

# **EXHIBIT G**

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15 Attorneys for Plaintiff

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

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

20 ANTELOPE VALLEY GROUNDWATER  
21 CASES

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

25 Plaintiff,

26 v.

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

Defendants.

Judicial Council Coordination  
Proceeding No. 4408

(Santa Clara Case No. 1-05-CV-049053,  
Honorable Jack Komar)

Case No.: BC 391869

**RICHARD WOOD'S RESPONSE TO  
AGWA'S MOTION TO DECERTIFY  
CLASS**

Date: May 6, 2009  
Time: 9:00 a.m.  
Dept.: 17C

1 AGWA moves to decertify or amend the class definition of the Small Pumper  
2 Class. The Small Pumper class counsel agree that, as currently defined, the class may  
3 include parties with potentially adverse interests. The problem is that nobody knows (1)  
4 how much groundwater the average domestic pumper uses or (2) how many domestic  
5 pumpers reside in the area of adjudication. Based on an informal survey, Mr. Wood and  
6 his counsel believe that the average use is significantly higher than the 1 acre-foot/year  
7 value cited in AGWA's motion. Wood and his counsel also believe that the number of  
8 potential class members is far less than the 15,000 people currently set to receive class  
9 notice.<sup>1</sup>

10 The more imminent and possibly intractable problem is that the Small Pumper  
11 class will not be able to get solid answers to these questions because it has been starved  
12 of resources. Indeed, the Court's ruling on Mr. Wood's motion for appointment of an  
13 expert will effectively prevent a meaningful investigation of class size and the volume of  
14 classwide pumping until after the Phase III trial.<sup>2</sup> In the mind of class counsel, this fact  
15 weighs in favor of decertifying the class.

16 The problem faced by class counsel is that without an expert to participate in the  
17 overdraft determination, the pumping rights of class members will be permanently  
18 impaired. At the risk of some oversimplification, the determination of overdraft will  
19 require that parties to produce evidence of total pumping in excess of the area of  
20 adjudication's safe yield. The total pumping is the sum of pumping for municipal,  
21 industrial, agricultural, and domestic use, along with whatever miscellaneous pumping is  
22 occurring. The members of the Small Pumper class contribute to the total amount of  
23 domestic (and, if AGWA is to be believed, agricultural) pumping. Whatever this

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25  
26 1 Two days ago, Los Angeles Waterworks District No. 40 informed class counsel that it has  
27 ballooned the number of potential class members from approximately 8,000 (where it had been  
28 estimated for a year or more) to 15,000. This compounds core problems with the class. Richard  
Wood will address these matters further in his *ex parte* application to be heard on May 6, 2009.

1 contribution is, the amount would establish the amount of self-help available to the class,  
2 i.e., the amount of pumping safe from the prescription claims of the public water  
3 purveyors.

4 **Whatever that amount might be, the Small Pumper class clearly cannot rely on the**  
5 **experts retained by other landowners. As evidenced by this motion and other recent**  
6 **filings, the other landowners do not want the Small Pumper class present in this**  
7 **proceeding at all and have become increasingly hostile to its continued existence.<sup>3</sup> Their**  
8 **experts will be incentivized to attribute pumping to uses other than small domestic use,**  
9 **because they are interested in protecting the pumping rights of other landowners against**  
10 **prescription claims. In the Phase III trial, if the evidence supports a finding of overdraft,**  
11 **the agricultural pumpers will advocate that they have been pumping a greater volume of**  
12 **water for reasonable and beneficial uses than other overlying owners, and vice versa. No**  
13 **landowner would seek to minimize their pumping volume in an overdrawn basin because**  
14 **any physical solution will ultimately force users to scale down from some baseline**  
15 **pumping volume.**

16 **So without an expert in the Phase III trial, the Small Pumper class will get**  
17 **whipsawed by competing experts, all of whom will interpret whatever data exists to**  
18 **minimize pumping by the small domestic pumpers.** Thus, when the Court eventually lifts  
19 its stay order on the appointment of an expert, there may already exist a factual finding  
20 concerning the ceiling amount of water available to the class's self-help defense.

21 Under this scenario, the small pumpers cannot be adequately represented as a  
22 class, regardless of class definition. Thus, if the class is to participate in the Phase III  
23 trial without an expert, it should be decertified.

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27 2 The Court granted Wood's motion for appointment of an expert, but stayed the order until after  
28 the Phase III trial on safe yield and overdraft. For reasons explained below, this ruling subjects  
that Wood class to the possibility of prejudice in the Phase III trial.

1 DATED: May 1, 2009

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By: \_\_\_\_\_ //s//  
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3 This hostility will increase when the other landowners learn that the Wood class may end up  
having twice as many members as anticipated.