reasonable steps to assist and encourage appropriate regulatory agencies to enforce reasonable
6 water quality regulations affecting the Basin, including regulation of solid and liquid waste
7 disposal, and establishing Memorandums of Understanding with Kern and Los Angeles Counties
8 regarding well drilling ordinances and reporting.

9 **18.5.9 Native Safe Yield.** Ten (10) Years following the end of the seven
10 Year Rampdown period, in the seventeenth (17th) Year, or any time thereafter, the Watermaster
11 Engineer may recommend to the Court an increase or reduction of the Native Safe Yield. The
12 Watermaster Engineer shall initiate no recommendation to change Native Safe Yield prior to the
13 end of the seventeenth (17th) Year. In the event the Watermaster Engineer recommends in its
14 report to the Court that the Native Safe Yield be revised based on the best available science, the
15 Court shall conduct a hearing regarding the recommendations and may order a change in Native
16 Safe Yield. Watermaster shall give notice of the hearing pursuant to Paragraph 20.3.2. The most
17 recent Native Safe Yield shall remain in effect until revised by Court order according to this
18 paragraph. If the Court approves a reduction in the Native Safe Yield, it shall impose a Pro-Rata
19 Reduction as set forth herein, such reduction to be implemented over a seven (7) Year period. If
20 the Court approves an increase in the Native Safe Yield, it shall impose a Pro-Rata Increase as set
21 forth herein, such increase to be implemented immediately. Only the Court can change the
22 Native Safe Yield.

23 **18.5.10 Change in Production Rights in Response to Change in Native**
24 **Safe Yield.** In the event the Court changes the Native Safe Yield pursuant to Paragraph 18.5.9,
25 the increase or decrease will be allocated among the Producers in the agreed percentages listed in
26 Exhibits 3 and 4, except that the Federal Reserved Water Right of the United States is not subject
27 to any increase or decrease.

1 **18.5.11 Review of Calculation of Imported Water Return Flow**
2 **Percentages.** Ten (10) Years following the end of the Rampdown, in the seventeenth (17th)
3 Year, or any time thereafter, the Watermaster Engineer may recommend to the Court an increase
4 or decrease of Imported Water Return Flow percentages. The Watermaster Engineer shall initiate
5 no recommendation to change Imported Water Return Flow percentages prior to end of the
6 seventeenth (17th) Year. In the event the Watermaster Engineer recommends in its report to the
7 Court that Imported Water Return Flow percentages for the Basin may need to be revised based
8 on the best available science, the Court shall conduct a hearing regarding the recommendations
9 and may order a change in Imported Water Return Flow percentages. Watermaster shall give
10 notice of the hearing pursuant to Paragraph 20.6. The Imported Water Return Flow percentages
11 set forth in Paragraph 5.2 shall remain in effect unless revised by Court order according to this
12 Paragraph. If the Court approves a reduction in the Imported Water Return Flow percentages,
13 such reduction shall be implemented over a seven (7) Year period. Only the Court can change the
14 Imported Water Return Flow percentages.

15 **18.5.12 Production Reports.** The Watermaster Engineer shall require each
16 Producer, other than unmetered Small Pumper Class Members, to file an annual Production report
17 with the Watermaster. Producers shall prepare the Production reports in a form prescribed by the
18 rules and regulations. The Production reports shall state the total Production for the reporting
19 Party, including Production per well, rounded off to the nearest tenth of an acre foot for each
20 reporting period. The Production reports shall include such additional information and supporting
21 documentation as the rules and regulations may reasonably require.

22 **18.5.13 New Production Application Procedure.** The Watermaster
23 Engineer shall determine whether a Party or Person seeking to commence New Production has
24 established the reasonableness of the New Production in the context of all other uses of
25 Groundwater in the Basin at the time of the application, including whether all of the Native Safe
26 Yield is then currently being used reasonably and beneficially. Considering common law water
27 rights and priorities, the mandate of certainty in Article X, section 2, and all other relevant
28

EXHIBIT B

1 Michael D. McLachlan (State Bar No. 181705)
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15 Attorneys for Plaintiff Richard Wood and the Class

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

18 Coordination Proceeding
19 Special Title (Rule 1550(b))

Judicial Council Coordination
Proceeding No. 4408

20 ANTELOPE VALLEY GROUNDWATER
21 CASES

Lead Case No. BC 325201

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

Case No.: BC 391869

25 Plaintiff,

**MOTION FOR ORDER SETTING
PARAMETERS FOR
TERMINATION OF SMALL
PUMPER CLASS COUNSEL'S
APPOINTMENT AS CLASS
COUNSEL**

26 v.

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

Defendants.

1 **I. INTRODUCTION**

2 This case presents a highly unusual scenario whereby the Court will retain
3 jurisdiction over the Judgment in perpetuity, even after the Judgment becomes
4 final after appeal. Given that Class Counsel are both natural persons, they
5 cannot represent a Class in perpetuity, even if they desired to do so. For this
6 reason, Class Counsel seeks an order from this Court that the duties of Class
7 Counsel to the members of Small Pumper Class shall terminate upon the
8 Judgment becoming final for appellate purposes.

9 **II. PERTINENT FACTS**

10 On September 2, 2008, the Court issued its order certifying the Small
11 Pumper Class action. [D.E. 1865.] In that Order, the Court appointed the Law
12 Offices of Michael D. McLachlan, APC, and the Law Office of Daniel M. O’Leary
13 as counsel for the Class. On December 28, 2015, the Court entered Judgment in
14 these coordinated proceedings. [D.E. 11021.] This judgment included a final
15 judgment for *Wood v. Los Angeles County Waterworks District No. 40 et al.*
16 [D.E. 11025.]

17 At least four parties have filed notices of appeal to the master Judgment,
18 and the appellate process has commenced.

19 **II. ARGUMENT**

20 Neither the California Rules of Court nor existing case law address the
21 issue of termination of Class Counsel’s role under the set of procedural facts set
22 forth above. Indeed, the law makes little mention of this issue – almost certainly
23 because every class case eventually becomes final at the trial court level, either
24 by dismissal or judgment.

25 It is clear that class counsel “owe absent class members a fiduciary duty to
26 protect the absentees’ interests throughout the litigation.” (*Barboza v. West*
27 *Coast Digital GSM, Inc.* (2009) 179 Cal. App.4th 540, 546; *Janik v. Rudy,*
28 *Exelrod & Zieff* (2004) 119 Cal.App.4th 930, 938.) The trial court, “as the

1 guardian of the rights of the absentees, is vested broad administrative, as well as
2 adjudicative power.” (*Greenfield v. Villager Indus., Inc.* (3d Cir. 1973) 483 F.2d
3 824, 832.) Just as the Court is required to issue orders certifying a class (C.R.C.
4 3.765), so too does it have the power to amend such orders as necessary. (C.R.C.
5 3.765 & 3.767(b).)

6 Here, the Judgment will become final at some point, but its
7 administration through the watermaster and this Court, will continue in
8 perpetuity. There must be some clearly defined terminus to the continued
9 representation of the Small Pumper Class by Class Counsel. Class Counsel
10 believe the end of their representation should be the point in time when the
11 Judgment becomes final. Obviously, Class Counsel will continue to litigate the
12 matter for the Class during the appeals. After the Judgment is final, the
13 watermaster takes a primary role in management and reporting to the Class,
14 including on issues impacting the Small Pumpers. The Judgment contains
15 necessary provisions for protecting the Small Pumpers interests, including
16 specific notice provisions for the Class (Judgment and Physical Solution §
17 18.4.4.) In this fashion, the Judgment provides for the ongoing means for the
18 Court to supervise the Small Pumpers through the direct administrative arm of
19 the watermaster.

20 For these reasons, Class Counsel request an order that terminates the
21 role of Class Counsel upon finality of the Judgment.

22
23 DATED: March 9, 2016

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

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By: Michael D.
McLachlan

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Michael D. McLachlan
Attorneys for Plaintiff Richard Wood and the
Small Pumper Class

PROOF OF SERVICE

I, Rosanna R. Pérez, declare:

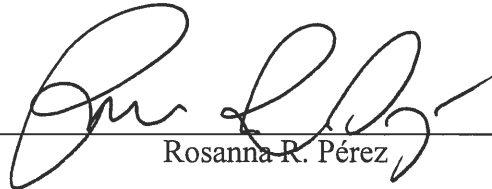
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Best Best & Krieger LLP, 300 S. Grand Avenue, 25th Floor, Los Angeles, California 90071. On May 18, 2016, I served the following document(s):

**REPLY IN SUPPORT OF LOS ANGELES COUNTY WATERWORKS DISTRICT
NO. 40'S MOTION TO AMEND JUDGMENT NUNC PRO TUNC;
DECLARATION OF JEFFREY V. DUNN**



by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 18, 2016, at Los Angeles, California.


Rosanna R. Pérez

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