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8 Attorneys for Defendant
Long Valley Road, L.P.
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**
12

13 Coordination Proceeding Special Title (Rule
14 1550(b))

15 **ANTELOPE VALLEY GROUNDWATER**
16 **CASES**

Judicial Council Coordination Proceeding
No. 4408

Santa Clara County Superior Court Case No.
1-05-CV-049053

Los Angeles County Superior Court Case
No. BC 325201

Assigned to Honorable Jack Komar (Ret)
Department 17C

**DECLARATION OF ANDREW W.
HOMER IN SUPPORT OF LONG
VALLEY ROAD, L.P.'S MOTION TO
INTERVENE IN JUDGMENT**

*[Notice of Motion and Motion for Leave to
Intervene in Judgment, Memorandum of
Points and Authorities, Declaration of Bruce
E. Pherson, Jr. and [Proposed] Order filed
concurrently]*

Hearing Date: November 1, 2018
Time: 9:00 AM

1 I, Andrew W. Homer, declare as follows:

2 1. I am an attorney with the law firm of Kelley Drye & Warren LLP. I am one of the
3 attorneys from our firm that represents non-party Long Valley Road, L.P. (“LVRP”) in connection
4 with the letter that LVRP received from the Antelope Valley Watermaster General Counsel on
5 approximately July 10, 2018 (“Watermaster Letter”), and in connection with LVRP’s concurrently
6 filed Motion to Intervene. I have personal knowledge of the following facts by virtue of my role as
7 outside counsel to LVRP and my participation in the communications discussed herein.

8 2. Among other things, the Watermaster Letter states that:

9 a. “LVRP may be pumping groundwater in violation of the “Judgment and Physical
10 Solution dated December 23, 2015 [] relating to the Antelope Valley Adjudicated
11 Basin”;

12 b. That if LVRP “do[es] not have a right to do so under the terms of the Judgment
13 the Watermaster is required by the Court to stop all unauthorized pumping”; and

14 c. LVRP should “immediately comply with Section 20.9 of the Judgment,” which
15 “provides a process for non-parties to intervene in the Judgment to become a
16 party then seek the right to produce groundwater from the Adjudicated Basin.”

17 A true and correct copy of the “Watermaster Letter” is included as Exhibit F to the concurrently
18 filed Declaration of Bruce E. Pherson, Jr. *See* Pherson Decl. at ¶ 10, Ex. F.

19 3. Upon receiving the Watermaster Letter, LVRP instructed its former counsel to
20 arrange a time to discuss its contents and LVRP’s options with the Watermaster General Counsel.
21 LVRP’s former counsel promptly contacted the Watermaster General Counsel to acknowledge
22 receipt and to confirm that LVRP would respond to the Watermaster Letter in more detail.

23 4. On August 13, 2018, the Watermaster General Counsel emailed LVRP’s former
24 counsel and stated as follows:

25 “It appears LVRP is already a member of the Small Pumper Class (unless they opted
26 out of being a member of that class). ... If they are a member of the Small Pumper
27 Class, they presumably are already subject to the Judgment and Physical Solution
28 and need not intervene.”

1 A true and correct copy of the Watermaster General Counsel’s August 13, 2018 email is included
2 as the third message in the thread that is reproduced in Exhibit A.

3 5. On August 15, 2018, Michael J. O’Connor, a Partner with my firm, responded to the
4 Watermaster General Counsel’s August 13 email. Among other things, in the August 15 email Mr.
5 O’Connor explained that:

- 6 a. Despite being listed as a member of the “Small Pumper Class” in the Judgment,
7 and having purportedly been provided notice of related actions such as class
8 certification and class settlement, LVRP has no record of receiving such
9 notice(s);
- 10 b. LVRP was at all times (and remains), by the Court’s approved definition, not a
11 member of the Small Pumper Class;
- 12 c. The Judgment Approving Small Pumper Class Action Settlements (“Small
13 Pumper Class Settlement Order”) defines the Small Pumper Class as follows:
14 “All private (i.e. non-governmental) persons and entities that own property
15 within the Basin, as adjudicated, and that have been pumping less than 25 acre-
16 feet per year on their property during any year from 1946 to the present”;
- 17 d. The same paragraph refers to the Court’s September 2, 2008 class certification
18 order as the source of this definition, so for purposes of establishing whether a
19 person or entity is a member of the class the relevant inquiry appears to be as of
20 September 2, 2008;
- 21 e. LVRP purchased the Property in 2006, and properly permitted and completed
22 groundwater wells that year;
- 23 f. In each year since and including 2006, LVRP has pumped and beneficially used
24 more than twenty-five acre-feet of groundwater at the Property, which is a
25 wholesale nursery that grows and sells hundreds of varieties of trees and shrubs,
26 including drought-tolerant and low water use plants for sale in Southern
27 California;
- 28 g. As such, LVRP is not a “person or entity that own[s] property within the Basin

1 ... and that [has] been pumping less than 25 acre-feet per year on [it's] property
2 during any year from 1946 through [September 2, 2008]" so by definition not a
3 member of the Small Pumper Class;

4 h. This is the case whether LVRP received notice(s) of related actions or not,
5 because had LVRP received such notice(s), it would have reasonably understood
6 it/them to not apply to it because it has never fallen within the class definition;

7 i. LVRP believes that it was improperly excluded from the Judgment, and that as
8 an overlying landowner it is entitled to pump and beneficially use groundwater
9 from beneath the Property, on the Property; and

10 j. LVRP also understands that it must follow required procedures to establish and
11 quantify this right within the framework of the Judgment, and wishes to work
12 cooperatively with the Watermaster and other parties subject to the Judgment
13 toward that end.

14 A true and correct copy of LVRP's counsel's August 15, 2018 email to the Watermaster General
15 Counsel is included as the second message in the thread that is reproduced in Exhibit A.

16 6. On August 16, 2018, the Watermaster General Counsel responded to Mr. O'Connor's
17 August 15 email, requested some additional information, and asked to arrange a time to discuss the
18 matter with LVRP's counsel and the Watermaster Engineer. A true and correct copy of the
19 Watermaster General Counsel's August 16, 2018 email to Mr. O'Connor is included as the first
20 message in the thread that is reproduced in Exhibit A.

21 7. Mr. O'Connor promptly provided the additional information requested by the
22 Watermaster General Counsel, and on September 4, 2018 LVRP's counsel, the Watermaster General
23 Counsel and the Watermaster Engineer convened by teleconference to discuss the Watermaster
24 Letter and LVRP's options and obligations in response. During this call:

25 a. LVRP generally confirmed the information it had previously provided and sought
26 input from both the Watermaster General Counsel and the Watermaster Engineer;

27 b. The Watermaster General Counsel confirmed that the June 9, 2018 date listed on
28 the face of the Watermaster Letter is incorrect, and that the Watermaster Letter

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was in fact mailed on or about July 9, 2018;

c. The Watermaster General Counsel confirmed that the Watermaster could not itself address the status of LVRP's water right and associated rights and responsibilities under the Judgment, which are the province of the Court, and that to do so LVRP would need to move to intervene in the Judgment; and

8. During the September 4, 2018 teleconference, the Watermaster General Counsel confirmed that the conversation satisfied the requirement in Section 20.9 of the Judgment that LVRP (as a non-party) consult with the Watermaster Engineer and seek the Watermaster's stipulation before moving to intervene.

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

Executed on October 9, 2018 at La Jolla, California.



Andrew W. Homer.

Exhibit A

Homer, Andrew W.

From: Craig A. Parton <Cparton@ppplaw.com>
Sent: Thursday, August 16, 2018 4:04 PM
To: O'Connor, Michael J.
Cc: Homer, Andrew W.
Subject: RE: Antelope Valley Groundwater Cases/Long Valley Road LP

Mr. O'Connor: Thank you for your e-mail below and raising these concerns about the status of your client vis-à-vis the Judgment and Physical Solution.

First, let me confirm with staff as to when my letter went out to your clients.

Second, I will try and determine how your client's name appeared on the Small Pumper list. In the interim can you supply me with the name of the predecessor in title to your client's property?

Third, I will circle back with you next week and will work with the Watermaster Engineer about a convenient time to talk at the end of next week (perhaps on Friday afternoon?).....Craig Parton



PRICE, POSTEL & PARMA LLP

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From: O'Connor, Michael J. [<mailto:moconnor@KelleyDrye.com>]
Sent: Wednesday, August 15, 2018 12:26 PM
To: Craig A. Parton
Cc: Homer, Andrew W.
Subject: Antelope Valley Groundwater Cases/Long Valley Road LP

Dear Mr. Parton -

Long Valley Road LP ("LVRP") has recently retained Kelley Drye & Warren LLP to represent it in connection with your letter dated June 9, 2018 (attached) and related matters. Thank you for previously discussing the matter with William Carter of the Musick Peller firm on behalf of LVRP. We understand from Mr. Carter that he noted in a July 23 conversation with Ms. Patty Rose of the Antelope Valley Watermaster's office that LVRP believes that the letter is misdated, and was actually sent on July 9, 2018. It was received by LVRP on or about July 10, 2019. As an initial item, could you please confirm the correct transmission date?

On the substance of the letter and your August 13 email below, we have conferred with LVRP and confirmed that the organization does not have any record of receiving actual notice of the overall Antelope Valley Adjudication and/or any notices sent to the "Small Pumper Class," either at the initiation of the underlying class action, class certification or class settlement stages. We understand that actual notice was attempted via mail and constructive notice was attempted through publication at various times during the pendency of the litigation, but also that the Class Administrator submitted testimony, for example, noting that 770 (18%) of the 4,310 notices of the proposed Small Pumper Class settlement were returned as undeliverable. Dkt. 9968 (June 4, 2015). Please let us know if you have any records that establish how and when notice of these proceedings was sent to our client.

In any event, and more importantly, LVRP was at all times (and remains), by the Court's approved definition of the Small Pumper Class, *not* a member of that class. The Small Pumper Class is defined in the December 23, 2015 Judgment Approving Small Pumper Class Action Settlements as follows:

"All private (i.e. non-governmental) persons and entities that own property within the Basin, as adjudicated, and that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present."

Dkt. 11020 at Exhibit C, para. F (December 28, 2015). The same paragraph refers to the Court's September 2, 2008 class certification order as the source of this definition, so for purposes of establishing whether a person or entity is a member of the class the relevant inquiry appears to be as of September 2, 2008. *Id.*

LVRP purchased the property that is the subject of your correspondence in 2006, and properly permitted and completed groundwater wells that year. We understand that LVRP's drilling contractor certified and submitted associated Well Completion Reports with the California Department of Water Resources in July 2006. Since that time, LVRP has in each year since (and including) 2006 pumped and beneficially used more than 25 acre-feet of groundwater at its property, which is a wholesale nursery that grows and sells hundreds of varieties of trees and shrubs, including drought-tolerant and low water use plants for sale in Southern California. As such, LVRP is not a "person or entity that own[s] property within the Basin ... and that [has] been pumping less than 25 acre-feet per year on [it's] property during any year from 1946 through [September 2, 2008]" so by definition not a member of the Small Pumper Class. This is the case whether LVRP received adequate notice of related actions or not. Had LVRP received such notice(s), it would have reasonably understood it/them to not apply to it because it has never fallen within the class definition.

Based on the above, we are hoping to arrange a time to discuss LVRP's options under the main judgment with you. LVRP believes that it was improperly excluded from the judgment, and that as an overlying user should be entitled to pump and use groundwater from beneath its property. LVRP also understands that it must follow required procedures to establish this right, and wishes to work cooperatively with the Watermaster and other parties subject to the judgment toward that end.

Please let me know if you have some time to discuss this during the week of August 20. As I will likely involve another attorney from my office, it would be helpful if we could set a date and time in advance.

Sincerely,

MICHAEL J. O'CONNOR
Partner

Kelley Drye & Warren LLP
(310) 712-6120
moconner@kelleydrye.com

From: Craig A. Parton [<mailto:Cparton@ppplaw.com>]
Sent: Monday, August 13, 2018 3:25 PM
To: Carter, William
Cc: Phyllis Stanin (PStanin@todddgroundwater.com)
Subject: Long Valley Road LP

Mr. Carter: It appears your client (Long Valley Road LP) is already a member of the Small Pumper Class (unless they opted out of being a member of that class). See page 29 of the "List of Known Small Pumper Class Members for Final Judgment" which is attached to the December 23, 2015 "Judgment Approving Small Pumper Class Action Settlements"If they are a member of the Small Pumper Class, they presumably are already subject to the Judgment and Physical Solution and need not intervene.

Is this consistent with what you know? Once your client's legal status is agreed upon, we can discuss how to go forward.....Thank you, Craig Parton (Watermaster General Counsel)



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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 10100 Santa Monica Boulevard, Twenty-Third Floor, Los Angeles, California 90067-4008.

On October 9, 2018 I served true copies of the following document(s) described as:


- **LONG VALLEY ROAD, L.P.’S NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE IN JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES**
- **DECLARATION OF BRUCE E. PHERSON, JR. IN SUPPORT OF LONG VALLEY ROAD, L.P.’S MOTION TO INTERVENE IN JUDGMENT**
- **DECLARATION OF ANDREW W. HOMER IN SUPPORT OF LONG VALLEY ROAD, L.P.’S MOTION TO INTERVENE IN JUDGMENT**
- **[PROPOSED] ORDER RE: LONG VALLEY ROAD, L.P.’S MOTION TO INTERVENE IN JUDGMENT**

on the interested parties in this action by placing the true copy:

BY ANTELOPE VALLEY WATERMASTER’S ELECTRONIC DOCUMENT SERVICE: I uploaded the document(s) listed above to www.avwatermaster.org, for electronic service on counsel of record listed on the Electronic Service List for Case No. 1-05-CV-049053.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 9, 2018, at Los Angeles, California.



Karen Tjaden